

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Aug 28 2020

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Donald B. Hocker, Circuit Court Judge

Case No. 2019-001514

Martha Foster Watts,

Appellant,

v.

Ricky W. Chastain, Sheriff
Laurens County, South
Carolina,

Respondent.

RECORD ON APPEAL
VOLUME I

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-30-624

LAURENS COUNTY SHERIFF'S DEPT.

MARTHA FOSTER WATTS

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: SEE ATTACHED VERDICT FORM.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2167
Judge Code

4/19/2018
Date

This judgment was entered on the _____ day of April, 2018 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of April, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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

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

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STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

COURT OF COMMON PLEAS
C/A 2015-CP-30-624

MARTHA FOSTER WATTS,

VS.

LAURENS COUNTY SHERIFF'S DEPARTMENT.

1. Was the defendant negligent?
☐ YES - Go to Question 2
☒ NO - Stop deliberations
2. Was the defendant's negligence a proximate cause of the plaintiff's injuries?
☐ YES - Go to Question 3
☐ NO - Stop deliberations
3. Was the plaintiff negligent?
☐ YES - Go to Question 4
☐ NO - Go to Question 7
4. Was the plaintiff's negligence a proximate cause of the plaintiff's injuries?
☐ YES - Go to Question 5
☐ NO - Go to Question 7
5. Using the combined negligence that proximately caused the plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is

attributable to the plaintiff and what percentage is attributable to the defendant? The percentage must add up to 100%.

Plaintiff _____ %

Defendant _____ %

Total _____ %

6. Was the plaintiff's negligence greater than fifty percent?

_____ YES - Stop deliberations

_____ NO - Go to Question 7

7. Please state the amount of damages, if any, sustained by the plaintiff. [Do not reduce the plaintiff's total damages based on the percentage of negligence by any party. After you have answered these questions, the judge will compute the amount of damages for which the defendant is responsible based on the percentage of the defendant's negligence which you have decided proximately caused the plaintiff's injuries. You are to determine only the total amount of the plaintiff's damages and enter that amount below.]

\$ _____ Actual Damages


FORELADY

WHEN YOU HAVE COMPLETED THE QUESTIONS, NOTIFY
THE BAILIFF.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Martha Foster Watts,

Plaintiff,

-vs-

Ricky W. Chastain, Sheriff Laurens
County, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

ORDER DENYING PLAINTIFF'S POST
TRIAL MOTIONS

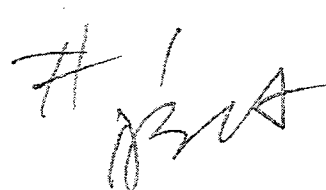
C.A. NO.: 2015-CP-30-00624

FACTS AND BACKGROUND

This is a claim arising out of a motor vehicle collision that occurred on August 15, 2013 in Laurens County, South Carolina at approximately 10:30 p.m. The Plaintiff, at that time, was traveling on Highway 76 and collided with another vehicle that had been involved in an earlier collision with a Laurens County Sheriff's Deputy. The Plaintiff alleges personal injuries and asserts a negligence claim against the Sheriff. The Laurens County Sheriff's Office denied liability in the claim and further alleged comparative fault on behalf of the Plaintiff.

This action was tried before me with a jury on April 16, 2018. The jury returned with a verdict in favor of the Defendant on April 19, 2018. The Plaintiff filed this Notice of Motion and Motion for a New Trial or Judgment NOV pursuant to Rules 59(b) and Rule 60(b)(3) of the South Carolina Rules of Civil Procedure on April 27, 2018. The Defendant filed a response to the Plaintiff's Motion on June 21, 2018. The Court set this matter for oral arguments on December 19, 2018 and the parties were allowed additional time to submit additional memoranda and/or selected portions of the trial transcript.

The Plaintiff submitted supporting memoranda dated December 19, 2018 and February



12, 2019. The Defendant filed a response to the Plaintiff's Motion on June 21, 2018 and an additional Memorandum in Opposition to the Plaintiff's post-trial motions dated February 6, 2019.

The Plaintiff raised an issue with respect to the admissibility of a surveillance video that was captured from a nearby recycling business located adjacent to the scene of the accident on Highway 76. The Plaintiff claims that the surveillance video was improperly admitted into evidence at trial. The Plaintiff contended that the video shown to the jury at trial was a copy of the original but not the original. The Plaintiff raised admissibility issues under SCRE Rules 1001, 1002 and Rule 403. The Plaintiff also argued that defense counsel made a prejudicial and improper closing argument.

The Defendant asserts that the surveillance video was admissible under SCRE Rules 401, 901, 1001, 1002, 1003 and Rule 1004. The Defendant further contends that the closing argument of counsel was not improper and/or was not prejudicial so as to warrant or justify a new trial.

STANDARD OF REVIEW

"In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Id.*; *See, Crossley v. State Farm Mutual Auto. Ins. Co.*, 307 S.C. 354, 357, 415 S.E.2d 393, 395 (1992). The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision. *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994).

DISCUSSION

I have reviewed the memoranda of law submitted by the parties, I have considered the

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arguments of counsel and I have reviewed the surveillance video and portions of the transcript as relate to the issues before me.

The surveillance video was the subject of a lengthy *in camera* hearing. The surveillance video in question captured part of the accident which is the subject of this claim on a camera mounted at Dixie Iron Metal Recycling. The owner of that business, Matt Cagle, testified that he found his fence laying on the ground and then learned from a trooper about the accident.

As to the issue of authenticity, Mr. Cagle testified that he set up the camera equipment in 2013, and that the system recorded video and not audio. He stated that his equipment recorded on a Lorex EC02 recording system and on a DVR with a hard drive inside. He stated that the hard drive cannot be physically removed and that it is located in the building in the main office of his business in a corner. He described that there was a monitor for the system mounted in the office and that the system could be reviewed using a mouse or a remote. He stated that the recording device runs continuously 24/7 and there had been no problem with the monitor, nor had there been anyone that had tampered in any way with or altered the equipment between the time of the incident and the time when a member of the MAIT Team came to his business to record from the video.

Trooper Duncan, with the South Carolina Department of Public Safety MAIT Team, brought a tripod to Mr. Cagle's business and set up a camcorder to record the images off of the monitor. Mr. Cagle testified that the images shown on the video equipment at trial accurately portray and represent the images that were on his recording system when Trooper Duncan came to his place of business. Mr. Cagle testified that the equipment recorded 24 hours a day and that the video was fast forwarded to the portion of the video which was relevant to the accident.

At trial there was also testimony from Al Duncan of the South Carolina Department of

H 3
NSA

Public Safety who was at that time a member of the Multidisciplinary Accident Investigation Team. Al Duncan testified that he set up a camcorder on a tripod in front of Mr. Cagle's monitor and recorded the parameters of the time frame related to the accident and the time frame which is the basis of the claim. He indicated that it was useless to record every single thing on the video and the surveillance video was advanced to the time just before and during this collision.

Trooper Duncan recorded onto a Sony handheld DVD and that system recorded to a hard drive within the camcorder. Officer Duncan then testified that the information was taken back to the office, loaded into his computer, and saved into the M drive of the MAIT Team which is a secure hard drive system. Trooper Duncan testified that the disc admitted into evidence at trial fairly represented the recording made from Mr. Cagle's monitor as to the events which relate to this incident. Trooper Duncan explained further that the recording was a constant recording and an exact picture of what was taken off of Mr. Cagle's surveillance monitor, and what was recorded onto his camcorder was put into the MAIT Team hard drive without any edits. He states that nothing was taken out of the video itself and that it is a complete recording from the time the button was pressed until the recording button was stopped. The video played at trial was in real time and there were no breaks, interruptions or alterations.

The video admitted at trial complies with Rule 1001, 1002, 1003 and 1004. Rule 1001 indicates that an original of a photograph includes the negative or any print therefrom and the video recorded by Al Duncan is actually a print of the images shown on Matt Cagle's Recycling Center surveillance video. It is a duplicate of the same. Furthermore, under Rule 1003 a duplicate is admissible to the same extent as an original unless there is a genuine question as to the authenticity of the original, or unless the circumstances would make it unfair to admit a duplicate in lieu of the original. There is no legitimate and/or genuine question raised here as to

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the authenticity of the original. Further, under Rule 1004, an original is not required, and other evidence is admissible if the original is lost or destroyed. It should be noted here that the original was never in the possession of the Laurens County Sheriff's Office and it is no longer available for the reasons that were fully explained at trial.

Rule 401 clearly defines relevant evidence as any evidence which has the tendency to make the existence of any fact that is of consequence more probable or less probable than it would be without that evidence. Relevant evidence is admissible under Rule 402 and here the video in question provided information and evidence as to the position of the vehicle, the timing of the two collisions at issue, the roadway conditions, and whether or not motorists had their lights on. These were all contested issues at trial and the video is clearly relevant to all of those issues. Specifically the surveillance video showed that there was a gap of approximately 41 seconds between the two collisions that occurred, and this time differential was a highly contested and important issue in this case.

The surveillance video received into evidence at trial was authentic and relevant, and it was not prejudicial to any party.

As an additional ground for a new trial and/or JNOV, the Plaintiff contends that defense counsel made an improper argument and told the jury what the video showed. The video was played during closing arguments and defense counsel invited the jury to use their 24 eyes to interpret what it showed. Counsel specifically said "You may see, find things much different than me. I invite you to do that." Attorneys are allowed and expected to argue inferences that can be drawn from the evidence. Considerable latitude is given to counsel in an effort to draw inferences and deductions from the evidence and this latitude allows counsel to state his or her own version of the testimony and to comment on the weight it should be given. *See Lesley v.*

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American Sec. Ins. Co., 261 S.C. 178, 199 S.E.2d 82 (1973); *State v. Johnson*, 306 S.C. 119, 410 S.E.2d 547 (1991); *State v. Caldwell*, 300 S.C. 494, 388 S.E.2d 816 (1990); *State v. Hough*, 325 S.C. 88, 480 S.E.2d 77 (1997). There was no prejudice in defense counsel's closing argument and any remarks by counsel did not deprive the Plaintiff of a fair trial.

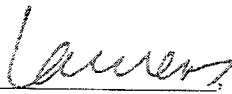
CONCLUSION

Based on the arguments submitted, a review of the evidence, and after considering arguments of counsel, I find the Plaintiff's Motion For A New Trial or Judgment NOV pursuant to Rule 59(b) and Rule 60(b)(3) should be and same are respectfully denied.

IT IS SO ORDERED.



Donald B. Hocker, Judge

 South Carolina

Dated: 8-5-19

#6

The South Carolina Court of Appeals

Martha Foster Watts, Appellant,

v.

Ricky W. Chastain, Sheriff Laurens County, South
Carolina, Respondent.

Appellate Case No. 2019-001514

The Honorable Donald B. Hocker
Laurens County
Trial Court Case No. 2015CP3000624

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until March 09, 2020.

FOR THE COURT

BY V. Elaine Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Thomas J. Thompson, Esquire
Russell W. Harter, Jr., Esquire

FILED

February 7, 2020

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS) IN THE COURT OF COMMON PLEAS

Martha Foster Watts, 2015 AUG 13) P 1: 25

Plaintiff,)

vs.)

Laurens County Sheriff's Department,)
LAURENS COUNTY CLERK OF COURT

Defendant.)

SUMMONS
15-CP-30-624

TO: THE ABOVE NAMED DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, Townsend Building, 210 West Laurens Street, Laurens, South Carolina, within thirty (30) days after the service hereof; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TOWNSEND & THOMPSON
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Attorneys for the Plaintiff

Laurens, South Carolina
August 13, 2015

LYNN W. LANCASTER
IN THE COURT OF COMMON PLEAS

Martha Foster Watts,

2015 AUG 13 P 1:25

Plaintiff,

VS.

Laurens County Sheriff's Department,

Defendant.

LAURENS COUNTY CLERK OF COURT COMPLAINT 15-CP-30-624

The Plaintiff, Martha Foster Watts ("Watts"), would respectfully show unto the Court:

1. Watts is a citizen and resident of the County of Laurens, State of South Carolina.
2. Watts is informed and believes that Defendant, Laurens County Sheriff's Department, hereinafter referred to as "Sheriff," is a governmental agency as defined by § 15-78-40 of the 1976 South Carolina Code of Laws, as amended, which employs personnel (deputies) to serve as law enforcement officers within the territory limits of Laurens County, and at all times herein relevant, Sheriff and/or one or more of his deputies (also referred to as "Sheriff") were acting in and about the official business of the Laurens County Sheriff's Department and were performing the official duties of same.
3. Watts is further informed and believes that on August 15, 2013 at approximately 10:38 p.m. in Laurens County, South Carolina, Sherell Elizabeth Latonya King, hereinafter referred to as "King," was operating her motor vehicle (2008 Dodge) at a lawful rate of speed, traveling in an easterly direction on the inside lane of Highway 76, a 4-lane highway with two eastbound and two westbound lanes which are separated by a median, hereinafter referred to as the "Highway."
4. Watts is further informed and believes that on or about August 15, 2013 at approximately 10:38 p.m., Sheriff was operating a motor vehicle in the same easterly direction of travel as King, but in the outside lane of the Highway, a small distance ahead of the King motor vehicle.
5. On or about August 15, 2013 at approximately 10:38 p.m., Watts was driving her motor vehicle (1995 Oldsmobile) at a lawful rate of speed, in a manner that was safe for the conditions of the Highway at that place and time, keeping a proper lookout and maintaining a safe distance between her vehicle and other vehicles on the Highway, traveling in an easterly direction in the inside lane of the Highway at a safe and secure distance behind the King and Sheriff motor vehicles.
6. The King and Sheriff motor vehicles while traveling as aforesaid, approached and drove over a hill, and as these motor vehicles descended on the downslope of the hill, Watts' view of the King and Sheriff vehicles was obstructed by the hill separating those vehicles from Watts' vehicle.
7. Watts is informed and believes that, as the Sheriff's motor vehicle began to descend said hill, Sheriff, without any signal or warning, in a grossly negligent and reckless manner, made a precipitous leftward U-turn, crossing from the outside lane of travel, through the inside (eastbound) lane of travel,

in which the King vehicle was traveling, and Sheriff's vehicle violently collided with the King motor vehicle, which caused the two vehicles to come to an abrupt stop, blocking the Highway's eastbound lanes.

8. Watts could not see the motor vehicle collision described in the immediately preceding paragraph, nor the King and Sheriff vehicles stopped in the Highway where they came to rest after the collision, until Watts' vehicle began to descend the downslope of the subject hill; and then and there, being immediately confronted with the sudden dangerous condition in the roadway, which was caused by the grossly negligent and reckless acts and omissions of the Sheriff, Watts responded with reasonable due care, under the circumstances; and she attempted to avoid colliding with the Sheriff and King vehicles by applying the brakes of her motor vehicle and turning her vehicle to the north; but, she was unable to entirely avoid colliding with the wreckage in the eastbound lanes of the Highway; her motor vehicle came into contact with the King and/or Sheriff motor vehicles, which caused Watts to lose control of her vehicle, which went into the shoulder adjacent to the westbound lanes of the Highway; and then and there it came to an abrupt stop.

9. As a direct and proximate result of Sheriff's gross negligence and recklessness, described herein, Watts received serious and, upon information and belief, permanent bodily injury whereby she sustained multiple bruises, contusions, and lacerations on and throughout her entire body; she suffered multiple broken bones, including a fracture of her right ankle; a fracture of her right wrist; and a crushing injury to her left knee, all of which caused Watts to suffer intense, excruciating and relentless pain; caused her to be hospitalized; and, thereafter, caused her to be placed in a long-term rehabilitative facility for an extensive period of time.

10. As a direct and proximate result of Sheriff's gross negligence and recklessness, and the serious bodily injury caused thereby, Watts continues to suffer great and overwhelming physical, mental and emotional pain; she is permanently disabled; and, as a further consequence of Sheriff's gross negligence and recklessness, Watts has incurred medical and other expenses in excess of \$100,000.00; and, upon information and belief, these expenses are continuing to increase and will continue to increase in the future, indefinitely.

11. The aforesaid collision, injuries, pain and suffering, disability, medical and other expenses sustained and incurred by Watts were caused solely and proximately by the Sheriff's gross, negligence and reckless disregard for the safety of Watts, King and other members of the public traveling on the Highway, when the Sheriff acted in the following particulars, to wit:

(a) He failed to signal his intention to make a leftward U-turn through and across the inside lane of eastbound travel, with no thought to other motorists whom he knew or should have known were in immediate danger as a result of his actions, in violation of § 56-5-760(D) of the 1976 South Carolina Code of Laws, as amended;

(b) While making his unsafe U-turn, he failed to keep his motor vehicle under adequate and proper control;

(c) He turned his motor vehicle in violation of § 56-5-2150(a)(b) of the 1976 South Carolina Code of Laws, as amended;

(d) He failed to timely apply his brakes, turn his motor vehicle and/or take other maneuvers so as to avoid the collision with the King motor vehicle;

(e) He operated the motor vehicle at an excessive and unsafe rate of speed, considering the circumstances, in violation of § 56-5-1520(A) of the 1976 South Carolina Code of Laws, as amended;

(f) He improperly changed lanes in violation of § 56-5-1900(a) of the 1976 South Carolina Code of Laws, as amended;

(g) He failed to yield the right of way to the King motor vehicle;

(h) He failed to take any precaution to warn oncoming motorists of the hazard which he had created;

(i) He failed to keep a proper lookout;

(j) He failed to properly signal his intention to make a left-hand turn/movement in violation of § 56-5-2140(a) of the 1976 South Carolina Code of Laws, as amended; and

(k) He turned his motor vehicle in violation of § 56-5-2140(a) and (b) by changing the direction of travel near the crest of a hill outside of oncoming travelers', including Watts', field of vision.

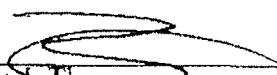
12. As a result of all of the above, Watts is informed and believes that she is entitled to, and hereby demands:

(A) Trial by jury as to all matters of fact;

(B) Judgment against Sheriff for all damages allowed by law, in amounts determined by the jury; and,

(C) All such other and further relief as may be just and proper.

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Laurens, South Carolina
August ____, 2015

Attorneys for the Plaintiff

2015 SEP 23 A 9:12

Martha Foster Watts,

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Plaintiff,

LAURENS COUNTY
CLERK OF COURT

Civil Action Number:
2015-CP-30-00624

vs.

Laurens County Sheriff's Department,

[JURY TRIAL REQUESTED]

Defendant.

Defendant, by way of Answer to the Plaintiff's Complaint, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as is expressly admitted, modified, or explained herein, each and every allegation of the Plaintiff's Complaint is denied and strict proof thereof is demanded.

2. That as to the allegations of paragraph one (1) of the Plaintiff's Complaint, the defendant is presently without sufficient information with which to admit or deny same; therefore, strict proof thereof is demanded.

3. That as to the allegations of paragraph two (2) of the Plaintiff's Complaint, it is admitted that the Laurens County Sheriff employs deputies in the ordinary course of business and/or operations. It is denied, however, that Laurens County Sheriff's Department is an entity for the purposes of suit. That accordingly, the allegations of paragraph two (2) of the Plaintiff's Complaint are denied as framed and strict proof

thereof is demanded.

4. That as to the allegations of paragraphs three (3) through twelve (12) of the Plaintiff's Complaint and any applicable subparts thereto, it is denied that said allegations accurately and fully set forth the circumstances then and there existing, and it is denied that said allegations accurately and fully set forth the duties of care incumbent upon the parties. That accordingly, said allegations are denied as framed and strict proof thereof is demanded.

5. That as to the plaintiff's prayer for relief, it is denied that the plaintiff is entitled to the relief requested therein and strict proof thereof is demanded.

6. That except as is expressly admitted, modified, or explained herein, each and every allegation of the Plaintiff's Complaint is denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

7. That it is denied that Laurens County Sheriff's Department is an entity for the purposes of suit.

FOR A THIRD DEFENSE

8. That the defendant respectfully pleads and asserts all provisions of the South Carolina Tort Claims Act as a complete and absolute bar to any recovery of the plaintiff from the defendant.

9. That the defendant therefore pleads and asserts the South Carolina Tort Claims Act as a complete and absolute defense and/or bar to the claims set forth in the

Plaintiff's Complaint. That the defendant specifically, but without limitation, pleads and asserts all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps and/or limits on damages as are set forth in the South Carolina Tort Claims Act.

FOR A FOURTH DEFENSE

10. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-30 as a bar and/or defense to the claims set forth in the Plaintiff's Complaint.

FOR A FIFTH DEFENSE

11. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-60 as a bar and/or defense to the claims set forth in the Plaintiff's Complaint.

FOR A SIXTH DEFENSE

12. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-120 as a bar and/or defense to the claims set forth in the Plaintiff's Complaint.

FOR A SEVENTH DEFENSE

13. That, to the extent applicable, the defendant pleads and asserts the comparative fault of the plaintiff as a complete and absolute defense to the allegations of the Plaintiff's Complaint. That alternatively, the defendant pleads and asserts the comparative fault of the plaintiff in mitigation of any alleged damages sought to be recovered by the plaintiff from the defendant.

FOR AN EIGHTH DEFENSE

14. That, upon information and belief, the damages alleged by the plaintiff were primarily caused by third parties for whom the defendant is not liable, and the

defendant pleads and asserts same as a complete and absolute defense and/or bar to the allegations of the Plaintiff's Complaint.

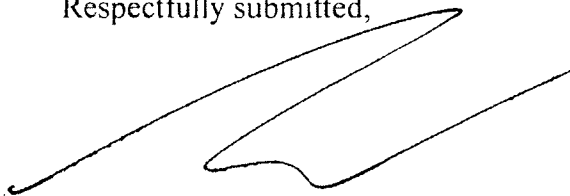
FOR A NINTH DEFENSE

15. That the defendant pleads and asserts the public duty rule and/or public duty doctrine as a complete and absolute and/or defense to the allegations of the Plaintiff's Complaint.

WHEREFORE, the defendant prays as follows:

1. That the Complaint of the plaintiff be dismissed.
2. That the defendant be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

September 14, 2015

STATE OF SOUTH CAROLINA ~~LYNN W. LANCASTER~~
COUNTY OF LAURENS) IN THE COURT OF COMMON PLEAS
Martha Foster Watts,)
2015 DEC 17 A 10:58
Plaintiff,)
vs.) AMENDED
LAURENS COUNTY COMPLAINT
CLERK OF COURT 15-CP-30-624
Ricky W. Chastain, Sheriff,
Laurens County, South Carolina,)
Defendant.)

The Plaintiff, Martha Foster Watts ("Watts"), would respectfully show unto the Court:

1. Watts is a citizen and resident of the County of Laurens, State of South Carolina.
2. Watts is informed and believes that Defendant, Ricky w. Chastain, Sheriff of Laurens County, South Carolina, hereinafter referred to as "Sheriff," is a governmental agency as defined by § 15-78-40 of the 1976 South Carolina Code of Laws, as amended, which employs personnel (deputies) to serve as law enforcement officers within the territory limits of Laurens County, and at all times herein relevant, Sheriff and/or one or more of his deputies (also referred to as "Sheriff") were acting in and about the official business of the Laurens County Sheriff's Department and were performing the official duties of same.
3. Watts is further informed and believes that on August 15, 2013 at approximately 10:38 p.m. in Laurens County, South Carolina, Sherell Elizabeth Latonya King, hereinafter referred to as "King," was operating her motor vehicle (2008 Dodge) at a lawful rate of speed, traveling in an easterly direction on the inside lane of Highway 76, a 4-lane highway with two eastbound and two westbound lanes which are separated by a median, hereinafter referred to as the "Highway."
4. Watts is further informed and believes that on or about August 15, 2013 at approximately 10:38 p.m., Sheriff was operating a motor vehicle in the same easterly direction of travel as King, but in the outside lane of the Highway, a small distance ahead of the King motor vehicle.
5. On or about August 15, 2013 at approximately 10:38 p.m., Watts was driving her motor vehicle (1995 Oldsmobile) at a lawful rate of speed, in a manner that was safe for the conditions of the Highway at that place and time, keeping a proper lookout and maintaining a safe distance between her vehicle and other vehicles on the Highway, traveling in an easterly direction in the inside lane of the Highway at a safe and secure distance behind the King and Sheriff motor vehicles.
6. The King and Sheriff motor vehicles while traveling as aforesaid, approached and drove over a hill, and as these motor vehicles descended on the downslope of the hill, Watts' view of the King and Sheriff vehicles was obstructed by the hill separating those vehicles from Watts' vehicle.
7. Watts is informed and believes that, as the Sheriff's motor vehicle began to descend said hill, Sheriff, without any signal or warning, in a grossly negligent and reckless manner, made a precipitous

leftward U-turn, crossing from the outside lane of travel, through the inside (eastbound) lane of travel, in which the King vehicle was traveling, and Sheriff's vehicle violently collided with the King motor vehicle, which caused the two vehicles to come to an abrupt stop, blocking the Highway's eastbound lanes.

8. Watts could not see the motor vehicle collision described in the immediately preceding paragraph, nor the King and Sheriff vehicles stopped in the Highway where they came to rest after the collision, until Watts' vehicle began to descend the downslope of the subject hill; and then and there, being immediately confronted with the sudden dangerous condition in the roadway, which was caused by the grossly negligent and reckless acts and omissions of the Sheriff, Watts responded with reasonable due care, under the circumstances; and she attempted to avoid colliding with the Sheriff and King vehicles by applying the brakes of her motor vehicle and turning her vehicle to the north; but, she was unable to entirely avoid colliding with the wreckage in the eastbound lanes of the Highway; her motor vehicle came into contact with the King and/or Sheriff motor vehicles, which caused Watts to lose control of her vehicle, which went into the shoulder adjacent to the westbound lanes of the Highway; and then and there it came to an abrupt stop.

9. As a direct and proximate result of Sheriff's gross negligence and recklessness, described herein, Watts received serious and, upon information and belief, permanent bodily injury whereby she sustained multiple bruises, contusions, and lacerations on and throughout her entire body; she suffered multiple broken bones, including a fracture of her right ankle; a fracture of her right wrist; and a crushing injury to her left knee, all of which caused Watts to suffer intense, excruciating and relentless pain; caused her to be hospitalized; and, thereafter, caused her to be placed in a long-term rehabilitative facility for an extensive period of time.

#2
TJ 10. As a direct and proximate result of Sheriff's gross negligence and recklessness, and the serious bodily injury caused thereby, Watts continues to suffer great and overwhelming physical, mental and emotional pain; she is permanently disabled; and, as a further consequence of Sheriff's gross negligence and recklessness, Watts has incurred medical and other expenses in excess of \$100,000.00; and, upon information and belief, these expenses are continuing to increase and will continue to increase in the future, indefinitely.

11. The aforesaid collision, injuries, pain and suffering, disability, medical and other expenses sustained and incurred by Watts were caused solely and proximately by the Sheriff's gross, negligence and reckless disregard for the safety of Watts, King and other members of the public traveling on the Highway, when the Sheriff acted in the following particulars, to wit:

(a) He failed to signal his intention to make a leftward U-turn through and across the inside lane of eastbound travel, with no thought to other motorists whom he knew or should have known were in immediate danger as a result of his actions, in violation of § 56-5-760(D) of the 1976 South Carolina Code of Laws, as amended;

(b) While making his unsafe U-turn, he failed to keep his motor vehicle under adequate and proper control;

(c) He turned his motor vehicle in violation of § 56-5-2150(a)(b) of the 1976 South Carolina Code of Laws, as amended;

(d) He failed to timely apply his brakes, turn his motor vehicle and/or take other maneuvers so

as to avoid the collision with the King motor vehicle;

(e) He operated the motor vehicle at an excessive and unsafe rate of speed, considering the circumstances, in violation of § 56-5-1520(A) of the 1976 South Carolina Code of Laws, as amended;

(f) He improperly changed lanes in violation of § 56-5-1900(a) of the 1976 South Carolina Code of Laws, as amended;

(g) He failed to yield the right of way to the King motor vehicle;

(h) He failed to take any precaution to warn oncoming motorists of the hazard which he had created;

(i) He failed to keep a proper lookout;

(j) He failed to properly signal his intention to make a left-hand turn/movement in violation of § 56-5-2140(a) of the 1976 South Carolina Code of Laws, as amended; and

(k) He turned his motor vehicle in violation of § 56-5-2140(a) and (b) by changing the direction of travel near the crest of a hill outside of oncoming travelers', including Watts', field of vision.

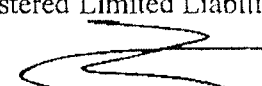
12. As a result of all of the above, Watts is informed and believes that she is entitled to, and hereby demands:

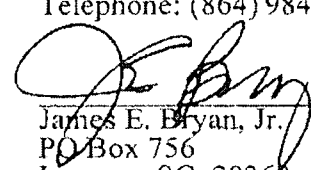
(A) Trial by jury as to all matters of fact;

(B) Judgment against Sheriff for all damages allowed by law, in amounts determined by the jury; and,

(C) All such other and further relief as may be just and proper.

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Laurens, South Carolina
December 15, 2015

Attorneys for the Plaintiff

Complaint are denied as framed and strict proof thereof is demanded.

4. That as to the allegations of paragraphs three (3) through twelve (12) of the Plaintiff's Amended Complaint and any applicable subparts thereto, it is denied that said allegations accurately and fully set forth the circumstances then and there existing, and it is denied that said allegations accurately and fully set forth the duties of care incumbent upon the parties. Further, it is denied that the collision referenced in the Plaintiff's Complaint occurred precisely as is alleged in paragraphs three (3) through twelve (12) of the Plaintiff's Complaint. That accordingly, said allegations are denied as framed and strict proof thereof is demanded.

5. That as to the plaintiff's prayer for relief, it is denied that the plaintiff is entitled to the relief requested therein and strict proof thereof is demanded.

6. That except as is expressly admitted, modified, or explained herein, each and every allegation of the Plaintiff's Amended Complaint is denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

7. That it is denied the defendant breached any applicable duty of care owed to the plaintiff.

FOR A THIRD DEFENSE

8. That the defendant respectfully pleads and asserts all provisions of the South Carolina Tort Claims Act as a complete and absolute bar to any recovery of the plaintiff from the defendant.

9. That the defendant therefore pleads and asserts the South Carolina Tort Claims Act as a complete and absolute defense and/or bar to the claims set forth in the Plaintiff's Amended Complaint. That the defendant specifically, but without limitation, pleads and asserts all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps and/or limits on damages as are set forth in the South Carolina Tort Claims Act.

FOR A FOURTH DEFENSE

10. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-30 as a bar and/or defense to the claims set forth in the Plaintiff's Amended Complaint.

FOR A FIFTH DEFENSE

11. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-60 as a bar and/or defense to the claims set forth in the Plaintiff's Amended Complaint.

FOR A SIXTH DEFENSE

12. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-60 (20) as a complete and absolute defense and/or bar to the allegations set forth in the Plaintiff's Amended Complaint.

FOR A SEVENTH DEFENSE

13. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-120 as a bar and/or defense to the claims set forth in the Plaintiff's Amended Complaint.

FOR AN EIGHTH DEFENSE

14. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-100 as a defense and/or bar to the allegations set forth in the Plaintiff's Amended Complaint.

FOR A NINTH DEFENSE

15. That, to the extent applicable, the defendant pleads and asserts the comparative fault of the plaintiff as a complete and absolute defense to the allegations of the Plaintiff's Amended Complaint. That alternatively, the defendant pleads and asserts the comparative fault of the plaintiff in mitigation of any alleged damages sought to be recovered by the plaintiff from the defendant.

FOR A TENTH DEFENSE

16. That, upon information and belief, the damages alleged by the plaintiff were primarily caused by third parties for whom the defendant is not liable, and the defendant pleads and asserts same as a complete and absolute defense and/or bar to the allegations of the Plaintiff's Amended Complaint.

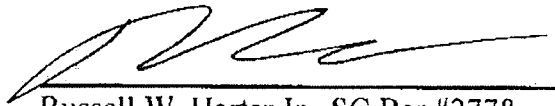
FOR AN ELEVENTH DEFENSE

17. That the defendant pleads and asserts the public duty rule and/or public duty doctrine as a complete and absolute and/or defense to the allegations of the Plaintiff's Amended Complaint.

WHEREFORE, the defendant prays as follows:

1. That the Complaint and/or Amended Complaint of the plaintiff be dismissed.
2. That the defendant be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,



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January 14, 2016

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2015-CP-30-00624
COUNTY OF LAURENS	)	
	)	
	)	
	)	
	)	
MARTHA FOSTER WATTS,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
LAURENS COUNTY SHERIFF'S	)	
DEPARTMENT,	)	
DEFENDANT.	)	
	)	

April 16, 17, 18, 19, 2018
Laurens, South Carolina

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE

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

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CHERYL A. SMITH
Circuit Court Reporter

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MONDAY, APRIL 16, 2018

(Jury qualification and selection not transcribed.)

(WHEREUPON, proceedings reconvened at 1:42 p.m.)

THE COURT: Okay. Gentlemen, we are back on the record.

And I understand we have an issue related to some video taping. I think plaintiff has an objection to some video footage coming in.

MR. BRYAN: It's a video deposition de bene esse of Mr. Holmes, and there's some additional lines Mr. Thompson is asking to strike. We've agreed on some that have already been edited out. It's my understanding Mr. Thompson has some additional ones.

THE COURT: Okay. So is that a separate -- the deposition is a separate issue?

MR. THOMPSON: Yes sir.

THE COURT: We've got the video taping, whether or not that comes in or not, and then we have Mr. Holmes's deposition that we have an issue.

MR. HARTER: Judge if I could, I think I can -- we took the video deposition de bene esse of Barton Holmes.

THE COURT: Right.

MR. HARTER: That was done upon notice. And

1 actually, Judge, if you recall, we were -- we had a status
2 conference with you on the phone to arrange that.

3 THE COURT: Right.

4 MR. HARTER: I don't believe there's any -- there's
5 no objection to the deposition as it was taken or any of
6 the procedures or any parts of the actual process. Then
7 when I got the deposition -- I was the one that noticed
8 the deposition. When I got the deposition transcript
9 back, I made edits that I thought were appropriate and
10 sent them to plaintiff's counsel. Plaintiff's counsel
11 made edits to -- they didn't object to mine. They sent me
12 some edits and I then sent the videographer that
13 information. These are the edits that we've agreed on.

14 THE COURT: Okay.

15 MR. HARTER: And then a day or two later, the next
16 day or something, Tom contacted me about a couple of lines
17 that are on pages 57 and 58. So I think that's all we've
18 got an issue with is whether or not those lines stay in or
19 go out.

20 THE COURT: Okay.

21 MR. HARTER: And I'll be glad -- if I can, I'll be
22 glad to give you ---

23 THE COURT: Sure.

24 MR. HARTER: --- you and your clerk, this is
25 basically -- and if you want to read along, you can. It

1 will be in small print. But that is kind of a
2 sliced-and-diced copy of what we have edited out.

3 Now, the questionable area, the area that we have not
4 agreed on, Judge, is on page 57 and 58. And specifically,
5 we're talking about lines 11 and 12 on 57, lines 22
6 through 25 on 57, and lines 1 through 7 on 58.

7 THE COURT: Okay.

8 MR. HARTER: I think that's the only thing that we
9 have any disagreement about. They want it out and I think
10 it should stay in. I think that kind of frames the issue.

11 THE COURT: Okay. All right. Before I hear argument
12 further, let me just read -- now, you agree, Mr. Thompson,
13 as far as what is at issue related to the deposition today
14 are those lines and pages that Mr. Harter referred to?

15 MR. THOMPSON: Yes.

16 THE COURT: Okay. All right. Let me read it and let
17 me see.

18 (Pause in proceedings.)

19 THE COURT: All right. Mr. Thompson, I'll be glad to
20 hear from you.

21 MR. THOMPSON: All right. May it please the Court.
22 Our objection to the language is basically that what he is
23 trying to tell is what someone else told him. It's
24 hearsay.

25 THE COURT: Right.

1 MR. THOMPSON: And they have agreed to take out large
2 portions of that. And we feel like this -- what he's
3 saying is not what he knows of his own personal knowledge,
4 but what either he -- someone else prepared the MAIT
5 report or whatever you want to call it ---

6 THE COURT: Right.

7 MR. THOMPSON: --- and/or the investigators who
8 assembled the MAIT report told him something.

9 THE COURT: Right. Okay.

10 MR. THOMPSON: So that's our position.

11 THE COURT: All right. Mr. Harter?

12 MR. HARTER: Very briefly, Your Honor. First of all,
13 the issue that relates to this line of questioning is,
14 well, there was an accident with Barton Holmes's vehicle
15 and Mrs. King's vehicle, and then sometime later,
16 Mrs. Watts's vehicle collides with Mrs. King's vehicle and
17 careens off and hits a fence. This line of questioning
18 relates to the interval of time between those two events.
19 And I will just go ahead and tell you, in statements
20 and/or in depositions, Ms. King has given an estimate of
21 that time, Barton Holmes has given an estimate of that
22 time, but also, in connection with this case, because
23 you're going to hear this later on, the MAIT team did an
24 investigation, came out and found that at the site of the
25 accident, there were two cameras at a recycling facility

1 right at the area where the incident occurred. One
2 cameral looks kind of toward -- and, Judge, this place is
3 on the left as you're going out of Laurens. It's down
4 past McDaniel's Liquor Store and the barbershop. But one
5 camera kind of looks, it kind of angles towards the
6 Laurens side and one camera angles toward the Clinton
7 side. And the way this accident is going to be described
8 is that Barton Holmes and King are traveling down 76
9 toward Clinton, and that Barton Holmes makes a U-turn in
10 front of her and her vehicle clips the rear-end of his
11 vehicle, and the vehicles stop on 76 with the King vehicle
12 facing toward Clinton and Barton Holmes's vehicle in the
13 median facing back towards Lauren.

14 Now, in connection with the deposition, Barton
15 Holmes, as you can tell from the video deposition, he is
16 asked -- this is Mr. Thompson's examination of Barton. He
17 says: Question, "Well, would you agree with the five to
18 ten seconds between the two collisions?" And then there's
19 an objection and a discussion.

20 And then Barton answers, and he says, "It was a
21 considerable more of time, more amount of time, so
22 obviously, my perception of time was a little off but I
23 don't think my facts are."

24 And then the question is, "All right. But you're
25 basing that, in fact, on what someone else told you then,

1 what the MAIT report concluded."

2 "Yes, sir."

3 "Something that somebody else prepared and had told
4 you."

5 "Yes, sir."

6 Now, Barton Holmes does not mention the time interval
7 here, Judge. The MAIT report indicates, and I will just
8 tell you that it was 41 seconds as opposed to five or ten
9 or whatever. But Barton in his deposition does not
10 mention the time element. He does not mention 41 seconds.
11 But he did in his -- so he doesn't mention the time at
12 all. He just said it was considerably more time based on
13 information that I later reviewed and/or was told about.

14 Now, in his discovery deposition which was done back
15 on April [sic] 15, 2017, he said at pages 36 and 37, he
16 describes basically the same thing, but he says -- and he
17 comments, Judge, that his perception changed after he
18 reviewed the video. And that's what he says in his
19 deposition. And I'm asking you, you said you saw the
20 video.

21 Yes.

22 Okay. So my point is, I think this stays in.

23 And let me just -- you know, don't want to make a big
24 deal about it, but, you know, by way of analogy or
25 example, let's just say that we're talking about a

1 distance or a measurement or something, and somebody goes
2 out and says -- or they testify, "According to my best
3 recollection, it's three feet." Okay. But then they go
4 back and actually do a measurement and it turns out to be
5 ten feet. It's not any different than somebody going and
6 referring to something else to verify their testimony. I
7 mean, they can cross-examine him and impeach him all day
8 about any different statements or any contradictory
9 statements or any times when this time estimate has been
10 expressed differently, but there's nothing that's
11 objectionable to the extent it can't be presented as
12 evidence. I mean, it comes in, I guess, for what it's
13 worth, that he says, "I looked at something. I looked at
14 the video. I think it's now longer." There's nothing
15 wrong with that. And, I mean, it's just a section in the
16 video, and we think it's admissible and it stays in.

17 He does not mention the 41 seconds. And we know that
18 the issue with the video, we're going to deal with that
19 another way, too. But he does not mention the time
20 element. He just mentions that he looked at the video.
21 So he doesn't go into anything substantive, Judge.

22 THE COURT: All right. Thank you.

23 Mr. Thompson, anything in brief response to
24 Mr. Harter's argument?

25 MR. THOMPSON: Briefly. Mr. Holmes, five days after

1 the accident, gave a recorded statement to one of the
2 investigators of the MAIT Team, and that's been
3 transcribed into a transcript now. And in that interview
4 five days after the accident, he says five to ten seconds.
5 Now, he later wanted to change it to a longer period of
6 time based on this video which we say is inadmissible.

7 And so what I'm thinking where we're headed here is
8 if the video is admissible, then, yes, this language could
9 stay in. But if the video is not admissible, then the
10 language has got to come out because it would be based on
11 inadmissible -- an inadmissible video that he may or may
12 not have watched or was told about.

13 THE COURT: Okay. All right. Now, Trooper Duncan
14 with the MAIT Team is going to testify, Mr. Harter?

15 MR. HARTER: Yes, sir. He is. He is going to
16 testify about how he captured the video.

17 THE COURT: Okay. All right.

18 MR. HARTER: And I agree. He can impeach my witness
19 about a prior statement. I mean, there's another witness
20 that says -- told the MAIT Team it was two seconds and
21 then she gave a deposition and said it was ten to 15. I
22 think that's all fair game, you know.

23 But, yes, to come back to your question, Trooper
24 Duncan with the MAIT Team at that point came to that
25 recycling center, got the video or got the recording, when

1 it does, and I don't know if you want to hear it, but it
2 records. And he goes and he finds it and he records the
3 recording, and then that is automatically put on the MAIT
4 Team mainframe. Okay. And then the -- we got a copy of
5 the MAIT Team mainframe through a FOIA request, and that's
6 the video. But it was -- that surveillance video was
7 taken by Trooper Duncan for the MAIT Team as he recorded
8 off of these surveillance cameras. Okay.

9 THE COURT: Well, let's talk about this video a
10 little bit, too, because at least I think from
11 Mr. Thompson's viewpoint, there's some connection here
12 whether or not the video is admissible and how that may
13 relate to whether or not some of this additional testimony
14 from Mr. Holmes comes in.

15 So we've got a video from the recycling plant that's
16 out on '76, and I assume your objection, Mr. Thompson, is
17 that there's no one from the recycling plant to
18 authenticate the ---

19 MR. THOMPSON: We have a multitude of objections. We
20 have a written legal memorandum for you and Mr. Harter.

21 THE COURT: Okay.

22 MR. THOMPSON: And Mr. Bryan is prepared to deal with
23 that issue of admissibility and/or suppression of it.

24 THE COURT: Okay. Right. Okay. Let me have it. If
25 you've got a written memorandum, hand that to me, and then

1 let's go ahead and argue this point, too, I think since
2 there's some connection here.

3 MR. HARTER: Can I add, Judge? Because I have been
4 asking them for a week for information to tell us what
5 their objections are.

6 THE COURT: Okay.

7 MR. HARTER: And I haven't -- I mean, they just say
8 "we object."

9 Now, I have under subpoena the owner or operator of
10 the recycling center, okay, who will come and put his
11 information on the record and testify about the recording.
12 I also will have a member of the MAIT Team from Columbia
13 who will bring the video recorded off of the MAIT Team
14 mainframe in the morning here at 10:00 to authenticate all
15 of that.

16 And, I mean, I can show you the video and tell you
17 what it says or what it represents, but we will be
18 prepared with, you know, witnesses tomorrow to hopefully
19 address these things. And I haven't seen this. I mean,
20 this is a pretty thick memo here, and I just, you know,
21 got it a second ago, you know. I mean ---

22 THE COURT: Let me ask this. And I know it's the
23 plaintiff's position that they want to publish in their
24 case in chief Barton Holmes's deposition as the defense
25 does as well. At what stage in your case in chief,

1 Mr. Thompson, were you planning to publish Mr. Holmes's
2 deposition?

3 MR. THOMPSON: Let me address one other matter. I
4 mean, I agree that we have just now given Mr. Harter our
5 written position. This was a somewhat difficult issue to
6 research and put together, and we viewed it as attorney
7 work product that we did not turn over that to him until
8 we got to this point. So that's our answer why we're just
9 now giving it over.

10 But to go to your question, we would want to play the
11 Holmes videotape as our first witness. And it would only
12 be played one time, I would assume, and that would be in
13 our case ---

14 THE COURT: Okay.

15 MR. THOMPSON: --- and then we would go from there.

16 THE COURT: All right.

17 MR. THOMPSON: Succinctly stated, it looks like we
18 need to deal with the video -- the surveillance video
19 before we can do much of anything else.

20 THE COURT: Right. It appears that way. Of course,
21 you know, you've got a fairly lengthy memorandum that not
22 only do I need to study on, but I think in all fairness
23 Mr. Harter needs an opportunity to review it.

24 MR. THOMPSON: Whatever he needs within reason.

25 MR. HARTER: Judge, I went over to Laurens like about

1 ten days ago to meet to see if we can agree on and discuss
2 exhibits, and it kind of didn't work out, you know. And
3 I've been constantly since that time trying to say, guys,
4 what is the real objection here, you know, kind of telling
5 me we don't think it's accurate, we don't think it's -- we
6 just object. And so that's why we're here where we are.
7 I mean, I think the problem is one of kind of their own
8 creation. If they want to use this right now, it's not
9 that it has to be played right now, but I'm fine with it.

10 But the guy doesn't mention the substance of the
11 video, of the surveillance video in his video deposition.
12 He doesn't mention the 41 seconds. He doesn't say
13 anything about how long the time was. He just says it's
14 considerably more. And I got that impression from looking
15 at the MAIT information.

16 THE COURT: All right. Let's do this. The jury is
17 not coming back till 2:30. Let's take a little time. I'm
18 going to read -- before I hear argument, let me read the
19 memorandum first and get a better feel for where the
20 plaintiff is coming from. Mr. Harter, that will give you
21 an opportunity to take a look at it, too, and then we'll
22 go from there. So everybody be at ease for just a little
23 bit.

24 (Pause in proceedings.)

25 THE COURT: Mr. Harter, have you had an opportunity

1 to review the memorandum?

2 MR. HARTER: Judge, I've had a chance to review it.
3 I haven't had a chance to refer to all these cases they
4 cite there, of course, but I've taken a cursory review of
5 it.

6 THE COURT: Okay. All right. Well, let's -- and
7 certainly, if you need additional time to review the
8 cases, let me just go ahead and hear from Mr. Bryan
9 concerning this and I may very well reserve ruling, give
10 you an opportunity to do a little further work on it if
11 you feel like that's necessary.

12 MR. HARTER: Right. Okay.

13 THE COURT: Let me make sure I understand. The
14 recycling company has a surveillance video and it
15 evidently recorded in some fashion what took place either
16 in whole or in part of what happened in the day in
17 question related to this accident. And then Al Duncan
18 with the MAIT Team obtained that video footage, correct?
19 No. He did not.

20 MR. HARTER: He went to the recycling place and he
21 recorded off of that video.

22 THE COURT: Okay. He made his own recording off of
23 the video from the recycling center.

24 MR. HARTER: Correct. Which goes right into the
25 mainframe of the MAIT Team.

1 THE COURT: Okay.

2 MR. HARTER: It was not his -- it was not his tape to
3 take, if you understand what I'm getting at, Judge. I
4 mean, that recording goes -- records and then it records
5 over itself. But to preserve it, he took his own
6 recording of that video footage, and it went immediately
7 into the main frame of the MAIT Team where it sat and sits
8 today. And then we've got a disk and a FOIA request, and
9 that's how that got circulated to us.

10 THE COURT: Okay.

11 MR. HARTER: But it is in the mainframe of the MAIT
12 Team, and they will be here tomorrow with another copy of
13 it for purposes of authentication. And, of course, Al
14 Duncan will be here to explain how he captured that.

15 THE COURT: Okay. All right.

16 MR. HARTER: I think that's correct, Judge. That is
17 my understanding. It's all subject to being fleshed out,
18 you know, with the testimony.

19 And it does, it shows Mrs. Watts's crash into the
20 fence. It shows her car. It shows sparks coming from her
21 car. It shows -- you know, and it shows lights which
22 indicate when the first accident happened. But it
23 actually shows her car running into the fence.

24 THE COURT: All right. Okay.

25 MR. BRYAN: Your Honor, if I may just dispute some of

1 the things he says. Basically, there's one incident here
2 but there's two car crashes. Mrs. King hits Mr. Holmes
3 and then Ms. Watts hits Ms. King.

4 THE COURT: Right.

5 MR. BRYAN: It does not show either one of those. It
6 shows the aftermath of a second crash because it shows
7 Mrs. Watts's car coming into view and running into a
8 fence, and it shows Ms. King's car, apparently after
9 Ms. Watts has hit it, rolling down the road. It shows no
10 crashes. It is an awful quality. It was on a video that
11 was used for security and was pointed towards the gates
12 for security of that business, and apparently, Mr. Duncan,
13 from what I've been told, went there and took a camera,
14 and it was on a monitor up here. It's not something that
15 can be transferred off. He video parts of that on his
16 video from the monitor. It is an awful quality. There
17 are flashes of lights. It would require some
18 interpretation, and there is no one that could interpret
19 what some of these things are because they're off camera,
20 and it is -- requires conjecture and then speculation on
21 top of conjecture to try to get anything that has any
22 reliability as for any evidentiary value from it.

23 But our complaint is, one, lack of authentication.
24 He says he's going to authenticate it. I'm not sure how
25 in the world he could. It is not complete. It runs and

1 jumps and jumps. The clocks apparently are inaccurate.
2 There's a problem with the clock. It covers up a lot of
3 that. There's a reflection of a man in the view that
4 covers up a lot of what you see. There's haze all around
5 it. It's just very -- we ask the Court to look at it
6 because it's just hard to comprehend anything that a jury
7 could get out of it without speculating. Anyone who talks
8 about IT has got to speculate and has got to be some
9 conjecture involved in it. So that is the inaccuracy of
10 it.

11 And when you see it, you'll see the time jumping.
12 There's one time it jumps back about six, eight, ten
13 seconds, and you just lose some time in it. It is a very
14 poor quality, and the evidentiary value is going to have
15 to be derived from pure speculation if somebody wants to
16 use it for any kind of evidence.

17 But it does show Mrs. Watts's car coming out after
18 the crash and crashing into the fence, and it shows
19 Mrs. King after the crash rolling down the road. But of
20 the accident, there's no part of the actual accident shown
21 by this.

22 THE COURT: Okay. All right. Well, yeah. I'm going
23 to have to, I guess, take a look at it, number one; and
24 then, two, before I can make a ruling, I think we're going
25 to have to take some in-camera testimony from Trooper

1 Duncan concerning this one aspect of his recording and the
2 quality and that sort of thing. And then since the video
3 is related to whether or not Barton Holmes, these few
4 lines on pages 57, 58, whether that comes in, I think I
5 first have to make a ruling concerning the video first
6 before I rule on the deposition, the way I see it. Would
7 you agree?

8 MR. BRYAN: Yes, sir.

9 THE COURT: Mr. Harter, would you agree?

10 MR. HARTER: Maybe, Judge.

11 THE COURT: Maybe. Okay.

12 MR. HARTER: Maybe.

13 Let me mention what -- and I would be glad and
14 thrilled for you to see the video. I mean, we do need you
15 to look at it.

16 THE COURT: Sure.

17 MR. HARTER: But it shows a lot. One of the things
18 the plaintiff is saying in this case is that nobody had
19 any lights on out there, you know. And it is probative.
20 It is relevant. I want to go ahead and -- I mean, it is
21 -- you know, I don't know how else you can authenticate it
22 other than the actual recording which was put into the
23 MAIT Team hard drive, and it is what it is, you know. I
24 mean -- and I disagree with their characterization of the
25 deficiency in this video. It shows important stuff. It

1 shows lights, it shows evidence about how and when the
2 first accident happened, it shows the time gap or element
3 between that event and the crash that sent -- where
4 Mrs. Watts drives off or hits the fence. Okay.

5 Now, I kind of agree with you, though. I mean, if
6 you have -- well, again, I don't think the video, Barton
7 Holmes doesn't mention the time element in the video.

8 THE COURT: Right.

9 MR. HARTER: Okay. He does not mention it was
10 41 seconds. He just mentions it was a longer period of
11 time than ten or 15 seconds because I looked at a video.
12 And that doesn't even have to be admissible.

13 And that's where, I guess, I'm kind of making the
14 circular argument. It's not like it has to be admissible.
15 I mean, if it's not admissible, so what? That's
16 impeachment stuff. It's just like him going back out to
17 the scene or going back and saying I believe the distance
18 is this, I believe the distance is that. You know, it's
19 not as if the video has to come in for this line of
20 questioning and these three or four comments to be in the
21 case. I mean, he does not mention the time element.

22 MR. BRYAN: Your Honor, if I may.

23 Are you through, Rusty?

24 MR. HARTER: Yeah.

25 MR. BRYAN: Okay. Your Honor, if I may, Mr. Holmes

1 five days after the accident in a recorded statement said
2 that Ms. Watts hit Ms. King five to ten seconds after
3 Ms. King had hit Mr. Holmes.

4 THE COURT: Is that in the video deposition?

5 MR. BRYAN: Yes. The transcript of the interview is
6 evidence on his deposition, yes.

7 THE COURT: Okay.

8 MR. BRYAN: And it's five to ten seconds after
9 Mrs. King had hit him. That's August 20, 2013. This
10 additional time by Mr. Holmes comes in in August of 2017.
11 Four years later he has refreshed his memory and changed
12 it after he has looked at this video. I addressed that
13 poisoning of his testimony with that video in here, in
14 this brief. And he changed his mind purely because he was
15 told it was different, not on his own recollection and not
16 on what he had known five -- not at the time of the
17 accident when he's tense, five days later when he's
18 relaxed and being interviewed and it's being recorded.

19 And the notion about these lights, Mr. Harter wants
20 to call it this, that and that. There's nobody. He can't
21 testify. There's nobody can tell you what this flash of
22 light is and what that is. And there's nobody that can
23 tell the jury that this is what this is when it's out of
24 sight. And I think when the Court looks at it, you'll see
25 it has no evidentiary value without just being prejudicial

1 to the point that it's going to prejudice the jury on
2 something that they really have to speculate on. Nobody
3 can really tell them. And conjecture. And I think once
4 you look at it, you'll see the poor quality of it.

5 But all this freedom of information stuff, they went
6 down there five days later and set up a camera and videoed
7 it, videoed the monitor. They didn't take any kind of
8 tape out of the security system, they didn't go make a
9 copy or recorded it. They just played it and then they
10 recorded it where I don't know if it was on that or on
11 theirs, if you look at it, it jumps up sometimes two
12 seconds and then four seconds and it jumps back a number
13 of seconds several times. You can see that the clocks are
14 off. The clocks interfere with your view, the time, the
15 reflections interfere with the time. It's just a poor
16 quality. His Honor will see it when he sees it.

