

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

RECEIVED

Aug 31 2020

SC Court of Appeals

Appellate Case No. 2020-000071

Tiffany N. Provence, as Special Administrator for the Estate of Jose Refugio Licona Larios,..... Appellant,

v.

Dominion Energy South Carolina f/k/a South Carolina Electric & Gas Company,.....Respondent.

RECORD ON APPEAL – VOLUME II

YARBOROUGH APPLGATE LLC
William E. Applegate, IV
Liam D. Duffy
Perry M. Buckner, IV
291 East Bay Street, Floor 2
Charleston, SC 29401
843-972-0150

BARNES LAW FIRM, LLC
Kathleen C. Barnes, SC Bar No. 78854
P.O. Box 897
Hampton, SC 29924
803-943-4529

SMITH, ROBINSON, HOLLER, DuBOSE,
& MORGAN, LLC
G. Murrell Smith, Jr.
Shannon N. Peake
Post Office Box 580
Sumter, SC 29151-0580
803-778-2471
Attorneys for Appellants

RICHARDSON PLOWDEN &
ROBINSON, P.A.
Steven J. Pugh
Post Office Drawer 7788
Columbia, SC 29202
803-771-4400

Megan C. White
235 Magrath Darby Boulevard,
Suite 100
Mount Pleasant, SC 29464
843-805-6550

WILLOUGHBY & HOEFER, P.A.
Tracey C. Green
Post Office Box 8416
Columbia, SC 29202
803-771-2128
Attorneys for Respondent

INDEX

PAGE

Index.....	i

VOLUME I

Notice of Appeal, January 17, 2020.....	1

Orders

Order granting Defendant's motion for a new trial absolute, November 1, 2019.....	3
Form 4 Order denying motion to reconsider, December 19, 2019.....	13
Form 4 Order denying Defendants' motion for continuance, September 26, 2019.....	16
Order Compelling Production of Records, September 14, 2019.....	17
Form 4 Order denying Defendant's motion for summary judgment, September 6, 2019.....	18

Pleadings

Summons and Complaint, June 7, 2017.....	21
Answer of Defendant South Carolina Electric & Gas Company, July 11, 2017.....	31
Plaintiff's motion <i>in limine</i> No. 3 to exclude evidence regarding Jose Larios' immigration status or any other witnesses' immigration status, September 20, 2019.....	40
Defendants' joint motion for continuance, September 13, 2019.....	44
Exhibits A-J.....	51
Memorandum in support of Defendant's motion for directed verdict, September 26, 2019.....	76
Verdict Form, September 27, 2019.....	98
Defendant's motion for judgment notwithstanding the verdict, in the alternative, for a new trial and for sanctions, October 7, 2019.....	100
Defendant's memorandum of law in support of its motion for judgment notwithstanding the verdict, in the alternative, for a new trial and for sanctions, October 7, 2019.....	104
Defendant's motion for new trial <i>nisi remittitur</i> or, in the alternative, new trial absolute, and incorporated memorandum in support, October 7, 2019.....	167

Plaintiff’s memorandum in opposition to Defendant’s motions for judgment notwithstanding the verdict, for a new trial, and for sanctions, October 18, 2019.....	181
Plaintiff’s memorandum in opposition to Defendant’s motion for new trial absolute or <i>nisi remittitur</i> , October 18, 2019.....	220
Plaintiff’s notice of motion and motion to reconsider, alter, or amend order granting new trial absolute, November 12, 2019.....	245
Attached affidavits, November 12, 2019.....	256
Defendant’s opposition to Plaintiff’s motion to reconsider, alter, or amend order granting new trial absolute, November 22, 2019.....	265

Transcripts

Transcript of pre-trial hearing on September 23, 2019.....	274
Transcript of trial, September 24-27, 2019.....	288
Opening statement by Mr. Applegate.....	308
Opening statement by Mr. Pugh.....	330

VOLUME II

Richard Carter

Direct examination by Mr. Buckner.....	347
Cross examination by Mr. Pugh.....	360

Marion Whaley

Direct examination by Mr. Applegate.....	371
Cross examination by Mr. Pugh.....	388
Cross examination by Mr. Stegmaier.....	415
Redirect examination by Mr. Applegate.....	417
Recross examination by Mr. Pugh.....	427

Erin Presnell

Direct examination by Mr. Applegate.....	429

Cross examination by Mr. Pugh.....	446
Edward Brill	
Direct examination by Mr. Applegate.....	462
Cross examination by Mr. Pugh.....	507
Pedro Abraham	
Direct examination by Mr. Buckner.....	523
Cross examination by Ms. White.....	533
Redirect examination by Mr. Buckner.....	555
Recross examination by Ms. White.....	558
Beverly O'Brien	
Direct examination by Mr. Duffy.....	559
Cross examination by Mr. Pugh.....	576
Mark Branham	
Direct examination by Mr. Duffy.....	586
Cross examination by Mr. Pugh.....	613
Redirect examination by Mr. Duffy.....	614
Ray Jackson	
Deposition video played (print copy of deposition designations played at trial included in record).....	615
Gaspar Larios	
Direct examination by Mr. Applegate.....	615
Tiffany Provence	
Direct examination by Mr. Applegate.....	630
Defendant's motion for a directed verdict.....	642

VOLUME III

Eric Jackson

Direct examination by Mr. Pugh.....	656
Cross examination by Mr. Applegate.....	684
Redirect examination by Mr. Pugh.....	716

Rodney Walker

Direct examination by Mr. Pugh.....	721
Cross examination by Mr. Duffy.....	733
Redirect examination by Mr. Pugh.....	738

Jane Smoak

Direct examination by Mr. Pugh.....	739
Cross examination by Mr. Buckner.....	745
Redirect examination by Mr. Pugh.....	749
Recross examination by Mr. Buckner.....	749
Defendant's motion for a directed verdict.....	759
Closing argument by Mr. Applegate.....	766
Closing argument by Mr. Pugh.....	788
Closing argument by Mr. Applegate.....	811
Jury Charge.....	814
Verdict.....	859
Print copy of Ray Jackson's deposition designations played at trial.....	865
Transcript of post-trial motions hearing on October 24, 2019.....	890

Trial Exhibits

Plaintiff's exhibit 1, photos.....	940
Plaintiff's exhibit 2, pathology report.....	948
Plaintiff's exhibit 4, autopsy photo.....	953
Plaintiff's exhibit 7, photo of chainsaw.....	954
Plaintiff's exhibit 8, benefit flyer.....	955
Plaintiff's exhibit 9, photos of memorial bench.....	956
Plaintiff's exhibit 13, photos.....	958
Defendant's exhibit 1, scene photo.....	966
Defendant's exhibit 3, line photo.....	967
Defendant's exhibit 4, line photo.....	968
Defendant's exhibit 5, night photo.....	969

Certificate of Counsel and Compliance

1 for identification))

2 THE COURT: Are we ready? Y'all about ready?

3 MR. BUCKNER: Your Honor, we're ready.

4 MR. APPLGATE: Yes, Your Honor.

5 THE COURT: Is defense ready?

6 MR. STEGMAIER: Yes, sir.

7 MR. KENNEDY: Yes, sir.

8 THE COURT: Let's ask the members of the jury to
9 join us, please.

10 (The jury entered the courtroom at 2:12 p.m.)

11 THE COURT: Have a seat, folks. All right. Folks,
12 if you recall when we broke for lunch, the attorneys had
13 addressed you with regards to their opening statements,
14 their opening remarks, and so now we're ready to
15 proceed. I recognize Mr. Buckner for the plaintiff's
16 first witness.

17 MR. BUCKNER: Thank you, Your Honor. First up for
18 the plaintiff is going to call Mr. Richard Carter.
19 Chief deputy coroner here in Colleton County.

20 THE COURT: Mr. Carter, if you'd please come around
21 and be sworn, sir.

22 RICHARD CARTER,
23 being first duly sworn, was examined and testified as
24 follows:

25 DIRECT EXAMINATION BY MR. BUCKNER:

1 Q Mr. Carter, how are you today?

2 A I'm good. How are you?

3 Q I'm doing well. If you could before we get
4 started, I want to make sure because this jury is over
5 here to your right that you direct your testimony to
6 them.

7 A Yes, sir.

8 Q You can feel free to ignore me in that sentence.
9 Okay?

10 A Okay.

11 Q Could you please introduce yourself to the jury
12 your full name, sir?

13 A Richard Phillip Carter.

14 Q And, Mr. Carter, could you tell the jury what you
15 do for a living?

16 A I work with the Colleton County Coroner's Office.
17 I'm the chief deputy coroner.

18 Q And how long have you been in that position?

19 A I've worked there probably about -- I been there 25
20 years.

21 Q Okay. And how long have you been chief deputy
22 coroner?

23 A Probably ten.

24 Q Could you tell the ladies and gentlemen of the jury
25 what chief deputy coroner in Colleton County does?

1 A Sort of like the assistant coroner and do whatever
2 the coroner wants me to do. I'm in charge when he's
3 gone.

4 Q And what areas do you cover? Obviously this case
5 that we're going to be talking about Edisto Beach, what
6 areas do you cover?

7 A We work homicides, suicides, and accidents, and
8 naturals.

9 Q Okay. And is there any part geographically of
10 Colleton County that you don't work on those incidents
11 with them?

12 A I normally don't work Edisto Beach. We have Deputy
13 Coroner Marion Whaley down at Edisto Beach. And he
14 usually handles everything down on that end unless he
15 needs assistance and then he can ask me and I'll be down
16 to help him.

17 Q Okay. And where do you live in Colleton County?

18 A I live in Lodge.

19 Q And, obviously, in this case you were involved down
20 in Edisto Beach the incident regarding Mr. Larios;
21 right?

22 A Yes.

23 Q Okay. And tell me what you remember about that and
24 how you became to be involved.

25 A I was involved in the ER, emergency room when they

1 received him there. He was deceased. I think when he
2 left Edisto Beach he was in the ambulance and they
3 worked the call, so the speak, trying to resuscitate him
4 and he died in transit and they brought him on to the
5 emergency room and that's when they called me.

6 Q Okay. And as chief deputy coroner, what is your
7 first order of business, so to speak?

8 A We investigate all deaths and we're mainly looking
9 for the cause of death. That's our first
10 responsibility. We want to know why the person died.

11 Q And initially in this case, what information were
12 you provided?

13 A Well, to first start off with, I was provided with
14 -- that they had a deceased person in the ER, needed me
15 to come down. So I went down, some of his family was
16 there. I started asking questions and then I called
17 Marion down at the beach and he went out to see what was
18 going on.

19 Q What did you tell -- I'm assuming when you say
20 Marion, you talking about Mr. Marion Whaley who's behind
21 me in the courtroom?

22 A Correct.

23 Q What did you tell Mr. Whaley to do?

24 A I told Mr. Whaley to go out and look at the scene
25 and see what was going on and to call me back.

1 Q Okay. And did he do that?

2 A He did.

3 Q And after you talked with Marion, what did you
4 learn?

5 A Well, when he called me back, he said -- he told me
6 what they had told him that had happened. That the man
7 was up on a ladder. And he had some kind of a safety
8 rope holding him up and he unsnapped it, hollered, and
9 fell backwards.

10 Q Okay.

11 A And then I asked Marion, I said, well, why did he
12 fall? He said, I don't know. I said, well, it's going
13 to be a reason why he fell and we need to know exactly
14 what caused him to fall backwards off that ladder. And
15 he says, well, I don't know. And I said, let me talk
16 with the family, I'll get back with you. So that's what
17 I did.

18 Q Okay. And did you instruct Mr. Whaley to take a
19 lot of pictures?

20 A I did. When I got back with him, I said, Marion, I
21 want you to go back out there and look and take as many
22 pictures as you can take even if they're not important,
23 take them anyway. I said, I'm still wanting to know why
24 he fell off that ladder. I said, he was experienced in
25 going up and down ladders, I just don't think he would

1 have fell without some reason. And he said, okay, I'll
2 go back. So he went back out there and took more
3 pictures.

4 Q Okay.

5 A Matter of fact, I believe I told him to go back
6 maybe two or three times or more. Because after as many
7 areas as I did it's just kind of suspicious of and just
8 kind of feel like there's something there that you can't
9 put your finger on.

10 Q Okay. And did you talk with the family?

11 A I did.

12 Q What did you find out from them?

13 A Well, I couldn't find out a whole lot because I
14 don't know Spanish. But I talked with them as best I
15 could and they were working for some tree company, some
16 person in the midlands that goes around cutting trees.
17 And I told them -- I tried to explain to them I'm going
18 to be doing an autopsy because I need that cause of
19 death. When you do a death certificate, the question
20 is, what caused the death. You have to have a cause of
21 death. So I said I'm going to do an autopsy so I could
22 find out what the cause of death is.

23 Q Now, you had testified that you directed Mr. Whaley
24 to go back out to the scene and take a number of
25 pictures, do you know how many times Mr. Whaley went to

1 the scene at 3402 Myrtle to take pictures?

2 A I sent him probably three times and he may have
3 went more. He does a thorough job and I'm sure that he
4 wanted to make sure that everything was taken he could
5 take.

6 MR. BUCKNER: Your Honor, at this time, I'd like to
7 put into evidence what's been stipulated as Plaintiff's
8 Exhibit One which is the photos from the coroner's file
9 discussed it with defense counsel and I'll hand them up
10 to the witness so he can look at them.

11 THE COURT: All right.

12 Q Mr. Carter, I know it's going to take you a little
13 bit to go through those photos. But those photos that
14 are now in front of you that has been marked as
15 Plaintiff's Exhibit One, are those the photos we were
16 just talking about that Mr. Whaley took? And you can
17 take your time, sir.

18 A So far, yes. Yes, that's photos that he had took.

19 Q Mr. Carter, you had testified that Mr. Whaley been
20 out there two or three times and took what has to be at
21 least 20 to 25 photos that are marked into evidence and
22 what I want to know is, after Mr. Whaley had been out
23 there taking all these pictures that had been at the
24 scene, were you told by him that there were any power
25 lines at 3402 Myrtle?

1 A No, I asked him. I said, Marion, did you see any
2 power lines? He said, nope. No power lines. I said,
3 do you see anything on that ladder or in that tree would
4 cause him to holler and fall? He says, no. I said,
5 well, there's something. I said, we're going to do an
6 autopsy and get to the bottom of it and see if we can
7 find out. So a couple of days later, he -- I took -- I
8 also told him, I said, look, you got eight hours that
9 this boss man is supposed to report it to OSHA. He's
10 got eight hours. I said, time's a clicking away. They
11 will fine him if he doesn't report it. He said, well,
12 I'll go tell him.

13 So when he got back with me, he said he told him.
14 And he said he said he would report it, which he did.
15 Because the OSHA man came, but he came like two or three
16 days later. And Marion called me and he said, look
17 here, there's power wires in that tree. And I said,
18 what you mean? I said, were they in there the other
19 day? He said, I didn't see them. He said all the limbs
20 and everything I couldn't see them.

21 Q And is it your understanding, Mr. Carter, that
22 Mr. Whaley walked the entire premises?

23 A He did. We searched -- he searched it really well
24 because I kept calling him and telling him, go back out
25 there.

1 MR. PUGH: Excuse me, Your Honor. Object to
2 speculation about what Mr. Whaley did or didn't do.

3 THE COURT: Sustained as to the speculation.

4 Q How long has Mr. Whaley been at the Colleton County
5 coroner's office?

6 A I think he worked for a good many years, like six
7 or eight years maybe and then he took a break and then
8 he came back. But he's -- I trust him.

9 Q He knows what he's doing?

10 A Yeah, he knows what he's doing, but I trust him.
11 He was also a paramedic a lot of years.

12 Q And prior to that conversation that you talked
13 about OSHA, had there been any mention of power lines at
14 3402 Myrtle?

15 A No.

16 Q Do you know what hospital Mr. Larios was taken to?

17 A Colleton County. Colleton Medical Center.

18 Q Did he stay there?

19 A No, I sent him down the Charleston for an autopsy.

20 Q All right. You had mentioned that previously. Can
21 you explain to the jury kind of how that process works
22 and why you would send him there?

23 A Yep. Well, when we have someone that we cannot
24 find a cause of death on, we need to know that. So what
25 we'll do is we'll send the body down to MUSC pathology

1 lab. Dr. Erin Presnell, is head of pathology. She's
2 got years and years of experience. And the lady before
3 her had years and years. They worked together. But I
4 trust her. Now, whatever she says, I've never caught
5 her in a mistake. I've never seen her wrong.

6 MR. PUGH: Objection, Your Honor. I don't think
7 this question has been asked.

8 THE COURT: Sustained as to that answer. Go ahead.

9 A So we settled down --

10 MR. PUGH: Excuse me, Your Honor. I don't know what
11 question he's answering at this point.

12 MR. BUCKNER: I'm asking him to explain the process
13 of how the body goes to Charleston. I think it's
14 responsive.

15 THE COURT: Yeah.

16 A So we send them down there and Dr. Presnell, she's
17 got a team of forensic pathologists and they do an
18 autopsy. And then when the autopsy is complete, they do
19 a complete toxicology test which goes to another group
20 of doctors and explains what kind of fluids he had and
21 what kind of -- any narcotics or anything in his blood
22 like that. Well, when the toxicology gets through, then
23 it comes back to Dr. Presnell and they make a
24 determination on what the cause of death is. Then they
25 send it to me, then I do a -- I do a death certificate

1 when the person dies, but we do a supplemental death
2 certificate. It's not a legitimate thing. We get the
3 answer to the cause of death, we do the real death
4 certificate and it's done.

5 Q And did you have any conversations with Dr.
6 Presnell about a potential electrocution?

7 A I did.

8 Q All right. What were those conversations?

9 A Well, I have to back up a little bit to do that.
10 Marion says that those power -- the OSHA man came, he
11 found the power wires and the trigger, so Marion called
12 me and said, hey, there's power lines. So I called Dr.
13 Presnell and I said, look, we've got a problem. I said,
14 there's power wires in that tree, he could have been
15 electrocuted. And she says, well, why didn't you see
16 them before? We just couldn't see them. There was too
17 many limbs or something. I don't know, we couldn't see
18 them.

19 So -- and Marion also said that the -- I think he
20 said the fire department came there and removed the
21 chainsaw when he fell backwards, he sat the chainsaw
22 down in the top of the Palmetto tree. And the fire
23 department came and they didn't see no power wires.
24 Because I certainly wouldn't have let them go up in
25 there if there was.

1 So, Dr. Presnell said, I tell you what I'll do,
2 I'll send down for the body in the morgue, bring it back
3 upstairs, put it on the autopsy table, and we will
4 inspect it again. She said, I could have missed
5 something. I said, you be absolutely sure that he was
6 not electrocuted.

7 So she brought him back upstairs, she called me and
8 she says, I did see a burn mark. Said I saw a lesion
9 where power wire could have touched him. So then we got
10 to looking at the chainsaw and we saw a burn mark on the
11 blade. So I think she had put the cause of death was
12 electrocution and secondary blunt force trauma when he
13 fell and hit, you know.

14 Q Now, Mr. Carter, did you ever look at the burn
15 marks on Mr. Larios' body?

16 A I did.

17 Q All right. Tell the jury about that. What did you
18 observe?

19 A Well, I looked because she looked and I wanted to
20 see what she was seeing. I wanted to be sure and I
21 looked and sure enough there was a burn mark.

22 Q And other than that circumstance, did you have any
23 further conversations with Dr. Presnell?

24 A I probable did. I probably talked to her about
25 this thing two or three, four times. Because we wanted

1 to be sure of what we were doing. And she said she was
2 convinced that he was electrocution or electricity ran
3 through his body caused him to scream. And he was
4 trying to get away from it is the way we were looking at
5 it. Taking loose the rope and fell backwards.

6 MR. BUCKNER: Your Honor, at this time, I'd like to
7 publish these pictures to the jury.

8 THE COURT: All right, sir.

9 MR. BUCKNER: That are marked as Plaintiff's Exhibit
10 One.

11 THE COURT: Are they marked?

12 MR. BUCKNER: They were all marked collectively as
13 one. Mr. Pugh had an opportunity to go through them.

14 THE COURT: No objection to these photographs from
15 the defendant?

16 MR. PUGH: None.

17 THE COURT: All right.

18 (WHEREUPON, Plaintiff's Exhibit Number 1 was
19 entered)

20 (The jury is looking at the photographs)

21 Q Mr. Carter, I got good news, I don't think I have
22 anymore questions for you.

23 A Great news.

24 Q Feel free to answer any questions the defense
25 counsel might have.

1 MR. PUGH: May I proceed?

2 THE COURT: Sure.

3 CROSS EXAMINATION BY MR. PUGH:

4 Q Mr. Carter, good afternoon.

5 A Hey, how you doing?

6 Q Nice to see you again.

7 A Good to see you.

8 Q Thank you for coming over today.

9 A No problem. Glad to help.

10 Q Now, after the incident -- after being made aware
11 of the incident, you went to the hospital; correct?

12 A That's correct.

13 Q Okay. And at the hospital, the Colleton County
14 Medical Center, no one there told you anything about an
15 electrical burn; correct?

16 A That's correct.

17 Q No one told you anything about marks on Mr. Larios'
18 body?

19 A No one there checked his body. I did that.

20 Q I'm sorry.

21 A No one checked his body.

22 Q So Colleton County Medical Center didn't check his
23 body?

24 A No, he was dead. They don't usually check a dead
25 person.

1 Q And he died on the way to the hospital?

2 A Yeah.

3 Q Okay. And you saw Mr. Larios' brother there;
4 correct?

5 A I reckon. It's been four years, but there was some
6 people there.

7 Q Okay. Do you remember who was there?

8 A I can't remember any names. I remember it was like
9 three or four.

10 Q Okay. Because it's been four years; right?

11 A Yeah.

12 Q And you don't speak Spanish?

13 A I don't.

14 Q And there wasn't an interpreter there?

15 A No. Well, there was one trying to, but I don't
16 think she knew a whole lot.

17 Q Okay. And you didn't understand really what they
18 were saying and vice versa?

19 A Well, we were making a lot of motions with our
20 hands. After 25 years, I've got to where I can talk
21 with them pretty good using my hands.

22 Q But not words?

23 A I shouldn't have stayed home from school when they
24 was taking Spanish.

25 Q Understood. So you never went to the scene at 3402

1 Myrtle; correct?

2 A Never did.

3 Q You never saw the chainsaw?

4 A Uh --

5 Q I'm not talking about a photograph, I'm talking
6 about the chainsaw?

7 A Well, I'm thinking. I told Marion to take the
8 chainsaw, the ladder, and all the evidence he could get
9 and lock it up. Because one day we will need it. He
10 sent me the rope that he was fastened off with. I put
11 it in the evidence locker at the Sheriff's Office.

12 Q The rope?

13 A The rope. Now the Sheriff's office now says they
14 don't have it.

15 Q Did you ever see the ladder?

16 A I did not. I saw pictures.

17 Q Okay. You never saw Mr. Larios or looked and
18 inspected his clothing, did you?

19 A Yeah. I looked at it at the ER.

20 Q Okay. And you noticed that his clothing did not
21 have any marks on it; correct?

22 A Well, no, I didn't. I can't say he had marks on
23 his clothing, but at that time, I had no idea that it
24 was electrical wire in the tree.

25 Q Right. I understand. But my question is, do you

1 know of any document whether it's yours, Colleton County
2 Coroner's Office, the Colleton County Medical Center or
3 the Medical University of South Carolina that references
4 burn marks on Mr. Larios' clothing or shoes?

5 A No. Not until we looked again and found out what
6 we did.

7 Q Let me make sure that I'm asking you this and we're
8 both on the same sheet of music. Are you aware as you
9 sit here today of any document from the Colleton County
10 Medical Center, the Colleton County Coroner's Office, or
11 the Medical University of South Carolina that references
12 burn marks on Mr. Larios' clothing or shoes?

13 A Not until we found out there was power wires.

14 Q No, sir. I'm sorry we're missing -- are you aware
15 of any document anywhere at anytime that says that?

16 A No.

17 Q No?

18 A Later on.

19 Q What document later on references that?

20 A Later on when we found out that there was power
21 wires in the tree. Then we saw things that didn't look
22 right.

23 Q I'm asking you about clothing or shoes.

24 MR. PUGH: I'm sorry, I turned my back, Your Honor.

25 I apologize, Your Honor.

1 THE COURT: It's okay.

2 MR. PUGH: I made a heck of a mess over here.

3 Q Mr. Carter, do you remember when I took your
4 deposition -- or we took your deposition on January 23
5 of 2018 in this case?

6 A Pretty well. Vaguely. But my memory is not as
7 great as it once was.

8 Q I understand. And I --

9 A I wish I could get younger.

10 Q I asked you this question on page 24.

11 "Are you aware of any document whether it's yours,
12 the Colleton County Medical Center, or MUSC that
13 references burn marks on Mr. Larios' clothing or shoes?"

14 And your response was:

15 "I do not."

16 Do you remember telling me that?

17 A No. But if you say I do, I do.

18 Q Thank you, sir.

19 A I would like to say, when we send a body for an
20 autopsy, we don't disturb anything. We don't go digging
21 through the clothing or the shoes and we don't try, you
22 know, we let them do that.

23 Q "Them" being MUSC?

24 A MUSC forensic pathologist.

25 Q And -- so MUSC's records which -- did you get a

1 copy of the reports from Dr. Presnell?

2 A I'm sure I did. I got a lot of reports.

3 Q Okay. And that question I asked you and you
4 answered, I do not, included MUSC records; right? And
5 MUSC records don't indicate any burn marks on clothing
6 or shoes; correct?

7 A Not at that time.

8 Q Not at anytime?

9 A I don't know how to answer that.

10 Q Okay. Let me ask you this, you never talked to the
11 OSHA investigator; correct?

12 A I don't think I did.

13 Q You weren't present for any of the witness
14 interviews by the OSHA investigator?

15 A No.

16 Q And you were the person that originally contacted
17 the Medical University and requested that an autopsy be
18 performed; correct?

19 A Correct.

20 Q And that autopsy was originally performed -- or the
21 autopsy, excuse me, was performed on Monday, November
22 30th of 2015, do you recall that? The next day?

23 A Yeah.

24 Q And do you recall receiving a copy of the autopsy
25 preliminary report from Dr. Presnell?

1 A Yes.

2 Q And do you recall Dr. Presnell telling you that the
3 cause of death was blunt force trauma to torso due to
4 fall from height?

5 A Yes.

6 Q Do you recall when that November 30, 2015 report
7 from the Medical University that there is no reference
8 anywhere to electricity or an electrical burn?

9 A No.

10 Q You don't remember?

11 A No, I don't. I don't recall that.

12 Q Okay. So let me make sure we're understanding each
13 other. So Mr. Whaley, unlike you, went to this scene
14 two or three times?

15 A At least.

16 Q Okay. And it's your testimony, we'll hear from
17 Mr. Whaley, but your testimony is the first couple of
18 times or so that he went he missed the wires that were
19 in the right-of-way behind the property; correct?

20 A Yes.

21 Q Okay. And it's your testimony that Dr. Presnell in
22 that first preliminary autopsy report that you received
23 a copy of, missed a burn mark on Mr. Larios' body;
24 correct?

25 A Yes.

1 Q And so then, two things -- so then something
2 happens. OSHA gets involved; right?

3 A Right.

4 Q And as a result of an OSHA investigation, and
5 you're the only guy talking to MUSC; right? From the
6 coroner's office?

7 A Yes.

8 Q And Mr. Whaley's not talking to Dr. Presnell?

9 A I don't think he did.

10 Q Okay. And so you're the spokesperson from the
11 coroner's office talking to MUSC about the autopsy of
12 Mr. Larios; correct?

13 A That's correct.

14 Q And as a result of the OSHA investigation, do you
15 recall that you called Dr. Presnell back?

16 A Correct.

17 Q Okay. And you told Dr. Presnell, and correct me if
18 I'm wrong, you told Dr. Presnell that, two things, and
19 I'm going to read this to you.

20 "Further investigation revealed the chainsaw had
21 contacted an overhead power wire."

22 Did you tell Dr. Presnell that?

23 A A good possibility.

24 Q Second.

25 "Rubber like material from the decedent, that's

1 Mr. Larios' shoes was noted on a ladder rung."

2 Did you tell Dr. Presnell that?

3 A I did.

4 Q Okay. Is it your testimony that the chainsaw being
5 used by Mr. Larios made direct contact with the primary?

6 A I did.

7 Q Okay. Do you know if that's physically possible?

8 A Yes.

9 Q It is? Yes?

10 A Yes.

11 Q Did you tell Dr. Presnell that indeed there was
12 rubber like material from Mr. Larios' shoes noted on a
13 ladder rung?

14 A Yes. But now I was communicating with Deputy
15 Coroner Marion Whaley which he was explaining to me what
16 he found. And he says, there's some rubber on the
17 ladder rung, you know. Common sense is telling me it
18 must have burnt the shoes.

19 Q I understand. Using your common sense, you
20 interpreted Mr. Whaley telling you that there was rubber
21 on a rung of the ladder as that having been caused by
22 this chainsaw making direct contact with the energized
23 primary; correct?

24 A That's the way we figured it.

25 Q Yes, sir. And just to be clear, you then relayed

1 that information, those two things, chainsaw contacted
2 the overhead primary, number one; and, number two, that
3 there was rubber from the decedent Mr. Larios' shoes on
4 the ladder, that's what you told Dr. Presnell?

5 A Yes.

6 Q And you said, Doctor, these two things, please look
7 at the body again?

8 A Yes.

9 Q And at that time, Dr. Presnell brought the body
10 back and looked and noted a lesion as she called it on
11 his abdomen; correct?

12 A Yes.

13 Q Okay. Did you do anything to confirm that the
14 chainsaw made direct contact with the energized primary?

15 A No.

16 Q Did you do anything to --

17 A The only thing I did was looked at Marion's
18 pictures.

19 Q Okay. Did you do anything to confirm that the
20 aluminium ladder had residue from Mr. Larios' shoes on
21 one of the rungs?

22 A I never actually looked at the ladder.

23 Q Okay.

24 A I saw a picture somewhere that had it.

25 Q Yes, sir. Okay. And, Mr. -- to be clear and be

1 fair, Mr. Whaley was at the scene, saw the ladder, saw
2 the chainsaw, that's your understanding; right?

3 A That's right.

4 Q And we can ask him about that. Okay.

5 A Yes, we can ask him.

6 Q All right. Mr. Carter, I appreciate you coming
7 over today. Thank you very much. These other lawyers
8 may have a couple of questions for you.

9 CROSS EXAMINATION BY MS. BRUDVIG:

10 Q Mr. Carter, were you acquainted with the fact that
11 the power line that Marion Whaley said he observed was
12 not on Mr. Jackson's property?

13 A I don't know.

14 Q That's all the questions I have. Thank you.

15 THE COURT: Anything, Mr. Kennedy?

16 MR. KENNEDY: Mr. Carter, I do not have any
17 questions. Cocounsel asked my questions for me. Thank
18 you.

19 THE COURT: Anything on redirect?

20 MR. BUCKNER: I don't think we have any, Your Honor.
21 Thank you very much, Mr. Carter.

22 THE COURT: Sir, thank you so much.

23 MR. CARTER: Thank you.

24 MR. APPLGATE: Your Honor, we call Marion Whaley to
25 the stand.

1 MARION WHALEY,
2 being first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION BY MR. APPLEGATE:

5 Q Good afternoon, Mr. Whaley. Will you please state
6 your full name for the jury.

7 A Marion Hampton Whaley, Jr.

8 Q Okay. Can you tell the jury what it is that you
9 do?

10 A I'm deputy coroner. I've worked for approximately
11 10 years as a paramedic in this county. Then took a
12 break for a while and was asked to come back. A while
13 later up until the time of this case I probably had 14
14 years of experience.

15 Q Do you do that full time, sir?

16 A No. No. I actually run a landscaping company and
17 I'm a certified arborist.

18 Q Okay. And so about how much time per week do you
19 do your services as the deputy coroner?

20 A I think we have a case about every six months.

21 Q All right. So you focus on those investigations
22 when they come up?

23 A When they come up I'm called.

24 Q Okay. Now, were you deputy coroner back in
25 November of 2015?

1 A Yes, I was.

2 Q Okay. And do you remember -- I know you've been
3 sitting here, Mr. Whaley, do you remember the case of
4 Jose Larios?

5 A Yes.

6 Q Okay. Can you tell me how you first got involved
7 in that case?

8 A Coming back from church that morning, I got a text
9 from Chief Deputy Coroner Richard Carter asking me if I
10 knew anything about somebody falling out of a palm tree.
11 And I said, no. About that time, a deputy is on the
12 main boulevard, stops me, and says, hey, we got this
13 thing down here, do I need to go down there? And I
14 said, yes, we need to go find out what's going on with
15 this since they transported him actively trying to
16 resuscitate him. We went down and I had him put up tape
17 around the scene until we could determine what we
18 thought was going on.

19 Q When you arrived at the scene, who was there?

20 A When I arrived there it was just -- he arrived back
21 there with me. Everybody was gone. I mean, it was --
22 what I remember it was just me all of a sudden and him.

23 Q Okay. And what time approximately did you arrive?

24 A Around 12:30, I think.

25 Q Okay. So what was the purpose, I guess, of your

1 initial visit there? What did you do in that first day,
2 I guess, investigating the scene?

3 A The main thing is we had a body up here. Okay. We
4 weren't sure exactly what happened. This guy falls off
5 the ladder, falls out of a tree, I have no witnesses, I
6 have nobody to talk to. So I get what little bit I can
7 from going back and talking to the firemen and talking
8 to the deputy, Deputy Seyle who was there and he kind of
9 filled me in on a few things. And looked all around the
10 scene as best I could and started to take just photos of
11 whatever I could there.

12 Now, I probably spent a good two or three hours
13 there making a determination of what might have
14 happened. In other words, were there bees in the tree?
15 Were there, you know, anything, a snake? What would
16 make this guy fall? Next thing's going to be is when he
17 gets there it's off to MUSC with the body and that's
18 going to tell us toxicology and internal injuries and
19 things like that.

20 Q In the three hours you spent there on that Sunday,
21 did you make any final determination about what had
22 happened?

23 A I pretty much had come to the conclusion that he
24 fell, but didn't know why. And from what I remember
25 Mr. Carter, when we were talking, and he did decipher a

1 little bit from the brother and the other person who
2 evidently was at the hospital that was with this guy.
3 He was on the ground when it happened. That I heard a
4 yell. He took chainsaw, stuck it up, it was still
5 running. Untethered himself because he's tied off,
6 untethered himself and started down the ladder and got
7 three steps and fell.

8 Q Okay.

9 A So I'm assuming that we got blunt force trauma.
10 For whatever reason, something scared this guy to death
11 and he had to get out of there or whether or not he was
12 stung or something, we just didn't know.

13 Q Was that the end of your investigation or did it
14 continue past that?

15 A It continued on. Because at this point OSHA's got
16 to be involved. I had the fire department come down,
17 also, and retrieve the chainsaw. They had already been
18 up and shut it off because it was left running. So they
19 brought it down to me. I had no clue of anything else
20 that could be wrong.

21 And so then, I finally get the owner of the
22 business to come over and he's coming to collect his
23 truck while I'm still there and his trailer. And I had
24 no reason to believe the chainsaw would be part of
25 evidence, so I handed it to him. The ladder, yes. The

1 ropes, yes. Mistake on my part, basically.

2 And then it was -- we left the scene pretty much
3 cord on off and then we had -- when Mr. Dennison who's
4 with OSHA came down, he came down -- this was on Sunday,
5 he came down, I believe, it was Tuesday. He went to the
6 scene with me and he took a lot of photographs, also.
7 We looked around. We saw different things. Then we
8 tried to get the family and the other -- the brother and
9 the other guy that worked with him together. And,
10 honestly it was a little bit hard to get together. A
11 little bit worried about some aspects.

12 But we did through a local attorney down there got
13 him -- got them into his office. Got an interpreter who
14 knew these people. And Mr. Dennison performed the --
15 performed the whole interview. I just listened and took
16 notes. And when I wanted to ask a question, I asked
17 Mr. Dennison to ask the question.

18 And it was at that point that through the
19 interpreter there were some things that we had not heard
20 about or known. And one of them was that they saw a
21 flash. The boy on the ground saw a flash. Larios
22 yelled or screamed or however it was. There again, and
23 he repeated exactly what he had told Mr. Carter at some
24 point where he put the chainsaw down, left it running,
25 untethered himself, and proceeded down the ladder and

1 got down to the third approximately, okay, approximately
2 the third rung on his step down and fell.

3 At that point, I left the meeting. I figured,
4 okay, there's a flash. We've got something else that
5 may have happened. And so I went back down, resecured
6 that whole scene and started looking around. And as I
7 looked around more and more, you had the wires that were
8 up going down the right-of-way on a bike path behind it.
9 The live wires are pretty high up from where he's at.
10 Okay. But the lower wire which is not energized was a
11 little more visible, but it was in some of the branches.

12 At that point, I called Mr. Carter and I told him
13 we need to call back to MUSC, bring the body back out,
14 and reexamine him and tell them that we possibly have
15 some type of incident with electricity.

16 Q Did you resecure the chainsaw at that time?

17 A Mr. -- this is when we saw this picture was in that
18 meeting and that was the other thing that just blew my
19 mind.

20 Q What picture is that, sir?

21 A The picture of the chainsaw with the -- with what
22 appears to be a burn mark on it. And Mr. Larios'
23 brother had been given the chainsaw by owner of the
24 company. Because evidently it was his. And he took it
25 home and took a photo of it like that. And then showed

1 it during that interview. I asked him at that point if
2 he would be so kind as to bring that chainsaw back to
3 me. Which he did.

4 Q Okay. At that time, again, did you have, I guess,
5 additional interactions with Mr. Carter related to your
6 investigation?

7 A Just mainly basically what I said is just, hey, we
8 need to go and make sure that body is brought back out.
9 In which at some point in time he came back and told me
10 that, yeah, they did go back in and examine the body.

11 Q Did you ever make any contact with SCE&G?

12 A Yes. Yes.

13 Q Can you tell me about that? Explain to the jury
14 what you did.

15 A Yes. I made contact with several people and one
16 was the homeowner because their property was involved in
17 this and they needed to know that there was an incident
18 on that issue. I made contact with Edisto Sales and
19 Realty to get the information to be able to call those
20 people. That was earlier. When we found out this was,
21 I wasn't sure what we had to do. And so I wasn't
22 allowing anybody around that ladder or anything else
23 until we knew more.

24 And so called SCE&G to come down and inspect and
25 also to secure, this is obviously has something to do

1 with a possible -- some type of burn mark. So,
2 therefore, they need to be involved. They need to make
3 sure that this place is safe and that and do whatever
4 investigation they need to do.

5 Q Now, did SCE&G come to the site and do an
6 investigation?

7 A Yes.

8 Q Were you there for any part of that?

9 A Oh, every bit of it. About five or six hours
10 waiting on them and then into the night.

11 Q Okay. And are you aware of any additional evidence
12 that was found by SCE&G?

13 A SCE&G had a photographer with them and they sent a
14 photographer up in one of the bucket trucks with all
15 there proper safety precautions doing it. And they took
16 a series of photos from different angles. They
17 photographed the ladder while it was still there and the
18 surroundings.

19 Q So they took photos sort of in the area between the
20 tree and the power lines?

21 A They took a lot of photos. I'm not sure exactly
22 what and how many they took, but they took a lot doing
23 it. And they -- there were two or three that
24 individuals beside just the line crew that came in to
25 check those.

1 Q And was besides them taking pictures, did they give
2 you any information about any findings they had about
3 the power line?