17 THE COURT: Well, let me look at it. Do you have --
18 is it like on a CD that I can put in the computer to look
19 at it?

20 MR. HARTER: I think we can.

21 And, Judge, two things. I think there's some
22 witnesses in the courtroom. I believe we would sequester
23 these witnesses in this trial.

24 THE COURT: Okay. Is sequestration agreed to?

25 MR. THOMPSON: Well, let me just step up and see

1 about -- I don't want him to sit here until 5:00.

2 MR. HARTER: You want to let him go home? That's
3 fine.

4 MR. THOMPSON: My point is, Your Honor, it looks like
5 this that we've gotten into is going to take us very close
6 to 5:00, and these people have come over here from
7 Abbeville and other places. I'd like them to be excused.

8 THE COURT: Sure. If you don't think we would be
9 dealing with them today, then by all means they can be
10 excused.

11 But are we going to sequester witnesses? Is that by
12 agreement?

13 MR. HARTER: I would move, yes. I would request
14 that, yes.

15 MR. THOMPSON: This is the first time it's come up.
16 I have no problem with it. Apply it to to both sides,
17 obviously.

18 THE COURT: Sure, sure. Both sides need to make sure
19 then when you have witnesses in the courthouse, that
20 they're not in the courtroom until after they testify, and
21 I've just got to leave it up to you guys to make sure that
22 that is taken care of.

23 MR. THOMPSON: Why don't you let me take my witnesses
24 out of here now, explain the rules to them ---

25 THE COURT: Sure.

1 MR. THOMPSON: --- and while Mr. Bryan, because he
2 don't have any ---

3 MR. BRYAN: Your Honor, when you view the video, I
4 want to make sure it's the same video that we've got here,
5 the same quality. Because I have it on a computer right
6 here if you want to watch it on this computer.

7 MS. JONES: What we have seen.

8 THE COURT: Gentlemen, let's try to -- I mean, even
9 though my court reporter is an excellent court reporter,
10 with everybody talking, it just makes it more difficult
11 for her, so let's try to not talk over everybody, and
12 everybody's talking at the same time.

13 Mr. Harter, show Mr. Bryan what you intend for me to
14 look at, and make sure that he's satisfied that what I'm
15 going to look at is what he has and what he has looked at.
16 So let's take a couple minute break.

17 MR. BRYAN: You want me to show him mine and then
18 give him this?

19 MR. HARTER: I'll do exactly what you said, Judge,
20 okay?

21 But let me -- can I address something right now?

22 THE COURT: Sure.

23 MR. HARTER: Maybe the -- let's do this for a second.
24 I will tell you that when you look at the video, you're
25 going to see lights moving. You're going to see traffic.

1 Then you're going to see lights swing around, and then
2 what happens is you see lights stop. Okay. No more
3 movement. Lights stop. And that is because of the Barton
4 Holmes-King accident. Then later with those lights still
5 going on some 40 seconds later is when Mrs. King's vehicle
6 is seen and Mrs. Watts's vehicle is seen. So it's lights,
7 but it shows lights stopped.

8 Now, I just wonder about this. If -- actually, to
9 authenticate and to put everything on the record tomorrow
10 -- I mean that you might need to make this ruling, Judge,
11 I plan to have my people here tomorrow to answer any
12 questions. I'm fine if you want to, you know, reserve
13 ruling on that. But maybe let's just take a minute and
14 see if this section is so big a deal. If we can deal with
15 that and then move on here today.

16 THE COURT: You know, I've got a jury back at 2:30,
17 and I just need to make some sort of determination whether
18 or not we even want to start today or maybe at a minimum
19 do opening arguments and then break for the day as far as
20 the jury goes.

21 So how long is the video in length, approximately?

22 MR. BRYAN: Probably no more than 10 to 12 minutes.

23 MR. HARTER: This section is important.

24 MR. BRYAN: It covers a period of much longer than
25 that, but it is broken down to -- the whole thing actually

1 is only about 10 to 12 minutes, I think.

2 THE COURT: All right. Well, let me ask you this.
3 Can we do opening without having to cover anything that's
4 in dispute insofar as video from the recycling center and
5 Barton Holmes's deposition? Can you give your opening
6 without having to touch on those two areas?

7 MR. BRYAN: I think so.

8 MR. HARTER: Yes, sir. I think we can. That's a
9 great idea. I mean, I'm going to mention that this video,
10 that we've done a video deposition of him. But
11 substantively, I mean ---

12 THE COURT: Right. Without content. Okay.

13 MR. HARTER: The issue we're talking about here about
14 the recycling center video, if we want to talk about it,
15 that's fine.

16 THE COURT: Okay. All right. Well, let's plan on
17 doing this. Let's -- as soon as Mr. Thompson comes back
18 in, let's bring the jury out. I'll give them a little
19 short preliminary instruction, let you guys do your
20 opening and then maybe stop for the day and then I can
21 look at this surveillance video and whatever else we need
22 to deal with.

23 MR. BRYAN: Your Honor, may I let Ms. Watts go to the
24 restroom in the meantime?

25 THE COURT: Sure. Yeah. We'll take a short break,

1 and then let's just handle it in that fashion.

2 (WHEREUPON, a recess is taken at 2:33 p.m.)

3 (WHEREUPON, proceedings reconvened at 2:50 p.m.)

4 THE COURT: Okay. Mr. Bolt, if you will bring the
5 jury out, please.

6 (WHEREUPON, the jury entered the courtroom at 2:52 p.m.)

7 THE COURT: You can have a seat.

8 All right. Ladies and gentlemen, we have a couple of
9 housekeeping matters that we need to tend to before we
10 start this case.

11 Madam Clerk, would you swear the trial jury in,
12 please.

13 THE CLERK: Yes, sir. If you'll please stand and
14 raise your right hands.

15 (WHEREUPON, the jury is duly sworn.)

16 THE CLERK: Thank you. You may be seated.

17 JURY INSTRUCTIONS

18 THE COURT: The second matter we need to tend to, I
19 need to appoint a foreperson of the jury. Now, if it is a
20 man, it is a foreman, makes sense, if it is a female, it
21 is a forelady.

22 Now, let me explain to you what a foreperson does in
23 a case. One, I need a person to serve as spokesperson
24 between the jury and the Court. If there's an issue that
25 arises that needs the Court's attention, then I need

1 someone to inform the Court of what that particular issue
2 is. Certainly, when you begin your deliberations, if
3 there's a question that the jury has during the course of
4 the deliberations, then I need someone to communicate with
5 the Court. Anytime there is a communication between the
6 jury and the Court, I need it written. There's paper back
7 in the jury room. So I need it written down by the
8 foreperson.

9 Secondly, I need a person to make sure that all of my
10 instructions are being followed. For example, I've
11 already instructed you not to discuss anything related to
12 the case, discuss the facts or anything among yourselves
13 until I tell you to, so I need to make sure that that
14 instruction is being followed. And really, that's
15 everyone's responsibility to make sure that everyone is
16 following the Court's instruction.

17 And thirdly, I need someone to organize and supervise
18 the deliberations once you're given the case to reach a
19 verdict in this case.

20 Now, I'm satisfied that all 14 of you would make
21 excellent forepersons of the jury; however, I can only
22 have just one. So I have decided on Ms. Pillus. Staci
23 Pillus, is that the correct pronunciation of your name?

24 JUROR NUMBER 110: Yes.

25 THE COURT: Okay. You are the forelady of this jury.

1 The next time you come into the courtroom, you will occupy
2 that front seat there, okay? The two alternates, you are
3 the two alternates, you will always maintain those two
4 seats there. Everybody else, you can sit wherever you
5 like.

6 Now, it's been my experience since I've been on the
7 bench that jurors typically like to sit in the same seat
8 throughout the entire trial. It's kind of like at church.
9 You have your own seat, your own pew, and that's where you
10 sit every Sunday. That's totally up to you if you want to
11 maintain your same seat or not. That's totally up to you.

12 And, again, I have explained the role of the
13 alternates. Your role is very important. It's not
14 unusual that a member of the 12 has to be excused for some
15 reason and I need someone who has listened to all of the
16 evidence and testimony to be able to fill those shoes and
17 keep going. So your role is very, very important.
18 Certainly, if I do not have to replace any of the 12,
19 then, of course, you would not participate in the
20 deliberations once that starts.

21 Now, let me just explain to you a few things how this
22 case will go. It's very crucial, ladies and gentlemen,
23 that you pay very close attention to everything that goes
24 on in this case, all of the testimony from the witness
25 stand, presentation of any exhibits that is put in in this

1 case. You're not permitted to take notes. That's why you
2 need to be very attentive, very alert throughout this
3 whole trial so you'll have a fairly good memory of what
4 has been done in this case when you do go back in the jury
5 room and begin your deliberations. Certainly, you're not
6 expected to memorize everything that's said and done in
7 this case, but I do expect that you have a good memory,
8 and the way to have a good memory is to be very attentive,
9 very alert. Make sure you get some good rest at night so
10 you'll be alert for the next day.

11 You, as the jury, are the sole judges of the facts.
12 You determine what happened in this case. The same law
13 that makes you the sole judge of the facts makes me the
14 sole judge of the law. I make a determination as far as
15 what evidence comes in and what law is applicable to this
16 case. So you're the sole judge of the facts. I can't
17 tell you what the facts are, and I'm the sole judge of the
18 law, and you can't tell me what the law is. All right.

19 The plaintiff brought this case. Ms. Watts filed
20 this lawsuit with the help of her attorneys; therefore,
21 she has the burden of proof to prove this case to you by
22 what we call a preponderance of the evidence, and I'll
23 explain more about that at the conclusion of this case.

24 Now, ladies and gentlemen, there may be times where
25 the lawyers will object or they may say, "Judge, I have a

1 matter of law." And if we cannot resolve that particular
2 issue with them coming up to the bench or us going over to
3 the side to discuss it, it may require me to send you back
4 to the jury room. And the primary reason for doing that,
5 in order for me to make a ruling on the particular issue
6 that they've raised, it may require me to discuss the
7 facts in the case with the lawyers, and certainly, I don't
8 want to do that in your presence, because, again, it's
9 your sole determination of the facts in this case and not
10 mine.

11 Now, I mentioned to you before we broke for lunch
12 about no research. Your decision in this case, your
13 verdict that you reach in this case has to be based
14 100 percent on what is brought out in this courtroom, and
15 it cannot be based upon anything else. Consequently, if
16 you were to go and do some research into any aspect of
17 this case, then you may be basing your verdict, your
18 decision in this case on something that has not been
19 brought out in this courtroom. And what information that
20 you have obtained through your independent research may be
21 totally wrong, may be totally erroneous, and certainly we
22 don't want you to have erroneous information. So just
23 understand that during this case, don't do any of this
24 research, Internet, social media, anything of that nature.

25 The progress of this trial, the plaintiff will put up

1 her case first. She will call her witnesses and put up
2 her evidence, and then the defendant will put up their
3 case, and then the plaintiff has the right to put up what
4 we call reply evidence if they so choose. If the
5 defendant raises some new issue that they need to respond
6 to, then they can put up a reply case.

7 It's very important that you keep an open mind.
8 don't make any decisions. Don't come to some judgment in
9 this case until all of the evidence has been presented to
10 you and the lawyers have made their closing arguments and
11 I have instructed you on the law. Up until that time,
12 keep an open mind.

13 Okay. Does the plaintiff have any objections to the
14 Court's preliminary instruction?

15 MR. THOMPSON: No, sir.

16 THE COURT: Defense?

17 MR. HARTER: No, sir. Thank you, Judge.

18 THE COURT: Thank you very much.

19 The lawyers now will make their opening arguments to
20 you. What they tell you is not evidence in this case.
21 It's what they believe the case is about. They'll explain
22 their respective positions and what they anticipate the
23 evidence will show. So give the lawyers your undivided
24 attention.

25 Plaintiff ready to go first?

1 MR. BRYAN: Yes, Your Honor.

2 THE COURT: Okay. You may proceed, Mr. Bryan.

3 OPENING STATEMENTS

4 MR. BRYAN: May it please the Court.

5 THE COURT: Certainly.

6 MR. BRYAN: Ladies and gentlemen of the jury, first
7 of all, I want to thank you for serving. I have over the
8 years heard a few people say they enjoyed their jury
9 service. Most always say I would rather have been doing
10 something else and I had something else to do. It is a
11 duty you have, but it is a burden on you and I appreciate
12 your being here, and I know you'll give close attention to
13 this case for Ms. Watts.

14 My name is Jim Bryan, and I have practiced law here,
15 as I told you earlier, over 40 years in Laurens. This is
16 Mr. Tom Thompson. He's practiced a lot longer than me.
17 He doesn't look older than me, but he is.

18 This is Ms. Martha Watts. She is the plaintiff in
19 this case. Ms. Watts is 91 years old. And this case is
20 about Ms. Watts.

21 On August 15, 2013, Ms. Watts went to play bingo.
22 Some people go to Clemson and Carolina football games for
23 entertainment, some people go to musical shows for
24 entertainment, some people go to car races for
25 entertainment and some people like to play bingo. She

1 liked to play bingo. She went over here to Laurens,
2 finished somewhere between 10:30 and 11:00. She came out
3 -- and she lives down in Clinton. She came out, turned on
4 Highway 76 headed towards Clinton, the bingo parlor over
5 here in Laurens across from Wendy's on Highway 76. And
6 she starts down that road in the left lane. There was two
7 lanes to Clinton, two lanes to Laurens. But she was in
8 the left lane.

9 She's traveling down the road, and this is, like I
10 said, around 10:30 or 11:00. It's dark. And suddenly she
11 sees a car stopped in the highway down the road maybe a
12 quarter, half mile from the bingo place down the hill.
13 And she sees this car stopped, and she tries to stop but
14 she ends up hitting that car and she veers off and hits
15 the fence, a fence post from the accident.

16 She was doing -- she'll testify she was doing the
17 speed limit, 35 to 40. It's a 40-mile-an-hour speed limit
18 I think the testimony will be. She will also explain to
19 you what happened to her after that accident, the
20 injuries. She broke her right arm, had surgery on it.
21 She broke her right foot. She'll go into the surgeries on
22 her foot. She had a big gash on her left knee.

23 And before this accident, Ms. Watts, who would have
24 been 86 then, August 15, 2013, Ms. Watts will testify and
25 the evidence will show that she was very athletic, could

1 do anything she wanted to. She could drive. She could
2 walk, run, dance. And after this accident, she spent time
3 in the hospital. She spent months in rehab. She now has
4 to walk with a walker. She had no problems with her
5 mobility beforehand. She is basically homebound. She has
6 gone through a lot of pain and suffering. She's had a lot
7 of medical bills. But now she is dependent on someone
8 else to buy her groceries, do anything like that for her,
9 take her to the doctor as a result of these injuries.

10 Now, in this case we're going to show you about this
11 accident. And a deputy sheriff of Laurens County was
12 traveling, and we believe the evidence will show in the
13 right lane, and he turned to make a U-turn across the left
14 lane and another lady, Ms. King, hit the deputy in the
15 side, and then Ms. Watts came and hit Ms. King.

16 Now, this deputy from the testimony will show that he
17 did not put on his blue light. And Ms. Watts, after
18 Ms. King hit him, Ms. Watts, within a matter of seconds,
19 comes and hits Ms. King. And all of these injuries and
20 everything that went on we will show that would not have
21 happened without the negligence of the deputy. Had he not
22 been negligent in the way he handled his automobile and
23 the way he handled the entire situation, Mrs. Watts would
24 not have received these injuries. And our case today and
25 this week will be to show you not only how the accident

1 happened, but the consequences of that accident to
2 Ms. Watts and what happened to her after that and the
3 injuries she received.

4 And once again, I appreciate very much your
5 attention. It's going to get harder and harder to pay
6 attention as the days go by, but I know you'll give it a
7 great effort and give Ms. Watts justice.

8 Thank you.

9 THE COURT: Thank you, Mr. Bryan.
10 Mr. Harter?

11 MR. HARTER: Thank you.

12 Madam Forelady, ladies and gentlemen of the jury,
13 again, my name is Rusty Harder. I have the great
14 privilege and honor of representing the sheriff's office
15 in this case today. I did not introduce you earlier to
16 Captain Mickey Coats with the sheriff's office who is at
17 counsel's table with us.

18 And I, too, want to join the Court and Mr. Bryan in
19 telling you how much we appreciate your service in this
20 case. We handpicked you. As you know, this process took
21 some time this morning, and every one of you raised your
22 hand, took an oath before God that you would be fair and
23 impartial. And you have no friends to reward and no
24 enemies to punish. And I know it's only human sometimes
25 to start developing feelings about things, but we trust

1 each of you all, to when that time comes, to do a gut
2 check and make sure that you don't rush to judgment about
3 anything or anybody.

4 And I want to tell you, I've been practicing law for
5 about 42 years now, and I remember one of the first cases
6 I tried, a great judge told the jury that the role as
7 jurors is a role that -- and he quotes Winston Churchill,
8 it is the most honorable and greatest role that you can
9 provide for your community and your country in peacetime.
10 And I just want to, again, thank you for your attention
11 here today, your willingness to serve in this case.

12 And I want to go ahead and say a couple of things.
13 First of all, Mrs. Watts is a very nice lady. She had a
14 very bad accident on August 15, 2013. She had some
15 significant injuries as a result of that accident. But by
16 the grace of God, I'm sure that she has had a remarkable
17 recovery given those circumstances..

18 And we're here today. This lawsuit is about
19 Mrs. Watts's claim for damages against the sheriff's
20 office. And you're going to be told about an accident
21 that occurred out on Highway 76 a little bit out of town
22 going from Laurens towards Clinton, and it happened down
23 near a recycling place. And you may know a little bit
24 about where we're talking about. There's a bingo parlor
25 there. I think it's across from the Wendy's. Then you

1 come down the hill and there's a barbershop on the right
2 and then there's this liquor store on the right, and as
3 you come down that hill, it's a straight stretch of road.
4 There's no hill, there's no curve. And that is the
5 approach and/or where this accident happened.

6 And what you're going to hear, ladies and gentlemen,
7 is a description about what happened that evening, and
8 you're going to hear about Mrs. Watts. You're going to
9 hear what other witnesses have to say. And one of the
10 witnesses that you're going to hear from is a young man by
11 the name of Barton Holmes. I don't have the ability to
12 introduce him today over here at the table with me because
13 right now he is at Fort Benning, Georgia. He has felt the
14 call to enter the military, and he is in special forces
15 airborne training at Fort Benning, Georgia. But Judge
16 Hocker was kind enough to help us orchestrate what we call
17 a video deposition. And we went down to Fort Benning,
18 Georgia, and we taped Barton Holmes's testimony, and we'll
19 play that I expect throughout this trial so that you can
20 see what he had to say. And, again, Mrs. Watts is a very
21 nice lady. I also submit to you that Barton Holmes is a
22 very nice man and a real gentleman.

23 And what happened on the evening in question is that
24 Barton Holmes and Mrs. King, Sherell King, were traveling
25 down 76 toward Clinton from Laurens, and Barton was behind

1 Mrs. King or beside her. You're going to hear flip-flop
2 testimony about that. But any event, Barton saw somebody
3 speeding in the other direction going toward Laurens, and
4 he initiated a maneuver to do a traffic stop. And when he
5 did that, he was making a U-turn on 76 to head back toward
6 Laurens to stop that motorist. And when he did, his
7 vehicle made contact with Mrs. Sherell King's vehicle.
8 And what ended up happening is Ms. King's vehicle struck
9 Barton Holmes's vehicle in the left driver's quarter panel
10 and ended up with Barton Holmes's vehicle facing back
11 towards Laurens sitting in the median and Mrs. King's
12 vehicle sitting in the median lane on 76.

13 The vehicles came to a stop, and then sometime after
14 that, a short time after that at the same spot, at the
15 same location, Mrs. Watts was traveling down 76 coming
16 from Laurens toward Clinton, and she was in that left-hand
17 lane. This was 11:00 at night. And she is approaching
18 this other accident. And Mrs. Watts runs into the rear of
19 Mrs. King's vehicle that is sitting there in the road, and
20 Mrs. Watts's vehicle veers off to the left, careens off to
21 the left and hits a fence and comes to rest.

22 Now, I'm going to suggest to you, ladies and
23 gentlemen, that one of the things that you're going to be
24 asked to decide in this case was whether or not anybody
25 was negligent and whether or not or what was the proximate

1 or real cause of Mrs. Watts's accident and her injuries.
2 We're not here about the accident or there's no claim by
3 Mrs. King involved in this case, but the issue that you're
4 going to be asked to decide and the outcome that results
5 in this case is what was the real proximate and/or direct
6 cause of Mrs. Watts's accident and her injuries.

7 Now, ladies and gentlemen, the judge is going to tell
8 you at some point in time about the rules of the road.
9 And these are the traffic laws that we all learn in
10 driver's training or we all see in the driver handbook and
11 we all know.

12 The traffic rules, the rules of the road, apply to us
13 all. They apply irrespective of a person's age. And I'm
14 going to suggest to you, ladies and gentlemen, as you
15 filter through the evidence in this case, that the
16 conclusion is that for whatever reason, Mrs. Watts, at the
17 time and date of this accident, was simply inattentive,
18 didn't see what was there or didn't see what she should
19 have seen, and that is the reason and that is the sole
20 cause for this accident.

21 And why do I say that? And I want to ask you, if you
22 will, what I'm telling you now is not evidence. What
23 Mr. Bryan has told you is not evidence. The evidence you
24 get will come from the witnesses. The law you get will
25 come from the judge. But I'm going to suggest to you that

1 the evidence that you will hear as to what happened and
2 why it happened is this. Mrs. Watts pulled out from the
3 bingo house that evening late, well after dark. She
4 pulled out, turned right and got into the left-hand lane,
5 which is the median lane. And she traveled down 76. The
6 roadway is straight, the roadway is clear, it was not
7 raining, it was not foggy. It was then August.
8 Mrs. Watts had her lights on. Mrs. Watts was driving down
9 that road with her hands on her steering wheel looking
10 straight ahead, and she hit a parked car.

11 Now, ladies and gentlemen, this stretch of roadway is
12 straight. It is a gradual downhill grade. But the
13 visibility is good. There was nothing that would have
14 prevented her from seeing well ahead of where she was
15 driving. There was nothing that would have prevented her
16 from being able to see what was happening in front of her.

17 Now, ladies and gentlemen, I want to ask you to
18 listen to the testimony in this case, and I'm going to
19 suggest to you that the testimony that you will hear from
20 Ms. Watts as to why and/or how this second collision
21 occurred, her collision, was because nobody had on any
22 lights. She did not see lights on the patrol car. It was
23 facing back towards Laurens. She did not see and/or
24 observe any lights at all out there on 76. She says she
25 did not see any lights on Mrs. King's vehicle. And

1 Mrs. Watts says that this accident would not have occurred
2 if these people had had their lights on. And, ladies and
3 gentlemen, I'm going to suggest to you that both Sherell
4 King and Barton Holmes had their lights on at the time
5 Mrs. Watts hit the King vehicle.

6 And, ladies and gentlemen, as you filter through and
7 work through the evidence and testimony in this case,
8 you're going to hear some conflicts. You're going to hear
9 maybe a little discrepancy about who was in what lane,
10 what -- how much time gap there was between these two
11 accidents or these two incidents. You're going to hear
12 some conflicting testimony.

13 And I want to tell you right now I don't mean to be
14 too naive, but I think people generally try to get it
15 right. I don't think anybody is going to come in here and
16 just purposefully twist facts around about what happened.
17 But we're all human, and we all look at things from
18 sometimes a different perspective.

19 And, you know, you're going to hear somebody say this
20 accident happened two seconds apart, this accident
21 happened ten seconds apart, this accident happened 15
22 seconds apart, or these accidents happened at a longer
23 period of time apart. You know, I don't know. I can't
24 quote any research, but in my common life experience, I
25 think that what you'll witness and what you'll see is the

1 mystery of human perception. We all see things, we all
2 make judgments about things. I think when we get down to
3 our human perception about making decisions in seconds and
4 how many seconds something takes, I think we're all
5 fallible about that. It's just like I may think I'm
6 arguing for 18 minutes now, the judge may tell I've argued
7 for 35. But the key is, I suggest to you, that we all
8 kind of may have different perceptions about what seconds
9 are.

10 And, you know, we used to have basketball referees
11 that counted out seconds as the ball was brought across
12 the half court like this, but now we've got buzzers, we've
13 got clocks, we have something that's more accurate. So
14 you're going to hear some conflict about how long was the
15 gap between these two accidents.

16 But I want to tell you, as you consider that
17 evidence, I want you to use one of the most powerful
18 resources we have, a powerful resource that you walked in
19 that door with this morning, a powerful resource that you
20 use every day in your common life experiences. And,
21 ladies and gentlemen, that is your good common sense. And
22 I'm asking you on behalf of everybody in this case to
23 listen to the evidence and testimony that you're going to
24 hear. But as you do, I want to ask you to listen with
25 your eyes, your ears, your nose and your good common horse

1 sense.

2 And you will hear descriptions about this roadway.
3 I'm going to suggest to you that Mrs. Watts had ample time
4 and distance to stop and avoid this accident and/or to
5 change lanes, but certainly to avoid an impact. She was
6 traveling between 35 and 40 miles per hour. And I'm going
7 to suggest to you that if she was attentive, as the rules
8 of the road says she should be, there is no reason why she
9 could not or would not ---

10 MR. BRYAN: Your Honor, this is opening arguments,
11 but he's got to the point that he's arguing his case.

12 THE COURT: Well, again, and I've instructed the jury
13 that whatever lawyers say in opening is not evidence.

14 And you may proceed, Mr. Harter.

15 MR. HARTER: Thank you, Judge. Thank you.

16 If she had been paying attention, I'm going to
17 suggest to you that your common sense would tell you that
18 she would have observed something. If this accident --
19 these accidents happened two seconds apart, she would have
20 seen lights, she would have seen a vehicle, she would have
21 braked. But I'm going to suggest to you that Mrs. Watts's
22 testimony is that she never saw any lights, never saw any
23 car, and never hit her brakes until after she hit this
24 other car.

25 Now, ladies and gentlemen, at the conclusion of the

1 case, you're going to be asked to render a verdict. The
2 word "verdict" comes from the Latin word "verdicto" which
3 means speak the truth. And at the conclusion of this
4 trial, the judge is going to give you a verdict form that
5 you will go back and you will be asked to complete. And
6 that verdict form is to be based on your best judgment,
7 your evaluation of the facts, your understanding of the
8 law that the judge will give to you, and in that verdict
9 form, you will make a decision that will affect us all.
10 And I'm going to suggest to you that in your deliberations
11 and through the trial of this case that we hope that the
12 evidence will be revealing to you, we hope that we will be
13 judicious in the use of your time. And I'm going to
14 suggest to you that the end result, the conclusion is and
15 the evidence will indicate that the sheriff's office is
16 not liable to Mrs. Watts for her damages.

17 Thank you.

18 THE COURT: Thank you, Mr. Harter.

19 Madam Forelady, ladies and gentlemen of the jury, I
20 still have some more what we call pretrial issues that I
21 need to work on with the lawyers, so we're going to
22 adjourn as far as you the jury goes, adjourn for this
23 afternoon and have you back here at 10:00 in the morning
24 and we'll start with the plaintiff's case.

25 Again, I remind you once again, no discussion among

1 yourselves about anything related to this case or any
2 discussion with anybody that you see and have contact with
3 this afternoon and this evening, and, again, no research
4 in anything related to this case. And get a good night's
5 rest, and we'll see you back at 10:00 in the morning.
6 Okay.

7 (WHEREUPON, the jury exits the courtroom at 3:25 p.m.)

8 THE COURT: All right. We're going to take a short
9 recess and give me a chance to look at that.

10 (WHEREUPON, a recess is taken at 3:26 p.m.)

11 (WHEREUPON, proceedings reconvened at 4:09 p.m.)

12 THE COURT: All right. I've looked at the video and
13 I assume that all you guys wanted me to look at was out at
14 the scene, the two parts, and not -- then he went to
15 recording the deputy's car which presumably is the one in
16 the wreck. You didn't want me to look at that. Okay.
17 All right.

18 Well, I want to -- before I make a ruling, I want to
19 hear from Trooper Duncan as well as you say the owner of
20 the -- or the manager of the recycling plant.

21 MR. HARTER: Yes, sir.

22 THE COURT: I will say this, and this is not an
23 indication of how I'm going to rule, without Duncan and
24 Cagle, I don't think there's any way that video can come
25 in, okay? Because it does require some guesswork. I

1 think the thing that's somewhat clear is that you do see a
2 car going into the fence area, which is presumably
3 Ms. Watts, because I think that's been indicated that she
4 ran into the fence. But I want to hear from Duncan
5 primarily, how he interprets this video before I make a
6 decision on whether or not it comes in.

7 If I determine that it doesn't come in, then I need
8 to make a determination whether or not Duncan can -- you
9 know, will say whether or not that's something that's
10 normally relied upon as an expert in his particular field
11 and base his conclusions and opinions on that video even
12 if it doesn't come in. So I've got a second hurdle if I
13 rule that the video does not come in. So we'll just take
14 some in-camera testimony from both of them and we'll go
15 from there. Okay.

16 MR. HARTER: Thank you, Judge. How about do I need
17 to make -- I'll have her here.

18 THE COURT: I assume -- all right. The MAIT lady
19 would be -- what is her name?

20 MR. HARTER: I think it's Corporal Anderson. I'll
21 have her here.

22 THE COURT: You say her name is what, Mr. Harter?

23 MR. HARTER: Corporal Anderson. I think it's
24 Anderson.

25 THE COURT: All right. She was not on the witness

1 list.

2 MR. HARTER: She was on the interrogatories, but she
3 wasn't on the -- you're right. Because we didn't -- I
4 didn't know what we would have to -- what gyrations we're
5 going to have to go through to do that.

6 THE COURT: Okay. Well, you know, I guess if you
7 intend to call her; have her testify before the jury, then
8 I'm going to need to voir dire the jury as far as any
9 connection with her.

10 Now, if you would only use her for purposes of
11 in-camera testimony as it relates to the admissibility of
12 the video, then we don't need to talk to the jury about
13 that. You just need to let me know in the morning how you
14 intend to use her, okay?

15 MR. HARTER: Okay.

16 THE COURT: But if you feel like she is necessary on
17 the issue of the video coming into evidence or not, then I
18 would probably need her here to ---

19 MR. HARTER: We'll plan to have her here.

20 THE COURT: Okay. If we can get started at 9:00 in
21 the morning, that would be good.

22 MR. HARTER: I won't have her until 10:00, but I'll
23 have the other two.

24 THE COURT: Okay. All right. Very good.

25 Anything else we need to put on the record before we

1 adjourn for this afternoon? Anything from the plaintiff?

2 MR. BRYAN: No, sir. I assume we'll deal with it in
3 the morning, everything.

4 THE COURT: Yeah. Okay. Thank you very much. Y'all
5 have a good afternoon and evening.

6 (WHEREUPON, proceedings adjourned at 4:13 p.m., to be
7 reconvened Tuesday, April 17, 2018.)
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1 TUESDAY, APRIL 17, 2018

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3 (WHEREUPON, proceedings commenced at 9:14 a.m.)

4 THE COURT: We are back on the record in the Watts
5 vs. Laurens County Sheriff's Department case.

6 I think what we have to deal with in camera is the
7 issue of whether or not the surveillance video, as it has
8 been called, will come in or not. And I still have to
9 make a ruling on that few portions of Barton Holmes's
10 deposition, whether or not that comes in.

11 So is that a correct statement of what we need to do
12 this morning before I bring the jury in?

13 MR. BRYAN: Yes, sir. I believe the Court ordered
14 sequestering witnesses. I would ask that witnesses be
15 sequestered.

16 THE COURT: Right.

17 MR. BRYAN: And I think there may be one more coming
18 in. I want to catch him also.

19 THE COURT: Yeah. The witnesses, even though this is
20 in-camera testimony, the witnesses will be sequestered.
21 And I know you have the folks from the MAIT Team here, but
22 I don't know who you plan to call first.

23 MR. HARTER: Judge, we're going to call Al Duncan
24 because he's the one that is most involved with this.

25 THE COURT: Okay.

1 MR. HARTER: We have a representative of the MAIT
2 Team here simply to bring the actual disk that was run off
3 of the hard drive at DPS. She brought it up here this
4 morning in case there's some issue about whether this is
5 the same video.

6 THE COURT: Okay. Okay.

7 MR. HARTER: Okay. That's all that pertains to.

8 THE COURT: Okay. All right.

9 MR. HARTER: And that's all she will testify to is
10 that this was a disk that was burned off of the main
11 screen of the DPS hard drive, which is the same as this,
12 and she brought it here. Just kind of a chain of custody
13 issue. But, I mean, this is the video everybody's looked
14 at and that you looked at.

15 THE COURT: Mr. Bryan, do you have any problem with
16 her remaining in here?

17 MR. BRYAN: Well, I'm just concerned about what other
18 stuff she may say. I would rather sequester her.

19 MR. HARTER: That's fine.

20 THE COURT: Okay. That's fine.

21 MR. HARTER: She wasn't supposed to be -- going to be
22 here till 10:00. But that's fine.

23 THE COURT: That's fine. Okay. Just ask her to find
24 a place out there. All right. Very good.

25 MR. HARTER: Okay. Judge, we're ready.

1 THE COURT: Okay.

2 MR. HARTER: I'll go ahead and dive into this.

3 THE COURT: Okay. Very good.

4 MR. HARTER: And I know we're here, this was kind of
5 not a motion in limine, but we're all kind of dealing with
6 this pretestimony. And I know we are because we've got to
7 deal with these issues about these sections of the video
8 deposition of Barton Holmes. But -- and I know I've said
9 this before, although there's no testimony in the case
10 yet, I anticipate, Judge, and I believe that the central
11 issues in the case will center around whether or not there
12 were lights on any of the vehicles that were involved in
13 this motor vehicle accident; and then, two, whether or not
14 -- or what the time interval was between the collision
15 that you heard about between Barton Holmes and Mrs. King
16 and then Mrs. Watts's collision.

17 THE COURT: Okay.

18 MR. HARTER: And so with that background, I would
19 like to call Al Duncan.

20 THE COURT: Okay.

21 MR. HARTER: And we'll just deal, Judge, with this
22 admissibility stuff right now. Okay.

23 THE COURT: Right.

24 MR. BRYAN: Your Honor, I want to make sure at this
25 time he's not trying to qualify him as an expert, is he?

1 THE COURT: I don't know exactly what Mr. Harter is
2 planning to do. I felt like for me to make a ruling on
3 the admissibility of this, again, it's been called a
4 surveillance video, because a lot of your objections,
5 Mr. Bryan, would be related to whatever Trooper Duncan
6 would testify to. So, I mean, for purposes of this
7 in-camera testimony, I don't think we necessarily need to
8 get into his qualifications as an expert necessarily. I'm
9 not sure exactly if I understand where you're coming from.

10 MR. BRYAN: Your Honor, if I may, I have an objection
11 to using him as an expert witness and I have a memorandum
12 and other motions to make concerning that if he is trying
13 to make him an expert at this point in time.

14 THE COURT: Okay.

15 MR. BRYAN: I'll go ahead and do it now. If he's
16 just going to ask him some questions about when he took
17 the video or something like that, but if he gets into
18 anything that is an expert testimony, I would like to make
19 my motion before he does that.

20 THE COURT: Right. Well, certainly, I anticipate
21 that Trooper Duncan is going to be called in the
22 defendant's case. Well, if I rule that the video is not
23 admissible, is Trooper Duncan still going to be called in
24 some fashion?

25 MR. HARTER: Yes, sir. Yes. He will be called.

1 Yes.

2 THE COURT: Okay. Well, let's deal with his
3 qualifications as well because we'd have to do that in
4 camera anyways.

5 So I expect you're going to offer him as an expert in
6 the area of accident reconstruction, are you not?

7 MR. HARTER: Investigation and in the area of
8 accident reconstruction.

9 THE COURT: All right. Let's deal with that as well.

10 MR. BRYAN: You want me to do my motion or wait, Your
11 Honor?

12 THE COURT: Let's go ahead and get his testimony and
13 see what he says, even though I'm certainly familiar with
14 Trooper Duncan.

15 Madam Clerk?

16 (WHEREUPON, AL DUNCAN is duly sworn.)

17 MR. BRYAN: Your Honor, I discussed with
18 Mr. Thompson, it may be better that we argue this motion
19 before he testifies.

20 THE COURT: Well, how can I rule on whether or not to
21 deem him an expert if we don't have anything on the record
22 insofar as his qualifications are? I'm going to need to
23 hear from him.

24 MR. THOMPSON: May we approach the bench on this? I
25 don't mean to delay this, but can we approach?

1 THE COURT: You need to approach?

2 MR. THOMPSON: Yes.

3 THE COURT: Okay.

4 (WHEREUPON, a bench conference was held off the record.)

5 THE COURT: Let's put this on the record. All right.

6 So you're raising a discovery issue as it relates to
7 Trooper Duncan, correct?

8 MR. THOMPSON: Any expert he may call.

9 THE COURT: All right. Let me hear from you then.

10 MR. BRYAN: Are we back on the record, Your Honor?

11 THE COURT: We are.

12 MR. BRYAN: All right. Your Honor, I have a
13 memorandum here concerning expert testimony, and I will
14 submit to you the defendant's answers to his
15 interrogatories along with the memorandum.

16 As can be seen from the -- and, of course, I don't
17 know whether the judge wants to -- if you'd like to read
18 the memorandum now rather than me argue afterwards.

19 THE COURT: Well, no. Let me kind of get an idea
20 from you, Mr. Bryan, where you're coming from on this
21 issue.

22 Trooper Duncan, you can go ahead and just have a seat
23 back in the -- because this may take a little bit.

24 THE WITNESS: Absolutely.

25 THE COURT: Okay. Mr. Bryan?

1 MR. BRYAN: Your Honor, first of all, the fact that
2 he is the one that videotaped this video off of another
3 video screen, I understand that, but the questions of
4 whether he -- what training he has in videography and all
5 that sort of thing, we'll question that. But the main
6 thing about interrogatories, if you could look at the
7 interrogatories, and the brief will spell a lot of this
8 out, I won't go through everything in the briefs, but I
9 know you'll read that, but Number 1 -- well, excuse me.
10 Let's go back and start in the interrogatories, on
11 page 10, Number 4, "Defendant has retained no expert
12 witnesses to testify to date." We have never been
13 notified of any expert witness until approximately ten
14 days ago Mr. Harter told me he was going to call Trooper
15 Duncan to reconstruct the accident.

16 On Number 2, he named literally nearly 23 people and
17 says, I may offer expert testimony in -- they may offer
18 expert testimony in the areas of expertise. That is the
19 extent of our notice. There is no summary of what the
20 witnesses are going to say.

21 Number 5 says, For each person the witness -- facts,
22 that a sufficient summary be to inform the parties the
23 important -- the typical interrogatories Your Honor is
24 familiar with. And he says, "See response to
25 Interrogatory Number 1." There is nothing on Number 1.

1 There was never any summary of what witnesses will say,
2 there was never naming a person as an expert. It was
3 generalities. And we have had absolutely no opportunity
4 to know who to depose, never thinking there would be any
5 kind of an expert reconstructionist because we were never
6 notified of that, and just general answers like that. And
7 I've got a lot of information in the brief concerning
8 that.

9 That just flies in the face of the discovery rules,
10 and we have just been put at a great disadvantage with
11 them coming at the last minute. Where do you find an
12 accident reconstructionist at the last minute? Where do
13 you go to get one? How do you get him to the spot? How
14 do you get him and meet with him? There's just not people
15 around here like that. You have to go off and find them.

16 And they put us at a great disadvantage --
17 prejudicial disadvantage because they've never named an
18 expert. Naming -- saying I haven't retained an expert and
19 I may question these people in areas of expertise and have
20 some odd people named after that would put us in a
21 position of having to take twenty-something depositions.
22 And we are at a great disadvantage if he uses any expert
23 because he clearly never gave us notice of an expert until
24 the first time I heard it was ten days ago, a little over
25 ten days ago.

1 THE COURT: How were you notified ten days ago?

2 MR. BRYAN: Mr. Harter came down I want to say
3 Wednesday or Thursday the week before last, and he made
4 comment that he was going to use Trooper Duncan concerning
5 a thumb drive he had sent me last fall as a
6 reconstructionist. And that's the only notice I've ever
7 had that he's going to use any particular person as an
8 expert. And this is the only notice we've had there's
9 going to be any -- before that time any kind of expert at
10 all.

11 So what we've got here, he's putting up something
12 he's never given us notice of that he was going to do, and
13 then we have no way to rebut it at this late date.

14 But it is clear to read these interrogatory answers
15 that we just -- and then on the tape, on his redactions,
16 I'll give the Court a copy of that. We got this -- our
17 interrogatories were sent April 6, 2016. And our motion
18 to produce, we got these responses July 17, 2017. And
19 here it asks for photographs and videos and things like
20 that. We got that video in June of '17 even though we
21 requested it over a year earlier, requested all
22 photographs which includes videos.

23 So that's another issue on the video is we requested
24 in I believe it's April '16 -- April 6, 2016. We get it
25 by hand at mediation June of 2017, and we get the answers

1 to our interrogatories and our request for productions in
2 July of '17. And nowhere has he ever said he's going to
3 use an expert. That language, general language is just
4 all that has ever been said. No particular person.

5 And as I mentioned in my brief, I think if I counted
6 right, it would be something like 23 people we would have
7 to take depositions of -- take the deposition of to figure
8 out which one's going to be an expert or what they're
9 going to say. There was no summary of what they were
10 going to say, all the things required, and there's nothing
11 to give us notice that there's any kind of expert until
12 approximately 10, 11 days ago. And we object to them
13 having any kind of expert because we've never been given
14 notice, have no opportunity to respond, no opportunity to
15 deal with them, and it's impractical to ask a client of
16 modest means to take 23 depositions.

17 THE COURT: Okay. All right. Mr. Harter?

18 MR. HARTER: Your Honor, I'm absolutely flabbergasted
19 to think that Mr. Bryan can walk in here today and suggest
20 and/or claim that he is somehow surprised and/or
21 prejudiced about Al Duncan testifying as an accident
22 reconstructionist in this case. We answered their
23 discovery responses, and in those discovery responses, we
24 were asked list the names of any experts the party
25 proposes to use. At that point in time, Al Duncan was a

1 member of the South Carolina MAIT Team. We identified
2 him. At the same time and/or around the same time,
3 Mr. Terrell, who was representing the underinsured
4 motorist carrier, got for us all the MAIT Team report.
5 And the MAIT Team report went into specific detail about
6 Al Duncan's involvement in this case, Al Duncan's
7 investigation in this case, the information that he
8 accumulated during the process of his investigation,
9 photographs, videos, reports, statements, and statements
10 that they themselves are using and have used to
11 cross-examine witnesses. And, Your Honor, I mean, it is
12 -- we identified Al Duncan. We identified other people.
13 And if there was any misconception or confusion on their
14 part, there's a thing called a motion to compel when they
15 could have made and/or should have made us clarify things
16 if they were under any misconception.

17 Judge, as an officer of the Court, I do not -- I
18 cannot imagine how they can come here now and in good
19 faith say we had no idea Al Duncan is going to testify in
20 this case as an accident reconstructionist and offer
21 opinions. We furnished his name, we furnished an
22 animation that he had done, we furnished his calculations
23 -- I mean we furnished his report, we furnished his
24 calculations and we said he's a potential witness in the
25 case, he's an expert in the case.

1 And, you know, I will tell you, if we want to get
2 into specifics about interrogatories, my answers are about
3 that thick (gesturing), Judge. Okay. Theirs are about
4 paper thin.

5 So, I mean, this is a matter of fundamental fairness.
6 I cannot imagine that they can claim that they're
7 surprised and that Al Duncan is not an expert.

8 Our responses, and I'll -- and if they're claiming we
9 didn't get the video, they've had it for like almost a
10 year now. And here are our responses, you know, if you
11 need to ---

12 MR. BRYAN: I handed them up to the Court.

13 MR. HARTER: --- for you to look at them.

14 And along with that we furnished request to produce,
15 responses to their request to produce. We reference the
16 MAIT report. I mean . . .

17 THE COURT: Is Duncan's report and animation, is that
18 a part of the MAIT Team report or is that something
19 separate?

20 MR. HARTER: Two things. First break it apart. His
21 report is part of the MAIT Team's report.

22 THE COURT: Okay.

23 MR. HARTER: Okay. His animation, which we have
24 decided not to use, is not part of that report. Okay.

25 THE COURT: Okay. All right.

1 MR. HARTER: And here is -- and, you know, I'll tell
2 you about furnishing documents and furnishing discovery
3 materials. Judge, I got just a few minutes ago a packet
4 of stuff from Mr. Templeton who was their expert that I
5 ain't seen, you know. But I don't mean to get carried
6 away. But, again, here is our -- a copy of our responses
7 that are December 19, and here we identify photographs, we
8 identify the animation, we identify computations. I
9 mean ---

10 MR. BRYAN: I'd like to respond when the time is
11 correct, Your Honor.

12 THE COURT: I'm going to let you respond as soon as
13 Mr. Harter is finished.

14 MR. HARTER: And, you know, Judge, they have the MAIT
15 Team report, too, and they should have listed him a
16 witness themselves. I mean, he's the witness for
17 everybody. But he has expert opinions, and his opinions
18 are part of the MAIT Team report, which is right here,
19 which everybody in this case got, okay, and has had for
20 almost a year. More than a year. Sorry, Mr. Terrell.
21 More than a year.

22 THE COURT: All right. Are you finished, Mr. Harter?

23 MR. HARTER: We're trying to streamline these cases
24 and get it moved on, Your Honor.

25 MR. BRYAN: As soon as Mr. Harter is through, I'll

1 go, Your Honor.

2 THE COURT: Okay.

3 MR. BRYAN: Don't want to interrupt him.

4 THE COURT: I think Mr. Harter is finished. I'll
5 briefly hear from you in response.

6 MR. BRYAN: Your Honor, Mr. Harter is not even
7 arguing the issue. We've had that MAIT Team report and
8 those videos since last June, which is more like ten
9 months and not over a year. The issue is expert
10 witnesses. And I ask Your Honor to read the interrogatory
11 answers. It does not give us the name of an expert. It
12 says specifically we haven't retained an expert, then he
13 said he may call this list of people, which is some --
14 looks like about 20 something people, may call them.
15 Well, actually, he says he will call the medical and
16 police people in the expertise area of their expertise.
17 And if you look at -- add the medical to it, it's like
18 probably 30 something people there that he's giving us
19 that he may call in the area of expertise without any
20 specifics, no statements of what they're going to testify
21 to.

22 The issue is Mr. Duncan being an expert when he has
23 never given us notice that Mr. Duncan is an expert. The
24 MAIT Team report is just an investigation. Mr. Duncan is
25 not even the primary investigator. Trooper Hunter was the

1 primary investigator of the accident. He's just
2 investigating from the State's perspective because a law
3 enforcement vehicle was involved. That does not give us
4 any notice that he's an expert.

5 The MAIT Team, I've heard of it. I don't know what
6 the MAIT Team is. I've never heard anybody say the MAIT
7 Team people are experts on something. And to note just
8 because he mentioned the word "MAIT Team" I'm supposed to
9 know that means he's an expert reconstructionist, there's
10 no possible way anybody would know that.

11 And the argument is not when we got the MAIT report.
12 We got the MAIT report last June. We said that. The
13 argument is we've never been given notice of any kind of
14 expert, and we have no opportunity to rebut his experts
15 with another expert or get another expert. We have no
16 idea what he is going to say. If he'd have told me this
17 is going to be an accident reconstructionist, I would
18 certainly have taken his deposition and possibly tried to
19 get an accident reconstructionist myself. But that's just
20 not somebody you can get around here. To come here, tell
21 me that ten days before we come to trial after that's been
22 sitting on -- we got that last July, no experts.

23 We filed this case in August of 2015 and then we
24 asked for -- sent interrogatories and things April of
25 2016. We got those interrogatories last July and it said

1 no experts, no experts. And they get a long list and say
2 we may call them about the experts. He did not even
3 answer.

4 How am I supposed to know that Mr. Harter has left
5 something critical out. How am I supposed to know he left
6 something critical out? And am I supposed to read his
7 mind? He wants me to make a motion. We had a deposition,
8 and Mr. Harter can get fired up like me. And I asked him
9 because of some other situations of things we didn't get,
10 he says, "What else do you want?"

11 I said, "I don't know. What else have you not given
12 me?"

13 And he says, "I don't know. You've got everything."

14 I said, "If you've given me everything, okay." This
15 was at a deposition in Mr. Cruickshank's office.

16 He has had opportunity. We've had discussions about
17 the problems with discovery, and we've talked to him about
18 that. We had this conversation at mediation because we
19 were talking about things we had never seen before.

20 But those interrogatories are clear that he does not
21 have an expert, and to allow him to put up an expert now
22 at this stage of trial is unbelievably prejudicial to this
23 lady. And it is just because of the way they did it. I
24 hate it for them. I hate they did that. Maybe they
25 wanted to. Maybe they just decided it may be just at this

1 point in time decided to call an expert. But whatever
2 happens, I don't know.

3 Your Honor, I don't know what else they're going to
4 call. They had people, experts out there Friday looking
5 at the scene of the accident. Are they going to call
6 those people? I don't know what they're going to call. I
7 don't know what we're going to get in here.

8 But I would ask the Court to read the memorandum, and
9 I would ask the Court to read the interrogatories. And I
10 think it is abundantly clear we have no notice of an
11 expert, and it would be greatly unfair, prejudicial, and I
12 go through all that in the memorandum and the law and
13 rules.

14 Thank you.

15 THE COURT: Okay. Here's what we're going to do
16 because I want to get moving with this case. Mr. Harter,
17 just during a break if you can get me the MAIT Team
18 report, I want to review that. Is that it?

19 MR. HARTER: This is it.

20 THE COURT: Okay. All right.

21 MR. BRYAN: I assume the thickness is the pictures,
22 because this is the MAIT Team report. But I assume there
23 are photographs with that. It looks a lot thicker than
24 what we ---

25 THE COURT: Whatever is deemed to be the MAIT Team

1 report, I want to look at that.

2 MR. BRYAN: May I review it, Your Honor?

3 THE COURT: We're going to just lay to the side right
4 now any issues related to Trooper Duncan and the video.

5 I'm going to go ahead and rule as it relates to
6 Barton Holmes's deposition. That objection to several
7 lines on two pages, I'm going to take that out. And I see
8 where your videographer is not here.

9 MR. HARTER: He will be here, Judge, in about five
10 minutes.

11 THE COURT: Okay. Because I know that in the
12 plaintiff's case in chief, Mr. Thompson indicated that
13 Barton Holmes's deposition is going to be the first
14 witness. So I don't know how long it would take for your
15 guy to redact that out, but it's going to come out, the
16 several lines on those two pages.

17 MR. HARTER: It's done. He should be here in a few
18 minutes.

19 THE COURT: Okay. All right.

20 MR. HARTER: There are two versions of it. There's a
21 version where they redacted out.

22 THE COURT: Very good. Thank you.

23 And as it relates to the video, Trooper Duncan, I'll
24 take that under advisement and we'll deal with that at the
25 appropriate time.

1 So, Trooper Duncan, you are free to go. You're going
2 to have to come back at some point in time, but there's no
3 need for you to just hang around. We've got witnesses
4 sequestered, so you'd have to sit out there anyways. But
5 I want to review the MAIT Team report and just see how
6 much notice it gives as it relates to Trooper Duncan.

7 (Pause in proceedings.)

8 MR. HARTER: Judge, if I could help a little bit,
9 there are some specific sections, and they're Bates
10 numbered MAIT 12, 13.

11 THE COURT: Basically, what I want to see is what was
12 provided to the plaintiff in discovery when it refers to
13 that MAIT report. Whatever was provided to Mr. Bryan and
14 Mr. Thompson, that's what I want to see.

15 MR. BRYAN: There are notes on that I would like
16 removed before it's given to the Court.

17 THE COURT: That's fine.

18 MR. BRYAN: But this was given to us along with a
19 disk. This was on a disk, had some recording statements
20 from, I believe, Trooper Hunter, maybe Trooper Duncan, a
21 recorded statement from Ms. King, a recorded statement
22 from Barton Holmes. And that was given to us.

23 The pictures I assume were given to us, but they have
24 not been given to us in one group. They were given to us
25 -- we've been given several groups of pictures. I don't

1 know which ones are included in there. I would like to
2 look through just to see.

3 THE COURT: You don't have to give it to me right
4 now, but I just want to be provided what was provided to
5 the plaintiff as it relates to the MAIT report.

6 MR. HARTER: This is it.

7 THE COURT: So just do it at a break because I think
8 Mr. Bryan wants to see what you're going to hand to me.

9 MR. BRYAN: That was never given to us like that. It
10 was given to us in increments and were not given -- we
11 were never given a book like that with all of that
12 together.

13 MR. TERRELL: It was given on a disk.

14 THE COURT: I can't have everybody talking at the
15 same time.

16 Whether it was given in a notebook or whatever, I
17 want the meat of it. And if it was given in increments,
18 that's fine. I want the whole package and however it was
19 given to the plaintiff. And y'all decide on what was
20 given, and that's what I want to see, but it doesn't have
21 to be given to me right now.

22 MR. BRYAN: I would just like to look at it, Your
23 Honor. It may be -- I don't know what he's giving you.

24 THE COURT: All right. Let's take about a ten-minute
25 break, and hopefully the videographer will be here, and

1 then at 10:00 we can bring the jury out and get started.

2 (WHEREUPON, a recess is taken at 9:46 a.m.)

3 (WHEREUPON, proceedings reconvened at 10:05 a.m.)

4 THE COURT: It's my understanding that the
5 plaintiff's first witness will be Barton Holmes's
6 deposition; is that correct?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Okay. All right. And we've been able to
9 have a redacted copy per agreement of the parties, and
10 then based upon my ruling I just made concerning several
11 lines out of pages 57 and 58.

12 MR. HARTER: It has been edited accordingly, Judge.

13 THE COURT: Okay. All right. Very good.

14 Mr. Bolt, let's bring the jury out and let's get
15 started.

16 (WHEREUPON, the jury entered the courtroom at 10:06 a.m.)

17 THE COURT: Good morning, ladies and gentlemen. I
18 hope everyone's doing well, you had a good, restful
19 evening and ready to get to work this morning.

20 Is the plaintiff ready?

21 MR. BRYAN: Yes, Your Honor.

22 THE COURT: Okay. You want to call your first
23 witness?

24 MR. THOMPSON: Yes, sir. We would call Barton Holmes
25 by way of video deposition.

1 THE COURT: Okay. All right. Ladies and gentlemen
2 of the jury, testimony is now going to be presented to you
3 by way of a videotape deposition. A deposition is sworn
4 testimony given by a witness outside of court with the
5 lawyers present asking questions. And this testimony that
6 will be offered by way of this videotape deposition is
7 entitled to the same consideration and be judged as to
8 credibility and weighed by you in the same manner as if
9 the witness were here testifying from the witness stand.
10 It's for you the jury to determine the effect, value,
11 weight and truth of the testimony given in this
12 deposition.

13 All right. You may proceed.

14 Make sure that if you can't hear it and see it, I
15 think it would be fine, but if you can just raise your
16 hand and we'll make whatever adjustments we need to.

17 (WHEREUPON, the video deposition of Barton Holmes is
18 played in open court.)

19 THE COURT: Okay. Ladies and gentleman, that
20 concludes the video deposition of Mr. Holmes. We're going
21 to take a ten- to 15-minute morning break, so I ask that
22 you go back to the jury room and remind you once again not
23 to have any discussions about anything related to this
24 case and we'll get you back out and continue forward.

25 (WHEREUPON, the jury exits the courtroom at 11:28 a.m.)

1 THE COURT: The copy of this deposition that's been
2 marked up is going to be marked as a Court's exhibit so
3 the record will be complete. It will be Court's Number 1.

4 We'll be in recess for about 15 minutes.

5 (WHEREUPON, Court's Exhibit No. 1 was marked for
6 identification, and a recess is taken at 11:29 a.m.)

7 (WHEREUPON, proceedings reconvened at 11:46 a.m.)

8 THE COURT: All right. Is the plaintiff ready for
9 the next witness?

10 MR. THOMPSON: Before the jury comes back, could I
11 address the Court?.

12 THE COURT: Sure.

13 MR. THOMPSON: This morning, apparently, we've had
14 some not misunderstandings, but between counsel we've had
15 some -- I'm trying to get the right word -- less than
16 tranquil exchanges.

17 THE COURT: Okay.

18 MR. THOMPSON: And we believe that both sides have
19 been very open with one another.

20 THE COURT: Right.

21 MR. THOMPSON: Yet there hadn't been any deliberate
22 hiding or secreting anything that comes before the Court
23 or should come before the Court. And all we can say on
24 the discovery documents, they are what they are, you know.
25 We will continue to be open, and Mr. Harter's been open

1 with us.

2 THE COURT: Okay.

3 MR. THOMPSON: I just felt like maybe the Court
4 should be aware that there is no undercurrent of distrust
5 or anything here between lawyers.

6 THE COURT: Right. I understand. I appreciate those
7 comments.

8 MR. THOMPSON: Okay.

9 MR. HARTER: And I appreciate that, too,
10 Mr. Thompson, because I do believe we've had an open
11 exchange of information. I don't feel like -- I don't
12 feel like I've blindsided them with anything. And I do
13 not know if you had a chance to look at that MAIT report
14 stuff yet.

15 THE COURT: I've started looking at it, but certainly
16 because it's pretty thick . . .

17 MR. HARTER: And/or -- but I will tell you, I got
18 this envelope this morning. I know it's got some stuff in
19 it I haven't seen.

20 THE COURT: Right.

21 MR. HARTER: But, you know, I've got to say, I don't
22 mean this -- we're big boys, you know. We tried cases for
23 years. And, you know, we try to get in here and we know
24 what our case is about, they know what my case is about.
25 There ain't supposed to be no secrets ---

1 THE COURT: Right.

2 MR. HARTER: --- and there wasn't and there isn't,
3 Judge, okay?

4 THE COURT: Sure.

5 MR. HARTER: I don't know what's in here, but I deal
6 with it. I'm sure you're going to tell me, you know. I'm
7 not going to stop the trial because of this, you know.

8 THE COURT: Right.

9 MR. HARTER: But I appreciate what Tom said, and he
10 and I talked in the bathroom, you know.

11 THE COURT: Right. Okay.

12 MR. HARTER: But I don't feel like -- I don't feel
13 like there's any claim for surprise ---

14 THE COURT: Right.

15 MR. HARTER: --- anything's happened so far in this
16 case. And you know you've tried cases -- a bunch of
17 cases, too.

18 THE COURT: And I appreciate the comments.

19 MR. BRYAN: Your Honor, I want to say, you know, I've
20 known Mr. Harter for years and like him. Don't mean
21 anything personal about him, but as Mr. Thompson said,
22 what those documents are are what they are, and we're not
23 backing up on what our motion is and what they say. We
24 didn't mean that.

25 And on that envelope he's showing there, if it come

1 from Mr. Templeton, I haven't seen it. He didn't give me
2 all of that either.

3 THE COURT: Okay. All right. Very good. Thank you.
4 Let's bring the jury out.

5 MR. HARTER: No hiding the ball. No ball's been
6 hidden as far as I know of, Judge, okay?

7 THE COURT: Who's your next witness?

8 MR. THOMPSON: Ms. Sherell King.

9 THE COURT: Okay.

10 MR. THOMPSON: She's in the courtroom.

11 THE COURT: Okay.

12 (WHEREUPON, the jury entered the courtroom at 11:50 a.m.)

13 THE COURT: Plaintiff call the next witness.

14 MR. THOMPSON: Yes. The plaintiff calls Ms. Sherell
15 King.

16 THE COURT: Come around, please, ma'am.

17 MR. THOMPSON: Come around and be sworn.

18 WHEREUPON,

19 SHERELL KING

20 After having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q All right. Ms. King, you need to speak up into the
24 microphone so that the Court, lawyers and most importantly
25 the jury can hear your testimony.

1 Have you ever testified in court before?

2 A No, sir.

3 Q Okay. You might be a little nervous, but we all are
4 a little nervous when we get in these things.

5 Why don't you give us your full name.

6 A It's Sherell Elizabeth Latoya King.

7 Q Okay. And where do you currently live?

8 A 48 Andrea Park, Clinton, South Carolina.

9 Q Okay. And about how long have you lived there?

10 A Four and a half years.

11 Q Okay. And as a child, where did you grow up?

12 A In Clinton, South Carolina.

13 Q Okay. And did you go to Clinton High School?

14 A Yes, sir.

15 Q And how far did you go in high school?

16 A I graduated in 2004.

17 Q Okay. And did you go to any type of tech schools or
18 colleges after you left or graduated from Clinton?

19 A I had some Piedmont Tech. I went to Piedmont Tech
20 for a little while.

21 Q And what kind of courses did you study there?

22 A Nursing.

23 Q Okay. And from what I know of you, you did not go
24 into the nursing field then, did you?

25 A No, sir.

1 Q Okay. Are you currently employed?
2 A Yes, sir.
3 Q And who is your employer?
4 A Whitten Center.
5 Q And how long have you been working at Whitten Center?
6 A 14 years.
7 Q And do you work different shifts there?
8 A I work first shift, but sometimes I have to do double
9 shifts, first and second shift.
10 Q Okay. Have you ever worked a third shift?
11 A Yes, sir.
12 Q Okay. If you're working the third shift, what time
13 do you have to be there?
14 A At 10:45.
15 Q And that's 10:45 p.m.?
16 A Yes, sir.
17 Q And you would work till when?
18 A Till 7:15 in the morning.
19 Q I see. But you rarely work the third shift, I take
20 it?
21 A No, sir.
22 Q Wait a minute. Now, I said you don't work the third
23 shift very much, or do you?
24 A Oh, no, sir. I don't work it now.
25 Q I understand. But you have sometime in the past?

1 A Yes, sir.

2 Q And what do you do at Whitten Center for the folks
3 down there?

4 A I take care of consumers, take them to the school,
5 feed them, take them to their doctor appointments and
6 different stuff.

7 Q Do you have a certain number of people that you're
8 responsible for?

9 A 16.

10 Q Okay. And then you stay with that group of 16 all
11 day?

12 A Yes, sir.

13 Q And tend to their needs?

14 A Yes, sir.

15 Q Okay. And you've been doing that for 14 years.

16 A Yes, sir.

17 Q Okay. And what church do you attend?

18 A Mount Calvary Apostolic Church.

19 Q Is that somewhere close to where you live?

20 A It's in Laurens, South Carolina.

21 Q In Laurens.

22 A Uh-huh.

23 Q Okay. Now, and your family is where?

24 A In Clinton, South Carolina.

25 Q Have you ever been arrested?

1 A No, sir.

2 Q All right. Now, let's try to go into this situation
3 that we're in court about today. Do you remember the
4 evening hours of August 15, 2013?

5 A Yes, sir.

6 Q All right. Did you spend the previous night at your
7 home ---

8 A Yes, sir.

9 Q --- the day before that?

10 A Yes, sir.

11 Q Okay. Did you have a boyfriend back in those days?

12 A Yes, sir.

13 Q Is he still your boyfriend?

14 A Yes, sir.

15 Q Okay. And where did he live back in August of 2013?

16 A He lived in Laurens, South Carolina.

17 Q Okay. Did you and he spend some time together at
18 your house that morning or afternoon?

19 A Yes, sir.

20 Q Okay. And then what shift were you going to work on
21 August 13 -- 15th, I mean?

22 A I was working third shift.

23 Q You were working third shift. So that meant you had
24 to be down at Whitten Center by 10:45?

25 A Yes, sir.

1 Q What did you have to do with the boyfriend that
2 afternoon?

3 A I had to take him back to Laurens before I went to
4 work.

5 Q Okay. And do you remember about what time you
6 dropped him off in Laurens?

7 A I headed to Laurens at 10:15.

8 Q Okay. And where was he living here in Laurens?

9 A Silver Street.

10 Q Okay. You dropped him off.

11 A Yes, sir.

12 Q And then you headed to Whitten Center.

13 A Yes, sir.

14 Q And you wanted to be there by 10:45.

15 A Yes, sir.

16 Q Okay. Now, do you remember the road you took out of
17 Laurens or the highway you took out of Laurens to go to
18 Whitten Center?

19 A Yes, sir.

20 Q What highway or road was it?

21 A Highway 76.

22 Q Okay. And had you driven that road on prior
23 occasions?

24 A Yes, sir.

25 Q Okay. How would you describe it as far as number of

1 lanes involved?

2 A It's two lanes.

3 Q Two lanes.

4 A Two lanes headed to Clinton and two lanes headed back
5 to Laurens.

6 Q Okay. So would you call it two lanes going east ---

7 A Yes, sir.

8 Q --- to Clinton, two lanes going west back to Laurens?

9 A Yes, sir.

10 Q And then is there anything in between those lanes?

11 A A median.

12 Q And what is it made out of; do you know?

13 A I think it's two lines in the median.

14 Q Yeah. And the median, is it level with the road or
15 above the road?

16 A Level with the road, but it's out in the middle.

17 Q Okay. All right. Now, do you know where the bingo
18 place is here in Laurens?

19 A Yes, sir.

20 Q Okay. As you're going to Clinton from Laurens on
21 Highway 76, what side would it be on, your left or your
22 right?

23 A It would be on my right if I'm coming from Laurens.

24 Q Okay. On the night in question, I just won't keep
25 mentioning that date, but when I say night in question,

1 that means August 15, 2013, okay?

2 A Okay.

3 Q So on the night in question, did you pass the bingo
4 place?

5 A Yes, sir.

6 Q And were there cars there?

7 A At the bingo place?

8 Q Yeah.

9 A I can't remember.

10 Q Okay. And when you passed the bingo place, what lane
11 were you driving in?

12 A I was in the left lane.

13 Q Okay. That's a little bit out with the left lane.
14 Would that also be known as the passing lane?

15 A Yes, sir.

16 Q Okay. The lane closest to the median.

17 A Yes, sir.

18 Q All right. And about how fast were you traveling?

19 A I was the -- it was the regular speed limit.

20 Q Yeah. It varies down in through there, I believe,
21 doesn't it?

22 A Yes, sir.

23 Q But wherever you were on the road, you're telling me
24 and the jury that you think you were going about the speed
25 limit.

- 1 A Yes, sir.
- 2 Q Okay. And what kind of car did you have back in
- 3 those days?
- 4 A 2008 Dodge Charger.
- 5 Q And how long had you owned it before that night?
- 6 A I just had got it that July.
- 7 Q Okay.
- 8 A In 2013.
- 9 Q Did it have lights on it?
- 10 A Yes, sir.
- 11 Q And what was the status on the lights when you were
- 12 driving by the bingo place?
- 13 A It was the regular lights that was on.
- 14 Q There were running lights, supposedly?
- 15 A Yes, sir.
- 16 Q Okay. Are those lights the kind that come on
- 17 automatically or do you have to engage them manually?
- 18 A I have to engage them manually.
- 19 Q Okay. And you believe your lights were on?
- 20 A Yes, sir.
- 21 Q All right. Now, as you were traveling down there,
- 22 there's other buildings and businesses as you go down
- 23 through that area, is there not?
- 24 A Yes, sir.
- 25 Q Are you familiar with any of them?

1 A No, sir.

2 Q Okay. When you got past the bingo some distance, did
3 you notice any type of law enforcement vehicle?

4 A Yes, sir.

5 Q And about how far beyond the bingo place were you
6 when you noticed the law enforcement vehicle?

7 A About a couple minutes.

8 Q Minutes?

9 A (Nods head affirmatively.)

10 Q Okay. That's a guess, approximately?

11 A Approximately, yeah.

12 Q Okay. And what color was the law enforcement car?

13 A Black.

14 Q Okay. What lane was this car traveling in?

15 A The right lane.

16 Q Okay. And what lane were you traveling in?

17 A I'm the left lane.

18 Q You're in the left lane.

19 And are you both going in the same direction?

20 A Yes, sir.

21 Q Okay. Was the police car ahead of you, behind you or
22 beside you?

23 A He was ahead of me.

24 Q About how many car lengths would you say?

25 A Two -- two seconds.

- 1 Q Pardon me?
- 2 A Can you repeat that again?
- 3 Q Let me start over again. About how far ahead of you
- 4 was the police car?
- 5 A I'd say a few minutes ahead of me.
- 6 Q I'm talking about the length, feet, inches, yards.
- 7 A Probably about ten. I can't remember.
- 8 Q Pardon me?
- 9 A I can't remember.
- 10 Q Okay. Let me ask you this. The police car was ahead
- 11 of you.
- 12 A Yes, sir.
- 13 Q And what kind of lights did this man have on that
- 14 car?
- 15 A What kind of lights? Just regular lights.
- 16 Q Headlights?
- 17 A Headlights.
- 18 Q Taillights?
- 19 A Yes, sir.
- 20 Q Okay. And as you were proceeding, both of you were
- 21 going down that way?
- 22 A Yes, sir.
- 23 Q And you don't know how far ahead of you, if he was --
- 24 how far ahead of you he was.
- 25 A No, sir.

1 Q Would it have been more than 20 feet?

2 A No, sir.

3 MR. HARTER: Your Honor, she said she didn't know.

4 THE COURT: Wait a minute. I've got an objection.

5 MR. HARTER: Objection.

6 THE COURT: Okay. Well, she stated -- I think she
7 stated two car lengths, but then when you asked her as
8 far as distance, she said she was unable to give a
9 distance.

10 MR. THOMPSON: I apologize.

11 THE COURT: That's okay.

12 MR. THOMPSON: I did not hear her say two car
13 lengths.

14 THE COURT: I think -- ask her again.

15 BY MR. THOMPSON:

16 Q Did you say two car lengths?

17 A Yes, sir.

18 Q Okay. I just didn't hear you.

19 THE COURT: That's all right.

20 BY MR. THOMPSON:

21 Q Okay. So as you headed down that road, he's two car
22 lengths ahead of you. Did anything unusual happen?

23 A Yes, sir.

24 Q Can you tell the jury what happened?

25 A As I was traveling towards Clinton, the Highway

1 Patrol made an unlawful U-turn in front of me and it
2 caused the accident. So when he did an unlawful U-turn in
3 front of me, he caused me to hit him, and then two seconds
4 later I got hit from the back.

5 Q Okay. Let's break it down. He did a U-turn?

6 A Yes, sir.

7 Q And where did your car hit his car?

8 A The back -- the back side.

9 Q And where on the highway did that metal meet metal?
10 In what lane?

11 A In the median.

12 Q You were in the median?

13 A Well, when he did a u-turn in front of me, I was like
14 in a -- I was in the left lane.

15 Q And so where did the metal meet the metal? In what
16 lane?

17 A The left lane.

18 Q Okay. And where did you end up?

19 A I was still in the same left lane.

20 Q Were you driving away or did you ---

21 A No, sir.

22 Q What did you do?

23 A I had slammed on my brakes.

24 Q Okay. And the sheriff's car ended up where?

25 A Side -- on the side.

1 Q Now, you have to ---

2 A Like when he turned -- made a U-turn in front of me,
3 he hit the sides of me and he ended up on the side of the
4 median.

5 Q Okay. He ended up on the side of the median?

6 A Uh-huh. Yes, sir.

7 Q In which direction was his car facing?

8 A It was facing like towards Laurens.

9 Q Okay. All right. And when the sheriff made the
10 U-turn, what lights or signals did you see?

11 A I didn't see no lights or signal.

12 Q Did he ever engage a light or signal? Did he ever
13 put one on?

14 A No, sir.

15 Q Okay. After you hit him, did he put a light on?

16 A No, sir.

17 Q All right. So you're sitting there in the outside
18 lane and he's sitting over near the median or on the
19 median.

20 A Yes, sir.

21 Q And are your lights on on your car?

22 A Yes. Yes, sir.

23 Q The front and the back?

24 A Yes, sir.

25 Q Now, does that car you have have what's known as

1 emergency flashers?

2 A Yes, sir.

3 Q Did you put those on?

4 A No, sir.

5 Q Okay. And how much time passed by as you best
6 remember after you struck the rear of his car that another
7 car hit the rear of your car?

8 A Like two seconds later.

9 Q Like 1,000 ---

10 A 2,000. Yes, sir.

11 Q Okay. Now, I thought you had earlier testified in
12 other forums or hearings that the officer had put his
13 lights on immediately after he hit you once he was over
14 there in the median. Did you not testify to that?

15 A Yes, sir.

16 Q Is that correct?

17 A Yes, sir.

18 Q So he did have a blue light on.

19 A Yes, sir.

20 Q But it was after he hit you.

21 A Yes, sir.

22 Q Okay. Did you see a left-hand turn signal?

23 A No, sir.

24 Q Okay. Now, before you were struck by the car
25 Ms. Watts was driving, did Officer Holmes get out of his

1 car?

2 A No, sir.

3 Q Okay. Did he ever get out of his car?

4 A Yes, sir.

5 Q And when was that?

6 A After I got struck by Ms. Watts.

7 Q Pardon me?

8 A After I got struck by Ms. Watts.

9 Q Okay. And did he come to you?

10 A Yes, sir.

11 Q And he checked on you.

12 A Yes, sir.

13 Q And how bad were you hurt; do you know?

14 A My neck and stuff were hurting.

15 Q Was your car able to be driven away?

16 A No, sir.

17 Q Okay. And what did Mr. Holmes do after he checked on
18 you?

19 A He just told me to stay where I'm at and help is on
20 its way.

21 Q Okay. Did he stay there with you or did he go
22 somewhere else?

23 A I think he went somewhere else.

24 Q Okay. Did you see him go over to Mrs. Watts's car?

25 A I can't remember.

1 Q You can't remember.

2 Okay. Now, you had a driver's license at that
3 time?

4 A Yes, sir.

5 Q Was your license in any way restricted?

6 A No, sir.

7 Q Do you wear glasses?

8 A No, sir.

9 Q Okay. Did you try to avoid the collision with the
10 sheriff's car?

11 A Well, I didn't have time to do anything to avoid
12 anything. It happened so fast, so . . .

13 Q Okay. Now, when the Watts car hit your car, where
14 did it go?

15 A I think it hit ---

16 Q Or did it go anywhere?

17 A I don't think it went anywhere.

18 Q The Watts car.

19 A Oh, her car went the other way. It went towards like
20 the fence or whatever.

21 Q After it hit your car?

22 A After it hit my car.

23 Q I don't believe I have any other questions. Please
24 answer -- one moment. Excuse me.

25 I forgot one area that I wanted to ask you about.

1 When Mr. Holmes turned in front of you, did he engage a
2 siren?

3 A No, sir.

4 Q He did not do that.

5 A No, sir.

6 Q Okay. And during the course of his turning in front
7 of you, did you see a blue light?

8 A No, sir.

9 Q Tell the jury when you first saw the blue light.

10 A When I first saw the blue light, that's when he
11 turned -- did an unlawful U-turn in front of me, and he
12 caused me to hit him. That's when I -- that's when I
13 noticed it.

14 Q Okay. After the metal had hit metal.

15 A Yes, sir.

16 MR. THOMPSON: All right. Thank you very much.

17 THE COURT: Cross-examination, Mr. Harter?

18 MR. HARTER: Yes, sir.

19 Judge, this is the exhibit that was introduced during
20 Bart Holmes's deposition.

21 Madam Court Reporter, this is Defendant's Exhibit
22 Number 4 to Barton Holmes's deposition.

23 And, Judge, also as housekeeping, here is the
24 original to that deposition.

25 Bear with me just one second, Ms. King.

1 CROSS EXAMINATION

2 BY MR. HARTER:

3 Q Good morning, Ms. King.

4 A Good morning.

5 Q As you know, my name is Rusty Harter, and I represent
6 the sheriff's office in this case. And let me ask you a
7 couple of questions.

8 You indicated that you were traveling down 76 toward
9 Clinton on the night of this accident?

10 A Yes, sir.

11 Q And this was after like 10:00 or so?

12 A Yes, sir.

13 Q Okay. And you were going to be at work at 10:45?

14 A Yes, sir.

15 Q Okay. Now, you were coming from Laurens toward
16 Clinton. And you said you passed the bingo parlor, the
17 bingo house, and then you knew there was some other
18 establishments along the roadway on the right; is that
19 correct?

20 A Yes, sir.

21 Q Okay. I think there was a barbershop there and a
22 liquor store, McDaniel's Liquor Store?

23 A Yes, sir.

24 Q All right. Look at that picture and see if you can
25 tell me, does that picture look like the area that we're

1 talking about where the liquor store is on the right?

2 A Yes, sir.

3 MR. HARTER: Okay. I'd like to mark this, please.

4 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
5 identification.)

6 THE COURT: What number is that, Mr. Harter?

7 MR. HARTER: I apologize. This is Defendant's
8 Exhibit Number 1.

9 THE COURT: Okay.

10 BY MR. HARTER:

11 Q Ms. King, Defendant's Exhibit Number 1, you probably
12 drive that road a lot, don't you?

13 A Yes, sir.

14 Q Okay. And it kind of goes downhill; is that right?

15 A Yes, sir.

16 Q It's level -- I mean it's straight, no curves or
17 anything, right?

18 A No, sir.

19 Q Okay. And do you see a white car in the median of
20 that photograph?

21 A Let me see.

22 Q Facing, you see it?

23 A I see it.

24 Q Huh? You see it?

25 A It's way too far.

1 Q But you see it.

2 A I see a car, yes, sir.

3 Q Do you know how far that is, that car is from that
4 liquor store picture? Probably don't, do you?

5 A (No answer.)

6 THE COURT: Mr. Harter, is that exhibit, have you
7 moved that into evidence?

8 MR. HARTER: Oh, yes, sir. Defendant's Exhibit
9 Number 1.

10 THE COURT: Okay. Is that without objection?

11 MR. THOMPSON: No objection.

12 THE COURT: All right. Without objection, Number 1
13 for the defense.

14 (WHEREUPON, Defendant's Exhibit No. 1 was admitted into
15 evidence.)

16 BY MR. HARTER:

17 Q Do you know how far that is, that distance is from
18 the liquor store down there to the -- where that car is?
19 No idea?

20 A No idea.

21 Q Okay. Now, the time of this automobile accident, it
22 was at night. And you were coming down 76, a road you
23 were very familiar with, knew where the bingo parlor is.
24 And what is the speed limit on that stretch of road?

25 A If I ain't mistaken, 35.

1 Q 35?

2 A 30 or 35.

3 Q 30 or 35. Now, is that how fast you were driving?

4 A I was driving the regular speed limit.

5 Q So you were driving 35?

6 A Yes, sir.

7 Q And it was a clear night, right?

8 A Yes, sir.

9 Q No rain.

10 A No, sir.

11 Q No fog.

12 A No, sir.

13 Q And you had your headlights on.

14 A Yes, sir.

15 Q And you know your car was working like it was
16 supposed to. Your brakes worked okay, you know that
17 your ---

18 A Yes, sir.

19 Q --- taillights worked and all that good stuff, right?

20 A Yes, sir. Yes, sir.

21 Q Okay. And you were traveling down 76, and you
22 indicated that Barton Holmes was in front of you; is that
23 right? The sheriff's deputy. I'm sorry.

24 A Well, he did a U-turn in front of me, yeah.

25 Q But he was traveling in front of you as you were

1 coming down 76.

2 A Yeah. He was in the right lane, I was in the left
3 lane.

4 Q Okay. He was in the right lane and you were in the
5 left.

6 A Yes, sir.

7 Q Okay. And how far behind him were you in car
8 lengths?

9 A I can't remember.

10 Q Can't remember. Okay. All right.

11 Now, you saw his car right before this accident?

12 A Yes, sir.

13 Q And could you tell it was a sheriff's deputy car?

14 A Yes, sir.

15 Q Okay. Did he have lights on?

16 A Yes. Regular head -- regular lights.

17 Q Regular headlights.

18 A Yes, sir.

19 Q Regular headlights. Okay.

20 Now, if you don't mind, let me just look here for a
21 second, and can you see this diagram?

22 A Uh-huh. Yes, sir.

23 Q All right. Let me just ask you, after your accident
24 with the deputy sheriff, is this the way the cars were
25 positioned? Your car was in this lane facing toward

1 Clinton, and the deputy's car was in the median facing
2 back toward Laurens.

3 A Yes, sir.

4 Q Okay. Your lights were on the whole time.

5 A Yes, sir.

6 Q His lights were on the whole time.

7 A Yes, sir.

8 Q His headlights are actually, according to what you
9 indicated, facing back toward Laurens?

10 A Yes, sir.

11 Q Okay. Now, I think you told us a minute ago that it
12 was how many seconds between the time your car got hit and
13 the time -- excuse me. How many seconds was it between
14 the time you and the sheriff's car hit each other and you
15 got rear-ended from the back?

16 A Two seconds.

17 Q Two seconds. So whoever hit you from the back was
18 two seconds behind you, obviously, right?

19 A Yes, sir.

20 Q Okay. And do you know how close that car was behind
21 you?

22 A I didn't know how close it was, but I know it was two
23 seconds. It was fast, so . . .

24 Q So Mrs. Watts, according to what you're telling us
25 now, was so close behind you that her car hit your car

1 within two seconds of the time you and Barton Holmes had
2 your accident.

3 A Yes, sir.

4 Q Did you ever notice that car behind you at any point
5 or any lights behind you?

6 A No, sir.

7 Q Okay. Now -- okay. Was there -- there was no damage
8 to the back end of your car in the first accident with the
9 deputy, was there?

10 A No, sir.

11 Q Now, I want to make sure I understand. When was it
12 that you said the deputy turned on the blue lights?

13 A I thought he -- I thought he did when he did that
14 U-turn in front of me.

15 Q And to make sure now, make sure, did you ever tell us
16 under oath just like you're sitting here today that the
17 deputy turned on his blue lights after your accident and
18 before Ms. Watts hit you?

19 A Yes, sir.

20 Q You told us that.

21 A Yes, sir.

22 Q In a deposition.

23 A Yes, sir.

24 Q In a deposition when you took the same oath that
25 you've taken today.

1 A Yes, sir.

2 Q Okay. So to be straight, you would tell the jury and
3 you would indicate to us that in other sworn testimony,
4 you told us that the deputy turned on his blue lights
5 after your collision and before you were hit in the rear.

6 A Yes, sir.

7 Q Is that right?

8 A Yes, sir.

9 Q And to make sure -- and let me make sure we get it
10 exactly right. I asked you -- we asked you a question
11 here, Ms. King, on page 15 of your deposition. And the
12 question was, "Okay. Then the blue lights that you said
13 he activated after you hit him, were they still on as he
14 was sitting there?" And what was your answer?

15 A "Yes, sir."

16 Q And the next question was, "After the wreck?" And
17 what was your answer?

18 A "Yes, sir."

19 Q Okay. And the next question was, "And they were on
20 -- were the deputy's headlights and taillights and the
21 blue lights on at the time that you were hit by
22 Ms. Watts?" And what was your answer back on November --
23 excuse me -- October 22, 2017?

24 A "Yes, sir."

25 Q You also, I think -- did you ever tell us before,

1 Ms. King, again, under oath, that there was ten -- five to
2 ten seconds between these two impacts?

3 A I can't remember that.

4 Q Okay. Okay. Well, let me -- again, Ms. King, you
5 remember this deposition, don't you?

6 A I think so. There was so much going on.

7 MR. HARTER: Your Honor, could we ask for an
8 instruction on depositions?

9 THE COURT: I've already explained to the jury what a
10 deposition is when Barton Holmes, when his deposition was
11 played.

12 MR. HARTER: Okay. Thank you. Thank you, Judge.

13 BY MR. HARTER:

14 Q Ms. King, you remember that your deposition was done
15 in Clinton, and you were there, I was there, Mr. Thompson,
16 Mr. Bryan was there, and Mr. Terrell was there and the
17 court reporter?

18 A Yes, sir.

19 Q Just like we have a court reporter here. And you
20 were asked questions under oath just like you're being
21 asked today.

22 A Yes, sir.

23 Q Now, I want to ask you, on page 17, Mr. Terrell asked
24 you, I think, "How much time elapsed between the time that
25 you had the wreck with the deputy and you were hit from

1 the rear by Ms. Watts?" And what was your answer, please.

2 A "Well, I won't call it no time. It was like seconds,
3 like I say, about five seconds, five to ten seconds."

4 Q "Well, I don't call it no time. It was like seconds,
5 like I say, about five seconds, five to ten seconds,"
6 right?

7 A Yes, sir.

8 Q And then the next question was, "Okay. So five to
9 ten seconds after you and the deputy had your wreck and
10 you came to a stop ---"

11 "Yes, sir."

12 "--- it's your testimony that about five to ten
13 seconds later is when Mrs. Watts came along and hit
14 y'all." Is that right?

15 A Yes, sir.

16 Q Okay. And so when we get to talking about seconds,
17 two, three, five, six, ten, nine, that's kind of a guess,
18 isn't it?

19 A Well it's seconds. It don't really matter. It's
20 seconds, though.

21 Q But you didn't like -- certainly, you don't know how
22 much time that it was exactly, but you know it was close.

23 A Seconds, yes.

24 Q Okay. And, Mrs. King, let me make sure, in terms of
25 your testimony here today and your statement about how

1 many seconds, would it be fair to say that you're not sure
2 and can't be sure whether it was two seconds, five seconds
3 or ten seconds or something in between between those two
4 accidents, in order to be fair?

5 A Yes, sir.

6 Q Okay. Now, in terms of preparing for your testimony
7 today, did you talk to anybody on either side of the case?

8 A No, sir.

9 Q Have you talked -- have you spoken with the lady here
10 in the courtroom back over here a little while ago?

11 A No, sir.

12 Q You weren't talking with ---

13 A No, sir.

14 Q Okay. All right. Now, and I want to make sure, too,
15 in connection with your testimony in your deposition, you
16 never had any conversations with me ---

17 A No, sir.

18 Q --- about what your time estimates were, correct?

19 A No, sir.

20 Q And nobody from the sheriff's office ever approached
21 you or attempted to approach you about this to discuss --
22 or discuss your testimony ---

23 A No, sir.

24 Q --- about how many seconds there was?

25 A No, sir.

1 Q Okay. So in all fairness, when we say five, ten,
2 two, 15, it's really all kind of subject to human guess
3 and speculation, right?

4 A Yes, sir.

5 MR. HARTER: Okay. Excuse me just a moment, Your
6 Honor.

7 THE COURT: Sure.

8 BY MR. HARTER:

9 Q Did you have a lawyer that represented you?

10 A Yes, sir.

11 Q Did you make a claim in the case?

12 A Yes, sir.

13 MR. THOMPSON: I object to anything that may have had
14 to do with Mrs. ---

15 THE COURT: Sustain the objection.

16 MR. THOMPSON: --- litigation, if any.

17 THE COURT: Sustain the objection.

18 BY MR. HARTER:

19 Q You had a lawyer?

20 A Yes, sir.

21 Q And I think when you had an interview with the MAIT
22 Team officer, your lawyer was there with you, right?

23 A Yes, sir.

24 Q Okay. I'm sorry. I apologize, Ms. King. One
25 moment.

1 Did you ever have any conversations at all with the
2 officer, the deputy that was involved in this accident?

3 Did you have any conversations with him?

4 A No, sir.

5 Q Okay. And after the accident, you saw that he ran
6 over, checked on Ms. Watts?

7 A Yes, sir.

8 Q Okay. And then at the time very soon after that, a
9 bunch of cars, bunch of lights ---

10 A Yes, sir.

11 Q --- came to the scene. Okay.

12 So there was no doubt in your mind, but at the time
13 of the accident when Mrs. Watts hit you in the rear, your
14 lights were on and operational and the deputy's lights
15 were on and operational.

16 A Yes, sir.

17 Q Okay. Now, his blue light, you told us before that
18 his blue light was on and he flipped his blue light on
19 after your accident and before Mrs. Watts's accident.

20 A Yes, sir.

21 Q Do you remember saying that?

22 A Yes, sir.

23 Q Okay. So you told us that before.

24 A Yes, sir.

25 MR. HARTER: Okay. Thank you very much. Those are

1 all the questions I have.

2 THE COURT: Redirect?

3 MR. THOMPSON: A little bit.

4 THE COURT: He's going to ask you a couple more
5 questions, ma'am.

6 REDIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Ms. Watts [sic], Mr. Harter referred to your
9 deposition that you gave back on October 11, 2017. Do you
10 remember him reading part?

11 A Yes, sir.

12 Q And during the course of that deposition, do you
13 remember that we played a tape?

14 A Yes, sir.

15 Q And the tape was a conversation between you and the
16 Highway Patrol, was it not?

17 A Yes, sir.

18 Q And after you -- that tape was recorded shortly after
19 the accident, was it not?

20 A Yes, sir.

21 Q And then when we went down to take your deposition in
22 Clinton, it was about four years after the accident,
23 right?

24 A Yes, sir.

25 Q And after you listened to the tape, did you indicate

1 that that tape had helped you refresh your memory?

2 A Yes, sir.

3 Q And thereafter, did you answer some questions
4 concerning the matter after listening to the tape?

5 A Yes, sir.

6 Q And if I hand you your deposition of
7 October 11, 2017, there was a question that says -- it's
8 hard for me to read it and let you see it at the same
9 time. There was a question to you, "Ms. King, when you
10 made that statement to the trooper, you told them the
11 truth, didn't you?" And what did you say?

12 A "Yes, sir."

13 Q And then the next question is, "This was September
14 10, so this was 26 days after the accident, wasn't it?"

15 A Yes, sir.

16 Q You said, "Yes, sir."

17 "And now we're talking about four years after the
18 accident." And you say what? Can you see that?

19 A Yeah. And what I'm saying, I'm going to refresh my
20 memory.

21 Q And the question was then asked, "Where did this --
22 where did the five to ten seconds today come from? Exact
23 just from your recollection or did someone tell you that
24 today?" And your answer was?

25 A "No. It would refresh my memory. At the time I

1 couldn't really, you know, because it's -- it's been some
2 years ago, and I'm trying to get everything together."

3 Q So when -- so is the two seconds that you said then
4 correct?

5 A That's true.

6 Q And would it surprise you -- then this question,
7 "Okay. But when did you first notice the blue light,
8 after Mrs. Watts hit you or before Mrs. Watts hit you?"
9 and your answer was?

10 A "After Ms. Watts hit me."

11 MR. THOMPSON: All right. Thank you. Answer any
12 questions Mr. Harter ---

13 THE COURT: Any recross, Mr. Harter?

14 MR. HARTER: Briefly.

15 RECROSS EXAMINATION

16 BY MR. HARTER:

17 Q So you said in your deposition -- did I misread your
18 deposition?

19 A No. I just -- I know what I said, but like I said,
20 it was years ago and I'm just trying to refresh my memory.

21 Q Right. And this statement to -- that you gave to --
22 that you referred to earlier, that was a statement 26 days
23 after the accident, right?

24 A Yes, sir.

25 Q Okay. We don't have any statements made a few days

1 after, but it was 26 days after in your lawyer's office
2 that you made this statement about ---

3 A Yes, sir.

4 MR. HARTER: Okay.

5 THE COURT: Okay. You can step down, ma'am.

6 MR. THOMPSON: Come down, please, and for the moment
7 have a seat in the back of the courthouse so we can figure
8 out what we're going to do here.

9 THE COURT: Let me see the lawyers for just a minute,
10 please.

11 (WHEREUPON, a bench conference was held off the record.)

12 THE COURT: All right. Ladies and gentlemen, I think
13 this would be a good time to take a lunch break. If
14 you'll be back at 1:45. And, again, remind you not to
15 have any discussions about this case. If you go to a
16 local restaurant, please keep your juror button visible,
17 and we'll see you back at 1:45. Have a good lunch.

18 (WHEREUPON, the jury exits the courtroom at 12:34 p.m.)

19 MR. HARTER: Just a housekeeping chore, Judge.

20 THE COURT: Okay. All right.

21 MR. HARTER: This is the video deposition of Bart
22 Holmes. We have one for the Court.

23 THE COURT: We'll just have one marked as a Court's
24 exhibit, and then if the jury in their deliberations, if
25 they want to view it again, then we can certainly view it

1 again.

2 MR. HARTER: I'd like to rid myself of these
3 exhibits, Judge, from Barton Holmes's deposition. I was
4 keeping up with him. I'd like to go ahead and give them
5 over to the court reporter now.

6 THE COURT: We'll have those exhibits -- how do you
7 want to do the exhibits? Do you want those as exhibits --
8 trial exhibits or -- because there was no objection at the
9 deposition to these exhibits, right?

10 MR. HARTER: Correct, correct. I don't want to keep
11 them any longer than I have to. Since I've introduced the
12 deposition, I don't want to have them.

13 MR. BRYAN: Do we have all of them?

14 THE COURT: Excuse me?

15 MR. BRYAN: Do we have all of them?

16 MR. HARTER: They're either in there, or these are
17 the two that I retained. I just want to hand them over,
18 okay? Those other exhibits should be in there, gentlemen,
19 okay?

20 MR. BRYAN: Can we make sure our exhibits are in
21 here?

22 THE COURT: My question is, do you want them as trial
23 exhibits, the exhibits that were attached to his
24 deposition?

25 MR. BRYAN: That would be fine with me.

1 THE COURT: All right. During break then, how about
2 go through, pull out the exhibits, make sure you're in
3 agreement, and we'll have them marked as trial exhibits.

4 MR. HARTER: That's fine. We'll just mark them all.

5 THE COURT: Okay. All right. We'll be in recess
6 till 1:45.

7 (WHEREUPON, a recess is taken at 12:36 p.m. Plaintiff's
8 Exhibit Nos. 1 through 5, Defendant's Exhibit Nos. 2
9 through 5 and Court's Exhibit No. 2 was marked for
10 identification.)

11 (WHEREUPON, proceedings reconvened at 1:55 p.m.)

12 THE COURT: All right. We're back on the record.
13 And it's my understanding that by way of agreement, the
14 exhibits that were attached to Barton Holmes's deposition
15 are now admitted into evidence as trial exhibits. That
16 would represent Exhibits 1 through 5 for the plaintiff and
17 2 through 5 for the defendant; is that correct?

18 MR. BRYAN: That's correct, Your Honor.

19 MR. HARTER: I think so, Judge.

20 (WHEREUPON, Plaintiff's Exhibit Numbers 1 through 5 and
21 Defendant's Exhibit Numbers 2 through 5 were admitted into
22 evidence.)

23 THE COURT: All right. Very good. You've got your
24 next witness here?

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Okay. All right. Very good. Let's
2 bring the jury out, Mr. Bolt.

3 (WHEREUPON, the jury entered the courtroom at 1:57 p.m.)

4 THE COURT: Mr. Bryan, are you ready to proceed?

5 MR. BRYAN: Yes, Your Honor. We would call Mr. Joe
6 Williams.

7 THE COURT: Come around, sir.

8 WHEREUPON,

9 JOE WILLIAMS

10 After having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BRYAN:

13 Q Mr. Williams, I'm going to try to talk loud enough
14 for you to hear, and you're going to need to get close and
15 answer into that microphone, okay? Get closer to it. She
16 has to take down and record everything you say.

17 Would you give me your full name, please.

18 A Joe Lewis William.

19 Q Joe Lewis Williams?

20 A Yeah.

21 Q All right. Mr. Williams, where do you live?

22 A Newberry.

23 Q All right, sir. And it don't matter about me, and
24 women get upset at this, but how old are you?

25 A 82.

1 Q All right, sir. And what do you do?
2 A Logging.
3 Q Logging. Do you work full time?
4 A Full time.
5 Q What kind of logging work do you do?
6 A What kind of work I do?
7 Q Cut trees?
8 A Cut trees.
9 Q All right. At 82?
10 A 82.
11 Q All right. That's good.
12 This lady behind me, Ms. Watts, do you know her?
13 A Yeah. I know her.
14 Q How long have you known her?
15 A I've been knowing her a long time.
16 Q Okay. And I want to direct your attention to
17 August 15, 2013. I think that date's been discussed to
18 you. Was that a day that you -- do you still -- how did
19 you meet Ms. Watts, first?
20 A We knew her from bingo in Greenwood. I come to know
21 her over in Greenwood.
22 Q Do you still see her playing bingo? I mean did you
23 up to 2013?
24 A Yeah.
25 Q Okay. Now, on August 15, 2013, did you see Ms. Watts

- 1 over at the bingo parlor in Laurens?
- 2 A Yeah.
- 3 Q Okay. And were you all both playing bingo?
- 4 A Yeah. We play.
- 5 Q Were you all playing at the same table or different
- 6 table?
- 7 A No. We at the same table, different tables.
- 8 Q But you knew who she was before that?
- 9 A Sir?
- 10 Q You knew who she was before that night.
- 11 A Yeah.
- 12 Q And y'all have been friends.
- 13 A Yeah.
- 14 Q And you knew her husband, too?
- 15 A Yeah.
- 16 Q And he'd been friends of yours for years?
- 17 A Yeah.
- 18 Q Had he been a friend of yours?
- 19 A Yeah. He been a friend of mine.
- 20 Q Okay. On the night of August 15, 2013, do you
- 21 remember about what time the bingo was over that night?
- 22 A It was about a quarter till 11:00.
- 23 Q Okay. And what did you do when it was over?
- 24 A I got up and left and she got up and left.
- 25 Q Ms. Watts?

- 1 A Ms. Watts got up and left.
- 2 Q Did y'all leave at the same time?
- 3 A She pulled off before I did, and then I pulled off
- 4 right behind her.
- 5 Q Okay. So you left the bingo parlor and both of you
- 6 went to your cars?
- 7 A Yeah.
- 8 Q She got in her car and you got in your car.
- 9 A Yeah.
- 10 Q And when she had pulled off, which direction did --
- 11 well, let me ask you this. The bingo parlor, is this in
- 12 Laurens?
- 13 A In Laurens.
- 14 Q All right. Where is it in Laurens?
- 15 A Over there by the Ford Place.
- 16 Q Over by the Ford place?
- 17 A Yeah.
- 18 Q Is that across from Wendy's?
- 19 A From Wendy's.
- 20 Q Okay. And when Ms. Watts pulled off, which direction
- 21 did she go?
- 22 A To the right.
- 23 Q All right. And which direction did you go?
- 24 A The right.
- 25 Q Were you right behind her when y'all pulled out?

1 A She pulled out before I did. I got two car lengths
2 behind.

3 Q Okay. But you both were headed towards Clinton.

4 A Yeah.

5 Q All right, sir. And tell me what happened after
6 y'all started down the road.

7 A We started down the road, and going down the road,
8 she hit something. I didn't know what she had hit.

9 Q Let me back up. I'm getting ahead of myself. When
10 y'all pulled out towards Clinton, what lane were you in?

11 A I had the right lane, she was in the left.

12 Q She was in the left?

13 A Yeah.

14 Q All right, sir. Go ahead.

15 A And she was going down the road, and she hit
16 something. I didn't know what she hit. It's dark down
17 there. I didn't know what she had hit. The only thing I
18 seen, her light went towards that fence, the fence
19 that ---

20 Q So you didn't see what she hit?

21 A I didn't see what she had hit. I didn't know what
22 she had hit.

23 Q About how fast were you going?

24 A About 35.

25 Q Okay. And how far behind her did you say you were?

1 A About two car lengths behind her.

2 Q Okay. And after you saw her hit something, tell me
3 what happened then.

4 A Then I was going down the road and turned around and
5 come back up, come back up there, and come by where she
6 was ---

7 Q Talk into that microphone.

8 A Come by where she was, and then somebody begged for
9 me to keep going.

10 Q When you came back, was Ms. Watts's car still ---

11 A Sitting over there by the fence.

12 Q Okay. And why were you coming back?

() 13 A I come back to see what she had -- had got hurt, you
14 know what I mean.

15 Q And when you came back, was anybody there?

16 A Not nobody there.

17 Q All right. Was there any trucks, cars, anything
18 there?

19 A It was dark. I ain't paid no attention, because
20 when I came back by there, somebody begged me to keep
21 going.

22 Q Okay. Somebody waived you on?

23 A Waived me on.

24 Q Okay. So you didn't get out of your car to check?

25 A No. I didn't get out.

1 Q Okay. Were there any ambulances or fire trucks there
2 when you came back?

3 A Yeah. When I come back, fire truck was there.

4 Q Okay. So when you saw her go off to the left, you
5 went on down the road somewhere and turned around.

6 A Turned around, come back.

7 Q Okay. And you were going to check on Ms. Watts?

8 A Yeah. Check on Ms. Watts, yeah.

9 Q And -- but you didn't get to do it.

10 A I didn't get to do it.

11 Q Somebody -- do you know who it was that waived you
12 on?

13 A No. I didn't know who it was.

14 Q All right. And where was the fire truck at this
15 time?

16 A It was on the right-hand side there.

17 Q Did it have its lights on?

18 A Yeah. It had lights on.

19 Q What did you do after that?

20 A Then I went over to the bingo, back to the bingo and
21 told the people that Ms. Watts had had a wreck. And then
22 the people in the bingo come on down there. Then when I
23 left bingo, come back, then I went over there by that car
24 thing over there and parked and got out of my car.

25 Q A used car lot?

1 A Yeah. A used car lot there.

2 Q Okay. Is this across the road?

3 A Across the road from there, yeah.

4 Q You pulled in there?

5 A Yeah. I pulled in there.

6 Q Did you get out of your car?

7 A Yeah. I got out of it.

8 Q And what did you do?

9 A I was outside of the car and they had put her in the

10 first car, in the ambulance.

11 Q And the ambulance was there the second time.

12 A Yeah. Ambulance the second time.

13 Q And did it have its red lights on?

14 A Yeah. It had red lights.

15 Q All right. And then after they put her -- you saw

16 them put her in the ambulance, what did you do?

17 A And then I pulled along and went home then.

18 Q All right. Now, when you were going down the road

19 and saw Ms. Watts hit something, you didn't see what it

20 was?

21 A No. I didn't see what it was. I didn't know what

22 she had hit.

23 Q All right. Did you see any blue lights when you were

24 going down the road when Ms. Watts hit this object?

25 A No. I didn't see no blue light.

1 Q All right. Were you looking for a blue light?

2 A No. I wasn't looking for no blue light car. I had
3 no way to know what they had done.

4 Q When you saw her hit this object, was it dark?

5 A Yeah. It's dark.

6 Q If there had been a blue light, do you think you
7 could have seen it?

8 A Yeah. I'd see.

9 Q All right. Now, when you came back, you saw a fire
10 truck.

11 A Yeah.

12 Q Did you see any blue lights?

13 A No. I didn't see none.

14 Q Were you looking for a blue light?

15 A No. I wasn't looking for them because I was looking
16 for -- I see (unintelligible).

17 Q Well, when you came back, could there have been blue
18 lights there that you just didn't see?

19 A It could have been. I just didn't see.

20 Q But there were flashing red lights on the truck --
21 fire truck.

22 A Yeah. A flashing red light thing on the ambulance --
23 the fire truck and the ambulance there.

24 Q When you went to the bingo parlor and told them all
25 about this and then you came back, did you see any blue

1 lights a second time when you came back down the hill?

2 A Yeah. It's blue lights there then.

3 Q Okay. And did you see any red lights?

4 A Yeah. Red light.

5 Q Was the fire truck still there?

6 A Fire truck still there.

7 Q All right. Was the ambulance there?

8 A Yeah. It was there.

9 Q Okay. Now, when you saw Ms. Watts hit something in

10 the road and you're -- you say two or three -- how far

11 behind were you?

12 A About two car lengths behind her.

13 Q Were you in the right lane?

14 A Yeah. The right lane.

15 Q She was in the left lane?

16 A Left lane.

17 Q All right. Why didn't you stop right then?

18 A Because there's a car behind me. I couldn't stop.

19 Q Okay. So you had to keep going.

20 A Had to keep going.

21 Q All right. When was the first time you saw Ms. Watts

22 after the accident?

23 A It was about -- about eight months I hadn't seen her.

24 Q Some months later?

25 A Yeah.

1 Q Where did you see her?

2 A I went by her house where she lived at. Her husband
3 told me she was up -- up there in that hospital thing out
4 there.

5 Q NHC?

6 A Yeah.

7 Q Nursing?

8 A Nursing home.

9 Q All right. And who was with you when -- did you go
10 see her in NHC?

11 A Yeah. I went to see her. Me and my niece went to
12 see her.

13 Q Your niece?

14 A Yeah.

15 Q Is your niece a friend of Ms. Watts also?

16 A Yeah.

17 MR. BRYAN: Pardon me just a minute, Your Honor.

18 THE COURT: Sure.

19 BY MR. BRYAN:

20 Q I want to direct your attention to the road that
21 night. Do you know about how far you were away from the
22 bingo parlor when this happened?

23 A We was about a quarter of a mile from the bingo down
24 there.

25 Q Fairly close?

1 A Yeah.

2 Q Was it going down hill?

3 A Yeah. It was going down hill.

4 Q And was it dark?

5 A It was dark.

6 Q Now, I want to go back to the issue of a blue light.

7 When you were coming down, when Ms. Watts hit the object,

8 did you see a blue light anywhere?

9 A No. I didn't see no blue light.

10 Q All right. Now, you've known Ms. Watts for a good

11 many years, haven't you?

12 A Yeah.

13 Q All right. That night at the bingo parlor, did you

14 see her and say hello to her?

15 A Yeah.

16 Q Did she look fine to you that night?

17 A Yeah.

18 Q When you went -- some months later when you went to

19 the rehab place and saw her, what was her condition there?

20 A It was bad.

21 Q Did you see her walk?

22 A No. She wasn't walking.

23 Q Was she in a wheelchair, a bed, or what?

24 A She was sitting up there in bed. She was in the bed.

25 Q In a bed?

1 A Yeah.

2 Q And did you see anything else about her condition
3 when you saw her in the nursing home?

4 A No, no. She told me she had -- she had got hurt.
5 She said she got hurt.

6 Q She told you about her injuries?

7 A Yeah. She told me about her injuries.

8 MR. BRYAN: Would you answer any questions Mr. Harter
9 might have.

10 THE COURT: Mr. Harter, do you have any
11 cross-examination?

12 MR. HARTER: I do. Just a few questions.

13 CROSS EXAMINATION

14 BY MR. HARTER:

15 Q Mr. Williams ---

16 A Yeah.

17 Q --- I promise you, you can hear me okay, can't you?

18 A Yeah. I hear.

19 Q All right. You had been down to the bingo house on
20 76 that night, and you pulled out on 76 and you were going
21 home; is that right?

22 A Yeah.

23 Q And you're very familiar with that road. I bet
24 you've traveled it a good bit, didn't you?

25 A Yeah, yeah.

1 Q Okay. And you actually used to pick Ms. Watts up and
2 take her to bingo sometimes, right?

3 A Yeah, yeah.

4 Q Okay. But you were going home that night and she was
5 going home, and you were kind of behind her; is that
6 right?

7 A Yeah, yeah.

8 Q Okay. And if I don't get it right, you tell me,
9 okay?

10 A Yeah, yeah.

11 Q But there's a lane that's closest to the middle of
12 the road, and that's like in the median. Close to the
13 median there's a lane closest to the shoulder of the road
14 or the right shoulder of the road.

15 A Yeah.

16 Q She was in the median lane, the road closest to ---

17 A She was in the left lane.

18 Q The left lane.

19 A Yeah. She was left lane.

20 Q And you were in the right lane.

21 A Right lane.

22 Q And you are behind her ---

23 A Yeah.

24 Q --- three car lengths behind her.

25 A Yeah.

1 Q Is that right?

2 A Two, about two, three, yeah.

3 Q Okay. And you're driving 35 miles an hour; is that
4 right?

5 A 35, yeah.

6 Q Okay. Now, is she driving faster than you are, or is
7 she driving slower than you are, or is she driving pretty
8 much the same speed, 35?

9 A We were going the same speed, 35.

10 Q Same speed. Okay.

11 A Yeah.

12 Q And you had your headlights on, of course.

13 A Yeah.

14 Q Okay. And you knew what her car looked like. It was
15 traveling ahead of you.

16 A Yeah.

17 Q Now, she had her headlights on.

18 A Yeah. She had her headlights on.

19 Q Okay. Now, I want to make sure I understand now. As
20 you came down 76, did you ever hear any tires squealing?

21 A No. I didn't hear tires squealing.

22 Q Did you ever hear anything sounding like two things
23 hitting together, crashing together?

24 A Yeah. Something hit.

25 Q And that was her.

1 A Yeah. That was her.

2 Q Now, before Ms. Watts hit this car that was in her

3 lane, did you see any lights anywhere?

4 A No. I didn't see -- I ain't seen nothing but her

5 light.

6 Q Sir?

7 A I ain't seen nothing but Ms. Watts's light.

8 Q You only saw Ms. Watts's lights?

9 A Yeah.

10 Q So if there was a car sitting in the lane in front of

11 Ms. Watts, you're saying you didn't see any lights there.

12 A No. There was no light there.

13 Q Okay. And you say she hit an object; is that right?

14 A Yeah. I know what it was.

15 Q Okay. Did the object have any lights on it?

16 A No.

17 Q You didn't see any lights?

18 A I only seen her light. I seen only her headlight.

19 Q Okay.

20 A That's the only light I saw.

21 Q And you didn't see any headlights facing back up

22 toward Laurens either, did you?

23 A No. Sure didn't.

24 Q Okay. So if a car -- if the car that Mrs. Watts hit

25 had its lights on, you would have seen that, don't you

1 think?