4 A There was one mark up on the top wire that was
5 appeared to be notched or like something hit it and
6 burnt it. And I'm assuming -- they had pictures of
7 these things, the only thing I did was ask them whatever
8 they had, please, you know, share it with our office and
9 that we would share our information with them. And
10 other than that, then it goes to Mr. Carter and
11 Mr. Harvey up here.

12 Q Did they ever give you or send you the pictures of
13 the burn mark on the power line?

14 A Not me. If anyone would have gotten them it would
15 have been the office.

16 Q Are you aware as we sit here today they've ever
17 sent you any of the pictures with the burn mark on the
18 power line either to you or your office?

19 A I do not know.

20 Q And in reviewing the file -- well, I know we had to
21 take your deposition within the last year or two, but do
22 you recall in reviewing the file ever seeing the picture
23 that SCE&G took of the burn mark on the power line?

24 A I don't remember.

25 Q And, again, I think you said they were there for

1 many hours into the night; is that correct?

2 A Yeah. And I did, I asked them -- in fact, they
3 wanted to leave the ladder up and come back until
4 tomorrow morning and I said, no. Because either that or
5 they were going to have to leave somebody there to make
6 sure that nobody went up that ladder and hurt
7 themselves. So we agreed to take the ladder down and
8 secure it with a chain to the side of the house.

9 Q Did they make any alterations to anything on the
10 property?

11 A Say again?

12 Q Did they make any changes to the property or to the
13 tree?

14 A Not at that point.

15 Q Okay. And so I don't know if I asked you this, but
16 what day was this investigation that SCE&G did?

17 A That would have been the Tuesday, I think. That
18 when -- as soon as all this happened in Mr. Dennison's
19 report and interview, then a lot of things were set into
20 motion to secure what is a definite investigator, what
21 may have changed a little bit.

22 Q Did they ever ask you about whether they could make
23 any alterations to the tree or cut the tree down?

24 A Yes.

25 Q And can you tell me about that?

1 A They basically --

2 MR. STEGMAIER: I don't mean to interrupt. I
3 apologize. He keeps saying, "they." I'm losing track
4 of who "they" are.

5 MR. APPELATE: SCE&G, sorry.

6 Q While SCE&G was doing the investigation, did SCE&G
7 ask you about cutting the tree down?

8 A Yes.

9 Q And can you explain to us sort of the circumstances
10 of that.

11 A That tree is -- appears to be because of the fence,
12 appears to be on private property. So, therefore, even
13 though the foliage may be over on to it, they would have
14 the right to cut that foliage off on that side. But I
15 can't give anybody permission to go on somebody's
16 property and cut it.

17 Q Okay. Did they cut anything on the tree at that
18 time?

19 A Not at that time.

20 Q Okay. Did they ever cut anything on that tree?

21 A Within a day or two that tree was cut down to the
22 point of where it would never grow again.

23 Q Did they notify you before they cut the tree?

24 A No. SCE&G did not.

25 Q Did you ever get any notification from Edisto Sales

1 and Realty, I think earlier you testified that you
2 notified them about the event, did anyone from Edisto
3 ever call you back?

4 A Well, I notified them and I actually talked to Jane
5 Smoak one of the ladies that's in charge there. I asked
6 her what it was and what I needed. And I needed the
7 phone number and address to the homeowner to contact
8 him.

9 Q Were you able to contact the homeowner?

10 A Yes.

11 Q And what was the purpose of that call?

12 A Two things. One was to advise them there was an
13 incident on their property and that they needed to call
14 their real estate agent and just kind of go through it
15 with them. If they had anymore questions about it, they
16 could obviously call me.

17 The other reason was to ask who Mr. Stevens was
18 working for. And the man, basically the homeowner told
19 me that he was -- that Mr. Stevens was working for him.

20 Q Okay. Mr. Whaley, I think with counsel's agreement
21 we will mark what will be Plaintiff's Two.

22 (WHEREUPON, Plaintiff's Exhibit Number 2 was marked
23 for identification)

24 Q Are you familiar with that document?

25 A With what?

1 Q Are you familiar with that? And take your time.

2 A This is my report.

3 Q Is this the only report you issued in this case?

4 A Yes.

5 Q Okay.

6 A May I clarify something there?

7 Q Yes, sir.

8 A Okay. Mr. Dennison with OSHA, when he did his
9 interview, I didn't need to see a need to duplicate
10 that. And I had already written this and had basically
11 turned it in. So I didn't want to alter this document.

12 Q All right. Well, again, this is your report;
13 correct?

14 A Yes, sir.

15 Q All right. And did you have any assistance in
16 preparing this report?

17 A No, sir.

18 MR. APPLEGATE: I'd like to move his report into
19 evidence if I may.

20 MR. STEGMAIER: No objection, sir.

21 MR. KENNEDY: No objection.

22 THE COURT: That's Plaintiff's Two?

23 MR. APPLEGATE: Plaintiff's Two, yes, sir.

24 THE COURT: Without objection.

25 (WHEREUPON, Plaintiff's Exhibit Number 2 was

1 entered)

2 Q Mr. Whaley, I'd like to go back to a couple of
3 things and just try to understand to make sure I have
4 the list. I know we talked about this again in your
5 initial deposition, but to my understanding, that you
6 found something suspicious about the chainsaw; is that
7 correct?

8 A Correct.

9 Q Okay. And did I understand your testimony it was
10 some type of what appeared to be a burn mark?

11 A Correct.

12 Q Okay. And I understand that -- did you guys ever
13 find anything, any traces of some type of burn in the
14 tree?

15 A When we went back, Mr. Dennison and I both went
16 around and looked at a lot of the branches that were on
17 the ground and different things like that for any sign
18 of burning. It appeared that there was a tip end of
19 some of the fronds that appeared to be burnt and there
20 was a seed pod that was -- appeared to be burnt and had
21 caught fire. And, I believe, Mr. Larios' brother said
22 that something had caught fire.

23 Q Okay. Was there any other -- based on your
24 experience and training, was there any other explanation
25 for that -- those burn marks that you had found in the

1 tree?

2 A Ask that question again.

3 Q Did you know what that -- what those burn marks
4 were from?

5 MR. PUGH: Object, Your Honor. Foundation. Calls
6 for speculation.

7 THE COURT: What marks are you talking about?

8 MR. APPLEGATE: The marks he just described he said
9 he found burnt seed pod and two palm fronds had burnt he
10 noticed them next to the power line.

11 THE COURT: And your question is?

12 MR. APPLEGATE: Did he know where those came from?

13 MR. STEGMAIER: I think the question was, based on
14 your experience and is there's some other explanation,
15 something along those lines. Mr. Pugh's objection was
16 there's no foundation for eliciting that response.

17 THE COURT: Well, you can ask -- he testified that
18 he found those items or saw those items and you can ask
19 him if he knows where they came from.

20 MR. APPLEGATE: Okay.

21 Q Do you know where they came from?

22 A I'm pretty sure they came from the seed pod, the
23 chainsaw going into the seed pod, and the seed pod
24 coming across and hitting the line that you couldn't
25 really tell that high wire was there. Okay. But that

1 would have been the one, not the one running through the
2 tree, and it would have hit that and then grounded and
3 formed the flash. A small flash fire. And if those
4 seed pods are dry, they'll catch a little bit of fire to
5 them. If the palms are dry they'll catch a little bit.
6 The green ones will just kind of burn and the seed pods
7 itself if they were wet and green, they will basically
8 -- you'll find a burn mark on them, but they're not
9 necessarily going to catch fire. I can think of no
10 other reason.

11 Q So, again -- sorry, let me go back to just I
12 understand we talk about the chainsaw, the burnt spot,
13 again, you found a burnt spot or informed by SCE&G of a
14 burnt mark on the power line; correct?

15 A (Nodded)

16 Q And then there was the burnt palm branches or seed
17 pods. Was there any information that you had collected
18 related to a ladder?

19 A No.

20 Q Okay. Did you ever review any pictures of any
21 substance on a ladder?

22 A Yes.

23 Q Okay. Did you make any determinations about what
24 that was?

25 A I couldn't tell what it was.

1 Q Okay. Did you ever -- in your position, did you
2 ever look at the pictures of Mr. Larios' burning
3 markings on Mr. Larios' body?

4 A I've never seen any photos of Mr. Larios.

5 Q And was that -- we just had this testimony of
6 Mr. Carter, was that sort of Mr. Carter's -- part of the
7 investigation?

8 A Correct.

9 Q I guess, lastly, just to clarify. I think just to
10 make it clear in your testimony, Mr. Whaley, but we
11 talked about you visiting this property on the Sunday,
12 November 29, 2015, and doing your initial investigation;
13 correct?

14 A Correct.

15 Q And that I think you testified you spent
16 approximately three hours there. At that time, did you
17 see any of the power lines running along the side of
18 that property?

19 A Probably the only one I saw was the bottom line
20 that was running next to it. And, there again, at this
21 point, didn't think, shame on me, that there could have
22 been anything else other than I fell, blunt force
23 trauma, you know, these small signs that we saw later
24 they're small. They're not real obvious. You would
25 have to really look.

1 Q Okay. Thank you, Mr. Whaley.

2 A Yes, sir.

3 THE COURT: Cross?

4 MR. PUGH: Thank you, Your Honor. Your Honor, can
5 we take a bathroom break?

6 THE COURT: Yeah. We're going to take a short
7 break. All right. Folks, please, during the break,
8 have no conversation about the case. And we'll bring
9 you back out shortly.

10 (The jury left the courtroom at 3:19 p.m.)

11 (There was a short break)

12 THE COURT: All right. Let's go ahead and bring the
13 jury back in, please.

14 (The jury entered the courtroom at 3:36 p.m.)

15 THE COURT: All right. Be seated, folks. All
16 right. Ladies and gentlemen, when we took that break we
17 were recognizing Mr. Pugh for his cross examination.
18 And so we'll pick up with that.

19 MR. PUGH: Thank you, Your Honor.

20 CROSS EXAMINATION BY MR. PUGH:

21 Q Good afternoon, Mr. Whaley. Good to see you again.

22 A Yes, sir. Same.

23 Q Thanks for coming over. You are what, 40-year
24 arborist, been doing it a long time; right?

25 A No. I've been in landscaping for about 40 -- 34

1 years. But arborist, I took that examination probably
2 10 or 11 years ago.

3 Q Gotcha. Thank you for clarifying that. And you
4 told us you took an exam. You actually have to study
5 some materials to be a licensed or certified arborist;
6 correct?

7 A Yes, sir.

8 Q Okay. And that exam, they talk about all kind of
9 stuff, tree health, tree trimming, everything; correct?

10 A Yes, sir.

11 Q And one of the things they talk about are doing
12 your work safely as a tree trimmer; correct?

13 A Correct.

14 Q One of the things they talk about are the OSHA
15 rules that apply to tree trimming; right?

16 A Right.

17 Q There's a whole chapter on that; right?

18 A Not in that book. Not OSHA. There are safety --

19 Q Right. And there's, I think you told us when we
20 talked earlier in your deposition that part of what you
21 studied was the need to walk around your work area
22 before you begin work; correct?

23 A Correct.

24 Q Okay. And that's what you do; correct?

25 A Yeah, before I trim. Absolutely.

1 Q Right. So I want to make sure that I understand
2 this. So around 12:30 on Sunday, November 29th is when
3 you received a text?

4 A Correct.

5 Q And you told us what you did. And one of the
6 things you did is you went to the scene; right?

7 A (Nodded)

8 Q Yes?

9 A Yes.

10 Q You looked around?

11 A Yes, sir.

12 Q And chainsaw up in the tree?

13 A Yes, sir.

14 Q And you took a photograph of that, didn't you? The
15 chainsaw up in the tree?

16 A Yes, sir.

17 Q Ladder still up against the tree?

18 A Yes, sir.

19 Q Rope on the ground?

20 A Yes, sir.

21 Q Palm fronds and some other vegetation lying around
22 the base of the ladder or the base of the tree; is that
23 correct?

24 A Correct.

25 Q Okay. And you, at some point while you were doing

1 your initial investigation, you made contact with
2 Mr. Will Stevens; correct?

3 A Yeah, later on that day.

4 Q Later on that day. And was it your understanding
5 that Mr. Larios was working for Will Stevens?

6 A Yes.

7 Q Did you know Mr. Larios? Had you seen him around
8 the island?

9 A You know, I never knew what his name was, but we
10 always smiled and said, hey.

11 Q Great. Did you know him from working on the
12 island?

13 A Yes.

14 Q Okay. Doing landscaping and tree trimming work?

15 A Yes, sir.

16 Q Okay. Do you know how long he worked for
17 Mr. Stevens?

18 A No, sir.

19 Q Do you know how long Mr. Stevens had done work at
20 3402 Myrtle Street?

21 A No, sir.

22 Q Do you know how long Mr. Larios -- how many times
23 he had done work at that address?

24 A Don't know.

25 Q The power lines that we're talking about, they run

1 -- is it a fair statement to say they run kind of along
2 the bike path back there?

3 A Yes, sir. Keep one thing in mind that that's a --
4 that roughly was designed to be an old road years ago
5 and that bike path does not run down the center. It
6 meanders.

7 Q Okay. I understood through kind of the forest back
8 there?

9 A Through the forest on the right-of-way. That
10 right-of-way.

11 Q And the right-of-way -- and you've been around
12 Edisto Beach and the island your whole life; is that a
13 fair statement?

14 A Yes, sir.

15 Q Okay. And what that -- what used to be a street,
16 what are we talking about, 50 years ago?

17 A It never really was a street. It was designed to
18 be a street. I don't even know if on an old map whether
19 it had a name to it.

20 Q Okay. The power lines, they've been out there how
21 long?

22 A Gosh, I couldn't tell you. It's been a long time
23 though. I mean, some of those houses that's how they
24 got the power to them when they were built.

25 Q I think when we last were together, I think you

1 told me you thought probably 40 years or more?

2 A That probably would be a good guess.

3 Q Okay. And do you agree that if someone who was
4 intending to trim trees at that location on Sunday,
5 November 29, 2015 had walked around and looked, they
6 would have seen the overhead wires, do you agree with
7 that?

8 A They would have seen the bottom wire had they
9 walked around the trees.

10 Q Correct. And how about if you're standing in the
11 yard looking back toward the bike path, can we agree
12 that you would see the wires there?

13 A I can't actually say whether you could or couldn't
14 because the wire if they had already done X amount of
15 trimming in there.

16 Q I'm sorry.

17 A Which they had already done a lot of trimming.
18 That tree was the one that they had -- that there was a
19 problem at.

20 Q Okay. And that tree was --

21 A So I don't know what it looked like prior to that.

22 Q When you got there, let's say when you got there,
23 Sunday, November 29, when you got there standing in the
24 yard looking toward the bike path you could see the
25 wires; correct?

1 A Yes, sir. Yes, sir.

2 Q And did you -- if you walked down the bike path and
3 looked up you could see the wires; correct?

4 A Yes, sir.

5 Q Let me show you --

6 MR. PUGH: Your Honor, I'm going to mark this as
7 Defendant's One for identification.

8 THE COURT: All right, sir.

9 (WHEREUPON, Defendant's Exhibit Number 1 and 2 were
10 marked for identification)

11 MR. PUGH: Your Honor, it's my understanding
12 Defendant's Exhibits One and Two may be admitted without
13 objection.

14 THE COURT: Any objection to Defendant's One and
15 Two?

16 MR. DUFFY: No objection, Your Honor.

17 (WHEREUPON, Defendant's Exhibits 1 and 2 were
18 entered)

19 Q Mr. Whaley, let me show you first, take a little
20 bit out of order. What I've marked as Exhibit Number
21 Two, do you recognize what's depicted in this photograph
22 as being the backyard or some of the backyard of 34 --

23 A Correct.

24 Q And we see the gazebo; correct?

25 A Correct.

1 Q See the ladder up against the palm tree; correct?

2 A Correct.

3 Q The vegetation down below --

4 A Correct.

5 Q -- on the ground? And this -- does this reasonably
6 depict what will the scene looked like when you got
7 there around 12:30?

8 A Yes, sir.

9 Q Yes, sir?

10 A Yes, sir.

11 Q Okay. And if we look and it's a little far away,
12 maybe your eyes are better. Can you see this wire
13 running here behind the tree, do you see that?

14 A Not from there. If I could step down I will. I
15 will be glad to.

16 Q Sure. Do you see the wire here we're talking
17 about?

18 A Yes, sir.

19 Q And over here?

20 A Yes, sir.

21 Q Okay. So to the right and left of the tree you see
22 that?

23 A Yes.

24 Q And you told us earlier that you called at some
25 point after OSHA got involved, you made contact with

1 SCE&G; correct?

2 A Correct.

3 Q Okay. And, in fact, one of the things you asked
4 was that SCE&G take down the ladder; correct?

5 A Yes. Because by the time they finished, it was
6 late at night and they wanted to leave it up and I said,
7 no, it's got to come down for safety purposes.

8 Q So let me show you what I've marked as Defendant's
9 Exhibit Number One and this is, as you can see, caution
10 tape. Can we agree this 3402 Myrtle?

11 A Yes, sir.

12 Q And we've got the ladder lying on the ground, do
13 you see that?

14 A Yes.

15 Q Some orange stakes?

16 A Yes, sir.

17 Q You were there when the stakes were put in the
18 ground?

19 A Yes.

20 Q Okay. So this fairly and accurately depicts what
21 you saw after the ladder had been taken down; correct?

22 A Yes.

23 Q Okay. And you were out there that day?

24 A Yes.

25 Q Again, let me come a little closer and let's look,

1 if you don't mind, do you see two wires, see the bottom
2 wire here; correct?

3 A Correct.

4 Q And we see the top wire here?

5 A Yes, sir.

6 Q And you, I think, described for us that -- and do
7 you understand that no -- or is it your belief and
8 testimony that no trimming had occurred between these
9 two photographs I just showed you?

10 A No.

11 Q So what this is, there's no further trimming that
12 occurred; correct?

13 A That's correct.

14 Q Okay. And no further trimming you can see both
15 wires; correct?

16 A Yes.

17 Q Okay. Did you walk down the bike path?

18 A Did I walk down the bike path?

19 Q Yes, sir, or look down the bike path?

20 A I did not initially.

21 Q Okay. How about after?

22 A After SCE&G and everything, yes, we looked down the
23 bike path.

24 Q Let me show you what I'm marking for identification
25 as Defendant's Exhibit Numbers Three and Four.

1 (WHEREUPON, Defendant's Exhibits 3 and 4 were marked
2 for identification)

3 Q Mr. Whaley, let me show you what I've marked as
4 Defendant's Exhibits Three and Four for identification.
5 Number Three, sir, you see gazebo in the bottom right
6 corner?

7 A Yes, sir.

8 Q You recognize this is looking down the bike path?

9 A Yes.

10 Q And this is you see two wires up above; correct?

11 A Correct.

12 Q And take a look at Number Four for identification,
13 please. Again, do you see two wires up above the bike
14 path?

15 A Yes.

16 Q Do Defendant's Exhibits Three and Four reasonably
17 and accurately depict what you saw when you were out at
18 3402 Myrtle Street looking down the bike path?

19 A Yes.

20 Q Okay.

21 MR. PUGH: Your Honor, we'd move for admission of
22 Defendant's Exhibits Three and Four.

23 THE COURT: Any objections as to Defendant's Three
24 and Four?

25 MR. DUFFY: No objection.

1 THE COURT: All right. Without objection.

2 (WHEREUPON, Defendant's Exhibits 3 and 4 were
3 entered)

4 Q So, Mr. Whaley, I'm going to show you larger
5 versions so we can look at them of Exhibits Three -- of
6 Defendant's Exhibits Three and Four. Look at Three
7 first.

8 You see the gazebo that we looked at earlier in
9 Exhibits One and Two down here in the bottom right
10 corner?

11 A Yes, sir.

12 Q And this is looking down the bike path behind the
13 property; correct?

14 A Yes, sir.

15 Q Down the right-of-way?

16 A (Nodded)

17 Q Yes?

18 A Correct.

19 Q Where the power lines run?

20 A (Nodded)

21 Q Yes?

22 A Yes.

23 Q And you see the two wires up here?

24 A Yes.

25 Q Okay. And on Exhibit Four, again, we looked at

1 this. This is just another angle of the same view down
2 the bike path; correct?

3 A Yes.

4 Q And that's what it looked like when you were out
5 there at 3402 Myrtle after the incident before any
6 additional trimming had taken place?

7 A Yes.

8 Q Mr. Whaley, I think you said earlier -- let me make
9 sure. Do you agree that it was physically impossible
10 for Mr. Larios being up on the ladder to have made
11 direct contact with the primary?

12 A I agree.

13 Q Impossible?

14 A I agree.

15 Q We talked earlier and you outlined for us and I'm
16 not picking on you at all.

17 A That's okay.

18 Q The chainsaw when you first went out there, it was
19 there in the tree; right?

20 A Right.

21 Q Ladder up the tree?

22 A (No response)

23 Q You called the fire department -- well, actually
24 you had to call them back out?

25 A Correct.

1 Q Because it's your understanding that the chainsaw
2 is still running in the tree?

3 A No. The chainsaw was not running when I got there.

4 Q Right. Thank you. Is it -- do you -- have you
5 been advised that the chainsaw was still running in the
6 tree after Mr. Larios fell?

7 A Yes.

8 Q And the chainsaw was running and someone from the
9 fire department went up the ladder and turned it off?

10 A Correct.

11 Q And left the chainsaw up the tree?

12 A Correct.

13 Q So someone from the fire department went up the
14 aluminium ladder, turned off the chainsaw where it was
15 sat down in the tree?

16 A Correct.

17 Q Came back down the ladder?

18 A Correct.

19 Q And when you get there the chainsaw is up there;
20 right?

21 A (Nodded)

22 Q Yes?

23 A Yes.

24 Q I'm sorry. She's taking --

25 A That's okay. I'm tired.

1 Q I understand. And so then you called the fire
2 department to come back and retrieve the chainsaw from
3 up in the tree?

4 A Correct.

5 Q So someone went back up the ladder, got the
6 chainsaw and brought it back down?

7 A (Nodded)

8 Q Yes?

9 A Correct.

10 Q And at that point you photographed the chainsaw?

11 A Yes.

12 Q And the photographs you took don't have any
13 reference to any marks on the chainsaw; correct?

14 A Not the ones I took at that point.

15 Q And so you photographed the chainsaw and in your
16 report before OSHA got involved, there's no reference in
17 your report that some arc burn on the chainsaw; correct?

18 A No.

19 Q And you gave the chainsaw to Will Stevens?

20 A Correct.

21 Q Mr. Stevens I think you said came to the scene to
22 retrieve his stuff?

23 A Yes.

24 Q Come get his truck, his trailer, chainsaw, other
25 things; right?

1 A Yes, sir.

2 Q Mr. Stevens did not come to the scene to assist
3 with your investigation, did he?

4 A No.

5 Q Did he assist with your investigation?

6 A Absolutely not.

7 Q Not at any time?

8 A No.

9 Q Did you request his assistance?

10 A In the investigation?

11 Q Yes, sir.

12 A No.

13 Q Did OSHA request his assistance?

14 A To --

15 MR. APPLEGATE: Your Honor, objection. I don't know
16 the foundation for how he knows.

17 THE COURT: The question is, did OSHA, he either
18 knows or he doesn't. He can answer if he knows.

19 MR. DUFFY: He knows what OSHA --

20 A Can I back up for one minute.

21 THE COURT: Hold on for a minute. The question is
22 as I understood it is, do you know if OSHA asked
23 Mr. Stevens to assist.

24 MR. APPLEGATE: I still don't think he can speak on
25 behalf of OSHA, Your Honor. I don't think he can speak

1 on behalf of OSHA, Your Honor. Objection. Speculation.

2 THE COURT: Well, overruled. If he knows he can say
3 that. If he doesn't, he doesn't.

4 Q Do you remember my question, sir?

5 A I remember both questions. Okay. One directed to
6 me. The one thing I asked Mr. Stevens as part of my
7 investigation, okay, was what -- who -- who was working
8 for who. Okay.

9 Q Yes, sir.

10 A Which he stated they were working as a side job for
11 me. Meaning Mr. Stevens. And my response there was,
12 I'm in landscaping, I don't understand what that means.
13 Who were they working for? And he goes, I guess they
14 were working for me and I said, okay. That's the only
15 involvement.

16 Q Thank you for that.

17 A Yes, sir.

18 Q You did participate in some work -- strike that.
19 Were you with Mr. Dennison from OSHA when he conducted
20 any interviews?

21 A Yes, sir.

22 Q Were you with Mr. Dennison from OSHA when he
23 conducted an interview of Will Stevens?

24 A No.

25 Q Were you with Mr. Dennison of OSHA when he

1 conducted an interview of Beverly O'Brien?

2 A No.

3 Q Okay. Mr. Whaley, to finish what we were talking
4 about, about the chainsaw. Once the chainsaw comes
5 down, you take photographs, you give it to Will Stevens;
6 correct?

7 A Correct.

8 Q And then do you know what Mr. Stevens did with it?

9 A He gave it to Mr. Larios' brother.

10 Q Do you know when that occurred?

11 A I don't.

12 Q Do you know if the chainsaw was used between Sunday
13 and -- when did you get it back, Wednesday?

14 A Tuesday.

15 Q Tuesday. Do you know in the chainsaw was used
16 between that period of time?

17 A I don't know.

18 Q Don't know one way or the other?

19 A (No response)

20 Q And to clear this up, the chainsaw, the physical
21 chainsaw is gone; correct?

22 A Correct.

23 Q And the chainsaw, when did the chainsaw go missing?

24 A We had two hurricanes. One Matthew and then Irma.
25 I went to go check on it right before or right after

1 Irma and it was unhooked from the ladder because it had
2 been tagged as evidence. It was unhooked from the
3 ladder and it was gone. The firemen there advised me
4 that they had not seen that up there since after
5 Matthew.

6 Q So somehow the chainsaw after Hurricane Matthew
7 came to Edisto Beach went missing?

8 A Yes. We didn't have anywhere to keep something
9 like that in our evidence up here. And so the ladder
10 and the chainsaw were there and the fire department kept
11 it there in good faith.

12 Q Yes, sir.

13 A I'm assuming somebody needed a chainsaw that was
14 down there helping.

15 Q Helped themselves to it?

16 A Unfortunately. Just threw the tag away and said,
17 hey, we're going to use it.

18 Q Yes, sir. Mr. Whaley, is it correct that you never
19 had that chainsaw analyzed to determine what this mark
20 was?

21 A I never did.

22 Q The ladder that Mr. Larios was standing on, is it
23 correct to say that you never had a mark on the ladder
24 analyzed to determine what it was?

25 A Never did.

1 Q As you sit here today, you don't know what, if
2 anything, the residue on a ladder rung had to do with
3 this incident; is that a fair statement?

4 A Yes.

5 Q Do you know in your participation of interviews of
6 witnesses, is it correct that Mr. Larios was, according
7 to witnesses, standing on or about the third rung of the
8 ladder?

9 A That's what we've basically been told.

10 Q He was standing on the third rung of the ladder?

11 A I know he took three steps down. Whether he was
12 standing on the third rung or not, I don't know. When
13 you go up a tree and you're on a ladder and you tie
14 yourself in, sometimes you tie yourself above that to
15 get in. But usually it's somewhere right around in
16 there where you can make your way around a tree. But he
17 couldn't have done that with what he was doing. Because
18 he didn't have a harness. He couldn't have walked his
19 way around the tree.

20 Q Yes, sir. What he had was a rope?

21 A Yeah.

22 Q You chuckled. Let me figure out, I think I know
23 why. Because in your opinion, it wasn't much of a rope?

24 A It wasn't -- it never held him. If he was tethered
25 off with it, but if he had fell and not undone it, it

1 would have never held him.

2 Q Okay. Let me show you what I'm marking for
3 identification as Defendant's Exhibit Number Five.

4 (WHEREUPON, Defendant's Exhibit Number 5 was marked
5 for identification)

6 Q Mr. Whaley, you were present, I think you told us a
7 few hours when SCE&G came out the night of December 1st
8 or evening and then into the night of December 1st to do
9 a look around the scene, take some photographs, things
10 like that; correct?

11 A Yes, sir.

12 Q And does this look like the scene as it was with
13 the ladder stuck up there in the tree?

14 A Yes, sir.

15 Q Okay. And you see to the left there of the tree,
16 you see two wires?

17 A Yes, sir.

18 Q Okay. And what I really want to ask you about is,
19 see that third rung on the ladder?

20 A Yes, sir.

21 Q You see some dark spot on it?

22 A Yes, sir.

23 Q Let me show you what I'm marking as Exhibit Number
24 Six for identification --

25 MR. PUGH: Oh, Your Honor, I would move for the

1 introduction of Defendant's Exhibit Number Five.

2 THE COURT: Any objection?

3 MR. DUFFY: No objection.

4 THE COURT: No objection to Defendant's Five.

5 (WHEREUPON, Defendant's Exhibit Number 5 was
6 entered)

7 (WHEREUPON, Defendant's Exhibit Number 6 was marked
8 for identification)

9 MR. PUGH: May I approach?

10 THE COURT: Yes, sir.

11 Q Mr. Whaley, let me show you what I've marked as
12 Defendant's Exhibit Number Six for identification. I
13 will represent to you this is a daylight photo, a little
14 closer up of what we just looked at. Does that appear
15 to be a reasonable description of what we're looking at?

16 A Yes, sir.

17 Q Okay. This is what it looked like the next day out
18 there with the ladder still up in the tree; correct?

19 A The ladder never was moved.

20 Q Right. Until SCE&G took it down at your request?

21 A Correct. Correct.

22 Q Got it. Okay.

23 MR. PUGH: Your Honor, I'd move for the introduction
24 of Defendant's Exhibit Number Six.

25 THE COURT: Any objection to Defendant's Six?

1 MR. BUCKNER: No objection.

2 THE COURT: Without objection.

3 (WHEREUPON, Defendant's Exhibit Number 6 was
4 entered)

5 Q Mr. Whaley, let me look at this with you. Here we
6 are looking up the ladder up the tree and we've got a
7 close-up of this dark discoloration on rung number
8 three; correct?

9 A Correct.

10 Q Okay. Now, the ladder was taken down by SCE&G at
11 your request; right?

12 A Correct.

13 Q And when it was down on the ground photographs were
14 taken?

15 A Yes, sir.

16 Q Okay. And can we agree that the ladder had a
17 number of warning labels on them?

18 A Yes, sir.

19 Q Let me show you what I'm marking as Defendant's
20 Exhibit Number Seven for identification purposes.

21 (WHEREUPON, Defendant's Exhibit Number 7 was marked
22 for identification)

23 MR. PUGH: May I approach?

24 THE COURT: Yes, sir.

25 Q Mr. Whaley, Defendant's Exhibit Number Seven for

1 identification purposes, does that fairly and reasonably
2 depict the ladder lying on the ground once it was taken
3 down from the tree?

4 A Yes, sir.

5 Q Do you see there the rung we've been talking about,
6 number three?

7 A Yes, sir.

8 MR. PUGH: Your Honor, I'd move the admission of
9 Defendant's Exhibit Number Seven.

10 THE COURT: Any objection?

11 MR. APPLGATE: Nope.

12 THE COURT: Without objection.

13 (WHEREUPON, Defendant's Exhibit Number 7 was
14 entered)

15 Q Mr. Whaley, so here we have top of the ladder;
16 correct?

17 A Yes, sir.

18 Q And one rung, two rungs, we see a label there with
19 an arrow and then we see rung number three that has this
20 smudge mark on it; correct?

21 A Yes, sir.

22 Q Mr. Whaley, let me show you what I'm marking for
23 identification purposes as Defendant's Exhibit Number
24 Eight.

25 (WHEREUPON, Defendant's Exhibit Number 8 was marked

1 for identification)

2 MR. PUGH: May I approach.

3 THE COURT: Yes, sir.

4 Q Mr. Whaley, let me show you this photograph,
5 represent to you that's a close-up of the label you were
6 looking at moments ago. Does that appear to fairly and
7 accurately depict what you saw that day?

8 A Yes, sir.

9 MR. PUGH: Your Honor, I'd move for the admission of
10 Defendant's Exhibit Number Eight.

11 THE COURT: Any objection?

12 MR. DUFFY: We haven't seen it, Your Honor.

13 THE COURT: I'm sorry.

14 MR. DUFFY: We haven't seen it, Your Honor.

15 (Looking at the photo)

16 MR. DUFFY: No objection, Your Honor.

17 THE COURT: All right. Without objection.

18 (WHEREUPON, Defendant's Exhibit Number 8 was
19 entered)

20 Q Mr. Whaley, Defendant's Exhibit Number Eight is a
21 close-up of the label we looked at from the previous
22 photograph that you will recall was pointing to rung
23 number three; correct?

24 A Yes, sir.

25 Q And this label says, "DANGER DO NOT STAND ON OR

1 ABOVE THIS RUNG YOU CAN LOSE YOUR BALANCE," do you see
2 that?

3 A Yes.

4 Q That's the English version. Below it, do you
5 recognize that language in Spanish?

6 A Yes, sir.

7 Q Mr. Whaley, let me show you what I'm marking as
8 Defendant's Exhibit Nine for identification.

9 (WHEREUPON, Defendant's Exhibit Number 9 was marked
10 for identification)

11 MR. PUGH: May I approach?

12 THE COURT: Yes, sir.

13 Q Mr. Whaley, Defendant's Exhibit Number Nine, I'll
14 represent to you is another label that was photographed
15 of the ladder. In fact, if you look to the left of the
16 ladder there in the background you see the gazebo?

17 A Yes, sir.

18 Q Does this Defendant's Exhibit Nine for
19 identification fairly and accurately depict one of the
20 other labels you saw on the ladder that day you were out
21 there?

22 A Yes, sir.

23 MR. PUGH: Your Honor, I'd move for the admission of
24 Defendant's Exhibit Nine.

25 THE COURT: Any objection?

1 MR. APPLGATE: No objection.

2 THE COURT: Without objection.

3 (WHEREUPON, Defendant's Exhibit Number 9 was
4 entered)

5 Q Mr. Whaley, this is another warning label on the
6 ladder Mr. Larios was using and it says, "DANGER FAILURE
7 TO READ AND FOLLOW INSTRUCTIONS ON THIS LADDER MAY
8 RESULT IN INJURY OR DEATH." Do you see that?

9 A Yes, sir.

10 Q And below it is Spanish?

11 A Yes, sir.

12 Q And below it we have a figure depicted as falling
13 from a ladder; correct?

14 A Correct.

15 Q When you went out to 3402 Whaley -- excuse me. I'm
16 sorry. 3402 Myrtle on November 29, 2015, you did not
17 suspect that electricity had anything to do with
18 Mr. Larios' fall; right?

19 A No, sir.

20 Q And you didn't have a suspicion that electricity
21 had anything to do with Mr. Larios' fall for a couple of
22 days; correct?

23 A Correct.

24 Q And it wasn't until a meeting with the family, in
25 particular the coworker and Mr. Dennison, that that

1 suspicious was aroused; correct?

2 A Correct.

3 Q And we don't have any testing of the chainsaw to
4 determine whether or not the burn mark on the chainsaw
5 was caused by electricity; correct?

6 A Correct.

7 Q We have your testimony that it was a physical
8 impossibility for Mr. Larios to have made contact with
9 the chainsaw and the primary; correct?

10 A Rephrase that.

11 Q Yes, sir. We have your testimony that it was a
12 physical impossibility for Mr. Larios to reach with the
13 chainsaw to the primary and make direct contact?

14 A Correct.

15 Q And we don't have any confirmation of what this
16 substance was on rung number three of the ladder that
17 we've been looking at; correct?

18 A Correct.

19 Q Thank you, Mr. Whaley. That's all I have.

20 A Yes, sir.

21 CROSS EXAMINATION BY MR. STEGMAIER:

22 Q Mr. Whaley, good afternoon.

23 A How are you?

24 Q I'm well. I confess to you I got a 16-year old
25 daughter at home who loves Taylor Swift. And she was

1 got the primary line. Essentially, an electrocution
2 death where somebody either made contact with a primary
3 line however that would have happened or they were
4 holding something or in contact with something that made
5 contact with the primary line. Are you tracking --

6 A I've never seen a death from that.

7 Q All right. Do you know anything about the power
8 that runs through the primary line?

9 A No.

10 Q Now, Mr. Pugh had asked you a bunch of questions
11 about the fire department coming and getting the --
12 getting the chainsaw that was still running in the tree.
13 Do you remember those questions?

14 A Yes, sir.

15 Q And from what I understand there were at least two
16 trips up and down the ladder to collect everything?

17 A Correct.

18 Q Nobody got electrocuted doing that, did they?

19 A No, sir.

20 Q Now, with regard to your job working for the
21 coroner's office, do you carry a firearm?

22 A On a concealed.

23 Q Okay. Is it part of your job to carry a firearm?

24 A Only as a concealed.

25 Q All right. So you obviously have the requisite

1 Q And is the reason you're supposed to wear eye
2 protection is the concern that material from the
3 chainsaw bits of leaves, foliage, plants, or whatnot
4 could get into your face and into your eyes?

5 A Yes, sir.

6 Q I think that is all the questions I have. Thank
7 you for your time.

8 THE COURT: Thank you, sir. Anything on redirect?

9 MR. APPLEGATE: Yes, Your Honor.

10 THE COURT: All right.

11 REDIRECT EXAMINATION BY MR. APPLEGATE:

12 Q Mr. Whaley, I want to start by just going back a
13 little bit to your testimony. We talked about earlier,
14 we talking about a method in which somebody made this
15 whole thing could have happened. You kind of explained
16 in your view how this kind of thing happens. And I want
17 to show you a poster board that has a picture. That was
18 -- now is this -- this is a picture, can you describe
19 this picture for me?

20 A That line is clear in that direction.

21 THE COURT: If you need to step down, that's fine.
22 Just keep your voice up so the court reporter can hear
23 you.

24 A We'll do.

25 Q If you wouldn't mind so the jury can see this

1 picture.

2 Again, as we understand, that's the set up that was
3 there and the ladder from which Mr. Larios fell;
4 correct?

5 A Correct.

6 Q So where's your understanding that he was? He was
7 somewhere up here on the ladder, is that the idea?

8 A Yes, sir.

9 Q Okay. And so his view looking forward, again as I
10 understand it, I think you took a picture. This gives a
11 little different perspective. As I understand, he was
12 up here looking forward; correct?

13 A Yes, sir.

14 Q Okay.

15 A He was looking that way.

16 Q And as we understand it, as we know here today
17 looking 20/20, we know the power lines are the neutral
18 is running somewhere in through here behind the tree;
19 correct?

20 A This way. (Indicating)

21 Q And we know that the primary power line is running
22 somewhere up in here; correct?

23 A Well, just above it.

24 Q Just above it?

25 A Both running in the same direction.

1 Q But as far as where this ladder is, the power
2 line's on the other side of the tree; is that correct?

3 A Correct.

4 Q So where he's standing on the tree of the ladder --

5 A There it is right there. Here's the bottom.

6 (Indicating)

7 Q That's the bottom line?

8 A The top one is going to be somewhere --

9 Q Top one is right in -- much closer to it. Okay.
10 So from this vantage point, the view is obstructed; is
11 that correct?

12 MR. STEGMAIER: Objection, Your Honor. That calls
13 for speculation.

14 MR. APPELATE: I'm just looking at the picture.

15 Q Can you tell whether his view was obstructed if you
16 stand here on the --

17 THE COURT: I'm going to sustain your objection, but
18 he can testify to what he sees on the photograph.

19 MR. STEGMAIER: Yeah. So, I mean, I want to make it
20 crystal clear that it's what we think Mr. Larios would
21 have seen which would be whatever --

22 THE COURT: He can testify to what he sees on the
23 photograph.

24 MR. STEGMAIER: I understand.

25 Q If you were standing on the ladder at the top of

1 this ladder, is your view to the other side obstructed
2 by the palm tree?