2 A Yeah. I would have seen it. Yeah. I would have saw
3 it.

4 Q Okay. Now, if there had been a vehicle sitting in
5 the median in this road facing back up towards Laurens
6 with the headlights on ---

7 A No. I didn't see ---

8 Q If it had been, if the headlights had been on, you
9 would have seen it.

10 A I would have seen it. Yeah. I would have saw it.

11 THE COURT: Let me just stop. Try not to talk over
12 one another from this witness, Mr. Harter.

13 BY MR. HARTER:

14 Q You would have seen that.

15 A Yeah. I would have saw it.

16 Q Okay. All right. So before Mrs. Watts hit this
17 object in the road, did you hear any brakes squeal?

18 A No. I didn't hear brakes squeal.

19 Q Before Mrs. Watts hit this object in the road, did
20 you see or hear any crash ---

21 A Yeah.

22 Q --- before hers?

23 A I hear when it hit.

24 Q When she hit?

25 A Yeah.

1 Q I'm talking about before she hit.

2 A No. I didn't hear nothing.

3 Q Before she hit this object you didn't see or hear any
4 crash; is that right?

5 A No, no. Sure didn't.

6 Q Okay. And when this happened, you were kind of
7 headed toward Clinton; is that right?

8 A Yeah.

9 Q Okay. And then you went and turned around and came
10 back up ---

11 A Yeah.

12 Q --- 76 toward Laurens.

13 A Laurens.

14 Q Okay. And when you turned around and came back up 76
15 towards Laurens, the fire truck was there.

16 A Yeah.

17 Q Okay. And somebody waived you on to keep going?

18 A Keep going. Yeah.

19 Q Okay. But the fire truck was there when you turned
20 around and came back.

21 A Yeah.

22 Q Okay. All right. And then after that, you went down
23 to the bingo parlor where y'all had been.

24 A Yeah.

25 Q Is that right?

1 A Yeah. That's right.

2 Q Okay. And you talked to the people in the bingo
3 parlor.

4 A Yeah. I told them that Ms. Watts had had a wreck.

5 Q Okay. You told Ms. Watts had had a wreck.

6 A Yeah.

7 Q And then you went back down to the scene where the
8 accident was.

9 A Yeah.

10 Q Okay. And then you stayed there for a while.

11 A Yeah. Till they put her in the ambulance.

12 Q Until they put her in the ambulance.

13 A Yeah.

14 Q Okay. And then you left.

15 A I left.

16 Q Now, did you see -- I think you said when you came
17 back, you saw some blue lights there.

18 A No. Red light and the ambulance there. If a blue
19 light there, I didn't saw it.

20 Q Okay.

21 A It could have been, but I didn't saw it.

22 Q I've got you. Okay.

23 Did you go down there and tell anybody who you were
24 or that you'd seen anything or knew anything about her
25 accident?

1 A Say that again?

2 Q I'm sorry. Did you go down there ---

3 A To bingo?

4 Q No. I'm sorry. After you came back ---

5 A Yeah.

6 Q --- and you saw them put her in the ambulance ---

7 A Yeah.

8 Q --- did you go down there and tell anybody who you

9 were and what you had seen?

10 A Coming down to the wreck?

11 Q Yes, sir.

12 A No. I didn't go down there.

13 Q Okay. Now, if there had been any blue lights on

14 before Mrs. Watts's accident, I think you said you would

15 have seen those.

16 A Yeah. I would have seen. She would have seen it,

17 too.

18 Q And if there had been any headlights or taillights

19 on the car she hit, you would have seen that, wouldn't

20 you?

21 A Yeah. I would have saw it.

22 Q Okay. So as you came down just before Ms. Watts

23 hit this thing in the road, it was total darkness and

24 there were no lights anywhere in any direction; is that

25 right?

1 A That's right.

2 Q I apologize. Is that right?

3 A That's right.

4 Q Thank you, Mr. Williams. You understood my
5 questions, right?

6 A Yeah, yeah.

7 MR. HARTER: Thank you. Good luck to you, sir. Good
8 shape as you are at your age.

9 THE WITNESS: Thank you.

10 THE COURT: Redirect?

11 MR. BRYAN: No, Your Honor. And I would ask the
12 Court's permission for Mr. Williams to be excused so he
13 can go back and -- we took him off his work job.

14 THE COURT: Any objection, Mr. Harter?

15 MR. HARTER: No, sir.

16 THE COURT: Okay. Mr. Williams, you are free to go,
17 sir. Or you're welcome to stay with us if you like, all
18 right?

19 THE WITNESS: Okay. Thank you.

20 THE COURT: Okay. Next witness.

21 MR. BRYAN: Your Honor, we call Richard Watts.

22 THE COURT: Okay. Come around, please, sir.

23 WHEREUPON,

24 RICHARD WATTS

25 After having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRYAN:

Q Would you state your name for the record, please.

A Richard Day Watts, Junior.

Q All right. Mr. Watts, where do you live?

A I live at 1639 Wilson Drive, Laurens, South Carolina.

Q What type of work do you do?

A I'm what's called an independent flood adjuster. I
work for NFIP.

Q Is that like an insurance adjuster?

A Yes.

Q On real property?

A Real property, homes, condominiums, commercial, so
forth. No cars.

Q So after they've been damaged, you do the ---

A Assessment..

Q --- assessment.

All right. Do you know Martha Watts here?

A Yes.

Q And what is your relationship to her?

A I'm her son.

Q Okay. How many brothers and sisters do you have?

A I have three sisters and one brother.

Q And they're all children of Martha Watts?

A Yes.

1 Q All right. Chronologically, who is the oldest?

2 A I am. I'm 72. I'll be 73 Thursday.

3 Q Okay.

4 A And my sister Phyllis, she is -- she'll be -- she's
5 71, my sister Susie is 69, my sister Lou I believe is 64
6 and my brother Dale is 60.

7 Q And where do you live, Mr. Watts?

8 A 1639 Wilson Drive.

9 Q How far away is that from your mother's home?

10 A Well, about 15 to 20 minutes.

11 Do you want mileage or time?

12 Q Well, you live a few miles on this side of Clinton;
13 is that correct?

14 A I live -- I live in front of the hospital.

15 Q And she lives on the other side of Clinton?

16 A She lives on the other side of Clinton going to
17 Joanna on Young Road.

18 Q But it's somewhere you can get to fairly quickly.

19 A Yeah.

20 Q And do any of your brothers and sisters live around
21 here?

22 A No. I have two sisters that live in Greenville, one
23 sister that lives in Columbia, and my brother used to live
24 in Greenville, but he stays with mother now.

25 Q Okay. How long since he started staying with your

1 mother?

2 A Couple of months.

3 Q And does he still work in Greenville?

4 A Yes.

5 Q So he goes to Greenville to work and comes back.

6 A Yeah. Gets up early, gets back late.

7 Q All right. Now, your father, is your father living?

8 A No. He passed away November 12, 2014.

9 Q Okay. Now, do you remember the date that this
10 accident happened, August 15, 2013?

11 A Yeah, I do.

12 Q How did you come to know about it?

13 A Daddy called me at probably 11:00 at night, said
14 mother had been in an accident and they're taking her to
15 Greenwood, and would I come get him, pick him up and take
16 him to the hospital. So we -- I went and picked him up on
17 Young Road. We went to Greenwood, to the emergency room,
18 and was there with her when she arrived.

19 Q Do you know approximately how long she was in Self
20 Hospital?

21 A Two to three weeks.

22 Q Did you go to visit her over there?

23 A Oh, yeah. I took daddy over there every day.

24 Q Okay.

25 A Sometimes even spend the night. And -- but most of

1 the time I would bring him back and take him back the next
2 day.

3 Q Okay. After she left the hospital, where did she go?

4 A NHC in Clinton.

5 Q Did you visit her there?

6 A Yeah. Probably three times a week.

7 Q How often did your daddy visit her?

8 A Every day.

9 Now, he would drive to NHC.

10 Q He could drive himself?

11 A Right. Oh, yeah.

12 Q Now, before this accident, would you describe what
13 your mother's physical condition was? What could she do,
14 her activities and so forth?

15 A Well, before the accident she was very mobile, very
16 active. She could walk, she could drive, she could go up
17 and down steps without anyone helping her, she could get
18 in and out of the car without anyone helping her. She
19 could do what she enjoyed to do, go play bingo a couple
20 nights a week. She had been going there from Young Road
21 probably for ten years up and down that road at least two
22 or three times a week.

23 Q Could she dance?

24 A Yeah. Her and daddy danced all the time.

25 Q Who took care of her house?

1 A She did.

2 Q Who brought her groceries?

3 A She did.

4 Q If she needed to go to a doctor's appointment, who
5 took her?

6 A She did or daddy.

7 Q How often before the accident did you see your
8 mother?

9 A Well, if I was in town and not working a storm, I
10 would probably go down there at least once or twice a
11 week.

12 Q Now, after the accident, would you describe her
13 condition?

14 A Well, she wasn't mobile anymore. She had to have
15 someone to help her walk. At first she was in a
16 wheelchair, so -- and then after that she was in a walker.
17 She had to have someone help her in and out of the car.
18 She had to have someone help her up and down the steps.
19 She had to have someone, which I did most of the time, go
20 buy the groceries for her. Daddy would buy them also
21 until he passed away, and then it was mainly up to me to
22 go take her to the doctor, take her to the eye doctor, go
23 buy her groceries for her or pick up whatever she needed
24 and take it down to the house if I was in town. If not,
25 then my sisters would have to step up to the plate.

1 Q The one in Greenville and Columbia?

2 A Uh-huh. But they would mainly come on the weekend
3 because they all work.

4 Q Do your other four siblings all have full-time jobs?

5 A Yes. Mine, I guess you could consider it kind of
6 part time because I only work mainly doing catastrophes
7 such as hurricanes or major floods, and then I'm home. So
8 I have the opportunity to do for her.

9 Q Now, you say until when she came home she was in a
10 wheelchair?

11 A Yes.

12 Q And she eventually graduated to a walker?

13 A Yeah. Probably a year.

14 Q A year what?

15 A That she was in the wheelchair.

16 Q But today she can get around in her walker.

17 A Yes. With help.

18 Q Does she use a walker in her home now?

19 A She has to. She's afraid she'll slip and fall.

20 Q And this accident occurred on August ---

21 A 15th.

22 Q --- 15, 2013. You said your father died
23 November 14th?

24 A Correct.

25 Q After your mother got out of the hospital and rehab

1 and came home, did your father care for her?

2 A Yes.

3 Q Okay. Does your mother now, is she able to go
4 anywhere?

5 A Someone takes her and helps her in and out of the
6 car, or her neighbor across the street sometimes will pick
7 her up and they'll go to Dollar General, and that's about
8 it, and come back home.

9 Q Other than that, is she basically homebound?

10 A She's homebound. She has a lady comes in and cleans
11 up the house, which, of course, she never cut grass.
12 Daddy did. But we have someone come and do the yard work
13 now. I used to take the trash every week, but it got to
14 the point that sometimes I wouldn't be there, so I hired
15 someone to pick the trash up every week so that I wouldn't
16 have to do that. Because if I was out of town, she
17 wouldn't have anyone to take her trash out.

18 My -- if I can say this, my uncle checks on her just
19 about every day. He's 91 years old. And he brings her
20 the Greenville News and checks on her every morning. I
21 don't want to say every morning because sometimes he's out
22 of town. He travels a lot. That's daddy's brother.

23 Q Is there any comparison of her life before the
24 accident and after the accident?

25 A No comparison now.

1 Q Is she totally dependent on other people now?

2 A Yes.

3 Q And how old is your mother now?

4 A She's 91 now. She was actually 85 when the accident
5 happened. And she was 85. And we talked about this
6 accident, and she was 16 years old when she got her
7 driver's license, and this is the first accident or
8 incident she's ever been involved in driving from 16 till
9 she was 85. Never been in anything.

10 MR. BRYAN: Just a minute.

11 Answer any questions Mr. Harter might have.

12 THE COURT: Mr. Harter, do you have any
13 cross-examination?

14 CROSS EXAMINATION

15 BY MR. HARTER:

16 Q Mr. Watts, your mother is very fortunate to have you
17 taking care of her and you're very fortunate to have her.

18 A Oh, yeah. Thank you.

19 THE COURT: You can step down, sir.

20 MR. BRYAN: You can stay in the courtroom.

21 THE COURT: You're welcome to stay in the courtroom.

22 Mr. Bryan, Mr. Thompson, you got another witness to
23 call?

24 MR. BRYAN: Yes, sir. We're going to call Ms. Watts.

25 THE COURT: I would imagine she might be a little

1 longer than some of your other witnesses, so let's go
2 ahead and take a ten-minute break and then we can take her
3 testimony.

4 Ladies and gentlemen, we're going to take about a
5 ten-minute break before we take the plaintiff's testimony,
6 so go back to the jury room. Again, no discussion among
7 yourselves about this case. Get you back out shortly.

8 (WHEREUPON, the jury exits the courtroom at 2:32 p.m.)

9 THE COURT: Be in recess about ten minutes.

10 (WHEREUPON, a recess is taken at 2:32 p.m.)

11 (WHEREUPON, proceedings reconvened at 2:51 p.m.)

12 THE COURT: All right. Mr. Bolt, you want to bring
13 the jury out, please.

14 (WHEREUPON, the jury entered the courtroom at 2:53 p.m.)

15 THE COURT: Plaintiff ready?

16 MR. BRYAN: Yes, Your Honor.

17 We call Martha Watts.

18 WHEREUPON,

19 MARTHA WATTS

20 After having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BRYAN:

23 Q Ms. Watts, I'm going to speak as loud as I can, and
24 you've got to get up and talk into that microphone so we
25 can hear you.

1 A Huh?

2 Q I said I'm going to speak as loud as I can, and
3 you've got to get up close to that microphone so when you
4 speak, we can hear you, okay?

5 A Okay.

6 Q If at any time you don't understand my question or
7 can't hear me, you tell me, okay?

8 A Okay.

9 Q I don't want to get in the way of the jury or anybody
10 else, so I'm about as close as I can get to you.

11 A Well, I can't hear.

12 Q Can you hear this question? Would you state your
13 full name, please.

14 A Martha Foster Watts.

15 Q Okay. Ms. Watts, I know you're proud of this. I'm
16 going to ask you how old you are. How old are you?

17 A 91.

18 Q Okay. And where do you live?

19 A 1673 Young Road in Clinton.

20 Q Okay. Are you married?

21 A I was. My husband is deceased.

22 Q Do you remember when he died? Do you remember when
23 he died?

24 A He died 11/12/14.

25 Q Okay. How many years were y'all married?

1 A 70.

2 Q How many children do you have?

3 A Five.

4 Q Two boys and three girls; is that correct?

5 A Yes.

6 Q Okay. I believe you heard your son say you've got --

7 he lives here in Clinton.

8 A Dicky lives here, and I have one in Columbia and

9 three in Greenville.

10 Q Okay. And you also heard him talk about your son

11 Dale that's been staying with you at night for a couple

12 months; is that correct?

13 A I didn't hear you. I'm sorry.

14 Q Your son Dale, has he been staying with you for a

15 couple of months?

16 A Yes. Uh-huh.

17 Q But he still works in Greenville.

18 A Yes.

19 Q I want to take you back to August 15, 2013. Do you

20 remember that night?

21 A That's when I had my wreck, the 15th of August 2013.

22 Q Yes, ma'am. At the time of that accident, what kind

23 of eyesight did you have? What kind of eyesight did you

24 have the day of the accident, before the accident? What

25 was your eyesight like?

- 1 A What kind of ---
- 2 Q Eyesight.
- 3 A Oh. My eyes were perfect. I just had -- went to
- 4 Dr. Montgomery back two months ago, and I didn't need any
- 5 glasses or anything.
- 6 Q Okay. Well, back in 2013 ---
- 7 A I wore glasses at night.
- 8 Q The night of August 15, 2013, did you have your
- 9 glasses on?
- 10 A I had my glasses on. That's the first thing I put on
- 11 when I get in the car at night.
- 12 Q Okay. And today, do you wear glasses today now?
- 13 A (No verbal answer.)
- 14 Q So you've got good eyesight?
- 15 A I have -- Dr. Montgomery said I didn't need any
- 16 glasses. I was perfect, so ---
- 17 Q All right. That's good.
- 18 A --- I have to take his word for it.
- 19 Q Okay. That night, where had you been on
- 20 August 15, 2013? Where had you been that night?
- 21 A I'd been playing bingo.
- 22 Q In Laurens?
- 23 A In Laurens.
- 24 Q Is that across the street ---
- 25 A It's across the street from Wendy's on 76 Bypass.

1 Q Okay. Do you recall about what time you left there?
2 What time did you leave bingo that night?
3 A Probably between 10:30 and 11:00. I don't know the
4 exact time.
5 Q Okay. And you were driving yourself?
6 A I was driving myself.
7 Q Were you alone?
8 A All by myself.
9 Q And where did you go when you left bingo? Which way
10 did you turn?
11 A I turned to the right coming out of the drive going
12 down 76 to go home.
13 Q Go home?
14 A And I was in the middle lane.
15 Q Okay. Now, there's two lanes going to Clinton, two
16 going to Laurens.
17 A Right. I was in the middle one next to the median.
18 Q Okay. Of the two going to Clinton, you were in the
19 left lane going to Clinton; is that right? There's two
20 lanes going to Clinton and you were in the left lane?
21 A I was in the left one.
22 Q Near the median.
23 A In the median.
24 Q Near the median.
25 All right. Now, did you have your lights on?

1 A I sure did.

2 Q Okay. Well, tell me what happened after you left the
3 bingo parlor.

4 A Well, I was coming down the road, and I was going
5 about between 35 and 40 miles an hour. And I was just
6 looking down, and the next thing I know, I had run into
7 something. I didn't know what. I didn't see any lights
8 or anything. I guess my lights had drowned them out, you
9 know, on her car.

10 Q Were you looking at the road in front of you?

11 A I was looking where I was going.

12 Q What did you see in front of you?

13 A Well, when I got down there, I saw Ms. King's car,
14 but I didn't know who she was. I just know -- I didn't
15 see any lights, but like I said, they could have been on.

16 Q Was the car stopped? Was Ms. King's car stopped?

17 A Yes, it was. And I hit it from the rear.

18 Q Okay. Did you have time once you saw it to put on
19 your brakes?

20 A No, I didn't.

21 Q Did you try to put on your brakes?

22 A I tried, yes.

23 Q And you hit Ms. King's car; is that correct? You hit
24 Ms. King's car?

25 A I hit her in the rear, yes.

1 Q What happened to your car then?

2 A What happened to what?

3 Q What happened to your car then?

4 A Well, my car, when I hit her, my car turned -- veered
5 to the left. I guess I had -- was trying to stop and went
6 to the left. And it went across the median and on the
7 other lane on the other side, and I hit an iron pole on
8 that place across there. And that stopped me.

9 Q And this car, Ms. King's car was in the left lane
10 also?

11 A She was in the lane that I was in, yes.

12 Q Okay. Now, what are the lighting conditions down
13 that road at night? What are the lighting conditions on
14 that road at night?

15 A Well, like I say, I really wasn't looking for any
16 lights or anything. I was just -- I had mine on and I was
17 just going down the road trying to get home.

18 Q Was it dark that night?

19 A Yes.

20 Q It was dark?

21 A It's dark.

22 Q 10:30 p.m., that's what you -- between 10:00 and
23 11 p.m.?

24 A Yes.

25 Q All right. Now, going down the road, before you saw

1 Ms. King's car stop, before you hit her, did you ever see
2 a blue light?

3 A No, I didn't.

4 Q All right.

5 A But like I said, it could have been on. I don't
6 know.

7 Q But you didn't see it? You didn't see it?

8 A No.

9 Q If there had been a blue light on, do you believe you
10 would have seen it?

11 A I believe I would have seen it, yes.

12 Q Now, what was the weather like? What was the weather
13 like that night? What was the weather like?

14 A Oh, it was all right. It was clear.

15 Q Now, you say you veered to the left and hit the
16 fence; is that correct?

17 A Right.

18 Q You have to speak up so she can record you. You have
19 to verbally speak.

20 A Right.

21 Q Okay. Now, when you hit that fence, were you
22 injured? Were you hurt when you hit that fence?

23 A I can't hear you.

24 Q Where you hurt when you hit the fence?

25 A When I hit the fence, yes. I had a broke ankle and a

1 broke wrist and a gash over my knee about 12 inches. I
2 guess the back had hit up under the dashboard, and -- but
3 I was just lucky that my hand -- I flew my hand up about
4 the time the airbag, and it didn't hit my face or
5 anything, so it didn't break my glasses or didn't, you
6 know, hurt me anywhere up there.

7 Q Okay. You said you broke your right arm?

8 A My right wrist.

9 Q Wrist. Okay.

10 Show me where you broke it. Show the jury where you
11 broke it.

12 A Oh.

13 Q Hold it up high.

14 A All the way almost to my -- about there (indicating).

15 Q Hold it up so they can see it.

16 A (Witness complies) Oh, I'm sorry.

17 Q Okay. That scar down your wrist, did you have
18 surgery?

19 A Yes, I did.

20 Q Okay. Now, that's been five years ago.

21 A Five years.

22 Q Did you have any problem with your right hand and arm
23 before you had that wreck?

24 A No, I didn't.

25 Q What's your situation now?

1 A Well, sometimes now I can't grip. It wants to kind
2 of catch, you know. But before, I can do anything with
3 it. It didn't bother me.

4 Q Okay. And you say you broke your right foot?

5 A Foot. And I had five pins put in it when they
6 operated on it.

7 Q And has it healed up? Has it healed up, your right
8 foot?

9 A Yes. But I still can't wear a boot or anything
10 that's high above, you know, my ankle because it pulls. I
11 have to wear low shoes.

12 Q You say they put in five pins.

13 A Five pins, yes.

14 Q Did you later after have to go back and have surgery
15 to take those pins out?

16 A Yes, I did. I went back three or four times if --
17 they changed the cast on my leg and on my arm and on my
18 leg. It was put ---

19 Q Did you have a problem -- excuse me. Are you
20 finished?

21 Did you have a problem with your right foot before
22 you had this accident?

23 A No, no.

24 Q What's the story on your right foot now? What is the
25 situation with your right foot now?

1 A Well, like I say, that's -- that's about the only
2 thing. It just -- you know, it's kind of not as movable,
3 but thank the Lord it's all right.

4 Q Okay. And you say you had a gash on your left knee?

5 A Uh-huh.

6 Q How big a gash was it?

7 A Well, I can't show them because I can't get my pants
8 up, but it's about 12 inches from about the middle of my
9 leg over the kneecap.

10 Q And what did they do to that? Or did you have to
11 have some medical procedure on that?

12 A I had a -- they -- they put it in a -- it looked like
13 a chicken basket, a wire basket thing that they put over
14 my leg so I couldn't move it.

15 Q Did you have it stitched up, sewed up before you ---

16 A Oh, yes.

17 Q --- before they put that cast/wire mesh on it?

18 A Yes. So I'm all in a cast and chicken wire.

19 Q So after the accident, you had a cast on your right
20 foot?

21 A Yes.

22 Q How far did it go up?

23 A Almost to my knee.

24 Q You had a cast on your right arm?

25 A Yes.

1 Q How far did it go up?

2 A And it was up to about almost there (indicating).
3 When they changed it one time, that was all -- but you can
4 see where it was all ---

5 Q When you say "almost there," were you pointing near
6 the elbow?

7 A I'm sorry. That's in the way.

8 Q Were you pointing near your elbow? You said up to
9 there. The cast on your right arm ---

10 A Yes.

11 Q --- you said it was up to there. Where were you
12 pointing to?

13 A About up to here (indicating).

14 Q Almost to your elbow.

15 A Almost to the bend.

16 Q The elbow?

17 A Uh-huh.

18 Q Okay. And you had a wire mesh around your whole left
19 leg.

20 A Yes. I couldn't move my leg.

21 Q Okay.

22 A They didn't want me to. That's the reason it was put
23 up to my . . .

24 Q How long were you in the hospital after this
25 accident?

1 A I was in the hospital in Greenwood two weeks.

2 Q And is that when they had all the surgeries and
3 things?

4 A That's where I had all my surgery.

5 Q I guess you went back at a later time to get your
6 pins out, though, didn't you? You went back later and got
7 your pins out of your ankle.

8 A Oh, yes.

9 Q Okay. Now ---

10 A I went back three or four or five times.

11 Q Okay. Now, where did you go after you left Self
12 Hospital?

13 A I went to National Healthcare.

14 Q Do you remember approximately when you went to
15 National Healthcare?

16 A I rode in the ambulance, and they had ---

17 Q Okay. I just said when did you go to National
18 Healthcare? Do you remember when you went to National
19 Healthcare? Do you remember when you went to National
20 Healthcare?

21 A Did I have a what?

22 Q Hold on a minute. I'm going to get a little bit
23 closer.

24 Do you remember when you went to National Healthcare?

25 A Well, it was two weeks, so it must have been sometime

1 in August because it was only the 15th of August when I
2 had my wreck.

3 Q So it was two weeks after the wreck?

4 A Uh-huh.

5 Q Okay. Now, when you went to National Healthcare,
6 tell me how you got over there.

7 A Well, the ambulance carried me over there, but they
8 had to put me up on a hoist and carry me into the National
9 Healthcare room. And it's just so funny. I had 327 in
10 Greenwood and 327 in National Healthcare. I said, "Well,
11 that's something."

12 So -- but anyway, they had to put me on the hoist and
13 lift me up and drop me on the bed because I couldn't move
14 this (indicating) leg and I couldn't move this
15 (indicating) arm and I couldn't move my foot.

16 Q Are you right-handed or left-handed?

17 A I was right-handed.

18 Q After you got to National Healthcare, what did they
19 do for you there?

20 A Well, I had -- I stayed in the bed I guess almost a
21 month, and I had to have my bath in the bed, I had to go
22 to the bed pan in the bed, and I had to have my meals
23 rolled over, you know, on the table for I'll say a good
24 almost a month.

25 Q Could you feed yourself with your left hand?

1 A I sure did.

2 Q Okay. Now ---

3 A I learned I could do a lot with my left hand.

4 Q Out of necessity?

5 A (Nods head affirmatively.)

6 Q Now, after you had been in the bed for a month, what
7 happened?

8 A Well, my therapist came in and she said -- talked to
9 me, but talking.

10 Q Well, you don't have to get into what somebody said.
11 Just tell me what they did.

12 A I just said she put -- pulled me over on the bed.
13 She said, "Get on this plank." She had a board so deep,
14 so wide, and she slid me down that board and put me in the
15 wheelchair.

16 Q And what happened after that? What did they do after
17 that?

18 A Well, that was the way I stayed in that wheelchair.
19 You know, I could go back and forth, but I still couldn't
20 move my leg and all the -- they'd have to help me back in
21 the bed and all.

22 Q Okay. Did you start taking some physical therapy
23 then?

24 A Yes, I did. I went up to the therapy room. And
25 Ms. Purdy and Cheryl was there, and they would put me on

1 the bed and try to make me maneuver my legs and my foot.
2 And it hurt so bad, so the nurse, before I'd go, she said,
3 "Honey, you better take a pain pill because it's really
4 going to hurt."

5 And I said, "Yes, it is." And I come back and I told
6 her, I said, "Yes. It really did, and the pain pill
7 really didn't help too much."

8 Q How many days a week did you take physical therapy?

9 A She gave me a big beach ball like, and she told me,
10 she said, "You throw it as far as you can with your left
11 because you can't do anything with your right." So I did
12 that. Then she put me on a -- a machine that you roll
13 back and forth, you know.

14 Q How long did you do these physical therapy exercises?
15 I mean, did you do them every day five days a week?

16 A About -- not every day, but just about every day.

17 Q Did you take weekends off? Did they take the weekend
18 off?

19 A Yes.

20 Q Okay.

21 A They took the weekend off, too.

22 Q And do you remember when you left National Healthcare
23 and went home?

24 A I went home December the 21st of '13. I warned my
25 husband. So I wanted to go home. After 70 years of being

1 apart, you know, it makes you want to go home.

2 So anyway, he carried me home. So I got home for
3 Christmas. But I had to go back to the hospital in
4 Greenwood to get all this taken off, you know, my cast, my
5 arm.

6 Q Did you do that after Christmas?

7 A Before, uh-huh. Before I could come home the 21st.

8 Q Oh, before you came home. Okay.

9 So when you came home, you had all your casts off?

10 A Yeah. But I had a boot on my right foot and a guard
11 over my left wrist. But my leg, it was all right. It had
12 healed, you know, so I didn't have too much with it.

13 Q That's your left leg?

14 A It just had a bandage on it. Uh-huh.

15 Q Okay. All right. Now, after you got home, did you
16 take any further physical therapy after you got home?

17 A Yes, I did. They come to the house, and I'd taken it
18 till April, I believe it was, of the next year, of '14.

19 MR. BRYAN: All right. Your Honor, we had agreed on
20 certain medical records at the hospital, Bates Number 22
21 through 108.

22 MR. HARTER: No objection, Your Honor.

23 MR. BRYAN: We'd like to submit this into evidence as
24 just medical records at Self Hospital.

25 THE COURT: Okay. That will be Number 6 for the

1 plaintiff.

2 (WHEREUPON, Plaintiff's Exhibit No. 6 was marked for
3 identification and admitted into evidence.)

4 BY MR. BRYAN:

5 Q Ms. Watts, before you had this accident, did you have
6 any physical limitations?

7 A No, I didn't. I worked every day.

8 Q What kind of work have you done all of your life?

9 A Waitress. And you've got to have a good foot for
10 that.

11 Q Prior to August 15, 2013, how long had it been since
12 you last worked as a waitress?

13 A Well, I don't know exactly, but I worked at the
14 Little Clock for Steve. Every time he had hired a
15 waitress and she wouldn't stay, he'd call me and want me
16 to come and help him till he could get another one. So I
17 don't know exactly.

18 Q That was part-time work?

19 A Huh?

20 Q Part-time work?

21 A Yes.

22 Q All right. Roughly, do you remember exactly -- not
23 exactly, but how long roughly it had been before the
24 accident since the last time you had worked for him?

25 A I have no idea.

1 Q Had it been years?

2 A Yes. Probably.

3 Q Okay. So you had probably worked as a waitress
4 within some years?

5 A I worked -- I worked at Whiteford's Restaurant for
6 nine years as a waitress.

7 Q Okay. So you had worked numerous places.

8 A I always ---

9 Q But you don't remember the last ---

10 A And I had ---

11 Q Excuse me. Go ahead.

12 A I could -- I could do anything I wanted to.

13 Q You don't know how long it had been since you last
14 worked as a waitress prior to the accident?

15 A No.

16 Q All right. Prior to that accident, could you drive?

17 A Yes.

18 Q Do you have any restrictions on your driver's
19 license?

20 A No. Nothing except at night, wear the glasses at
21 night.

22 Q Did you have any limitations on your movement?

23 A No.

24 Q You would have been about 85 when you had this
25 accident. At 85, could you run and jump?

1 A Doing what?

2 Q Could you run and jump? Could you run ---

3 A Run and jump?

4 Q --- before the accident?

5 A Oh, I guess. I never -- I never tried to jump.

6 Q Did you have any trouble walking?

7 A It's kind of hard for an 86-year-old woman to run and

8 jump.

9 Q Okay. Before the accident, did you have any problems

10 walking?

11 A No. Never. I was very agile. All my life I played

12 tennis, softball, basketball, cheerleader. I done

13 everything, and I drove anywhere I wanted to go and never

14 had no restrictions on my license, never had a wreck,

15 thank the Lord. But . . .

16 Q Except one time. You had one wreck.

17 A Yes.

18 Q Your husband, what did he do for you after you came

19 home December 21, 2013?

20 A He'd taken care of me. He was my right-hand man. He

21 would -- he would fix breakfast, he'd cook, clean, go to

22 the grocery store, and he tried to do everything I wanted

23 him to do. He was -- I loved him and I miss him so much.

24 Q When he died November the 12th, 2014, was it a sudden

25 thing or had he been sick?

1 A He died 11/12/14, and I feel like him working with me
2 so much that he -- that it hastened his death. But maybe
3 it didn't. I don't know. I just feel like ---

4 Q Well, let me ask you this. Did he die suddenly or
5 did he have a long illness?

6 A No. He died suddenly.

7 Q And after he died -- well, before he died, did you
8 and he dance a lot? Did you go dancing?

9 A Oh, yeah. We -- we -- he was a Shriner, and we went
10 everywhere then and met a lot of people and had all -- all
11 the partying you'd want.

12 Q How long had it been prior to that accident since you
13 and he had danced together?

14 A Oh, goodness. I don't know whether it was the
15 birthday or when of one of our grandchildren.

16 Q How long was that?

17 A I don't know.

18 Q Was it months before or years before?

19 A I'd say maybe -- well, let's see who had the last
20 birthday. I've got so many I have to count them up.

21 Q One of your grandchildren had a wedding and you and
22 he danced?

23 A Yes.

24 Q And I'm not asking for an exact date, but
25 approximately how long prior to that accident do you think

1 it was that y'all danced together?

2 A I'd say maybe a year or six months. I don't know.

3 Q It was somewhere close to that time; is that correct?

4 A Yes.

5 Q Okay. But before you had this accident, you could
6 dance.

7 A Sure.

8 Q Okay. You can't dance now, can you?

9 A No. I can't hardly walk, much less dance.

10 Q Now, the night of this accident, were you on any kind
11 of medication or anything?

12 A No. And I don't -- didn't smoke and I don't drink.

13 Q Are you on any kind of medication now?

14 A And no medication. And thank goodness and the Lord I
15 don't take any now.

16 Q Okay.

17 A I'm 91 years old. The only thing I take is a little
18 pain pill for my knees.

19 Q And how often do you take that?

20 A I had one this morning, and I probably won't have
21 another one unless I go out, you know. My neighbor Carol
22 Ann Gault, she's so good, she comes and takes me out. We
23 go to sometimes to buy groceries, and we ride to Belk and
24 to the Dollar Store. If it wasn't for her and Dicky, I
25 don't know what -- I'd be stuck in the house all the time

1 because my children all work and out of town.
2 Q Except for those occasions, are you homebound?
3 A Yes, I am.
4 Q All right. Now, tell me what kind of pains you have
5 now.
6 A Right now?
7 Q Not now, not this minute, but just general ---
8 A In my knees.
9 Q Your knee -- both knees hurt? Both knees hurt?
10 A Both knees.
11 Q Do they hurt you on a daily basis? Do they hurt you
12 on a daily basis?
13 A Yes. Nightly basis, too, sometimes.
14 Q What do you do about those knees? You take a pain
15 pill.
16 A Yes.
17 Q Does that help it some?
18 A Helps some.
19 Q What else do you do? What else do you do for your
20 knees, for your pain in your knees?
21 A I got pain cream that I rub on my knees.
22 Q Does that help?
23 A Uh-huh.
24 Q Okay. Now, I believe you have someone that comes and
25 cleans your house for you weekly.

1 A Yes. I have Cindy Cannon. She comes every two
2 weeks, and she does my hard cleaning for me, you know,
3 like cleaning the restroom and cleaning -- changing my
4 beds ---

5 Q Do you pay her?

6 A --- and mopping and sweeping and vacuum. And if I
7 need anything the day she comes on Tuesdays, I call her
8 and she'll stop and buy it for me.

9 Q Do you pay her?

10 A I pay her.

11 Q All right. Now, you incurred a substantial amount of
12 medical costs because of all this, haven't you?

13 A I sure have.

14 Q Okay. And I believe this accident on
15 August 15, 2013, and you had -- you went to NHC after you
16 went to Self, then you went and had NHC physical therapy
17 at home until April the 25th; is that correct?

18 A (Nods head affirmatively.)

19 Q And I'm going to show you a stack of medical bills
20 and a listing of these on top.

21 A Uh-huh.

22 Q Do you recognize that?

23 A What, EMS?

24 Q Yeah.

25 A Yes. \$869.

1 Q Okay. There's a whole list here, and we can go over
2 every one of them if necessary, but you and I -- you've
3 gone over all these before, haven't you?

4 A I sure have.

5 Q And when you total all of them up, what is the total?

6 A \$218,309.47.

7 And I know I've went all through these, every one of
8 them.

9 Q So these are your medical bills from this accident.

10 A Yes, sir.

11 MR. BRYAN: Your Honor, I believe we made an
12 agreement to put this in.

13 MR. HARTER: We agree they can come in, Your Honor.

14 THE COURT: Okay. That will be Number 7 for the
15 plaintiff into evidence.

16 (WHEREUPON, Plaintiff's Exhibit No. 7 was marked for
17 identification and admitted into evidence.)

18 BY MR. BRYAN:

19 Q Now, Ms. Watts, is it safe to say that this accident
20 radically changed your life?

21 A Well it's changed it from night to day. I'm telling
22 you when you can't do anything except stay in the house,
23 and I feel like I have good room, though, that I can go,
24 you know, through my walker.

25 Q You can move around your house?

1 A I've got plenty of room.

2 Q And your walker will fit through all your doors?

3 A Uh-huh. And I've got a rod in my shower and one in
4 my bathroom and all. And I'm fixed, but I still, I feel
5 like that they owe me a little bit of my pain.

6 Q Let me ask you this. The night of this accident, you
7 were riding down in the left lane. Were you looking ahead
8 of you in the lane? Yes or no? You've got to answer.

9 A Yes.

10 Q Okay. And you saw Ms. King's car suddenly stop in
11 front of you.

12 A Yes.

13 Q Did you see the previous accident between Ms. King
14 and Deputy Holmes? Did you see the accident that had ---

15 A No.

16 Q So you did not see it.

17 A It had already happened.

18 MR. BRYAN: Okay. Hold on just a minute.

19 THE COURT: Sure.

20 BY MR. BRYAN:

21 Q Ms. Watts, you are here in court today, and you know
22 when you come to court, you bring a claim in court for
23 your damages. Is that what you're here for today, to get
24 reimbursed for your damages? Is that correct?

25 A Yes.

Martha Watts Direct by Mr. Bryan

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1 Q All right. We put in \$218,000 in medical bills, but
2 you've also had a lot of pain and suffering, haven't you?

3 A That's right.

4 Q And you still have it every day.

5 A I still am.

6 Q And you have had a radical change in your life that
7 will never get better.

8 A But for a 91-year-old woman, I guess I'm doing all
9 right.

10 Q Well, you have been blessed with a good attitude and
11 outlook on life, and that's something to be grateful for
12 and thankful for.

13 A I thank the good Lord's been good to me.

14 MR. BRYAN: All right. Would you answer any
15 questions Mr. Harter has?

16 THE COURT: Any cross-examination?

17 MR. HARTER: Ms. Watts, we wish you well.

18 Ms. Watts, we wish you well. I don't have any questions
19 for you today, okay? Take care of yourself.

20 THE WITNESS: Thank you.

21 THE COURT: You can step down, ma'am. Mr. Bolt, if
22 you'll help her.

23 Mr. Bryan, do you have any further witnesses?

24 MR. BRYAN: Can I consult with Mr. Thompson just a
25 minute?

1 THE COURT: Sure. Take your time.

2 MR. BRYAN: Your Honor, the plaintiff rests.

3 THE COURT: Okay. All right. Ladies and gentlemen
4 of the jury, we're going to take another break this
5 afternoon, and so go back to the jury room and we'll get
6 you back out shortly.

7 (WHEREUPON, the jury exits the courtroom at 3:31 p.m.)

8 THE COURT: Okay Mr. Harter, do you have any motions
9 you would like to place on the record?

10 MR. HARTER: I would, Your Honor. At this point in
11 time, I'd like to move for a nonsuit on behalf of the
12 defendant. It is clear from -- and our motion is based on
13 a proximate-cause issue. We agree there was, obviously, a
14 collision between the King vehicle and the sheriff's
15 office vehicle. And Mrs. Watts, however, is traveling
16 down 76, she collides into the rear of a parked vehicle,
17 and as a matter of law, we submit that the sole and
18 proximate cause of her accident and her injuries resulted
19 from her lack of attentiveness.

20 She indicates that she saw no lights. She saw this
21 car not in front of her until just before it happened.
22 She indicates she did not apply her brakes. And based on
23 the facts and circumstances, we just submit that, as a
24 matter of law, her fault or her negligence is such as to
25 bar her claim. We've asserted comparative fault, but as a

1 matter of law, we submit, one, that there is no negligence
2 on behalf of the sheriff's office; and two, that as a
3 matter of law, Mrs. Watts's own conduct is sufficient to
4 bar her claim.

5 THE COURT: Okay. Thank you. Viewing the evidence
6 in the light most favorable to the plaintiffs, certainly
7 the Court is concerned not with the -- what the Court is
8 concerned with is whether or not there is any evidence to
9 support their claim. The Court finds that there is and
10 the motion is respectfully denied.

11 Okay. Mr. Harter, can I get an idea from you as far
12 as what your case looks like insofar as witnesses? I know
13 we still have the issue of Trooper Duncan. I know we need
14 to still deal with that. So kind of what's your plan?

15 MR. HARTER: Judge, I've got to tell you, I've got to
16 think over that for a few minutes or for a little while,
17 okay?

18 THE COURT: Okay.

19 MR. HARTER: I'm not entirely sure right now. I'd
20 like to confer.

21 THE COURT: Sure. Let's take ---

22 MR. HARTER: I don't have any -- I just would like to
23 think about it for a little while.

24 THE COURT: Sure.

25 MR. HARTER: I'm not sure what my plan is going to

1 be. I do have some requests to charge. If I can hand
2 those up we can move that part of it.

3 THE COURT: Okay. Sure. You can get those to me.

4 Well, let's take a ten, 15-minute break and give you
5 a chance to talk with ---

6 MR. THOMPSON: Could the plaintiff be heard on one
7 matter?

8 THE COURT: Sure.

9 MR. THOMPSON: Mr. Bryan, during the lunch break,
10 called to my attention the remarks that I made earlier
11 today about our position vis-a-vis Mr. Harter and his
12 staff, and none of that changes. But we did not want to
13 give the Court the impression that we were backing off
14 from our position with reference to the discovery issues.

15 THE COURT: And the Court did not have that
16 impression.

17 MR. THOMPSON: That's a separate thing. But I still
18 meant everything that I said about our relationships and
19 what's going on ---

20 THE COURT: Right.

21 MR. THOMPSON: --- but we're not saying, Judge,
22 forget about that motion we made.

23 THE COURT: I know you haven't. And that's something
24 we're still going to have to deal with.

25 MR. THOMPSON: Yes.

1 THE COURT: I understood you pretty well,
2 Mr. Thompson.

3 MR. THOMPSON: Okay. All right. Thank you.

4 THE COURT: Okay. All right. We'll be in recess
5 ten, 15 minutes, and then we can go from there.

6 And it may be helpful that after you talk with
7 co-counsel, then maybe everybody come back in chambers and
8 we can talk informally about what your plans are, and then
9 certainly we can put on the record anything that we need
10 to put on the record, okay?

11 MR. HARTER: Thank you, Judge.

12 MR. THOMPSON: So just let Mr. Bolt know when you're
13 ready.

14 (WHEREUPON, a recess is taken at 3:36 p.m.)

15 (WHEREUPON, proceedings reconvened at 4:07 p.m.)

16 MR. HARTER: Judge, I need to clarify something. I
17 thought that Lee was sending the affidavit. She didn't.
18 But Anderson got it in the drop box from Lee and brought
19 it here so we've got it. And if we need to make that
20 connection, we will.

21 THE COURT: That's fine.

22 All right. Well, let's bring the jury out so we can
23 go ahead and cut them loose for the day, and then we'll
24 deal with Trooper Anderson.

25 (WHEREUPON, the jury entered the courtroom at 4:09 p.m.)

MR. HARTER: Judge, this is -- as we said, this is kind of a way of follow-up from what we were dealing with this morning about the surveillance video.

1 THE COURT: Right. And all of the objections that
2 have previously been raised by the plaintiff as it relates
3 to this surveillance video were still on the table for
4 further discussion and consideration by the Court, and
5 certainly, the plaintiff can raise any additional issues
6 not already raised after we hear from Trooper Anderson.
7 But this is more just for identification of what she has.

8 You may proceed.

9 MR. HARTER: And, Judge, of course this will depend
10 on how we proceed.

11 THE COURT: Sure.

12 DIRECT EXAMINATION

13 BY MR. HARTER:

14 Q Trooper Anderson, will you state your full name for
15 the record, please, for the judge.

16 A My name is Kelly Anderson.

17 Q Okay. And you're with South Carolina Highway Patrol,
18 or DPS?

19 A Yes, sir.

20 Q How long have you been with DPS?

21 A Since January of 2000.

22 Q Okay. And what is your role and position there?

23 A I'm a lance corporal is my rank, and my current
24 assignment is to the Multidisciplinary Accident
25 Investigation Team as an investigator.

1 Q Okay. And with regard to this case we're here about
2 today, were you involved in that investigation?

3 A Yes, sir. I was.

4 Q Okay. And with regards to this case, did you bring,
5 at our request, a disk ---

6 A I did.

7 Q --- that includes information from the South Carolina
8 DPS hard drive?

9 A That's correct.

10 Q Okay. And can you show us that disk?

11 A (Witness complies).

12 Q All right. And tell us how you got that, where it
13 came from.

14 A I received a phone call yesterday from Lee Watkins,
15 who is our MAIT -- or Multidisciplinary Accident
16 Investigation Team coordinator requesting that I bring a
17 copy of this disk to court here today. And she took the
18 file, the video file, put it onto our hard drive, and
19 asked me to make a copy of it and bring it here today.

20 Q And how did you get the copy?

21 A Off of our drive.

22 Q Okay. Off of the DPS ---

23 A That's correct.

24 Q -- hard drive?

25 A (Nods head affirmatively).

1 Q Is that right?

2 A That's right.

3 Q Okay. And do you know what material that disk

4 contains?

5 A It does contain video that was taken of both the

6 sheriff's department vehicle that was involved in the

7 collision, Ms. King's Dodge Charger vehicle that was

8 involved in the collision, and also surveillance video.

9 Q Okay. So it includes surveillance video from a

10 nearby recycling place?

11 A That's correct.

12 Q You're familiar with the fact that there was video

13 surveillance ---

14 A Yes, sir.

15 Q --- that was captured as part of the MAIT team's

16 investigation?

17 A That's right. And it was captured by Trooper Duncan.

18 Q Okay. And did you look at that material?

19 A I did.

20 Q Okay. And does that disk contain what you just

21 described ---

22 A That's right.

23 Q --- the video ---

24 A Yes, sir.

25 Q --- or, excuse me, the recording of the video from

1 that surveillance ---

2 A That's correct.

3 Q --- from that recycling center?

4 A Yes, sir.

5 MR. HARTER: Okay. I'd like to mark this for --
6 Judge, didn't you say for identification or as a Court's
7 exhibit or whatever?

8 THE COURT: We'll mark it for identification only.

9 Does the plaintiff have any questions of Trooper
10 Anderson as it relates to this limited purpose of marking
11 the disk for ID?

12 MR. BRYAN: Yes, sir.

13 THE COURT: Okay. All right. Were you finished?

14 MR. HARTER: Do you have more questions?

15 MR. BRYAN: Yeah. I have more questions unless you
16 -- go ahead, Rusty. You go ahead and finish.

17 MR. HARTER: Okay. Let's mark it.

18 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
19 identification.)

20 MR. HARTER: And, Judge, I think, as I indicated in
21 chambers, if there is an issue with the connection between
22 her and Lee Watkins getting this off the hard drive, we'll
23 call somebody tomorrow.

24 THE COURT: Right. Well, let's -- after you're
25 finished, and we'll allow the plaintiff to examine Trooper

1 Anderson, and then we'll go from there..

2 MR. HARTER: Okay. No further questions.

3 THE COURT: Mr. Bryan?

4 CROSS EXAMINATION

5 BY MR. BRYAN:

6 Q Corporal Anderson, did you actually look at this
7 specific CD that was just put in?

8 A I did.

9 Q Okay. And you did that today?

10 A I did it yesterday after I burned a copy of it to
11 make sure that it was on there.

12 Q And did you actually copy it from the hard drive or
13 someone else copied it?

14 A I did myself on my issued laptop.

15 Q Okay. And this hard drive is the DPS hard drive?

16 A Yes, sir.

17 Q All right. Do you have firsthand knowledge as to how
18 it got on that hard drive? Personally, did you see it
19 downloaded?

20 A Initially, when we had the case, the video files that
21 I recorded, I put onto the drive. The video files that
22 Corporal Duncan at the time recorded, he put onto the
23 drive. And then since that time, they have been put onto
24 a different drive because of storage space.

25 Q Okay. But your testimony today is someone told you

1 this was the video for this case, and you downloaded it on
2 a disk and brought it here from a hard drive in Columbia?

3 A Yes, sir.

4 Q And that's the extent of your knowledge of this ---

5 A Yes, sir.

6 MR. BRYAN: No further questions.

7 THE COURT: Okay. All right. I'm going to allow it
8 to be marked for identification, and we'll get into the
9 admissibility issue tomorrow.

10 MR. HARTER: Judge, is there anything else about
11 authenticity?

12 THE COURT: Are there any other issues other than
13 what has already been raised by the plaintiff as it
14 relates to the video? I understand that there are also
15 pictures that were taken and I don't know if the pictures
16 are going to be at issue, but as it relates to the
17 surveillance video, any additional issues?

18 MR. BRYAN: With this witness?

19 THE COURT: I mean any additional issues since we've
20 heard from her that she's the one that downloaded the disk
21 from the DPS hard drive, are there any ---

22 MR. BRYAN: Our dispute is going to be how it got to
23 that point. Yes, we have issues with getting to that
24 point. But what she's just said ---

25 THE COURT: Right.

1 MR. BRYAN: --- based upon what she just told me, I
2 don't have any other questions for her.

3 THE COURT: Okay. Right.

4 MR. HARTER: And, Judge, also to clarify, the only
5 part of this disk that we are interested in is the
6 surveillance video.

7 THE COURT: Right. Okay.

8 MR. HARTER: That's the only part that we're going to
9 ask anybody to get involved with.

10 THE COURT: Okay. All right. So the pictures are --
11 even though they are on the disk, they're really a
12 nonissue at this time.

13 MR. HARTER: That's our position right now.

14 THE COURT: Okay. All right. Very good.

15 Thank you, Trooper Anderson. I'm sorry you had to
16 hang around all day.

17 I'm just curious. One question. MAIT got involved
18 in this accident because of a law enforcement person
19 having been connected in some fashion?

20 TROOPER ANDERSON: That's correct. Yes, sir.

21 THE COURT: Because there was not a death involved
22 which you normally get involved in.

23 TROOPER ANDERSON: Right.

24 THE COURT: Okay. Thank you. I figured that. I
25 just wanted to make sure.

1 MR. HARTER: And, Judge, I want to just make sure I'm
2 clear because I've been questioning and I still, as far as
3 the -- I'm sorry. As far as the disk is concerned and the
4 surveillance that is on the disk, do I understand that we
5 have addressed all the authenticity issues as relates to
6 the transfer of that material off of the DPS hard drive
7 onto this disk which is Exhibit Number 6?

8 THE COURT: Right. I think, as Mr. Bryan just
9 indicated, their issue or issues relate to from salvage
10 company to DPS hard drive and not necessarily from DPS
11 hard drive to the disk here.

12 MR. BRYAN: And, Your Honor, having not seen the
13 video on that, I'm certainly not saying that that is the
14 same thing that I was given. We gave you -- the one you
15 looked at is the one we were given.

16 THE COURT: Right. And it may be good for you to
17 leave today is take a look at that and make sure that's --
18 and I'm sure it is, but make sure that that disk is what
19 you've had and what was given to me to view.

20 MR. HARTER: I think that's a great idea, Judge.

21 THE COURT: Yeah. Just so you don't have any
22 questions, it may be good to do that before you leave out.

23 Anything else we need to discuss before we adjourn
24 for the day?

25 MR. HARTER: Judge, I'm being -- requested is will

1 they or will they not stipulate to the authenticity of
2 this disk, period?

3 MR. BRYAN: No.

4 THE COURT: Well, I think it's a matter of semantics.
5 They have used the term "authenticity" or "authentication"
6 as it relates to their arguments with respect to
7 admissibility. But I don't think -- once they take a look
8 at that, I don't think that they're going to say, hey,
9 that's not the video that came from the salvage company,
10 correct?

11 MR. BRYAN: I may not say that but I may say, you
12 know, we've seen what we were given. That's what we had
13 to work with. That's what we got through discovery. So
14 if this is a beautifully color, clear picture that shows
15 more than what that one does, I don't know. I just ---

16 TROOPER ANDERSON: It's not.

17 MR. HARTER: I just -- you know, Judge, I don't want
18 to play games. I just want to make sure I know there are
19 issues about admissibility based on probative value,
20 relevance, all those other things, but authenticity is one
21 of the first steps. I want to make sure we've crossed
22 that because I don't want to -- I mean, I don't want to
23 play around with it, you know.

24 THE COURT: Once they look at that, then -- and,
25 again, it's just a matter of semantics. The issues raised

1 are still there but no additional issues, and that all
2 goes to admissibility. We can say authenticity, we can
3 use several terms, but I know where they're coming from,
4 and I'm going to hold their feet to the fire. But take a
5 look at that before we finish up for the day. And Trooper
6 Anderson, if you don't mind just hanging around just a
7 little bit longer.

8 TROOPER ANDERSON: Okay.

9 THE COURT: Thank you.

10 MR. HARTER: And if there's anything else, then
11 please let us know.

12 THE COURT: Okay. Take a look at it and then let me
13 know and I'll come back on the bench.

14 (WHEREUPON, a recess is taken at 4:23 p.m.)

15 (WHEREUPON, proceedings reconvened at 4:43 p.m.)

16 THE COURT: Okay. Mr. Bryan, you've had an
17 opportunity to review the disk that has been marked for
18 identification Number 6 for the defense?

19 MR. BRYAN: Yes, sir. It is the same video that you
20 watched. It has a little bit better clarity in one
21 section of it.

22 THE COURT: Okay.

23 MR. BRYAN: It is the same video. And I don't have
24 any question that she took it off, wherever she is, the
25 DPS hard drive yesterday and brought it here today. That

1 part I don't have no dispute over.

2 THE COURT: Okay. All right. Very good.

3 MR. HARTER: And I appreciate that. But, Judge, I'm
4 trying to authenticate something and quit running around
5 playing games. And Mr. Bryan has been to this location.
6 This is the video that has been -- everybody's had for
7 over a year now. What in the world is a continuing
8 objection to authenticity? And I get, I get the idea that
9 he says it doesn't show something and relevance and
10 probative value and prejudicial and all that, but for
11 heaven's sake, for authenticity, what other hoops do we
12 need to jump through? I'm just trying to get some clarity
13 to that.

14 THE COURT: Right. I think they're using, as I kind
15 of alluded to before we took a break, they're using the
16 term "authentication" or "authenticity" in a little bit
17 different manner than what we normally think of using
18 authenticity. I think their arguments -- I understand
19 what their arguments are, and so I don't think they're
20 challenging the authenticity in the normal course as we
21 normally think it is. I understand what their arguments
22 are, the arguments that they have raised previously, I
23 guess raised yesterday, and those are still on the table
24 for me to consider. Okay.

25 MR. HARTER: So we'll argue about admissibility. I

1 get that all clear.

2 THE COURT: Right, right. And, you know, if they
3 want to use the word "authentication" or "authenticity,"
4 again, I'm not being critical, but I'm going to consider
5 it kind of differently than from where you're coming from.

6 MR. HARTER: And I appreciate it. I appreciate that.

7 THE COURT: All right. Very good. All right. Well,
8 let's start back at 9:00 in the morning, and y'all have a
9 good evening. Appreciate your hard work.

10 (WHEREUPON, proceedings recessed at 4:46 p.m., to be
11 reconvened on Wednesday, April 18, 2018.)

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Mr. Harter, we are in your case or starting your

MR. HARTER: But I hope to satisfy the rule and your objections or your concerns about the admissibility of this particular surveillance video.

1 And to cut to the chase and to shorten things and to
2 just cut to the heart of the matter, we're proposing to
3 introduce this surveillance video. We are not offering
4 any expert testimony.

5 THE COURT: Okay.

6 MR. HARTER: We are not asking for expert testimony
7 to comment about that. The plaintiffs have objected to Al
8 Duncan or anybody else testifying as an expert, so we're
9 not offering any expert testimony in conjunction with this
10 video surveillance. But it is just as if a picture, and
11 it is a series of moving pictures, and so we want to
12 authenticate it and offer it as admissible evidence.

13 THE COURT: In order for me to rule on the
14 admissibility, taking into consideration the various
15 objections and grounds that have been raised by the
16 plaintiff, I believe I have to hear from Trooper Duncan in
17 light of the fact that he is the one, I understand,
18 recorded from the recycling center's surveillance, so I'm
19 going to need to hear from him. Even though you may not
20 intend to offer him as an expert in your case in chief,
21 I'm still going to need to hear in order to deal with the
22 objections raised by the plaintiff.

23 MR. HARTER: I agree. Absolutely. And I appreciate
24 it. But -- and we will call Matt Cagle ---

25 THE COURT: Okay.

1 MR. HARTER: --- and we will call Al Duncan to
2 authenticate and establish the admissibility of this,
3 okay?

4 THE COURT: Okay. Very good. Okay. All right.

5 MR. HARTER: We're not asking anybody to offer any
6 opinions about what's on there, okay?

7 THE COURT: Okay. All right.

8 MR. HARTER: Matt Cagle, please.

9 WHEREUPON,

10 MATTHEW CAGLE

11 After having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HARTER:

14 Q Matt, I'm going to be asking you a series of
15 questions, and Judge Hocker is going to be listening to
16 what you have to say. He is over here to your left, if
17 you need to, to speak to him.

18 First of all, tell the judge what your name is,
19 please.

20 A Matthew Talmer Cagle.

21 Q All right. And speak up, Matthew. You won't have
22 any trouble hearing me, but we'll need to make sure she
23 gets you.

24 A Matthew Talmer Cagle.

25 Q Okay. And how old are you, Matthew?

1 A 44.

2 Q And where do you live?

3 A Robinson Road, 403 Robinson Road.

4 Q And that is in?

5 A In Laurens, South Carolina.

6 Q Okay. And how long have you lived in Laurens County?

7 A Basically all of my life. I've been on Robinson Road
8 25 years.

9 Q And what kind of work do you do?

10 A Scrap metal.

11 Q Okay. Do you have a recycling facility or scrap
12 metal facility off of Highway 76 between Laurens and
13 Clinton?

14 A Yes, sir.

15 Q And what is the name of that business?

16 A It doesn't have an official sign up, but it was under
17 Dixie Iron and Metal.

18 Q It was what?

19 A Under Dixie Iron and Metal.

20 Q Okay. And I want to direct your attention back to
21 August the 15th of 2013. Did you operate that business in
22 that facility then, at that time, back in August of 2013?

23 A My father owned it, but I made sure everything run
24 correctly.

25 Q Okay. You work there?

1 A Yes, sir.

2 Q Okay. Now, was there any video surveillance,
3 recording equipment on the premises at that time?

4 A Yes, sir.

5 Q Okay. And how many cameras were there on the
6 premises?

7 A With the old system and the new system, there were
8 probably 12.

9 Q Okay. How many cameras were there as of August the
10 15th, 2013?

11 A There was eight that actually worked.

12 Q Eight that worked?

13 A Yeah.

14 Q Okay. And were there any cameras that were focused
15 and/or toward 76?

16 A Yes, sir.

17 Q Okay. And who put those cameras there?

18 A I did.

19 Q Okay. You mounted them?

20 A Yes, sir.

21 Q And you directed or focused where they would go; is
22 that right?

23 A Yes, sir.

24 Q And did those cameras capture traffic moving up and
25 down 76?

1 A Yes, sir.

2 Q Okay. And why did you put those cameras there?

3 A To monitor the two gates going into the scrap yard.

4 Q Okay. Now, did you come about knowing sometime on
5 August the 15th or sometime after that that your gate or
6 your fence at your scrap yard was damaged?

7 A Yes, sir.

8 Q How did you come about knowing or finding that out?

9 A When we came into work, it was laying on the ground.

10 Q Okay. And how did you find out what had happened?

11 A Later on a deputy -- I mean a trooper let me know
12 what happened.

13 Q Okay. And did you go and look at any of the
14 recording equipment that was on your premises at that
15 time?

16 A Yes, sir. I rewound it to see what had happened to
17 the fence.

18 Q And you rewound it to the date; is that right?

19 A Yes, sir.

20 Q Okay. And did you look at that video at that time?

21 A Yes, sir.

22 Q The recording?

23 A Yes, sir.

24 Q Okay.

25 A But I -- I didn't know the date. What I did, I had

1 to rewind it from where we had left the previous
2 evening ---

3 Q Right.

4 A --- till the actual ---

5 Q Now, did your recording equipment, did it record date
6 and time?

7 A Yes, sir.

8 Q Precisely a date and time?

9 A Yes, sir.

10 Q And did it record real-time?

11 A Yes, sir.

12 Q In other words, if there was five seconds recorded or
13 clicked off on the timer on the video or on the recording,
14 is that five seconds or ten seconds real-time?

15 A Yes, sir.

16 Q Now, when you went back and looked at the recording,
17 what did you see?

18 A A car with sparks flying out from under the front end
19 coming through the fence.

20 Q Okay. And is that the fence that you saw damaged
21 that next day or the day after when you came in?

22 A Yes, sir.

23 Q Okay. And can we -- Matt, you looked at this
24 recording before; is that correct?

25 A Only on the monitor. I've never seen the recording.

1 Q Okay. Does this look like the image that you have
2 got on your monitor from the recording of this
3 surveillance?

4 A Yes, sir.

5 MR. HARTER: Okay. Can we advance that a little bit,
6 please.

7 BY MR. HARTER:

8 Q And it starts here with a time of 10:57; is that
9 right?

10 A Yes, sir. It appears that way.

11 (WHEREUPON, Defendant's Exhibit No. 6, a video, was played
12 in open court.)

13 Q Did you see what we just observed there?

14 A Yes, sir.

15 Q Was that the video that indicate -- or recording
16 which damaged your fence?

17 A Yes, sir.

18 Q Is that what you saw that damaged -- is that the area
19 of your fence that was damaged?

20 A Yes, sir.

21 Q Did you see a car go into that fence?

22 A Yes, sir.

23 Q Okay. Now, this recording equipment that you have, I
24 think you said -- well, does it record sound or just
25 image?

1 A No, sir. Just audio -- just video, I mean. Yes,
2 sir. No audio.

3 Q Just the images. Okay.

4 Now, there was -- how many cameras did you have,
5 Matt, that would capture things on 76? Was this the only
6 one or was there another one?

7 A There's another one. There's two gates that you can
8 get into the scrap yard, and they're facing both gates.

9 Q Okay. And they are -- it looks like one faces kind
10 of the gate -- kind of looks at the gate that goes --
11 that's on the Clinton side of your business, and the other
12 one looks like it's on the gate that's on the Laurens side
13 of your business; is that right?

14 A Yes, sir. We just called the first one the lower
15 gate, and that's the upper gate.

16 Q This is the upper gate?

17 A Yes, sir.

18 Q Okay. All right. Now, and you say it records in
19 exact real-time; is that correct?

20 A Yes, sir.

21 Q So it has a timer on it?

22 A Yes, sir.

23 Q And a day and a time on it; is that right?

24 A Yes, sir.

25 Q Okay. And was this equipment, you said you installed

1 it yourself?

2 A Yes, sir.

3 Q Okay. And who maintained it or who took care of it?

4 A I do, but there's really nothing to take care of.

5 Q Okay. And tell us, now, Matt, did you have at the
6 time of this -- well, have you had any problems with that
7 system accurately recording date and time and events?

8 A No, sir. It's been fine ever since I installed it.

9 Q Okay. And when was it that you installed it about?

10 A It would have been early of 2013.

11 Q Okay. And you still have it there today?

12 A Yes, sir.

13 Q Okay. And, Matt, you are talking to an older person
14 who doesn't have extensive technical knowledge, but will
15 you tell us what kind of recording system it is, the name
16 of the recording system and what type of system it is?

17 A The name of it is Lorex ---

18 Q Speak up now and tell the judge.

19 A The name of it is Lorex ECO2 that records on a DVR,
20 which what it is is a hard drive inside a recorder that
21 records the images on. You can't physically take the hard
22 drive out. It's in the system itself.

23 Q So the Linux ---

24 A Lorex.

25 Q Lorex. I'm sorry. Lorex has a hard drive in it; is

1 that right?

2 A Yes, sir.

3 Q Okay. And where is the actual hard drive located
4 physically in the building?

5 A It's in the main office in the corner.

6 Q Okay. And that's inside, right?

7 A Yes, sir.

8 Q Okay. And, now, does the -- do you also have a
9 monitor there ---

10 A Yes, sir.

11 Q --- in the office? Okay. And where is the monitor
12 located?

13 A It's mounted in the corner up high in the office.

14 Q Okay. And, now, how would you activate, or if you
15 came in and wanted to review images from a prior event,
16 how physically would you activate the recording system
17 to gain entry or to see those images? What would you
18 do?

19 A There's actually two ways. There's a mouse with the
20 DVR, or there's a remote that is just simpler because it's
21 -- if you're at the DVR, you can't look straight up at the
22 monitor and work it, so using a remote looking at the
23 monitor is more simpler.

24 Q Just because it's positioned where it is, it's easier
25 to use the remote than it is the mouse?

1 A Yes, sir.

2 Q And is that the remote or ---

3 A Yes, sir. This is it.

4 Q Does the remote work properly?

5 A Yes, sir.

6 Q Now, has that equipment, to your knowledge since you
7 put it in, ever failed or required any service that you
8 know of?

9 A No, sir.

10 MR. HARTER: Okay. Can we look at the camera from
11 the other angle, please.

12 MR. BRYAN: I see it.

13 BY MR. HARTER:

14 Q I'm sorry. This is Chapter 6. I see. I apologize.

15 No. I'm sorry. Go -- now, I want you to pay
16 attention to the camera angle from this direction and see
17 if you can orient us to that.

18 (WHEREUPON, Defendant's Exhibit No. 6, a video, was played
19 in open court.)

20 Q Now, I notice this one's skipping a little bit. Why
21 is that, do you know, as opposed to continuous?

22 A I can't see it clearly, but you can go fast-forward
23 times two, times four, times six, times 16.

24 Q Okay. But it's showing -- it's kind of showing the
25 second intervals; is that right? One second intervals?

1 A It looks like it's jumping two seconds. That would
2 be ---

3 Q It does.

4 A --- times two. I can't see the corner very clearly.

5 Q Okay.

6 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
7 to play in open court.)

8 A Now it's playing at normal speed.

9 Q Okay. And it looked like it starts ---

10 A I think I had to fast-forward again to actually get
11 to the time ---

12 Q Okay.

13 A --- because it's jumping two seconds again. So
14 that's why.

15 Q That's because you're fast-forwarding?

16 A Yes, sir. If you -- if you can see in the corner, it
17 will say times two, times four.

18 Q I've got you.

19 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
20 to play in open court.)

21 Q Okay. Now, it looks like it kind of freeze frames in
22 seconds; is that right?

23 A It plays continuously. If I can see the corner, I
24 could tell you if it's playing fast-forward. I'm just
25 going by the seconds. It looks like it's jumping every

1 two seconds.

2 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
3 to play in open court.)

4 Q Did you capture any indication from the camera that
5 was focused toward Laurens that was information that you
6 associated with any damage to your gate?

7 A No, sir. That was just the other view, I guess the
8 before picture. But ---

9 Q Okay. This is the -- this is the view from the other
10 camera?

11 A Yes, sir.

12 Q Now, if we go back to the camera that -- I'm sorry.

13 A Is that the only video of that angle?

14 Q That's the video from the camera that goes towards
15 Laurens, okay?

16 A All right.

17 Q Now, the image that goes toward Clinton ---

18 A That one's playing in real-time.

19 Q Oh, okay. I'm sorry.

20 MS. DAVIS: May I interrupt? That was a computer
21 thing. The disk was having trouble loading ---

22 MR. HARTER: I apologize, Your Honor.

23 MS. DAVIS: --- on the computer timetable.

24 MR. HARTER: So what now, Carly? It was because?

25 MS. DAVIS: It's the computer that's slowing it

1 down.

2 MR. HARTER: Your computer?

3 MS. DAVIS: Yes.

4 MR. HARTER: Is it loading now?

5 MS. DAVIS: This is just taking a minute.

6 MR. HARTER: I apologize, Judge.

7 Your Honor, with reference to this particular frame,
8 you know, Ms. Davis, my associate, tells me there's a
9 problem with her computer. That will not ---

10 THE COURT: Okay. All right. Do we need to switch
11 computers?

12 MR. HARTER: We can switch and maybe ---

13 THE COURT: Sure.

14 MR. HARTER: And I think you've hopefully seen it,
15 but we can show it on another computer. I apologize for
16 that.

17 THE COURT: That's fine. Switch computers, if you
18 need to.

19 MR. HARTER: It's supposed to be continuous, you
20 know. But it's because of the computer, I think.

21 THE COURT: Okay. Can we fix that?

22 MS. DAVIS: We're going to need a minute.

23 MR. HARTER: Okay. She says we'll need a minute,
24 Judge.

25 THE COURT: That's fine.

1 MR. BRYAN: Your Honor, you viewed it and you know
2 the one that we got, but I think it had the same jumps in
3 it. I don't think it's different than the other ones
4 were.

5 MR. HARTER: Well, video is what it is. This is the
6 one from ---

7 THE COURT: Just try another computer, and we'll be
8 off the record for a few minutes and give you a chance to
9 do that..

10 (Off the record.)

11 THE COURT: Let's go back on the record.
12 You may continue with your examination.

13 MR. HARTER: Thank you.

14 If you'll advance the recording, please.

15 (WHEREUPON, Defendant's Exhibit Number 6, a video, played
16 in open court.)

17 BY MR. HARTER:

18 Q And it picks up with 10:57:17; is that correct?

19 A That's what it's showing.

20 Q Okay.

21 A It's playing it in real-time now because the seconds
22 are going by.

23 Q Okay. So there's no skipping on this then, right?

24 A No, sir.

25 Q Huh?

1 A No, sir.

2 MR. HARTER: Okay. Do we need to turn this, Judge do
3 you think?

4 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
5 to play in open court.)

6 BY MR. HARTER:

7 Q There's a freeze-frame now, correct?

8 A Correct.

9 Q Okay. And we're coming up to 10:58:11.

10 And this is on August the 15th of 2013, correct?

11 A I can't quite see the 2013, but, yes, sir.

12 Q Come look at it and just make ---

13 THE COURT: You can step down, but just be sure to
14 speak up if you're testifying while you're away from the
15 microphone.

16 THE WITNESS: August 15, 2013, 10:58.

17 BY MR. HARTER:

18 Q P.m.?

19 A P.m.

20 Q Okay. Thank you.

21 And this is a camera image -- I'm sorry, Matt. This
22 is a camera image facing towards Laurens then, correct?

23 A Correct.

24 Q And these images that we've looked at, this disk, is
25 this information that came off of the recording at your

1 recycling scrap place when the trooper came and talked to
2 you and reviewed the tape -- or the recording?

3 A Yes, sir.

4 Q Okay. And did it record -- does this -- these
5 segments we're looking at record events -- and I'm not
6 going to ask you to go through the whole hour or whatever,
7 but it records events from between 10 p.m. and 11 p.m.? I
8 mean, what we've looked at.

9 A Yes, sir. Yes, sir. What's shown. Yes, sir.

10 Q And it will include everything that happens, you
11 know, right? I know you don't understand that question,
12 but this is a segment of the time off of your recording
13 device; is that correct?

14 A Yes, sir.

15 Q Your recording device runs continuously. Is it
16 24/7?

17 A Yes, sir.

18 Q Okay. And it records on a DVR; is that correct?

19 A Yes, sir.

20 Q Okay. And then it goes into the hard drive,
21 correct?

22 A Yes, sir.

23 Q Okay. And you have how many cameras on your place,
24 did you say?

25 A Now there's four that's operating.

1 Q Okay.

2 A There's actually eight mounted, but we don't need but
3 four of them.

4 Q Okay. So it's by choice and decision, not by
5 malfunction that you've got different or fewer cameras?

6 A Yes.

7 Q Okay. Any problem with malfunction or maintenance to
8 either of the two cameras that face either of the gates?

9 A No, sir. About every month or two, you might want to
10 wipe the lens off. But other than that, no.

11 Q Okay. Any problems with the monitor that you use?

12 A No, sir. It stays on continuously 24 hours a day.

13 Q What kind of monitor is it?

14 A A Hewlett-Packard, HP.

15 Q Okay. Is the monitor and the recording system, are
16 they compatible?

17 A Yes, sir.

18 Q Okay. And I think you said it was the what? What's
19 the name of the system?

20 A It's a Lorex ECO2.

21 Q Lorex ECO2.

22 And when you installed it, did you install it
23 consistent with the instructions?

24 A Yes, sir.

25 Q Okay. And to your knowledge, did anybody tamper

1 with, review, or in any way alter this equipment between
2 the time of this incident when you discovered this image
3 on your recording device and the time that Officer Duncan
4 came to your business and recorded?

5 A No, sir.

6 Q You understand my question?

7 A Yes, sir.

8 Q To your knowledge, has anybody altered, tampered with
9 or done anything to the images?

10 A No, sir.

11 Q Okay. I think at one point in time, the light was
12 turned on or off in the room while the recording was
13 taking place; is that right?

14 A Yes, sir.

15 Q Okay. Was the recorder ever turned off or was
16 anything changed about the images or the system or the
17 equipment that was used when Trooper Duncan came and
18 recorded this?

19 A Not my system, but we had to -- his recording was
20 showing a reflection ---

21 Q Right, right.

22 A --- in the monitor. So we had to cut off the lights,
23 and then he recorded it.

24 Q But did it obliterate any of the images?

25 A No, sir.

1 Q Okay. It just kind of created a glare?

2 A Yes, sir.

3 Q Which we can see, right?

4 A Yes, sir.

5 Q Okay. And the only reason for that was just
6 because there was glare, and the lights were adjusted,
7 right?

8 A Yes, sir.

9 Q Okay. And tell us how the rewind thing works. Tell
10 us how it can be rewinded and what happens. Tell the
11 judge.

12 A On the remote here, you've got play, rewind and
13 pause. You can rewind it just like a -- let's say a disk,
14 like a Blu-ray or DVD player. You've got rewind times
15 two, and you can rewind it four times, 16 times. It's
16 just every time you mash rewind, it will go faster and
17 then faster and faster until it plays again.

18 Q And that's when it will do the jumping then?

19 A Yes, sir.

20 Q Okay. Now, when it's playing continuously, that is
21 in real-time?

22 A Yes, sir.

23 MR. HARTER: Okay. Excuse me just a minute, Your
24 Honor.

25 BY MR. HARTER:

1 Q Matt, I might not have addressed something. The
2 first angle that we looked at, and it says Chapter 6?

3 A That's channel.

4 Q Channel. Thank you. Channel 6. That's your system
5 records that?

6 A Yes, sir.

7 Q Okay. So Channel 6 records images going toward
8 Laurens.

9 A Yes, sir.

10 Q Channel 5 records images going toward Clinton.

11 A Yes, sir.

12 Q Okay. Now, we looked at Channel 5. We're looking at
13 Channel 5 again. And this recording, again, confirm
14 whether or not it is August the 15th of 2013 at 10:57-ish;
15 is that right?

16 A Yes.

17 Q Or 10:57.

18 A As much as I can see, yes, sir.

19 Q Okay. Well, come down here and confirm that. I want
20 to make sure.

21 It's capturing -- it's running now, correct? Running
22 now?

23 A Yes, sir. It's running in real-time. It says "play"
24 right there. That's real-time.

25 Q Okay. And it is -- the date is August 15, 2013?

1 A August, yeah, 15, 2013.

2 Q 15. Okay.

3 A 10:58 p.m.

4 Q Okay. And we've been looking at copies of your
5 surveillance recording between approximately 10 and now
6 we're coming up on 11:00 p.m., correct?

7 A Correct.

8 Q Okay. Thank you. All right. Now, Matt, go back and
9 take your seat.

10 Do you recall when Trooper Duncan came to your
11 business and reviewed this surveillance video?

12 A Not the exact date, but it was within a couple days.

13 Q Okay. And tell the judge how that happened and what
14 happened there, how he came to talk to you and what
15 happened.

16 A I believe another officer came and asked about it, if
17 there was a cassette that I could give him or something.
18 He asked -- he asked me first if our surveillance cameras
19 worked and if it recorded at the time. And he wanted to
20 know if there was a cassette that he could get a copy of.
21 But with this system, there is no cassettes. They had to
22 bring -- Mr. Duncan had to bring a tripod like this right
23 here and set a camcorder on it to record the images off
24 the monitor.

25 Q And he did that?

1 A He did that.

2 Q And that's the only way you can get those images ---

3 A Yes, sir.

4 Q --- is record them off of your monitor.

5 A Yes, sir.

6 Q And were you there when he recorded it off of your
7 monitor?

8 A Yes, sir.

9 Q Okay. Did he record what had been recorded on your
10 system?

11 A Yes, sir.

12 Q Okay. Is there any -- was there any alteration or
13 change to anything having to do with your system, your
14 surveillance system between the time you discovered this
15 damage to your fence and the time that Trooper Duncan came
16 and took his tripod and camcorder and recorded from your
17 surveillance equipment?

18 A No, sir. Nothing had changed.

19 Q Okay. Excuse me just a minute.

20 Now, I apologize. What happens to your recording
21 system as it cycles through?

22 A It records in a loop, and about every six months it
23 records over itself. You can only go back about six
24 months.

25 Q And it records in a loop and then it's erased.

1 A Continuous. Yes, sir.

2 MR. HARTER: Okay. All right. Thank you, Your
3 Honor. I appreciate your patience ---

4 THE COURT: Sure.

5 MR. HARTER: --- but we had a computer issue, not a
6 tape issue.

7 THE COURT: That's fine.

8 Mr. Cagle, let me ask you, what you're viewing in
9 court here today, is that an accurate representation and
10 duplication of what was on your monitor on your system
11 that you viewed?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. Thank you.

14 Mr. Bryan, you have any questions?

15 MR. BRYAN: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. BRYAN:

18 Q Mr. Cagle, when did you first see this video that
19 you're watching now? When was it first shown to you?

20 A Right now.

21 Q Okay. You haven't seen this since Trooper Duncan
22 recorded it?

23 A No, sir.

24 Q Okay. And you say it was a Lorex ECO DVR and you
25 can't -- you don't have the equipment to download it.

1 A No, sir. You can open a port and have it go through
2 the Internet, but that makes it vulnerable to get into
3 your system and just hack your computer.

4 Q But there is equipment a person could have -- take in
5 there and download it and then take that equipment out,
6 couldn't you?

7 A If they could, I don't know about it. I don't
8 know.

9 Q You know there's ways to download that with other
10 equipment that you don't have.

11 A I'm sure there is, yes.

12 Q And you put this machine in in 2013?

13 A Yes, sir.

14 Q Okay. And did you set the time then?

15 A Yes, sir. When we set it up.

16 Q Does it automatically set?

17 A No, no. We set it. When we set the system up, put
18 the time in then. But it corrects -- it corrected
19 itself ---

20 Q Immediately?

21 A --- immediately. Yes, sir.

22 Q So since 2013, it has always been on time?

23 A Yes, sir.

24 Q Is it still on time today?

25 A Yes, sir.

1 Q I was out there a few nights ago with you and we
2 looked at it, and we looked at the time and we looked at
3 our watches. Do you remember that?

4 A Yes, sir.

5 Q So it was on time a few nights ago.

6 A Yes, sir.

7 Q To the best of your knowledge, was it on time and
8 correct on August 15, 2013?

9 A Yes, sir.

10 Q Now, your monitor's up in a corner, isn't it?

11 A Yes, sir.

12 Q And come down, if you would. When you and I were
13 looking at it the other night and we commented -- or I
14 commented, your time and date is across the top in the
15 middle, isn't it?

16 A Yes, sir.

17 Q It's not down as low as it is right here, is it?

18 A This is not the full monitor view of it right here.

19 Q But on yours, the time and date is along the top edge
20 of it?

21 A Yes, sir.

22 Q Okay. Now, are these two monitors' clocks
23 synchronized?

24 A Yes, sir.

25 Q All right. So if last night someone tried to, say,

1 break in your gate that that shows -- that's your lower
2 gate, isn't it, there?

3 A Yes, sir.

4 Q --- at 10:38 last night, what you would do is you
5 could go back to 10:38 and it would show that's the
6 date?

7 A Yes, sir.

8 Q So the clock was right and the clock is right.

9 A Yes, sir.

10 Q So that actual view, because of the location at the
11 time and date, is not the way it looks on your monitor at
12 your office, is it?

13 A That's exactly how it looks. I mean, I don't
14 understand what you're saying.

15 Q All right. The time and date on your monitors is
16 higher on the picture, isn't it, along the top edge?

17 A It's the same as it is now. It looks like the
18 recording. The camera is kind of at an angle turned this
19 way.

20 Q And you say Trooper Duncan came in with a tripod and
21 a camcorder?

22 A Yes, sir. A tripod like this but real size.

23 Q And your monitor's up here, and he got back somewhere
24 else and recorded your monitors that played.

25 A Yes, sir.

1 Q All right. The jumping of sometimes two seconds and
2 four seconds and other changes in the speed, who did that?
3 Did he do it or did you do it?

4 A That would be me.

5 Q You did it?

6 A Uh-huh.

7 Q Did he ask you to do it?

8 A No, sir. I was just trying to get to whatever time
9 he needed recorded or when the accident happened.

10 Q Have you ever had any training in setting up security
11 systems?

12 A No, sir. I've just been doing it since I was about
13 10, I guess.

14 Q But in looking at the angle, once again, I just want
15 to make clear. You know, I came to your place a few days
16 ago, didn't I?

17 A Uh-huh.

18 Q And you and I went up and looked at where the time
19 and the date went across the top, and you said that's the
20 way it's always been up there along the edge; is that
21 correct?

22 A Yes, sir.

23 Q And as you can see here, there is some video above
24 your time with date on this one, but you think that was
25 from the angle of the camera or something maybe?

1 A Yes, sir because you could see the monitor coming
2 down on this side and then starting across the bottom, but
3 you don't see the full -- the full monitor there.

4 Q So the full monitor is not in view?

5 A No, sir.

6 Q Did the trooper tell you what time he wanted you to
7 go back to and what date and so forth?

8 A He told me what time the incident occurred.

9 Q And you went back to the time?

10 A Yes, sir.

11 Q And what time did he tell you; do you recall?

12 A I don't remember.

13 Q But as I said last night, if somebody broke in your
14 gate at 10:38, you would go to 10:38 and it would show on
15 that monitor 10:38.

16 A I would have to rewind it till I've seen what
17 incident occurred. I wouldn't know what time.

18 Q If somebody told you someone broke in at 10:38,
19 you would rewind it to 10:38, and that's what you would
20 see?

21 A If that was accurate, yes, sir.

22 Q And on August 15, 2013, if you rewound it to
23 10:38 p.m., it would show you what happened at 10:38 p.m.,
24 wouldn't it?

25 A Yes, sir.

1 Q Okay. So the time would have been right that day?

2 A Yes, sir.

3 Q So Trooper Duncan told you when to start and he told
4 you when to stop; is that correct?

5 A Yes, sir. But I had to rewind it to see what
6 happened to the fence.

7 Q And then when you rewind it, he told you ---

8 MR. HARTER: Go ahead and finish. Go ahead.

9 THE COURT: You can finish your answer, Mr. Cagle.

10 THE WITNESS: Yes, sir. Yeah.

11 BY MR. BRYAN:

12 Q So you rewind it to the point where the lady hit the
13 fence, where you could see it?

14 A A little before that. Yes, sir.

15 Q Before that. And he told you to start there?

16 A Yes, sir.

17 Q And you went until he told you to stop?

18 A Yes, sir.

19 Q And when you sped it up either two-second or
20 four-second increments, he told you to do it?

21 A No, sir. I actually done it to get it to that time
22 that he wanted.

23 Q Did he tell you to stop at any time when you were
24 running it?

25 A Just when the lights were reflecting the image back

1 on his recording.

2 Q Okay. Of him?

3 A Of -- yes, sir.

4 Q And you stopped it, you turned the lights off and
5 then y'all recorded some more?

6 A We recorded again. Yes, sir.

7 Q You recorded the whole thing a second time?

8 A Yes, sir. Yes, sir.

9 MR. BRYAN: No further questions.

10 THE COURT: You can step down, Mr. Cagle. Thank you.
11 You need to stay around.

12 REDIRECT EXAMINATION

13 BY MR. HARTER:

14 Q What portion of the monitor might not be showing on
15 this image that we're looking at today?

16 A It looks like the very top and the -- it would be the
17 right side of the monitor.

18 Q Okay. How much? What section?

19 A I wouldn't -- I wouldn't say much because you can see
20 part of it on the left side and the bottom.

21 Q Whether the date says August 15th or August of 2010
22 or whatever, do the images that have been portrayed on
23 these disks, this disk that we've looked at from Channel 5
24 and Channel 6, accurately portray and represent the images
25 that were on your recording system when Trooper Duncan

1 came to your place of business?

2 A Yes, sir.

3 MR. HARTER: Thank you.

4 THE COURT: You can step down, sir.

5 MR. BRYAN: One more question.

6 RECROSS EXAMINATION

7 BY MR. BRYAN:

8 Q At those times shown on the monitor; is that
9 correct?

10 A Excuse me. I ---

11 Q At the time shown on the monitor?

12 A Uh-huh.

13 Q Yes. Is that -- it shows accurate video at the time
14 shown on the monitor?

15 A Yes, sir.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. HARTER:

18 Q How many times have you had somebody run into your
19 fence exactly like that at that place of business?

20 A Never.

21 Q And even if it said April of 2013, that's a picture
22 of what happened and what's recorded on your monitor in
23 the system, correct?

24 A Yes, sir.

25 MR. HARTER: Thank you.

1 THE COURT: Now you can step down, Mr. Cagle. You
2 need to stay with us back in one of the waiting rooms.

3 MR. HARTER: Thank you.

4 THE COURT: Mr. Bolt, if you'd tell the jury just to
5 be patient with us, that we're working on some issues and
6 we'll try to get them out just as soon as we can. If
7 you'd tell them that, please, sir.

8 MR. HARTER: Your Honor, we'd call Al Duncan.

9 THE COURT: Okay. Madam Clerk?

10 WHEREUPON,

11 AL DUNCAN

12 After having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HARTER:

15 Q Trooper Duncan, will you give the Court your full
16 name, please.

17 A Yes, sir. It's Aaron Lee Duncan, II.

18 Q Okay. And where do you live, Al?

19 A I live in Greenwood.

20 Q Okay. Let's make sure you get on that microphone.

21 A Yes, sir.

22 Q How old are you?

23 A I am 46.

24 Q Okay. And were you previously employed by South
25 Carolina DPS?

1 A I was, sir.

2 Q Okay. How long were you employed at DPS?

3 A I started my career with the Highway Patrol August

4 the 14th of 1994.

5 Q Okay. And are you with the Highway Patrol now?

6 A No, sir. I retired.

7 Q Okay. When did you retire?

8 A I retired August the 17th of 2017.

9 Q Okay. And when you were -- where are you employed

10 now, or what do you do now?

11 A I currently work with Warren Forensic Engineers and

12 Consulting.

13 Q Okay. And were you a member of the MAIT team?

14 A I was, sir. I joined Highway Patrol MAIT team in

15 March of 2008 as full-time MAIT unit.

16 Q And that's -- what is the purpose for the MAIT team?

17 A That is the Multidisciplinary Accident Investigation

18 Team. That -- that unit of the Highway Patrol

19 investigates more thoroughly the serious collisions or

20 questions in a collision that the average trooper is just

21 not trained to do.

22 Q How long has the MAIT team been the MAIT team -- has

23 there been a MAIT team?

24 A As I recall, I can't remember if it was '94 or '96

25 when it fully got enacted, but they started developing it

1 in '94.

2 Q Okay. Now, I want to go ahead and move now to the
3 day of August of 2013, and I want to ask you if you went
4 to a business establishment at a recycling or scrap yard
5 on Highway 76 to investigate whether or not there was any
6 surveillance video of an accident that had occurred on 76
7 on August the 15th of 2013.

8 A I did, sir. As I recall, it was August the 20th that
9 I actually went out there. That morning I had been
10 dispatched by my supervisor. And at that time, I was a
11 corporal with the MAIT team. The supervisor was a
12 Sergeant Brock. He sent me to lead the investigation on
13 this collision that we were looking at. Went that morning
14 to the recycling center and met Corporal Hunter.

15 Q Okay. And I just want to ask you about information
16 as to how you captured information from the surveillance
17 video, okay?

18 A Absolutely.

19 Q That's what our focus is.

20 A Absolutely.

21 Q Okay. All right. Now, did you meet with and/or talk
22 to Matt Cagle?

23 A I did, sir.

24 Q Okay. And did you determine, based upon those
25 conversations, that there was some recording of images on

1 a system what would have a bearing on the collision which
2 occurred on 76 near this scrap yard that evening?

3 A Yes, sir. We did.

4 Q Okay. And tell the judge how you went about -- what
5 you did when you went there to Matt's business.

6 A Right. We -- we arrived, we looked at the footage
7 that he had, and we realized that he did have cameras
8 facing in the direction of the crash. Mr. Cagle was not
9 familiar with a way to get the data from the hard drive of
10 the system he had, his surveillance system, onto any kind
11 of a disk or I call them a thumb drive, but the little
12 small jump drives, anything that they can transfer it to
13 us. And in these situations, we have typically realized
14 that that evidence can be lost, so I set up a camcorder on
15 a tripod in front of the monitor for Mr. Cagle's
16 surveillance system, had him get it in line with the time
17 frame that we were looking at because we had previewed and
18 made sure it was there. Once he got it in that line, we
19 started the recording and got it to the parameters of what
20 time frame we were looking for and captured the evidence
21 that was on the video.

22 Q Okay. And this looks like one of the camera images
23 from Channel 5. And, Al, is this -- you actually, on the
24 camcorder, recorded off of the monitor that Mr. Cagle had
25 in his business.

1 A That's -- that's correct. You can see my reflection
2 in the monitor as well. Couldn't cut that out.

3 MR. HARTER: Can we advance the image now?

4 BY MR. HARTER:

5 Q And this is picking up with August 15, 2013,
6 according to this image, at 10:57:39 p.m., right?

7 A Yes, sir.

8 (WHEREUPON, Defendant's Exhibit No. 6, a video, played in
9 open court.)

10 Q I think I see a bald head in one of those reflections
11 there.

12 A It does have a tendency to shine and reflect. Yes,
13 sir.

14 Q Does it, in any way, obscure your ability to
15 visualize what's happening on 76?

16 A No, sir.

17 Q And this information that you recorded, it looks like
18 this is one angle ---

19 A Yes, sir.

20 Q --- going back facing back towards Clinton, correct?

21 A That is correct. Yes, sir.

22 Q Okay. And did that angle of the recording show at
23 10:58:54 lights of a vehicle crashing into a fence?

24 A Yes, sir.

25 Q Okay. It is what -- I mean, whatever it is, it is?

1 A That's correct. Yes, sir.

2 Q All right. Now, did you also record anything from
3 the other camera, which was a Channel 6 camera, I think?

4 A Yes, sir. As the video continues through and follows
5 through, it will start with the other angle as well.

6 Q Okay.

7 A Again, he couldn't get either one from the hard
8 drive ---

9 Q Okay.

10 A --- so we had to video record both of them with a
11 palm-held camcorder.

12 Q And this shows a Channel 6, right?

13 A Yes, sir. That's correct.

14 Q Okay. Now, Al, at some point, as this stuff -- as
15 this disk runs continuously, there are sections on it
16 where it skips or jumps.

17 A When you say "as this disk runs," as my recording
18 runs or as what I'm recording runs?

19 Q As what you record -- I mean -- I'm sorry. As what
20 you recorded has some skips in it.

21 A Yes, sir.

22 Q Tell the judge why and how those skips are there.

23 A Yes, sir. The reason there are some skips,
24 especially starting out at the first of it is the video
25 is getting to the part of -- of the, for lack of a

1 better term, the meat and potatoes of what we're there to
2 see.

3 We didn't need to capture everything prior to the
4 time frame of the event that we were looking for or
5 anything beyond the time frame of the event we were
6 looking for. That would just crowd up room on the hard
7 drive that is used by the entire state's MAIT team. And
8 in order to preserve that room, we try to limit it to just
9 the data that we need. I mean, if we recorded everything,
10 we'd have just a bunch of data that was useless to the
11 investigation.

12 So he has -- Mr. Cagle has forwarded that to the time
13 frame that we were wanting to look at specifically because
14 as we had previewed the tape or the surveillance video, we
15 had previewed the loop, and he backed it back up and then
16 walked it up to the time we wanted. And we started the
17 recording prior to him getting it to the exact location
18 that we wanted, but was able to slow it down and watch it
19 from there.

20 Q Just like if the court reporter, if the jury comes
21 back and says we want to hear pieces of the testimony, the
22 court reporter would fast-forward till we got to that
23 point, right?

24 A That's correct. Yes, sir.

25 Q Okay. Now let's talk about the equipment that you

1 used to record the images that you saw on the --

2 Mr. Cagle's monitor.

3 A Yes, sir.

4 Q What was that?

5 A The State had gone through -- as a MAIT unit, you use
6 the video quite regular. We video all the scenes, we
7 video all the cars, we video our process of doing things,
8 if possible. So at this particular point in time, I had a
9 Sony hand-held DVD recorder. And as I recall, it was a
10 hard drive recorder. And that information didn't record
11 to a tape or to an SD card or to a disk. It recorded to
12 the hard drive within the camcorder, or the palm-held
13 camcorder itself.

14 That information was saved on that camcorder as it
15 recorded it. It was taken back to my office and loaded
16 into my computer where the files were -- that MAIT had
17 recorded were combined into one video, and then it was
18 saved to the -- what they call the M drive or the MAIT
19 drive for the Highway Patrol. And MAIT team has access
20 to that drive. No other troopers do. So that's saved
21 there as our evidence for our investigation.

22 Q That's kind of like a chain of custody thing,
23 right?

24 A Yes, sir. That is secure.

25 Q So the information that you captured on this

1 camcorder went into the hard drive which was the MAIT
2 team's secure hard drive.

3 A That's correct. Yes, sir.

4 Q Okay. Now, Al, did you look at this -- the images
5 we're looking at and have on the screen now are
6 Defendant's Exhibit 6, which is a disk that was brought to
7 us yesterday by a member of DPS. And I want to ask you if
8 we can look at that. I want to ask you, does this --
9 we're going to scan through it, but does this fairly
10 represent the recording you made from Matt Cagle's monitor
11 when you went to his place of business and recorded the
12 events that appear to relate to this incident or time
13 frame related to this incident?

14 A Yes, sir.

15 MR. HARTER: Okay. Can we just kind of run through?
16 (WHEREUPON, Defendant's Exhibit No. 6, a video, played in
17 open court.)

18 BY MR. HARTER:

19 Q And we're running now through 10:58:08, 09.

20 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
21 to play in open court.)

22 Q Okay. We're going through 10 probably 58 through --
23 p.m. through 11 p.m. on Channel 5, correct?

24 A Yes, sir.

25 Q Okay. Is that accurate of what you recorded from the

1 monitor of ---

2 A It is, sir. There's ---

3 Q --- Matt Cagle's business?

4 A Yes, sir. It's a -- it's a constant recording that
5 went from the time I started the recording until the point
6 in time that we ---

7 Q Okay. And the date and time we're talking about is
8 stamped on the monitor 10 -- I'm sorry -- 8/15/2013 at
9 10 p.m., correct?

10 A That's correct. And that's recorded by his
11 surveillance system. That's not by my camcorder.

12 Q Okay. So this is an exact picture of what you took
13 off of his system?

14 A That is, yes.

15 Q And that is a picture of his system.

16 A Yes, sir.

17 Q Just as it moves.

18 A A bunch of them combined together to make it move,
19 Yes, sir.

20 Q Okay. Now let's look at the Channel 6.

21 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
22 to play in open court.)

23 Q The this also bears the date of August 15, 2013,
24 beginning at about 10:58; is that right?

25 A Yes, sir.

1 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
2 to play in open court.)

3 Q Okay. And we're letting it run through 10:58 p.m.

4 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
5 to play in open court.)

6 Q We're letting it just run on so you can see through
7 11 p.m., correct?

8 A Yes, sir.

9 Q Okay. Now, that segment that we just looked at, is
10 that a true and accurate representation of what you
11 recorded on the camcorder when you went to Mr. Cagle's
12 business?

13 A It is.

14 Q Okay. And is that -- is that -- both of these angles
15 that we've talked about and looked at from Channel 5 and
16 Channel 6, is that an accurate portrayal of what you
17 recorded on the camcorder and what you put into the MAIT
18 team hard drive system?

19 A It is.

20 Q Okay. Did you, in any way, do any edits or anything
21 to the copy that you -- what you ran on your DVD?

22 A No, sir. As for editing, the clips that I recorded
23 were taken and added into -- connected to each other so it
24 would be one movie clip, and the volume was removed from
25 it so that you wouldn't have any background noise or

1 people talking or anything like that, which was customary
2 of any video that the MAIT team actually records
3 themselves so you don't have all the noise and the
4 disruption to it.

5 Q Okay. So ---

6 A But the video itself, as far as from the time the
7 recording button was hit until the record button was
8 stopped, is the same video. Nothing was cut or taken out
9 of or edited about that part.

10 Q And you say there was no talking. That would be
11 talking in the room while the recording is going on.

12 A That's correct.

13 Q But there was no sound on the video or surveillance
14 video?

15 A No, sir. Not from the surveillance video at all.
16 No, sir.

17 Q Okay. Now, the camcorder equipment that you used,
18 you said it was what? Sony?

19 A I believe it was a Sony. Yes, sir.

20 Q Did it function properly?

21 A It did, sir.

22 Q You have any issues with it in not accurately
23 recording, storing or transmitting information?

24 A No, sir.

25 Q How about the computer that you used? Any difficulty

1 or issues with that?

2 A No, sir. No issues with them. They were eventually
3 upgraded to a newer system, but aside from that, when I
4 turned it in, it was still functioning properly and
5 worked.

6 Q Okay. Excuse me a moment.

7 Al, did anybody edit anything out of the mainframe?
8 When this thing goes to Columbia and into the mainframe,
9 did anybody edit anything out of the mainframe of what you
10 recorded and sent?

11 A No, sir. Everything looks the same on it, and no one
12 should have had access to it to do any changes.

13 Q And it's a fair representation of what you recorded
14 from Matt Cagle's surveillance equipment; is that right?

15 A Yes, sir.

16 Q Okay. I think I probably know the answer to this,
17 but the equipment that you have and you used, was it
18 reliable?

19 A Yes, sir. I had used it for a while. In fact, the
20 last I heard, it was passed over to one of my subordinates
21 when I retired and they were still using it.

22 Q Okay. And did you have any maintenance issues with
23 it?

24 A No, sir.

25 Q And that was your equipment that you maintained?

1 A It was on my inventory, and it was mine to keep up
2 with. Yes, sir.

3 MR. HARTER: Okay. Thank you. That's all the
4 questions I have.

5 THE COURT: Okay. Mr. Bryan?

6 CROSS EXAMINATION

7 BY MR. BRYAN:

8 Q Mr. Duncan, you say this was a Sony camera?

9 A As best I recall. Yes, sir.

10 Q You say that the DPS owned it?

11 A Yes, sir.

12 Q All right. Tell me how long you had used it before
13 this particular time, August 15, 2013.

14 A To tell you exactly how long, I couldn't be exact
15 with it without going back and trying to find inventory or
16 property transfer sheets as Highway Patrol kept up with.
17 Before this one, I had one that was a DV drive that worked
18 with a disk, and I don't know when I changed from one to
19 the other. I couldn't tell you, sir.

20 Q But this was a hard drive?

21 A As best I recall. Yes, sir.

22 Q And it didn't have a chip in it or a disk in it?

23 A No, sir. You had to plug it straight into the
24 computer.

25 Q You had to go plug it into a computer.

1 A That's correct.

2 Q And you say you went and plugged it into your
3 computer?

4 A That's correct, sir.

5 Q Transferred it from your computer to the DPS
6 computer.

7 A As I recall, I gathered the information that I had,
8 because I had three video clips on there. Lance Corporal
9 Anderson had one video clip on there where she had looked
10 at Ms. King's vehicle. I took those -- her clip because I
11 already had three on my computer. I added her fourth clip
12 to it to join it together to make that one movie, and then
13 it was sent. I clicked it and transferred it over to that
14 drive.

15 Q Over to the DPS computer?

16 A To the Highway Patrol's M drive. Yes, sir.

17 Q Okay. And then how did it get from there to DPS?

18 A That is the DPS. Everything is connected through ---

19 Q So there was one transfer from your camera to your
20 computer and then from your computer to the DPS computer.

21 A That's correct.

22 Q And on both those transfers, you personally did them.

23 A Yes, sir.

24 Q Now, the camera that you used, was it periodically
25 serviced or ---

1 A As far as service ---

2 Q Anything done to maintain it?

3 A No, sir. There wasn't any problems with it that need
4 to maintain anything beyond using it. If I noticed any
5 errors with it, it would have been replaced, as was the
6 DVD drive camera prior to it.

7 Q And the poor quality of the video is just because of
8 the poor quality -- it was nighttime; is that correct?

9 A What do you mean, the poor quality of the video?

10 Q Poor quality of the video, what you can see.

11 A What you see there is what I was able to capture from
12 Mr. Cagle's video, that the clarity of that is due to his
13 surveillance cameras. That's just the way it was to
14 capture it.

15 Q I believe in your notes you made you said you copied
16 it as well as possible.

17 A Yes, sir. I mean, it's -- it's not ---

18 Q You acknowledge -- go ahead.

19 A --- perfectly squared up.

20 THE COURT: Y'all don't talk over each other. Wait
21 for questions to be finished, wait for answers to be
22 finished before the other begins talking.

23 BY MR. BRYAN:

24 Q Go ahead.

25 A Yes, sir. As you can tell, looking at the frame, the

1 frame of his monitor may not be perfectly squared up with
2 the camcorder itself. I didn't take time to level the
3 tripod or to square everything up to make it a perfect
4 fit, but that is the best I could capture his video using
5 another camera to do so.

6 Q And it's nighttime also?

7 A Well, in the video that we're capturing, yes, sir, it
8 is nighttime.

9 Q Now, I believe Trooper Hunter was the primary
10 investigator; isn't that correct?

11 A He would have been, yes, sir, as far as who's going
12 to complete the report itself. The MAIT team doesn't come
13 in and do his paperwork for him. We gather the facts and
14 the information to give to him to compile his report.

15 Q But you review his paperwork, don't you?

16 A We do take his paperwork and look at it. Yes, sir.

17 Q And you reviewed his reports -- his reports?

18 A Which reports, sir?

19 Q The accident report Corporal Hunter ---

20 A I can't say. At that particular point in time, my
21 job, I was a corporal. The sergeant would have been more
22 in charge of reviewing all of the things to check his
23 detail, but I can't say whether or not I reviewed it for
24 any particular purpose or not. No, sir.

25 Q So you can't say you ever saw any of Hunter's reports

1 or investigation on this accident?

2 A Well, I won't say I've never seen his reports or his
3 investigation of this accident. I just don't -- I'm not
4 going to say that I reviewed it to check it for any
5 accuracy to -- that -- that's not the job. There's a
6 reviewer's spot on that. So if that's what your question
7 is, that's what I ---

8 Q Do you remember reviewing it? You don't remember
9 reviewing it. Is that what you're saying?

10 A I guess you need to qualify what you mean by
11 reviewing. There's a spot on there for a supervisor to
12 review that report. And ---

13 Q But, I mean, did you actually look at it and read it?

14 MR. HARTER: Y'all have to talk one at a time.

15 Mr. Bryan, let him finish his answer now.

16 Go ahead.

17 THE WITNESS: Have I looked at it? Have I read his
18 report? Yes, sir. But I was not the reviewer.

19 BY MR. BRYAN:

20 Q Yes, sir. I understand. Thank you.

21 This video, when you went out and took it, did you
22 tell Mr. Cagle when to start?

23 A I don't recall that portion at all. It's my
24 understanding Corporal Hunter had informed me that the
25 video was out there. That's why I met with him that

1 morning at the recycling center. We went inside, we
2 observed it. Corporal Hunter has a time frame, I'm
3 assuming, from when 9-1-1 was called to know what
4 proximity to be viewing. I don't know if Mr. Cagle had
5 viewed it prior to or not, but we looked at the video,
6 realized that it had potential evidence on it, and I
7 recorded the video.

8 Q Who told him when to start playing the video?

9 A As far as when to push the button or what time frame
10 to look at?

11 Q Push the button. Well, both.

12 A Well, as far as with the recording part, once I had
13 my stuff set up, I told him to start the video. And then
14 as far as for what time frame, I'm assuming that that's
15 something he had found either from Corporal Hunter or
16 maybe he had looked at the video prior to. I'm not
17 certain of that.

18 Q So he picked the time, and you operated the video
19 camera?

20 A I'm not going to say that he picked the time. I'm
21 going to say that the time was determined of when the
22 possible evidence was in there.

23 Q That was my question.

24 A But I operated the video camera.

25 Q You determined the time when it was possibly in

1 there?

2 A Not me in particular. No, sir.

3 Q Mr. Cagle determined it?

4 A I don't recall who come up with the time frame on it.
5 I'm assuming that Corporal Hunter had that information
6 when we walked into the door because of 9-1-1 information.

7 I met Corporal Hunter that morning to record the
8 video. I had further duties up the road with a prior
9 appointment. Then I came back that afternoon and took the
10 pictures. So this particular trip was set up through
11 Corporal Hunter.

12 Q Was Corporal Hunter present when you did this
13 video?

14 A He was.

15 Q And as far as speeding up the video where you jump
16 two seconds and four seconds and various things, did you
17 tell Mr. Cagle when to do that or did he do it?

18 A I don't recall what was said about it. I know that
19 he progressed that video to the parameters of where we
20 needed to get started so that I didn't capture extra
21 footage to take up space on the hard drive.

22 Q I'm going to show you Corporal Hunter's -- well, let
23 me ask one other question. In your statement you made,
24 you said you were investigating a two-car collision where
25 the first collision is a two-unit collision on US 76,

1 Laurens, the second unit is another two-unit collision
2 involving one of the vehicles and a third vehicle for the
3 sequence, if you will. We are investigating the first
4 which involves a 2006 Mustang owned by Laurens County and
5 a 2008 Dodge Charger. Is that what you investigated, the
6 accident that -- the first collision that Deputy Holmes
7 was involved in?

8 A That was what my focus was. Yes, sir.

9 Q And did you review Trooper Hunter's accident report?

10 A No, sir. JT Moore reviewed Trooper Hunter's accident
11 report.

12 Q Well, have you ever seen that before?

13 A Yes, sir. I have seen this before.

14 Q And you've read it?

15 A Well, I mean, I've looked at it. Yes, sir. Did I
16 say I read it? I -- I have not combed over it for errors
17 or ---

18 Q What would you read on there?

19 THE COURT: All right. We need to make sure that the
20 question is finished before the answer is given ---

21 MR. BRYAN: Yes. I apologize.

22 THE COURT: --- and the answer is given before the
23 question is asked.

24 MR. BRYAN: I apologize, Your Honor.

25 THE COURT: Thank you.

1 BY MR. BRYAN:

2 Q Go ahead.

3 A I would have looked at the details of the crash as
4 far as what the date, the time, the people involved, the
5 vehicles and things like that to use in my investigation
6 on my portion of it.

7 Q What is the time of crash on there?

8 A This says 2238.

9 Q And what time is that? 10:38?

10 A That would be 10:38.

11 Q Did you, at any time, operate or make any -- do
12 anything with Mr. Cagle's security system?

13 A No, sir. I did not touch Mr. Cagle's security
14 system.

15 Q And I believe the monitor was a typical flat monitor
16 up on the wall; is that correct?

17 A As I recall, it was right above a desk in that area.
18 Yes, sir. But I'm not -- how it was affixed, I don't
19 know. I didn't -- didn't touch it, didn't move it. It
20 could have been sitting on a stand. It could have been
21 sitting on a cabinet. It could have been fixed to the
22 wall. I'm -- I'm uncertain and indifferent.

23 Q Now, this would have been August the 15th, 2013; is
24 that correct? Well, it was a few days after that. Do
25 you recall exactly?

1 A I believe it was August the 20th.

2 Q Okay.

3 A But I'm not 100 percent certain.

4 Q 2013?

5 A There is a placard at the beginning of the movie that
6 would identify the date and the time that I was there.

7 Q When's the first time after that that you looked at
8 it?

9 A I would have taken care of the fieldwork that day.
10 The notes that you have in front of you would have the
11 date and time that I took notes on the video, but to say
12 what time I actually sat down and looked at it again, I --
13 I couldn't tell you exactly.

14 Q Okay.

15 A When the video was actually combined, all clips were
16 put together on the 23rd, but I would have to look at the
17 video file itself to be able to identify it properly.

18 Q Would I be correct to say you did the work on the
19 video that you were going to do within the next 30 days
20 after you took it?

21 A It should have been done within that time frame.
22 Yes, sir.

23 Q Now, after that, when is the next time that you saw
24 the video?

25 A We have a -- within the MAIT team, there is what's

1 called the IRC is the internal review committee. All
2 cases are combined up and taken down there for review.
3 Every lieutenant and sergeant across the state reviews the
4 work and the effort put into each investigation to make
5 sure that it's being done in accordance with the MAIT
6 protocol and within accepted principles within the
7 reconstruction industry. That information is looked at
8 prior to going to the IRC. Sergeant Brock, who would have
9 been in charge of this, would have sat down and reviewed
10 this case with the teammates, and I would have seen it
11 again then.

12 Q Approximately when would that have been in relation
13 to the time you took the video?

14 A It would have been, as you mentioned earlier, MAIT
15 team has 30 days on a regular case, 45 days on a felony
16 case, so it should have been sometime within 30 days,
17 maybe a little bit more, depending on when the next
18 internal review committee would have been.