3 A It could be.

4 Q Okay. I mean, and my question is the power lines
5 were on the other side of this tree. I'm trying to
6 orientate the jury.

7 And the idea is that Mr. Larios and just make sure
8 we understand now we have a little bit of a prop to
9 understand. Mr. Larios makes contact with the chainsaw;
10 is that correct?

11 A Yes.

12 Q And the chainsaw, we have a contact between the
13 power line and through the fruit stalk into Mr. Larios;
14 is that correct?

15 A Correct.

16 Q Now, I would like to go back if I can and ask you
17 to look at what was marked as Exhibit One which is the
18 photos that you took. We have those up here, if I may.
19 If you'll look at that first photo.

20 MR. PUGH: Which one is it, Counsel?

21 MR. APPLGATE: It's part of the exhibit of the
22 coroner photos.

23 Q As I understand it, Mr. Whaley, those are the
24 pictures that you took when you investigated the scene
25 on the first day; correct?

1 A Yes, sir, I believe these are.

2 MR. APPLEGATE: If I may, Your Honor, I want to
3 publish these same pictures while we're doing this.
4 These are just demonstratives.

5 THE COURT: Of what's already in evidence?

6 MR. APPLEGATE: Yes.

7 THE COURT: Okay. For the jury, these are some of
8 the same pictures.

9 Q If you'll look at that very first picture and tell
10 me, do you see, Mr. Whaley, a power line in that
11 picture?

12 A No, sir.

13 Q And if we can switch to the next picture related to
14 the trees. This is a close-up at the top of the tree
15 that you took that day. Is there any vision of the
16 power line in that picture?

17 A No, sir.

18 Q I want to show you another one that has a view of
19 the chainsaw and ask you if there's any ability to see,
20 this is from the prospective of Mr. Larios, any ability
21 to see power lines from that prospective?

22 A There would be no way to see.

23 Q Now, there's another picture that you took, it's
24 looking from the down below, but if you'll look at that
25 picture, this is kind of looking up. If you look at

1 that picture, do you see the power lines in that?

2 A No, sir.

3 Q Okay. As I understand it, if you look through
4 these pictures and I know we've done this exercise
5 before, but in your pictures, the powers lines aren't
6 visible; is that correct?

7 A Correct.

8 Q Okay. And as we talked about and we had a
9 discussion with Mr. Carter earlier and your testimony
10 earlier as you and I spoke, when you were out there that
11 first day you didn't see the power lines; correct?

12 A No, I wasn't really looking for the power lines
13 either at that point. Because -- I mean, I looked up,
14 but, no, and I didn't walk to the other side.

15 Q And I think Mr. Pugh showed you the picture and,
16 again, do you know where this picture -- or who took
17 this picture?

18 A SCE&G, I think.

19 Q Okay. So this is -- and do you know where this
20 picture is taken from?

21 A Let me bring it closer.

22 Q Yes, sir.

23 A I'd need to see the old picture he showed me.
24 Because one has the gazebo in it and there's a palm back
25 in there that can be identified by that gazebo.

1 Q Is it this one?

2 A May I step down, please?

3 THE COURT: Yes, sir.

4 A No, it wasn't that one. Here you go.

5 THE COURT: Keep your voice up, please.

6 A Okay. Look carefully. The gazebo tells me that
7 the tree it would have been trimmed in here somewhere.

8 Okay. Maybe hidden by the branches. This picture, see
9 that palm, that's the same palm. You just can't see the
10 gazebo. It's taken high up. You want me to show you?

11 Q This is from the prospective of Louise Street?

12 A From Louise Street down the bike path going --

13 Q Behind the property?

14 A Northwest.

15 Q Okay.

16 A Did you see what I was talking about?

17 MR. PUGH: I did.

18 A Okay.

19 Q All right. Thank you. Again, you didn't take any
20 pictures from that prospective, did you?

21 A No, sir.

22 Q And when you did your investigation trying to
23 figure out the cause of Mr. Larios' fall from the
24 ladder, you didn't go over to this area and look from
25 that prospective, did you?

1 A No, sir.

2 Q In this picture along with the other pictures we
3 discussed of the burn marks on the primary line was not
4 produced to you in the coroner's file; is that correct?

5 A I don't know whether they were or not.

6 Q Okay. While you were out there, I just want to
7 make it clear, did you see anything that indicated --
8 were there any warnings as you surveyed the property or
9 looked at in any pictures, were there any warnings or
10 indicators around the property warnings that there were
11 power lines running through this area?

12 A Not necessarily.

13 Q Okay. And I think as Mr. Pugh mentioned to you
14 that this area, that used to with be a roadway sometime
15 ago. I think he said it's sort of a forest that runs
16 behind this house?

17 A It never became an actual road. It was always
18 grown up. It was never a road as far as I have ever
19 known. It was just designated on paper to be a road.
20 And then the town decided to turn it into a meandering
21 bike path by one of our local retired architects to
22 design it for something nice and not turn it into a
23 road.

24 Q I know a minute ago, Mr. Whaley, that counsel was
25 asking you about sort of the law as he perpetrated to

1 you as it relates to the homeowner and I wanted to ask
2 you about that. Are you aware that Mr. Jackson, the
3 homeowner, or that Edisto Realty or that PENSCO Trust,
4 anybody who owned this property ever did any kind of
5 inspection to walk this area to determine whether the
6 trees and the power lines were causing any dangers or
7 problems?

8 A Say that again.

9 Q When you did your investigation, did you ever find
10 any information to suggest that the homeowner
11 Mr. Jackson or Edisto Realty had done any inspection on
12 this property to determine if those power lines were
13 there and warned anyone about them?

14 MR. STEGMAIER: Objection. Foundation. I think --
15 I think the question should be asked before this one is,
16 did he ever ask Mr. Jackson or Edisto about any sort of
17 warnings.

18 THE COURT: I guess -- I assume that's what you
19 meant when you asked him did he know?

20 MR. APPLEGATE: I was trying to get the results of
21 his investigation if he made a determination, yes, Your
22 Honor.

23 THE COURT: Okay.

24 A Whether either one of those agencies would have
25 inspected the property for that?

1 Q Had any of them inspected the property and warned
2 Mr. Larios about those power lines?

3 A No.

4 THE COURT: Is that a, no, or you don't know?

5 A I don't know.

6 Q And as it relates to the power lines, Mr. Whaley,
7 are you aware of the law that requires and the rules
8 that require SCE&G to keep their power lines clear from
9 any and all vegetation?

10 A I'm not.

11 Q And you didn't do anything to analyze what that
12 was?

13 A No, sir.

14 Q Okay. Do you know why SCE&G came in as you
15 described earlier and cut the top of that tree off?

16 MR. PUGH: Object to the form. Foundation.
17 Speculation.

18 THE COURT: You can ask him if he knows.

19 Q You can answer it.

20 A Better ask the question again.

21 Q Okay. Do you know why SCE&G came in there and cut
22 the top of that tree off?

23 A Not specifically. Um --

24 MR. PUGH: Your Honor, object to anything beyond
25 that.

1 THE COURT: I'm going to sustain any objection to
2 speculation. If he knows, he knows. If he's guessing
3 --

4 MR. APPLEGATE: I understand that. He earlier
5 testified that he had had some conversations with them
6 about it, so I just was trying to follow-up and find out
7 whether he was given any explanation why they cut the
8 top of the tree off.

9 THE COURT: Right. And you can ask that.

10 A You would cut the top of the tree off because it's
11 created injury and you don't want it to create anymore.

12 MR. APPLEGATE: That's all the questions I have,
13 Your Honor. Thanks. Thank you, Mr. Whaley.

14 A Yes, sir.

15 THE COURT: Mr. Pugh?

16 MR. PUGH: Briefly, Your Honor.

17 RECROSS EXAMINATION BY MR. PUGH:

18 Q Mr. Whaley, when you went to the scene of this
19 incident on November 29th, I think you just told us you
20 weren't looking for power lines; right?

21 A Correct.

22 Q You went out there because you were told a man fell
23 off the ladder and died; correct?

24 A Correct.

25 Q If you went out there and you were looking at all

1 A I did. They're a little hard to see sometimes with
2 the tone of light and different things like that.

3 Q Right. And we've seen some photographs that the
4 lines are clearly depicted in there; correct?

5 A Yes, sir.

6 Q And we've seen some photographs where it's a little
7 more difficult if not hard to tell where the line is;
8 correct?

9 A Yes, sir.

10 Q And that's what you're talking about with the
11 photographs?

12 A Yes, sir.

13 Q Sometimes you can see things, sometimes it's a
14 little more difficult; right?

15 A Correct.

16 Q But it's not your testimony that between the time
17 Mr. Larios was injured and when you went out there that
18 someone went out and made the power lines disappear;
19 right?

20 A No.

21 Q They weren't invisible, were they?

22 A No.

23 Q If you were looking for them you could see them?

24 A If you were looking for them.

25 Q And if you can take a photograph of them you can

1 MR. PUGH: I appreciate the indulgence.

2 THE COURT: Sure.

3 (There was a short break taken)

4 THE COURT: All right. Are we ready? Let's bring
5 the jury back in, please.

6 (The jury entered the courtroom at 5:15 p.m.)

7 THE COURT: All right. Thank y'all. Please have a
8 seat. Folks, we have one more witness this afternoon
9 and we recognize the plaintiff for your next witness.

10 MR. APPELATE: Your Honor, thank you. Your Honor,
11 we call Dr. Presnell.

12 THE COURT: Dr. Presnell, if you'd please come
13 around and be sworn, please, ma'am.

14 ERIN PRESNELL,
15 being first duly sworn, was examined and testified as
16 follows:

17 THE CLERK: Please have a seat on the witness stand
18 and state your name for the record.

19 A Hi, my name is Susan Erin Presnell,
20 P-R-E-S-N-E-L-L.

21 DIRECT EXAMINATION BY MR. APPELATE:

22 Q Dr. Presnell, where do you reside?

23 A Excuse me.

24 Q Where do you live?

25 A Charleston, South Carolina.

1 Q What is your occupation?

2 A I'm a forensic pathologist at the Medical
3 University of South Carolina.

4 Q Can you give me briefly your educational
5 background?

6 A Yes. So I went the Clemson and I graduated with --
7 in microbiology. Then I went to medical school at MUSC
8 which is the Medical University. Finished medical
9 school, I chose pathology as my field of medicine.
10 Stayed at MUSC to do my training there. And then after
11 that, I continued to stay there to do my subspecialty
12 training in forensic pathology. And then they hired me
13 as faculty. So I've been there since 1999. So for 20
14 years.

15 Q See how good and quick she is. We're going faster.
16 (Laughter)

17 Can you tell the jury what you do on a daily basis
18 with forensic pathology?

19 A Well, so we do medical and forensic autopsies at
20 MUSC. But the primary -- most of what we do are
21 forensic autopsies. And those are autopsies on someone
22 that has passed from either a natural cause of death or
23 an unexpected cause of death. And the way that we get
24 the cases, South Carolina is a coroner death
25 investigation system. Is that each of the counties in

1 South Carolina have their own elected coroner and their
2 deputies. The coroners respond to death scenes and they
3 decide who would get or who they're going to authorize a
4 forensic autopsy on. And then they send that person to
5 us to do the autopsy at MUSC.

6 Q So in forming your conclusions as to cause of death
7 in an autopsy, do forensic pathologists like yourself in
8 your field normally rely on information gathered at the
9 scene by coroners?

10 A Yes.

11 Q Is it a normal practice for forensic pathologists
12 to rely on this information provided by the coroner when
13 you're conducting your autopsy?

14 A Yes. We -- often times not all of the information
15 that comes out during an investigation is going to be
16 known when we do the autopsy. But, you know, the
17 information they have, they will share with us. You
18 know, like where the person was found, what they were
19 last doing, when they were last seen alive. That kind
20 of information. So we have an approach to the autopsy.
21 Then, you know, just depending on the case there might
22 be more information that comes up during the
23 investigation which, you know, becomes a part of the
24 case.

25 I will speak louder and I'm going to try to slow

1 down.

2 (The jury, get a little bit closer so I can hear
3 you. I can't hear you over here)

4 Q Approximately how many autopsies have you
5 performed?

6 A About -- it's an estimate and I would say about
7 3,000.

8 Q Okay. Have any of those autopsies involved
9 electrical shock or burns or electrocutions?

10 A Yes. I knew you were going to ask about how many.
11 I was trying to figure about how many. I would say
12 probably maybe one a year, so about 20 for
13 electrocutions. Not thermal injury, that's a lot more
14 of those.

15 Q Let me hand you what I'll mark for identification
16 purposes your autopsy report ask you to review that.

17 (WHEREUPON, Plaintiff's Exhibit Number 3 was marked
18 for identification)

19 A So this is a copy of the final autopsy report that
20 I temporarily did at MUSC on how Mr. Jose Licona Larios.

21 Q So did you conduct a diagnostic evaluation of
22 Mr. Larios and then render the diagnosis in this report?

23 A Yes. Well, I did an autopsy on November 30, 2015.
24 And did all the different -- all the normal studies we
25 would normally do during the course of an autopsy and

1 including the cause of manner of death.

2 Q Does this autopsy report in front of you appear to
3 be a genuine and authentic copy of the original?

4 A Yes, it does.

5 MR. APPLGATE: Can I mark that as Plaintiff's
6 Exhibit Two, Your Honor?

7 THE COURT: All right. Any objection to Plaintiff's
8 Exhibit Two.

9 MS. SPIRES: Wouldn't we go to Three?

10 THE COURT: Three.

11 MR. APPLGATE: Okay.

12 MS. SPIRES: Because I would to refer to Two as
13 being withdrawn.

14 MR. APPLGATE: Plaintiff's Three.

15 THE COURT: Yeah, that report's marked as -- any
16 objection to Plaintiff's Exhibit Three?

17 MR. STEGMAIER: No, sir.

18 MR. PUGH: No objection.

19 THE COURT: You may proceed, sir.

20 (WHEREUPON, Plaintiff's Exhibit Number 3 was
21 entered)

22 Q Can you -- as it relates to Jose Larios, can you
23 describe sort of the autopsy process that you engaged
24 in?

25 A It was pretty standard approach as for all

1 autopsies. So, again, I will get information from the
2 coroner, the body will arrive, we'll document the person
3 as they arrive to us so that whatever clothing they
4 still have on, et cetera. We will unclothe them, make
5 sure they're all clean so we can evaluate any lesions,
6 any injuries that they might have. We document those
7 with diagrams, but also photographs. And then we do a Y
8 incision and look at all the internal organs. We
9 dissect them. We may take pieces of them to look at
10 under a microscope depending on the type of case. We
11 also look at the brain. All of our autopsies are
12 complete autopsies.

13 Also, we get blood and urine if it's available to
14 send off to get tested for drugs and alcohol. And
15 that's the end of the first part of the autopsy. And
16 then all that information comes back to us later like
17 we'll get the toxicology results. We'll get the tissues
18 to look at under the microscope a little later. We put
19 it all together in a report and, again, generate the
20 final report. And in this case that's what we did as
21 well.

22 Q And based on your examination and autopsy of
23 Mr. Larios, what were all the factors that contributed
24 to his death?

25 A Well, let me just back up with when we received

1 Mr. Larios for autopsy, we were told that he had been on
2 a ladder and had fallen from that. And, indeed, his
3 cause of death is from the fall from the ladder. So
4 internally, he has a number of scratches and some
5 bruises on his skin. But internally, he has all of the
6 -- well, not all of them. Ribs one through seven, I
7 believe, ribs fractured on the left side. The same ribs
8 fractured on the right side. He has about 150
9 milliliters of blood in the left chest cavity. Another
10 200 in the right chest cavity. His liver is lacerated,
11 meaning it's torn. Both kidneys are lacerated or
12 they're also torn. The lower back bone, the lumbar
13 area, the processes that stick off the side are broken.
14 There is another 150 milliliters of blood in the abdomen
15 as well as a lot of soft tissue bleeding and hemorrhage
16 from trauma -- direct trauma to that. So, ultimately,
17 his cause of death is going to be from the blunt trauma
18 to -- or from the fall from hitting -- striking the
19 ground.

20 However, the other component that we did see at the
21 autopsy was this area of his abdomen. It's a little
22 bigger than an inch and a half. And it's a little red
23 area where the epidermis, so the top layer of the skin
24 has slipped off. It slid off the lower part of the skin
25 on the dermis. So it kind of looks like a media scall,

1 a burn, a -- potentially electrical contact area.

2 Now, other types of situations where you might see
3 the skin separate like that would be decomposition or
4 being found in water. Like having been in water a long
5 time. But that was not the case in Mr. Larios' death.
6 He wasn't decomposing nor was he covered in water.

7 So at the time, you know, we made a description.
8 The first part would be autopsy. We described this
9 lesion. Subsequent to that we did get information that
10 he -- we knew he had been cutting trees or tree limbs
11 with a chainsaw up in a tree, but that there's some type
12 of contact that had been made with the electrical line
13 and that before he fell he did a shout out, Woo! I
14 don't know exactly how it went, but a loud shout out.
15 Had removed his rope and then fell. And that there was
16 residue that had been on -- or what they thought was his
17 shoe residue on the rung of the ladder.

18 He did not arrive to us with shoes. He was clothed
19 except the shoes did not accompany him. So I couldn't
20 actually exam the shoes directly. However, in
21 consideration of all of the components, his actual
22 history of the shout out which is classic, a classic
23 shock type injury. Is -- or shock type history -- or
24 history that you hear during shock type injury. A yell
25 out.

1 This location in the trees with the contact made --
2 evidence of contact made, and the marks of the shoes on
3 the rung, and then finally the autopsy finding of that
4 lesion right in the middle of his abdomen made us
5 conclude that indeed that electrical contact had
6 occurred and because of that, even though I made his
7 cause of death the blunt trauma due to the fall, I made
8 contributory the electrical contact -- the electrical
9 injury. Ultimately, whether the fall or -- and/or the
10 contribution of the electrical contact, the manner of
11 death in this case would be accident.

12 Q And, I guess, as that being your opinion, as I
13 understand it, blunt force trauma due to fall and
14 contact with power line as being contributory. Do you
15 hold that opinion to a reasonable degree of medical
16 certainty?

17 A Well, this is what my opinion is based on all of
18 the history, information, and autopsy findings, yes.

19 Q Okay. Now, were you given information about there
20 being burnt palm fronds, burnt seed shoots in the tree?

21 A No. I don't have that actually in my case history
22 that I documented. I have the information the coroner
23 relayed that there had -- let's see. That there had
24 been some contact between the chainsaw and the overhead
25 power wire.

1 Q Were you given information that there was
2 appearance of an arc burn or some type of burn on the
3 chainsaw?

4 A Not from the coroner. No. Not that I have
5 documented.

6 Q Okay. Were you given any information about -- I
7 guess, any other information about the burn other than
8 what you just mentioned here today?

9 A No.

10 Q So to clarify, Doctor, is it -- again, is it your
11 opinion that electrical contact with the power line more
12 likely than not contributed to Jose's death?

13 A Yes.

14 Q Okay. Now, you didn't do any testing on the ladder
15 or any analysis on any of these -- this evidence that
16 was provided to you, did you?

17 A No. The information I had is based on what the
18 coroner provided.

19 Q Okay. And that's a standard procedure for you in
20 your field?

21 A That's a standard procedure for the coroner death
22 investigation system.

23 MR. APPLEGATE: Let me mark, if I can.

24 (WHEREUPON, Plaintiff's Exhibit Number 4 was marked
25 for identification)

1 MR. APPLEGATE: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 Q Let me show you what tend to offer as Exhibit Four,
4 and ask you if you recognize these photos?

5 A This is a copy of a photograph that we took at the
6 time of autopsy.

7 Q Okay. And --

8 A Two photographs at the point of autopsy.

9 Q Okay. And who took those pictures?

10 A Either me or my assistant.

11 Q Does that appear to be Mr. Larios at the time of
12 doing the autopsy, this appears to be an accurate
13 picture?

14 A It is. And it also has our autopsy label on it so
15 it has the right number for his autopsy.

16 MR. APPLEGATE: If I may, can I move these pictures
17 into evidence, Your Honor? Plaintiff's --

18 THE COURT: Have they been marked yet? Just so I
19 can refer to a number for the record.

20 MR. APPLEGATE: Four.

21 HE COURT: Four. Any objection to Plaintiff's Four
22 which are these photographs?

23 MR. STEGMAIER: No, sir.

24 MR. KENNEDY: No, Your Honor.

25 THE COURT: Mr. Pugh?

1 MR. PUGH: I'm sorry. No, Your Honor. I was
2 reading. Sorry.

3 THE COURT: Any objection to that photo?

4 MR. PUGH: No, sir.

5 THE COURT: All right. That's Plaintiff's Four.

6 (WHEREUPON, Plaintiff's Exhibit Number 4 was
7 entered)

8 MR. APPLGATE: If I may, Your Honor. The jury, I
9 apologize for the sense of nature of these photos.

10 Q But, Doctor, can you show me in this picture if you
11 wouldn't mind coming down, could you please show us the
12 area that was determined to be an electric --

13 THE COURT: If we could, could I get Doctor Presnell
14 to stand facing the court reporter. And then, Doctor,
15 if you keep your voice up so make sure everything is
16 taken down.

17 A Okay. So in the middle -- I'm sorry for my
18 appearance as well. I had to rush. All right. So that
19 obvious injury between like kind of in the upper abdomen
20 chest area, that is actually from the defibrillation
21 pads, the pads that they would use. But this injury
22 lower, you can kind of see where the skin's slipped off
23 and you can see a little bit of the redness around the
24 edges. That's the mark -- that's the injury that I'm
25 talking about.

1 Q And I guess -- what about that picture -- what
2 about that injury makes it appear to be electrical
3 content?

4 MR. STEGMAIER: Objection. Asked and answered.

5 THE COURT: Overruled. She can answer that.

6 A Well, so electrocution can cause a number of
7 different appearances. A classic electrocution injury
8 actually looks like a crater with white rim with a red
9 rim. But in this instance we don't have that degree of
10 like a classic electrocution injury. What we have here
11 is this hyperemic area and the skin has slipped off.
12 Theoretically, could maybe a scalp burn do that? Yeah,
13 possibly.

14 So it doesn't -- when I look at it, I don't say
15 this is a classic electrocution. I just say that this
16 is not normal. This isn't an abrasion. This isn't a
17 laceration. It's not a contusion. It's an area where
18 the top layer of skin has slipped off from the lower
19 layer. Certainly is consistent with a contact with an
20 electrocution burn and based again on his circumstances,
21 on the shout out, on the residual material on the ladder
22 rungs, all of that together and his location, that I am
23 concluding that this is the electrical contact site.

24 Q Does it make any difference whether this is a
25 direct contact with an electric line or indirect contact

1 to make a mark like this?

2 A Well, I don't know. I mean, like I said, this
3 isn't like a high -- well, so I know that the contact --
4 the electrical contacts that he's supposed to have made
5 contact with is -- are power lines. And power lines are
6 high voltage. So you would think that if he actually
7 contacted his skin with the actual power lines there
8 would be a lot more injury. So to me this suggests that
9 there is some indirectness whether it's the chainsaw to
10 the palm fronds, seed pod that's making the contact.
11 That makes more sense.

12 Q Thank you. I guess, if you can see that from here,
13 is there anything about this photo that's actually
14 different?

15 A If that photograph you have up now is a picture of
16 him when he came to us at autopsy, remember I said we
17 take a photograph of how they arrive to us. So that's
18 all the medical intervention and the clothing that he
19 was still wearing featured there. But you can see the
20 same marks on his abdomen.

21 Q Okay. Thank you, Doctor. I think we may have
22 touched on this, Doctor, but I did want to go through a
23 couple of areas again. As part of your practice you're
24 not going and determining what level of power or
25 electricity would have been in a power line to come in

1 contact to Mr. Larios?

2 A No.

3 Q Okay. So you don't know and that's not something
4 that's part of your job to analyze what would be the --
5 what the voltage was?

6 A In a different system it would be part of my
7 investigators jobs, but we're not in that kind of
8 system, so I rely on the coroner as the investigator by
9 law.

10 Q And as it relates to your investigation as with
11 forensic pathologist, the distance between Mr. Larios
12 and the power line, is that important?

13 A I mean, as long as there was an electrical whether
14 it be an electrical contact, whether it be through an
15 arc that they contacted it and then transmitted it
16 through the chainsaw or not, I don't know that that
17 matters.

18 Q Did you find any marks on his hands or feet that
19 were consistent with an electrical burn?

20 A No.

21 Q Is that -- does that change your opinion in anyway?

22 A Well, I mean, expect if the hands were a site of
23 entry then perhaps there might be injury there. But you
24 see that the mark is on the abdomen, so you consider
25 that the site of injury. In some instances

1 electrocutions do not actually leave a mark. Lightening
2 is an extreme version of electrocution as well and there
3 are cases of those where somebody is struck by
4 lightening and they leave no marks. So it's not -- it's
5 not unusual to not be able to see, you know, perhaps say
6 an exit area.

7 Q And can you explain that because it comes up the
8 idea of entry and exit wound.

9 A Well, so electricity is going to be conducted along
10 the pathway. And I'm not the electrician, I know this
11 through the forensic pathology component of this. But
12 if we have your contact with the chainsaw and the palm
13 frond to the electrical wire or through an arc, it
14 enters the abdomen area and it would travel to where
15 he's grounded so it would go down to where his feet are
16 touching the metal ladder and exit there. So that would
17 be the pathway through him.

18 If that doesn't -- well, we don't have to get into
19 that. And then the idea that his shoes are -- some shoe
20 like residue was on the ladder rungs also supported that
21 as the pathway.

22 Q And, Doctor, if the fact someone gave an opinion
23 that there was a fruit stalk connected to the primary
24 line and a fruit stalk connected to the neutral line as
25 the ground, would that have any affect on your opinion

1 as to his electric shock?

2 A I don't know. I would have to look into the
3 neutral verses how the high voltage power lines are set
4 up.

5 Q Does it have -- you explained earlier, Doctor, that
6 you had done your initial review, got more information,
7 did a secondary review, does that have any affect on
8 your final opinion?

9 A Well, I mean, this is ongoing. It's not first
10 review verses second review. We have the initial
11 information, we do the autopsy, we document the
12 findings, we get additional information, correlate the
13 information with the autopsy findings with what we see
14 microscopically, with the toxicology, et cetera, put it
15 together with the history and then come to the
16 conclusion. And I'm sorry, I forgot what your question
17 was.

18 Q I think you answered it. So that's good for
19 forgetting. Beyond the -- your opinions, Doctor, that a
20 blunt force trauma with contribution of the electrical
21 contact, was there anything else that you saw that could
22 have possibly contributed to Mr. Larios' death based on
23 your autopsy?

24 A No. The blunt force injury was the cause of death.

25 MR. APPLEGATE: And as I'm prone to do, I want to go

1 ahead, Your Honor, if I may at this time after my
2 presentation, to ask, if I may, that Dr. Presnell be
3 deemed an expert in the field of forensic pathology?

4 THE COURT: I don't -- no objection to that, is
5 there?

6 MR. STEGMAIER: No objection.

7 MR. PUGH: No.

8 MR. KENNEDY: No objection.

9 Q With that, I guess I'll give you one last
10 opportunity. With that analogy you are deemed an expert
11 in forensic pathology, are all the opinions you've given
12 here today to a reasonable degree of medical certainty?

13 A Yes, based on the information I have. Yes.

14 Q Thank you very much. I'll pass you on to defense
15 counsel.

16 CROSS EXAMINATION BY MR. PUGH:

17 Q Good after -- it's getting close to good evening.
18 Doctor, I'll try to be very brief. When Mr. Larios'
19 body came to MUSC, y'all did a thorough examination of
20 his body; correct?

21 A Of course.

22 Q And that includes looking at his clothing?

23 A Yes. What he had left.

24 Q Right. And you told us that his shoes weren't with
25 him?

1 A Correct.

2 Q And we can agree that Mr. Larios upon presentation
3 did not have any entry or exit wounds on his body;
4 correct?

5 A I'm sorry, ask again.

6 Q He did not have any entry or exit wounds in the
7 classic electrocution since; is that correct?

8 A He did not have the classic appearance of what is
9 classically described as an electrocution. But you
10 would recognize it and point to and say that's an
11 electrocution.

12 Q Right. I think you told us in your -- earlier when
13 we had an opportunity to talk to you, that if you just
14 saw Mr. Larios, you came to work one day and he's there,
15 you're to perform an autopsy, looking at him, you would
16 not have thought he was involved in an electrical
17 incident; is that correct?

18 A Correct. If we had found -- if he had been found
19 deceased in bed and had gone to bed like 11 p.m. the
20 night before and found in the morning deceased and that
21 injury was there, it would not fit anything. But I
22 wouldn't -- electrocution wouldn't immediately jump to
23 mind.

24 Q Okay. And so, Doctor, can we agree that Mr. Larios
25 did not have any marks that y'all made reference to in

1 your reports on his hands or feet?

2 A Correct.

3 Q He had no burns or burning charring discoloration
4 on any of his clothing that's noted; correct?

5 A Right. I described the shirt that he was wearing
6 as a black thermal. These had all of course been
7 previously cut by EMS, so -- and I don't have any other
8 description than that. So I will have to assume then
9 that there was no trauma injury. Although, I wouldn't
10 expect there to be based on what his mark is on his
11 abdomen.

12 Q And he actually had two shirts on; correct?

13 A Yes. A black thermal shirt and a white T-shirt.

14 Q And neither one of those had any marks on them that
15 you noticed --

16 A Not they noted. Yeah.

17 Q -- or made reference to? Okay. And nor did you
18 make any reference to anything of note with regard to
19 his socks that he was wearing; correct?

20 A Correct.

21 Q And so you on November 30, 2015 do a complete
22 examination and autopsy of Mr. Larios; correct?

23 A Yes. But we did the complete gross part of the
24 autopsy.

25 Q Right. Subject to toxicology?

1 A And microscopic slides for -- yes.

2 Q Okay. And you issue a preliminary or an autopsy
3 preliminary report; correct?

4 A Yes.

5 Q Any autopsy preliminary report that you issued in
6 this case referenced blunt trauma to torso due to fall
7 from height of ladder; correct?

8 A I don't have that in front of me, but that sounds
9 completely like my type of cause of death.

10 Q Let me show you what I'm marking at Defendant's
11 Exhibit Number 10 for identification.

12 (WHEREUPON, Defendant's Exhibit Number 10 was marked
13 for identification)

14 MR. PUGH: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 MR. PUGH: Your Honor, I'm advised this is without
17 objection, so I would move for the entry of Defendant's
18 Exhibit Number Ten.

19 THE COURT: All right. Without objection it's in
20 evidence.

21 (WHEREUPON, Defendant's Exhibit Number 10 was
22 entered)

23 MR. PUGH: May I approach?

24 THE COURT: Yes, sir.

25 Q Dr. Presnell, I'll represent -- well, you tell us,

1 is that your autopsy preliminary report from November
2 30, 2015?

3 A Yes.

4 Q Can we agree that there's not a single reference in
5 that report regarding electricity?

6 A Correct.

7 Q Okay. And then it's my understanding you have a
8 telephone call with Mr. Carter of the Colleton County
9 Coroner's Office subsequent to your autopsy; correct?

10 A Yes.

11 Q And you tell Mr. Carter your preliminary opinions
12 that Mr. Larios died of blunt force trauma; correct?

13 A Yes.

14 Q Multiple lacerations of his internal organs?

15 A Yes.

16 Q Seven broken ribs on each side?

17 A Yes.

18 Q Four broken vertebrae?

19 A Yes.

20 Q None of those were caused by electricity?

21 A Correct.

22 Q Caused by a fall?

23 A Correct.

24 Q And in that telephone call, I want to make sure
25 that I've got this straight. In that telephone call

1 with Mr. Carter who, to be fair, you say, look, we rely
2 on the coroner's office to tell us things; is that
3 right?

4 A Well, yes.

5 Q I mean, because, Doctor, you're not out doing
6 investigations at scenes and things like that?

7 A Not in the coroner system we are not.

8 Q Correct. And you have your role and they have
9 there's; right?

10 A Correct.

11 Q And you rely on them to provide you with
12 information derived from their continuing investigation;
13 correct?

14 A Yes.

15 Q And would you agree that what you're hopefully
16 getting from the coroner's office is accurate
17 information; correct?

18 A Yes.

19 Q Can we agree that if you get inaccurate information
20 from the coroner's office that can lead to inaccurate
21 results on your end; correct?

22 A It could.

23 Q And can we agree that in that subsequent telephone
24 call what Mr. Carter told you was two things. And if
25 you'll look at Plaintiff's Exhibit -- it's your final

1 report, Doctor?

2 A I have a copy.

3 Q What is the number just so we have it for the
4 record?

5 A It is Plaintiff's Exhibit Three.

6 Q Thank you. Doctor, if you'll look at page 2 for a
7 second. You have Case History?

8 A Yes.

9 Q Okay. And it says, "According to the Colleton
10 County Coroner, Mr. Richard Carter"?

11 A Yes.

12 Q And then we skipped down to the last sentence:
13 "Further investigation revealed the chainsaw had
14 contacted an overhead power wire;" correct?

15 A Yes.

16 Q And then it says, "Rubber-like material from the
17 decedent's shoes was noted on a ladder rung;" right?

18 A Yes.

19 Q So you were told that the chainsaw Mr. Larios was
20 using made contact with an overhead power wire; right?

21 A Either made contact or made contact through what he
22 was cutting.

23 Q Right. And what this says though, just reading it,
24 "chainsaw had contacted an overhead power wire," that's
25 what it says; right?

1 A Yes, it does.

2 Q And the next sentence says, "Rubber-like material
3 from the decedent's shoes was noted on a ladder rung."
4 That's what it says?

5 A Yes, it does say that.

6 Q And those two things you relied on; correct?

7 A Yes.

8 Q Okay. And you didn't certainly do anything to
9 confirm whether those were accurate or not; is that
10 correct?

11 A No, we did not. I did not. I'm not sure what else
12 I could have done.

13 Q Right. And so -- has anyone ever told you that
14 there was not rubber-like material from Mr. Larios'
15 shoes on a ladder rung?

16 A No.

17 Q Has anyone ever told you that the ladder rung or
18 whatever this discoloration was has never been tested?

19 A No.

20 Q Has anyone ever told you that it was a physical
21 impossibility for the chainsaw Mr. Larios was using to
22 have made contact with the overhead power wire?

23 A So perhaps and I'm trying to remember, it's been a
24 while. The reference to the chainsaw making contact
25 with an electrical source, even though I do say

1 electrical wire in this history, doesn't necessarily --
2 he's cutting limbs, so whether the source is through the
3 limb or not, I'm not specifying in here.

4 Although, I did specify in the sentence that it
5 makes contact with the wire. But in answer to the
6 question, no, there was no specification as to what
7 actually contacted the electrical wire.

8 Q Do you recall having your deposition taken in
9 connection with this case?

10 A I do.

11 Q Do you recall being asked a question:

12 "As a general matter, would you have wanted to be
13 provided additional information about the electrical
14 shock or evidence related to an electrical shock or is
15 that sort of beyond what your normal practice is?"

16 Do you recall being asked the question?

17 A Not specifically. But, of course, I'm always going
18 to answer that, yes, the more information the better.

19 Q Right. And in response to that question, do you
20 remember your answer?

21 A I don't recall, but I couldn't imagine not saying,
22 yes, I would want more information.

23 Q And your answer, Doctor, was:

24 "Our normal practice is to rely on whatever the
25 coroner will provide us."

1 That's what you told us today?

2 A That's true.

3 Q And then your answer continues.

4 "You know, I mean, he gave us" -- "he" being
5 Mr. Carter, "gave us the information that there's
6 evidence of a chainsaw contacting electrical lines."
7 Then you go on, "And then that there's the shoe debris
8 on the rungs coupled with his presentation of a shout
9 out and this mark on his abdomen was sufficient for me
10 to conclude that he had an electrical component that
11 there was an electrical component in the fall."

12 Do you recall that testimony?

13 A Yes. That sounds like exactly something I would
14 say, yes.

15 Q I understand. And so, if it is inaccurate that the
16 chainsaw contacted an electrical wire, that would be
17 something you would want to know?

18 A Yes. If there was no electrical wire and there was
19 no possibility or no source of electricity then I would
20 like to know that. Yes.

21 Q And I think Mr. Applegate asked you, you don't know
22 anything about distances of wires?

23 A No. Although, I do know arcing is possible. But I
24 don't have a specific distance for this scenario.

25 Q And you haven't done anything and I'm just asking,

1 you haven't done anything in an attempt to recreate what
2 the path of electricity may have been with regard to
3 Mr. Larios?

4 A No.

5 Q Okay. Nor have you tried to recreate what that
6 voltage amperage current anything would have been;
7 correct?

8 A No. I mean, you making it sound like I haven't
9 done stuff. But this isn't normally something that I
10 would -- that's my part of forensic pathologist. But
11 the answer is, no, I did not do that.

12 Q So the only thing that changed between November 30,
13 2015 your preliminary autopsy report which we've marked
14 as Defendant's Ten and the Plaintiff's Exhibit Number
15 Three which is your final autopsy report, you with me?

16 A Yes.

17 Q The only thing that's changed is in the interim you
18 had a conversation with Mr. Carter?

19 A Well, yes, information. Yes.

20 Q And the information he told you, I'm not going to
21 belabor it, but we just talked about; right?

22 A Some of it. There was also the shout out before
23 the fall actually happened, too.

24 Q Right. But the two components we just talked about
25 were chainsaw contact and the overhead power line and

1 shoe residue on the ladder rung?

2 A Well, I still don't know what the actual conclusion
3 is on that. That's -- again, that's the information
4 provided by the coroner and that's what I had to go to
5 to rely on.

6 Q Right. Fair enough. So it's fair to say you still
7 don't know as you sit here today whether those
8 statements I just referenced, chainsaw contacting the
9 overhead power line or rubber or the residue from
10 Mr. Larios' shoes on the ladder, you don't know whether
11 either one of those is accurate or not?

12 A Well, I don't know about whether the residue is
13 tested or not, so, no, I don't know that. And then I
14 don't know specifically what the contact was with the
15 electrical source.

16 Q And if you had seen Mr. Larios without that history
17 that we just talked about which is how you saw him on
18 November 30th; right, you didn't have that history?

19 A Right. Yes.

20 Q So -- and when you saw him on November 30th,
21 without that history you made no reference to an
22 electrical component; correct?

23 A Correct.

24 Q And when you got that history coupled with some
25 other things that we talked about, that's when you

1 referenced --

2 A The electrical contact.

3 Q -- an electrical component to his injury; correct
4 -- or to his fall?

5 A Yes. That is correct. But, again, it's a
6 consolation of things. I mean, the lesion was still
7 there. The abdominal lesion and the history and the
8 shout out, et cetera. And so you're putting that all
9 together it makes sense as to the sequence of events.
10 And as to what that potentially could have caused that
11 lesion.

12 But prior to that, prior on the November 30th when
13 I actually did the autopsy without the information of
14 electrical, I had no -- I didn't have an idea of what
15 actually caused the lesion on the abdomen. So that did
16 change after I spoke with the coroner who informed me of
17 the additional information that the investigation was
18 uncovering.

19 Q And when did you bring Mr. Larios or re-examine him
20 visually? When did that occur?

21 A Excuse me.

22 Q When did that occur?

23 A When did what occur?

24 Q When did you re-examine Mr. Larios visually after
25 your discussion with Mr. Carter?

1 A That wouldn't happen. He has already been
2 autopsied. So we do all these photographs and our
3 autopsy will be done on one day. Occasionally, we will
4 hold somebody that might need to be re-examined, but
5 that wouldn't have been the case with Mr. Larios.

6 Q So just to be clear, after your discussion with
7 Mr. Carter, you went back and looked at photographs, you
8 didn't go back and look at the body itself?

9 A Well, I looked at the autopsy report and, yes, we
10 always -- whenever we're proofreading the report as we
11 add more information to it we're always going to be
12 reviewing the photographs as well.

13 But there is a description of it prior. But, no,
14 we wouldn't have brought the body back to MUSC to look
15 at again.

16 Q Doctor, in both of the preliminary and final
17 autopsy report you have referenced to cuts or abrasions
18 on other parts of Mr. Larios' body; correct?

19 A Yes.

20 Q Some of those include his facial area?

21 A Yes.

22 Q Doctor, I think that's all I have for you. Thank
23 you.

24 A You're welcome.

25 CROSS EXAMINATION BY MR. STEGMAIER:

1 might not have had any last year.

2 Q Okay. And my understanding based on the questions
3 posed to you by Mr. Pugh, with regard to the injury that
4 you saw with Mr. Larios, this isn't a classic injury
5 that you would typically see as it relates to
6 electrocution or shock; correct?

7 A Correct. This is not what they call a pathognomic
8 lesion where you can look at it and say a high power
9 electrocution.

10 Q Two questions left. Do you -- in your personal
11 life, do you ever use chainsaws?

12 A No.

13 Q All right. So you probably don't have to be an
14 expert using chainsaws, but is it good habit, bad habit,
15 with regard to holding a chainsaw that's running right
16 at your stomach level?

17 A What's the -- what is the question?

18 Q As I understood your testimony that this could have
19 been indirect that somehow this could have come through
20 his chainsaw -- somehow it could have come through his
21 chainsaw and shocked him. Do you remember that?

22 A Yes.

23 Q Okay. So, my question is with regard to holding a
24 running chainsaw, good habit, bad habit, good thing, bad
25 thing as holding it close to your stomach on your chest?

1 (Court was adjourned at 6:15 p.m.)

2 THE COURT: All right. Anything we need to take up
3 before we get started?

4 MR. APPLGATE: I don't think so, Your Honor. We're
5 ready to go.

6 THE COURT: Anything from defense?

7 MR. PUGH: No, sir.

8 THE COURT: All right. Let's bring the jury in,
9 please.

10 (The jury entered the courtroom at 11:12 a.m.)

11 THE COURT: Thank you, folks, please have a seat.
12 Ladies and gentlemen, welcome back this morning and I
13 apologize for keeping you back there, but I've been
14 working with the attorneys and we were able to get some
15 things resolved that I think in the long run is going to
16 save us more time. So, while you've been back there and
17 I know you're wondering what's going on, I can assure
18 you that the things we've been doing out here have been
19 toward making the trial a little bit more efficient
20 maybe for us to get further along. So we're going to
21 redeem that time. But I hope everyone is well rested
22 and ready to start back.

23 If you recall when we took our break yesterday, we
24 were on the plaintiff's case and we're going to pick up
25 right where we left off and we recognize the plaintiff

1 for their next witness.

2 MR. APPLEGATE: Your Honor, I'd call -- the
3 plaintiff's call Ed Brill.

4 THE COURT: All right. Will you please come around,
5 sir, and be sworn.

6 EDWARD BRILL,
7 being first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION BY MR. APPLEGATE:

10 Q Good morning, Mr. Brill. Can you please state your
11 full name for the record.

12 A Yes. Edward R. Brill.

13 Q Where do you live?

14 A Presently live in Florida. In Boynton Beach,
15 Florida.

16 Q And what is your professional title?

17 A I'm a professional engineer -- electrical engineer
18 and my title right now is senior project manager.

19 Q And where do you work?

20 A I work for a company called SEA, and it's a
21 forensic engineering firm which investigates accidents,
22 fires, shock, electrocution cases as well as many other
23 types of cases.

24 Q Can you explain to the jury a little bit about
25 further on your experience with shock and electrocution

1 cases?

2 A I've been with SEA now for about 15 years and over
3 the past 15 years I've investigated hundreds of cases
4 involving reported shock or electrocution. Typically
5 what we have with shock or electrocution cases can
6 involve many things from power lines down to outlets in
7 your house. So those shocks can vary in those
8 categories. And before I worked for is Florida Power
9 and Light -- or before I worked for SEA for 15 years, I
10 was employed with Florida Power and Light for 20 years.
11 And did also investigations for them involving
12 electrical investigations as well as basically setting
13 up distribution systems for your homes, for hospitals,
14 and for laying out the distribution lines and designing
15 them for installation behind homes and businesses.

16 Q What are, if you can help, what are distribution
17 lines?

18 A So typically distribution lines are the line you
19 will find behind your home with the transformer box as
20 the cans that hang on those poles. Those would be
21 considered distribution lines. As opposed to transition
22 lines which are the very high large lines we typically
23 see along the highways that are usually much higher and
24 much bigger and much wider than the distribution lines.

25 So, typically distribution lines are 13,000 volts

1 to maybe 23,000 volts that those are the ones that we'll
2 have running through your neighborhood and your
3 overground or underground as opposed to transmission
4 lines which can be hundreds of thousands of volts and
5 voltages basically, you know, equivalent to like
6 pressure. It's telling you how big of a pressure it's
7 capable in those lines.

8 Q And so I understand your testimony, you were
9 involved with the power company in Florida and you
10 helped design those distribution lines?

11 A That's correct.

12 Q Can you explain to the jury a little bit about your
13 educational background in Engineering?

14 A I received my undergraduate in Engineering from the
15 US Navel Academy and then I attended -- after graduation
16 I attended Florida Atlantic University and received my
17 Bachelor of Science in Electrical Engineer. And from
18 that point in time, I began my work at the power company
19 with my engineering degree and then obviously continued
20 education classes for the last 35 years in my field.

21 Q Mr. Brill, I see that you have a PE behind your
22 name, can you tell us what that is?

23 A Yes. Around the United States the term is called
24 Professional Engineer. So the term "PE" stands for
25 someone who's basically got a degree from an accreted

1 engineering school, has at least five years of
2 experience and then has passed multiday tests in their
3 field and in the state that they're in would qualify
4 them as a professional engineer. And so presently I'm
5 qualified Professional Engineer in five states including
6 South Carolina.

7 Q Beyond that certification or licensed, do you have
8 any other licenses or certifications?

9 A Yes. I'm also a certified fire and explosion
10 investigator, so part of my job has to do with
11 investigating fires as they relate to electrical items
12 that could have caused fires is also part of my
13 investigation and it deals with other areas in the
14 engineering field besides electrical shock and
15 electrocution cases.

16 Q Going back, after you, I guess, finished your
17 degrees and your education, where did you go to work?

18 A I started working for Florida Power and Light
19 immediately after graduating from college. I worked my
20 way -- at that time I had a business degree and realized
21 that I had should probably use my Engineering background
22 and then I basically worked as a co-op student with
23 Florida Power and Light for two years while I went back
24 to school and got my Electrical Engineering from Florida
25 Atlantic University.

1 Q Did you ever have any experience while working for
2 Florida Power and Light utility company with line
3 maintenance and vegetation management?

4 A Yes. There is two basically main areas where I had
5 that experience. One would be my construction services
6 engineering experience where I mentioned that I did
7 design work with the distribution system. It would be
8 like getting the equivalent of this county as my area
9 and I would be responsible for all new construction,
10 existing construction, and maintenance projects for the
11 utility company that were occurring on the utility
12 system.

13 And as part of that job, I would drive around the
14 area meeting with builders, working with electrical
15 contractors, any needs they had from the power company
16 upgrading their service or putting in a new service or
17 someone putting in a pool and wanting to put their
18 service underground or relocate their service. So I had
19 a lot of experience around also patrolling the lines and
20 looking for areas that the utility company should be
21 aware of.

22 And then also, all of us at the utility company as
23 I'm sure is the same thing in South Carolina, we're all
24 concerned about hurricanes, so we're all assigned to
25 storm duty as well. And part of that is also driving

1 lines, looking for issues that could be related that
2 could cause problems during storms. And that included
3 trees, any poles that looked like they might be rotting
4 or needing issues and we would basically turn those
5 items into our management for service work to get done.

6 Q I assume that Florida Power and Light had a
7 maintenance and vegetation plan that was developed for
8 that utility?

9 A Sure. Every utility company has a program for
10 vegetation management. Obviously, it's going to be much
11 different in Arizona as it is for a couple of people in
12 Main, but obviously, South Carolina, Georgia, Florida,
13 we have very fast growing trees, species that can be out
14 there, so vegetation management is often a much bigger
15 issue in the southeast. So basically it's setting up
16 the budget with the money you have allotted to decide
17 and layout your tree trimming program on how you're
18 going to trim the trees the most efficient way and most
19 cost effective way.

20 Q Okay. And that kind of led me to my next question
21 which is, again, how does a utility come up with that
22 maintenance and vegetation plan?

23 A Basically they have a department. Florida Power
24 and Light would have a department. South Carolina
25 Electric and Gas would have a department, a vegetation

1 management and they would basically work on budgets, get
2 approved budgets and then use the money in those budgets
3 to allot either inhouse tree trimming or hiring
4 contractors to do tree trimming on their lines to
5 minimize the impact and also minimize any safety issues.

6 Q How do they prioritize the needs within the
7 vegetation management plan?

8 A Typically it's going to be based on, you know, the
9 effective customers. If the tree could fall and take
10 out 1,000 customers, obviously, that's going to be a
11 bigger priority in the tree that could fall and take out
12 one customer. So it's going to be based on the
13 utilities experience, their knowledge, and the knowledge
14 of their system and what they have and how customers are
15 being served from those different lines.

16 Q As it relates to your, again, your experience at
17 Florida Power and Light, what is your experience with, I
18 guess, with focusing I understand that it relates to the
19 vegetation management you just discussed, but just
20 focusing on the safety requirements of a power company?

21 A There's different basically organizations that set
22 up standards or codes. And so typically for most of the
23 utility companies in the United States, they follow a
24 code called the National Electrical Safety Code. It's
25 similar to the National Electrical Code which is what's

1 used for power at your homes or your businesses. But
2 the National Electrical Safety Code is specifically
3 designed for high voltage electrical safety and it's
4 specifically geared toward power companies, telephone
5 companies, and cable TV companies.

6 Q Going back to your current employment, how many
7 investigations have you done related to electric shock
8 or electrocution?

9 A Over the past 35 years I've been involved in
10 probably 4- to 500 investigations; the past 15 years I
11 would say at least 2- to 300 investigations involving
12 electrical shock or electrocution or arc flash which is
13 associated with the other two items.

14 Q Have you ever testified in a court as an expert
15 engineer prior to today?

16 A Yes.

17 Q And do you know approximately how many times?

18 A Over 20 times.

19 Q And as you've done work, I guess, do you do
20 consulting as you're doing here in this case to analyze
21 the facts or investigate this matter in other cases?

22 A Yes. Our company, I'm the electrical engineer for
23 or particular office and I have a lot of utility
24 background. So a project can get called into our
25 company and then they would assign that project to the

1 engineer that they felt is most qualified to handle that
2 type of project. And with my background, I would get
3 obviously electrical type projects with my experience
4 and training and knowledge.

5 Q And have you, in this capacity, have you worked for
6 both people who have been injured and also for
7 representing utility companies?

8 A Yes. And for the past five years, my mix is
9 roughly 50 percent work on the plaintiff's side and 50
10 percent work on the defendant's side.

11 Q Okay. And for the non lawyers in the room, the
12 plaintiff's side is -- that's the people who are
13 injured?

14 A It can be the people who suffered a loss typically.
15 It could be insurance companies. It could be companies
16 or it could be individuals.

17 Q Have you done an investigation in this case,
18 Mr. Brill?

19 A I have.

20 MR. APPLEGATE: Your Honor, I'd like to move
21 Mr. Brill or designate him as an expert in electric
22 shock and electrocutions and as to standard of care for
23 electric utilities.

24 THE COURT: Any objection to that designation or
25 would you like to voir dire the witness?

1 MR. PUGH: May I approach?

2 THE COURT: Yes, sir.

3 (Bench conference)

4 THE COURT: All right. So there are no objections
5 as to the designation as an expert in his field?

6 MR. PUGH: Correct, Your Honor. Subject to our side
7 bar and thank you for indulging us.

8 THE COURT: Yes, sir, all right. You may proceed.

9 MR. APPLEGATE: I don't know whether we -- do we do
10 a, Your Honor explain to the jury --

11 THE COURT: I have a charge that I'll give the jury.
12 But just briefly for right now, let me just -- ladies
13 and gentlemen, we have witnesses based upon their
14 education, skill, and experiences are classified or
15 qualified as what we call an expert in a particular
16 field.

17 Now, that gives a witness who is designated as an
18 expert, that gives that witness the right to talk about
19 the field in which they're an expert and with regards to
20 their investigation they're allowed to give their
21 opinion based upon their investigation to things that
22 they have investigated. Typically, lay witnesses are
23 not allowed to give opinion testimony, but an expert is
24 allowed to give an opinion as it relates to their
25 investigation and their findings.

1 I tell you that to explain to you the difference
2 between a lay witness and an expert witness. But I also
3 would tell you that you are to consider an expert
4 witnesses testimony no differently as you consider any
5 other witness. You consider the testimony in this
6 record and give it whatever weight you feel it deserves.

7 A person who is designated as an expert is not
8 automatically given any greater degree of credibility or
9 believability simply because they're considered an
10 expert. You weigh all of the testimony of each witness
11 and you give it whatever weight you think it deserves.
12 Okay.

13 MR. APPLEGATE: Thank you, Your Honor.

14 Q Mr. Brill, did you investigate and analyze the
15 death of Jose Larios?

16 A I did.

17 Q Okay. And can you tell the jury a little bit about
18 your investigation and analysis of this case?

19 A In this particular case, the location where the
20 accident occurred had obviously been changed and altered
21 since the date of the incident. So part of my
22 investigation in this case was to examination
23 photographs, documents that were taken by others soon
24 after the accident. A lot of times I would get hired
25 immediately after an accident and I have the opportunity

1 to get out there and see the location firsthand. In
2 this case, I had to rely on photographs from the scene
3 taken by OSHA investigator, taken by the coroner's
4 office, and also taken by South Carolina Electric and
5 Gas. So those are photographs were part of the things I
6 analyzed.

7 I also did conduct a scene examine prior to my
8 deposition in June. When I went out to the scene to
9 kind of get an idea of where the tree in question was
10 located that was cut down so that the location of a
11 stump, the location of the fencing in the pictures, and
12 the location of the power lines, and other trees in that
13 area as they were back in June, obviously, several years
14 after the incident.

15 And then I also reviewed all the other documents
16 that were available in the case and presented to me by
17 counsel and those included many deposition transcripts
18 from anything from the coroner's office to utility
19 personnel to medical examiner and also tree service
20 people and witnesses such as the coworkers of Mr. Larios
21 and their deposition testimony and also additional
22 pictures and documents.

23 I also reviewed inhouse documents provided by South
24 Carolina Electric and Gas showing their tree trimming
25 policies and procedures, a presentation that they

1 presented on tree trimming and what their tree trimming
2 methods are and what their guidelines are. I looked at
3 standards associated with tree trimming, National
4 Standards, ANSI is the America National Standards
5 Institute. That's one agency that provides standards in
6 tree trimming that many utilities around the country
7 adopt. Also the National Electrical Safety Code as it
8 applies to the utility in this case.

9 And then I obviously investigated using other
10 documents that were presented from records from the tree
11 trimming that occurred prior to the incident by Lewis
12 Tree Service and multiple documents that were provided
13 as part of the discovery. So those were all things that
14 I used along with my experience, training, knowledge,
15 background, and education, and previous experience from
16 other cases was all weighed in in my investigation.

17 Q Okay. And based on that investigation, are you
18 able to provide opinions to a reasonable degree of
19 engineering certainty in this case?

20 A Yes, I am.

21 Q Okay. And had you come up with any central
22 opinions?

23 A Yes.

24 Q And can you please tell the jury what those are?

25 A My central opinion in this case is that the tree in

1 question where Mr. Larios was working at the time of the
2 incident did not meet the utility guidelines for tree
3 trimming specifications that South Carolina Electric and
4 Gas had adopted. Even though there's records that tree
5 trimming occurred in the area back in 2013, I found no
6 evidence from either of the photographs or the documents
7 that the particular trees in the area of the incident
8 were actually trimmed during that time.

9 I also found that the tree in question based on the
10 photographs and limited measurements that we have from
11 the OSHA investigator that the tree in question could
12 not have been within the requirements of that ANSI
13 standard of maintaining a 10-foot clearance from the
14 power line at the time that they were out there in 2013.
15 So that tree should have been trimmed or removed at the
16 time of their trimming back in 2013.

17 Also because this tree in question is on owner's
18 property, typically what we look for is evidence that,
19 you know, you don't want the utility company coming on
20 your property necessarily to cut your trees down, so
21 that's obviously an issue for the utility company. So
22 we would look for evidence of some type of an exception
23 where the utility company identified a tree on private
24 property that could not be trimmed to meet the standard.
25 And then there would be some kind of a record that the

1 homeowner was contacted about having that tree removed
2 and getting permission to the power company to remove
3 that tree and found no evidence of that record as well.

4 Q And, Mr. Brill, do you have any opinion as to what
5 caused Mr. Larios to fall off the ladder at the 3402
6 Myrtle?

7 A Yes. The opinion I have in that area is that he
8 was exposed to an electrical shock and that this
9 electrical shock caused him to basically fall back out
10 of the tree. And the shock that he received was due to
11 contact with the tree and with the branches he was
12 cutting and using a chainsaw at the time that the
13 combination of the branches, contacting the branches and
14 those branches contacting the high voltage line which is
15 the upper line, and other branches contacting the lower
16 line which is the grounded line, created a path for
17 electricity to flow from the high voltage line through
18 the vegetation through Mr. Larios and back into the tree
19 and out the grounded line for the utility company. And
20 that was because the lines were in contact in close
21 proximity to the tree at the time of the incident.

22 Q Mr. Brill, do you have demonstratives exhibit that
23 would help you explain these opinions to the jury?

24 A Yes. I tried to help prepare a diagram that would
25 kind of give an idea of what I'm talking about as far as

1 how this shock could have occurred.

2 Q Mr. Brill, I think this is the diagram.

3 MR. APPLEGATE: Can you please put that up on the
4 screen?

5 Q Here's a pointer, I think it's kind of far away,
6 Mr. Brill, but we're using high technology. This is a
7 laser pointer, so if you guys can see it, we're going to
8 put something up here.

9 MR. APPLEGATE: Your Honor, if I may just hand out
10 these pictures that they can pass around. It's the same
11 pictures. It's sort of hard to see at this distance.
12 It's the exact same thing that's up here. If somebody
13 on the jury wants to look at them I can put it out here
14 as we go through them.

15 Q Again, this initial picture, can you tell us what's
16 depicted in this picture?

17 A Yes. If we look at the OSHA photographs that were
18 taken, some of the South Carolina Electric and Gas
19 photos that were taken as well as the coroner photos
20 that were taken. This is a general depiction of the
21 backyard of the property that basically was across a
22 bike path area. I remember it was an old street, I
23 think, that was abandoned and made into a bike path.

24 So the fence here separates basically the owner's
25 property. This diagram is basically looking in from the

1 property out toward that bicycle path area. And then
2 the tree in question was right near the fence line where
3 Mr. Larios was working at the time. The pictures show a
4 ladder. The OSHA photos will show a ladder up against
5 the tree at approximately extended about 23 to 25 feet
6 in height. And then there was testimony that Mr. Larios
7 was somewhere on the top three or four rungs using a
8 chainsaw trimming the excess foliage.

9 We also see many photographs that were taken
10 showing the ground around the base of the tree and --
11 around the base of the tree there's evidence of a lot of
12 cutting that had already occurred prior to the incident.
13 So many branches and fronds had basically fallen to the
14 ground.

15 The particular tree, there's two main, I guess,
16 growths that are coming off the tree is obviously the
17 palm fronds and there's -- not being an arborist, I know
18 the proper term, we use this term seed stalk or seed
19 pods or fruit stalk. There's a lot of different names
20 that have been thrown around of what this is. But
21 coming out of the top of the tree are these growths that
22 don't like look palm fronds, but look like tall sticks
23 with berries on them.

24 And we'll see in the next photograph, I believe, is
25 more of a close-up of the top of the tree. So here we

1 can see some of these stalks. And coming off as well as
2 the palm fronds that are surrounding in basically 360
3 degrees around the tree.

4 Based on the testimony, it's also been documented
5 by the coworker, OSHA, and also the coroner's office
6 that the power lines in question here were very
7 difficult to see and were not open and obvious to be
8 seen from the area where he was working.

9 So, we'll, I guess, look at the next photograph
10 possibly gives us an idea. So we've taken some of the
11 foliage out so we can see the power lines better and get
12 a better description as there's two lines. There's an
13 upper line and a lower line. And the best way to
14 describe it is that the upper line, if you think of the
15 outlets in your house, you have three prongs. You have
16 the round prong and then you have the left and the right
17 prong. Well, the left prong which is slightly bigger is
18 called the neutral or the grounded prong. And so that
19 eventually connects to the lower wire out on the utility
20 system.

21 The upper wire is the hot or the primary voltage.
22 In this case, it's 13,800 volts if you were to measure
23 it with a meter. And then at some point in time it goes
24 through a transformer which transforms that 13,000 volts
25 down to the 120, 240 volt level you see in your home and

1 for your appliances.

2 So the upper line is the high voltage line, 13,800.
3 The lower line is basically at zero volts it's grounded.
4 So we have two lines that are running in the area close
5 to these trees. And the OSHA photographs and
6 documentation, the lower line, the neutral, there's
7 pictures showing fronds and some of these pods or stalks
8 look like they're very close to or possibly touching the
9 lower wire. And then we have the upper wire, the upper
10 shoots that were being cut that are sticking out more to
11 the top of the tree.

12 And then the next photograph will kind of show you
13 the scenario of how a shock can occur in this scenario.
14 So as this upper stalk contacts the line, possibly while
15 it's been cut with the chainsaw and it's starting to
16 fall toward the line. It basically allows it to have
17 contact with that upper line either while the chainsaw
18 is touching it or while Mr. Larios is grabbing it with
19 his hand. And then the electricity is able to basically
20 flow through that cut stalk into the chainsaw or into
21 the hand and then into the body and then it can come out
22 a part of his body that's touching the tree such as his
23 other hand or his chest and then the tree will then
24 carry that current back toward that neutral or grounded
25 wire. So we have a complete circuit that can be created

1 by this scenario. And it's my opinion that the evidence
2 supports that that type of a shock is what would have
3 been exposed to Mr. Larios. It's not a high voltage
4 13,000 volt type of an event, but it could be a much
5 lower voltage as it travels through the resistance of
6 that stalk to get to that person's body.

7 Q Can you help me understand a little bit, Mr. Brill,
8 again, this sort of the path of the electricity, what's
9 the -- how do you go in and out? Does it have to have
10 an entry and an exit?

11 A Many cases where we see high voltage contact when
12 someone obviously touched or put something metal, such
13 as a ladder or a pole, into the high voltage line, we
14 will typically have very strong evidence of entry wounds
15 where the electricity entered the person's body and then
16 also exit wounds where the electricity exited their
17 body.

18 In the case of a lower voltage shock, many times we
19 find no evidence of entry or exit wounds, but we have
20 evidence of a shock. So you can have anything from
21 entry/exit wound to no entry wound, but an exit wound or
22 you can have no exit wound, but you can have an entry
23 wound. And a lot of times that will be determined by
24 the surface area what you're contacting. So someone
25 holding a ladder with two hands may not have an entry

1 wound when the ladder comes in contact with the line,
2 but we may find holes blown out of his feet where the
3 electricity exited. And in that case you can have an
4 exit wound without an entry wound. So the lower the
5 voltage, the less likely you are to see entry or exit
6 wounds. Usually over 500 to a couple thousands volts is
7 where you'll start to see evidence of exit wounds and
8 entry wounds and then obviously at 13,000 volts. If he
9 was exposed to that level there would be a lot more
10 evidence of those type of wounds.

11 Q And, Mr. Brill, I want to follow-up with you in a
12 bit about the injuries that in what you saw as it
13 relates to that, but I guess I was just trying to make
14 sure that you had explained to us the idea of the power
15 needing to go somewhere and is it the grounded line that
16 needs to go ground?

17 A Correct. It's got -- in this case it's got
18 multiple paths it can take. It can go through the saw
19 to the body. It can go out the feet, down the ladder.
20 It can go down the tree to the ground, but it's going to
21 take the lowest path or the least resistive path. And
22 in this case, that's going to be directly back to the
23 grounded wire. So that's the shortest distance. It's
24 the lowest resistance and so the current will take that
25 path as opposed to trying to go down a ladder into the

1 ground, across, you know, hundreds of feet to the next
2 pole and then find its way back up.

3 So this case, the scenario based on my experience
4 in my opinion is that the actual path of the shock would
5 have been into his body through this branch he was
6 cutting and then out of his body through his chest or
7 through his hand into the tree and then back out to the
8 lower wire of the grounded wire.

9 Q I'm going to show you a picture that we'll mark as
10 Plaintiff's Five, I believe.

11 (WHEREUPON, Plaintiff's Exhibit Number 4-A was
12 marked and entered)

13 Q I know a moment ago, Mr. Brill, you asked about --
14 I mean, you have explained the OSHA picture that you had
15 reviewed and is that the picture that you were talking
16 about a minute ago?

17 A Yes. That's one of the photographs that I relied
18 on for that -- the opinion that those lines were very
19 close to touching and touching the line.

20 Q Okay. And, again, what is -- as far as you
21 understand, what is that one?

22 A That is the lower wire, the neutral or the grounded
23 wire.

24 Q Okay. And as I understand it, I'm going to show
25 you what was an SCE&G picture, can you tell me what's in

1 that picture?

2 A Maybe this will work. So here we can see those
3 lower basically branches. You can see one of those seed
4 type pods, whatever they are. You can't really see
5 where the neutral is, but it's somewhere. If you follow
6 this line, this is the neutral, it's going down and
7 getting into the tree here. The upper wire is that high
8 voltage line. So this angle is being taken from in the
9 bike path area looking back toward the property. So
10 it's basically the opposite side.

11 The ladder would have been on this side of the tree
12 and we're looking at the opposite side. So here we have
13 still a seed pod that had not been cut yet still
14 sticking out of the top of the tree. And then we have
15 other evidence of many of those seed pods being at the
16 base of the tree having already been cut and some
17 possibly have fallen down into the neutral wire as they
18 were being cut.

19 Q Mr. Brill, thank you for that explanation. Can you
20 go through with me and explain to the jury what evidence
21 you reviewed that was important and you coming up with
22 this opinion related to this electric shock?

23 A As I reviewed all the documents there was reports
24 that just prior to falling off the ladder, Mr. Larios
25 yelled out. There are reports from OSHA and also from

1 the coroner's office and also from the coroner's report
2 that SCE&G found a burn mark on their wire after the
3 incident. There was burned branches found on the ground
4 and there's burned branches identified up in the tree by
5 the coroner's office as well as the pictures from the
6 OSHA documents.

7 So those items along with a potential mark on a
8 chainsaw that we reviewed that possibly could be the
9 result of some type of an electrical event when the
10 chainsaw is cutting a stalk while the upper line hits
11 the line. We have evidence of a potential exit wound on
12 Mr. Larios' chest that was found by the coroner's
13 office. And then we have evidence from Mr. Abraham, the
14 coworker, who was with Mr. Larios who testified he heard
15 him scream out, he saw him fall, and then he said he
16 also, I guess, he smelled a burning smell and thought he
17 saw smoke or something coming from Mr. Larios and from
18 the tree after the incident. And that was based on his
19 deposition testimony that I reviewed.

20 So all of those items along with the photographs
21 that I reviewed brought me to that conclusion of how the
22 electrical shock had occurred.

23 Q Let me show you a photograph, Mr. Brill, and ask
24 you if you have seen this picture before?

25 A Yes. This is another one of the OSHA photographs.

1 It shows many, many cuttings directly below the tree
2 where the ladder is still up against it. And we see
3 five or six or seven of these seed pods. If I hold it
4 up this way you can see evidence of a lot of cuttings
5 that have already been on the ground at the time the
6 ladder is still up against the tree. And if I count
7 just through here, I think I counted at least seven or
8 eight of those seed pods and at least ten branches.

9 So many cuttings had occurred. Some of these could
10 have fallen off at the time of the incident, before the
11 incident. And so, again, when they ended up on the
12 ground, the fact that they found burned ones on the
13 ground means that those could have been the ones he was
14 cutting at the time of the incident. Or it could be
15 another one that was up against the line at a previous
16 time. We don't know, but we know that there was
17 multiple cuttings at the base of this particular tree
18 after the incident.

19 MR. APPLEGATE: I'd like to mark this photograph as
20 Plaintiff's Exhibit Five and publish to the jury.

21 THE COURT: All right. Any objection to Plaintiff's
22 Five?

23 MR. PUGH: I believe we already have a Five. No
24 objection.

25 THE COURT: Without objection.

1 (WHEREUPON, Plaintiff's Exhibit Number 5 was marked
2 and entered)

3 Q Mr. Brill, were you provided -- I guess you're
4 aware that SCE&G had noted that there was a burn mark on
5 the primary power line; correct?

6 A Correct. And the coroner's report, the last page
7 of the coroner's report after they went back out and
8 found the burnt branches and called the power company,
9 they said while they were out there, South Carolina
10 Electric and Gas went up and found a burn mark on their
11 wire and noted that and gave that information to the
12 coroner who -- a representative who was investigating
13 the incident. So that's where that information came
14 from.

15 Q Is that significant to you in your opinion?

16 A It goes along with, obviously, these branches were
17 long enough to have reached that upper wire either
18 during the trimming process or for -- just prior to or
19 even during the event.

20 Q Now, Mr. Brill, do you know whether there was any
21 analysis in this case about whether the fuse on the, I
22 guess, on the power pole nearest to this power line
23 event, was there any damage to the fuse that would have
24 indicated there was a problem or there was a shock
25 event?

1 A Right. So the way the fusing is done on these high
2 voltage lines is there's fuses that are put up on an
3 item called "cutout" or a "dropout" and it's basically a
4 device that this -- if the fuse blows, this device falls
5 open and allows the utility workers to see where the
6 power has been out.

7 After the incident, there's deposition testimony
8 that the power company representatives went up and
9 documented, took photographs of the fuse location.
10 Pulled the fuse out and they found no evidence of damage
11 to the fuse. Which I testified in my deposition that
12 it's something I would completely expect to be the case.
13 Because in order for that fuse to blow you have to have
14 a very high current level, much higher than somebody's
15 body can pass and usually much higher than a tree can
16 pass.

17 So usually tree problems and trees in power lines
18 very seldom below the fuses. And if you think about
19 your home when you've had storms and your lights have
20 flickered on and off but they haven't gone completely
21 off, most of the time that can be related to some tree
22 branch blowing into the line temporarily causing a
23 voltage issue, but not on the line long enough to blow
24 the fuse.

25 And I've been in cases where homes have burned to

1 the ground and the fuses haven't opened. And where
2 trees have been found laying against the line and the
3 fuses haven't opened because it's strictly a matter of
4 it has to -- the current going through the fuse has to
5 exceed the rating and for -- in order for it to open and
6 blow.

7 And many of these type of incidences don't create
8 enough of a fault current like in your house, it
9 wouldn't create enough current to trip the breaker in
10 your panel. It's not a high enough fault to cause that,
11 but it's still enough to cause your lights and the
12 voltage to drop in your homes and cause flickering
13 lights.

14 Q Mr. Brill, there's -- I wanted to ask you and see
15 if you can explain looking back at your demonstrative
16 here. And we've seen this picture of the -- when you
17 explain to me the neutral line, there was some
18 suggestion that this event couldn't take place because
19 that was a neutral line in this picture. Do you have
20 any opinion on that?

21 A The question was along those lines was, could the
22 neutral have been the source of power. In other words,
23 being a high voltage input, in other words, could
24 electricity have come from the neutral into the tree and
25 cause the injury. And in my opinion, based on my

1 experiences, we have no evidence that there was a
2 problem with the neutral at the time and that the
3 neutral was just the path through the current, the flow
4 to, not the source of the electrical current for the
5 shock.

6 Q Thank you. Is there anything that SCE&G could have
7 done to avoid this whole event to happen?

8 A Obviously, the records are that this area was
9 trimmed back in 2013 which is two years prior to the
10 incident, had this area behind this home been inspected
11 and trimmed properly, it's my opinion that this tree
12 would have either have been cut way back, been removed,
13 or would have had some kind of record that the homeowner
14 was contacted and refused to allow the utility company
15 to remove or cut that tree. And those are the three
16 things I think I would have found had, you know, had the
17 utility been back there trimming this particular tree
18 based on all the evidence that I've reviewed.

19 Q I think earlier in your testimony, Mr. Brill, you
20 talked about where these policies, rules come from. Can
21 you -- and in one of the things you said was SCE&G's own
22 policies and procedures. Can you tell me what those
23 policies and procedures are that relates to SCE&G?

24 A So, basically, the ANSI standard -- so we talked
25 about there's a National Electrical Safety Code which

1 gives general requirements for tree and vegetation
2 management as -- just very general and it applies to all
3 power companies around the country so there's no real
4 specifics. It says in there that each utility based on
5 their own experience is responsible to set up a program
6 that's appropriate for that particular utility.

7 Then we have the ANSI standard which is another
8 national standard, but it does have specific tree timing
9 guidelines on how to trim trees, how far back to trim
10 trees, and how to properly remove vegetation and make it
11 safe for power lines to pass along side through, over or
12 under particular trees.

13 And so based on the documents that I reviewed from
14 South Carolina Electric and Gas, they've adopted the
15 ANSI A300 standard as their standard. And in their
16 presentation, they talk about they trim a minimum of 10
17 feet back from the primary or the high voltage lines as
18 long -- as well as their other lines. And also 10 feet
19 below their lines and 20 feet above their lines. And
20 that's the guideline that ANSI sets up and that's the
21 guideline that was adopted according to the documents I
22 reviewed by SCE&G.

23 Q Mr. Brill, why wouldn't -- sorry. One second here.
24 Do you know what specifically those internal policies
25 are? I mean, what actual requirements do they have to

1 comply with as far as part of the ANSI standards and
2 their vegetation management?

3 A Well, usually there's minimum standards and then
4 they're going to have their own standards that apply to
5 transmission lines and they're usually going to be a lot
6 stricter with the transmission line guidelines.
7 Because, obviously, a lot more customers will be
8 affected if a tree took out a transmission line. They
9 could take out the whole town here. So they're going to
10 have different guidelines for the different lines that
11 they have. And typically the standards are usually
12 minimum standards and so the utilities, a lot of times,
13 will either go further than the standard to have even
14 stricter policies. But their policies basically are
15 adopting the ANSI standards.

16 Q So, again, specifically that standard is, if I
17 missed it, is there an amount of specific distances that
18 they need to be as far as making sure their lines are
19 free and clear from any and all vegetation?

20 A Well, it's supposed leave -- there's two things.
21 There's the 10-foot minimum requirement. And then as
22 experienced holds, so, in other words, they may have
23 some species of trees that are very slow growing, they
24 may let those get a little bit closer because they know
25 those species aren't going to be a problem for many

1 years.

2 And then there's obviously fast growing species
3 that we see especially in the southeast where we can
4 have much faster growth then 10 feet every five years.
5 And in that case, the utility might trim back to 20 feet
6 or 30 feet on those species. Because they know they're
7 going to be out there every so many years based on their
8 policy.

9 In this case, South Carolina Electric and Gas has a
10 five year trim cycle, so they go out every five years.
11 So as experience and their knowledge and training tells
12 them they can cut back minimum of 10, but they could
13 actually trim back further if they determine that a
14 particular tree would grow too far or too close to that
15 line in a five year period.

16 Q And now you kind of told us about those policies,
17 Mr. Brill, did SCE&G comply with those -- their own
18 policies and procedures or those of ANSI or A-N-S-I and
19 the National Electric Safety Code?

20 A In my opinion they did not meet those
21 qualifications based on the measurements that we have.
22 Reportedly there are measurements that were taken by
23 South Carolina Electric and Gas that I have not been
24 provided. But the measurements that OSHA took, the
25 photograph they took, I believe, you know, even with

1 just those measurements which are approximations and the
2 photographs that there's no way that this tree was
3 likely trimmed in 2013 and would not have met the
4 requirements and the standards back in 2013 when they
5 left this location after being in that area to do their
6 trimming.

7 Q Is it a -- is there any reason why SCE&G couldn't
8 inspect this property or this area to ensure that the
9 lines were free and clear from any and all vegetation?

10 MR. PUGH: Object to the form of foundation.

11 THE COURT: Sustained as to the objection. Rephrase
12 your question.

13 Q Mr. Brill, again, you've worked in the utility
14 company for many years; is that correct?

15 A Yes.

16 Q Okay. And you've had experience with vegetation
17 management programs?

18 A Yes.

19 Q Okay. And you have worked as a lineman; is that
20 correct?

21 A I was trained to be a lineman. I never -- I never
22 became one and that was back when the company decided to
23 train some engineers to be linemen in case the Union
24 went on strike. And I was one of those that was
25 selected for the training. Fortunately for me, they

1 never went on strike so I never had to do that work.

2 But, yes, I did receive training to be a lineman.

3 Q And you're familiar with the sort of a utilities
4 ability to go out and do inspections of power lines?

5 A Yes.

6 Q Okay. And, so, is there anything that you've been
7 able to tell from the evidence you reviewed in this file
8 and how SCE&G operates, is there anything that keeps
9 them from doing an inspection to the power lines to keep
10 -- to make sure that they are free and clear from any
11 and all vegetation?

12 MR. PUGH: Object to the form of foundation as to
13 what the evidence is about what SCE&G did or didn't do
14 with regard to this circuit.

15 THE COURT: Let me get y'all to step over here.

16 (Bench conference)

17 THE COURT: All right. You may proceed.

18 Q So what I'm trying to understand is that in the
19 time period -- in any time period, really -- let's go
20 back. You testified, Mr. Brill, that they do a five
21 year trim cycle; is that correct?

22 A Yes.

23 Q And so SCE&G's policy is five year trim cycle and
24 is there any evidence of when the last trim cycle would
25 have took place on Edisto Island?

1 A 2013 and 2018 according to the records.

2 Q Okay. And is there anything that would have
3 precluded someone to come and do an inspection, preclude
4 SCE&G from doing an inspection and making sure that
5 within the timeframe of 2013, 2018 that the power lines
6 remained free and clear from any and all vegetation?

7 MR. PUGH: Object to the form, Your Honor.

8 THE COURT: I'm sorry.

9 MR. PUGH: Object to the form of that question. The
10 question is between 2013 and 2018. That was the
11 question.

12 THE COURT: Right. As to whether or not there was
13 anything that would preclude them from inspecting it.

14 MR. PUGH: Right.

15 (Bench conference)

16 THE COURT: Same question, but bring it down to the
17 '15.

18 Q Sorry, Mr. Brill. Is there anything that would
19 prohibit SCE&G from inspecting the property where this
20 accident took place from their supposed trim cycle in
21 2013 and when Mr. Larios was shocked?

22 A No.

23 Q Okay. And isn't it their responsibility to make
24 sure that they inspect the property and keep the lines
25 free and clear from the vegetation?