19 Q After that, when is the next time that you saw the
20 video?

21 A I believe Mr. Harter and I spoke, and that would have
22 been sometime in October, November of last year.

23 Q Okay. 2017?

24 A Yes, sir.

25 Q So there was a four-year span from the time you

1 processed this tape until you saw it next.

2 A Not from the time I processed it. No, sir. From the
3 time that I -- that the case file itself was done and shut
4 down, it would have been somewhere in the neighborhood of
5 about that. Yes, sir. I guess.

6 Q All right. Since last you say October or November?

7 A Give or take. Yes, sir. I'm not sure of the exact
8 time.

9 Q Since then, when was the next time that you saw the
10 video?

11 A I received it from the MAIT files when I got the
12 subpoena for Court. I reviewed it, looked at it, gone
13 over the notes and done typically as anybody would to
14 prepare for court. So ---

15 Q So that would have been ---

16 A --- several times.

17 Q Last week?

18 A I'd say so much as the night before last I looked at
19 it.

20 Q And you say you retired. When did you retire
21 from ---

22 A August the 17th of 2017.

23 Q And you work for Warren Engineering now?

24 A Warren Forensic Engineers and Consultants. Yes, sir.

25 MR. BRYAN: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. HARTER:

Q Does that -- the images we looked at on the screen here look any different today than it looked when you recorded it?

A No, sir. Everything about it, as I recall, looks exactly the same.

Q Irrespective of the time recorded on any accident report by anybody, this is a copy of what you recorded from Mr. Cagle's equipment, right?

A That is correct.

MR. HARTER: Thank you, sir. That's all.

THE COURT: Mr. Duncan, let me ask you, Mr. Bryan had asked you on Trooper Hunter's accident report, he indicates a time of 10:38.

THE WITNESS: Yes, sir.

THE COURT: Okay. Does that video have any images at the time of 10:38.

THE WITNESS: I -- I can't say what was prior to or even if the time was synced up to verify what time was on his surveillance as I was standing there. I know that what I saw on the video lines up with the information that I had about the crash at that time and I found out as I continued on with the investigation.

THE COURT: Mr. Harter, is there not an accident

1 report for the second collision?

2 MR. HARTER: Yes, sir. There are.

3 THE COURT: I thought I saw it in the ---

4 MR. HARTER: There are two accident reports, Judge,
5 and all we're interested in is this coming in. It's
6 purported -- it's whatever it purports to be.

7 But to answer your question, yes, sir, there are two
8 separate -- there are two separate accident reports.

9 THE COURT: Right. I saw it yesterday ---

10 MR. HARTER: Right.

11 THE COURT: --- but I can't find it today.

12 MR. HARTER: Right. And, you know, irrespective of
13 the time, of course, we say that is the image that it is.
14 But to answer your question, Judge, there is an accident
15 report that says time of collision, 22:38, and that is
16 noted on Hunter's report, and then on the other one, it
17 also says 22:38.

18 THE COURT: But, my question is, what I'm concerned
19 about, Mr. Duncan, is if, in fact, the crash happened at
20 10:38 and the evidence indicates that both crashes were
21 very close in time, would that mean that the time of the
22 Cagle recording would be almost 20 minutes off? Would it
23 tell me that? Is that what it's telling me? If the crash
24 happened at 10:38 but the recording equipment says it
25 happened at 10:58, then would the recording equipment be

1 off 20 minutes?

2 THE WITNESS: Would it be possible for me to look at
3 the collision report, please.

4 THE COURT: Sure. Yeah. If you need to look at
5 anything to answer my question.

6 THE WITNESS: Yes, sir. Please. If I could see one.
7 One collision report would be sufficient.

8 THE COURT: All right. Would just handing you the
9 book help you?

10 MR. HARTER: I can hand it right ---

11 THE COURT: Okay. He's looking. He's got what he
12 needs.

13 MR. HARTER: Okay.

14 THE WITNESS: When you look up in the upper corner,
15 the collision report has the time that Terry Hunter says
16 he received the call and that he responded to the call.
17 Those numbers -- as a trooper for the years that I was,
18 those numbers sometimes are more accurate than others
19 because we try our best to determine when the crash -- but
20 without being there, we don't know for certain.

21 As far as the time goes on this, I have had
22 conversation with Mr. Cagle, as I'm sure you're aware. I
23 don't know how well he functions with keeping ---

24 MR. BRYAN: Your Honor, I object.

25 THE WITNESS: --- things up to date to make sure ---

1 THE COURT: This is in camera. This is in camera.

2 THE WITNESS: --- to make sure that the time is being
3 kept up with to be exact. I know that as I've done this
4 thing for years, but I have noticed that some places have
5 their time accurate, some places don't, because that is
6 one of the things that the MAIT team does. As you're well
7 familiar, we go and we look for anything that we can find.

8 So would it be the first time that a camera has been
9 off in relation to what time something actually occurred?
10 No, sir. Could it be that Terry Hunter has his times off
11 a little bit? Yes, sir. That's possible as well. But
12 from what I saw, the information gathered in that video
13 reflects perfectly the evidence that's on the roadway and
14 what took place in the crash.

15 THE COURT: All right. Thank you.

16 THE WITNESS: Yes, sir.

17 THE COURT: Anything to follow up to the Court's
18 question?

19 MR. BRYAN: Yes, sir.

20 THE COURT: Okay.

21 RECROSS EXAMINATION

22 BY MR. BRYAN:

23 Q Mr. Duncan, in the MAIT report, you also reviewed an
24 incident report filled out by Deputy Holmes, did you not,
25 as part of the MAIT report?

1 A I did not. No, sir.

2 Q You never looked at that?

3 A I'm not going to say I didn't look at it, but I
4 didn't review it.

5 Q Well, I'm using the wrong word. Have you ever seen
6 Deputy Holmes' report of the accident?

7 A Yes, sir. I have seen the incident report.

8 Q All right. And what day does he say it occurred?
9 This is Deputy Holmes, not ---

10 A What date did he say it occurred?

11 Q Time. Excuse me. Time.

12 A He has on a 24 hour clock of 2237 as the incident
13 time.

14 MR. BRYAN: All right. Thank you. Nothing further.

15 THE COURT: Thank you, Mr. Duncan. You can step
16 down.

17 THE WITNESS: Yes, sir.

18 THE COURT: You'll need to stay with us, but since we
19 have witnesses sequestered . . .

20 Mr. Harter, I assume that's all your witnesses as it
21 relates to the Court's in-camera review on the issue of
22 the video?

23 MR. HARTER: It is, Judge. And just as a caveat, we
24 do not plan to offer any expert -- ask Mr. Duncan to offer
25 any expert opinions.

1 THE COURT: If I rule that the video is admissible,
2 if I do, are you not planning to call Mr. Cagle or
3 Mr. Duncan to lay a foundation for the video before the
4 jury?

5 MR. HARTER: Judge, I will if that's -- if that
6 becomes necessary. I mean, I thought that's what we're
7 trying to do here. I was trying to move things along, and
8 I know we've taken a while to do. I'll do whatever you
9 want, Judge. I mean, if -- but -- I just try not to drag
10 things out any more than we have to.

11 THE COURT: All right. Mr. Bryan, anything in
12 addition to what you've already submitted to the Court
13 concerning the video, your memorandum? Anything in
14 addition to that?

15 MR. BRYAN: Your Honor, I think the memorandum says
16 it all, but I think the key element -- legal element, does
17 it create -- will it create more questions and more
18 confusions to the trier of fact, the jury, than it will
19 answer. And with all the discrepancies between time, the
20 haziness, the darkness and everything else, we believe
21 that any probative value it may hold would be far
22 outweighed by the confusion and misrepresentations that
23 the jury would get from it and inaccurate information.

24 THE COURT: Do you want to briefly respond,
25 Mr. Harter?

1 MR. HARTER: I would like to respond, Your Honor.
2 And I will tell you, I believe that the case law that I'm
3 familiar with is sort of fact-driven on this kind of
4 stuff. And I'm sure, Judge, you know the rules of
5 evidence probably better than most of us.

6 Rules of evidence are there to help us get to the
7 truth and not be an obstruction to the truth. And whether
8 this accident happened at 10:57 on the 15th of August or
9 some other time or another day, that's really not the
10 issue. The issue under the rules of evidence is whether
11 or not the information offered accurately portrayed what
12 it purports to represent.

13 Rule 102 says the rule shall be construed to secure
14 fairness in administration, elimination of unjustified
15 expense and delay, promotion of the development of the law
16 of evidence to the end that the truth may be ascertained
17 and proceedings justly determined. And under -- I'm sure,
18 Judge, you know Rule 901 says the requirement of
19 authentication or identification as a condition precedent
20 to admissibility is satisfied by evidence sufficient to
21 support a finding that the matter in question is what its
22 proponents claim.

23 This is video footage of Highway 276 between the
24 hours of 10:00 and 11:00 when this accident occurred, when
25 these accidents occurred. There is no ifs, ands or buts

1 about it. It shows -- and we've heard the plaintiff's
2 case. And the plaintiff's case indicates that there is
3 questions of fact as relate to whether or not there were
4 lights on, and questions of fact as relate to what time
5 element is involved with these two accidents on 76. And
6 it's clearly represented in Channel 5 of the video that
7 the car, the actual car that Mrs. Watts hit is seen in the
8 video. Mrs. Watts' car, there's a car that careens off
9 and hits a fence is seen in the video, and there are
10 lights on.

11 And that is -- you know, there are disputed facts
12 here. And there is also claims or questions that there
13 were no lights on any of the vehicles out there. And
14 we've just got these witnesses that have kind of gone all
15 over the place with it. This is information that is
16 reliable, it is information that is relevant, and you know
17 the case law as I said, seems like it goes all over the
18 place. But it's fact-driven. I mean, the case law is
19 fact-driven. And the burden is not significantly high
20 with respect to establishing the admissibility or
21 authentication of surveillance video.

22 There is nothing confusing about this. The jury can
23 take it and consider it for what it's worth. The burden
24 under Deep Keel, LLC versus Atlantic Private Equity, the
25 burden to authenticate evidence is not high and requires

1 only that the proponent of the evidence offer a
2 satisfactory foundation from which the jury could
3 reasonably find the evidence is authentic.

4 And so I do not see -- I mean, this video is short,
5 it's clear. What it shows, what it doesn't show, it is
6 evidence from which the lawyers in the case, all of us,
7 could make arguments as to references or inferences that
8 should be drawn from this video.

9 But, Your Honor, I just respectfully submit that this
10 surveillance video, we've climbed the hill here. We've
11 done everything I suggest we need to do in order for this
12 video to find its -- for this jury to be able to see these
13 images. And I don't see how it is, in any way, not
14 relevant, I don't see in any way that it is not probative.
15 And, heck, there's things on here that might help me,
16 things on here to help them, so it's certainly not
17 prejudicial. And there's no way that they can claim they
18 haven't seen or had this video for well in advance of this
19 case.

20 And I told you before when I started jabbering this
21 morning, I know I won't ever satisfy Mr. Bryan that it's
22 admissible evidence here, but I think and respectfully
23 submit that we've satisfied the rule, and I hope we've
24 satisfied you, Your Honor. And I'm sorry it took so long
25 to do it, but I believe we've done it.

1 MR. BRYAN: May I respond?

2 THE COURT: Briefly.

3 MR. BRYAN: All right. His talking about arguing it,
4 that is one of our concerns that you'll take that -- he
5 would take that video and argue that it means this and it
6 means that, which would take speculation and conjecture.
7 Rule 403 says although relevant evidence may be excluded
8 if the probative value is substantially outweighed by the
9 danger of unfair prejudice, confusion of the issue or
10 misleading the jury or is considered undue delay, waste of
11 time, needless presentation of cumulative evidence, he's
12 had -- Mr. Holmes, he's had Mr. Holmes testify what he
13 wants him to testify to. He's had evidence in the end
14 that it's cumulative to this. But it is fact-driven. I
15 would agree with that.

16 And if the Court will review the cases that we put
17 together in the memorandum, those cases clearly talk about
18 videos of videos, the unclearness of the videos, having to
19 use speculation and conjecture to interpret it, and it is
20 fact-driven on that.

21 And if you look at the cases, there are not many
22 South Carolina cases. We've got some other state cases
23 here, too. But every one of them is that whole thing. It
24 comes down to looking very similar to this case about the
25 chance of prejudice, and it is cumulative, and it is going

1 to be confusing. And I'd like to know -- I'd like the
2 Court -- make that clear. I don't think a lawyer on an
3 argument can start taking a video and making
4 interpretations of things that are not on there or any
5 part of it. He has to let the jury deal with that.

6 But I don't see how it can be anything but prejudice
7 under the cases and under Rule 403, and we object to it
8 being in evidence, Your Honor.

9 THE COURT: Thank you very much.

10 MR. HARTER: May I respond just very, very briefly?

11 Judge, under Rule 401, relevant evidence means
12 evidence tending to have a tendency to make the existence
13 of a fact more probable or less probable. Relevant
14 evidence is admissible unless it is determined to be
15 inadmissible. And this is just like a picture. If
16 Mr. Bryan or I take a picture and we hold it up here in
17 our argument and say, Ladies and gentlemen, look at this.
18 Look at what she's wearing in that picture. Look at what
19 he's holding in his hand. That's exactly what we're doing
20 here.

21 And thank you, Judge. I appreciate your continued
22 consideration.

23 THE COURT: Well, certainly, the arguments of the
24 plaintiff were very well made and I've given it serious
25 consideration. But I believe the argument goes to the

1 weight and not to the issue of admissibility. I'm going
2 to find that the probative value does outweigh any unfair
3 prejudice to the plaintiff. I find that the video is
4 admissible.

5 It would appear to me that Mr. Cagle and Mr. Duncan
6 would need to testify. Certainly, the plaintiff would
7 want to be able to cross-examine them before the jury
8 concerning the video.

9 We're going to take a very, very short break so we
10 can get the jury back out and proceed forward.

11 (WHEREUPON, a recess is taken at 11:17 a.m.)

12 (WHEREUPON, proceedings reconvened at 11:27 a.m.)

13 THE COURT: All right. Gentlemen, are we ready for
14 the jury?

15 MR. HARTER: Judge, can I make one housekeeping chore
16 with this? You made your ruling about this case. Is it
17 necessary for me to show the tape to each of these
18 witnesses just like we did in the prior hearing?

19 THE COURT: I'm not going to tell you how to try your
20 case. You do what you feel like is necessary. I've
21 already ruled that the video is admissible into evidence.
22 But after that, that's up to you.

23 Mr. Bryan, you're standing?

24 MR. BRYAN: No, sir. I was just seeing what he was
25 saying.

1 THE COURT: Oh.

2 MR. BRYAN: My cross-examination of both of them will
3 be shorter than it was before.

4 THE COURT: Okay. All right. Very good, gentlemen.
5 Bring the jury out, please.

6 (WHEREUPON, the jury entered the courtroom at 11:29 a.m.)

7 THE COURT: Good morning, ladies and gentlemen.
8 Thank you for your patience and understanding.

9 I can tell you that since about 9:15, except for a
10 ten-minute break that we took just now, we have been
11 working solid.

12 What happens is when you have really good lawyers
13 like we have in this case, they will tend to work a judge
14 pretty hard, and they've raised issues that I've had to
15 deal with. And typically, in dealing with those kind of
16 issues, I have to do it outside of your presence. So we
17 have been working. So I apologize for leaving you back in
18 the jury room now for about an hour and a half, but it's
19 just something that is necessary. I can't avoid it
20 because I have to allow the lawyers to represent their
21 clients to the best of their ability. That's what they've
22 been doing. And issues are raised, and I have to deal
23 with it. Okay. So thank you once again.

24 All right. We are now starting in the defendant's
25 case, and, Mr. Harter, I'm going to turn it over to you,

1 sir.

2 MR. HARTER: Thank you very much, Judge. Your Honor,
3 we call Matt Cagle.

4 WHEREUPON,

5 MATTHEW CAGLE

6 After having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HARTER:

9 Q All right. Scoot up to that microphone, Matthew.
10 You won't have any trouble hearing me, but we want to make
11 sure we hear you, okay?

12 A Okay.

13 Q That's good.

14 Your name is Matt Cagle, correct?

15 A Yes, sir.

16 Q Okay. Matt, will you tell the jury where you live,
17 how old you are, what kind of work you do?

18 A I'm 45 -- 44 years old. I work scrap metal. I live
19 on Robinson Road in Laurens, South Carolina.

20 Q Your scrap metal business, does it have a name?

21 A Dixie Iron and Metal.

22 Q Dixie Iron and Metal?

23 A Yeah.

24 Q Okay. And where is it located, Matt?

25 A One of them is located on Highway 76.

1 Q All right. And that is between Laurens and Clinton;
2 is that right?

3 A Yes, sir.

4 Q Okay. And I want to ask you, do you have and
5 maintain some video surveillance equipment there at your
6 business location off of 76?

7 A Yes, sir.

8 Q Okay. And I want to direct your attention back to
9 August the 15th of 2013, and I want to ask you, did you
10 have some damage to one of your fences or gates there at
11 your place of business?

12 A Yes, sir. The fence.

13 Q Okay. And tell the jury what happened and how you
14 found out about that.

15 A When we came in in the morning, our fence was laying
16 down on the ground. And nobody had told us what happened,
17 so I had to look back on the surveillance to see why it
18 was laying on the ground.

19 Q Okay. And you had equipment there that captured the
20 fenced area?

21 A Yes, sir.

22 Q Okay. You have cameras that were aimed toward the
23 gate that's on the Laurens side of your business and the
24 gate that's on the Clinton side of your business, two
25 gates?

1 A That's correct.

2 Q Okay. And this recording that you had, you viewed it
3 the next morning or the morning when you came in and after
4 you saw the gate damaged?

5 A Yes, sir.

6 Q Okay. And I want to ask you, Matt, if you'll take a
7 quick look at what we've got up here. And I want to ask
8 you if we're starting about 10:57:23, and I want you just
9 to look through this. And this says Channel 5; is that
10 right?

11 A Correct.

12 Q And that is the camera that faces toward ---

13 A Clinton.

14 Q --- Clinton. Okay.

15 A I call it the lower gate.

16 Q Okay. Wait a minute. Okay. All right. And if we
17 can, let's just advance it.

18 This is the camera that looks towards the Clinton
19 side?

20 A Correct.

21 MR. HARTER: Okay. It's okay, y'all. Just go ahead
22 and run it. And we're just going to run it from 10:57.

23 (WHEREUPON, Defendant's Exhibit No. 6, a video, played in
24 open court.)

25 BY MR. HARTER:

1 Q And is this recording for us, Matt, in real time?

2 A Yes, sir.

3 Q Okay. And the date is indicated August 15, 2013, at
4 10:57, 58 now.

5 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
6 to play in open court.)

7 Q Now, do you see something move across, and is that
8 what hit your fence?

9 A Yes, sir. A vehicle come across and went through the
10 fence.

11 Q Okay. That's the area of your fence that was
12 damaged?

13 A Yes, sir.

14 Q Okay. And this video or this recording, it is off of
15 equipment that you have there at your place of business?

16 A Yes, sir.

17 Q Okay. And is it timed? The recording, is the time
18 set and is that synchronized ---

19 A Yes, sir.

20 Q --- into the system?

21 A Yes, sir.

22 Q Okay. Now, is there another camera that shows us
23 another angle that you looked at?

24 A There's one toward the other gate toward Laurens,
25 facing Laurens way.

1 Q And is that on Channel 6?

2 A I believe so.

3 Q Okay.

4 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
5 to play in open court.)

6 Q And we're picking up on Channel 6 with 10:58; is that
7 right?

8 A Yes, it is.

9 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
10 to play in open court.)

11 Q And the same system we're talking about here, Matt,
12 controls this camera?

13 A Yes.

14 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
15 to play in open court.)

16 Q And as we wind through this, does it also show the
17 time and date ---

18 A Yes, sir.

19 Q --- of the recording off of this camera?

20 A Yes, sir.

21 Q Okay. And now let me ask you a little bit about the
22 system that you have there. Tell the jury, what is the
23 name of the recording system that you have there?

24 A It's a Lorex ECO2. It's a DVR that records on a hard
25 drive. There's no physical cassette tape, anything you

1 can remove out of it.

2 Q Okay. So it records on a hard drive; is that right?

3 A Yes. Onto like a computer.

4 Q And the hard drive is inside the DVR, correct?

5 A Correct.

6 Q Okay. And you said there was no tape or no card you
7 can pull out from the DVD ---

8 A No, sir.

9 Q --- to copy? Okay.

10 Now, let me ask you, the equipment that you used, it
11 is a recording system with cameras strategically placed;
12 is that right?

13 A Correct.

14 Q And did you put those cameras there yourself?

15 A I did.

16 Q All right. Did you maintain those cameras?

17 A Yes, sir.

18 Q The equipment that you have there, this recording
19 equipment, you said the brand name of it. When did you
20 put that equipment in?

21 A It would have been early 2013.

22 Q Okay. And is that equipment still there today?

23 A Yes, it is.

24 Q Okay. And so that information is recorded onto the
25 hard drive of your system. And how do you play it back,

1 or how do you look at it or visualize it?

2 A There's two ways. You can use a mouse that's
3 actually physically hooked to it, or there's a remote that
4 you can actually rewind and look at what you need to.

5 Q Is that the remote, by the way?

6 A Yes. This is the actual remote.

7 Q Okay. And does it play on a monitor or screen?

8 A A monitor is mounted on the wall in the top corner of
9 the office.

10 Q Okay. And have you had -- is the monitor, and is
11 that recording system and the remote, are they all
12 compatible equipment?

13 A Yes.

14 Q Have you had any issues, problems or breakdowns with
15 that equipment accurately recording what the cameras are
16 supposed to pick up?

17 A No, sir.

18 Q Okay. And that equipment, who maintains that
19 equipment?

20 A That would be me.

21 Q And did you, at any point in time, meet with a
22 representative of the South Carolina Highway Patrol to
23 view those images?

24 A Yes.

25 Q Okay. And who was that, Matt? Do you know?

1 A The first officer was Mr. Hunter.
2 Q Okay.
3 A And I told him that I cannot give you a videotape,
4 you know ---
5 Q You could not what?
6 A Give him a videotape, a copy of what happened.
7 Q Okay. And did you later meet with Al Duncan?
8 A Yes.
9 Q Okay. And did Mr. Duncan come and review that
10 recording with you?
11 A Yes, sir.
12 Q And did Mr. Duncan record information from your
13 recording onto a camcorder?
14 A Yes, sir.
15 Q Okay. Now, the recorder that you have, the
16 surveillance recorder or video equipment, does it loop and
17 cycle around?
18 A Yes, sir.
19 Q Okay. And how long does it take to over -- at some
20 point -- or copy -- does it -- is it saved or does it go
21 away after a certain period of time?
22 A Roughly about six months you can go back and view
23 what happened at any point.
24 Q Okay. Excuse me just a minute.
25 All right. And just to make sure that this is a copy

1 -- or this -- the images we looked at here a few minutes
2 ago that you mentioned and we reviewed together, those
3 were fair and accurate representations of what was on your
4 recording equipment when you came in and looked at your
5 equipment after this accident occurred?

6 A Yes, sir.

7 Q Okay. The equipment's reliable?

8 A Yes, sir.

9 MR. HARTER. Okay. All right. Thank you. Will you
10 answer any questions that ---

11 THE COURT: Okay. Cross-examination.

12 MR. BRYAN: Yes, sir. Thank you, Your Honor. May it
13 please the Court.

14 CROSS EXAMINATION

15 BY MR. BRYAN:

16 Q Mr. Cagle would you tell me the name of your
17 business?

18 A It's Dixie Iron and Metal.

19 Q And you said you had two businesses?

20 A Well, there's actually three scrap yards all
21 together, yeah.

22 Q The one in question is on Highway 76?

23 A That would be Location 2, yeah. Yard 2.

24 Q I'm going to show you some photographs. These are
25 things you sent.

1 MR. HARTER: Your Honor, he's not being called as a
2 witness to any photographs or -- it's just to authenticate
3 the video.

4 MR. BRYAN: These are pictures that Mr. Harter
5 furnished me, and it's showing the location of his
6 business.

7 THE COURT: Okay. And you have an objection to
8 Mr. Bryan showing those photographs to Mr. Cagle?

9 MR. HARTER: No, I don't.

10 THE COURT: You may proceed.

11 MR. HARTER: Are you going to mark them?

12 MR. BRYAN: Okay.

13 (WHEREUPON, Plaintiff's Exhibit Nos. 8 through 13 were
14 marked for identification.)

15 THE COURT: All right. You may proceed.

16 BY MR. BRYAN:

17 Q Mr. Cagle, when you go from Laurens to Clinton, where
18 is your business located?

19 A If he was coming from Laurens going to Clinton, it
20 would be on the left-hand side of the road.

21 Q I'm going to show you Plaintiff's Exhibit No. 8. Is
22 -- going down that road, is that -- do you recognize that
23 road?

24 A (Reviews document) Yes. This is Highway 76.

25 Q In relation to that photo, what side of the road

1 would you be on -- your business be on?

2 A It would be on the left side of the road.

3 Q I'm going to show you Plaintiff's Exhibit 9 and 10.

4 Is that the road that your business is on?

5 A (Reviews documents) Yes. Off Highway 76.

6 Q And would your business be on the left of that road
7 as you go down that hill?

8 A Yes, sir.

9 Q I'm going to show you Plaintiff's Exhibit 11. You
10 can see it looks like a car parked on the left side. Is
11 that the location of your business? Is that Highway 76
12 there?

13 A This is Highway 76. Yes, sir.

14 Q Is that about where the location of your business is?

15 A Where are you in reference to?

16 Q All right. Excuse me. On the side -- on the left
17 side of the road when you look at the photograph, this
18 appears to be something parked on the side. Is that where
19 your business is?

20 A That's what appears to be a windshield.

21 Q Is that located right where your business is?

22 A Yes. That would be where the upper gate is in the
23 video there.

24 Q Maybe this is a better picture. Does this show your
25 business better?

1 A Yes. This is a better -- better picture.

2 Q All right. Let me identify that one. That's
3 Plaintiff's Exhibit 12.

4 Is that showing your business on the left there?

5 A It's showing the lower gate and a tractor-trailer
6 that we have parked over next to the fence.

7 Q Okay. And that is where your business is?

8 A Yes. But it's only showing the bare ---

9 Q The lower gate?

10 A Yeah.

11 Q All right, sir. What about this one? Plaintiff's
12 Exhibit 13, what does it show?

13 A This is showing a privacy fence at the upper -- upper
14 gate where that camera is pointed at.

15 Q All right, sir.

16 THE COURT: Are you offering those into evidence?

17 MR. BRYAN: Oh, excuse me. I'm sorry, Judge. I'm
18 sorry. Yes, sir. I would submit these into evidence.

19 THE COURT: Mr. Harter, any objection?

20 MR. HARTER: No, sir. I've looked at them.

21 THE COURT: Without objection, No. 8 through 13 into
22 evidence for the plaintiff.

23 (WHEREUPON, Plaintiff's Exhibit Nos. 8 through 13 were
24 admitted into evidence.)

25 MR. HARTER: No objection to these.

1 THE COURT: All right. 8 through 13 into evidence
2 for the plaintiff.

3 BY MR. BRYAN:

4 Q Mr. Cagle, you say you put this video security system
5 in in early part of 2013?

6 A Yes, sir.

7 Q And when you put it in, did you set the clock on it?

8 A I originally did, but it set itself, synced itself.

9 Q Did you check to make sure it was right?

10 A Yes, sir.

11 Q And have you ever had to change or do anything to the
12 clock?

13 A No, sir.

14 Q To the best of your knowledge, has it always been
15 right?

16 A Yes, sir.

17 Q Last week I believe you and I looked at it and
18 checked it with our watches; is that correct?

19 A Yes, sir.

20 Q Was it right last week?

21 A Yes, sir.

22 Q To the best of your knowledge, was the clock right on
23 August 15, 2013?

24 A Yes, sir.

25 Q And the date -- the clock shows with the date on the

1 video; is that correct?

2 A Yes, sir.

3 Q So whatever time and date it shows on your video has
4 been correct since you put it in in the early part of
5 2013?

6 A Yes, sir.

7 Q Now, when is the first time that you saw this video
8 since the officer came and videotaped it?

9 A Since the officer made a copy of it, today.

10 Q It appears to be what he copied to you?

11 A Yes, sir.

12 Q Okay. Now, he brought a camera in and put it on a
13 tripod; is that correct?

14 A Yes, sir. Similar to this, but a large tripod.

15 Q And your monitor was on the wall?

16 A Yes, sir. It's up high.

17 Q How big a monitor is it?

18 A I can't say exactly, but it would be roughly maybe a
19 16-inch.

20 Q 16-inch screen?

21 A Yeah.

22 Q And he had a camera and he -- camcorder and he copied
23 it; is that correct?

24 A Correct. Yeah.

25 Q Now, did you control what he copied or where it went?

1 A Are you saying ---
2 Q Did you tell him what to copy or did he copy what he
3 wanted to copy?
4 A No, no. He told me what time and date to start from.
5 Q And you did what he told you?
6 A Yes.
7 Q And there are some speed-up glitches in it here and
8 there. Did you do that?
9 A If you mean fast-forwarding ---
10 Q Fast-forward. Excuse me.
11 A Yes, yes.
12 Q Sometimes two seconds, sometimes four seconds?
13 A Yes.
14 Q But you were just going to wherever he wanted to
15 start; is that correct?
16 A Yes, yes.
17 Q Now, I believe that video is a little bit off --
18 little bit -- cocked off a little bit, isn't it? It's not
19 exactly ---
20 A That's correct. It's not showing the full monitor.
21 Yes, sir.
22 Q And you say you saw the crash into your fence on
23 that video?
24 A Not on this video. I seen it on our security
25 system.

1 Q Your fence was damaged pretty bad at your business?

2 A Yes, sir. It was laying on the ground.

3 MR. BRYAN: Just one moment, please.

4 THE COURT: Sure. Take your time.

5 MR. BRYAN: I have no further questions.

6 THE COURT: Okay. Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. HARTER:

9 Q Matt, just quickly, the Channel 5, the one we looked
10 at a minute ago, that shows the car running into your
11 fence; is that right?

12 A Yes, sir.

13 Q Okay. How many times have you had cars running
14 through your fence like that?

15 A Never.

16 Q Okay. And whether this thing shows August of 2013 or
17 April of 2015, the images and what we see on there is an
18 accurate representation of what was on your recorder or
19 your recording equipment that Officer Duncan recorded on
20 his camcorder; is that correct?

21 A Yes, sir.

22 MR. HARTER: Okay. Thank you. That's all the
23 questions I have.

24 THE COURT: Any recross?

25 MR. BRYAN: No, Your Honor. No, sir.

1 THE COURT: Okay. Thank you. You can step down,
2 sir. You are free to leave the courthouse or you're more
3 than welcome to remain with us if you like. You're free
4 to leave the witness stand.

5 THE WITNESS: Thank you.

6 MR. HARTER: Your Honor, we call Al Duncan.

7 THE COURT: Okay.

8 WHEREUPON,

9 AL DUNCAN

10 After having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HARTER:

13 Q Al, would you state your full name for the Court and
14 jury, please.

15 A Yes, sir. It's Aaron Lee Duncan, II.

16 Q And where do you live, Al?

17 A I live in Greenwood.

18 Q And how old are you?

19 A I'm 46 years old.

20 Q And are you a native of Greenwood County?

21 A I am, sir. That's where I went to high school,
22 graduated college, grew up there. That's my hometown.

23 Q Okay. Have you been a trooper with the South
24 Carolina Department of Public Safety?

25 A I was, sir.

1 Q And how long were you a trooper with Public Safety?

2 A I joined the South Carolina Highway Patrol in August
3 of 1994, and I retired in August of 2017.

4 Q Okay. And when you retired in August of 2017, you
5 gave back to DPS all of your equipment that you had?

6 A I did. I returned all of everything.

7 Q Okay. I want to direct your attention back to August
8 of 2013.

9 A Yes, sir.

10 Q And I want to ask you, did you have an occasion --
11 were you a member of the MAIT team?

12 A I was.

13 Q Multiinvestigation ---

14 A Multidisciplinary Accident Investigation Team. Yes,
15 sir.

16 Q Okay. And in connection with your role in the MAIT
17 team, did you go to the business that Matt Cagle operated
18 off of Highway 76 and take some video footage off of his
19 surveillance camera?

20 A What I did, sir, is I met Corporal Hunter there from
21 Laurens County, and I actually went and recorded
22 Mr. Cagle's video camera. He was not familiar with how to
23 get the information from the camera onto a disk or a thumb
24 drive, so I actually set up a camcorder, pointed it at his
25 monitor and recorded his surveillance system playing the

1 movie that it had captured.

2 Q And why did you go to his place of business and do
3 that?

4 A It's set in proximity of a location that we were
5 doing a collision investigation on, and Corporal Hunter
6 had noticed and got in touch with Mr. Cagle because he has
7 surveillance cameras sitting outside. And part of what
8 the MAIT team does, in order to gather any and all
9 evidence is we look for things like that. Because once
10 the video captures stuff, you know, it helps define what
11 took place.

12 Q Okay. And I want to ask you if we can look at some
13 video footage here. And this looks like it comes from --
14 it says CH5. I'm going to represent to you that's
15 Channel 5. Okay. And we're picking up with a time of
16 10:57. And just for the jury, I want you to be able to
17 confirm if this is an accurate representation of what you
18 recorded and who that baldheaded guy is in there.

19 A Yes, sir. We were not able to keep from having the
20 reflection in the room. We tried it without lights and
21 with lights, but that is my reflection there. As I have
22 the camcorder set up, you can see the outline of the frame
23 of the monitor for Mr. Cagle's surveillance system, and I
24 had my camcorder pointed towards it in order to capture
25 the video.

1 (WHEREUPON, Defendant's Exhibit Number 6, a video, played
2 in open court.)

3 Q And it now captures lights going on 76.

4 A Yes, sir.

5 Q And I just want to ask you to look through this with
6 me and confirm whether or not this is an accurate
7 rendition of what you recorded on your camcorder from the
8 video -- from the recording equipment of Mr. Cagle's,
9 okay?

10 A Yes, sir.

11 Q Did you record that ---

12 A Yes, sir. I did.

13 Q --- from his equipment?

14 A Yes, sir. I did.

15 Q Okay. And let's look at the Channel 6, which I'll
16 represent to you I think is another camera angle.

17 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
18 to play in open court.)

19 Q And we'll go back to the same time. This is looking
20 toward Laurens?

21 A Yes, sir. That camera cuts back towards Laurens.
22 The first view is towards Clinton.

23 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
24 to play in open court.)

25 Q It captures traffic moving in both directions.

1 A Yes, sir. It does.

2 (WHEREUPON, Defendant's Exhibit No. 6, a video, continued
3 to play in open court.)

4 Q Now, this camcorder equipment, is this something that
5 you're familiar with that you've used ---

6 A Yes, sir.

7 Q --- for years?

8 A With the Highway Patrol, we took photographs. We
9 also took video of crash scenes, vehicles, different
10 things. So each investigation that we did, we had both
11 photographs and video of. The video camera, I've used it
12 on numerous scenes. I don't know exactly when I picked
13 this particular camera up, but we would use them until
14 they ---

15 Q And this recording, that's in real-time?

16 A It is. Yes, sir.

17 Q Okay. Now, how did y'all get to the point where you
18 were going to start recording?

19 A I'm not sure. I met Corporal Hunter, who was the
20 trooper in charge of the investigation originally. I met
21 Corporal Hunter at the recycle center that morning of
22 April the -- excuse me -- August the 20th, somewhere
23 around 9:00 because he had heard -- I don't know how he
24 spoke with Mr. Cagle or how we found out that Mr. Cagle
25 had the surveillance video. He and Mr. Cagle were there.

1 I went and met with them, look at what they had seen on
2 the video and realized that it was something that I needed
3 to salvage and to make sure we had available, and
4 therefore, I set up my camcorder on the tripod to capture
5 it.

6 Q Okay. Now, on sections of this disk, there is
7 sections where it kind of jumps a little bit. How -- was
8 that when -- what would explain -- and not talking about
9 sections we looked at here, but other sections.

10 A I'm sorry?

11 Q Did -- was the -- sorry.

12 A Okay. That's all right. I understand your question
13 now.

14 The video itself, you can see the numbers counting on
15 the screen in the upper portion of it. That is actually
16 on Mr. Cagle's camera. That's not my video recorder
17 counting out the time. That's Mr. Cagle's counting out
18 the time.

19 Because the MAIT team stores so many videos, so much
20 evidence, photography, reports and different things across
21 the state, it all goes to one drive, one hub, if you will,
22 in Columbia. We try not to get a large amount of stuff.
23 We want to get just the particulars that we need.

24 Knowing where the information was important on the
25 video, we didn't want to start too early, so when

1 Mr. Cagle sets up for me to make a recording, he
2 fast-forwards up to a closer time and then starts the
3 video into real-time so that I can capture that
4 information.

5 Q Okay. The areas we've looked at in the video as we
6 scanned through it from 10:00 to 11:00-ish, but those are
7 real-time numbers?

8 A That's correct. Yes, sir.

9 Q Now, when you did this and you got this information
10 on your camcorder, what happens to it? What did you do to
11 it?

12 A When I complete the fieldwork and get back to the
13 office, this particular camcorder, as I recall, was a
14 hard-drive camcorder. It did not have a disk or a chip or
15 anything to it, a tape. It actually recorded on its
16 internal hard drive. I connect that hard-drive camera to
17 my computer and I move that information over.

18 There are several video clips that are captured in an
19 investigation. As I mention, we record the scene, we
20 record the cars, we record anything that is important that
21 we can video. Those video clips are all compiled together
22 and made into one movie clip so that we don't have four or
23 five different things sitting out there. It has all of
24 what MAIT recorded in one click.

25 That information was put onto my computer. Every

1 video clip was. I think I took a total of three, maybe
2 four video clips, depending on how you look at the
3 surveillance, and that information was put together with
4 one vehicle that another trooper had recorded on my
5 computer. That was made in that one video clip, and then
6 that video clip was moved over to the MAIT hard drive
7 through the Internet on Columbia's -- or into Columbia
8 where it's stored.

9 Q Okay. And so what you recorded on your camcorder or
10 what was -- went into the hard drive in Columbia or DPS?

11 A Yes, sir. That's correct.

12 Q That's a secure hard-drive system?

13 A The MAIT team, because of the nature of the
14 investigations that they cover, the information is not
15 just accessible to any trooper, any employee in DPS. Only
16 MAIT team and upper level of the Highway Patrol are able
17 to get into that to be able to access any of that data.
18 So, yes, sir, it's set up secured so that no one can go in
19 and look at anything or have access to anything.

20 Q Was there any editing of any of the recording that
21 you made of Mr. Cagle's surveillance video?

22 A No, sir. As for editing of the video itself, no,
23 sir. The video runs its entirety.

24 Because of other noise that we had in the background,
25 traffic, people talking, telephones ringing, as you can

1 see my reflection, at one point, I actually had the phone
2 up to my ear talking. The audio is removed from it so
3 that you don't get all of the background noise of people
4 talking and the nonsense there. But the video itself is
5 one solid recording.

6 Q But there was no audio on Mr. Cagle's surveillance.

7 A No, sir.

8 Q So is this an accurate depiction and representation
9 of what you recorded from his equipment?

10 A It is.

11 Q And there were no edits of anything that you recorded
12 from his equipment?

13 A No.

14 MR. HARTER: Okay. Your Honor, we would move in the
15 disk which was authenticated yesterday. It was a Court's
16 exhibit, but we would like to move it in as a defendant's
17 exhibit at this time.

18 THE COURT: Okay. Subject to everything noted on the
19 record by the plaintiff ---

20 MR. HARTER: Thank you.

21 THE COURT: --- it will be admitted into evidence as
22 Defense No. 6.

23 (WHEREUPON, Defendant's Exhibit No. 6 was admitted into
24 evidence.)

25 MR. BRYAN: Your Honor, may I question the ---

1 THE COURT: Sure. Yeah.

2 Are you finished, Mr. Harter?

3 MR. HARTER: I'm sorry. I apologize. Yes, sir.

4 Thank you.

5 THE COURT: Okay. All right. Proceed with
6 cross-examination.

7 CROSS EXAMINATION

8 BY MR. BRYAN:

9 Q Mr. Duncan, where do you work now?

10 A I work for Warren Forensic Engineers and Consultants.

11 Q All right, sir. And you took a tripod out and stood
12 it up and videoed the monitor which was some distance
13 away; is that correct?

14 A Yes, sir. I tried to set it up as to get as much of
15 the video monitor in the frame as possible looking at the
16 small screen that's on the camcorder.

17 Q Do you know how far away your camera was from the
18 video, approximately?

19 A No, sir. As I recall, it wasn't a lot of room in
20 that office that he has at the recycle center, so it
21 wasn't far. No, sir. But I did try to frame it up to
22 where I captured all of it as much as possible.

23 Q Was Mr. Cagle in there with you?

24 A He was as well as Corporal Hunter.

25 Q Did he cooperate with you?

- 1 A I'm sorry?
- 2 Q Did he cooperate with you?
- 3 A He did.
- 4 Q And who else was in there with you?
- 5 A Corporal Hunter.
- 6 Q Corporal Hunter was a state trooper then; is that
- 7 correct?
- 8 A That's correct. Yes, sir.
- 9 Q And he was the primary investigating trooper of the
- 10 accident?
- 11 A As I recall, yes, sir. He was the one that
- 12 initially came out to the crash scene and started the
- 13 investigation.
- 14 Q And I believe you were merely investigating the crash
- 15 between Holmes and King; is that correct?
- 16 A Yes, sir.
- 17 Q Okay. And as a part of investigating that, you said
- 18 you did this video; is that correct?
- 19 A Yes, sir.
- 20 Q All right. And you also mentioned that you did some
- 21 photographs and some other things; is that correct?
- 22 A Yes, sir.
- 23 Q All right. Did you take any other -- anything
- 24 besides the photos and videos?
- 25 A Did I take any?

1 Q Photographs, you took photographs; is that correct?

2 A Yes.

3 Q Still photographs?

4 A Yes, sir.

5 Q All right. And when you were videoing, did you get
6 to video whatever you wanted to video?

7 A I don't understand your question, sir.

8 Q Did Mr. Cagle, in any way, restrict you from what you
9 could video?

10 A No, sir.

11 Q You told him what you wanted to video?

12 A I asked him -- originally, the intent was to get him
13 to give me a copy of what was on his surveillance camera.
14 From what I understood speaking to Mr. Cagle, he was not
15 familiar with how to obtain that by a thumb drive or a
16 jump drive or a card or anything else. In an effort to
17 preserve the evidence, because some of these things -- and
18 I believe his runs on a loop to where after so many days,
19 it records over it. In order to preserve the evidence, I
20 felt it best to record that with my camcorder, and he
21 complied with allowing me to do that.

22 Q And you got to record exactly what you wanted to
23 record?

24 A I got to record the part that I thought was
25 evidentiary for the investigation. Yes, sir.

1 Q All right, sir. Now, as part of your investigation,
2 in addition to taking the video, you took some still
3 photographs; is that correct?

4 A Yes, sir.

5 MR. BRYAN: Do you want me to identify them before I
6 ask him, Your Honor?

7 MR. HARTER: I just asked him to identify -- let the
8 witness identify the ones he took, because some of those
9 were not taken by him.

10 THE COURT: You go and ask him that before you have
11 them marked.

12 MR. BRYAN: Ask him before we mark it? All right.

13 BY MR. BRYAN:

14 Q Would you identify those that you took?

15 A (Reviews documents) I took those two, sir.

16 Q Do you know who took these others?

17 A The daytime photographs were more than likely taken
18 by Lance Corporal Anderson, I believe. The nighttime
19 photographs, I'm not certain whether that was Corporal
20 Hunter or who was at the scene that took those
21 photographs.

22 (WHEREUPON, Plaintiff's Exhibit Nos. 14 and 15 were marked
23 for identification.)

24 BY MR. BRYAN:

25 Q I'm going to show you Plaintiff's 14 and 15. Would

1 you identify what that is?

2 A Sir, I can identify from these two photographs that
3 you handed me that these are what appears to be the large
4 county vehicle that has the similar colors.

5 As a MAIT unit, when we're trained in photography, we
6 take the photograph -- for example, if I were to take the
7 picture of the back -- the back lock on the door, I would
8 take a picture far off, get closer and closer. I mean,
9 this is a tire from the vehicle and the fender well from
10 the vehicle with the fuel cap. So I'm going to assume
11 from that photograph that that is the left rear quarter
12 panel.

13 And I believe I see the same on there that that's the
14 left rear quarter panel, but with the other pictures
15 around, it would help me to identify it.

16 Q Okay. I'll show you Plaintiff's Exhibit 4 and
17 Plaintiff's Exhibit 5. Is that also the deputy's car?

18 A That would be. Yes, sir.

19 Q All right. Where was the damage on the deputy's car?

20 A It was on the left rear quarter panel, sir, below the
21 fuel tank.

22 Q And on Plaintiff's Exhibit 5, there is no damage on
23 the rear end of the car, is it?

24 A Not that I can tell from this picture, but you can't
25 see the damage to the quarter panel in that picture,

1 either.

2 Q Okay.

3 A The color of the vehicle masks it somewhat.

4 Q In Plaintiff's Exhibit 4, you can see the damage,
5 can't you?

6 A Yes, sir.

7 Q And you can see there is no damage on the rear?

8 A I can see that corner of the taillight. Yes, sir.

9 MR. BRYAN: And that's where the damage was.

10 Your Honor, we submit ---

11 THE COURT: 14 and 15 into evidence. Any objection?

12 MR. HARTER: No, sir. I thought those were already
13 in.

14 THE COURT: 14 and 15 into evidence for the
15 plaintiff.

16 (WHEREUPON, Plaintiff's Exhibit Nos. 14 and 15 were
17 admitted into evidence.)

18 BY MR. BRYAN:

19 Q And that's where the damage on the trooper's car was,
20 was on the driver's side over the -- near the back tire;
21 is that correct?

22 A It was behind the left rear wheel. Yes, sir. On
23 that quarter panel.

24 Q On the side of the car.

25 A Yes, sir. On the rear corner.

1 Q Now, and you took all these pictures and this video
2 as part of your investigation of Trooper King [sic] and
3 Holmes' accident; is that correct?

4 A I'm sorry. Say that again?

5 Q You took all these videos and photographs as part of
6 Trooper Holmes -- your investigation of the Holmes-King
7 accident?

8 A That's correct. Yes, sir.

9 Q And you reviewed a lot of evidence, did you not?

10 A I reviewed a lot of different things as far as
11 looking at it for the investigation. Yes, sir.

12 Q And I believe you reviewed Trooper Holmes -- excuse
13 me -- Trooper Hunter's -- not review. Review is a
14 technical word. You read over the accident report.

15 A I have seen this accident report. Yes, sir.

16 Q All right. And what time does it show the accident
17 being?

18 A Trooper Hunter has the accident at 2238 hours, or
19 10:38 in the evening.

20 MR. BRYAN: Your Honor, I'd like to submit this as an
21 exhibit.

22 MR. HARTE: No, sir. I don't think it comes into
23 evidence. Accident reports don't.

24 THE COURT: Right. The accident report would not be
25 admissible. You've been able to question him about it,

1 but the report itself is not admissible.

2 BY MR. BRYAN:

3 Q From your review -- not review -- your observation of
4 the accident report, at the time of the accident, what
5 lane was Deputy Holmes in?

6 A At the time of the accident, it has him going from
7 the fast lane, or the No. 1 lane in the highway as Highway
8 Patrol refers to it as the No. 1 -- it's the fast lane or
9 the left-hand lane. Going from the left lane towards the
10 right lane and then coming back across.

11 Q Okay. And is it -- according to the report, when he
12 came ---

13 MR. HARTER: Your Honor, unless he's going to -- he
14 can call the trooper or he's going to call -- qualify him
15 as an accident reconstructionist. He's here to talk about
16 the video only.

17 THE COURT: Well, he's already been allowed to ask or
18 respond to the time that's noted on the accident report,
19 so I'll allow him to continue with that. Overruled.

20 MR. HARTER: The time part, right.

21 BY MR. BRYAN:

22 Q So, shouldn't Deputy Holmes' vehicle come from the
23 right lane to the left lane; is that correct?

24 A Yes, sir.

25 MR. HARTER: I'm sorry, Your Honor. That doesn't

1 relate to the time.

2 THE COURT: Right. But my point in saying that he's
3 already been asked -- or allowed to ask about the time is
4 what is on the accident report. The accident report is
5 not coming in, but he can ask him.

6 Go ahead, Mr. Bryan.

7 BY MR. BRYAN:

8 Q And the trooper pulls in front of Ms. King's car; is
9 that correct?

10 A May I see that again, please.

11 Q Yes, sir.

12 A (Reviews document) That is what Terry Hunter has on
13 here. Yes, sir.

14 Q And that's when the collision occurred?

15 A That is what Terry Hunter has on here. Yes, sir.

16 Q Terry Hunter was the primary investigator of this
17 accident; is that correct?

18 A As Highway Patrol standards. Yes, sir.

19 Q I would show you Plaintiff's Exhibit No. 1. This is
20 Deputy Holmes' report of the accident. That was Trooper
21 Hunter's report we were just talking about, correct?

22 A Yes, sir.

23 Q All right. This is Deputy Holmes' report of the
24 accident, which is Plaintiff's Exhibit No. 1. What is the
25 time that he shows the accident occurs?

1 A On this report, he has the time of 2237.

2 Q And what is 2237 for the real world?

3 A 10:37.

4 MR. BRYAN: 10:37.

5 Just a minute, Your Honor. If I may have a minute.

6 THE COURT: Sure.

7 MR. BRYAN: Your Honor, let me return this. I have
8 no further questions..

9 THE COURT: Okay. Anything in redirect, Mr. Harter?

10 MR. HARTER: Yeah. Just a couple things.

11 REDIRECT EXAMINATION

12 BY MR. HARTER:

13 Q Trooper Hunter didn't witness the accident, did he?

14 A No, sir. He did not.

15 Q Okay. And Mr. Bryan asked about time entries. Is
16 there any discrepancy about time entries between the
17 information that's on the recording that you made from
18 Mr. Cagle's system? Is there any time discrepancies
19 there?

20 A Between the report versus the video?

21 Q Yeah.

22 A There is some time discrepancies between that. And
23 on the collision report, it says specifically -- beneath
24 the diagram drawing there's a line that says "this is the
25 trooper's best opinion based on the information that he

1 has." And there's more to it than that, but it knows --
2 it essentially says that this does not mean that every
3 detail is accurate and correct.

4 I don't know if there's a time discrepancy between
5 the time showing and the real-time that particular day,
6 because at that point, I'd just begun the investigation.
7 I did not look at my phone or my watch to verify that
8 Mr. Cagle's camera was exactly with time.

9 When a trooper shows up or gets the call, he does
10 essentially the same best thing. He's like, okay, well,
11 just got the call. It's about 15 minutes after, 20 after,
12 whatever. He takes his notes and does that. That does
13 not mean that the time exact on the report makes the exact
14 time that he received the call or the exact time that he
15 arrived on the scene. That's when he documented it, and
16 it was his best as possible with what he had.

17 Q In terms of the time element, do you consider this to
18 be credible and consistent with the video?

19 A Yes, sir.

20 Q The surveillance video?

21 A I do.

22 Q Okay. At some point in time in this surveillance
23 video, do you see a vehicle veering off to the left and
24 hitting the fence?

25 A You do. Yes, sir.

1 Q Okay. Is that the dynamics of the vehicle accident
2 that Ms. Watts had on that day?

3 A It is consistent with -- the recorded information is
4 consistent with the physical evidence on the roadway as to
5 what took place that evening. Yes, sir.

6 Q Okay. Excuse me just a minute.

7 Does that video show any other accidents on that day
8 in that manner?

9 A Nothing that I'm aware of. No, sir.

10 Q Okay. These pictures 11, 10 -- I'm sorry -- 8, 9,
11 10, 11, 12, 13, did you take those pictures?

12 A Yes, sir.

13 Q Exhibit No. 9, Plaintiff's Exhibit No. 9, let me just
14 orient -- do you see that?

15 A Yes, sir.

16 Q Exhibit No. 9 shows a business establishment on the
17 right side of the road, correct?

18 A Yes, sir.

19 Q Is that the liquor store?

20 A Yes, sir. That is correct.

21 Q How far is that from the crash scene?

22 A Approximately 800 feet.

23 Q This picture is taken toward the crash scene from a
24 distance of 800 feet; is that correct?

25 A Yes, sir. That's correct.

1 Q That's more than two and a half football fields,
2 isn't it?

3 A Yes, sir. That's correct.

4 MR. HARTER: Excuse me, Your Honor.

5 THE COURT: Sure. Take your time.

6 MR. HARTER: Thank you, Al. That's all the questions
7 I have.

8 THE COURT: Recross?

9 MR. BRYAN: Yes, sir.

10 RECROSS EXAMINATION

11 BY MR. BRYAN:

12 Q Mr. Duncan, you have testified that this videotape is
13 accurate.

14 A It's an accurate depiction of what I recorded from
15 his surveillance. Yes, sir.

16 Q It's now your testimony that that time is not
17 correct?

18 A The video that I recorded is accurate. I did not
19 check the time to verify the time with my watch or my
20 phone or anything that I had. I'm testifying that that is
21 the video that I recorded from his surveillance. There's
22 no interruptions, no breaks. I haven't altered it or
23 changed it. That is the way I viewed it. That is what I
24 saw the first day that I went there.

25 Q Earlier today in testimony, you said that you

1 reviewed the 9-1-1 call, too.

2 A No, sir. I never said I reviewed a 9-1-1 call.

3 Q You didn't say that in your previous testimony?

4 A No, sir. I did not.

5 Q Now, this is, once again, on Trooper Hunter's report.
6 What does he say is the time he got the call and the time
7 he arrived at the scene?

8 A From what I can read on this, he says he got the call
9 at 2238 hours, and he arrived on the scene at 2251 hours.

10 Q 10:38 and 10:51; is that correct?

11 A That's correct.

12 MR. BRYAN: No further questions, Your Honor.

13 THE COURT: Mr. Duncan, you can step down, sir.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. HARTER:

16 Q How many accidents like this did you video record
17 happening out there that night?

18 A That would be the only one, sir.

19 MR. HARTER: Okay. Thank you.

20 THE COURT: Mr. Duncan, you can step down and you are
21 free to leave the courthouse or you're welcome to remain
22 with us. Either way.

23 THE WITNESS: Thank you, sir.

24 MR. HARTER: Your Honor, could we just take a minute
25 and do a little housekeeping, see where we're going to go

1 from here?

2 THE COURT: All right. Madam Forelady, ladies and
3 gentlemen of the jury, go back to the jury room. We may
4 very well break for lunch at this point in time, but I'm
5 not exactly sure. Let me talk with the lawyers and kind
6 of see where we are, and then we'll get you back out
7 shortly, okay?