1 A They're responsible to inspect their facilities and
2 keep them free and clear, yes.

3 Q Is there any reason why, and this has been the
4 question throughout the case, is there information that
5 SCE&G would have received or should have received that
6 would indicate that this line was too close to the
7 vegetation?

8 A Not unless someone observed it after their 2013
9 inspection cycle.

10 Q Is it surprising to you under the facts of this
11 case that there was no sort of notification that was
12 provided to SCE&G through either some type of fuse or
13 any other thing to give them some indication that this
14 would have happened?

15 A No. There would have to be somebody call in. If
16 they're not out inspecting for any other reason then it
17 would be based on a customer calling in and complaining
18 of flicking lights, that would lead them to, you know,
19 come out and inspect for some kind of a complaint.

20 Q Why can't SCE&G just rely on the homeowners?

21 A Homeowners don't have the knowledge or the
22 education or the training to know what needs to be done
23 on the power lines. That's something that the power
24 company has the superior knowledge of.

25 Q And just as general matters, does the power line or

1 the power company, do they keep maps of where the power
2 lines are located?

3 A Yes. Every utility will have some kind of a system
4 to designate location so that if a customer calls in,
5 the linemen or trouble men will be able to know exactly
6 how that customer's power is being served to their home.
7 So when he goes out, he knows where to go and how to get
8 the service back up and running in an efficient way.

9 Q And is there any documentation that's kept by a
10 utility that shows sort of where their power lines are
11 in relationship to surrounding vegetation?

12 A It doesn't show the vegetation on those maps, but
13 it shows where the lines are run on basically a street
14 view. So you can basically say whether the lines are
15 running behind homes or in front of homes, along streets
16 or between homes, and the rear easement, the maps would
17 tell them that.

18 Q So what I'm trying to understand, is the utility
19 aware that there are lines that are say running down a
20 city street that's out any vegetation as opposed to
21 lines that are running, you know, through a forest?

22 A Sure. That would be the information that they
23 would have in their records.

24 Q Is there any -- and let me start over. In this
25 case, it's SCE&G's position that it was Mr. Larios'

1 fault for not seeing this line. Do you have an opinion
2 on that?

3 A Again, I wasn't out at the scene right after the
4 incident, but from all I reviewed, including the
5 deposition testimonies of the coroner's office and also
6 his coworker Mr. Abraham, that they walked the property
7 that morning, didn't see the lines. We have the
8 coroner's office come out, they do their initial
9 investigation. They never saw any power lines in the
10 area and they took photographs and did their
11 investigation.

12 And OSHA came out sometime, I believe, on Monday
13 afternoon, they didn't see the lines. And it wasn't
14 until a meeting, I believe, on Tuesday between OSHA, the
15 coroner's office, and the coworker Abraham that they
16 found this picture with the burn or showed a picture of
17 the burn mark on the chainsaw and led them to go back
18 out an investigate. And at that point in time is when
19 they discovered the lines were near the tree. But prior
20 to that, none of those parties that were out there had
21 been able to see it.

22 So in my prospective, based on that and the
23 photographs, it's very difficult to see them in the
24 photographs as well that this was not open and obvious
25 and was fairly hidden by the growth in that area.

1 Q Mr. Brill, we've been referring in this trial to an
2 OSHA investigation. Do you know -- can you actually
3 just help us understand what OSHA is and what that is?

4 A So OSHA is a federal government agency that's
5 tasked with basically safety in the workplace. And the
6 two main functions of OSHA -- actually three is they
7 have standards for safety, they do inspections,
8 basically random inspections to determine if employers
9 are complying with OSHA standards. And then they also
10 go out and investigate accidents after the fact if
11 they're of significant -- of a significant level to
12 where they're required to be reported to OSHA.

13 So OSHA is strictly an investigative arm of the
14 government that's out there looking at employer and
15 employee relations and safety. And that's what OSHA's
16 function is. In this case, we were able to use a lot of
17 the information at OSHA obtained in their investigation
18 especially the photographs, the notes, and the
19 interviews to help assist, as a small part of all the
20 evidence we looked at, to assist in the evaluation of
21 the incident.

22 But OSHA is not tasked with determining the fault
23 or involving any other parties. They're strictly out
24 there investigating an employee and his employer and no
25 one else.

1 Q Now, that helped me a little bit understand. Now,
2 if, for example, you've seen the records that the owner
3 of this house is Mr. Ray Jackson, and if Mr. Jackson had
4 gone out and been up in this tree trimming, been
5 shocked, would there be an OSHA investigation then?

6 A No. OSHA wouldn't get involved in that because
7 there's no employee/employer relationship.

8 Q Okay. And what about if a handyman had been hired
9 by Mr. Jackson and he had come over and gone up in that
10 tree?

11 A Again, sole proprietorship, if you're just the only
12 employee of your company, I don't see OSHA investigate
13 those type of accidents either.

14 Q Now, was Mr. Larios cited for violating OSHA rules
15 in this case?

16 A Mr. Larios received no citations as he's the
17 employee. This citations were written to his employer.
18 Which all citations were written to, I believe, Steven
19 Landscape.

20 Q Okay. And did the landscape company receive any
21 citations from OSHA?

22 A Yes. The Stevens Landscape received multiple
23 citations based on OSHA's investigation.

24 Q Okay. And what were some of those citations?

25 A They included not providing a safe workplace. Not

1 providing the proper personal protective equipment that
2 the employee should have used. Allowing an employee to
3 work too closely to power lines. Along with not, I
4 guess, working from elevated position. They cited him,
5 I believe, for allowing Mr. Larios to work from an
6 elevated position on a ladder. And so those were
7 basically the general violations that I remember reading
8 -- reviewing.

9 Q Now, you mentioned the safe workplace and the
10 proximity to the power lines as being a citation. Does
11 OSHA consider in their analysis maybe a citation for the
12 employer whether the employer or the employee could in
13 fact see the power lines?

14 MR. PUGH: Object. Foundation. Speculation.

15 THE COURT: You need to lay a foundation as to his
16 knowledge of that.

17 MR. APPLEGATE: Okay.

18 Q Mr. Brill, are you familiar with the OSHA?

19 A Yes. I reviewed the OSHA basically the standards
20 and sections that would have been applicable in this
21 case as well as all of the references in the OSHA report
22 and documents on their references to those particular
23 violations.

24 Q Okay. And just generally speaking, are you
25 familiar with OSHA and OSHA citations and when they

1 apply?

2 A Yes. I typically get copies of OSHA reports on
3 almost all of the shock/electrocution cases that I do if
4 there's a significant injury. So over the years, I've
5 reviewed at least 50 to 100 OSHA reports on different
6 inspections and investigations related to electrical
7 shock and electrocution.

8 Q Did you speak to any of the OSHA investigators in
9 this case?

10 A I did. I had a call to Mr. Dennison, I believe. I
11 forget his name, the OSHA investigator who was out at
12 the scene, I did speak with him.

13 Q Okay. And is there any consideration of whether
14 Mr. Larios in getting a citation that he was within too
15 close to power lines, is there any consideration given
16 in this case to whether he could or could not see the
17 power lines?

18 A No. OSHA doesn't have any differentiation. The
19 10-foot rule is the 10-foot rule. Their standards don't
20 get into whether you can or can't see or why you can or
21 can't see the lines. It's strictly if you're working
22 within 10 feet of the lines whether they're out open and
23 obvious or whether they're hidden it's still a violation
24 of that particular standard.

25 Q Had SCE&G followed their own policies and

1 procedures, could Mr. Larios or his employer ever
2 violated the 10-foot rule?

3 MR. PUGH: Object to the form. Calls for
4 speculation.

5 THE COURT: I'm going to allow it. Overruled.

6 A I'm sorry, could you repeat the question?

7 Q Yes. Had SCE&G followed their own guidelines, is
8 there anyway that Mr. Larios or his employer could have
9 violated the 10-foot rule?

10 A Had the tree been properly trimmed or removed in
11 2013 when they were last out at the scene, then there
12 wouldn't have been the ability for them to have violated
13 the 10-foot rule on this particular tree because it
14 would have either been removed or cut back significantly
15 enough to where it wouldn't have been able to contact
16 the line.

17 Q Mr. Brill, thank you for your patience. As it
18 relates back to these policies and procedures, again,
19 why are these policies and procedures so important?

20 MR. PUGH: Object to foundation. I'm not sure which
21 ones we're talking about.

22 THE COURT: What specifically are you referring to?

23 Q Why are they, SCE&G's internal policies and
24 procedures as well as the National Electric Safety Code
25 and ANSI regulations, why are they so important?

1 A They provide a baseline for safe work practices by
2 the people that are adopting those standards. So if you
3 adopt the standard you're adopting them to providing
4 safe reliable system and that's why you would adopt them
5 and follow them in your policies and procedures.

6 Q What happens if you don't follow these policies and
7 procedures?

8 A You can create problems such as safety hazards,
9 outage problems, and reliability issues for the power
10 company.

11 Q And situations like you have here?

12 A Yes.

13 MR. APPLEGATE: Your Honor, I think that's all the
14 questions I have.

15 THE COURT: Let me get y'all and ask you real quick.

16 (Bench conference)

17 THE COURT: Ladies and gentlemen, I'm going -- in
18 talk to the attorneys and trying to look at schedules of
19 folk's schedules and stuff, we're going to break at this
20 time for lunch. But what I'm going to ask you to do is,
21 typically, I give you an hour and a half, we're going to
22 trim it back a little bit today. I'm going to give you
23 an hour. Okay.

24 So if you would and we want to start back at 1:30.
25 So it's 12:29 now, that gives you an hour. Please have

1 no conversation about the case. Don't let anyone talk
2 with you and we'll see you back here at 1:30.

3 (The jury left the courtroom at 12:30 p.m.)

4 THE COURT: I just instructed Mr. Brill to not have
5 any conversation about his testimony during the break.
6 Let's get back and ready to start at 1:30. Okay.

7 MR. BUCKNER: Yes, sir. Thank you, Your Honor.

8 (Lunch break)

9 THE COURT: Anything we need to take up before we
10 start back? From the plaintiff?

11 MR. DUFFY: Nothing from us, Your Honor.

12 THE COURT: Anything from the defense? Anything we
13 need to take up before we start back?

14 MR. STEGMAIER: Your Honor, I think at the
15 conclusion of this witness we're going to cutout, so,
16 yes, sir.

17 THE COURT: Okay. What do you want to do -- maybe
18 at the conclusion of this witness we'll take a short
19 break and then we can talk about what we want to tell
20 them and everything?

21 MR. STEGMAIER: Mr. Applegate, have you seen the
22 consent order?

23 MR. APPLEGATE: Yes, I --

24 THE COURT: We'll take a short break when we get
25 done with Mr. Brill's testimony.

1 All right. Let's bring the jury in, please.

2 (The jury entered the courtroom 1:35 p.m.)

3 THE COURT: All right. Thank you, folks, please
4 have a seat. Ladies and gentlemen, welcome back. I
5 want to thank y'all very much. I work with juries all
6 the time and y'all are the most punctual, on time folks
7 that I've ever worked with and I really do appreciate
8 it. Thank you for doing that.

9 But I hope you enjoyed your lunch break. And if you
10 recall when we broke at the break for lunch that
11 Mr. Applegate had completed his direct examination of
12 Mr. Brill. And so I'm going to recognize Mr. Pugh for
13 his cross.

14 MR. PUGH: Thank you, Your Honor. Please the Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION BY MR. PUGH:

17 Q I'm going to put that done there so I don't spill
18 it like I did yesterday. Good afternoon, sir?

19 A Good afternoon, sir.

20 Q Good to see you again, Mr. Brill.

21 A Good to see you.

22 Q Thank you for coming up.

23 A Thank you.

24 Q One of the things you looked at in connection with
25 your work in this case were photographs, reports, and

1 things like that from OSHA; correct?

2 A Correct.

3 Q Hundred and some photographs, something like that
4 from OSHA; right?

5 A Up to a hundred, yes.

6 Q It was a lot. Okay. Looking at this photograph
7 which is in evidence as Defendant's Exhibit Number One.
8 Do you recognize this as the scene where this incident
9 occurred?

10 A Yes. This is, I believe, the Tuesday or so after
11 the ladder was taken down.

12 Q Yes, sir. You can see the ladder laying on the
13 ground?

14 A Yes, sir.

15 Q And we can see the neutral?

16 A Yes.

17 Q We can see the primary?

18 A Yes.

19 Q And we can see those on both sides of the tree;
20 correct? Primary, primary, neutral, neutral running
21 over here?

22 A Yes. I can see those in the photographs, yes.

23 Q Okay. You agree with me that something that you
24 can take a photo of you can see it; right?

25 A Sure. Again, those photos were taken after a lot

1 of trimming had been completed.

2 Q Let's talk about that. Is it your understanding
3 that the trimming that was done out there was nine
4 trees?

5 A I believe he testified -- Mr. Abraham that they had
6 done nine already at the time of the incident.

7 Q Yes, sir. And in fact, this tree that we're
8 talking about was to be the last tree?

9 A I believe that's correct from the testimony.

10 Q So before the ladder was moved to this tree, a
11 bunch of trees had already been trimmed?

12 A That's my understanding, yes.

13 Q Okay. Opening up that backyard; right?

14 A Again, I don't know where all the other trees were
15 that they were working on, but they're somewhere on the
16 property.

17 Q All right. Now, let's talk about some things that
18 you have not done. Okay. You have not inspected the
19 chainsaw; correct?

20 A That's correct. It was reportedly missing from the
21 evidence storage.

22 Q Okay. And, in fact, you told me when I took your
23 deposition that --

24 MR. APPLEGATE: Object, Your Honor. Improper
25 impeachment.

1 MR. PUGH: I'm not impeaching him, I'm asking him a
2 question.

3 MR. APPLGATE: He can ask the question, but he's
4 talking about reading the deposition.

5 MR. PUGH: Okay. I'll rephrase.

6 THE COURT: All right.

7 Q Mr. Brill, is it correct that you cannot say to a
8 reasonable degree of engineering certainty that the mark
9 on the chainsaw was indeed indicated or indicia of
10 electrical activity?

11 A Right. I believe I testified that without looking
12 at it personally, it would be difficult to do that from
13 the photographs.

14 Q Right. Can't say whether that mark on the chainsaw
15 came from electricity or not?

16 A Correct. And I believe there was additional
17 testimony that came in after my deposition was taken.

18 Q And what testimony is that?

19 A I believe that's Mr. Abraham's deposition where he
20 testified that he had serviced and oiled the chainsaw
21 multiple times during the day and never saw that mark
22 prior to the chainsaw being investigated after the
23 incident.

24 Q And so you still and no one has seen the chainsaw,
25 it's your understanding, since back in November of 2015;

1 correct?

2 A That's correct.

3 Q And the same with regard to the ladder that
4 Mr. Larios was standing on. Do you understand that
5 there's a discoloration on the third rung of the ladder?

6 A I read that and saw some photographs that kind of
7 tried to depict that. Yes.

8 Q And is it true that you would not state to a
9 reasonable degree of engineering certainty that that
10 discoloration on the third rung of the ladder is any
11 indication of electrical activity?

12 A I would agree I saw no evidence to support that.
13 That would have been from an electrical event.

14 Q And, in fact, so we can clear up this business
15 about the ladder, you do not believe that the ladder --
16 the aluminum ladder Mr. Larios was standing on was in
17 anyway involved in this pathway for circuit; correct?

18 A That's correct.

19 Q So it is your testimony that no electricity ever
20 went through the ladder at the time Mr. Larios was
21 cutting?

22 A I don't believe I said no electricity at all.
23 Obviously some electricity would flow through the tree
24 through the ladder, but because we have no corresponding
25 burn marks on the pads of the ladder, there's no

1 evidence that any noticeable amount of current was
2 passed down through the ladder.

3 Q And we don't have any electrical evidence of where
4 the ladder was up against the palm tree either, do we?

5 A No, I don't see any photographs of that before it
6 was cut down.

7 Q Okay. You didn't see any photographs of the ladder
8 up against the tree?

9 A No. I thought you were referring to the ladder
10 behind -- the tree behind the ladder where it was up
11 against the tree.

12 Q Yeah. That's my question. Did you not look at
13 photographs of the ladder up against the tree?

14 A No. I was referring to the tree where the ladder
15 was blocking. In other words, the area where the ladder
16 was in contact with the top of the tree. I didn't see
17 any photographs of that specific area to indicate when
18 current would have flown into the tree itself from the
19 ladder.

20 Q Are you aware of any photographs that you've seen
21 that showed any burning or electrical activity from the
22 tree?

23 A Just from the branches and the fronds that are
24 identified by the coroner's office. No, sir.

25 Q Other than that?

1 to be stacked up. Sections of tree trunks still stacked
2 up on the property today. I glanced and looked at them,
3 I didn't see anything that stood out to me.

4 Q Okay. You were looking to see if there was any
5 indicia of electrical activity?

6 A Yes. Just to see -- I mean, the age of them now
7 and the weathering, I didn't think there was any useful
8 information from those trunks.

9 Q And do you know that that ladder -- excuse me, that
10 that tree was taken down in 2019?

11 A I was not aware of when it was taken down.

12 Q Do you know that tree was taken down in 2019 at the
13 direction of Mr. Ray Jackson?

14 A I have no information. I'd have to agree with you
15 because I don't know any other information to say.

16 Q Did you know that tree was taken down in 2019 at
17 the direction of Mr. Jackson by a tree trimming company?

18 A I was not aware of that.

19 Q You never had the opportunity to inspect
20 Mr. Larios' clothing?

21 A That's correct.

22 Q Never saw his footwear?

23 A Just the photographs of the limited photographs
24 that we have.

25 Q We can agree that Mr. -- based on the information

1 you have, Mr. Larios has no classic entry or exit
2 wounds; correct?

3 A Correct. This is a unique type of a shock event.
4 It doesn't fit the mode of the typical entry/exit
5 wounds.

6 Q It doesn't fit particularly what you would see if
7 there was, for example, direct contact with the high
8 voltage overhead primary?

9 A Correct. We talked about that evidence would be
10 clear if that were the case.

11 Q Is it also, can we agree, that you do not intend to
12 talk about to a reasonable degree of electrical
13 engineering certainty that a mark on Mr. Larios' stomach
14 or abdomen was caused by electricity?

15 A That's correct. As a nonmedical doctor I would
16 usually defer to the doctor for that type of -- but I do
17 compare, obviously, unfortunately, my job I have to look
18 at autopsy photos a lot of times for the entry and exit
19 wounds and I couldn't say one way or the other. I can
20 definitely I say I can't rule out that that mark is an
21 electrical mark and I can't say conclusively that it is
22 an electrical mark.

23 Q Correct. What can we agree it certainly is not an
24 electrical mark from a high voltage power line direct
25 contact?

1 A Absolutely agree with that, yes.

2 Q Because if we're talking about that, the typical
3 situation with that unfortunately is catastrophic
4 injuries; correct?

5 A That's correct.

6 Q Did you look at the two different autopsy reports
7 in this case?

8 A I believe I looked at whatever was in my file when
9 I was deposed were the files that I looked at.

10 Q Do you know anything about that took place between
11 the time Dr. Presnell did her original autopsy and when
12 she finalized the report? Do you know anything about
13 that?

14 A Yes. From my recollection, the initial
15 investigation as I testified earlier none of the
16 original investigators, either the autopsy -- or the
17 coroner's office investigators or OSHA investigator
18 observed any power lines when they were out there during
19 their initial investigation. So I believe before they
20 conducted the interview and went out to look for the
21 power lines on, I believe, the Tuesday after the
22 accident, the first autopsy had, I believe, already
23 taken place with no information indicating power lines
24 were present in the area.

25 Q Okay. And are you aware that there was a

1 subsequent phone call from Mr. Carter of the coroner's
2 office to Dr. Presnell?

3 A Yes. In his deposition testimony I remember
4 reviewing that.

5 Q And you're aware of two things being told by
6 Mr. Carter to Dr. Presnell; one, that Mr. Larios'
7 chainsaw made direct contact with the overhead primary;
8 correct?

9 A I believe that was his opinion. Yes.

10 Q And, in fact, based on your investigation and
11 attempt to reconstruct this incident, you would agree
12 that is a physical impossibility?

13 A Right. With my engineering background and having
14 looked at hundreds of these cases, I have the knowledge
15 and training to be able to look at that and give it much
16 better opinion.

17 Q So the point is, Dr. Presnell being told that the
18 chainsaw made direct contact with the overhead primary,
19 you know that to be incorrect?

20 A The information that she was provided from
21 Mr. Carter appears to be incorrect from my
22 investigation.

23 Q And we talked about the discoloration -- and the
24 second piece of information that was provided by
25 Mr. Carter to Dr. Presnell was that there was this

1 residue from Mr. Larios' footwear from the third rung of
2 the ladder; correct?

3 A I recall that as well, yes.

4 Q And based on your reconstruction or attempt to
5 reconstruct this incident, that would also be incorrect?

6 A Correct. I didn't see evidence to support that the
7 ladder was the path of fall current. But obviously
8 that's a path that many of these type of accidents take.
9 So it could be an assumption that somebody made based on
10 the evidence that was present.

11 Q But based on your reconstruction, that didn't
12 occur? There's no indicia that this discoloration came
13 from electricity?

14 A Correct. With all the additional information I
15 obtained several years later that probably the coroner's
16 office didn't have at the time of their inspection. I
17 obviously have a lot more information, and experience,
18 and training to be able to evaluate all the evidence.

19 Q And you agree that what you want is accurate
20 information to try and come up with the accurate
21 conclusion, do you agree with that?

22 A Everyone likes as much information as they can to
23 make that conclusion.

24 Q And you want it to be accurate; right?

25 A Yes.

1 create the shock. He could be touching the stalk
2 directly.

3 Q So under your theory, just to be clear, you don't
4 know whether the electricity entered Mr. Larios through
5 his left hand or through his right hand which was on the
6 chainsaw?

7 A That's correct. And I didn't testify that I did
8 make that assumption.

9 Q And you told me a minute ago the chainsaw was still
10 running or that's your understanding?

11 A That's the testimony I believe from the coroner's
12 office that it was still running when they got there up
13 in the tree.

14 Q You don't know whether the gas powered chainsaw was
15 smoking?

16 A I don't.

17 Q For Mr. Abraham to have seen smoke coming off of
18 Mr. Larios -- well, let me ask you about that for a
19 minute. You looked at the OSHA records; correct?

20 A I did.

21 Q You didn't see any reference in the OSHA records to
22 Mr. Abraham ever telling anyone that Mr. Larios was
23 smoking after he yelled, do you?

24 A No. And, again, I review OSHA files all the time
25 and find discrepancies of not recalling everything when

1 they're being interviewed right after an accident.

2 Q Well, I appreciate that. My question was it isn't
3 in the OSHA records; right?

4 A Nothing that was written down. Whether he told the
5 OSHA this or that and didn't write it down or he didn't
6 tell them.

7 Q So that was new to you after I took your
8 deposition?

9 A Correct. That came out in Mr. Abraham's deposition
10 two months after my deposition.

11 Q Okay. And for Mr. Larios to in fact have been
12 smoking or had smoke coming off of him, according to
13 your pathway, would you agree that his shirt would have
14 caught -- his cotton shirt would have ignited, caught on
15 fire?

16 A No, unless he was exposed to 13,000 volt.

17 Q It would take 13,000 volts to ignite a cotton
18 shirt?

19 A It would take much higher voltage than 1,000 volts
20 to ignite the cotton shirt.

21 Q Would it take 13 -- and your testimony is that
22 that's not what he received?

23 A No. I believe it's somewhere below 1,000 volts
24 from my experience of looking at the incident and the
25 lack of entry/exit wounds along with all the other

1 cannot receive a shock?

2 A If neither of those things happened by themselves,
3 you're saying?

4 Q What I'm saying is, if he doesn't either manipulate
5 something, move it over into the primary, he can't get
6 shocked? If he doesn't drop something on to the
7 primary, he can't get shocked, do you agree with that?

8 A Correct. And if the tree's not there for him to
9 cut, he can't get shocked either.

10 Q Right. I know you wanted to tell me that, so I'm
11 glad we got that out. And we're going to get to that in
12 a few minutes.

13 A Sure.

14 Q I appreciate you jumping ahead for us. Do you
15 agree that no one gave notice to Dominion Energy that
16 Mr. Larios would be out there working that day?

17 A We found no record that anyone had notified the
18 power company.

19 Q You agree that no one requested that Dominion
20 de-energize or insulate this line?

21 A I agree.

22 Q Do you agree that no one requested that Dominion
23 come out and put any type of insulation on this line
24 before the work was done?

25 A There was no record of that in the documents I

1 THE COURT: All right.

2 MR. PUGH: I agree with that. Have we cut out all
3 the parts where he says, yeah, I agree or I don't know
4 about that? We got it all out?

5 MR. BUCKNER: Y'all can handle that with your
6 questioning.

7 MR. YARBOROUGH: Just strike through it.

8 (Off the record)

9 THE COURT: Okay. And what I'll also do is I'm
10 going to -- David and I were just talking, I'm going to
11 explain to the jury that the next witness who was not
12 able to be here will be present with this -- is
13 appearing by way of deposition that Mr. Yarborough is
14 going to read the witness' responses and they're to give
15 this -- they're to treat this testimony as though -- and
16 who is the witness here?

17 MR. PUGH: Pedro Abraham.

18 THE COURT: Mr. Abraham. All right. They're to
19 treat this testimony as though Mr. Abraham were here
20 testifying and give it whatever weight they think it
21 deserves.

22 MR. APPLEGATE: Thank you.

23 THE COURT: Are y'all ready? Let's bring the jury
24 in, please.

25 (The jury entered the courtroom at 3:10 p.m.)

1 THE COURT: All right. Ladies and gentlemen,
2 welcome back. Let me give you a couple of -- note a
3 couple of things for you before we get started. That
4 you may notice if you haven't already noticed that
5 Mr. Stegmaier and Mr. Kennedy are no longer with us.
6 They represented respectively PENSCO Trust Company and
7 Edisto Sales and Rentals Realty. Those two parties have
8 settled their claims and are no longer a part of this
9 litigation as we go forward. So that's the reason that
10 you don't see them sitting over there any longer.

11 The next witness that the plaintiff's are calling,
12 Mr. Abraham is -- was unable to be present today and so,
13 however, his deposition was taken prior to this trial
14 beginning. And a deposition is simply sworn testimony
15 taken outside of court.

16 We have with us Mr. David Yarborough here today.
17 Mr. Yarborough has been kind enough to agree to play the
18 role of Mr. Abraham. So, Mr. Buckner, as well as the
19 attorneys ask the questions from the deposition,
20 Mr. Yarborough is going to read to you Mr. Abraham's
21 responses to those questions.

22 You are to give deposition testimony which is what
23 this is, you're to give it to same weight and treat it
24 the same way as you would if Mr. Abraham was actually
25 here answering the questions himself. There's nothing

1 changed about it, it's still sworn testimony that just
2 was taken prior to the trial. You give it whatever
3 weight that you feel it deserves. Okay.

4 So, Mr. Buckner, are you ready to proceed, sir?

5 MR. BUCKNER: I am, Your Honor.

6 THE COURT: All right.

7 PEDRO ABRAHAM,

8 being first duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION BY MR. BUCKNER:

11 Q Good afternoon. Can you please state your full
12 name for the record, sir.

13 A Pedro Abraham de la Cruz. Yes.

14 Q Mr. Abraham, do you know Jose Larios?

15 A Yes.

16 Q How do you know him?

17 A We were friends going back all the way to Mexico

18 Q And did you know him after he lived in the States
19 as well?

20 A After he came here, I didn't see him after that.

21 Q Okay. Do you remember where you were, sir, on
22 November 29, 2015?

23 A Yes.

24 Q Can you tell me about that day, sir? Let me make a
25 correction. I'll ask it a different way, Mr. Abraham.

1 Can you tell me a little bit about that day of
2 November 29, 2015 and where you were?

3 A Yeah. He mentioned to me -- we had spoken the
4 night before, and he had mentioned that one of his
5 helpers wasn't going to be able to go and cut the palm
6 trees with him, so he asked me if I could go and help
7 him the next day, and responded with yes.

8 Q Okay. So on that day, did you drive with Jose to
9 3402 Myrtle Street?

10 A Yes.

11 Q And what was your plan, sir?

12 A He mentioned to me that they were going to clean up
13 some palm trees.

14 Q And so, if you will, walk me through what you did
15 that day.

16 A That morning we left the house, and we stopped by a
17 store to buy something to drink and some bread, and then
18 from there we went to the office from where he -- from
19 where he works from.

20 We passed by to pick up the ladder that we were
21 going to use to trim the palms.

22 We showed up to the work site, and the first thing
23 we did was we supervised the area to make sure
24 everything was fine.

25 Q What equipment did you have with you?

1 A He -- he had the ladder with him and the chainsaw
2 and also the fasteners to tie -- to secure himself to
3 the tree.

4 Q Were you planning on doing any cutting yourself,
5 sir?

6 A He only took me so I could clean up whatever palm
7 -- palm that would fall to the floor, so I would pick
8 them up, clean that area, and I would pick them up and
9 then put them on the side of the road.

10 Q What other assistance did you provide to
11 Mr. Larios?

12 A I would also put gas in the chainsaw, I would apply
13 oil and also tighten the chains.

14 Q And whose chainsaw were you working with?

15 A I don't -- I don't know which one it would belong
16 to. I don't know if it belonged to him or the owner.

17 Q As far as you could tell, was the chainsaw working
18 properly on that day?

19 A Yes, everything was working normal. We did a total
20 of nine palms, and after three palms, I would apply gas
21 and oil, and everything was working properly.

22 Q Had you ever been to this property before that day?

23 A No.

24 Q Do you know whether Jose Larios had ever been on
25 that property before that day?

1 A No, I don't know.

2 Q Had you ever worked with Jose before?

3 A No. It was the first time.

4 Q Did you see anything on the property that made you
5 concerned that there was any danger that you would
6 encounter doing your work?

7 A No, because when we arrived, we supervised
8 everything, and everything was fine.

9 Q Did you see any power lines that were close to the
10 palm trees you were cutting?

11 A No.

12 Q Did you and Jose ever talk about power lines in the
13 area while you were on the property?

14 A No.

15 Q Can you tell me what happened or what you saw that
16 day with Jose?

17 A After we had trimmed the nine palms and we were
18 done with that, we went -- we got to the last palm, and
19 I sat the ladder in that palm, and then he went up, he
20 went the up ladder.

21 Then he tied himself around the tree around his
22 waist to make sure everything would be secure.

23 To be able to get to the top of the tree, he
24 started clearing whatever was on top of his head first
25 to be able to then -- after he can remove that, he was

1 able to get to the sides of the palm tree.

2 At that time then also while he was doing that, I
3 was picking up -- I was picking up the debris that was
4 falling, and it I was making piles of it. Then I was
5 taking and making a pile so that I could throw them on
6 my shoulder and I can go where they needed to go.

7 Then all of a sudden while I was working and doing
8 what it was doing, I heard a loud -- a loud scream, and
9 then I turned over and I stopped doing what I was doing,
10 and I looked over, and I saw a lot of smoke. I realized
11 things weren't fine.

12 Then I would yell to him to see if he was okay, and
13 then he would not respond to me at that point.

14 I noticed that he was trying to -- with one arm
15 trying -- with the left arm trying to unbuckle himself,
16 but at that point his head was kind of in a downward
17 position, and then I realized he was just -- it wasn't
18 fine at that point.

19 Then I noticed that he was at the point without
20 strength and he -- I saw -- I noticed where he was
21 unable to unbuckle himself, but then he fell backwards.

22 Q Sir, if you could continue to page 11 of line 3 and
23 continue from there, Mr. Abraham.

24 A When I was with him, I smelled a burnt -- a burning
25 -- a burnt smell.

1 With injury that I saw that he suffered, I then ran
2 to call 9-1-1, but at that point my phone in the
3 location we was didn't have a good signal.

4 And then I went out to the road and I saw a lady
5 that was exercising. She was walking down the path. I
6 asked her that -- I told her in English there's an
7 accident, and then I said -- I asked her if she could
8 call -- if she could dial 9-1-1 for me.

9 Then five to eight minutes later was when the
10 ambulance and the police arrived and noticed the body
11 was laying there.

12 Q Once the police arrived, what did you do?

13 A They were asking me -- the police arrived and they
14 were asking me what happened. They would say in
15 English, like, "What happened?" But I didn't -- I
16 didn't really understand how to explain it, at that
17 moment Gaspar showed up and I told him what had
18 happened.

19 Q And at that time, did you know why he had fallen
20 out of the tree?

21 A No.

22 Q Can you describe what you saw when Mr. Larios was
23 on the ground and you went to him?

24 A When I went to him, I lifted his head, and I asked
25 if he was okay, and he said he was fine, but I realized

1 he wasn't fine after the injury, and that's why I felt
2 like I needed to run and call 9-1-1.

3 And then after the lady dialed 9-1-1, I returned
4 back to him, and I lifted his head, and at that point he
5 wasn't responding anymore.

6 Q When you first lifted his head and he spoke to you,
7 could he move at that time?

8 A No, he wasn't moving.

9 Q Did you see any visible injuries to his body?

10 A No.

11 At that moment just because I was scared, I really
12 didn't -- I really didn't really know what to do at that
13 moment.

14 Q Then did you go to the hospital?

15 A Yes. Yes.

16 Q And how long were you at the hospital?

17 A We were there like an hour, about one hour.

18 Q And who told you that Jose had died?

19 A When -- when Gaspar showed up, he was -- he was
20 asked about him, and then one of the workers that worked
21 there in the hospital then took us, took us to where
22 Jose was, and at that point he was covered with a white
23 sheet.

24 Q Did you go back to the scene, sir, after you left
25 the hospital?

1 A Yes, we returned back to the site because we
2 weren't just -- we weren't okay with just the fact that
3 it was just a fall.

4 Q What did you see when you went back to the scene?

5 A We noticed that -- that the palm right there on
6 this -- this one was burnt on this palm right here.

7 MR. BUCKNER: And I believe that, Your Honor, we've
8 stipulated to the entry of the photograph that I think
9 will be Plaintiff's Six.

10 (WHEREUPON, Plaintiff's Exhibit Number 6 was marked
11 and entered)

12 Q Mr. Abraham, if you could point out and we can go
13 back and reread that testimony.

14 Did you -- well, what did you see when you went
15 back to the scene, sir?

16 A We noticed that the palm, the palm right there on
17 this -- this one was burnt on this palm right here.

18 Q Mr. Abraham, besides seeing a burnt mark on that
19 tree, did you see anything else while you were there on
20 the scene?

21 A Well, no, at the -- at the moment we were -- we
22 first went, we just saw the burn mark of the palm tree,
23 but then the second day when we got ahold of the
24 chainsaw, I noticed that the chainsaw had -- had the
25 burn mark where previously, when I inspected it, it did

1 not have any of the markings there.

2 And when we checked -- when I checked the burnt
3 mark, I noticed that there was the burnt mark there, and
4 previously, before that, when I was maintaining it and
5 putting gas and oil in it, that burn mark wasn't there
6 before, and we noticed that it was on there after we
7 looked at it after the accident.

8 Q Did you have a conversation with an investigator
9 after this incident?

10 A We talked to a person here when we came to the
11 office of Bubba Unger.

12 Q And there you had a conversation with the OSHA
13 investigator; is that correct?

14 A Yes.

15 Q And you gave them the information about the
16 chainsaw; correct?

17 A Yes.

18 Q And did you tell him about the burn marks you saw
19 in that tree?

20 A Yes.

21 Q Did you go back to the scene any time after that?

22 A A lot -- much time after, we returned because we
23 were all just together at the house, and we were all
24 down and we were sad, so we were all together at that
25 point.

1 Q Do you know what happened to the chainsaw?

2 A At that -- at that time we -- I don't know what
3 happened to the chainsaw, but I remember the third day
4 we noticed that the burn mark was there, and I remember
5 that mark not being there from before because I was the
6 one maintaining -- doing the maintenance on the chainsaw
7 while we were working.

8 Q Do you know where the chainsaw is today?

9 A No.

10 Q So as we sit here today, knowing all the
11 information we know, what do you think happened to the
12 Jose Larios?

13 A I felt like just seeing on when he was up there,
14 seeing the smoke that was coming off of him from where
15 he was at the moment I saw him.

16 MS. WHITE: Your Honor -- okay. Yeah, can I just --

17 THE COURT: Yeah. All right.

18 Q Mr. Abraham, I apologize. When you were here in
19 2015, were you here on a work permit?

20 A Yeah. Yeah, I was contracted to Florida, and then
21 I would come here for two or three months, and then I'd
22 go back to Mexico

23 Q Okay. Today have you come to America on another
24 work visa?

25 A Yes. I'm here, but it expired, but I have plans to

1 return in a few months.

2 Q Are you working while you're here now?

3 A Yes.

4 Q And are you working in landscaping, sir?

5 A Yes.

6 Q And you work with Gaspar?

7 A No. With another boss.

8 Q Who do you work with here?

9 A Mr. George.

10 Q Do you know his last name?

11 A George Dossett.

12 Q That's all I have, sir. Thank you.

13 CROSS EXAMINATION BY MS. WHITE:

14 Q Good afternoon.

15 A Good afternoon.

16 Q You were here today when -- and listened to
17 Mr. Gaspar Licon's deposition; correct?

18 A Yes.

19 Q And you heard the question that he -- the questions
20 that he was asked?

21 A Yes.

22 Q You heard the answers that he gave?

23 A Yes.

24 Q Have you ever given any written statements about
25 what you saw on the day of the accident?

1 A Only that time where we were at Bubba Unger office
2 that's when we -- I gave testimony there -- or gave a
3 statement there.

4 Q You took your friend to act as interpreter; right?
5 Hector Vega?

6 A Yes, Hector Vega.

7 Q And that was your request that Mr. Vega came as
8 your interpreter; correct?

9 A Yes.

10 Q And your boss was there, George Dossett?

11 A Yes.

12 Q And a man from OSHA?

13 A Yes.

14 Q Do you know what OSHA is?

15 A No.

16 Q Do you know anything about the OSHA work rules?

17 A No.

18 Q No one's ever trained you in OSHA?

19 A No.

20 Q How old were you when you first learned that you
21 shouldn't touch power lines?

22 A What? I don't understand.

23 Q Sure. As a boy, you were taught not to touch an
24 overhead power line?

25 A Yes.

1 Q That's something you've known most of your life;
2 correct?

3 A Yes.

4 Q And when you're doing your work, you try to stay
5 away from power lines; correct?

6 A Yes.

7 Q And you've been taught to stay away from power
8 lines; correct?

9 A Yes.

10 Q Do you have any medical training?

11 A No.

12 Q Okay. Have you ever heard of something called the
13 National Electric Safety Code?

14 A No.

15 Q Have you ever been involved in the analysis of
16 electrical burns?

17 A No. It was the first time something like that had
18 happened.

19 Q Do you know anything about metallurgy?

20 A No.

21 Q Have you ever viewed any ANSI, and that's A-N-S-I,
22 tree trimming standards?

23 A No.

24 Q Have you ever spoken to Mr. Applegate before?

25 MR. BUCKNER: Your Honor, if we can take a second.

1 (Off the record)

2 MS. WHITE: Sorry about that, Your Honor.

3 Q Have you ever spoken to Mr. Applegate before?

4 A Yes.

5 Q How many times?

6 A Once.

7 Q When?

8 A It was here last Wednesday.

9 Q In this office?

10 A Yes.

11 Q How long?

12 A Like an hour.

13 Q Did you look at any documents?

14 A No.

15 Q How about photographs?

16 A Some similar to these.

17 Q And what did you discuss?

18 A About the accident.

19 Q Okay. The day of the accident, November 29, 2015,
20 do you remember that day?

21 A Yes.

22 Q You were working in the morning?

23 A Yes.

24 Q Daylight?

25 A Yeah, in the day, yeah, in the morning.

1 Q It wasn't dark outside?

2 A No. It was in the morning.

3 Q The whether was clear?

4 A Yes.

5 Q No wind or rain or anything like that?

6 A No. It was like the way it is now.

7 Q Okay. This was your first day working with
8 Mr. Jose Larios?

9 A Yes.

10 Q Had never worked with him before?

11 A No.

12 Q Do you know why he asked you instead of his
13 brother?

14 A No, I don't know.

15 Q Okay. How were you being paid?

16 A In cash.

17 Q By whom?

18 A His boss.

19 Q And who was his boss? Mr. Will?

20 A Mr. Will, it's something like that. I don't know
21 his name exactly.

22 Q Do you know Mr. Will?

23 A A little bit, not very much.

24 Q Did you ever work for him before that day?

25 A No.

1 Q Have you worked for him since?

2 A No, I haven't worked for him, no.

3 Q Have you ever talked to him about the accident?

4 A No.

5 Q Have you ever tried to talk to him about the
6 accident?

7 A No.

8 Q When you went to 3402 Myrtle Street that morning,
9 you looked around; right?

10 A Yes.

11 Q Did you go into the backyard?

12 A Yeah. We supervised all -- everything around the
13 house, everything that we're going to work in that area,
14 we supervised all the way around it.