8 (WHEREUPON, the jury exits the courtroom at 12:28 p.m.)

9 MR. HARTER: Judge, we had indicated and sent to you
10 and to plaintiff's counsel some deposition excerpts from
11 Mrs. Watts.

12 THE COURT: Right.

13 MR. HARTER: I'm going to go needle those, pare those
14 down and try to shorten them so we don't take up more
15 time.

16 THE COURT: Okay. All right. Other than publication
17 of excerpts from Ms. Watts's deposition, do you have any
18 other witnesses or evidence that you intend to put up?

19 MR. HARTER: I've got to confer, Judge.

20 THE COURT: Okay. You think you may know in the next
21 few minutes so I can kind of figure out about breaking for
22 lunch and when to have them back?

23 MR. HARTER: I will try.

24 THE COURT: Okay. All right. Let's take a
25 ten-minute break.

1 MR. THOMPSON: Your Honor, we're objecting to the
2 reading of those excerpts from Mrs. Watts's deposition.
3 She's here. And as I read the rule, you can only do that
4 in the event the witness is not here.

5 THE COURT: Okay. All right. Well, let me refresh
6 myself on that rule, Mr. Thompson.

7 MR. THOMPSON: Yes, sir.

8 THE COURT: So your basis for your objection is that
9 because she has already testified in your case in chief,
10 unless she testified to something inconsistent with what
11 she testified to in her deposition, that would be the only
12 way to publish her deposition, just so I can understand
13 your objection.

14 MR. THOMPSON: Right. Yes. But there are instances
15 where you can read the deposition, but generally, it's
16 when someone is not available.

17 THE COURT: Okay. All right.

18 MR. THOMPSON: I can give you the rule.

19 THE COURT: I think I can find the rule.

20 MR. THOMPSON: Okay.

21 THE COURT: Let's take about a ten-minute break and
22 do whatever we need to do and then we will regroup.

23 (WHEREUPON, a recess is taken at 12:31 p.m.)

24 (WHEREUPON, proceedings reconvened at 12:46 p.m.)

25 THE COURT: Okay. We are back on the record.

1 Let's deal with the issue with respect to the
2 defendant's use of excerpts from the plaintiff's
3 deposition. Mr. Thompson, before we took a break, you
4 raised an objection. Now, I am looking at Rule
5 30(2)(a)(2), and the way I read that, it said, you know,
6 use of deposition of a party, which is -- deposition of a
7 party may be used by an adverse party for any purpose.
8 Now, you may have another rule or another part of this
9 rule that you're relying on in opposition to the
10 defendant's use of the plaintiff's deposition. So I'll be
11 glad to hear from you.

12 MR. THOMPSON: It was my understanding, and may be
13 misplaced understanding, that you could not use a part of
14 a deposition or entire deposition if the person is here,
15 only if they were absent or it fell into one of those
16 categories under 3(a)(b) and (c).

17 THE COURT: Right.

18 MR. THOMPSON: And Mr. Harter certainly had the
19 opportunity to have cross-examined her with the deposition
20 when she took the stand.

21 THE COURT: Right. And I think subsection 1, 2 and 3
22 are all standalone subsections the way I read Rule 30(2).
23 So if 3 deals with the deposition of a witness, whether or
24 not is a party, may be used under those different
25 situations. I think 1, 2 and 3 are all standalone, the

1 way I read it.

2 MR. THOMPSON: Yes, sir.

3 THE COURT: So I am going to -- you have provided to
4 me prior to today, Mr. Harter, what you intend to publish.
5 Is this still those portions?

6 MR. HARTER: No, Your Honor. When we broke just now,
7 I whittled it down.

8 THE COURT: Okay. You've got new?

9 MR. HARTER: Yes, sir. This is all I want to publish
10 right here.

11 THE COURT: Okay. All right.

12 MR. THOMPSON: Now, we had handed up on the bench our
13 excerpts we wanted to read from Mr. Holmes's deposition of
14 August 15, 2017.

15 THE COURT: Okay. Yeah. I mean, I'll allow you to
16 do that in rebuttal case.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: I mean, certainly, I need to feed you all
19 out of the same spoon.

20 MR. HARTER: And I just got these. I haven't looked
21 at these yet.

22 THE COURT: Okay.

23 MR. HARTER: I guess we'll be around lunchtime before
24 we do this part. But I would like to have a chance to
25 look at this.

1 THE COURT: Yeah. I think probably we need to break
2 for lunch now, and we just need to -- and, Mr. Harter,
3 other than publication of the plaintiff's deposition, do
4 you have any other witnesses or evidence?

5 MR. HARTER: I have evidence, Judge. And this is
6 stuff that I think we agreed upon pretrial when I went to
7 Laurens. But I have the patient care form from
8 Mrs. Watts's accident, I have the emergency department
9 records and the triage record. And they agreed for those
10 things to come in, so I just need to mark them and move
11 them in.

12 THE COURT: Mr. Bryan, is that correct?

13 MR. BRYAN: That's correct, Your Honor.

14 THE COURT: Sir?

15 MR. BRYAN: Yes, sir. That's correct.

16 THE COURT: All right. So let's go ahead and have
17 those marked now.

18 (WHEREUPON, Defendant's Exhibit Nos. 7, 8 and 9 were
19 marked for identification.)

20 (Pause in proceedings.)

21 THE COURT: So other than the respective publication
22 of portion of some depositions, do we have any other
23 witnesses that will testify? I'm just trying to figure
24 out a time frame here.

25 MR. HARTER: That will be it for me, Judge, I think.

1 THE COURT: Okay. Does the plaintiff, other than
2 publishing a portion of Holmes's deposition, do you intend
3 to put up any other rebuttal case?

4 MR. THOMPSON: No, sir.

5 THE COURT: Okay. All right. Well, we need to also
6 work on the charge. How I do the jury charge, I will
7 provide to you a draft of a charge. I don't want you to
8 submit to me at this point any request to charge. Take a
9 look first at what my draft contains, and then that is
10 what we will work off of. So we're going to need some
11 time to do that, plus time to eat lunch, plus time to
12 publish these depositions.

13 Do you think we're going to be able to get it to the
14 jury today and not have it too late?

15 MR. THOMPSON: Your Honor, may I speak to that point?

16 THE COURT: Sure. Please.

17 MR. THOMPSON: It looks to me like this is going to
18 go to the jury quite late in the afternoon, and I would
19 suggest that we argue the case in the morning. I don't
20 want the case to go to the jury at 4:00 and those people
21 wanting to go home at 5:00. Plus, it's going to take some
22 time to put together an argument. And try to just do it
23 from the seat of your pants, it takes -- you argue much
24 longer than you need to as a general rule as opposed to
25 one that's organized.

1 THE COURT: Okay. Mr. Harter, do you have any
2 preference?

3 MR. HARTER: I'm at your disposal, Judge.

4 THE COURT: Okay. All right. Let's do this then.
5 Because the publication of the deposition should not take
6 very long both ways, let's go ahead and do that, and then
7 I will cut the jury loose for the remainder of the day.
8 We can get lunch, and then we can take this afternoon to
9 work on the charge, and then that will give you some time
10 to work on your closing.

11 MR. HARTER: Judge, I need some time to look -- his
12 deposition excerpts are a number of them, so I'm going to
13 need a little time for that. I'm sorry.

14 THE COURT: That's all right. That's not a problem.

15 MR. HARTER: But we could ---

16 THE COURT: We'll break for lunch and I'll have them
17 back at about, say, 2:15, 2:30, and hopefully by that time
18 we could do the deposition publication and then go ahead
19 and cut them loose for the remainder of the day.

20 MR. HARTER: Okay. And we'll just plan to argue and
21 charge tomorrow.

22 THE COURT: Argue and charge in the morning.

23 MR. HARTER: Put everything in today, argue and
24 charge tomorrow.

25 THE COURT: Argue and charge tomorrow. But I do want

1 to spend this afternoon on getting the charge lined up.

2 MR. HARTER: Good. Okay.

3 THE COURT: All right. Mr. Bolt, if you will bring
4 the jury out, please.

5 (WHEREUPON, the jury entered the courtroom at 1:00 p.m.)

6 THE COURT: Ladies and gentlemen, what we're going to
7 do, we're going to go ahead and break for lunch, and I
8 want you back here at 2:30. We have a little bit left to
9 do in the case insofar as testimony evidence. Not a lot.
10 Once we accomplish that, then I'm going to send you all on
11 home for the rest of the day, have you brought back in the
12 morning at which time the lawyers will make their closing
13 arguments to you and then I will charge you the law
14 applicable to this case and then instruct you to begin
15 your deliberations. The reason for doing it in that
16 manner is once you come back from lunch, we finish up the
17 case, by the time argue and charge as we call it, closing
18 arguments, the Court's charge, it's going to put it late
19 in the afternoon. And so we would rather give it to you
20 tomorrow morning and instead of you potentially being here
21 late in the evening. Of course, I have no way of knowing
22 how long you're going to take to deliberate. That's
23 totally up to you guys.

24 So go ahead and break for lunch. Be back here at
25 2:30, and we'll finish up the case short of closing

1 arguments and charge, and then we'll do that in the
2 morning, okay?

3 Remember my same instructions. Have a good lunch.

4 (WHEREUPON, the jury exits the courtroom at 1:02 p.m.)

5 THE COURT: All right. Y'all have a good lunch.
6 We'll see you at 2:30.

7 (WHEREUPON, a recess is taken at 1:02 p.m.)

8 (WHEREUPON, proceedings reconvened at 2:35 p.m.)

9 THE COURT: Okay. Gentlemen, we're back on the
10 record.

11 Any issue as it relates to the publication of various
12 excerpts of depositions?

13 MR. HARTER: Judge, I think we are in agreement.

14 THE COURT: Okay.

15 MR. HARTER: I have made some -- the areas I want to
16 publish, they're in agreement with. We have discussed all
17 that. I think we're all synchronized of what they're
18 going to publish in Barton Holmes and I'm going to publish
19 from Ms. Watts.

20 THE COURT: Okay. All right.

21 MR. HARTER: And if I could go further, Judge. We,
22 on the break, agreed to talk about our debate of
23 Exhibit 7, 8 and 9. And I want to apologize to you for us
24 debating that in your presence.

25 THE COURT: That's okay.

1 MR. HARTER: I don't think we meant to do that.

2 But anyway, I have agreed to withdraw the patient
3 care form. What we had done is we met previously, and I
4 premarked these from my exhibit list, but we haven't
5 renumbered them yet. But this is a patient care form. It
6 makes reference to a statement by a deputy obviously to
7 the EMS attendants, and I withdraw that.

8 THE COURT: Okay. I believe that is Number 9.

9 MR. HARTER: It is -- well, I'm sorry. We did mark
10 these. We did. I apologize. I'm going to withdraw 7.

11 THE COURT: Withdraw 7.

12 MR. HARTER: I'm going to withdraw 7.

13 THE COURT: All right.

14 MR. HARTER: Withdraw 7.

15 And Number 8 is the emergency department chart of
16 this patient, and it's page numbers 67 through 76. And,
17 Judge, we believe this is admissible as a business record.
18 It makes reference to a history that the patient gave
19 herself at the hospital, and that the people at the
20 hospital were able to get a good history. And it says
21 "history comes from patient." And so I submit that
22 Exhibit Number 8 is admissible as a business record under
23 804 -- 803, 804.

24 THE COURT: Is there any objection to Number 8?

25 MR. BRYAN: Yes, sir.

1 MR. HARTER: And I think Mr. Bryan may object to
2 that.

3 Number 9 is the triage note of the same date, and it
4 also makes reference to the same information as in
5 Number 8. So if Number 8 comes in, I will agree to redact
6 what they object to in Number 9. Okay.

7 THE COURT: All right. Is that agreeable, Mr. Bryan,
8 that if they redact what you have an objection to, then
9 you're in agreement for the exhibits to come in?

10 MR. BRYAN: I'm agreeable to Number 9. I'm not
11 agreeable to Number 8. And, Your Honor, I would like to
12 present to the Court why I don't agree with it.

13 THE COURT: Yeah. All right. Let me make sure I'm
14 clear. Mr. Harter, which exhibit are you willing to
15 redact a portion of?

16 MR. HARTER: I'm going to kick Number 7 out.

17 THE COURT: Right.

18 MR. HARTER: I will redact Number 9, and kind of
19 assuming I get Number 8 in because it's cumulative, it's
20 duplicative. Okay.

21 THE COURT: But you have a problem with 8, Mr. Bryan?

22 MR. BRYAN: Yes.

23 THE COURT: And you have a problem with 9 even with
24 the redaction.

25 MR. BRYAN: No. If he redacts that from 9, I'm okay

1 with that.

2 THE COURT: But you're only willing to redact
3 Number 9 if you get 8 in, correct?

4 MR. HARTER: It's the same information is all, and I
5 don't want it duplicated.

6 THE COURT: Okay. Hand it to me and then I'll hear
7 from you, Mr. Bryan, as far as what . . .

8 MR. BRYAN: Whenever you're ready, Your Honor.

9 THE COURT: Sure.

10 MR. BRYAN: Your Honor, Mr. Harter came to my office
11 two weeks ago today, and we did agree on some things. He
12 named these three objects and asked me if I'd agree to
13 them, and I said yes, as long as they're just medical
14 records, medical stuff. When I got here today, in looking
15 at them closely, on Number -- what was identified as
16 Number 7, it has a statement in here. "On arrival,
17 Laurens County deputy" ---

18 THE COURT: Now, 7 he's pulling.

19 MR. BRYAN: Yes, sir. I'm trying to put that in
20 context.

21 THE COURT: Oh, okay. Got you.

22 MR. BRYAN: It says, "Laurens County deputy states
23 witnessed vehicle four-door sedan at 50 to 60 miles an
24 hour, heavy damage." And then on Number 9, the part that
25 he's redacting talks about 50 miles an hour.

1 On Number 7, on that part where he's talking about
2 patient history, it's a number of statements. And it's
3 not clear that -- whoever took it is not here in the
4 courtroom, and it says something about hit a car, hit
5 50 miles an hour. I forgot the exact wording. It's on --
6 I'll point it out to His Honor. Clinician history here.
7 Speed impact greater than 50 miles an hour. That is not
8 -- I would submit there's nothing to indicate that that's
9 something that Ms. Watts told him, and it's hearsay. And
10 if she told him, that person needs to be here to identify
11 that she said that. It appears to be just accumulation of
12 these other things where the deputy said, and I would
13 object to him having that part. If he would redact that
14 part, I have no problem with that document. But the only
15 testimony we've had so far is 35 to 40 miles an hour heard
16 by Mr. Williams.

17 And I understand what's going on. He's wanting to
18 have something to argue to the jury that she was doing
19 50 miles an hour and hit a car. Absolutely no other
20 evidence. And that, like I said, is just ---

21 THE COURT: All right. Let me see 9.

22 MR. BRYAN: 50 miles an hour is the only thing I ask
23 to be redacted.

24 THE COURT: That's on 8. Now, does that also appear
25 on 9?

1 MR. BRYAN: Yes, sir. I'll show you.

2 THE COURT: Can you point it out?

3 MR. BRYAN: It's hard to read because it's in
4 handwriting. It's right up there, 50 to 60.

5 THE COURT: Oh, I've got you.

6 Well, Mr. Harter, in order to get it under the
7 Business Records Act, don't you have to establish that the
8 record was prepared in connection with the recorded event,
9 it's regularly kept in the regular course of business even
10 though presumably the medical records would? But don't
11 you have to have a witness who can come in and establish
12 that? I can't -- I don't have any basis to say that these
13 are records regularly kept in the normal course of
14 business of Self Memorial.

15 MR. HARTER: Judge, I will just tell you, I thought
16 we agreed to that. I thought we -- they asked me to admit
17 the authenticity of documents, which I did. I didn't
18 admit they were admissible, but that goes to whether or
19 not it is actually a business record. And that is -- in
20 all fairness, this statement here in Exhibit 7 is to a
21 different provider. This is to EMS paramedics. Okay.
22 But that note and that emergency department record, Judge,
23 it clearly shows that that history came from the patient,
24 and it shows she was a good historian. Okay.

25 THE COURT: Well, but again, my point is I realize

1 you maintain you had an agreement with Mr. Bryan, he
2 maintains that you didn't. I can't get into that. I
3 can't get into that. But in order to get this in under
4 803(6), I have to have someone establish that this a --
5 fit within the criteria and the requirements of the rule.

6 MR. HARTER: I would appreciate Mr. Thompson or
7 Mr. Bryan commenting about that. If there was any
8 question, and there has been no question, no question,
9 Judge, as to the authenticity of these documents. And it
10 is -- I mean, it's self-evident that it is an emergency
11 department record.

12 THE COURT: That's what it certainly appears to be.
13 But, again, without someone from the hospital establishing
14 the requirements under 803(6), I can't just say that it
15 is, you see?

16 MR. HARTER: Well, I would ask -- Judge, I would ask
17 if you would inquire of counsel as to whether or not they
18 can -- this is not part of the business records of the
19 hospital because, again, they asked me to admit that and I
20 did. And I'm not trying to play games here, you know. I
21 mean ---

22 THE COURT: I understand you're not.

23 MR. HARTER: I would think -- and I've agreed for
24 their records, the ones they selected to come in.

25 And, Judge, I'm going to tell you, we sat down, I

1 provided these documents to them, they were highlighted
2 exactly like we've got them right here as far as I know,
3 and that's ---

4 THE COURT: I understand where you're coming from,
5 and of course I'd kind of wonder why some records get to
6 come in and some others don't. But they're saying that
7 there was not an agreement for 8 and 9 to come in. I
8 mean, I can't go behind y'all's disagreement on this.

9 MR. BRYAN: Your Honor, the reason there's a
10 disagreement, because Mr. Harter said, "Is it okay to put
11 these in?" and I said, "Are they just medicals?" He named
12 them. He said, "Yes."

13 I said, "If they're just medicals, I'm fine."

14 It has -- every one of them has a reference to a
15 50 miles an hour from the deputy saying to the EMS when
16 the EMS turned them over to the hospital. And it is
17 nothing but a stunt to argue 50 miles an hour to this
18 jury, and that's why I object to it and it is not properly
19 introduced into evidence. It is not what he represented
20 it to be to me.

21 MR. HARTER: Your Honor, I will not accept service of
22 that, and I'm insulted that he would suggest that I
23 misrepresented something that's in their medical chart
24 that we discussed that he had. It is -- if it's medical,
25 it is medical. That's exactly what it is is medical. But

1 I am personally offended for Mr. Bryan to suggest there's
2 been some misrepresentation or gimmick or trick. I mean,
3 we put this out there, Judge.

4 THE COURT: Mr. Bryan, when you discussed this with
5 Mr. Harter, had you seen the actual documents 8 and 9 that
6 he is referring to? Had you actually looked at them?

7 MR. BRYAN: I had not looked over them. We had them,
8 and he said -- I said, "Are they just medicals?" and he
9 says, "Yes." And I said, "If it's just medicals, I'm fine
10 with it." And it wasn't till today that I saw in the body
11 of them there's something -- a reference to somebody
12 saying 50 to 60 miles an hour and would ask Mr. Harter if
13 he's offended did he not know that was in there when he
14 showed -- when he asked me.

15 THE COURT: Well, I don't want to get into all that.
16 I don't want to get into all that.

17 MR. HARTER: I knew it was in there, and that's why I
18 identified it to bring out to present at trial. And I got
19 it from him and took it to their office.

20 THE COURT: Right. Well, what I'm hearing Mr. Bryan
21 say is that he was unaware -- when he agreed for these to
22 come in, he was unaware that it contained the language
23 about the speed of the car.

24 Here's what I'll do is I will be glad to leave the
25 record open for you to get somebody from Self in to -- and

1 if they can maintain under 803(6) to confirm that these
2 are records that are normally kept and the other
3 requirements under the rule, I'll allow you to do that.
4 And then I think it would come in. I think it would come
5 in without question. But I can't -- if there's an
6 objection, I can't just automatically make a determination
7 legally that these are business records. I'm sure that
8 they are, but I can't make that determination.

9 MR. HARTER: Okay.

10 THE COURT: So if you want the record open, I'll be
11 glad to extend that to you.

12 MR. HARTER: I'll tell you what. Let's just go ahead
13 today, and in the morning, if I feel some big urge to have
14 that in, I'll try to get somebody here from Self.

15 THE COURT: Okay.

16 MR. HARTER: But I would like for the -- I mean,
17 we're going to rest. We're going to conclude all the
18 testimony today accept for that.

19 THE COURT: We'll leave that record open.

20 So what we will do, these will be marked 7 and 8
21 right -- I mean, no, no -- 8 and 9 right now for
22 identification only, and then you can decide what you want
23 to do.

24 MR. HARTER: And I will tell you as an officer of the
25 Court, the triage note, I don't have it, I'll go ahead and

1 redact that, okay?

2 THE COURT: Okay.

3 MR. HARTER: Because what you rule and how we connect
4 that up would be based on the same information.

5 THE COURT: Okay. All right. So Number 9 with the
6 redaction can come in. There's no objection to that.

7 MR. BRYAN: No, sir.

8 THE COURT: Okay.

9 MR. BRYAN: Number 8 can come in with the redaction.

10 THE COURT: But I don't think he's willing to do that
11 quite yet.

12 MR. HARTER: Well -- well, I -- yeah. I'm not
13 willing to do that yet, but we'll see, if that's okay with
14 you.

15 THE COURT: All right. So 8 is for identification
16 only, and 9 is coming in with the redaction. And y'all
17 are going to have to put a pin through that.

18 (WHEREUPON, Defendant's Exhibit No. 9 was admitted into
19 evidence.)

20 MR. HARTER: I'm going to do it right now, Judge.

21 THE COURT: And 7 is still withdrawn.

22 MR. HARTER: Right.

23 THE COURT: Okay. All right.

24 MR. HARTER: This is not dark enough, ladies. We'll
25 fix it. We'll fix it.

1 THE COURT: She'll make sure it's taken care of.

2 MR. HARTER: We'll fix it later, okay?

3 But with the exception of that, Judge, I think we're
4 good.

5 THE COURT: All right. Very good.

6 MR. HARTER: We'll go ahead and when you get ready,
7 we'll publish.

8 THE COURT: And how I prefer to have these
9 depositions published is like on y'all's, one of you ask
10 the question and either Mr. Cruikshanks or anybody,
11 Ms. Davis, just sit at the witness stand and you serve as
12 the witness, and the same on this side, too, okay?

13 (Pause in proceedings.)

14 THE COURT: All right. Let's have the jury brought
15 in, Mr. Bolt.

16 The deposition of Mr. Holmes you're wanting to
17 publish, I assume that is that first deposition, correct?
18 The discovery -- it's been referred to as discovery
19 deposition.

20 MR. BRYAN: Right.

21 THE COURT: Okay. I thought so. I just wanted to
22 make sure.

23 MR. BRYAN: The discovery deposition.

24 (WHEREUPON, the jury entered the courtroom at 2:54 p.m.)

25 THE COURT: Madam Forelady, ladies and gentlemen of

1 the jury, each side is going to publish certain excerpts
2 from some depositions. The defense is going to publish
3 certain excerpts from the plaintiff's, Ms. Watts's,
4 deposition, and then I understand that the plaintiff is
5 going to publish excerpts from a first deposition that
6 Barton Holmes gave.

7 And if you'll remember, it was either yesterday or
8 Monday, I can't recall, I explained to you what a
9 deposition is. A deposition is where a witness or party
10 to the case, either way, is placed under oath and answers
11 questions posed to them by the attorneys outside of court.
12 You remember Barton Holmes, his deposition that was given
13 recently that was videotaped and played for you, that was
14 done outside of court. And so -- and you can give it
15 whatever consideration that you feel like it needs to be
16 given in this case.

17 So, Mr. Harter, if you will publish. I think
18 Ms. Davis will be the -- play the role of the plaintiff in
19 providing answers to the questions.

20 MR. HARTER: Thank you. And, Your Honor, we are
21 reading some selected portions of Mrs. Watts's deposition
22 that was taken at the office of Thompson and Townsend, and
23 this deposition was taken July the 21st of 2016. And I'd
24 like to now refer to page 28 ---

25 THE COURT: Okay.

1 MR. HARTER: --- line number 21.

2 EXCERPT OF DEPOSITION TESTIMONY OF MARTHA WATTS

3 "QUESTION: Kind of take me step-by-step through what
4 happened. You get on 76. Tell me your version of what
5 happened.

6 "ANSWER: Well, I was coming down the road, and all
7 at once I hit that car in the back. There was not a
8 light on. If it had been light on, I wouldn't have hit
9 it."

10 MR. HARTER: Page 32, line 6.

11 "QUESTION: Make sure I understand you. It is your
12 testimony that there were no lights on?

13 "ANSWER: Right.

14 "QUESTION: Any of the vehicles?

15 "ANSWER: I didn't see any lights.

16 "QUESTION: Did you see Ms. King's car before you hit
17 it?

18 "ANSWER: See who?

19 "QUESTION: Ms. King's car, the car that you hit.

20 "ANSWER: I didn't know who she was.

21 "QUESTION: But did you see that car before you hit
22 it?

23 "ANSWER: No. I was right up on it.

24 "QUESTION: Did you ever hit your brakes?

25 "ANSWER: Yes.

1 "QUESTION: Why did you hit your brakes?

2 "ANSWER: Well, I hit the car.

3 "QUESTION: But did you hit your brakes before you
4 hit the car?

5 "ANSWER: No.

6 "QUESTION: You hit your brakes after you hit the
7 car?

8 "ANSWER: Yeah."

9 MR. HARTER: Page 48, line 6.

10 "QUESTION: Were you unconscious after the wreck?

11 "ANSWER: No. I was conscious.

12 "QUESTION: Conscious the whole time?

13 "ANSWER: It didn't phase me."

14 MR. HARTER: Thank you.

15 THE COURT: Okay. Thank you.

16 MR. HARTER: Your Honor, with ---

17 THE COURT: With what we discussed previously ---

18 MR. HARTER: Of that, we rest.

19 THE COURT: Right. With that understanding.

20 Okay. Now, in rebuttal, it's my understanding that
21 the plaintiff will publish certain excerpts from the
22 deposition of Mr. Holmes that was done. I'm not sure I
23 heard the date.

24 MR. BRYAN: August 15, 2017.

25 THE COURT: August 15, 2017. Okay.

1 EXCERPT OF DEPOSITION TESTIMONY OF BARTON HOLMES

2 MR. THOMPSON: Turn to page 6, please, line 14.

3 "QUESTION: And what is your education level
4 exclusive of law enforcement training?

5 "ANSWER: I have some college but I haven't completed
6 my bachelor's yet."

7 MR. THOMPSON: Read on through line 22. Oh. I'm
8 sorry.

9 "QUESTION: What college are you talking about?

10 "ANSWER: You're asking what school?

11 "QUESTION: Yes.

12 "ANSWER: I went to Texas A&M, Clemson, I have a
13 couple hours at Greenville Tech and Anderson University."

14 MR. THOMPSON: All right. Please turn to page 10,
15 begin at line 8.

16 "QUESTION: Now, your law enforcement experience,
17 it's my understanding that the Laurens County sheriff's
18 position was your first in law enforcement; is that
19 correct?

20 "ANSWER: That's correct. Yes, sir.

21 "QUESTION: Okay. And to be in the position to be
22 hired by the Laurens County Sheriff's Department, did you
23 attend the police academy?

24 "ANSWER: Initially, when being hired by the
25 sheriff's office, I worked out at the detention center. I

1 was uncertified at that point. About six months later I
2 was selected to go to the South Carolina Law Enforcement
3 Academy to be Class 1 certified as a law enforcement
4 officer, and that's when I went to the academy.

5 "QUESTION: Okay. And what does Class 1 mean?

6 "ANSWER: It's your typical law enforcement
7 certification of any officer that would be patrolling the
8 streets, gives arrest authority, full training on all
9 those matters.

10 "QUESTION: Now, you were hired by Mr. Chastain,
11 right?

12 "ANSWER: Yes, sir. He was the sheriff when I was
13 hired.

14 "QUESTION: Right.

15 "ANSWER: I didn't actually interview with him, but
16 he was the sheriff.

17 "QUESTION: But when you worked there, about three
18 years is my understanding, right?

19 "ANSWER: I worked for the Laurens County Sheriff's
20 Department approximately six years.

21 "QUESTION: Six years?

22 "ANSWER: Yes, sir.

23 "QUESTION: And you were -- and what were your
24 primary duties during those six years period?

25 "ANSWER: With the sheriff's office, again, I started

1 off at the detention center. After I graduated Criminal
2 Justice Academy, I was assigned to Uniform Patrol which
3 would be the people in marked patrol cars answering calls
4 for service.

5 "QUESTION: Right.

6 "ANSWER: From there I became the school resource
7 officer at Hickory Tavern Middle School and Laurens High
8 School. I supplemented there as well. From there I
9 became the evidence custodian assigned to the Criminal
10 Investigation Division. From there I was assigned as a
11 detective investigator in the Criminal Investigation
12 Division. And my last bit I was in charge of the DARE
13 Program in the Community Service Division.

14 "QUESTION: It's a drug program?

15 "ANSWER: Yes, sir. I went to school and taught
16 fifth graders, you know, how to make good choices and good
17 life decisions.

18 "QUESTION: Do you recall your last day, the date you
19 were last employed by the Laurens County Sheriff's
20 Department?

21 "ANSWER: I can't remember exactly. I submitted my
22 letter of resignation, I believe, in May of 2016.

23 "QUESTION: Would Sheriff Chastain still be sheriff
24 when you submitted your letter?

25 "ANSWER: Yes, sir."

1 MR. THOMPSON: All right. Turn to page 15, please.

2 MR. HARTER: I think you had a question on page --
3 line 13.

4 MR. BRYAN: What page?

5 MR. HARTER: I think you had indicated you wanted to
6 publish a question on line 13, page 12. Okay. That's
7 fine.

8 MR. THOMPSON: Question on what line?

9 MR. HARTER: No. Go ahead.

10 MR. THOMPSON: Okay. Sorry. According to my notes,
11 we'll go to page 16.

12 MR. BRYAN: I have that marked here. I don't know if
13 it was supposed to be. On what you gave me, I've got
14 marked line -- what line?

15 MR. THOMPSON: Page 16.

16 MR. HARTER: I'm sorry. You were to publish,
17 according to the note, page 12 down through line 18.

18 MR. BRYAN: The question on 13 -- line 13, that would
19 be your next question. Page 12, line 13.

20 MR. THOMPSON: I'm there. I'm on page 13.

21 "QUESTION: Now, on August 15, 2013, between
22 10:30 p.m. and 11 p.m. were you performing duties as a
23 deputy sheriff for Sheriff Chastain?

24 "ANSWER: Yes, sir, I was.

25 "QUESTION: Do you have any military service?

1 "ANSWER: No, sir, I do not."

2 MR. THOMPSON: I believe that's where I cut off.

3 MR. BRYAN: Well, you -- okay.

4 MR. THOMPSON: Now we'll turn to page 16, line 8.

5 "QUESTION: Now, you spoke about the radar unit.

6 What kind of unit are you referring to? Is it built into
7 the vehicle?

8 "ANSWER: The radar unit that was in my vehicle that
9 evening was a hand held removable unit that could be
10 mounted to the dash. It was unique in the fact that it
11 had a hand-held mode and a moving mode as well."

12 MR. THOMPSON: Mr. Harter, can we add something in
13 that section. I don't think the . . .

14 Okay. Go to page 17, line 16.

15 "QUESTION: Okay. On this particular day, can you
16 recall when you started your duties for the sheriff on
17 August 15, 2013? When did you come on duty?

18 "ANSWER: Typically, for these type of events, it
19 would be between 8:00 and 9:00, the early evening hours.

20 "QUESTION: And that's when you would begin?

21 "ANSWER: Yes, sir.

22 "QUESTION: And how long would a shift last?

23 "ANSWER: Again, it was just kind of depended on, you
24 know, what was going on that evening, but we would usually
25 stay until 1:00 or 2:00 in the morning.

1 "QUESTION: All right. I see. You were assigned a
2 specific roadway that night?

3 "ANSWER: No, sir. The way that it works is
4 typically, we would identify areas that we wanted to be
5 present in and work those areas, obviously, moving in and
6 out of them. We were basically in the process of moving
7 from the Laurens area to Clinton area at this time in
8 question.

9 "QUESTION: Well, how many different patrol cars were
10 involved that night with this task force, or do you know?

11 "ANSWER: I can't recall specifically, but there were
12 units, again, from the sheriff's office, Highway Patrol.
13 We typically had officers from Laurens and Clinton City
14 participating as well."

15 MR. THOMPSON: Turn to page 24.

16 MR. BRYAN: Okay.

17 MR. THOMPSON: All right. Line 21.

18 "QUESTION: Okay. Kind of honing in on these two
19 accidents, can you tell me what lane you were in as you
20 passed maybe let's say the bingo headed east towards
21 Clinton? Do you remember that?

22 "ANSWER: I would have been in the -- and, again, I
23 want to make sure my nomenclature is the same between
24 numbers of lanes. Do you have a diagram that I can show
25 you?

1 "QUESTION: Yeah. We could do that. Let me see.
2 Maybe I can do as good as Mr. Harter, but I doubt it."

3 MR. THOMPSON: Mr. Harter says, "I doubt it."

4 MR. HARTER: I think you go to line 16.

5 "QUESTION: Let me hand you this drawing. Okay. If
6 this is the lanes coming back toward Laurens, 1 and 2, and
7 these are the lanes going towards Clinton, 1 and 2, and
8 this is the median, do you remember them as 1 -- don't you
9 remember them, 1 as being the lane closest to the ---

10 "ANSWER: Yes sir. I can agree with that."

11 MR. THOMPSON: All right. Go to page 27.

12 MR. HARTER: Line 16, I think, Mr. Thompson.

13 MR. THOMPSON: Somehow I did not give notes.

14 MR. HARTER: No. That's yours.

15 MR. BRYAN: Page 25?

16 MR. HARTER: 25. Page 25, line 16 is your ---

17 MR. THOMPSON: Question, page 25, line 16.

18 "QUESTION: So when you passed bingo, what lane are
19 you in on Highway 76 on that night?

20 "ANSWER: I recall, again, traveling through the area
21 that I probably would have been in the Number 1 lane."

22 MR. THOMPSON: Now moving to page 27.

23 MR. HARTER: I think keep going until page 26,
24 line 5.

25 MR. BRYAN: Line 25 -- I mean page 25, line 20 is

1 where we stopped.

2 "QUESTION: Okay. And were there cars around you?

3 "ANSWER: There were a few cars on the road, but,
4 again, the traffic wasn't excessively heavy by any
5 standard. It was later in the evening so, you know,
6 typically late evening traffic between Laurens and
7 Clinton. Not very many vehicles."

8 MR. THOMPSON: Okay. Over to page 26.

9 "QUESTION: So what was your intended destination as
10 you came down past bingo and came on down Highway 76
11 towards Clinton?

12 "ANSWER: My intention at this point was to patrol
13 the area, that area of Highway 76. Again, it goes from a
14 higher speed limit to a lower speed limit."

15 MR. THOMPSON: All right. According to my notes,
16 switch to page 27, line 4.

17 "QUESTION: Okay. It's your recollection that you
18 were in Lane 1 primarily?

19 "ANSWER: Yes, sir.

20 "QUESTION: Okay.

21 "ANSWER: I would have been in Lane 1 when I observed
22 the motorist traveling towards me that was speeding. I
23 would have been in Lane 1 when I, you know, started making
24 the turn.

25 "QUESTION: The motorist that came towards you that

1 you believe was speeding, was that confirmed by the radar
2 unit?

3 "ANSWER: Yes, sir. Actually, I locked in the speed
4 at 69 miles an hour for that unit.

5 "QUESTION: And were you hand holding it at the time
6 or was it in a ---

7 "ANSWER: It was in a fixed position on my dash."

8 MR. THOMPSON: All right. Going to page 28,
9 according to my calculations, line 5.

10 "QUESTION: Okay. So exactly where were you on
11 Highway 76 when you clocked this oncoming motorist at an
12 excessive speed in relation to some of the businesses that
13 were on your right-hand side?

14 "ANSWER: Again, it would have been in the area,
15 again, past bingo where the road becomes -- I mean, where
16 the road is, you know, straight. It's four lanes with
17 that slight downgrade. I would say around the area of I
18 guess where I'm trying to take my correct landmark. I
19 would say safely in the area around Ned Kemp's Barber
20 Shop, that area, obviously, moving towards Clinton.

21 "QUESTION: Do you think that's where you picked it
22 up?

23 "ANSWER: Again, it was in the general area, yes,
24 sir.

25 "QUESTION: Okay. And once you got that speed, what

1 did you do?

2 "ANSWER: Would you rephrase that?"

3 MR. THOMPSON: Then we are going to same page,
4 line 21.

5 "QUESTION: Okay. What actions did you take insofar
6 as equipment on your car and turning or not turning or
7 slowing down, or what did you do as soon as you saw that
8 you had a speeder?

9 "ANSWER: Yes, sir. Again, the speed limit in that
10 area is 40 miles an hour, so I wasn't traveling that fast
11 to begin with. I was probably actually traveling under
12 the speed limit just because I was going down the road.
13 But I would have applied my brakes on my -- I have a
14 little light control module that controls my blue lights
15 and my siren. I would have put on -- put that into first
16 position which is just my rear blue lights, obviously,
17 while applying my brake. And then shortly thereafter,
18 after slowing down to a safe speed, I made a U-turn.
19 Obviously, you know . . ."

20 MR. THOMPSON: Now we're going to stay on page ---

21 MR. HARTER: Keep going, lines 10 through 14.

22 "QUESTION: When did you begin" ---

23 MR. HARTER: Stop talking. Make sure you finish your
24 answer.

25 MR. THOMPSON: Your answer is?

1 "ANSWER: In making my U-turn, again, in an attempt
2 to make the traffic stop."

3 MR. THOMPSON: Now, turning to page 30.

4 MR. HARTER: Line 15. Line 15, page 29.

5 "QUESTION: Okay. Well, were you successful in
6 making the U-turn?

7 "ANSWER: As I was making the U-turn, again, I
8 flicked my blue lights on, made the U-turn. I was --
9 again, it happened very quickly, but probably in the
10 latter stages of executing my turn when the vehicle struck
11 in my back left quarter panel area behind my tire, and
12 basically, in my words, executed kind of a pit maneuver on
13 me. But basically, turned my vehicle a complete
14 180 degrees to where I was. I was stopped in the median
15 facing the opposite direction.

16 "QUESTION: And did the vehicle that struck you on
17 the side, what happened to it immediately after the
18 impact?

19 "ANSWER: Again, I was facing the direction back
20 towards Laurens, but from what I observed, that vehicle
21 was stationary there just past me in the Number 1 lane
22 facing Clinton.

23 "QUESTION: Okay. Now, when you clicked the button
24 to put on the blue light, is that the only thing that
25 came on when you clicked the button, a back blue light?

1 Is that all that came on your car from a warning
2 standpoint?

3 "ANSWER: If I understand your question correctly,
4 yes, sir.

5 "QUESTION: That's the only warning that you gave was
6 moving the switch so it would illuminate the back blue
7 light?

8 "ANSWER: No, sir. That's not the only warning that
9 was given. I apologize. I must have -- I must have
10 understood. Obviously, I was applying my brakes, I was
11 slowing down, so it would have been, you know, the
12 standard brake lights that were equipped on my car as well
13 as the extra lights that were equipped.

14 "QUESTION: Okay. So it's your brake lights and the
15 rear part of the blue lights that you were relying on as
16 the only warning that you showed that you were going to do
17 something?

18 "ANSWER: Yes, sir. And I believe I put a turn
19 signal on. But, again, there were plenty of lights
20 illuminating, you know."

21 MR. THOMPSON: All right. Page 31, line 13.

22 "QUESTION: Now, do you have an independent
23 recollection of putting on your left turn signal or not?

24 "ANSWER: I cannot definitely say that I did, but,
25 again, there would have been other indicators that I was

1 slowing down."

2 MR. THOMPSON: Page 37.

3 MR. BRYAN: 36.

4 "QUESTION: And in your estimation, how much time
5 went by between the first and second collision?

6 "ANSWER: Initially, I would have told you that it
7 didn't -- I didn't know exactly how long, but it was long
8 enough for me to, you know, kind of check myself, make
9 sure I was okay, everything, and then also making like a
10 visual on the other vehicle and driver, you know, trying
11 to ascertain if they were okay. And then, obviously, my
12 next thing was to call into dispatch. I remember sitting
13 there in my vehicle.

14 "The way our dispatch system works is you have to
15 call dispatch, give them the unit number, then wait to be
16 called. And there was some other radio traffic going on,
17 so there was a period of time I had to wait to actually,
18 you know, say what I needed to say on the radio. And it
19 was immediately as I was about to key up the microphone
20 that the second collision occurred right there, again, to
21 my left."

22 MR. THOMPSON: Turn to page 37, please.

23 "QUESTION: So you're sitting in your car when the
24 second collision occurs?

25 "ANSWER: Yes, sir.

1 "QUESTION: Was there any damage to your car that
2 would have prevented you from exiting the car?

3 "ANSWER: Damage to my car?

4 "QUESTION: Yeah.

5 "ANSWER: That would have prevented me from opening
6 my door? No, sir."

7 MR. THOMPSON: All right. Go to page 45, line 22.

8 "QUESTION: Okay. Do you have an independent
9 recollection of how many blue lights there were on after
10 the second collision, how many different blue lights?

11 "ANSWER: The number?"

12 MR. THOMPSON: And turn the page.

13 "QUESTION: Yeah. The number of vehicles.

14 "ANSWER: No, sir. I could not tell you that. I
15 could not tell you that."

16 MR. THOMPSON: Turn to page 49, go to line 22.

17 MR. HARTER: 25.

18 MR. THOMPSON: That's the answer.

19 THE COURT: 25 is an answer, just go back up to the
20 previous ---

21 MR. HARTER: 25 is ---

22 MR. THOMPSON: It's hard to read through my thing
23 over here. I should have marked the deposition.

24 Page 49, line 25.

25 "QUESTION: My point is, saying that when you told

1 this officer 5 to 10 seconds, it was in close proximity to
2 the event itself. I mean, it was close in point of time.

3 "ANSWER: I might agree that it was close. I guess
4 it depends on your definition of close, but it wasn't like
5 the first collision happened, then there was no room, you
6 know, for the second vehicle to either not have time to
7 react or not see, you know. The vehicle was sitting there
8 for a good amount of time. And, again, the road was
9 clear, visibility was good. It's not like it was a bam,
10 bam type of sequence."

11 MR. THOMPSON: That's it. You can come down.

12 THE COURT: All right. Does the plaintiff rest your
13 rebuttal case?

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Okay. All right. Madam Forelady, ladies
16 and gentlemen of the jury, we're going to go ahead and
17 adjourn for the day, and we'll start back at 10:00 in the
18 morning. And have a good evening, get some rest, and
19 we'll finish up this case tomorrow. Okay. Have a good
20 evening.

21 (WHEREUPON, the jury exits the courtroom at 3:24 p.m.)

22 THE COURT: All right. I've got a draft charge that
23 I'll make copies and hand to you in just a few minutes,
24 okay?

25 Anything else on the record before we take a break?

1 MR. THOMPSON: Not from the plaintiff.

2 THE COURT: Okay. Very good. Just be at ease and
3 we'll get you some copies here in just a minute.

4 (Pause in proceedings.)

5 THE COURT: We need to go back on the record for just
6 a second.

7 Mr. Bolt has informed me that one of the jurors of
8 the 12, and we'll find out who it is in just a moment,
9 indicated to Mr. Bolt that she thought that this case
10 would be over with by today and that she has a doctor's
11 appointment in Spartanburg maybe at 8:30 and then maybe
12 another doctor's appointment at 2:30.

13 So what my inclination is is to bring her out here
14 and just see if there's a way that she can have both those
15 appointments rescheduled. And if she indicates to me that
16 it's just -- that would just be a terrible thing to do or
17 unable to do, then I would be inclined to excuse her and
18 put in her place -- in civil cases, it's not by lottery.
19 It's just whoever the first alternate is would take that
20 place.

21 Any objections to handling it in that fashion?

22 MR. THOMPSON: Let me speak to Mr. Harter a minute
23 about it.

24 THE COURT: Sure.

25 (Pause in proceedings.)

1 THE COURT: Okay. Does the plaintiff have any
2 objections to handling this juror in that fashion?

3 MR. THOMPSON: No, sir.

4 THE COURT: Okay. Defense?

5 MR. HARTER: The only thing is kind of singling her
6 out. I don't know what the ---

7 THE COURT: Well, she's kind of singled herself out
8 by informing Mr. Bolt that she -- and the concern I have,
9 if I force her to stay here, then you're going to have an
10 unhappy juror. And that could ---

11 MR. HARTER: And you just don't bring her out.
12 You're going to ask her if she can reschedule and explore
13 that ---

14 THE COURT: And if she says it would create a
15 hardship or she can't or whatever, then I'm going to go
16 ahead and excuse her and appoint the first alternate.

17 MR. HARTER: Okay. That's fine. Judge, I
18 understand. That's fine. That's fine.

19 THE COURT: Bring her out. We'll put it on the
20 record.

21 (WHEREUPON, Juror Number 16 enters the courtroom.)

22 THE COURT: Hey.

23 JUROR NUMBER 16: How are you?

24 THE COURT: Good. How are you doing?

25 JUROR NUMBER 16: I'm doing good.

1 THE COURT: Okay. This is Freda Brown, Juror
2 Number 16.

3 All right. You've got two doctors' appointments.

4 JUROR NUMBER 16: Yes. And I didn't -- I made them
5 a few months ago. And I thought it was only going to
6 last three days, and I thought I was going to be able to
7 make them. But, I mean, I can do whatever you need me to
8 do.

9 THE COURT: Well, I don't want to create a hardship
10 for you. If you think you can reschedule without being a
11 problem for you, then that would be great. But if you
12 think you would be unable to reschedule or if it would
13 create some problems for you, then I don't want to do
14 anything that would be a hardship for you. So what do you
15 think?

16 JUROR NUMBER 16: As long as I can start calling them
17 before 5:00, I should be able to get ahold of both of
18 them.

19 THE COURT: And reschedule?

20 JUROR NUMBER 16: Yeah. Reschedule.

21 THE COURT: Okay. All right. Well, I appreciate you
22 doing that. Thank you.

23 JUROR NUMBER 16: Okay. Thank you.

24 (WHEREUPON, Juror Number 16 exited the courtroom.)

25 THE COURT: All right problem solved.

1 MR. HARTER: That's great.
2 (WHEREUPON, proceedings adjourned at 3:31 p.m., to be
3 reconvened on Thursday, April 19, 2019. Court's Exhibit
4 Nos. 3, 4 and 5 were marked for identification.)
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1 THURSDAY, APRIL 19, 2019

2
3 (WHEREUPON, proceedings reconvened at 10:09 a.m.)

4 THE COURT: All right. We're back on the record.
5 And I want to make sure that everybody is good with the
6 final charge. Per our informal charge conference of
7 yesterday, I indicated that I would include in the charge
8 both sides' request, but when we started looking at the
9 plaintiff's statutes, we included every statute requested
10 but there were some subsections of some of the statutes
11 that just were not applicable so we took it out. So the
12 final charge, we provided you with a copy.

13 Plaintiff is good?

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Okay. Defense good?

16 MR. HARTER: Your Honor, I have one point to raise,
17 and I know we covered this yesterday. But when I went
18 back and looked at the section on duty to keep a proper
19 lookout ---

20 THE COURT: Okay.

21 MR. HARTER: --- we had two charges that kind of wove
22 into that. I think one was 1 and one was 2, and you told
23 us back there you were going to include 2, which you did
24 and which in all candor we said okay, okay. I looked at
25 it this morning, and, Number 1, actually, it is a charge

1 on maintaining a proper lookout, but it goes into a little
2 more detail that I think is appropriate. So I would ask
3 that you consider flipping those and including 1 instead
4 of 2. And here it is. And I know we discussed it
5 yesterday, Judge. I looked at it a little closer this
6 morning.

7 THE COURT: Mr. Harter, I'm going to stay with what
8 I've got in the charge. I will have your request Number 1
9 marked as a Court's exhibit so you're protected on the
10 record.

11 Okay. Anything else concerning the charge? And we
12 made the one little change in the verdict form as you
13 note.

14 Okay. All right. Ready to make closing arguments?

15 MR. THOMPSON: Yes, sir.

16 MR. HARTER: I have one matter that we left on the
17 table yesterday, Judge.

18 THE COURT: Okay.

19 MR. HARTER: It related to one of the medical
20 records.

21 THE COURT: Okay.

22 MR. HARTER: And I have the custodian of Self
23 Regional here to address that issue.

24 THE COURT: Okay. All right. What you're going to
25 need to do is I guess you're going to need to put your

1 screen and everything to where we can have your witness
2 there.

3 MR. HARTER: All right. That's fine.

4 THE COURT: Mr. Thompson, Mr. Bryan, you are
5 standing, so ---

6 MR. THOMPSON: Well, I mean, our initial objection
7 would be this is a person who was never disclosed to us in
8 the discovery, and now we're confronted with somebody that
9 we don't know what's going to go on.

10 THE COURT: Right.

11 MR. THOMPSON: We object to it.

12 THE COURT: Okay. Well, the fact that they deal with
13 medical records ---

14 MR. THOMPSON: It's very damaging to be put in under
15 the guise of it's medical records.

16 THE COURT: Well, the fact that they deal with
17 medical records themselves that both sides have had
18 possession of for whatever period of time, and as I
19 indicated yesterday, since you objected to those records
20 coming in, I had indicated to Mr. Harter that he could
21 keep the record open to bring the records custodian, so
22 I'm going to allow him to do it.

23 MR. THOMPSON: Do we need to make a continuing
24 objection to this?

25 THE COURT: You're protected, Mr. Thompson.

1 MR. HARTER: Your Honor, we call Terry Huss.

2 THE COURT: What you're going to need to do, we're
3 going to need to get the jury out first.

4 MR. HARTER: You want us to do it in front of the
5 jury? We can. Okay. That's fine.

6 THE COURT: Yeah.

7 MR. BRYAN: Your Honor, are we going to do the
8 admissibility issue in front of the jury?

9 THE COURT: What I indicated yesterday, because the
10 plaintiff objected to those records coming in, Mr. Harter
11 thought that he could get them in under the Business
12 Records Act without having anyone from Self here to set
13 forth the necessary foundation. Under the rule, I did not
14 allow him to do that, but I indicated that if he brought a
15 witness who could establish the various factors under the
16 Business Records Act to get that document in, then he
17 would be permitted to do it. I don't see where we need to
18 take any testimony outside the presence of the jury. If
19 she's unable to establish the necessary factors under the
20 rule, then the document's not coming in, plain and simple.

21 MR. BRYAN: Yes, sir.

22 There is another issue about the chain of these three
23 documents he originally put up there that I think shows
24 the third one to be -- not to be what it's presented to
25 be, and I do want to bring that to the attention of the

1 jury. I don't know -- I mean to you, to the Court. I
2 don't know if you want the jury to hear that.

3 THE COURT: Okay. When you indicate chain, I'm not
4 quite certain. Are you talking about chain of custody?

5 MR. BRYAN: No, sir. It's just the circumstances of
6 the three documents. I can argue it right now if you
7 would like me to.

8 THE COURT: Yeah. I mean, I'm not understanding you.
9 It's my fault, not yours.

10 MR. BRYAN: Mr. Harter had another one here,
11 Number 7. I don't know if he still has it or not.

12 MR. HARTER: We took -- there's one of them, Judge,
13 and I don't mean to -- we agreed to take one of them out.
14 This was the one that he objected to. We said okay, fine,
15 give it back to the court reporter because we're
16 withdrawing it.

17 THE COURT: All right. 7 was withdrawn.

18 MR. BRYAN: Yes, sir. If it may please the
19 Court, Number 7 had a statement in it the deputy at the
20 scene says that she hit a stopped car doing 50 or 60 miles
21 an hour. The next statement comes in the EMS, apparently,
22 the statement that was the EMS statement. This is when
23 they turn them over to the hospital here. And we were
24 going -- we agreed we would redact it, but it's in this
25 second document, too.

1 THE COURT: Right.

2 MR. BRYAN: And we agree we were going to redact
3 them, and guess at some point we will redact that.

4 This one, on the second page, which seems to be just
5 a follow-up to the same information, and if I may read
6 this to the Court, he's got it highlighted here: Exam
7 started at 900 -- well, it would be 12:09. Able to get
8 good history, have reviewed and agreed to the RN notes.
9 History comes from patient. Presenting problems starting
10 minutes ago. The patient arrived via EMS and consulted in
11 route. See run sheet and RN notes. No significant past
12 medical history. Patient does not drink alcohol. No
13 alcohol today. No drug use. No drug use today. Past
14 medical history denies. No syncope prior to MVA, whatever
15 that is. Vehicle struck while moving. Type of MVA: hits
16 stopped vehicle. The speed of impact: greater than
17 50 miles an hour. Was in front seat. Was on driver's
18 side. Was restrained with seat belt. Airbag activated.
19 Major damage to vehicle. Arrived by ambulance. Arrived
20 with cervical spine immobilization. Arrived on a
21 backboard. Major mechanism suggested by history.

22 Your Honor, what -- I mean, it's obvious what the
23 intent is. There's nothing medical in here that anybody
24 wants in. And what he is wanting in is this 50 miles an
25 hour, and he wants to argue to the jury that she hit a

1 stopped car doing 50 miles an hour. This is a
2 continuation of 7 and 8 where the deputy told the
3 ambulance.

4 THE COURT: Do you want 7 in? If you want 7 in, you
5 have a right to get 7 in.

6 MR. BRYAN: I don't want it in. The whole thing is a
7 continuation of that. But there is no indication -- he
8 wants to say that she said that speed impact greater than
9 50 miles an hour, and that's what he's trying to say that
10 she says this. And I would ask the Court to read it.

11 But it is a highly prejudicial thing. There is no
12 other evidence. All the evidence, there's been no dispute
13 about the speeds anywhere before. And this is going in
14 purely for 50 miles an hour. Nothing to do with any
15 medical records. And if you look at the chain of those
16 three documents, one, two down to this one, it is clear
17 where this 50 came from. It didn't come from Ms. Watts.

18 THE COURT: Right. Well, it would seem like to me
19 that you would want 7 in. If 7 indicates that the deputy
20 said that, then it would seem like to me that you would
21 want 7 in, and you certainly can get that in, assuming
22 that the witness provides the necessary foundation.

23 MR. BRYAN: I understand, Your Honor. But all of it
24 is -- none of it is -- all of it is hearsay. None of it
25 can be directly documented to Ms. Watts.

1 THE COURT: Well, that's the purpose for the
2 Business Records Act under 803 allows hearsay documents to
3 come in where it's an exception rather to the hearsay rule
4 if the business record is kept in the normal course of
5 business, et cetera, et cetera. That's the purpose for
6 the rule.