15 Q Did you see any power lines anywhere around 3402
16 Myrtle Street?

17 A No.

18 Q Did you specifically look for them?

19 A Yes, but you can't see anything because it's like a
20 jungle. Everything is covered.

21 Q Did you walk down the bike path behind the
22 property?

23 A No. It's just whatever that's inside the property
24 of the home.

25 Q Okay. So you never looked outside of the fenced

1 backyard?

2 A No.

3 Q Never went outside the fence onto the bike path?

4 A No.

5 Yeah, and we just -- we were just doing what's
6 inside. That's all we were doing.

7 Q And I'm talking to you about your pre-work looking
8 around.

9 A No. We just checked, like I said, inside the
10 property, and we checked to see if there was any danger,
11 and there wasn't any.

12 Q Because you were working inside the property you
13 didn't look for -- apologize. You didn't look about
14 anything outside of the property; correct?

15 A No.

16 Q All right. Did you ever drive down the bike path
17 behind the property?

18 A I'm sorry. My highlighted copy. Can you give me
19 the page line?

20 Q We're on page 25, line 22. And the answer?

21 A No, we never left the property. We were always
22 inside.

23 Q Always inside the fence?

24 A Yes.

25 Q Once the ladder is placed against the tree,

1 Mr. Larios climbed up the ladder?

2 A Sorry. Again, I'm out of sink. Page line?

3 Q Page 28, line 25.

4 A Read the question one more time.

5 Q Absolutely. And once the ladder is placed against
6 the tree, Mr. Larios climbed up the ladder?

7 A Yes.

8 Q He had the chainsaw in his right hand?

9 A Yes.

10 Q And once he got to the top or near the top of the
11 ladder where he wanted to be, he tied himself around the
12 tree; correct?

13 A Yes.

14 Q You told OSHA investigators that Mr. Larios was
15 standing on the fourth rung of the ladder; is that
16 correct?

17 A Yes.

18 Q And the way Mr. Larios was trimming was one hand --
19 his right happened on the chainsaw, and the left hand on
20 the tree; correct?

21 A Yes.

22 Q And as he's cutting, the vegetation is falling to
23 the ground; correct?

24 A Yes.

25 Q And your job was to pick up the cut vegetation;

1 correct?

2 A Yes, correct.

3 Q Show you what has been marked as Exhibit Two. This
4 is the vegetation that was falling on the ground?

5 A Those are, yes.

6 Q And that's what you were picking up to take to the
7 street?

8 A Yes.

9 Q And while you're picking up the cut vegetation, you
10 heard Mr. Larios yell?

11 A Yes.

12 Q Before he yelled, you weren't around him?

13 A No, because I was picking up what was laying down.

14 Q And you were then carrying it out to the street and
15 coming back; correct?

16 A Yes.

17 Q My question is: When he yelled, you didn't know
18 why?

19 A No.

20 Q And he never told you what happened, did he?

21 A No, no, no.

22 Q Okay. And the chainsaw that we looked at in
23 Exhibit One -- the chainsaw that we looked at in Exhibit
24 One, the other photograph -- now we got the right one.
25 That's where the chainsaw was when Mr. Larios yelled;

1 correct?

2 A Yes.

3 Q Okay. When he yelled, you looked up toward him?

4 A Yes.

5 Q You saw him hold onto the tree?

6 A Yeah. He was grabbing on the left hand, he was
7 trying to unbuckle himself with the right hand.

8 Q Untie the rope with his right hand; correct?

9 A Yes.

10 Q And he untied the rope?

11 A Yeah. He then tried to go down to the next step of
12 the ladder, and he didn't have anymore -- he didn't have
13 anymore strength in his body, that's when he fell
14 backwards.

15 Q Okay. Before we get to that, once you heard him
16 yell, no more vegetation fell to the ground; correct?

17 A No, no more.

18 Q All right. And you saw him untie the rope?

19 A Yes, because I went to see how -- what was going
20 on.

21 Q Where were you?

22 A I was in this part here. You could see right here.

23 Q Show me where.

24 A Says, right in the corner, lifting those palms
25 there. And this is on Exhibit Two.

1 (Pointing)

2 Q All right. And you're pointing to where you were,
3 this is Exhibit Two?

4 A I was there lifting the palms from there.

5 Q And that's where you were when he yelled?

6 A Yes.

7 Q And you saw him start to go down the ladder;
8 correct?

9 A He tried to get down, but then he couldn't.

10 Q And I can give you the statement.

11 You recall making this statement, and I'm going to
12 tell you.

13 A Okay.

14 Q Pedro Abraham saw nothing to cause Larios to fall.

15 A No. Well, you know, you're working, and I didn't
16 -- I didn't see.

17 Q So you didn't see what caused him to fall; correct?

18 A I just saw him untie himself and, like I said, I
19 saw the smoke coming out of the tree.

20 Q Okay. Let me ask you about that. Where did you
21 see the smoke?

22 A You could see the part on top -- on the top part
23 over here, you could see there was -- you could see
24 there on the top part where that -- where that was --
25 where it was coming out of.

1 Q And where you pointing, Mr. Abraham?

2 A Are you sure we're looking at the right exhibit? I
3 think we need Exhibit One.

4 (Pointing)

5 A You could see the smoke there.

6 Q Not smoke from the chainsaw.

7 A I mean, I was -- I was by myself and I was scared,
8 so I really didn't check appropriately, but...

9 Q Do you know where the smoke was coming from?

10 A No, no, no, no.

11 Q Do you know what caused the smoke?

12 A No.

13 At that moment, no, I didn't know.

14 Q Did you -- do you know why the OSHA investigator
15 that you talked to on December 1st has no mention of you
16 saying anything about the smoke?

17 A Well, I felt pressured, and then I just noticed --
18 remembered back and that day, I remembered that there
19 was smoke coming out.

20 Q Okay. So let me make sure I understand what you're
21 telling me. As you sit here today, you don't recall
22 ever telling OSHA about the smoke?

23 A No.

24 Q You didn't tell them about the smoke?

25 A No, I didn't tell them.

1 Q Okay. Did you try to call Mr. Stevens?

2 A No.

3 Q If you wanted to call Mr. Stevens, would you even
4 know how?

5 A No. I don't have his number.

6 Q Do you know how the chainsaw ended up with
7 Mr. Stevens?

8 A No.

9 Q Was it Mr. Stevens who gave the chainsaw back to
10 Gaspar?

11 A Honestly, I don't know.

12 Q Mr. Abraham, do you know anything about the
13 trimming history of the trees at the accident site
14 before you went there?

15 A No.

16 Q And Mr. Stevens never told you about the power
17 lines in the right-of-way behind the property; correct?

18 A No.

19 Q And you told us earlier that part of what you and
20 Mr. Larios did when you arrived was survey the yard
21 area; correct?

22 A Yes.

23 Q Is that something you forgot to tell OSHA?

24 A Yes.

25 Q You forgot to tell OSHA that you and Mr. Larios

1 surveyed the property before you began work?

2 A Yes.

3 Q And there are other things -- are there other
4 things you forgot to tell OSHA?

5 A No. It's just that.

6 Q And the smoking part?

7 A Yeah, and the part of the smoke.

8 Q Were you paid for your work that day?

9 A No.

10 Q Have you ever had any discussions with anyone from
11 SCE&G?

12 A No.

13 Q Do you know what that is, SCE&G?

14 A No.

15 Q Have you ever -- have you ever worked for a company
16 that trims trees along power lines?

17 A No.

18 Q Have you ever seen those companies doing their
19 work?

20 A I've just seen them, but I've never done work for
21 them.

22 Q Have you watched them get up in bucket trucks?

23 A Yes.

24 Q Do you know if Mr. Stevens owned a bucket truck in
25 November of 2015?

1 A No.

2 Q Do you know do you know if Mr. Stevens had
3 previously used a bucket truck to trim trees at this
4 location?

5 A No.

6 Q And do you remember the assistant or deputy coroner
7 Marion Whaley was present? I apologize, I missed a
8 part. Let's back up just a bit.

9 A Sure.

10 Q We're on page 39.

11 And when you met in Attorney Unger's office, that
12 was December 1st; correct, 2015?

13 A Yes.

14 Q How did that meeting come about?

15 A When I met up with this -- this guy, he took me to
16 the Unger's office, I had to explain everything that
17 happened that day.

18 Q And do you remember the assistant or the deputy
19 coroner, Marion Whaley, was present also?

20 A No.

21 Q You don't remember him being there?

22 A The lady?

23 Q No. That's a man?

24 A The firefighter? The short guy? The short little
25 guy? He's like the firefighter.

1 Q Okay. Do you remember the short guy being present?

2 A Yeah.

3 Q Okay. Do you remember at that meeting whether
4 anybody said that they thought Mr. Larios had seen a
5 snake in the tree?

6 A No.

7 Q You don't remember that?

8 A No, I don't remember that.

9 Q So we're going to look at Exhibit Number One. This
10 one. Can you show me on this photograph where
11 Mr. Larios' rope was tied around the tree?

12 (Pointing)

13 A It was at that height.

14 Q So right at the third rung of the ladder?

15 A Yes.

16 Q And he was standing on the fourth rung; right?

17 A Well, I don't remember if it was the third or the
18 fourth, but it was one of those.

19 Q Have you ever heard of something called the 10-foot
20 rule?

21 A No.

22 Q And prior to your work on November 29 of 2015, do
23 you know anyone that contacted the utility company to
24 de-energize the power line?

25 A No.

1 Q Do you know if anyone that contacted the utility
2 and asked that the lines be grounded?

3 A No.

4 Q Do you know if anyone that contacted the utility
5 company and asked that the lines be shielded or
6 insulated?

7 A No.

8 Q Neither you nor Mr. Larios were trained in utility
9 line-clearance?

10 A No, we weren't, we weren't trained.

11 Q No one ever trained you how to get up and trim
12 trees close to a power line; correct?

13 A No.

14 Q And you were not an experienced and trained line
15 -clearance tree trimmer, were you?

16 A No, not me.

17 Q And to your knowledge, Mr. Larios was not a trained
18 and experienced line-clearance tree trimmer; correct?

19 A No.

20 Q No, you don't think he was?

21 A What was the question?

22 Q To your knowledge, Mr. Larios was not a trained and
23 experienced utility line-clearance tree trimmer?

24 A No.

25 Q Did Mr. Stevens provide you or Mr. Larios with any

1 protective equipment before you began your work?

2 A No. He just took the strap that he used to tie
3 himself down.

4 Q Do you know that OSHA found that Mr. Stevens failed
5 to train you and Mr. Larios properly?

6 A No.

7 Q It's true though; right?

8 A Yes.

9 Q Were you aware that OSHA also found that
10 Mr. Stevens failed to provide you and Mr. Larios with
11 the appropriate protective equipment?

12 A No, I didn't know.

13 Q That's true, he failed to provide you with
14 protective equipment?

15 A Yes.

16 Q Were you aware that OSHA determined that
17 Mr. Stevens violated the rules by allowing work within
18 10 feet of a power line?

19 A I don't know anything about that.

20 Q Do you know that OSHA found that there was a
21 failure to conduct a hazard assessment at the location
22 before your work began?

23 A No, I didn't know.

24 Q Were you aware that OSHA found that Mr. Stevens --
25 that he knew or should have known that employees, that's

1 you and Mr. Larios, were trimming trees in close
2 proximity, within 10 feet to energized power lines?

3 A No, I didn't know.

4 Q And were exposed to the hazards of contact with
5 energized lines, were you aware of that?

6 A No, because we didn't see -- we couldn't see the
7 cables.

8 Q Okay. And I didn't ask you if you could see them.
9 I asked you if you were aware that OSHA made that
10 finding against Mr. Stevens?

11 A No, I didn't know.

12 Q Nobody ever told you about the power lines in the
13 right-of-way behind the property; correct?

14 A No.

15 Q It's your testimony that you never saw the power
16 lines before the work began?

17 A No, we never saw them.

18 Q You don't know what Mr. Larios saw; correct?

19 A No.

20 Q But you-all never talked about power lines;
21 correct?

22 A Correct.

23 Q And when you went out after the accident, you were
24 able to look up and see the power lines; correct?

25 A Yes.

1 Q Okay. I'll show you and ask you to look at Exhibit
2 Two now. And you've already shown us -- you've already
3 shown us where you were gathering up the palm fronds
4 after they were cut; correct?

5 A Yes.

6 Q And the ladder is up against the tree where you
7 placed it; correct?

8 A Yes.

9 Q And this is a photo taken from the yard where you
10 were working?

11 A Yes.

12 Q Looking towards the tree being trimmed; correct?

13 A Yes.

14 Q Let's look at this together. I'm going to come
15 over here. All right. Let's look at this together. Do
16 you see -- can everybody see? This line right here, it
17 comes out over here; right? Do you see this line right
18 here?

19 A Yeah, you can see a little bit.

20 Q Okay. You can see a wire; right?

21 A Yeah, you can see a little.

22 Q All right. So when you're looking toward a tree,
23 you can see a wire; correct?

24 A Yes.

25 Q Do you know how long that wire has been there?

1 A No.

2 Q And did you walk the entire property?

3 A I'm sorry. Page line?

4 Q Page 50, line 10.

5 A Just -- we didn't go outside, just inside the
6 property, inside the property.

7 Q Did your survey of the property include going back
8 to the fence?

9 A No, we didn't go outside the fence.

10 Q Okay. Did you stay inside the fence?

11 A Yes.

12 Q Did you walk all the way to the fence during your
13 survey?

14 A Yes.

15 Q Okay. Do you know what you would -- what you would
16 have seen if you looked up at the fence?

17 A No, I wouldn't see.

18 Q We're going to transition to page 56.

19 A All right.

20 Q So you were living with Gaspar at the time of this
21 incident in November of 2015?

22 A Yes.

23 Q How long had you been living with him at the time
24 of the incident?

25 A After the accident, I went -- I returned in

1 December.

2 Q But before the accident, how long had you been
3 living with him?

4 A I arrived here in August.

5 Q And you moved in with them immediately?

6 A Yes.

7 Q Who else was living in the house in November of
8 2015?

9 A Gaspar, his family, and his brother.

10 Q And yourself?

11 A Yes.

12 Q And so when Mr. Larios told you about this job the
13 night before November 29th, was that at the house?

14 A Yes.

15 Q But Mr. Larios knew the night before he was going
16 to 3402 Myrtle Street?

17 A Well, I mean, I didn't know. He just asked me if I
18 wanted to go to accompany him to work, and then I said
19 -- I just told him yes.

20 Q You didn't know where you were going to work?

21 A No.

22 Q And were you given instructions by anyone else
23 other than Mr. Larios?

24 A No.

25 Q About how many fronds had he trimmed off the tree

1 before he fell?

2 A Sorry. Page line?

3 Q Fifty-nine, line 25.

4 A Honestly, I don't know.

5 Q Do you know what part of the tree he was working on
6 when he yelled?

7 A He was on the back part of the tree.

8 Q And when you say back part of the tree, you mean he
9 was reaching around?

10 A Yes.

11 Q Thank you, Mr. Abraham. That's all the questions I
12 have for you.

13 A You're welcome.

14 REDIRECT EXAMINATION BY MR. BUCKNER:

15 Q Mr. Abraham, okay. On November 29, 2015, when you
16 were at the property, did anyone come and warn you about
17 the cables behind the property?

18 A No.

19 Q Did the owner of the house come out and warn you
20 about the power lines behind the property?

21 A No.

22 Q Did anyone from Edisto Sales and Realty come out an
23 warn you about the power lines behind the property?

24 A No.

25 Q Did anyone from SCE&G, the power company, come and

1 warn you about the power lines?

2 A No.

3 Q Were there any warning signs that you saw?

4 A No.

5 Q Did anyone provide you with any of these warnings,
6 tree cutting warnings, or anything of that nature?

7 A No.

8 Q Did you know that when the coroner, Marion Whaley,
9 investigated this scene, that he could not find any
10 power lines?

11 A No.

12 Q Did you know that the police and firefighters who
13 came and investigated, they didn't see any power lines
14 either?

15 A No.

16 Q Did you know that Mr. Dennison from OSHA didn't see
17 any power lines until he was shown the pictures of the
18 chainsaw and the burnt palm fronds?

19 A No, he said he didn't see anything either.

20 Q I want to go ahead and show you, Mr. Abraham,
21 what's been or we can mark now as Plaintiff's Seven.
22 And I'm going to show a picture of the same.

23 (WHEREUPON, Plaintiff's Exhibit Number 7 was marked
24 and entered)

25 Q Now, Mr. Abraham, is that the chainsaw that y'all

1 were using that day?

2 A Yes.

3 Q And can you point out for me, sir, where the marks
4 are on the chain that you saw after Jose fell out of the
5 tree?

6 (Pointing)

7 A In the chain.

8 Q Where is it again, sir?

9 (Pointing)

10 Q And that's the mark you showed the OSHA
11 investigator, sir?

12 A Yes.

13 Q And you never saw that mark on the chainsaw before
14 Mr. Larios fell out of the tree; right?

15 A It wasn't there before.

16 Q The power company's attorney marked this as Exhibit
17 One to the deposition. And so this is the picture of
18 the ladder all the way running up the tree.

19 Sir, can you tell me if you can see the power line
20 in that picture?

21 A No, you can't see it.

22 Q When you were out there that day working, did you
23 see any power lines?

24 A Yeah, correct, I didn't see them.

25 Q Thank you, sir. No further questions.

1 RECROSS EXAMINATION BY MS. WHITE:

2 Q Okay. Other than you, Mr. Larios, and Will
3 Stevens, no one knew you were going to 3402 Myrtle on
4 November 29, 2015?

5 A No.

6 Q You didn't tell anybody; right?

7 A No, I didn't tell anybody.

8 Q You didn't even know where you were going; right?

9 A I didn't know exactly the place, but I knew we were
10 going to work.

11 Q Right. You just didn't know the place?

12 A No.

13 Q Thank you.

14 And, Your Honor, we'd move to -- only thing that we
15 haven't admitted yet is Exhibit One from the deposition.

16 THE COURT: All right.

17 MS. WHITE: As Defendant's Eleven.

18 (WHEREUPON, Defendant's Exhibit Number 11 was marked
19 and entered)

20 MR. APPLEGATE: Plaintiff's call Beverly O'Brien.

21 THE COURT: Ms. O'Brien, if you would please come
22 around and be sworn.

23 BEVERLY O'BRIEN,

24 being first duly sworn, was examined and testified as
25 follows:

1 DIRECT EXAMINATION BY MR. DUFFY:

2 Q Ms. O'Brien, good afternoon. If you would, for the
3 jury, please, tell us where do you live?

4 A Ladson, South Carolina.

5 Q Okay. And you live in Ladson, do you work
6 somewhere else?

7 A On Edisto Island.

8 Q You been working out there a long time?

9 A Close to 30 years.

10 Q And what is it that you do for work?

11 A Landscaping.

12 Q Landscaping?

13 A Yes.

14 Q You been doing that for 30 years?

15 A Yes.

16 Q And do you work for a company or do you own your
17 own landscaping?

18 A I own my own business now.

19 Q You own your own business, what's the name of that?

20 A Edisto Landscapes.

21 Q Do you have a number of employees in that business?

22 A I have three.

23 Q And because you've worked out on Edisto for so
24 long, did you know Jose Larios before he died,

25 Ms. O'Brien?

1 A Yes, I did. I worked with him with Will Stevens.

2 Q Tell us if you would a little bit about when you
3 first met Mr. Larios.

4 A I was working with Fox Landscaping when I meet
5 Jose. He would -- just started working for Will. He
6 worked for Will maybe a year and I quit Fox and went to
7 work with Will.

8 Q Do you recall what year that was you met Jose?

9 A 2007, 2008.

10 Q And in addition to knowing Mr. Jose from work, did
11 you also come to know his family over the years as well?

12 A Yes, I did. He had a niece, Wendy, that was his
13 pride and joy. He made sure she had anything she
14 wanted. He loved children and especially Wendy.

15 Q You've gotten to know Wendy as well?

16 A Yes.

17 Q And tell us a little bit more about your
18 observations of Jose's interactions with Wendy as you
19 said was his pride and joy.

20 A That was his pride and joy. You know, anything
21 that she wanted, anything that she, you know, she liked,
22 he would make sure that she got it. He didn't leave the
23 island much. He stayed over there on the island a lot.
24 I would go shopping for them at the flee market or if
25 Wendy needed new clothes or something, he always went to

1 Walmart or something. I would always pick up something
2 for him, whatever he wanted.

3 She wanted a Chihuahua puppy. And I looked on
4 Craig's List and found her a Chihuahua puppy. To get
5 her a Chihuahua puppy.

6 Q And was that something that Jose had approached you
7 about?

8 A Yes, he asked me to get her one because she wanted
9 one.

10 Q So Wendy told him, I want a Chihuahua puppy?

11 A She wanted a Chihuahua puppy.

12 Q And he enlisted your help?

13 A I had to find him a Chihuahua puppy. He would go
14 out of his way to get her anything.

15 Q And you talked a little bit about -- sounds like
16 you knew Jose not only from work, but personally; is
17 that correct?

18 A We worked together. We wasn't together, you know,
19 after work or nothing like that. We're just friends.

20 Q Okay. Tell us about your observations -- I mean,
21 of Jose as a coworker, what was he like?

22 A He was a very good person. He was more concerned
23 about other people than he was himself. He loved his
24 family. He was a family man. He loved his brother. He
25 loved, you know, his brother's wife, Wendy the most. He

1 would send his mother money in Mexico. He would usually
2 give me the money, I would stop at a store in Ravenel in
3 like a little Mexican store and wire his family money.

4 Q About how often were you doing something like that?

5 A Sometimes it was every couple of weeks. Sometimes
6 it was more often. He would do a lot of side jobs after
7 work. He was a workaholic. If he would have extra
8 money, he would want to send it to his mother and his
9 family in Mexico.

10 Q Do you recall how much -- how much money he was
11 sending?

12 A Sometimes it would 200, 300, 400, it all depends on
13 what he had to send.

14 Q You said Jose was a workaholic?

15 A He was constantly working. After work he would do
16 side jobs. He stayed busy.

17 Q And were you with Jose on the day that he died? It
18 was a Sunday morning.

19 A No, I was not.

20 Q Do you recall that morning?

21 A Yes, I was at the hospital. My daughter had had a
22 baby on Saturday.

23 Q Do you recall where you were when you found out
24 about his death?

25 A In the hospital room in a -- my daughter's hospital

1 room. Will had called and he was all upset and crying.

2 Just all I can say is Jose fell out of a tree. Jose

3 fell out of a tree and died.

4 Q What was your reaction to hearing that?

5 A I was in shock. I couldn't believe it. It's not
6 every day, you know, one of your coworkers just dies at
7 work. It doesn't happen all the time.

8 Q Do you remember when the last time you saw Jose
9 before he died, when that was?

10 A Friday at work.

11 Q Friday at work?

12 A Uh-huh.

13 Q Was that -- that was -- that would have been
14 November 27th; is that right?

15 A Yes.

16 Q Around Thanksgiving time?

17 A Yes. I rent a beach house for the week of
18 Thanksgiving and invite my friends down that don't have
19 family so they don't have to spend Thanksgiving by
20 themselves. That week, we would always go to the rental
21 and have lunch. I wasn't working with Jose that Friday,
22 we were doing something different and Jose had stopped
23 by there because he knew my family, he knew my daughter,
24 my son, and some of my friends that were there. So he
25 stopped by the beach house to have lunch. I seen him

1 five o'clock after work. Went back, took everything
2 back to the shop.

3 Q Did Jose, how did he come to know your family?

4 A Through -- my family comes down to go fishing and
5 crabbing and stuff. He would always meet us down there.

6 Q Do you recall anything about his relationship with
7 any other members of your family that stood out to you?

8 A They all liked him. He thought my daughter was the
9 greatest thing. She was young. She was a kid.

10 Q About how old was she when Jose died?

11 A Maybe a teenager. No, when he died, she was
12 pregnant. She was 19.

13 Q So obviously you found out about his death, was it
14 on Sunday that you found out?

15 A Yeah, Sunday morning. It was before lunch. We
16 were waiting for my daughter to be released from the
17 hospital and the baby.

18 Q Did you every go and visit the scene out at 3402
19 Myrtle Street after he died?

20 A Monday. I went down there, Marion Whaley had
21 pulled up when I was there. I tied a black ribbon
22 around the palm tree.

23 Q Why did you do that?

24 A It's something a lot of people do.

25 Q Can you elaborate a little bit? It's something

1 people -- I mean --

2 A Jose used to tell me about things that they did in
3 Mexico. Like if someone died, they kind of made like a
4 memorial for them. Especially if it was somebody dear
5 to them. I just -- I thought it would be something
6 good.

7 Q When you went out on Monday the following day, was
8 there anything about this scene, anything you found at
9 the scene?

10 A The palm fronds were still there. There was a
11 burnt palm frond. I didn't know if the family had been
12 there, I didn't want the family to see it. I walked it
13 up, threw it on the bike path. There was palm fronds
14 everywhere. None of that had been cleaned up yet.
15 There was yellow tape coming in the walkway. That was
16 it.

17 Q Okay. I want to make sure I understand correctly.
18 You -- yellow tape, was that blocking off --

19 A Wherever it was at before, it was just like a piece
20 thrown on the ground there.

21 Q And I know you've been sitting in this courtroom
22 for a number of days here and listening to the
23 testimony, you've seen the pictures of the palm fronds
24 on the ground. I want to make sure I understand your
25 testimony.

1 You said a moment ago you found a burnt palm frond?

2 A Yes.

3 Q Where was that?

4 A In between the palm tree and the split rail fence.
5 The bike path.

6 Q Is this on the back of the property?

7 A Yes.

8 Q And what did you do with the burnt palm frond that
9 you found?

10 A I picked it up and I walked it up the bike path.

11 Q What was the reason behind that?

12 A I didn't want Jose's brother or Wendy seeing a
13 burnt palm frond there. It's just -- I don't know. I
14 didn't want them to see it.

15 Q Did you think it might upset them?

16 A I'm sure it would of.

17 Q And when you went out there on Monday, at any point
18 in time, did you ever see any power lines?

19 A No. I wasn't looking for them neither.

20 Q Had you been at that home doing landscaping?

21 A I have done that yard for 20 years. I been in that
22 yard plenty of times. I've trimmed the palm trees
23 myself.

24 Q And all that time you never known there were power
25 lines --

1 A No, I did not.

2 Q How would you, Ms. O'Brien, describe the growth,
3 trees, and vegetation in that area?

4 A The palm trees seem to grow fast. I mean, we cut
5 those trees every year, every fall. Mr. Jackson wanted
6 the palm trees cut. They're always cut in the fall
7 November/December.

8 Q Is that area along the bike path, is it an
9 overgrown area?

10 A It does get grewed up. Right now there's palm
11 fronds in the bottom line.

12 MR. PUGH: Objection, Your Honor. Move to strike.

13 THE COURT: I'm sorry.

14 MR. PUGH: I said I move to strike the last comment.
15 Talking about today.

16 THE COURT: All right. Sustain that. I'm going to
17 strike that last comment.

18 Q Ms. O'Brien, let me ask you this question. In
19 2015, November of 2015, at the time that Jose died, how
20 would you at that time have described the growth and
21 vegetation and palm trees in that area by the bike path?

22 A It was a jungle. It was growing up.

23 Q You've been doing landscaping I know in Edisto for
24 a long time, is it common in your experience for Edisto
25 to have overgrown trees around power lines like that?

1 A Yes.

2 Q Do you think that's a common condition out there?

3 A It does happen. They tend to grow quite fast.

4 Especially in September you get a lot of rain and stuff
5 is going to grow.

6 Q And I don't know whether you were here for the
7 earlier part of the trial, but there was some suggestion
8 that Jose had been trimming the trees at that property
9 dozens and dozens and dozens of times. Do you know
10 whether that's true or not?

11 A I don't think so. I know Larry had done the trees
12 in there a lot. Larry used to work with us, also.
13 Larry was a certified tree man. Jose learned a lot from
14 him. I don't know that Jose had ever done the trees in
15 that one yard.

16 Q You don't know if Jose had ever done the trees in
17 that --

18 A Ever trimmed the palm trees in that one yard
19 before. I know he had been in there while we were doing
20 them. I don't know that he had done them by himself in
21 there.

22 Q And at some point after Jose's death, do you know
23 whether that tree he was working on was later trimmed?

24 A It's been -- no, the tree itself, that week, later
25 on that week someone had come in and cut the top off of

1 it which eventually killed it. You can't cut the top
2 off of a palm tree and expect it to sprout out.

3 Q What's the affect of cutting the top off?

4 A It's going to kill it. It's going to die. It's
5 not trimming. It's writing a death sentence. You can't
6 cut the top off of a palm tree.

7 Q And you observed within a week of Jose's death that
8 somebody had topped the tree?

9 A It was later on that week. There was guys there.
10 We had went in to just do a cleanup. Because, I mean,
11 we left everything the way it was. I was still working
12 for Will Stevens. We left everything the way it was.
13 And it was either Thursday or Friday of that week, we
14 went to just cleanup the yard. Like, you know,
15 maintenance and there was two guys in there. They had
16 cut off the top of the palm tree in Mr. Jackson's yard
17 and left the stuff right there.

18 And on the bike path they also cut the top out of
19 one of the palm trees. Which that tree was still
20 standing there. It's dead, but it's still there.

21 Q It's dead because the top got cut off?

22 A Right.

23 Q Did you go back to work right after Jose's death?

24 A The following week.

25 Q Why didn't you go back to work right away?

1 A Well, shut the business down for a week. It was
2 too much for everybody.

3 Q What do you mean "it was too much for everybody"?

4 A One of our coworkers had just died. We were kind
5 of shook up.

6 Q And at some point after Jose's death, did you do
7 anything to try to assist his family?

8 A Yes. I put together a benefit fundraiser. We did
9 a dinner and a raffle to raise money to try to help send
10 Jose's body back to Mexico.

11 MR. DUFFY: May I approach, Your Honor?

12 THE COURT: Certainly.

13 (WHEREUPON, Plaintiff's Exhibit Number 8 was marked
14 for identification)

15 Q Ms. O'Brien, let me hand you what's been marked as
16 Plaintiff's Exhibit Eight for identification.

17 You just mentioned a moment ago you helped put
18 together a benefit fundraiser for the family?

19 A Yes, I did.

20 Q Can you tell us what this Exhibit Eight is?

21 A It's one of the fliers that we had put through the
22 island just to let people know what was going on. Those
23 that couldn't make it, they donated money. The stores
24 donated food, groceries, whatever we needed. Drinks.
25 Everybody kind of pitched in and then they came and

1 pigged out.

2 MR. DUFFY: Your Honor, if I may publish this to the
3 jury?

4 THE COURT: Yes, sir.

5 Q And that's the picture of Jose there in the middle;
6 is that right?

7 A That is. That's Jose.

8 Q So tell me, you said that the event was the
9 following week; is that right?

10 A Yeah. We gathered up stuff, had it at Will's shop.
11 A lot of people came. We had a fire. We had a local
12 that sings on the island. He came and played his guitar
13 and sang. A lot of the Mexican's that we didn't know
14 and they came. Everybody kind of supported each other.

15 Q Did you have to go out and seek people to give
16 contributions?

17 A No. People were finding us. You know, I'm all
18 over that island. I'm still all over that island. They
19 were stopping, you know, asking what do we need. They
20 wanted to donate plates, food, whatever. They kind of
21 found us. I never went begging for nothing. Everything
22 was donated because everybody liked Jose. Jose was a
23 good person.

24 Q And I want to ask you a little bit more about Jose.
25 Did you do you think Jose enjoyed being a part of the

1 Edisto community?

2 A He loved Edisto. He loved South Carolina. He was
3 into the history. He wanted to know more about the
4 parks in Columbia. The plantations. He was really
5 interested in the plantations. What they grew. When
6 they lived there and the houses that they lived in and
7 stuff like that. He was interested in it.

8 Q And I'm curious, do you speak Spanish, Ms. O'Brien?

9 A No.

10 Q I mean, I want to explain to the jury how you came
11 to know all these things about Jose and what it was that
12 he was interested in?

13 A Jose spoke good English. He was also taking
14 English classes at the school on Edisto. They had him
15 once or twice a week at Jane Edwards and he was taking
16 English classes.

17 Q He was taking English classes once or twice a week?

18 A Uh-huh.

19 Q How long had he been doing that?

20 A A while. I'm not really sure how long, but he had
21 been doing it for a while. Jose could speak good
22 English.

23 Q Jose could speak good English?

24 A He could speak good English, yeah.

25 Q And he talked to you about history, is that what

1 you were saying?

2 A Yeah. I would get him books. He would ask me to
3 find him books on this and books on that. I would find
4 him books at the flee market.

5 Q Do you know whether -- did Jose have a girlfriend
6 to your knowledge?

7 A He was seeing someone. I never met her. I didn't
8 know her. He would talk about her every now and then.
9 I didn't know her.

10 Q You talked a little bit about his relationship with
11 his niece Wendy, did you ever get a sense of, you know,
12 whether Jose wanted to have a family of his own?

13 A He did. He wanted to settle down and have a family
14 here. I can't tell you much about, you know, him and
15 his girlfriend. I didn't know her. Never met her.

16 Q Well, I'm curious what he said to you about --

17 A He wanted to settle down and have a family. He
18 wanted to have a better -- better here than in Mexico.
19 He didn't want to raise a family in Mexico and let the
20 children go through what he had to go through growing
21 up. He wanted a better life.

22 Q A better life, that's what you understood that to
23 mean?

24 A Yes.

25 Q And you mentioned, of course, earlier the support

1 that Jose was providing to his family. Did you -- how
2 about to his brother Gaspar and his niece Wendy?

3 A He was always helping out. They split rent and
4 most of them paid rent. I would get him fruit and
5 vegetables at the flee market. The flee market in
6 Ladson, they were big areas like Mexican food. I don't
7 even know what some of the stuff is. But I would always
8 get stuff for Jose. He would give me a list and I would
9 find the guy working there and I would give him a list
10 and he'd load up my truck.

11 Q You helped him run some errands and stuff like
12 that?

13 A Yes.

14 Q Do you think Jose would have made a good father?

15 A Most definitely. He loved children. He loved life
16 himself. He was a happy camper. He enjoyed living.

17 Q Is that your sense of --

18 A That's me knowing Jose.

19 Q That's --

20 A He was a happy camper.

21 MR. DUFFY: Your Honor, if I may take up something
22 real quick before --

23 (Bench conference)

24 MR. DUFFY: Your Honor, at this time, I would like
25 to move Plaintiff's Eight which is marked for

1 identification.

2 THE COURT: That was the photo you just showed me?

3 MR. DUFFY: Yes, Your Honor.

4 THE COURT: All right. Plaintiff's Eight -- I'm
5 sorry. Yeah, I think that's right. All right. Without
6 objection?

7 MR. PUGH: None.

8 THE COURT: Plaintiff's Eight without objection.

9 (WHEREUPON, Plaintiff's Exhibit Number 8 was
10 entered)

11 Q Ms. O'Brien, at some point after Jose's death, are
12 you aware of a memorial that was built in his honor?

13 A Yes. It was a concrete bench. I put it on the
14 other side of the split rail fence. I asked his brother
15 first. We put it out there for them to kind of gather
16 and leave their treasures and trinkets and stuff like
17 that when they come to pray to Jose.

18 Q And let me just go ahead and hand you what's been
19 marked as Plaintiff's Exhibit Nine.

20 (WHEREUPON, Plaintiff's Exhibit Number 9 was marked
21 for identification)

22 Q Is that what you're describing?

23 A Yes.

24 MR. DUFFY: I'd like to go ahead and move that into
25 evidence at this time, Your Honor.

1 THE COURT: That's Eight and Nine?

2 MR. PUGH: No objection.

3 THE COURT: Eight and Nine without objection.

4 (WHEREUPON, Plaintiff's Exhibit Number 9 was
5 entered)

6 Q And, Ms. O'Brien, where is that located?

7 A On the other side of the split rail fence at
8 Mr. Jackson's bike path.

9 Q Do people -- to your knowledge do people still
10 visit that site?

11 A Yes, they do.

12 Q Ms. O'Brien, I appreciate your time. Thank you.

13 THE COURT: All right. Cross examination?

14 CROSS EXAMINATION BY MR. PUGH:

15 Q Good afternoon. Ms. O'Brien, first, sorry about
16 the loss of your friend. Jose was your friend; right?

17 A Yes, he was.

18 Q And y'all worked together for a number of years,
19 you told us about that; right?

20 A Yes.

21 Q And this property, do you call it the Jackson
22 property, is that what you refer to it as?

23 A Yeah, the house belongs to Mr. Jackson. I've known
24 him for 20 years. It's just -- sometimes it was easier,
25 the guys can't remember numbers and names and stuff.

1 And sometimes names are easier than numbers to remember.

2 Q Of course.

3 A And vice versa.

4 Q And you yourself have done work in that -- or on
5 that property for how many years?

6 A Twenty something.

7 Q Okay. Always for Mr. Jackson?

8 A No. I worked for Fox Landscaping.

9 Q No. No. No. Mr. Jackson was the owner?

10 A Mr. Jackson owned the house, yes.

11 Q Right. And you worked for Fox and then you went to
12 work for Will Stevens?

13 A Right.

14 Q And now you continue to do work out on Edisto for
15 your own company; right?

16 A Right.

17 Q And how many times a year do you think that you
18 work at the Jackson property?

19 A Every other week. And we trim the palm trees once
20 a year, in the fall.

21 Q And you yourself had trimmed that -- what we're
22 talking about is this specific tree. I'll show you what
23 I've marked as Defendant's Exhibit Number One. You
24 yourself have previously trimmed this tree in the
25 center; correct?

1 A Yes, sir.

2 Q How many times have you trimmed that tree in the
3 past, over 20 years?

4 A Yes.

5 Q Do you know how long these power lines have been
6 back here in the right-of-way?

7 A I have no idea.

8 Q A long time?

9 A I imagine so.

10 Q Yes, ma'am. And so you were never injured doing
11 any work at Mr. Jackson's property, were you?

12 A No, I was not.

13 Q You were never shocked or had anything happen to
14 you when you -- 20 times or so went up in that tree;
15 correct?

16 A No.

17 Q And you said that a gentleman named Larry, what is
18 Larry's last name?

19 A Larry Simmons.

20 Q Simmons?

21 A Uh-huh.

22 Q Is that a YES?

23 A Yes.

24 Q And Larry was, I think you used the -- he was a
25 certified tree man?

1 A Right.

2 Q And Mr. Larios was not a certified tree man?

3 A No, he was not.

4 Q But he had been doing the work for a number of
5 years?

6 A Yes.

7 Q And kind of learning from Larry, is what you said?

8 A Yes.

9 Q And you just don't know one way or the other
10 whether Mr. Larios had previously trimmed this tree
11 we're talking about or not, do you?

12 A No, I do not know.

13 Q Do you know if Will Stevens had ever trimmed that
14 tree?

15 A Yes, he has.

16 Q How many times do you think Will Stevens has
17 trimmed that tree?

18 A More than I have.

19 Q All right. Have you ever -- let me ask you this.
20 I'm talking now about when Mr. Stevens' company that you
21 work for was doing the work at the Jackson property. Do
22 you know how much Mr. Stevens was charging Mr. Jackson
23 that every two weeks?

24 A Not really, no.

25 Q Okay. And that was my question. You weren't in

1 charge of that billing?

2 A No, I had nothing to do with his money.

3 Q I got you. Did you have anything to do with
4 getting those bills paid through somebody whether it's
5 Mr. Jackson or somebody else?

6 A Through Will. No, I had nothing to do with Will's
7 bookkeeping or none of that.

8 Q All right. You never contacted anybody at the
9 power company about these lines back here that we're
10 looking at in the right-of-way, did you?

11 A No, I did not.

12 Q And there are also -- this property is at the
13 corner of Louis Street and Myrtle; is that correct?

14 A Yes.

15 Q And so what we have is, if you look here you see
16 this vehicle parked right here, you see that?

17 A Yes.

18 Q Okay. That's on Louis Street; right?

19 A Correct.

20 Q It runs kind of on the other side of this gazebo --

21 A Yes.

22 Q -- across the bike path back toward the beach;
23 correct?

24 A Yes.

25 Q Okay. And then in front of the house is Myrtle

1 Street; right?

2 A Right.

3 Q And there is a power pole, a utility pole, in the
4 front yard of 3402 Myrtle Street; correct?

5 A Right.

6 Q And there are power lines that run along Louis
7 Street and tie in back here with this line that we're
8 looking at; correct?

9 A I don't know that.

10 Q You don't know whether there are lines right here
11 along Louis Street?

12 A No, I do not.

13 Q Okay. Just don't know one way or the other?

14 A No, I don't know if they are or not.

15 Q Okay. You told us, I think, I may have not written
16 it down correctly. You told us that you went out after
17 learning of your friend's death, you went out the next
18 day; correct?

19 A Yes. I was at the hospital on Sunday when I came
20 back to Edisto, Monday I went out to the yard.

21 Q Right. And I want to be clear, what you found when
22 you went out there was a burnt palm frond?

23 A Yes.

24 Q It was a palm frond?

25 A Yes.

1 Q And you said it was burnt; correct?

2 A It had a burn mark on it. The whole palm frond was
3 not burnt, just a burn mark.

4 Q Okay. Out on the edge or where was this burn mark?

5 A I'm not really sure. I don't know. It was a brown
6 frond like it could have been a bottom frond.

7 Q Like a bottom frond?

8 A Like palm fronds when they start browning out they
9 start from the bottom. You don't normally see a top one
10 brown out. They do it from the bottom.

11 Q Got it. And that's what we're talking about with
12 trimming, we're trimming from the bottom?

13 A Right.

14 Q And so this frond that you found on Monday was
15 lying between this split rail fence that we see here and
16 the bike path; correct?

17 A Right.

18 Q And you picked it up and you put it on the bike
19 path; right?

20 A Me and a friend was walking up the bike path and I
21 still had the frond in my hand and I just sat it down on
22 the other side of Louis Street behind a bed. A flower
23 bed along the backside.

24 Q Okay. So you were walking down this way toward the
25 gazebo?

1 A That way.

2 Q This way?

3 A No, that way. The bike path is this way.

4 Q Okay. So you're walking away from the gazebo down
5 the bike path; correct?

6 A No, that way.

7 Q Okay.

8 JURORS: Towards the cars.

9 A Yeah, towards the cars over there.

10 Q Thank you. Toward the cars where you're walking;
11 correct?

12 A Yes, sir.

13 Q And you put this palm frond out here at the street
14 so it would get picked up with the rubbish; correct?

15 A Right.

16 Q Do you know where that palm frond came from?

17 A No, I don't.

18 Q Okay. Do you know what happened to it?

19 A No, I don't. I never went back to see if it was
20 still there.

21 Q Do you know how long it was?

22 A How long?

23 Q Did you take any measurements of it?

24 A Nope. It was green. It was -- I mean, it was
25 brown. It was a palm frond. I don't know how long it

1 was.

2 Q I got you. Ms. O'Brien, thank you very much.

3 That's all the questions I have for you.

4 MR. PUGH: Nothing further, Your Honor.

5 MR. DUFFY: Nothing further from us, Your Honor.

6 THE COURT: Thank you. You may step down. All
7 right. Ladies and gentlemen, these gentleman wanted to
8 keep you here all night and I told them, no. (Laughter)
9 I'm just kidding. As a matter of fact, that's what we
10 were talking about and all the attorneys agree that
11 maybe break -- this might be a good breaking time for
12 today. We kept you here late a couple of nights, we're
13 going to break a little early today.

14 So, if you would, again, continue what you've been
15 doing and everything that you can do to keep yourselves,
16 you know, able to remain fair and impartial. Don't
17 allow anyone to talk with you, influence you in any
18 fashion.

19 If you be back in the morning at 9:30 we'll get
20 started once you're all are here we'll get started where
21 we left off. Ladies and gentlemen, have a good evening,
22 we'll see you in the morning.

23 (The jury left the courtroom at 4:42 p.m.)

24 THE COURT: Are we ready to put these matters on the
25 record?

1 THE COURT: She is coming. Okay. Juror 72, Darrell
2 Gant, have we tried to reach him? Madam clerk, have we
3 tried to reach --

4 THE CLERK: I was not aware there was a --

5 THE BAILIFF: Mr. Gant we just found out.

6 THE CLERK: Okay. Do I need to go downstairs and
7 check with Sharon?

8 THE COURT: This is his number here?

9 THE BAILIFF: That's his phone number.

10 THE COURT: Let me try calling him.

11 (Calling Mr. Gant)

12 (On the phone with Mr. Gant)

13 THE COURT: He is about three minutes away he said.
14 And Ms. Williams is in route. So, we'll just be at ease
15 then, I guess, unless there's anything else we need to
16 take up? But they're going to let us wait on them now.

17 It's only fair. We can just be at ease. Y'all can
18 relax. I'm not going to go back into chambers. I'm
19 just going to hang out.

20 (Off the record)

21 THE COURT: All right. Let's bring the jury out.

22 (The jury entered the courtroom at 9:56 a.m.)

23 THE COURT: Thank you, folks, you may have a seat.
24 I just want the record to be clear, we were waiting to
25 go at 9:30. (Laughter) And let me take that back

1 because I pride myself in being an honest person. We
2 were ready to go at 9:35. Okay.

3 But, ladies and gentlemen, we are ready to continue.
4 We were on the plaintiff's case when we rested and so
5 we're going to pick up where we left off. We recognize
6 the plaintiff for their next witness.

7 MR. APPLGATE: Thank you, Your Honor. We'd call
8 SCE&G, Mark Branham.

9 THE COURT: Sir, if you'd please come around to be
10 sworn.

11 MARK BRANHAM,
12 being first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION BY MR. DUFFY:

15 Q Mr. Branham, good morning.

16 A Good morning.

17 Q Can you tell us what your occupation is?

18 A I'm a supervisor of vegetation management.

19 Q And who is your employer?

20 A Dominion Energy.

21 Q SCE&G/Dominion; right?

22 A That's correct.

23 Q And you've been here all week in trial, haven't
24 you, Mr. Branham?

25 A Yes.

1 Q You've heard all these witnesses testify; right?

2 A Yes.

3 Q And you been deposed in this case as well, haven't
4 you?

5 A I have.

6 Q You were the one, in fact, handpicked by the
7 defendant SCE&G as the voice of the company; isn't that
8 right?

9 A As a 30(b)(6) witness, yes, sir.

10 Q And all the answers you gave in your deposition,
11 those were the answers of SCE&G; right?

12 A Yes.

13 Q Everyone at SCE&G is looking to you to testify in
14 this trial as the company; right?

15 A Yes.

16 Q Mr. Branham, we've heard a lot this week about
17 vegetation management. And vegetation management,
18 that's simply the practice of clearing and trimming
19 trees or branches so that power lines -- overhead power
20 lines of SCE&G are free and clear; right?

21 A Yes. And it also involves some other aspects.

22 Q Some things like herbicide maybe and some growth
23 retardants; is that right?

24 A Herbicide maintenance, yes, sir.

25 Q And you'd agree with me, Mr. Branham, wouldn't you,

1 that SCE&G's responsibility is to provide separation
2 between its power lines and the adjacent vegetation?

3 A We do provide separation.

4 Q That's SCE&G's responsibility, isn't it?

5 A Yes.

6 Q Vegetation management is a critical component of
7 SCE&G's business, isn't it?

8 A Yes.

9 Q And, in fact, Mr. Branham, the number one purpose
10 of vegetation management is to protect the public and
11 SCE&G employees and keep them safe; right?

12 A Yes. Safety and reliability is extremely
13 important.

14 Q Safety is the number one reason, isn't it?

15 A And reliability, you know, they both can go hand in
16 hand.

17 Q And that's because, Mr. Branham, trees and limbs
18 growing near or into power lines can create a hazard;
19 right?

20 A They can create a hazard.

21 Q Vegetation growing into power lines can threaten
22 the safety of the public, can't it?

23 A It potentially could, yes, sir.

24 Q And that's because it can cause a risk of
25 electrical shock; right?

1 A You know, the risk there, you know, if an
2 unqualified person puts himself in a position within 10
3 feet of a power line, there could be a significant risk
4 there.

5 Q Mr. Branham, my question was, a risk of electrical
6 shock is a known risk by SCE&G of vegetation and trees
7 growing into power lines; is that right?

8 A There could potentially be a risk there. But just
9 because a tree is on the power line does not mean
10 there's a risk of shock there.

11 Q Mr. Branham, you recall I took your deposition in
12 this case; right?

13 A Yes.

14 Q Have you reviewed that deposition?

15 A I have.

16 Q And one of the other risks created an additional
17 electric shock is the risk of fire if vegetation grows
18 into power lines; isn't that right?

19 A Yes, sir.

20 Q Mr. Branham, certainly you'd agree with me that the
21 electricity that SCE&G/Dominion pumps through its wires
22 is incredibly dangerous; right?

23 A Yes.

24 Q It's deadly and it can kill people, can't it?

25 A It can.

1 MR. DUFFY: If I may approach, Your Honor?

2 THE COURT: Yes, sir.

3 (WHEREUPON, Plaintiff's Exhibit Number 10 was marked
4 for identification)

5 Q Mr. Branham, I'd like to hand you what's been
6 marked as Plaintiff's Exhibit Ten for identification
7 purposes. Could you please tell the jury what that is?

8 A This is a PowerPoint titled, "Utility Pruning of
9 Trees."

10 Q And this is a presentation you put together, isn't
11 it?

12 A Yes.

13 Q And this is a presentation that was given to the
14 Edisto Beach town counsel; right?

15 A Yes.

16 MR. DUFFY: And, Your Honor, at this time I'd like
17 to move to have Plaintiff's Exhibit Number Ten admitted
18 into evidence.

19 THE COURT: Any objection to Plaintiff's Ten?

20 MR. PUGH: None, Your Honor.

21 THE COURT: All right. Without objection
22 Plaintiff's Ten is in evidence.

23 (WHEREUPON, Plaintiff's Exhibit Number 10 was
24 entered)

25 Q And, Mr. Branham, this is SCE&G's explanation to

1 the members of the community about how SCE&G performs
2 vegetation management, isn't it?

3 A Yes.

4 Q If I could get you to look at page 3, Mr. Branham.
5 Do you see that there?

6 A Yes, sir.

7 Q And that says that SCE&G's minimum clearing specs.
8 The third row I want to point out. "Clearing
9 specs-Trees trimmed a minimum of 10 feet below, 10 feet
10 to the side, and at least 10 feet above primary lines;"
11 isn't that right?

12 A At least 20 feet above.

13 Q Excuse me. Twenty feet above. Now, those minimum
14 clearances, those apply to primary/neutral lines;
15 correct?

16 A Yes.

17 Q And if, Mr. Branham, you would, please turn to the
18 next page, page 4. And that slide is titled, "Why does
19 SCE&G prune trees;" is that right?

20 A That's correct.

21 Q The number one reason listed is:

22 "Ensure public safety-utility vegetation
23 maintenance reduces electrical hazard risk to the public
24 by:

25 Providing separation between wires and vegetation

1 to eliminate potential electrical shock;" isn't that
2 right?

3 A Yes.

4 Q Number one reason is to ensure public safety; isn't
5 it?

6 A I mean, you know, provide safety and reliable power
7 and like I said, they go hand in hand.

8 Q Number one is public safety, isn't it?

9 A Yes, sir.

10 Q Number two is reliable power?

11 A Yes, sir.

12 Q And, in fact, down below reliable power it says:

13 "Trees are among the most common cause of outages."

14 Then it goes on to say:

15 "SCE&G is proactive and prunes trees BEFORE they
16 pose a risk;" isn't that right?

17 A Yes.

18 Q Now, SCE&G trims trees on a five-year cycle; isn't
19 that right?

20 A Yes.

21 Q And if you'll turn to page 7. That's what's
22 discussed there, is it not?

23 A Yes.

24 Q Once every five years a particular area is visited;
25 right?

1 A Yes. So every project we have is on a five-year
2 cycle.

3 Q And it also says there in this presentation that
4 you gave to the Edisto town counsel that:

5 "It's possible SCE&G will conduct 'mid-cycle'
6 pruning for vegetation conditions that won't hold cycle
7 or for maintenance purposes;" isn't that right?

8 A Right.

9 Q And mid-cycle trimming you also call that "spot
10 trimming," don't you?

11 A Correct.

12 Q And "won't hold cycle," that just means that the
13 vegetation will not hold until five years comes around;
14 isn't that right?

15 A When we talk about not holding cycle, we talk
16 about, you know, a situation where it's causing outages
17 -- reoccurring outages.

18 Q So you're telling me that SCE&G only performs
19 vegetation management on vegetation if it won't hold
20 cycle if it causes an outage?

21 A Right. A lot of times we'll have a request to trim
22 a tree that's close to the line, but for spot trimming
23 and we look at outage data, but if it's not causing
24 reoccurring outages, that's not a candidate for spot
25 trimming.

1 Q You said somebody's got to call in and request,
2 there's got to be some outages; is that your testimony?

3 A Or we could have some data that shows the outage
4 history.

5 Q SCE&G's reacting to the data, is that what you're
6 telling me?

7 A I'm not sure about that.

8 Q Well, earlier --

9 A So if we have a condition that's causing
10 reoccurring outages, that would be a situation where we
11 would go do a spot trim.

12 Q And, Mr. Branham, isn't it also true that one of
13 the reasons for spot trimming or mid-cycle trimming is
14 to ensure safety?

15 A Potentially, yes, sir.

16 Q Okay. That's one of the reasons, isn't it?

17 A Yes.

18 Q Now, Mr. Branham, SCE&G has an entire forestry
19 department, doesn't it?

20 A Vegetation management, yes, sir.

21 Q Okay. And the corporation spends millions of
22 dollars every year on vegetation management; right?

23 A I don't know the exact number, but I know it's a
24 very significant amount of money.

25 Q It's in the millions, isn't it, Mr. Branham?

1 A Yes, sir.

2 Q And with all that institutional knowledge,
3 Dominion/SCE&G -- SCE&G/Dominion knows that not all
4 species of trees are going to grow at the same rate;
5 isn't that right?

6 A Yes. Some trees have different growth rates.

7 Q And yet even though SCE&G knows that, the cycle is
8 the same for a project regardless of the tree species;
9 isn't that also right?

10 A Yes. They're all on five-year cycles for
11 distribution.

12 Q Once every five years regardless of its species for
13 growth rate; right?

14 A Yes.

15 Q And that's true for Edisto Beach; isn't it?

16 A Yes.

17 Q Same thing is true for all SCE&G service area?

18 A Five-year cycle for everything, yes, sir.

19 Q And we looked earlier, Mr. Branham, SCE&G's minimum
20 clearances, minimum clearances requiring that trees and
21 vegetation be trimmed back to 10 feet or either side of
22 these power lines; right?

23 A Yes, but we also have exemptions to those
24 clearances.

25 Q Exceptions to the clearances; is that what you

1 said?

2 A Yes.

3 Q Yeah. And if there's an exception to the clearance
4 or something like that, SCE&G can't just put it's head
5 in the sand, they got to go out and talk to the
6 homeowner and rectify that problem, don't they?

7 A The problem of?

8 Q If there's some claim by SCE&G that there's an
9 exemption out applicable?

10 A (No response)

11 Q Is that a YES?

12 A I thought you -- I'm still waiting on the question.

13 Q Mr. Branham, my question is: Just because there
14 may be an exemption, that doesn't absolve SCE&G of its
15 responsibility to maintain separation between its lines
16 and vegetation, does it?

17 A No. We still maintain separation, but there is an
18 exemption to our clearances.

19 Q And if palm fronds or branches are within SCE&G's
20 clearances, those would have to be trimmed; correct?

21 A Yes.

22 Q And under these rules, we'll look at here in a
23 minute, SCE&G's own policies, palm trees are treated no
24 differently than other trees; right?

25 A Yes.

1 Q And now after being trimmed, SCE&G knows that some
2 vegetation is going to react differently to its growth
3 rates, doesn't it know that?

4 A Yes. The growth rates are different, but we know
5 that all trees after we, you know, go through on a spot
6 during our five-year cycle trim, we know that those
7 trees are going to grow back.

8 Q SCE&G knows they're going to grow back in the
9 lines?

10 A Yeah, we know that the trees do grow after we trim
11 them. That's why we're on the cycle.

12 Q And in fact, Mr. Branham, problems with trees
13 encroaching on distribution lines in the right-of-way
14 like behind 3402 Myrtle Street, those problems can
15 actually happen really fast; right?

16 A Yes. Vegetation can grow very fast.

17 Q And so some trees may not hold for whatever cycle
18 SCE&G has designated as applicable?

19 A Some trees do not.

20 Q Mr. Branham, you would agree with me that SCE&G has
21 a duty to reasonably inspect its power lines to make
22 sure they're clear, doesn't it?

23 A Yes.

24 Q But, in fact, SCE&G only inspects its lines once
25 every five years after the cycle trim is performed;

1 right?

2 A As part of the project we inspect it every five
3 years, but we always have people out in the field, you
4 know, looking at lines.

5 Q And your testimony is that linemen are out there
6 looking at lines constantly inspecting for vegetation
7 management; is that your testimony?

8 A If they see a situation out in the field, yes, they
9 address it.

10 Q Mr. Branham, you're the SCE&G handpicked witness in
11 this case, have you reviewed the testimony of other
12 witnesses from SCE&G linemen in particular?

13 A I have not reviewed linemen testimony.

14 Q Would it surprise you to learn that linemen don't
15 believe their job is to inspect for vegetation
16 management?

17 A Yes, that would surprise me. Because they're out
18 in the field and they're working on trees all the time
19 and it's a very common situation.

20 Q You testified a moment ago, Mr. Branham, that SCE&G
21 conducts its inspections after the cycle trim; right?

22 A Yeah. We have field inspections and we have final
23 inspections. So during the project, we will ride around
24 and take a look at the work and then after the
25 contractor turns a project in and after a contractor

1 rides in and says it's complete, we'll do a final
2 inspection.

3 Q You say field inspection, final inspection, those
4 are happening after the five-year cycle trim; isn't that
5 right?

6 A That's right. One is --

7 Q There is no inspection done by, Mr. Branham, six
8 months after the cycle trim; isn't that right?

9 A I mean, it could be. I mean, typically our final
10 inspection is done shortly after. But to give you an
11 exact date, I'm not sure of exact date or timeframe.

12 Q Mr. Branham, you do recall that I took your
13 deposition on Wednesday, May 22, 2019, don't you?

14 A Yes.

15 MR. DUFFY: Madam court reporter, will you unseal
16 Mr. Branham's transcript for me, please.

17 (Ms. Spires complies)

18 Q Mr. Branham, let me hand you a copy of your
19 transcript which was taken on May 22, 2019. Do you
20 recall that date?

21 A Yes, sir.

22 Q And I was there and you were there; right?

23 A Yes.

24 Q And you swore an oath to tell the truth, didn't
25 you?

1 A I did.

2 Q If I could, Mr. Branham, I'd like you to look at
3 page 53 of your deposition.

4 A Okay.

5 Q And I'm asking you at this point in time
6 inspections that SCE&G has performed. And I'd like you
7 to read, Mr. Branham, page 53, line 6 for the jury.

8 A "Doesn't happen six months later or a year later;
9 right?"

10 Q And what was your answer to that?

11 A "No."

12 Q And how about the next question?

13 A "Not two years later?"

14 Q And your answer to that?

15 A "No."

16 Q So SCE&G does not perform an inspection of its
17 lines six months later, a year later, or even two years
18 later after the cycle trim; isn't that right?

19 A Like I said, it could happen shortly after. I
20 can't give you an exact timeframe of when that occurs
21 because --

22 Q Well, Mr. Branham, your testimony --

23 A -- it depends on workload and a lot of other
24 things.

25 Q And your testimony at the time of your deposition

1 was, no, that does not happen; isn't that right?

2 A That's right. Typically it's shortly after, but a
3 contractor finishes a contract section.

4 Q And, again, you're talking about the inspection
5 associated with approval of the cycle trim; right?

6 A That's right.

7 Q Mr. Branham, are you aware -- excuse me. You're
8 not aware of any record in this case that demonstrates
9 that SCE&G ever performed an inspection of the area
10 behind 3402 Myrtle Street between February 2013 cycle
11 trim and November 29, 2015 when Mr. Larios died, are
12 you?

13 A There wouldn't have been an inspection done by a
14 forester.

15 Q Mr. Branham, again, my question is, you're not
16 aware of any record that demonstrates after the cycle
17 trim inspection was done in February of 2013 and when
18 Mr. Larios died in November, any record that
19 demonstrates an inspection was done by SCE&G in that
20 time period?

21 A We would have a record on what's called a "veg-man
22 program." That's a GIS program that basically shows the
23 completed work the contractor has done and then we use
24 that same program to go out and inspect the work.

25 Q And, Mr. Branham, maybe I'm not -- maybe we're on a

1 different waive lengths here. You're talking about the
2 inspection that's done following the five-year cycle
3 trim; is that right?

4 A Yes.

5 Q Okay. And I'm talking about after the inspection
6 to approve the work of the five-year cycle trim.

7 There's not a single record in this case that
8 demonstrates that SCE&G/Dominion ever inspected the
9 lines behind 3402 Myrtle Street, is there?

10 A Yeah, I'm not sure if we have a record like that.

11 Q You're not aware of one?

12 A I'm not.

13 Q One's not been produced in this case that you know
14 of?

15 A To my knowledge, no, sir.

16 Q And just to be clear, Mr. Branham, there's nothing
17 that would have prevented SCE&G from doing another
18 inspection behind 3402 Myrtle Street, for example, once
19 a year; right?

20 A You know, if we were having issues on that line or
21 if we had some outage data that would show an occurring
22 outages, yes, we could have done an inspection there.

23 Q My question is, there's nothing that would have
24 prevented SCE&G from inspecting this line once a year;
25 is there?

1 A Oh, no, sir.

2 Q And there's nothing that would have prevented SCE&G
3 from doing spot trimming as we see that they say they do
4 once a year out there, is there?

5 A No.

6 Q SCE&G could have done both of those things; right?

7 A If there was a need, yes, sir.

8 Q I'm talking about whether they could have done it?

9 A Yes, they could have done it.

10 (WHEREUPON, Plaintiff's Exhibit Number 11 was marked
11 for identification)

12 Q Mr. Branham, let me go ahead and hand you what's
13 been marked as Plaintiff's Exhibit Eleven.

14 Are you familiar with that document there,
15 Mr. Branham?

16 A Yes.

17 Q And this is something that we've heard about all
18 week which is ANSI; isn't that right?

19 A Yes.

20 Q ANSI is the American National Standards Institute;
21 correct?

22 A Yes.

23 Q And this is the ANSI A300 tree shrub and other
24 woody plant management document; right?

25 A Yes.

1 Q And these are guidelines and standard that
2 SEC&G/Dominion has adopted, hasn't it?

3 A Yes.

4 Q Mr. --

5 MR. DUFFY: Judge, at this time I'd like to move
6 Plaintiff's Eleven into evidence, please.

7 THE COURT: Any objection?

8 MR. PUGH: None.

9 THE COURT: Plaintiff's Eleven without objection.

10 (WHEREUPON, Plaintiff's Exhibit Number 11 was
11 entered)

12 Q And, Mr. Branham, ANSI, they publish industry wide
13 best practices for utility companies when it comes to
14 vegetation management; correct?

15 A Yes. It's an industry wide consensus.

16 Q And, if you would, Mr. Branham, I'd like to cover a
17 few -- just a few points in here with you. The first
18 one is down here at the bottom of page -- looks to be
19 marked as page 1. Do you see that, "Reasons for
20 pruning"? 2.2.

21 A Yes.

22 Q Okay. And what it says there is:

23 "The reasons for tree pruning may include, but are
24 not limited to, reducing risk, managing tree health and
25 structure, improving aesthetics, or achieving other

1 specific objectives;" right?

2 A Yeah.

3 Q The number one reason is reducing risks; isn't that
4 right?

5 A Yeah. It says:

6 "The reasons for tree pruning may include, but are
7 not limited to, reducing risk, managing tree health and
8 structure, improving aesthetics."

9 Q The first one listed is risk, isn't it?

10 A First one listed is risk.

11 Q And that would include the risk of electric shock;
12 right?

13 A I mean, that could include a lot of risks.

14 Q I'm asking you whether it includes the risk of
15 electrical shock?

16 A I think it could.

17 Q And then, Mr. Branham, if you would, look at --
18 ahead to section 8.1.

19 A Got it.

20 Q You see that there? In fact, this document here
21 has a section specifically with dealing with palm
22 pruning, doesn't it?

23 A Yes.

24 Q And the first thing listed under palm pruning is
25 that:

1 "Palm pruning should be performed when fronds,
2 fruit, or loose petioles may create a dangerous
3 condition;" right?

4 A Yes. But I also want to note this is not in the
5 utility pruning section.

6 Q Are you telling me that SCE&G has not adopted or
7 does not apply these best practices listed here about
8 palm pruning?

9 A We have.

10 Q So that would apply to SCE&G's practices; right?

11 "Palm pruning should be performed when fronds,
12 fruit, or loose petioles may create a dangerous
13 condition;" right?

14 A Mainly what applies is on 8.3 with the "Exception:
15 That palms encroaching on electric supply lines." So
16 when we come through, you know, we trim those back as
17 part of our five-year cycle.

18 Q And that 8.3 says:

19 "Live, healthy fronds above the horizontal should
20 not be removed;" right?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q And then it goes on, it says there's an exception
25 to not removing them. And that says, when palms are

1 encroaching on electric supply lines; correct?

2 A Right. "Exception: Palms encroaching on electric
3 supply lines."

4 Q And that would include the lines that run behind
5 3402 Myrtle Street, wouldn't it?

6 A Yes.

7 (WHEREUPON, Plaintiff's Exhibit Number 12 was marked
8 for identification)

9 Q Mr. Branham, do you recall in your deposition that
10 we looked at some photographs together?

11 A Yes.

12 Q I'd like to go ahead and hand you what's been
13 marked for identification purposes as Plaintiff's
14 Exhibit Number Twelve. Have you seen that document
15 before, Mr. Branham?

16 A Yes.

17 Q Is it your understanding that that's a photograph
18 taken behind 3402 Myrtle Street?

19 A Yes.

20 MR. DUFFY: Your Honor, I'd like to move Plaintiff's
21 Twelve into evidence at this time.

22 THE COURT: Any objection?

23 MR. PUGH: None, Your Honor.

24 THE COURT: Without objection, Plaintiff's Twelve.

25 (WHEREUPON, Plaintiff's Exhibit Number 12 was

1 entered)

2 Q And I just want to ask you, Mr. Branham, the only
3 thing I want to ask you about this photograph is what I
4 asked you before at deposition which is, that photograph
5 right there, as depicted in that photograph, that
6 vegetation is nowhere near 10 feet away from SCE&G's
7 utility line depicted there, is it?

8 A Right. It appears it's closer than 10 feet.

9 Q And 10 feet is the minimum clearance SCE&G adopts;
10 isn't that right?

11 A Yes. At the time the trimming, you know, along
12 with those exceptions. But at the time of trimming we
13 require 10 feet to the side of the primary, but there
14 could be some exceptions to that rule.

15 Q And, Mr. Branham, when SCE&G has exceptions to that
16 rule, it's documented somewhere, isn't it?

17 A It is not documented.

18 Q SCE&G doesn't document when trees or vegetation are
19 growing within 10 feet of its power lines and it says it
20 can't do anything about it?

21 A No. We perform that final inspection and that's
22 when we look at all the work.

23 Q And that's the final inspection that's done after,
24 right after the five-year trim cycle; right?

25 A Yes.

1 Q Not done six months later; right?

2 A Yes.

3 Q Not a year later?

4 A No.

5 Q Not two years later?

6 A No.

7 Q Not until five years comes by again; right?

8 A No. The final inspection happens shortly after the
9 contractor turns it in as complete.

10 Q Mr. Branham, I know a lot of utilities do aerial
11 trimming with helicopters, is that something SCE&G has
12 done?

13 A We have.

14 Q Okay. And how about drones, a lot of companies are
15 using drones now for certain areas of inspection, is
16 SCE&G doing that?

17 A I'm not really sure about that. I have not been
18 involved with any drone work.

19 Q Aerial trimming, is that done with a helicopter?

20 A Yes.

21 Q SCE&G has it's own helicopter?

22 A No.

23 Q But it rents them and goes out and it drops saws
24 down from them and trims trees, doesn't it?

25 A Yes.

1 Q Mr. Branham, I just want to confirm your
2 understanding of the evidence in this case.

3 The tree that Mr. Larios was trimming which is
4 depicted here in Plaintiff's Exhibit Twelve. That tree
5 is not on an exception log or a refusal log or anything
6 of that sort at SCE&G, is it?

7 A To my knowledge, no.

8 MR. DUFFY: Court's indulgence just a moment.

9 (Pause)

10 MR. DUFFY: Your Honor, thank you.

11 THE COURT: Yes.

12 Q Now, Mr. Branham, again, going back briefly to this
13 story about inspection -- or exceptions and did you call
14 it exemptions?

15 A Yes.

16 Q At times, if there's an exemption, the only thing
17 to do is to remove the tree; isn't that right?

18 A A lot of times if there's a significant size trunk
19 located within our 10-foot clearance, we don't have to
20 remove the tree. Or cut the tree in half in that case.

21 Q Let me make sure I understand. If there's a trunk
22 that's within 10 feet of SCE&G's power line, SCE&G
23 doesn't care that it's close or growing into the power
24 line and it doesn't have to remove it or trim it or
25 anything like that?

1 A We do the side trimming, but a significant size
2 trunk within that 10-foot clearance, that can be an
3 exception.

4 Q Okay. And side trimming, you're talking about
5 pruning half the tree off and leaving the other half to
6 grow away from the utility line; isn't that correct?

7 A Yes.

8 Q And that's because you've got to direct growth away
9 from the power lines?

10 A That's just providing our separation.

11 Q Right. You have to direct the growth away from the
12 power lines to give the separation that's needed;
13 correct?

14 A Yeah. We trim the vegetation on the line side back
15 to the main trunk.

16 Q And the reason for that is because if the tree
17 branches or the limbs or the palm fronds grow into the
18 power line, it creates a hazard?

19 A It does. But we also recognize that after we trim,
20 that vegetation can grow back and that's why we have
21 these cycles.

22 Q SCE&G knows that after it comes and trims a tree,
23 some are going to grow back very quickly into the lines
24 is what you're telling; correct?

25 A Yes. We know the trees will grow back.

1 Q And that's exactly the reason or the scenario in
2 which spot trimming or mid-cycle trimming is warranted,
3 isn't it?

4 A When it's causing reoccurring outages, yes.

5 Q It's only when it stops SCE&G's meters from
6 running?

7 A If it's causing reoccurring outages.

8 Q Right. And the outages cause the meter to stop,
9 doesn't it?

10 A Yes.

11 Q Meter stops that means money stops going into SCE&G
12 from that customer; right?

13 A Right. I mean, that's how we collect. Yes.

14 Q And, Mr. Branham, we've looked at a lot of policies
15 and procedures and guidelines, standards and all these
16 things that SCE&G has in place and has adopted, and if
17 SCE&G had simply followed those policies and made sure
18 that these lines were free and clear of vegetation,
19 Mr. Larios would have never been shocked and killed;
20 right?

21 MR. PUGH: Object to the form.

22 THE COURT: Sustained.

23 A You know, we know that vegetation --

24 THE COURT: I sustained the objection.

25 Q Mr. Branham, I appreciate your time. Thank you.

1 Q Because otherwise you would be, I think you said,
2 cutting the tree in half?

3 A Yes.

4 Q You were asked a lot of questions about mid-cycle
5 or spot trimming, do you recall those?

6 A Yes.

7 Q You can set that aside. When does Dominion or
8 formally South Carolina Electric and Gas Company do spot
9 trimming or mid-cycle trimming? What conditions?

10 A When there's reoccurring outages.

11 Q Are you aware, as you sit here today, between
12 February of 2013 and November 29, of 2015 of any service
13 issues on the circuit behind 3402 Myrtle Street, Edisto
14 Beach?

15 A No.

16 Q Are you aware of any outage issues at that location
17 in the timeframe I just talked about?

18 A No.

19 Q Are you aware of any requests to perform spot
20 trimming or mid-cycle trimming at that location?

21 A No.

22 Q Are you aware of any requests to perform spot
23 trimming or mid-cycle trimming at that location that
24 were ignored?

25 A No.

1 A Potentially, yes.

2 MR. DUFFY: No further questions, Your Honor.

3 THE COURT: Recross?

4 MR. PUGH: None.

5 THE COURT: Thank you very much, sir. You may step
6 down.

7 MR. APPLGATE: Your Honor, we're going to call
8 Mr. Ray Jackson by way of video.

9 THE COURT: All right.

10 MR. APPLGATE: And like to explain to the jury, if
11 I may. This is a video of the homeowner and we've
12 clipped it up so -- to make it shorter for you guys.
13 But it's a short clip so you guys can review the
14 evidence that would be presented.

15 THE COURT: Okay. And, folks, just as I told you
16 with a deposition, that is a sworn statement taken
17 outside of court, the video is the same. Mr. Jackson in
18 this video has been placed under oath. You may not see
19 that on the video, but he's under oath. He's answering
20 questions just as if he were sitting here in the witness
21 box. So you give that testimony whatever weight you
22 would give testimony as if it was live and whatever
23 weight you think it deserves.

24 MR. PUGH: Your Honor, may we just have a brief
25 reminder of who Mr. Jackson is.

1 THE COURT: Yeah. Mr. -- I think, Mr. Applegate --

2 MR. APPELATE: He is the owner of the house.

3 THE COURT: He is the owner of the property at

4 Edisto, at Myrtle Drive, I'm sorry.

5 MR. PUGH: 3402 Myrtle, yes, sir.

6 RAY JACKSON

7 **(Playing the video of Mr. Ray Jackson)**

8 MR. APPELATE: The plaintiff calls Gaspar Licona.

9 LUNA GAINER,

10 being first duly sworn as the interpreter for Gaspar

11 Licona.

12 GASPAR LARIOS,

13 being first duly sworn, was examined and testified as

14 follows:

15 MR. APPELATE: As a preliminary matter, Your Honor,

16 I'd like to just go ahead and move into evidence

17 Plaintiff's Exhibit Thirteen which is pictures of Gaspar

18 that these parties agreed to.

19 THE COURT: All right. Plaintiff's Thirteen will be

20 in evidence without objection.

21 MR. PUGH: I haven't seen them.

22 THE COURT: I'm sorry. I thought you said you had

23 seen them. I apologize. Go ahead. Any objection?

24 MR. PUGH: None.

25 THE COURT: All right. Without objection that is

1 Plaintiff's Thirteen. Mr. Applegate, you may proceed.

2 (WHEREUPON, Plaintiff's Exhibit Number 13 was marked
3 and entered)

4 MR. APPLGATE: Thank you.

5 DIRECT EXAMINATION BY MR. APPLGATE:

6 Q Can you introduce yourself to the jury?

7 A My name is Gaspar Licona Larios.

8 Q Good morning, Mr. Larios. Are you nervous?

9 A A little bit.

10 Q Well, that's okay. We'll go easy on you this
11 morning.

12 Can you tell the jury where you live?

13 A In Edisto.

14 Q And who do you live with?

15 A With my wife, and my girls, my children.

16 Q Can you tell me, I guess, about your whole family?

17 A We live together. We share everything together
18 over time. I work there at home. My wife takes care of
19 my girls.

20 Q Can you first start off and -- pardon me, madam
21 interpreter, can you hold it a little closer. We have a
22 couple people in the jury who have trouble hearing. So
23 actually the louder the better.

24 MS. GAINER: Okay.

25 MR. APPLGATE: Thank you so much.

1 Q How many children do you have?

2 A I have three children. Jose is my oldest, Wendy
3 who is my daughter which is there, and my beautiful
4 daughter Flora.

5 Q And how old is your son Jose?

6 A Twenty-three years old. Wendy is 13 and my
7 beautiful little girl Flora, she's 1.

8 Q Does everyone live with you?

9 A Yes. Yes, all of us live -- we all live together.

10 Q Now, with Jose, is Jose in school or does he work?

11 A He works. He helps me with work. We work
12 together. Like we're friends.

13 Q And how about your daughter Wendy?

14 A She goes to school. She studies. And she helps
15 her mom. She prepares my coffee. We get along well. I
16 never get mad at them. I scold them, but I never get
17 mad at them.

18 Q Gaspar, I need to ask you about your brother today.

19 A Okay.

20 Q I'm going to start off, I'm going to show you some
21 pictures and let you tell the jury what these are.

22 Okay?

23 A Okay.

24 Q We're going to put them up on this board over here
25 and you can talk about them.

1 Well, the light is not great in this picture, but
2 you can tell us what this picture is?

3 A That's my brother working, trimming the palm what
4 he used to love to do. He used to love to do that kind
5 of job.

6 Q Okay.

7 MR. APPLEGATE: Can you bring it in a little bit so
8 we can maybe see it a little better?

9 (They comply)

10 Q How about this picture?

11 A He's my only brother and he's with my daughter, my
12 daughter Wendy who is right there. She was younger
13 there. She's older now. That was the admiration of my
14 brother.

15 Q How about this, do you remember this photo?

16 A Yes. He would sit there to play with the pets.
17 That's the little kitten that he had brought to my
18 daughter and gave it to her as a gift. The name of the
19 cat is Capullo.

20 Q What does that mean?

21 A It's the name of the cat. It's when a flower
22 starts blooming.

23 Q Okay.

24 MR. APPLEGATE: Can you pass on? You can scroll
25 through a couple of these.

1 (They comply)

2 Q How about this picture, Mr. Gaspar?

3 A That's my brother with my nephew. It's a nephew
4 that's in Michigan. But the little boy was here. He
5 was here with us.

6 MR. APPLEGATE: And next one.

7 Q I think we know what this one is, but do you
8 remember this picture?

9 A Yes. That's where my brother would always sit. He
10 would watch TV with my daughter and also play with the
11 pets.

12 MR. APPLEGATE: Next one.

13 Q How about this picture, what's happening here?

14 A This is just when he would get ready and we would
15 be getting ready to go to work. We would -- he would
16 become so happy that we were going to go to work.

17 Q Is that your truck?

18 A Yes.

19 Q And is that -- was he a driver of that truck or
20 were you the driver of that truck?

21 A He would be. He would be the driver.

22 Q Okay.

23 MR. APPLEGATE: Next photo.

24 Q Again, I guess, this picture speaks for itself. Do
25 you remember this one?

1 A Yeah. He's happy. He's working. He's always
2 carrying his line for safety.

3 MR. APPLEGATE: Will you pass through up to -- well,
4 just pass through a couple of them. Keep going. Okay.

5 Q Now, do you know who is in this picture?

6 A Yes. My brother with the pets, with the little
7 puppy that he had given my daughter. So he's there.
8 Those are the little two pets. And the little doggy,
9 his name is Nino. It's a small one. It's a little
10 Chihuahua. And the other one is the bigger one. His
11 name is Portos. They would play together.

12 Q Okay.

13 MR. APPLEGATE: And pass through.

14 Q And this picture, did you take this picture?

15 A I didn't take the picture. But there he is happy
16 working. Like no one you had seen before.

17 Q That's okay. Thank you, Gaspar. Now --

18 A It makes me happy to look at the picture of how he
19 worked. He was an example that I was going to follow.

20 Q And can you elaborate on that. Just kind of tell
21 me about your brother a little bit.

22 A When we were in Mexico, we would always play
23 together. We would never fight. We always had some
24 plan.

25 Q Was he younger or older?

1 A He's older than me.

2 Q Do you have any other siblings?

3 A No. He was my only sibling.

4 Q Do you have any other sisters?

5 A No, I have none. I'm the only one now that only
6 older in the family.

7 Q Did Jose play sports or have any other hobbies like
8 that?

9 A Yes. When we were together, we would play soccer
10 and I would be the goalie. He was the central defense.
11 We were helping each other. He was protecting me, but
12 nobody could score a goal in me.

13 Q Who was the better soccer player?

14 A He was. He was the best. They were all scared of
15 him. Because he had a very heavy leg. He would hit the
16 ball very, very hard.

17 Q I would never admit that about my brother, but it's
18 also true.

19 Tell me if you can about Jose's school, did he make
20 it far in school?

21 A Yeah. He was better student than I was. He was
22 studying a lot. When he went to the University he had a
23 scholarship. And I was a little bit dumber, I stopped
24 studying so he could continue with his school. And so I
25 started going to work to help him.

1 Q Did he do any schooling after high school or how
2 far did he go in school?

3 A He went to the University and finished his career.
4 And he graduated as an attorney. It's just that he
5 could no longer continue because of lack of money.

6 Q Did he ever practice law?

7 A No. No, because he was missing his degree. And
8 that is why he came here so he could make some money.

9 Q When you say "his degree," you mean his license?

10 A Yes, the license.

11 Q And how far did you make it in school, Gaspar?

12 A Middle school.

13 Q And how about your parents?

14 A They didn't go to school.

15 Q How old are your parents?

16 A They're older than 60 years old. They're old. I
17 mean, they're elderly.

18 Q And do you know why they're not here today?

19 A They're ill. It's not recommended that they
20 travel.

21 Q Have you ever provided some financial support for
22 your parents?

23 A Yes, I always send money.

24 Q And how about your brother?

25 A He was the one that would provide more. He was

1 providing money to the family.

2 Q And why is that?

3 A Because he was the older and the older one and I
4 have my family.

5 Q When did your brother move to Edisto?

6 A In the year of 2003, 2004, something like that or
7 before.

8 Q And where did he live and what did he do here?

9 A We've always lived together here in Edisto and he
10 was cutting yards for a living.

11 Q And where do y'all live, is it a house or an
12 apartment?

13 A We were renting a trailer.

14 Q Okay.

15 A And then I had an opportunity to purchase a house,
16 so we bought it.

17 Q And who purchased the house?

18 A Between the two of us. He was helping me. My
19 brother would help me so that the two of us could pay.
20 He would give me some money to pay the house. And the
21 house was not in my name. We placed it in my daughter's
22 name Wendy's.

23 Q Now, where did your brother work?

24 A We have worked in Florida picking oranges in
25 Georgia picking tobacco. And other places. We didn't

1 really like those jobs, but we had to do it. It was for
2 little money. Until we arrived at Edisto and my
3 brother, when we got to Edisto he said there was a lot
4 of money there. It's a small island, but there's a lot
5 of money because there's a lot of work.

6 Q And what kind of work schedule did your brother
7 have?

8 A Practically the whole day. And every day. And
9 whenever we had a chance, we would go with the family,
10 with my daughter, would play with my daughter with
11 little pets.

12 Q Gaspar, can you tell me the last time you saw your
13 brother?

14 MS. GAINER: Counsel, would you repeat the question,
15 please?

16 Q I'm sorry. Can you tell me the last time you saw
17 your brother?

18 A I saw him the day he fell. In the morning, we had
19 breakfast together. We were together right there in the
20 kitchen, in the living room. We were watching TV for a
21 little while. And until he told me that he had to leave
22 to go to work and I told him to be careful. And that is
23 when he left to go to work. And then I saw him again at
24 the hospital.

25 Q When did you find out what had happened?

1 A That day. I had not left for work yet, but I had a
2 phone call that an accident had happened. And so I left
3 to go there. I don't remember the date when the
4 accident happened. I know that it was in 2015.

5 Q Okay. After you heard about the accident, did you
6 -- what did you do?

7 A I went over there to see him. And I was praying
8 that everything was going to be okay.

9 Q Did you get to see your brother at the 3402 Myrtle?

10 A I did not see him.

11 Q Was he still there when you arrived at the house?

12 A Well, yeah, he was there. The ambulances were
13 there. The fire department was there. And one of the
14 firemen approached me and said that my brother was well.

15 Q Did you ask to see him?

16 A No.

17 Q And did you ride in the ambulance to the hospital?

18 A Didn't allow me in. I went in a different car
19 following the ambulance.

20 Q And did you get to see your brother at the
21 hospital?

22 A Well, I only -- yes, I saw him when they already
23 told me that he was gone. And from there I told my dad.

24 Q And how did your dad respond?

25 A I made the call to Mexico. My grandma picked up.

1 And so I told her to put my dad on. She put my dad on
2 and my dad only knows that my dad is a strong man. So I
3 imagined that when I made the call the entire family was
4 right there around him. And I told my dad that my
5 brother had passed away. And he started crying. And so
6 when my family saw my dad crying, they figured that
7 something serious had happened.

8 Two days later they told my mom what had happened
9 or maybe a day later they had told my mom. And so my
10 mom started dialing my brother's cell phone with the
11 hope that he would answer her. And I would pick up and
12 she would say, "Jose? Jose? Is that you, Jose?" And I
13 would say, "No, mom. It's me, Gaspar." And she would
14 start crying. And then she would keep calling me on the
15 cell phone over and over with the hope that he would
16 answer the phone.

17 Q Gaspar, did you guys have any type of funeral for
18 your brother?

19 A Yes. The entire community was helping me so that
20 my brother could be taken to the church.

21 Q And was he buried here?

22 A No, we sent him to Mexico.

23 Q Is that where your parents are?

24 A Yes.

25 Q Gaspar, I'm sorry, I know this is hard, but can you

1 let us know how this has affected your family?

2 A It's affected my family a lot in the sense that my
3 dad stopped working. He sits outside and just thinks.
4 My mom, well, she got sick and now I have to send her
5 money for her medications. The medication costs about
6 \$100. And one box of pills comes with only like eight
7 or ten pills and that is for the rest of her life.

8 Q And how about your family here, you know, you and
9 Wendy?

10 A They're okay here with me, but I cannot let myself
11 go down. I cannot do that for them. I don't want them
12 to see me cry. My daughter, look at her, she's crying
13 now. You don't know the pain that it carries. They
14 know. I always feel that, you know, I say that my
15 brother is in Mexico. That my brother is with my family
16 in Mexico and he's enjoying life there with them. So
17 that I don't let myself down and think that.

18 And I have not cried for him like a family member
19 should be cried for. My brother's in Mexico. He's with
20 my family. With my mom. With my dad. He's playing
21 there with them, but not dead.

22 Q Jose, do you know what your brother -- how old was
23 your brother when he died?

24 A Thirty-nine, 40. I really don't remember exactly,
25 but he's older than me by two years.

1 Q Did he ever tell you what he wanted to do with his
2 life?

3 A We had all kinds of dreams. He would call me Compa
4 and I would call him Compa. And we always tell each
5 other that we just didn't want to be one of like the
6 rest of the people. He always wanted to be someone big.
7 Better than anyone. Y'all have seen the pictures, he's
8 always happy working. And there are so many people that
9 go to work and they are angry. And my brother was
10 always happy. We had all kind of goals. He had a dream
11 he wanted to have his own family. He wanted to have his
12 own children. He wanted to buy property in Mexico so he
13 could build a stadium for children, for the young
14 people. And for his children whom he still didn't have
15 them yet. We never fought. We were always helping each
16 other.

17 Q Thank you, Gaspar. I don't really have anymore
18 questions. Is there anything else you would like to
19 say?

20 A Yes. I want to thank, Your Honor, for being here
21 with me listening to me. And I want to thank them, the
22 jury, because they heard me. I know now they feel what
23 I feel, also. Because some of you might be parents.
24 You have your children and I don't want anybody to go
25 through what I'm going through. He's my brother, but

1 this is -- it's very hard. Very hard for me. And thank
2 you for everything and thank you for listening to me.
3 Thank you.

4 Q Thank you, Gaspar. You need to wait, the other
5 attorneys can ask you questions. Okay?

6 A Okay.

7 THE COURT: Cross examination?

8 MR. PUGH: None, Your Honor.

9 THE COURT: All right. Thank you, sir. Thank you
10 very much, sir. You may step done. Thank you for being
11 here.

12 MR. APPELLEGATE: Your Honor, if it's appropriate, can
13 we take a five minute recess and maybe start right back
14 or not?

15 THE COURT: Let me ask y'all something real quick.

16 (Bench conference)

17 THE COURT: Okay. We'll be at ease then. Folks,
18 we'll take a short break. Please have no conversation
19 about the case. If you need anything back there, just
20 let us know. We'll bring you back out shortly. Okay.

21 (The jury left the courtroom at 11:47 a.m.)

22 THE COURT: We'll be at ease then for a few minutes.

23 (Break time)

24 THE COURT: Anything we need to take up before we
25 bring the jury out from the plaintiff?

1 MR. APPLEGATE: No, Your Honor.

2 THE COURT: From the defense?

3 MR. PUGH: No, Your Honor.

4 THE COURT: All right. Let's bring them out.

5 (The jury entered the courtroom at 12:05 p.m.)

6 THE COURT: All right. Thank you, folks, please
7 have a seat. All right. We'll pick up with the
8 plaintiff. Recognize the plaintiff for the plaintiff's
9 next witness.

10 MR. APPLEGATE: Thank you, Your Honor. Plaintiff
11 calls Tiffany Provence to the stand.

12 THE COURT: Ma'am, if you would come around to be
13 sworn.

14 TIFFANY PROVENCE,
15 being first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION BY MR. APPLEGATE:

18 Q Good morning, Ms. Provence. Can you introduce
19 yourself to the jury?

20 A Sure. My name is Tiffany Provence. I am the
21 special administrator for the Estate of Jose Larios and,
22 therefore, the plaintiff in this case.

23 Q So over the course of the week we've heard your
24 name and I want to make sure that everyone understands
25 what your role is here. What is a special

1 administrator?

2 A So a special administrator is appointed by the
3 probate court in estates for various reasons. Which
4 include situations such as this where the beneficiaries
5 can't be present, where beneficiaries may be
6 incapacitated. Beneficiaries may be minors or
7 beneficiaries can't agree on who's going to be in charge
8 of an estate. And, therefore, the Court appoints
9 someone outside of the family to protect the estate, act
10 on behalf of the beneficiaries, and be able to speak for
11 anyone who isn't capable of being here to speak for
12 themselves.

13 Q Okay. Let me go back a little bit. Can you tell
14 us a little bit about your educational background,
15 Ms. Provence?

16 A Sure. I am a graduate of the University of Florida
17 where I got my bachelors degree. And then a graduate of
18 the University of South Carolina where I got my law
19 degree.

20 Q And do you practice law?

21 A I do. I'm an attorney in a firm of six attorneys
22 and I practice primarily in probate and probate related
23 litigation.

24 Q Okay. Do you have any other -- have you ever had
25 any other legal titles besides attorney in the world of

1 the law?

2 A Sure. So I spent about a decade of my career as a
3 probate judge in Dorchester County, South Carolina, and
4 I actually still sit as a drug court judge.

5 Q Besides what you're doing here in this case, have
6 you served in the special administrator in other cases?

7 A Sure. I've accepted numerous court appointments
8 over the past ten years in various estates to serve in
9 this capacity.

10 Q And, again, I think you've explained sort of how
11 the process works a little bit, but, I guess, and what
12 is your job when it comes to being the administrator of
13 Jose's estate?

14 A Sure. So each estate is different based on the
15 decedent and the beneficiaries. In this estate, my
16 responsibility was to essentially bring this legal
17 action, participate as the plaintiff, and to act to
18 protect the beneficiaries which would be Jose's family
19 and to make sure that their rights were protected
20 throughout this action.

21 Q Okay. Now, in doing that, have you, I guess, spent
22 time getting information and speaking with the family?

23 A Sure. When you're appointed special administrator
24 of an estate for someone that you didn't have the
25 pleasure of knowing, then you have kind of a homework

1 list of things that you're responsible for doing to
2 understand and acclimate yourself to the person to their
3 belongings, their family members, their history, how
4 they passed, why they passed. Their beneficiaries,
5 anything that I would be responsible for reporting both
6 to the probate court as well as to this court, if
7 necessary.

8 Q Okay. What did you come to learn about Jose?

9 A I've learned a lot about Jose through communicating
10 with his family and through understanding his genealogy
11 and researching his background. I've learned a lot of
12 interesting facts. A lot of things that may have
13 wrongfully assumed when learning someone was a
14 landscaper like Gaspar mentioned earlier. I was very
15 surprised when I learned that he had a law degree.

16 But I've learned that he was a dedicated family
17 man, even though he didn't have, but wanted children of
18 his own. I've learned that he was a pride and joy to
19 his parents. That he was their child that got through
20 college and had that law degree. He was an incredibly
21 hard worker. I've learned that he worked tirelessly to
22 support his family including his parents and his family
23 here. In ways I feel like I've gotten to know him
24 without ever having the honor to meet him.

25 Q And, I guess -- so, what's the universe of family

1 that Jose left behind?

2 A So Jose had his parents, his father who is also
3 named Jose, and his mother Anastacia. And then he had
4 his brother. Interestingly enough, he was one of four
5 children. These parents lost two children earlier in
6 life. So Gaspar is the last of the remaining of those
7 four children.

8 And then Gaspar's children who would be Jose's
9 nieces and nephews. He had grandparents or has a
10 grandfather and had a grandmother that he was very close
11 to. And a lot of cousins that I've learned about and
12 community connections as well. But a tight close small
13 family, but a very extended and loving larger family.

14 Q What do Jose's parents do?

15 A My understanding at this time is that his mother is
16 unable to work. She's very ill. Both with -- on
17 dialysis with failing kidneys as well as very high blood
18 pressure and other medical issues.

19 His father was out of work for a period after his
20 death. And now I don't want to offend any retirees, but
21 I'll just say, I believe he is attempting in dabbling
22 back at farming to give him something to do. But at his
23 age and with his health he's unable to really actively
24 farm in the way that he used to. That was what he did
25 prior was to work in the fields.

1 Q Have you come to learn through conferences with his
2 parents sort of what the communication, the relationship
3 between Jose and his parents?

4 A Absolutely. As I mentioned, Jose was their pride
5 and joy. He was at times sending his entire paycheck
6 home to support his parents. He was able to earn here
7 and send the money so that they could provide for their
8 needs, including medical needs. And they were
9 incredibly proud of him. And I think looking forward to
10 his opportunity to live out his dreams of being a
11 lawyer.

12 Q And pardon me, Ms. Provence. I realized I had some
13 questions I wanted to ask you that I think his brother
14 already gave us this information, so I'm trying not to
15 go back over some of the same things here.

16 Did you have any time to learn about Jose's prior
17 work background?

18 A I did. So I learned that Jose was very creative in
19 getting himself through University. He washed dishes,
20 did like odd jobs. He was a teaching assistant to help
21 him fund his education. And what I found most
22 interesting which Gaspar mentioned was that he was
23 actually paid to play soccer.

24 So I had a little bit in translation trying to get
25 through, but apparently he was so good that teams would

1 pay him to come and play on their team. And not only in
2 Mexico, but also in the US that I guess I would call
3 that a ringer. You know, he was paid to come and play.
4 So he did a lot to try to make ends meet and to make
5 sure that he was not, you know, a burden on his family,
6 was instead providing support to them.

7 Q Gaspar touched on this a little bit, but is there
8 any information you come to learn about how his parents
9 came to learn of his passing?

10 A I did. So I had heard Gaspar's story previously
11 and wanted to understand directly from the family
12 because I was a little confused about the mother
13 learning later and why that happened. So I did learn
14 that Gaspar had to, you know, call his father with the
15 news. And apparently due to his mom's health, a medical
16 decision was made to provide her medication before she
17 learned of her son's passing. Because this being the
18 third of her four children they were concerned medically
19 that it could cause her problems with her blood pressure
20 and her other issues.

21 I was also really touched to learned how about this
22 small community came together in an effort to
23 essentially bring Jose home and to honor him in the
24 community where he was a little bit of a, you know, a
25 local hero in the sense that he was so well-known for

1 his soccer and for the care that he gave his family.

2 And it was difficult to learn that the accident
3 occurring right after Thanksgiving that by the time they
4 were able to arrange this it was essentially the week
5 around Christmas when he was brought home and buried.

6 Q Again, have you had any opportunity to understand
7 again why they were unable to be present this week?

8 A Yeah. Medically I do not believe that it would be
9 recommended. I know that Jose's mother medically cannot
10 travel due to the dialysis and the kidney issues. His
11 father also has some severe spinal or lumbar issues, so
12 travel would not be recommended. Even if I think a
13 doctor would approve him to be here, I don't think
14 financially it would have been feasible for his father
15 to have gotten here and spent the time necessary to
16 attend this trial.

17 Q Can you give me an appreciation, Ms. Provence, I
18 guess, what you've learned about how this, again, what
19 the impact on his parents has been?

20 A Not only his parents, but I would also say that
21 Gaspar probably minimized what I would consider an
22 additional weight on his shoulders. I mean, as he
23 described, he and his brother were very cooperative in
24 working almost as a unit. So there were times that
25 Gaspar could cover all of their expenses here and,

1 therefore, Jose was able to send everything that he
2 earned to his parents. And then other times where he
3 would assist Gaspar with things that were going on here.

4 So this loss financially and emotionally has been
5 devastating to these parents in a way that as a parent
6 is very hard. Sorry. Just to think about. And not
7 just to those parents, but to Gaspar who now, in my
8 opinion, carries the weight of the world on his
9 shoulders trying to make up a financial difference that
10 he's not capable of making up individually. One man
11 can't undertake that responsibility.

12 Jose was a man that had sacrificed in a way that
13 I'm ashamed to admit is not my personality type. And
14 what I mean by that is that he loved other people's
15 children, but never quite had the time to have his own.
16 He supported, you know, his family. And seeing that he
17 was always putting things on hold to help others. And
18 if any of you are lucky enough to have that kind of
19 person in your life, when they're gone, I think everyone
20 suddenly realizes the role that they played. And that's
21 certainly how that family has been impacted.

22 His nephew and nieces as well I think have felt the
23 loss of, you know, the uncle that was always there. The
24 happy uncle that, you know, didn't reprimand and was
25 always there. So I would say it's been a huge loss

1 emotionally as well as financially.

2 Q That's all the questions I have. Thank you,
3 Ms. Provence?

4 MR. PUGH: May we approach?

5 (Bench conference)

6 THE COURT: Folks, let me get you to step back into
7 the jury room while I take up this matter of law. We'll
8 get you back out here shortly. Please have no
9 conversation about this case.

10 (The jury left the courtroom at 12:24 p.m.)

11 THE COURT: All right. Have a seat, folks.
12 Mr. Pugh?

13 MR. PUGH: Thank you, Your Honor. Your Honor, the
14 testimony of Ms. Provence is so improper and out of
15 bounds particularly in light of the record in this case.
16 We have served discovery from day one in this case.
17 We've asked a number of questions about Mr. Larios, his
18 family, his relationships, his medical history, his
19 prior tree trimming incidents, if any, financial
20 support, loss of earning capacity, loss wages, and
21 consistently not only in response to the discovery
22 responses, we were told none. Don't have that. Not to
23 my knowledge.

24 We then through happenstance, learned from Marion
25 Whaley telling Mr. Matt Kizer who is the principal at

1 the issue maybe.

2 (Bench conference)

3 THE COURT: I'm going to respectfully deny the
4 motion for a curative instruction. And, anything else
5 before we bring the jury back in?

6 MR. PUGH: No, Your Honor.

7 THE COURT: Anything from the plaintiff before we
8 bring the jury back in?

9 MR. APPLEGATE: Just for the record, I think we just
10 received -- my assistant processed this, but the
11 defendant's motion as it's been denied for
12 reconsideration was finally denied by Judge Mullen that
13 was entered. And now, just for the record, that was all
14 the questions we had questions about.

15 THE COURT: And we talked about that earlier.
16 Apparently, Judge Mullen's office just e-filed that
17 denial of the motion for reconsideration.

18 MR. APPLEGATE: I just wanted to let the Court know.

19 THE COURT: All right. Let's bring the jury in,
20 please.

21 (The jury entered the courtroom at 12:46 p.m.)

22 THE COURT: Thank you, ladies and gentlemen. Please
23 have a seat. All right. We'll recognize Mr. Pugh for
24 his cross examination.

25 MR. PUGH: No questions, Your Honor. Thank you.

1 THE COURT: All right. Thank you, sir. Ma'am,
2 thank you very much. You may step down.

3 Unless you got a seven minute witness, I think it
4 might be lunchtime. But you might have a seven minute
5 witness, I don't know.

6 MR. APPLEGATE: Your Honor, the plaintiff rests.

7 THE COURT: Well, this is a perfect time to break.
8 Ladies and gentlemen, in all cases, not particularly
9 this case, in all civil cases that we try, once the
10 plaintiff rests their case, the Court has to take up
11 matters of law before we proceed.

12 So I would be sending you back into the jury room
13 while I did that anyway. So this is a perfect time to
14 go ahead and break for lunch. While you're at lunch, I
15 will take up those matters of law, so that when you come
16 back we'll be ready to proceed. Okay.

17 I will ask you, if you would, to please be back here
18 at 2:15. Okay. And if you'll be back -- no, 2:30. I'm
19 going to let you get back at 2:30. We'll be back a
20 little bit early and take up matters of law we need to
21 take up.

22 So if you would, please, be back at 2:30. Have no
23 conversation about the case. Do not allow anyone to
24 talk with you about the case.

25 (The jury left the courtroom at 12:49 p.m.)

1 THE COURT: All right. Have a seat folks. Guys,
2 y'all want -- I'm happy to accommodate y'all. Would you
3 like to go ahead and take up the matters at the close of
4 the plaintiff's case or do you want to do that when we
5 get back from lunch? We'll come back a little early.

6 MR. PUGH: Could we maybe come back a few minutes
7 early and do it, Your Honor?

8 THE COURT: That's fine. We can do that. Why don't
9 we come back at 2. I'll give you just a little over an
10 hour and we'll then come back at 2 and take up those
11 matters.

12 (Lunch break)

13 THE COURT: Are we ready then to take up motions at
14 the close of the plaintiff's case?

15 MR. PUGH: Yes, Your Honor.

16 THE COURT: Mr. Pugh, I will be happy to hear from
17 you.

18 MR. PUGH: Your Honor, can I hand these up?

19 THE COURT: Yes, sir.

20 MR. PUGH: May I proceed?

21 THE COURT: Yes, sir.

22 MR. PUGH: Thank, Your Honor. Your Honor, on behalf
23 of defendant Dominion Energy South Carolina, formally
24 known as South Carolina Electric and Gas Company, we
25 would make our motion for a directed verdict pursuant to

1 Rule 50(a). The specific grounds are matters on which
2 we believe the motion to be granted as follows:

3 Plaintiff has failed to introduce evidence that
4 would allow the jury, the finder of fact, or find in
5 favor of the plaintiff. Specifically, plaintiff has
6 failed to establish that Mr. Larios received an
7 electrical shock or that Dominion Energy had a duty to
8 Mr. Larios in view of the fact that he was improperly
9 and unlawfully in proximity to the energized line. And
10 thus was a trespasser to whom Dominion Energy had no
11 duty.

12 There is no credible medical testimony that in fact
13 Mr. Larios received an electric shock. In fact, there's
14 a lack of testimony in that regard being based on
15 incorrect or inaccurate information.

16 Additionally, there is no credible testimony or
17 evidence regarding the pathway and mechanism of alleged
18 shock that Mr. Larios received.

19 Additionally, Dominion did not, in any event,
20 proximately cause Mr. Larios' injuries which were
21 instead proximately caused by the intervening and
22 superseding negligence of Mr. Larios, his employer
23 Stevens Irrigation and/or Will Stevens, or in concert,
24 both.

25 Dominion Energy is not liable based on the evidence

1 in that Mr. Larios was overwhelmingly negligent and
2 Mr. Larios' primary assumption of risk resulted in his
3 injuries.

4 Your Honor, we have filed a memorandum brief in
5 support. I've handed copies to counsel. I've also
6 provided copies to Your Honor and your law clerk. There
7 are as exhibits to the memorandum, there are the OSHA
8 citations for the record, and we'll -- we have -- I have
9 Mr. Anthony Wilks from OSHA and his inhouse counsel
10 Ms. Deidra Laws who are here. Mr. Wilks is here to
11 testify under a subpoena.

12 However, I believe with the agreement of plaintiff's
13 counsel, in light of Your Honor's prior rulings that the
14 citations may come in, but the extraneous matters of the
15 OSHA report including witness statements and the like.
16 We've agreed to put the citations themselves into
17 evidence through agreement.

18 MR. BUCKNER: Your Honor, the only thing further to
19 add that Mr. Pugh and I just discussed was eliminating
20 in reference to the fine amount at the bottom of each of
21 those. Some of them are zero, but some of them were not
22 and we've all agreed to take those out.

23 MR. PUGH: That's being done as we speak. They are
24 being redacted. There will be no fine amounts set forth
25 in that exhibit.

1 THE COURT: Okay.

2 MR. PUGH: And I don't -- Defendant's Fourteen will
3 be the OSHA citations that we would proffer by agreement
4 with the redaction of the penalty amount.

5 THE COURT: Yes, sir.

6 (WHEREUPON, Defendant's Exhibit Number 14 was marked
7 and entered)

8 MR. PUGH: Your Honor, briefly. As you've heard,
9 there are uncontroverted, we believe, dispositive facts
10 in this case. I'm on page 4.

11 Mr. Larios was working on a ladder at the height of
12 approximately 23 to 26 feet.

13 Contrary to OSHA law, the ladder was aluminium not
14 insulated or not conductive. No witnesses testified
15 that they witnessed Mr. Larios receive an electrical
16 shock.

17 In fact, Mr. Larios did not. It was uncontroverted
18 made direct contact with the energized primary.

19 Given Mr. Larios' height and wingspan and the type
20 of chainsaw he was using, it was physically impossible
21 for that to make contact with the primary.

22 There are no -- there's no evidence in the record of
23 service issues, outages, or other problems including
24 problems with regard to vegetation at the subject
25 resident or at the subject property. But more

1 specifically, on the power line in question. It runs in
2 the right-of-way behind 3402 Myrtle.

3 As Your Honor has heard, after the incident,
4 Dominion Energy pulled the fuse from the circuit,
5 determined it was intact.

6 Due to his lack of training with electrical
7 equipment, Mr. Larios is by uncontroverted testimony
8 characterized as an unqualified worker pursuant to the
9 OSHA standards and the National Electric Safety Code.
10 Therefore, is an unqualified worker. Mr. Larios was
11 required to stay a minimum distance of at least 10 feet
12 away from the energized primary or other energized
13 electrical equipment pursuant to the OSHA law and other
14 standards.

15 As Your Honor has seen, OSHA cited Mr. Larios'
16 employer, Stevens, specifically for the conduct of
17 Mr. Larios, that is, that he was within 10 feet of an
18 energized primary.

19 Mr. Larios was working with a chainsaw in that area.
20 And, further, the testimony is that Dominion was not
21 notified by anyone. Not the plaintiff, not Mr. Larios,
22 not PENSCO former defendant, not former defendant Edisto
23 Sales, not his employer Stevens Irrigation, or any other
24 person or entity that Mr. Larios would be working within
25 10 feet of the energized power line.

1 Unless a worker can confirm with the utility
2 pursuant to OSHA and NESC that a power line is
3 de-energized, they are required that the worker assume
4 that the line is energized and potentially dangerous.

5 No person or entity has requested for the November
6 29, 2015 incident that Dominion Energy de-energize or
7 insulate or move or otherwise modify the power line
8 running in the right-of-way prior to Mr. Larios working
9 in the vicinity of it.

10 Even if Mr. Larios did receive an electrical shock
11 other than by coming into direct contact with the
12 primary power line, such occurrence could only occur if
13 Mr. Larios violated the OSHA work rules applicable to
14 his own conduct.

15 Mr. Larios according to the OSHA general duty cause
16 had also an independent duty of his own to ensure his
17 own safe work habits.

18 Your Honor, we would make a motion for directed
19 verdict pursuant to Rule 50(a). I won't bore you with
20 the recitation, meaning the argument of authorities in
21 the memorandum brief we have filed. We believe that we
22 are entitled to a directed verdict as to the entire case
23 as I've outlined in my oral motion that I made just now
24 and as set forth in our memorandum brief that has been
25 filed.

1 Additionally, Your Honor, there is an absolute lack
2 of any clear and convincing evidence in the record upon
3 which a jury could conclude that the plaintiff is
4 entitled to even it's submission of the issue to the
5 jury of punitive damages. And we would additionally
6 move for a directed verdict under Rule 50(a).

7 This is not a punitive damages case and that that
8 issue should not be submitted to the jury. And we've
9 got that outlined, Your Honor, in our memorandum brief
10 as well.

11 THE COURT: All right.

12 MR. PUGH: I have a separate motion, but I'll allow
13 counsel to respond to this one.

14 THE COURT: Yeah.

15 MR. PUGH: Yes, sir.

16 THE COURT: Okay. Yes, sir, Mr. Applegate.

17 MR. APPLGATE: Thank you, Your Honor. The standard
18 is of the evidence as a whole it's susceptible and --
19 sorry, Your Honor. The standards is that there only
20 needs to be one reasonable inference. I mean, this
21 case, defendants have filed a motion for directed
22 verdict, what I heard. Your Honor, they suggested, one,
23 of no evidence of electric shock.

24 There was testimony from Mr. Carter the coroner,
25 Mr. Whaley the coroner, the pathologist Dr. Presnell,

1 and from an expert engineer Dr. Brill, all have given
2 evidence that there was electric shock that has been
3 furnished there.

4 The idea of intervening evidence, again, I think
5 what seems to be confused here is a motion for them to
6 be able to put on empty chair defense. There's
7 definitely been significant evidence in the record by
8 multiple witnesses that SCE&G failed to comply with
9 their own standards. And that evidence was provided not
10 only by plaintiff's witnesses, plaintiff's expert, as
11 well as SCE&G's only -- their 30(b)(6) witness corporate
12 representative Mark Branham.

13 You know, the issues raised by Mr. Pugh, proximately
14 caused contributory negligence on questions of fact for
15 a jury. And I think we put an abundant amount of
16 evidence in here over the last three days to get past
17 any motion as it relates to, again, we've put in
18 evidence of their duty. We put in significant evidence
19 of their breach of that duty. And then, again,
20 causation damages. We have put in significant damages
21 in the case and so I would ask the Court to deny the
22 motion for a directed verdict.

23 THE COURT: What about the, I'm going to call it the
24 second half of the motion even though he addressed
25 punitive damages?

1 MR. APPLGATE: As I understand it, the -- we're
2 talking about the bifurcated trial agreement?

3 THE COURT: Well, I mean, he's made a motion that
4 there hasn't been any clear and convincing evidence that
5 would rise to the level of recklessness or carelessness
6 to warrant a verdict for punitive damages.

7 MR. APPLGATE: Your Honor, we've put in evidence
8 that from -- that their standard requires them to keep
9 these lines free and clear. That there is no evidence
10 that they ever made any attempt at all to go and inspect
11 this area. From the time of their cycle trim in 2013,
12 two and a half years before this, never made one effort.
13 Had every opportunity to make that effort and they
14 didn't do anything in that regard.

15 So I think that in and of itself, Your Honor, is
16 clear evidence that they made -- that they -- reckless
17 conduct when they have superior knowledge which has been
18 admitted to by their own experts, our expert, and
19 everyone else about the electric company's duty and
20 superior knowledge about the danger of electricity.

21 They have a whole department that's all been put in
22 evidence, their whole department focused specifically on
23 this task. And they made no effort in the two years to
24 do what their own policies and procedures required them
25 to do which is to follow-up and make sure in fact that

1 there has been some sort of -- that they maintain the
2 separation.

3 So if that's not -- that's not accidental, that's
4 clearly -- they have no evidence that they made any
5 effort. And any evidence that they put in defense of
6 that is simply that they're linemen that would be
7 working, doing work, not in this area or this
8 specifically at this property, but people, you know, as
9 work of the utility happens that they may have passed by
10 there and if they had seen something, they would have
11 maybe done something. But there's actually no evidence
12 and they never -- they haven't put up one witness to
13 suggest they did one single thing.

14 I think the plaintiff has met their burden to,
15 again, suggest that their conduct was willful, wanton,
16 reckless, and much beyond just a careless conduct. So I
17 would ask the Court to deny that motion as well. And
18 we, again, as agreed, we -- assuming we get the verdict
19 that we bifurcate punitive damages trial.

20 THE COURT: Thank you, sir.

21 MR. APPLEGATE: And, Your Honor, if I may. I think,
22 again, the point -- maybe I didn't make this clear of an
23 arc, the bifurcation is that, you know, we put on
24 conduct evidence. But, again, additional evidence of
25 punitive damages was supposed to be, you know, left for

1 punitive damages case that we agreed to.

2 THE COURT: Okay.

3 MR. APPELATE: Thank you.

4 MR. PUGH: Briefly?

5 THE COURT: Yes, sir.

6 MR. PUGH: Your Honor, I won't belabor the point
7 because I've got another motion that deals with
8 Mr. Brill and his testimony that I'm asking to be
9 stricken from the record and those kind of hand in hand
10 part and partial with Rule 50(a).

11 However, as to the punitive damage issue. If you
12 look at page 20 of our brief, Your Honor, the only thing
13 that they put in is a suggestion that somehow Dominion
14 Energy didn't follow -- I don't know, ANSI or the
15 National Electric Safety Code or something along those
16 lines or perhaps even Dominion Energy which they didn't
17 introduce, I did, the distribution line-clearance
18 trimming requirements.

19 As cited there on page 20 of our brief despite the
20 flawed analysis of both Dr. Presnell and, of course,
21 Mr. Brill. At best, the plaintiff has left us arguing
22 that somehow there was some violation of the NESC or
23 ANSI with regard to tree trimming standards. That's not
24 to suggest the counterbalance of. We have the
25 uncontroverted testimony with regard to the conduct of

1 Mr. Larios and his violation of the OSHA work rules that
2 apply to him.

3 Now, what's more important there is, while there's
4 national standards are admitted for the jury to consider
5 as potential evidence of simple negligence, they are not
6 in violation of those standards. Is not evidence of
7 negligence, per se, willful misconduct, or any basis for
8 punitive damages to go to a jury in this case, Your
9 Honor. Thank you.

10 MR. BUCKNER: Your Honor, if I could, I don't know
11 if there's a point of confusion here. But at the
12 beginning of this case, we agreed by consent upon the
13 joint defense motion under 15-32-510 to try a bifurcated
14 case. Which means, our hands were kind of tied on what
15 punitive evidence we would have loved to have put up on
16 punitive evidence in this case, but the statute is very
17 clear. The legislative directive is very clear, if we
18 win this trial, we get to go put that punitive case on.

19 And so I'm a little surprised that after we agreed
20 to not put up that case, that consent is being used
21 against us for a directed verdict. We haven't had an
22 opportunity to do that yet. That's what bifurcation is.
23 We're trying liability and compensatory damages and no
24 matter what the verdict is, we will then, if we get a
25 verdict, have a right to go to that next phase.

1 So the idea that we should be precluded from doing
2 that which we can't otherwise do, is nonsensical under
3 the statutory code.

4 MR. PUGH: Actually, that wasn't what --

5 MR. BUCKNER: And in addition to what the evidence
6 has been which we think had we agreed to put on the --
7 both phases in this case, we would still be entitled to
8 defeat the motion.

9 MR. PUGH: Your Honor, briefly. I know -- the issue
10 of the bifurcation was that there wouldn't be evidence
11 of net worth and those kind of things in the plaintiff's
12 case in chief.

13 Your Honor, had that, you know, set aside this issue
14 that they were somehow precluded from putting on
15 evidence that would be clear and convincing evidence as
16 to potential -- the potential issue of punitive damages
17 going to the jury is simply incorrect. I mean, they had
18 their expert on the stand, he testified for several
19 hours yesterday, and their entire case has gone in at
20 this point. And simply there is no evidence, clear and
21 convincing evidence which Your Honor is well aware is
22 the standard, that they would be entitled to have the
23 issue of punitive damages go to the jury.

24 THE COURT: Okay. I'm going to respectfully deny
25 your motion for a directed verdict as to the negligence

1 as well as the punitive damage question.

2 I think these -- I think it's a factual issue
3 depending -- I think there's evidence in the record
4 depending on how the jury views it. And I don't think
5 it would be appropriate to -- for the Court to step into
6 the jury's role in evaluating that evidence.

7 I think it's -- I think there is evidence in the
8 record depending on how the jury views it whether they
9 find either way. So I think it's a factual issue that
10 the jury is going to have to resolve.

11 Do you have another motion?

12 MR. PUGH: Thank you, Your Honor, I'll make it
13 brief.

14 THE COURT: Yes, sir.

15 MR. PUGH: A motion to strike Mr. Brill's testimony
16 from the record, Your Honor. I won't recite all the
17 various rules there. Frankly, Your Honor heard the
18 testimony, Mr. Brill has more questions than answers.
19 Mr. Brill has no credible testimony of how this alleged
20 shock occurred. In fact, he has admitted unequivocally,
21 several issues with regard to his opinions, critical
22 assumptions, and speculation which he made which is too
23 great of a leap.

24 His opinions are not based to a reasonable degree of
25 electrical engineering certainty, instead they're