7 MR. BRYAN: Yes, sir. And his argument is going to
8 be that Ms. Watts said 50 miles an hour.

9 THE COURT: Well, and then you would have every right
10 to argue contrary to that. You could argue to the jury
11 there's nowhere in these documents that said that
12 Ms. Watts made these statements. So you have the right to
13 put up a counter argument to that.

14 MR. BRYAN: I would just hope that we get this
15 redacted here.

16 THE COURT: The court reporter will make sure it gets
17 redacted before it goes to the jury.

18 MR. BRYAN: I would renew my objection on that rule
19 along with what Mr. Thompson's argued, Your Honor.

20 THE COURT: Okay. So noted for the record.

21 Okay. Let's bring the jury out.

22 MR. HARTER: So we're using 9 redacted and 8 as it
23 is.

24 THE COURT: Right.

25 (WHEREUPON, the jury entered the courtroom at 10:22 a.m.)

1 WHEREUPON,

2 TERRY HUSS

3 After having been duly sworn, testified as follows:

4 THE COURT: Ladies and gentlemen of the jury, there
5 is one additional witness that the defense has called
6 before we go into closing arguments and the Court's
7 charge.

8 You may proceed, Mr. Harter.

9 MR. HARTER: Thank you.

10 DIRECT EXAMINATION

11 BY MR. HARTER:

12 Q Will you state your full name for the Court and jury,
13 please.

14 A Sure. Teresa Huss, H-U-S-S.

15 Q Teresa, what is your -- where do you work?

16 A I work at Self Regional Healthcare.

17 Q And what is your position there?

18 A I'm the manager of health information management.

19 Q Okay. And in terms of the medical records at Self
20 Regional, they're electronic medical records?

21 A Yes, sir.

22 Q Okay. Are you the custodian of those records ---

23 A I am.

24 Q --- for Self Regional?

25 A Yes, sir.

1 Q And at our request, did you bring with you this
2 morning emergency department records regarding Martha
3 Watts ---

4 A Yes, sir. I did.

5 Q --- regarding her admission to the emergency
6 department at Self on August of 2013?

7 A I did. Yes, sir.

8 Q Okay. And at my request, did you compare what is
9 Defendant's Exhibit -- that has been marked for
10 identification Defendant's Exhibit 8 with the actual
11 records he presented -- you printed off this morning?

12 A I did. Yes, sir.

13 Q Okay. And these pages, Exhibit 8 has page -- little
14 stamped numbers on the bottom from 67 through 76. Do you
15 see that?

16 A Yes, sir.

17 Q Is that a true and accurate copy of the electronic
18 records that Self Regional has maintained by U.S.
19 custodian?

20 A Yes, sir.

21 Q Okay. And are the Self Regional medical records
22 business records or records that you keep on patient care?

23 A Yes, sir.

24 Q Okay. Teresa, can you please look at the first page
25 of the nursing assessment, and it says a section called

1 General Presentation. Will you please read that to the
2 jury.

3 A Yes, sir. "Alert, oriented and fully verbal,
4 developmentally able to" ---

5 THE COURT: The record's not into evidence yet,
6 Mr. Harter. You're having her publish something that's
7 not into evidence.

8 MR. HARTER: I'm sorry. I'm sorry. We move this
9 into evidence, Your Honor, Exhibit 8.

10 MR. BRYAN: Your Honor, I would like to question ---

11 THE COURT: Y'all come here a minute.

12 (WHEREUPON, a bench conference was held off the record.)

13 BY MR. HARTER:

14 Q Okay. Teresa, the record we are looking at,
15 Number 8, Exhibit Number 8, I want to ask you, is that a
16 record, a patient record that is made and/or created
17 around the time of the event that the patient is treated
18 in the emergency department?

19 A Yes, sir.

20 Q Is that a record that is kept in the ordinary course
21 of business by Self Regional Hospital?

22 A Yes, sir.

23 Q Is it a record that includes information from a
24 patient regarding her care and treatment?

25 A Yes, sir.

1 Q And is it information that is provided by the patient
2 to the medical provider?

3 A It could be. I mean, I was not there so I don't
4 know.

5 Q But that record purports to be that?

6 A (No answer.)

7 Q It includes patient information.

8 A It would include anything that was shared in that
9 visit.

10 Q Okay. Is it a record that is regularly maintained in
11 the conduct of the hospital's practice of treating and
12 caring for patients?

13 A Yes, sir.

14 Q It is a record that includes statements and/or
15 information related to medical diagnosis and treatments of
16 patients; is that correct?

17 A Yes, sir.

18 Q Is that an accurate record from Self Regional from
19 the electronic medical records that you maintain?

20 A Yes, sir.

21 MR. HARTER: Your Honor, we move it in.

22 THE COURT: Mr. Bryan, you wanted to examine this
23 witness solely on the issue of admissibility?

24 MR. BRYAN: Yes, sir.

25 THE COURT: Okay. Not the contents, just the

1 admissibility.

2 MR. BRYAN: Yes, sir.

3 VOIR DIRE

4 BY MR. BRYAN:

5 Q Ms. Huss, how long have you been at Self Regional?

6 A I've been there 29 years.

7 Q How long have you been in your current position?

8 A About five.

9 Q Okay. Now, when you went to get this record, you got
10 it off a computer; is that correct?

11 A Yes, sir.

12 Q Just had to print it off. And I assume Mr. Harter
13 asked you last night to get it?

14 A Yes, sir.

15 Q All right. You printed it off this morning?

16 A Yes, sir.

17 Q Okay. And when this record was taken, was a deputy
18 sheriff of Laurens County present there?

19 A I don't -- I don't know that.

20 Q Okay. Were you present there?

21 A No, sir. I was not.

22 Q Have you ever worked in an emergency room?

23 A I have not.

24 Q Are your duties purely administrative?

25 A Yes, sir.

1 Q So you're not a nurse?

2 A No. No, sir.

3 Q And what is a clinician? It says clinician history
4 of ---

5 A That would be anybody that was involved in the care.

6 Q So that would be anybody that was a caretaker?

7 A As far as I know.

8 Q And do you know who the specific clinician that put
9 this on here is?

10 A I do not.

11 Q Okay. And do you know who actually gave this
12 information?

13 A It would be reflected in the record. I mean, I'd
14 have to look at it. It would be based on -- RDD. There's
15 a grid back here in the back. It's going to be Richard
16 Brookshank, MRD. Richard Brookshank -- Brooksbank.
17 Sorry.

18 Q So he would be the one that had gotten that?

19 A That would place this documentation. Yes, sir.

20 Q So all you know is it's printed on a piece of paper
21 that you printed off a computer this morning.

22 A Yes, sir.

23 Q You have -- it appears that some Dr. Brookshanks put
24 it on there; is that correct?

25 A That is what that reflects. Yes, sir.

1 Q You don't know who else was present when he put it on
2 there.

3 A No, sir.

4 Q Could someone else have contributed to it?

5 A I can't answer that. I'm not sure.

6 Q And you have no idea about the accuracy of it, do
7 you?

8 A No, sir.

9 Q Is there someone in the emergency room that keeps
10 these records?

11 A Not outside of the computer. No, sir. Those are
12 maintained electronically.

13 Q And you couldn't tell us if there was -- there's no
14 way to tell who else was present when this was taken, this
15 information was taken?

16 A I wouldn't know at that particular time. No, sir.

17 MR. BRYAN: Thank you.

18 THE COURT: All right. I will allow Defense Exhibit
19 Number 8 into evidence under the business records.

20 (WHEREUPON, Defendant's Exhibit No. 8 was admitted into
21 evidence.)

22 MR. HARTER: Thank you, Judge.

23 MR. BRYAN: Your Honor, we would just let the record
24 reflect our objection.

25 THE COURT: Certainly. You're protected on the

1 record, Mr. Bryan.

2 MR. HARTER: Thank you, Judge.

3 DIRECT EXAMINATION (Continued)

4 BY MR. HARTER:

5 Q Now, Teresa, can you come back to the document,
6 please. Can you look at your copy? We'll read from your
7 copy.

8 A Can you remind me what page you're on?

9 Q I'm going to look at page -- sorry. The second page
10 with nursing assessment.

11 A Her presentation?

12 Q Yeah. General -- and I think I maybe jumped ahead
13 with the judge on this before. Let's go to it, and if you
14 will, read to the jury what the nursing assessment was in
15 General Presentation.

16 A "Alert, oriented and fully verbal. Developmental age
17 appropriate responses."

18 Q Okay. Now, down at the bottom there's another
19 section called Clinical History of Present Illness; is
20 that right?

21 A Yes, sir.

22 Q Would you read to the jury the clinical history of
23 present illness as it appears in the emergency department
24 record of Mrs. Watts on that day?

25 A Yes, sir. "Exam started at 00:09. Able to" ---

1 MR. BRYAN: Your Honor, I'll let her start over, but
2 I believe it says clinician's.

3 BY MR. HARTER:

4 Q Okay. Clinician History of Present Injury. And the
5 clinician is the doctor, right?

6 A Or whoever treated the patient.

7 Q Thank you. Right.

8 A "Exam started at 00:09. Able to get a good history.
9 Have reviewed and agree with RN note. History comes from
10 patient. Presenting problem started minutes ago. Patient
11 arrived via EMS and consulted in route. See run sheet and
12 RN note."

13 Q Go on.

14 A "No significant past medical history. Patient does
15 not drink alcohol. No alcohol today. No drug use. No
16 drugs used today. Past medical history: denies. No
17 syncope prior to MVA. Vehicle struck while moving. Type
18 of MVA: hit a stopped vehicle. Speed of impact: greater
19 than 50 miles per hour. Was in front seat. Was on the
20 driver's side. Was restrained with a seatbelt. Airbag
21 activated. Major damage to vehicle. Arrived by
22 ambulance. Arrived with cervical spine mobilization.
23 Arrived on a backboard. Major mechanism suggested by
24 history."

25 Q Okay. Flip over to the neurological exam on the next

1 page, neuro exam.

2 A "Alert, oriented to person, place, and time. No
3 motor deficit. No sensory deficit."

4 Q Okay.

5 MR. BRYAN: Your Honor, can I ---

6 THE COURT: Mr. Bryan?

7 MR. BRYAN: I would like to ---

8 THE COURT: Oh, I'm going to give you an opportunity.
9 I just don't know if Mr. Harter is finished yet.

10 BY MR. HARTER:

11 Q Now, Teresa, I want to ask you, if you will, these
12 are some records that the plaintiff has introduced and we
13 have agreed to come into evidence, okay?

14 A Okay.

15 Q Do those appear to be medical records from Self
16 Regional Hospital just from your cursory review of them on
17 the same day?

18 A (Reviews documents) Yes, sir.

19 Q And I want you to look down at the bottom of the page
20 of the plaintiff's exhibit and you see it has a stamp --
21 number stamp on it.

22 A Yes, sir.

23 Q Okay. And it begins like 22 or something?

24 A Yes, sir.

25 Q Okay. Now, the record I'm holding, Exhibit 8, it

1 also has the same kind of stamp, doesn't it?

2 A Yes, sir.

3 Q If somebody requests medical records from Self
4 Regional Hospital on a patient and they provide a proper
5 medical authorization, they get all of the patient's
6 records, don't they?

7 A They get what's requested. Yes, sir.

8 Q Okay. And if they request all the records, they get
9 them, right?

10 A Yes, sir.

11 Q And all those records would include the emergency
12 department record, which we marked as Exhibit 8, as well
13 as the other records which is marked as Exhibit 6, right?

14 A Correct.

15 MR. HARTER: Okay. Excuse me just a minute, Your
16 Honor.

17 THE COURT: Sure.

18 BY MR. HARTER:

19 Q Did I ever request any medical records from you
20 before the subpoena today?

21 A I'm not aware of that. I'm not sure.

22 Q Right. But if the plaintiff requested those records,
23 they would get them, right?

24 A Yes, sir.

25 Q And do you know whether they did or not?

1 A I do.

2 Q How do you know?

3 A When I was at records this morning, I found Self's
4 request.

5 Q You found the request for these records from the
6 plaintiff.

7 A Yes.

8 Q Right? It wasn't from me. It was from them?

9 A Yes, sir.

10 Q Some time back, wasn't it?

11 A (Nods head affirmatively.)

12 Q Huh?

13 A Yes, sir.

14 MR. HARTER: Thank you.

15 THE COURT: Mr. Bryan?

16 CROSS EXAMINATION

17 BY MR. BRYAN:

18 Q Did you bring a copy of this with you today?

19 A I did.

20 Q Can you show it to me, please.

21 A Sure.

22 Q This is an actual copy of this same thing.

23 A Yes, sir.

24 Q This came straight from your computer this morning.

25 A Yes, sir.

1 Q And it has -- so this highlighting on here is not
2 yours, is it?

3 A I don't believe so. Because they were printed out in
4 black and white.

5 Q And on that clinician history, there's a long list of
6 items, isn't it?

7 A Yes, sir.

8 Q You don't know who actually said each one of these
9 things, do you?

10 A I do not.

11 MR. BRYAN: Your Honor, this is a copy straight from
12 the computer. This one has been marked on and I would ask
13 that the clean one be put into evidence.

14 THE COURT: That will be fine. During a break, we'll
15 take care of making the switch.

16 MR. BRYAN: No further questions, Your Honor.

17 THE COURT: Thank you, ma'am. You can step down.
18 You're free to leave the courthouse.

19 Okay. The evidentiary record in this case is now
20 closed. Let's take a couple minute break so the lawyers
21 can get their things lined up for closing. So ladies and
22 gentlemen, just go back to the jury room for just a few
23 minutes so they get everything kind of lined up in order
24 to present their closing to you. We'll get you back out
25 shortly.

1 (WHEREUPON, the jury exits the courtroom at 10:40 a.m.)

2 THE COURT: Mr. Harter, do you want to make sure that
3 the clean copy is the same as the other one so the court
4 reporter can make the change?

5 MR. HARTER: I will. I will. I will.

6 MR. THOMPSON: Before we break ---

7 THE COURT: Just hold that thought.

8 (WHEREUPON, Court's Exhibit No. 6 was marked for
9 identification.)

10 THE COURT: Okay. Mr. Harter first and then ---
11 Mr. Thompson, I'll hear from you next.

12 MR. HARTER: It is an exact copy, but we'd like to
13 introduce a copy with the actual Bates numbers on there
14 because those other documents had Bates numbers on them as
15 well. So we'll run a copy of this, a clean copy of this,
16 which is Exhibit 8, and it will be -- but with the Bates
17 numbers on it.

18 THE COURT: Okay. Do you have any problems? Just as
19 long as it's not highlighted.

20 MR. BRYAN: As long as it's not highlighted. I don't
21 care anything about the Bates number.

22 THE COURT: What we will do is, of course we'll take
23 a break between closing and charge, so y'all make sure
24 that's done and everybody is good with that. Okay.

25 Now, Mr. Thompson, you need ---

1 MR. THOMPSON: Yes, sir. I don't want to interrupt
2 Mr. Harter during his argument if I don't have to. It was
3 my understanding that the surveillance video was allowed
4 into evidence, but no comments were allowed to be made on
5 the video during its display to the jury. And my point
6 is, if that is the case, then we would take the position
7 that Mr. Harter cannot try to interpret the video during
8 his closing arguments.

9 THE COURT: Okay. I don't recall that being
10 something that we discussed concerning comments.

11 Are you planning to use the video in some fashion?

12 MR. HARTER: Yes, sir. We do plan, Judge. We use
13 the video just like we would use a picture. It is a
14 picture, and I plan to point things and reference things
15 on the surveillance video and invite the jury to pay
16 attention to those things. And I'm sure plaintiff's
17 counsel can do the same thing.

18 THE COURT: Right. I don't think -- I think it's
19 permissible to use that for demonstrative purposes in your
20 argument. I don't think you're entitled to add to the
21 video anything that the video does not show, okay?

22 MR. HARTER: I think -- I plan to comment about what
23 the video does show.

24 THE COURT: Whatever the video shows, you can
25 certainly argue that as they can, but if the video does

1 not show something, then you certainly cannot -- because
2 it almost would be testifying, and certainly you cannot do
3 that. But if the video shows something -- for example,
4 I'm just using this as an example, the video shows a car
5 going across the road into what is presumably the fence.
6 That's already been testified to. You can argue see this
7 car traveling into the fence. Or the plaintiff can argue
8 nowhere in the video is the crash shown. You could argue
9 that. But now as far as I know that there's been some
10 mention about time, you can't argue to the jury the time
11 because that's not shown on the video. So I'll allow you
12 to argue what is on the video, but if it's not on the
13 video, then you can't add to it.

14 MR. HARTER: The time is shown on video, Judge.

15 MR. THOMPSON: It's just 20 minutes off.

16 MR. HARTER: The seconds are shown on the video. And
17 the testimony has been that it records realtime, and time
18 is important. But it shows the real time. It does. I
19 mean, that was what ---

20 THE COURT: Well, yeah. I mean, you can point out
21 the time, but you can't tell them, hey, we've got 41
22 seconds between -- I mean, let them reach that conclusion.

23 MR. HARTER: Well, I plan to tell them that, Judge.
24 We'll tell you I plan to tell them that there is an
25 interval of 41 seconds between this series of events and

1 this series of events, and it clocks off on the video.
2 You see it.

3 THE COURT: Well, you can point out, all right, this
4 -- there's the time, there's time, but I'm not going to
5 allow you to get to tell them this 41 seconds difference.
6 They can reach their own conclusions.

7 MR. HARTER: Let them figure it out themselves.

8 THE COURT: Let them figure it out themselves.

9 MR. THOMPSON: All right. One other point. There's
10 a lot of flashing lights on that video, and I don't think
11 Mr. Harter could testify to what those flashing lights
12 mean because we haven't had an expert get on the stand to
13 say this light represents this and that or ---

14 THE COURT: Yeah. They're going to have to reach
15 their own conclusion as far as what that video -- what
16 that video means. I know we're in a gray area here. I
17 can appreciate that. We're in a gray area as far as how
18 far either side can go with respect to this -- with
19 respect to this video.

20 MR. HARTER: And I will tell you, it's been my
21 experience, Judge, and I'm sure yours, too, jurors are
22 smart, you know. And if you get in there and say this
23 tree is green and it's red, they'll blow you out of the
24 water, you know. So my point is, it's admitted into
25 evidence. There was no qualification about that. And I

1 think we're both -- we're both entitled to argue and point
2 to the jury references of what an interpretation of that
3 is.

4 THE COURT: Well, yeah. You can't give your own
5 interpretation. They can interpret it. You can point out
6 certain things that the video shows, but ---

7 MR. HARTER: I think we can suggest interpretations
8 for it.

9 THE COURT: Well, let's get into it, and I'm
10 confident that if Mr. Bryan or Mr. Thompson feels like
11 you're crossing the line, then, you know, let them take
12 the appropriate course of action or lack thereof. That's
13 about the best we can do.

14 You guys get set up. Of course, the plaintiff opens
15 in full and defendant responds and then they have the
16 right to rebuttal any new arguments.

17 (WHEREUPON, a recess is taken at 10:48 a.m.)

18 THE COURT: Let's bring the jury out, Mr. Bolt.

19 (WHEREUPON, the jury entered the courtroom at 11:02 a.m.)

20 THE COURT: All right. Ladies and gentlemen, I
21 understand you got your lunch orders filled out. All
22 right. Good, good.

23 The lawyers will now make their closing arguments to
24 you. The plaintiff will go first, then the defense, and
25 then the plaintiff has the right to have any reply

1 argument as to any new matters that the defense raises.

2 This is the last opportunity that these lawyers have
3 to advocate for their respective clients, so they, I'm
4 sure, have worked hard in preparing their closing
5 arguments. So please give them your undivided attention.

6 Is the plaintiff ready?

7 CLOSING ARGUMENTS

8 MR. THOMPSON: Yes, sir. May it please the Court.

9 Madam Foreman and ladies and gentlemen of the jury,
10 as I told you at the outset, my name is Tom Thompson, and
11 I'm an attorney. I practice law here in Laurens. I've
12 been here too long to tell you. I would tell you that
13 I've had the privilege to work with Ms. Watts, the
14 plaintiff in this case, now for a number of years. We
15 have a lot of documents, a lot of exhibits, a lot of
16 testimony you've heard. A lot of discovery took place
17 during the course of this litigation. And as a
18 consequence, and unfortunately for you, perhaps, I may
19 have to talk a little bit longer than you want to hear me
20 talk, but I feel like I need to address all the points
21 that I think are important and that you should hear.

22 I realize that jury duty is an imposition on
23 everyone. It takes time from your leisure activities, it
24 takes time from your family, it takes time from your work.
25 But I would point this out to you. The United States of

1 America, to my knowledge, is the last country on the face
2 of the earth that still uses the jury system. All other
3 court systems primarily rely on a judge who hears the
4 facts, makes a decision what the facts are, and then
5 applies the law he or she thinks is applicable. In this
6 case you all are the judge of the facts and determine what
7 the truth is in this case.

8 Now, this system of ours is long-winded. It's
9 expensive. But I hear no clarion call that we should end
10 it because no one has devised a better system than the
11 system you are now participating in.

12 As I said earlier, you will have the duty to
13 determine what the facts are, what the evidence is. Your
14 verdict must be based on the testimony that comes from the
15 witness stand or any exhibits that are put into evidence.

16 Now, there have been a number of individuals who have
17 testified in this case. I think the judge will tell you
18 you can believe one against all, all against one. You can
19 believe part of what a witness says and disregard the
20 other part.

21 And you shouldn't be too concerned about this process
22 because you're going to be handling this matter very much
23 the same way that you handle your everyday affairs.
24 Someone comes to you and tells you something, you either
25 believe it or you disbelieve it, and you come up with your

1 position based upon your common sense, the experiences you
2 had during your lifetime, your formal and informal
3 education, history, if you know anything about history.
4 You use all of these resources at your command to make
5 everyday decisions on what to do for yourself and your
6 family and your friends and whatever, and that's what
7 we're asking you to do today, to use your common sense and
8 rely upon your experience in life.

9 I want to commend you for being so attentive. This
10 has been a somewhat lengthy trial. I have been in some
11 that have been very short. And you won't believe it, but
12 I've been in cases that last two weeks. I don't think I
13 could do that anymore at my age, but you have --
14 notwithstanding the fact that we've been rather lengthy
15 over the last four -- three and four days, but you have
16 been on target with your watching, listening and
17 observance.

18 Now, you must, as I said before, weigh the evidence
19 and determine who is telling the truth. In other words,
20 stated another way, you are the fact finders to determine
21 the credibility of a witness or the believability of a
22 witness. And some of the things that you can rely upon in
23 judging somebody, was that person in a position when the
24 accidents happened to see, to hear what took place and
25 come into this courtroom and accurately recount what took

1 place, or was this person in a position where they could
2 not have seen or heard what took place? You could also
3 consider what a person may have to gain or lose by
4 testifying in a certain fashion. Lastly, you can consider
5 a person's bias or prejudice.

6 During the course of my discussions with you, I'm
7 going to talk a little bit about what was testified to or
8 what the evidence is in my estimation. I may also mention
9 some aspects of what I consider to be the law that
10 controls certain aspects of this case.

11 Now, if I say a witness said a certain thing and you
12 remember it differently than what I say, then you take it
13 the way you remembered it, not what I say. If I say a
14 certain law has application and this is what it means and
15 His Honor charges you differently, then you disregard what
16 I say and you follow the instructions of the Court. I can
17 assure you that if I misquote testimony, if I misinterpret
18 the law, it's a mistake of the head and not of the heart.

19 Now, you are here to find the truth. It may have
20 been said earlier in these proceedings, but I will repeat
21 it because I normally say this to all jurors. You are not
22 here to punish enemies, you are not here to reward a
23 friend. You are to seek out the truth.

24 Now, in this case, the plaintiff, Mrs. Watts, has the
25 burden of proof. She must establish her case by the

1 greater weight or preponderance of the evidence. And if
2 you could imagine maybe two scales hanging, when we come
3 into court, those scales are level for the plaintiff and
4 for the defendant. They're suspended on chains and what
5 have you. If the plaintiff tips those scales ever so
6 slightly in her direction, she will have satisfied her
7 burden of proof. If the scales remain equal after you've
8 heard all the testimony, heard all the argument of counsel
9 and heard the judge's charge, if they remain equal, they
10 don't move, then the plaintiff has not proved her case.
11 Or if the scales tip ever so slightly in the direction of
12 the defendant, here again the plaintiff will not have
13 proved her case.

14 Preponderance of evidence is not judged by the number
15 of witnesses that either side puts up. It's determined by
16 the greater weight of the evidence.

17 Now, this is a case based on negligence, which is a
18 tort, negligence. So what does Mrs. Watts have to prove?
19 We're not talking about minute details now. We're talking
20 about general concepts of the law. She's going to have to
21 prove that Mr. Holmes owed a duty of care to her in the
22 operation of his motor vehicle. She's going to further
23 have to prove that Holmes negligently breached that duty
24 of care and the breach proximately caused or directly
25 caused the damages she complains of. Those four things is

1 what she has to do to your satisfaction and prove them by
2 the greater weight or the preponderance of the evidence.

3 You know, we've been battling this case around for
4 years and now in the courtroom for three and a half days.
5 Maybe I'm simpleminded, but I think it's a simplistic
6 case. This is a situation where there was a multiple
7 motor vehicle collision, not two separate collisions. The
8 defense in some respects have tried to separate one from
9 the other. But Mr. Holmes, and we'll get to this in a
10 minute, prepared an incident report about this incident
11 less than 24 hours after the incident. And we're going to
12 go over that report. And when we do, I think you will
13 clearly see that he treated it as a multicar collision,
14 not two separate collisions.

15 Now, what happened in this case? Ms. Watts, a very
16 agile, elegant, kind, sweet woman pulled out of the bingo
17 place and immediately goes into Lane 1. And as she's
18 going that way, unbeknownst to her, Ms. King, who she did
19 not know, and Mr. Holmes, who she did not know, were ahead
20 of her on U.S. Highway 76. All three cars are traveling
21 east towards Clinton. And Holmes claims -- this is the
22 only thing he sticks with through this whole thing. I'm
23 going to show you where he changes, changes, changes,
24 changes. He sticks to the story that he is in Lane 1.
25 Lane 1, for the purpose of this trial, is the lane closest

1 to the median or the passing lane, Lane 2 is the lane up
2 against the shoulder of the terrain or the ground, and
3 then there's a median, and then there's two lanes coming
4 to the west. Lane 1 closest to the median, Lane 2 is out
5 there next to the ground.

6 Now, Holmes has testified in his incident report that
7 somewhere around McDaniel's Liquor Store he clocks a
8 speeder going around 70 miles an hour in a 40-mile-an-hour
9 zone. When we took his deposition, and that was read to
10 you, he said, no, he clocked him around Ned Kemp's
11 barbershop, which is significantly to some extent west of
12 the McDaniel Liquor Store. And Holmes says he makes a
13 left-hand turn, U-turn out of Lane 1 to get in behind a
14 speeder.

15 Now, we know, though, pretty much so, based on the
16 testimony, that Holmes was not in Lane 1. How do we know
17 that? Sherell King was behind Mr. Holmes. This young
18 lady is driving a car. Do you think she or I, you would
19 have passed this deputy sheriff when they're both going
20 down the road about the speed limit? No. She was never
21 going to pass this highway patrolman -- I mean this deputy
22 sheriff. She's going to stay behind him. So that's
23 pretty solid that Ms. King saw him in Lane 2, not 1.

24 Then the defense's own witness, Al Duncan, who
25 testified yesterday, indicated, based on a report by the

1 chief investigating officer, Corporal Hunter, that Holmes
2 came out of Lane 2, crossed Lane 1, had a collision in
3 Lane 1. And pure common sense would tell us if you're in
4 Lane 1, it's about virtually impossible to make a U-turn
5 in that lane without going into the median. So the
6 evidence is pretty compelling that he, Holmes, was in
7 Lane 2 or had looped into Lane 2 and came back into Lane 1
8 where he struck the King vehicle.

9 Now, this accident -- this accident between
10 Mr. Holmes's cruiser and Mrs. King's Dodge was not much of
11 an accident. It was a fender bender. It wasn't like a
12 tanker fire going on down there that everybody could see
13 from miles away. It was a fender bender. The deputy's
14 car was hit back here (indicating) in front of the bumper
15 near the tire. Mrs. King's car was hit on the very front.
16 And in order for that type of an accident to have
17 happened, Mr. Holmes would have had to have given her a
18 broadside view of his car, even had to have been
19 perpendicular to her in the road for her to hit him
20 straight on in the back of his car.

21 And it's uncontroverted that the accident happened in
22 Lane 1. I took down Mr. Holmes's testimony when he
23 testified by videotape, and I said, "Let me make sure I
24 understand your prior testimony and what you pointed out
25 to Mr. Harter. The collision between your car and the

1 King car did not happen in the median."

2 Holmes, "No, sir."

3 Thompson, "All right."

4 Holmes, "I mean, it was very close to the median, but
5 still I would say it -- say it in the Number 1 lane."

6 So I think we're all in agreement that the collision
7 occurred in the Number 1 lane, not in the median.

8 Now, when we get to this point, I think we're looking
9 at did you ever play a game of dominoes? Probably. If
10 you're old like me, you would have played, maybe. You
11 know, you line up the dominoes, and if the first domino
12 falls, the second one is going to fall, the third one's
13 going to fall, and if they're all lined up, eventually
14 they all fall. And I contend to you that this was a
15 domino effect. It started off by Holmes, a chain reaction
16 started off by Holmes. First domino he makes a left turn,
17 a U-turn. You find nothing in this record, in his written
18 reports, and we're going to go over those, where he said
19 he made a left-hand turn signal. He turned without
20 warning, and the first domino fell.

21 The second one fell when he ran into King's car. He
22 disabled her car. It stalled in the median -- I mean in
23 Lane 1. And it was an extremely dark night, and she is
24 out there.

25 The third domino falls when Ms. King [sic], who

1 doesn't see this thing happen when it happens, she's
2 coming down a hill in the dark of night, she's coming down
3 this hill, Plaintiff's Exhibit 11, headed to Clinton. And
4 you make of it what you will, but the accident is down in
5 here (indicating), and she doesn't -- she didn't see it.
6 She says she doesn't see a blue light. There's no mention
7 of her seeing the trooper's white lights or running
8 lights. I have listened to this case for three days. I
9 haven't seen a blue light, and I haven't seen any white
10 lights of any relevance. So this domino effect takes
11 place, and this is a sole product of a deputy sheriff.

12 Now, let me make something clear to you. Mrs. Watts
13 is not suing Mr. Holmes, per se. He was working for the
14 Laurens County Sheriff's Department under Ricky Chastain,
15 and he testified to that on his video deposition. He
16 further testified that when this happened, he was
17 operating within the scope of his authority. So the
18 lawsuit, although we talk about Holmes, it is essentially
19 and only against the sheriff's department.

20 I submit to you that Holmes is a young man who has
21 somewhat of a checkered past. He tried Texas A&M. That
22 didn't work out. He tried Clemson. That didn't work out.
23 He tried Greenville Tech. That didn't work out. Tried
24 Piedmont Tech. That didn't work out. You heard all this.
25 Then he tried the sheriff's department for a few years and

1 left. And then he, in my estimation, others may feel
2 differently, he bolts. He joins the Alabama National
3 Guard eight days before I took his deposition on
4 August 15, 2017. And I asked him in that deposition,
5 "Tell me about your military experience, Mr. Holmes."

6 And he says, "I don't have any."

7 Well, maybe he didn't have much experience, but I
8 submit to you he could have said something, because this
9 case was bearing down on us, and let us know in a few days
10 he was going to be out of here. And you know what that
11 caused. He caused me to drive 16 hours in one day to take
12 his deposition. And I didn't do that great a job. It was
13 a grueling trip.

14 At any rate, going back to the date this happened,
15 here's this man who's had a lot of different positions,
16 who admitted in his depositions that his primary job was
17 that as a school resource officer, and that from time to
18 time, he would join up with the Highway Patrol and other
19 law enforcement units and have what's known as saturation
20 patrols in different areas of the county. On the night in
21 question, it was on Highway 76.

22 Here you've got, in my opinion, is a man with a bad
23 gun and a hot car, and he's going to catch this speeder
24 come hell or high water. And that was the only thing on
25 his mind. He wasn't considering who was on the highway

1 and who wasn't on the highway and what the consequences
2 were going to be of a rash and uncivilized decision which
3 he made. He's a trained officer, but he throws the rule
4 book in the trash can and causes this multivehicle
5 collision.

6 These kind of collisions are not freak. Whenever the
7 highway is unexpectedly choked down by another wreck, by
8 cars backing up, people coming up behind, they have a
9 right to assume in the absence of some warning that the
10 roadway is clear, but time after time, we have these
11 rear-end collisions that are produced by a choke point in
12 the road, a choke point. Holmes created a choke point,
13 and once Watts was within the trap of the choke point, she
14 tried to maneuver her way out, she tried to put brakes on.
15 I'm going to come back to that. And she tried to steer
16 away. She had to have tried to steer away. You could
17 look at the video. If it would have been a dead-on hit
18 into the back of the King car, that's where we would have
19 found Ms. Watts. But no. We didn't find her there. Her
20 car went to the left, traveled a good many feet and came
21 to a stop at a pole in a fence. So she's turning, she's
22 trying to avoid it, she's applying her brakes. I'm going
23 to get back to that in a minute.

24 And I think this judge will tell you that there is --
25 I don't know exactly what words he will use, but he will

1 tell you that when a driver comes upon a sudden emergency
2 unexpectedly, then one is not necessarily held to that
3 high standard of a reasonable man, but only what would a
4 reasonable person do if confronted with this type of a
5 situation. And I submit to you further she did what she
6 could do, brakes and turning.

7 Now, it was dark out there that night, and that's
8 confirmed by Holmes because I took his testimony down.
9 And he says -- here's what he's talking about. He says,
10 "I was traveling at a high rate of speed. I believe my
11 radar indicated" -- it, talking about the speeder, "was
12 traveling approximately 69 miles an hour in what would
13 have been a 40-mile-per-hour zone at the time." Again, he
14 said, "It was dark. The only distinguishing feature that
15 I could really tell other than it being the vehicle
16 traveling on the stretch of road towards me was that it
17 had HID headlights." It's so dark out there, Holmes, he
18 sees a car coming, but he can't tell you what kind of car
19 it is. It's too dark. All he can tell you is that it had
20 these special headlights on it.

21 And later, his lawyer asked him, "Good visibility?"

22 Holmes, "Other than being dark, it was good
23 visibility. Yes, sir."

24 Holmes has unequivocally set the stage for a very
25 dark and gloomy area of the highway which King would have

1 to deal with within seconds.

2 Now, Holmes was the operator of that motor vehicle.
3 He was required to use the same care that would be used by
4 a person of ordinary reason and prudence. He was further
5 under the obligation to keep a proper lookout for other
6 vehicles on the road, namely King. You need to watch
7 attentatively, and he needs to keep his vehicle under
8 control. The Court will tell you all these things. So he
9 needs to be under control so that he can slow down, stop
10 and turn without colliding.

11 Now, there's some statutory duties. These are legal
12 duties which are the evolution of case laws throughout the
13 centuries. But there's some statutory duties that the
14 people in Columbia called the General Assembly have
15 passed, and those deal with changing of lanes, making left
16 turns in the operation of emergency motor vehicles. And
17 I'll talk about those later. But those are the things
18 that Holmes was obligated to be following that night.

19 I submit to you that the negligence on the part of
20 Holmes set in motion a very foreseeable consequence. This
21 was a U-turn on a dark night on a major highway. This was
22 not some farm road where you can whip around and turn
23 around and go back or some little old country road.

24 If you drive up and down the highways of South
25 Carolina and there are four lanes, our highway department

1 has figured it out. Most every one of them have a barrier
2 you can't cross. You can't cross. It's either a cement
3 barrier or it's these strong cables that are stretched so
4 tight that you can't -- a semi-trailer can't break through
5 them. We didn't have them out here on 76. That enabled
6 Holmes to pull off what he tried to pull off. But as a
7 general rule, you can't cross through there, and if we'd
8 have had them, we wouldn't be here today. And I believe
9 that both King and Holmes had a right to assume that
10 Holmes was going to drive carefully, that he would keep a
11 proper lookout, he would keep his motor vehicle under
12 control, and that he would signal his intentions.

13 Watts was vigilant. A person her age and still
14 driving and dancing and what have you, to reach that age
15 and be in that good condition, you'd have to be vigilant.
16 But she wasn't clairvoyant that night, that is, to be able
17 to see into the future and know what's around the next
18 bend. She couldn't be clairvoyant.

19 And she was operating her motor vehicle at or below
20 the speed limit. Again, I took down what Mr. Holmes said
21 in his deposition that you heard, and he says, "And I just
22 remember a vehicle traveling in the Number 1 lane, again,
23 probably going at or around the speed limit. It didn't
24 seem to be going particularly fast." So whatever evidence
25 the other side wants to get in in this case about speed on

1 the part of Ms. Watts, not only was her testimony she was
2 doing the speed limit, Mr. Williams said she was doing the
3 speed limit, and Mr. Holmes says she's going the speed
4 limit.

5 Now, I think the next area that we need to address is
6 how much time, how much time was there between the
7 King-Holmes collision and the King-Watts collision. I
8 don't care how they want to argue it. They want to give a
9 lot of time. I've got an answer for you. If they want to
10 say it's a little bit of time, I think I have an answer to
11 it.

12 King said two seconds. King was cross-examined very
13 effectively by Mr. Harter, a great trial lawyer, and she
14 never came off as I remember the two seconds.

15 King had an interview with the Highway Patrol, and
16 she said 1,000, 2,000. She says two seconds.

17 All right. Now, Holmes, after things settle down and
18 he sees where everything's headed, he wants to push this
19 time out as far as he can get it. So when he went to have
20 the interview with the Highway Patrol, and you'll have
21 this in your jury room, I think it's on page 7, he tells
22 them about the time between -- between the -- page 7.
23 He's going to tell that man Duncan who testified that it
24 was five to ten seconds. You know when that interview
25 happened? August 20, 2013, five days after the accident.

1 He says five to ten seconds. King says two seconds. Now,
2 Holmes, he bumps it out to five to ten.

3 And bear with me here just a minute. I maybe can
4 skip a little bit of this.

5 All right. Then when we examined him on
6 March 16, 2018, we talked about this same subject, and
7 when I asked him about what did you tell Trooper Duncan,
8 he says, "I believe in my statement to Trooper Duncan
9 after a week or so after the accident, I estimated
10 15 seconds or so." That's not true. You look at page 7,
11 and it's not 15 seconds. It's five or ten. So now he's
12 got it out to 15 seconds. Which one of these stories are
13 we going to believe? The first? the middle? the last?
14 And I think you'll find that the defense will argue that
15 somewhere else in his testimony he wants to extend it even
16 further..

17 Let's look at it this way. If it was a short period
18 of time between the two accidents, who is the culprit?
19 Mr. Holmes, he did a U-turn, and before anybody could
20 react, Ms. Watts hits the back of the car. They say it's
21 15 seconds, 20 seconds and the Watts car hits. What in
22 the world is Trooper Holmes doing sitting in his car 15,
23 20 seconds? He stated -- and I took this down, he's
24 referring to Mrs. King. He says, But, you know, it's not
25 safe for somebody to come to rest in the middle of the

1 road, so I was trying to get her to move through his car.

2 I don't know how he was trying to get her to move.

3 But he had a duty. If that time lag was that long as
4 he wants us to believe now, he had a flashlight, I'm
5 confident he had flares. He didn't have to worry about
6 cars coming from the east. He had the cars coming behind
7 him from the west. He should have gotten out there with
8 whatever kind of device he had, and don't tell me these
9 people don't have warning devices that they can set out on
10 the road or flash and say, look, we've got a car stuck in
11 the middle of Lane 1, because he himself says it's
12 dangerous.

13 I would submit to you that on that day, Ms. Watts,
14 85 years old, was operating her motor vehicle in a lawful
15 manner when she was confronted by a sudden emergency
16 created by Holmes. She broke no duty of care to Holmes.
17 She was observing the roadway. She was coming downhill as
18 I showed you before. She was coming down this hill, and
19 it was dark. And there's a little dip in there down that
20 way. You can look at it. And she had her eyes open, and
21 that little fender bender, she didn't see it. And then
22 she was trapped, as I said.

23 Now, let's talk about Watts, King and Williams again.
24 What did each of these people have to gain or lose by
25 testifying the way they did?

1 Watts's story has remained constant through
2 everything she said. Some of it was a little bit
3 damaging, but she kept her same story.

4 King's interview with the Highway Patrol, her
5 deposition, her testimony in open court remained the same.

6 Mr. Williams had a deposition and testified in open
7 court, and it remained the same.

8 King and Williams were trying to talk about who's got
9 something to gain. King had absolutely nothing to gain,
10 stuck to her story. Williams had nothing to gain,
11 stuck to their story other than being man and woman
12 enough to come into this jury -- this courtroom, this
13 strange and forbidding place to some people who don't work
14 here all the time, scared to death, but nevertheless told
15 the truth.

16 Now, Watts, does she have something to gain? Yeah.
17 You've got to be practical about this. She's trying to
18 regain some of the stuff she lost because of what
19 Mr. Holmes did. But I would submit to you that no matter
20 what you give her, if anything, she would trade it all
21 back in to have her life back. We can't buy that life
22 back. We can't give her that life back. So she does have
23 something to gain.

24 Now, you must base your evidence on -- I mean your
25 verdict on the evidence that's presented, as I told you

1 before.

2 Now, you were shown a film. There were no comments
3 as I recall about the film. I saw nothing in that film
4 that would help you figure out what happened. The first
5 accident I don't believe was there, but it's up to you to
6 make up your mind.

7 There's a snippet of the second accident. The
8 important part of the second accident may be this. Holmes
9 testified that Mrs. King had her emergency flashers on. I
10 don't remember what's in the film right off hand, but I'll
11 bet you a dollar to a donut the King car's flashers are
12 not on. Holmes keeps trying to build his case that he's
13 not at fault, that it's somebody else's fault.

14 Now, Holmes, and you'll have this in your jury room,
15 the next day after the accident, he does a report that's
16 written up by him to prove by somebody in his office, and
17 he goes into some detail. And you read it and you take it
18 for what you believe it to be. I submit this to you. He
19 says he cut his blue light on to warn the speeder that he
20 was coming after that speeder, but he doesn't say what
21 blue light he cuts on in this thing. But in his testimony
22 to me or Mr. Harter, he says, "I was going to activate my
23 blue light and execute a U-turn across the paved median to
24 catch up with the speeding vehicle." He says that also in
25 his deposition at page 29.

1 Now, tell me this. I'm a simple person. If you're
2 trying to alert a speeder, why do you put on your rear
3 blue lights? How is that going to alert a speeder coming
4 towards you at 70 miles an hour? It's inconceivable. It
5 doesn't make any sense. I don't think he knows what light
6 he turned on if he turned on any lights, which we don't
7 think he did.

8 In here he treats both of these accidents together in
9 one report. He doesn't break them down. He talks about
10 the King accident, he talks about the Watts accident.
11 More importantly, he says this event took place on
12 August 15, 2013, started at 22:37, which means 10:37 at
13 night, and he -- it looks like he calls it in at 10:38.
14 One minute goes by. So that sort of mitigates against his
15 position that there was a long time involved. He radios
16 in a speeder at 10:27 [sic], and he radios in the accident
17 a minute later. So, I mean, obviously, very little time
18 is going by.

19 And he also in two places claims his bumper -- his
20 bumper was damaged. I'm going to try to tie all this
21 together for you at the end. Here's a picture of
22 Mr. Holmes's car right after the collision. I don't see
23 any bumper damage. You'll have it with you in the jury
24 room. You can look at it, and you can make whatever
25 conclusions you want to make of it. But why would he put

1 down in two different places in this report that his
2 bumper was damaged? I think he's trying to get away from
3 the fact that his car was a broadside shot by King and
4 he's trying to get it around the corner so she hit him in
5 the bumper, which she did not.

6 Now, there's another interesting bit of information
7 in here. He says these two accidents -- this accident
8 happened with King, and he says Deputy Holmes exited his
9 vehicle to check for injuries. However, as Deputy Holmes
10 initiated this action, a white in color vehicle traveling
11 in the Number 1 lane struck the rear of the Dodge Charger
12 causing both vehicles extensive damage. Then he says he
13 alerted dispatch what happened and informed them of the
14 injuries to the parties.

15 So here he's getting out of his car one time after
16 both accidents have happened. I submit to you, and we're
17 going to get to it, but he's going to testify he got out
18 of the car two times.

19 The other thing about the film is if you look at the
20 incident report, Plaintiff's Exhibit 1, you're going to
21 see that this accident was called in at 22:38, and then
22 you look at the film, surveillance film, and they're going
23 to claim that's in real time. I think you're going to
24 find a big discrepancy there.

25 All right. This getting out of the motor vehicle, I

1 know all these are minute points, but, you know, you build
2 a case on minute points sometimes. You know, you don't
3 start building a house with the roof. You start with the
4 foundation, and you lay a board and a board and a board
5 and a board. And I'm having trouble with my paperwork
6 that I want. You build the foundation. And we're trying
7 to build a foundation that Mr. Holmes is not a credible
8 witness, that he has changed his story.

9 Now, the incident report had him out of the car one
10 time. His interview with the Highway Patrol, which you'll
11 see when you read it, he gets out one time. But when we
12 get down to Fort Benning, Georgia, he says, "I opened my
13 door momentarily, got out really quickly, kind of motioned
14 her to try to clear the Number 1 lane because she's come
15 to rest in that Number 1 lane. But there was a period of
16 time between the two collisions, enough for me to get my
17 wits about me, you know, briefly pop out of my vehicle,
18 get back in and remember to key it on the radio before the
19 second incident happened." And then he gets out again.

20 I submit to you he didn't get out of the vehicle but
21 one time. He got out when Watts came by two seconds after
22 he had collided with the King car.

23 Another interesting point is, and he said this,
24 Mr. Harter says, "Were you working in saturation or
25 traffic control at that time?" talking about

1 August 15, 2013.

2 His answer was, "Yes, sir. We were conducting a
3 multijurisdictional traffic saturation."

4 Well, if he was in this wreck and the basis for why
5 he did what he did was based on the fact that he was going
6 after a speeding car, if I was him, I'd want that speeder.
7 Speeder couldn't have got away. It was a saturation
8 patrol out there covering every nook and cranny of that
9 road. He radioed in. He gave them a description of the
10 LED lights or whatever they are on that car, and yet the
11 speeder has disappeared from the face of the earth. I
12 don't know if there was a speeder out there or not. You
13 read his incident report, but I haven't seen him. It's
14 like I haven't seen any blue lights in this case yet.

15 Now, here's an important point. There is a law that
16 will be applicable to this case. Bear with me just a
17 minute, please, ladies and gentlemen. We're basing our
18 case in part upon a violation of a number of statutory
19 laws, laws that were written by the General Assembly,
20 rules of the road, if you would have me say. These rules
21 must be followed, and a person who does violate a rule of
22 the road can be found to be negligent, per se, that is to
23 say if you violate it, you're automatically negligent.

24 Now, I questioned him about that speeder, and I said,
25 "What additional information did you need to charge him

1 with speeding that you had before you in your car?"

2 He says, "Identified on the radar, that the radar
3 indicated that he was traveling in excess of the speed
4 limit. I virtually confirmed and identified the vehicle
5 that I was clocking, and so legally that's all."

6 Question, "You had all the evidence you needed,
7 didn't you?"

8 "Yes, sir."

9 "To charge him with speeding."

10 "Yes, sir."

11 All right. This law the judge will charge you,
12 56-5-760, what it does is it allows emergency vehicles,
13 ambulances, fire trucks, police cars in certain instances
14 to disregard the rules of the road, okay? But even if
15 they do, they must still be vigilant and watch what
16 they're doing. So, yes, Holmes could have made a U-turn
17 like he did to pursue that fellow, but in order to have
18 done that, he was obligated to do two things before he did
19 that. He must have engaged his audible signal, the siren,
20 and the visual blue lights before he could do that. It's
21 common sense.

22 Haven't you heard an ambulance going through a red
23 light, honk, honk, honk, honk? Everybody can hear that.
24 If he'd have done that, King would have heard him coming.
25 If he put his left turn signal on, where I don't see where

1 he ever testified to a certainty that he put it on, she
2 would have at least been forewarned.

3 But now, there's an exception to that where he
4 wouldn't have to put that on to obtain evidence of a
5 speeding violation. So in other words, let me try to
6 explain this to you. It's not complicated. He could have
7 not put any warnings on whatsoever if he wanted to get
8 more evidence about that guy speeding. He didn't have a
9 case, so he could have done it without the siren and
10 without the lights. But I asked him, "What other evidence
11 did you need at that time to make a speeding arrest?" And
12 he said he didn't need any more evidence. He had it all.
13 So that means in my opinion that he was obligated to give
14 a warning to those cars around him by siren and by signals
15 and lights that he was going to pull a deal, he was going
16 to make a U-turn on a four-lane road and everybody would
17 be on notice then. If he was still trying to gain
18 information about the speeder, he could have done it
19 without it. But he told us in clear language that he had
20 all that information.

21 Now, there's some other statutes which the Court will
22 charge you, but they deal with people not being allowed to
23 turn right or left on the roadway unless it can be done
24 with reasonable safety. Can't be done without giving an
25 appropriate signal. It also says the vehicle shall be

1 driven nearly as practical, entirely within the lane and
2 shall not be moved from the lane until the driver has
3 ascertained that such movement can be made with safety.
4 And a vehicle cannot be turned around to go in the
5 opposite direction unless such movement can be made in
6 safety and without interfering with other traffic. I
7 submit to you that he violated all the statutory
8 requirements, and he's negligent. He's negligent, was
9 negligent.

10 Now, if you determine that the plaintiff has carried
11 the burden of her case, this case will deal strictly with
12 actual damages. Those are damages that will compensate
13 Ms. Watts for the injuries and things that happened to her
14 as a result of Mr. Holmes's negligence. They're her
15 hospital bills, there's pain, excruciating pain, there's
16 loss of enjoyment of life, there's mental suffering. All
17 these things are hard to put a dollar amount on, but I'm
18 going to try to help you with that.

19 I think she's a gentle, sweet lady who had a long and
20 bright future before. Holmes has rung the bell for the
21 Grim Reaper to come early.

22 Her medical expenses, just alone her medical expenses
23 were a little north of \$218,000, almost a quarter of a
24 million dollars. You can identify with that. And by the
25 way, that was not challenged. I heard no challenge to

1 that figure when Mr. Harter, who knows his business, never
2 questioned the medical amount.

3 Now, she was in the hospital two weeks. You ever
4 been in a hospital? They're waking you up constantly,
5 they're sticking needles in you, they're taking your
6 temperature, they're giving you pills, you don't sleep.
7 She was undergoing numerous operations. Pins were being
8 put in her body. Later she had to go back and pins had to
9 come out.

10 Then in late August she went to NHC and stayed there
11 till December '13. What did she do at NHC for those many
12 months? Well, she told you. She lived in a bed, she
13 bathed in a bed, she ate in a bed, she went to the
14 bathroom in a bed. Couldn't move. So they want to get
15 her out of bed, they had to put her on a board and slide
16 her.

17 Excruciating. She's been in pain. She's still on
18 pain pills. All of us have had pain, and we do anything
19 we could do to get rid of it. We take pills. We do
20 whatever we can. But, you know, when we have pain, we
21 have hope, you and I, that that pain -- most of us do. We
22 have hope that that pain one day is going to be gone. I'm
23 going to get treatment, and I'm going to get squared away,
24 and I'm going to get back to life like it was.
25 Ms. Watts's pain is never going to go away. It's been

1 going on five years. She's still in pain. How many years
2 does she have left? I don't know. I know one thing. She
3 sure raised a good family, sure was a credit to the human
4 race, and to have her life snuffed out by a senseless act
5 is unacceptable.

6 Since she's been home, she's been a prisoner in her
7 own house. She doesn't have the money to hire
8 housekeepers and what have you. Her family loves her
9 dearly. They've got their own lives to live. And I would
10 say this. If those people wanted to come down there and
11 say, "Hey, mom, I'm going to give up my job, I'm going to
12 come down here, I'm going to watch you and I'm going to
13 take care of you," she would not let them. That's the
14 type of person she is. She would say, "Go live your own
15 life. I've lived mine, and I'm not going to put you down
16 here with me so you can't do anything but go down with
17 me."

18 And so she used to dance, she used to drive, she used
19 to go to the grocery store, she used to work part time
20 when they needed her. She said she played tennis. I find
21 that hard to believe, but she said she played tennis.
22 She's very athletic. She lived a righteous, healthy life.

23 You know, Ponce de Leon came over to this country
24 from Spain back in the 17th century searching for
25 something called the fountain of youth. He never found

1 it. But I believe this lady did find the fountain of
2 youth. The only problem with it is Mr. Holmes cut the
3 stream off and it's not there anymore. And if the stream
4 would still be running, she'd still be running.

5 I'm about to get to the end here with you guys. I do
6 want to talk a little bit more about money.
7 Unfortunately, in the system we have, as great as it is --
8 the lectern don't hold papers -- as great as it is, we
9 have not figured out a way to compensate people like
10 Mrs. Watts who have pain, have suffering, who had the
11 enjoyment of life snatched away except by awarding money
12 damages. So the sheriff's department, we're asking the
13 sheriff's department through your verdict to give her the
14 only kind of damages that our system permits.

15 And so we can consider the medical bills, we can
16 consider how long she was in the hospital and how that
17 affected -- and the pain and the suffering and the
18 inconvenience and what have you, we can consider the
19 number of months she was at NHC with the same type of view
20 at that. She lost an arm. Not useful anymore. She lost
21 a leg. It's not useful anymore. How much are all these
22 things worth? I submit to you that six figures won't
23 compensate her fully, but you should be thinking this case
24 is worth just on the medical a quarter of million dollars,
25 and then she's had to go through all this and she's got to

1 live a life of pain, of struggle, of loneliness, of
2 discouragement, of depression. I say you give this woman
3 a million dollars. That won't do it, but it will sure
4 help her. Maybe we don't think in those kind of terms in
5 Laurens County, but it's time that we do.

6 I have a few more things to tell you and then I'm
7 going to sit down. I kind of call this case the
8 hit-and-run case. You know why I say that? Mr. Holmes
9 hit this lady and he ran out of here. He also lied to
10 just about everybody he talked to about this thing, and I
11 tried to point those out to you.

12 There's a Latin phrase called falsus in uno, falsus
13 in omnibus. In English, false in one, false in
14 everything. That's what we have here with Mr. Holmes.

15 And to end it, I may get a chance to come and talk
16 with you again depending on what Mr. Harter says, but this
17 is probably the last time you're going to hear from me. I
18 hope you won't forget what I've said to you. I hope you
19 won't be swallowed up by the defense's argument which I
20 assume will be diametrically opposed to what I say. But I
21 would still go back to our premise, our belief that this
22 was a simple thing, a man making an illegal U-turn for
23 some reason, and we don't really know why. And then it
24 was lied about the whole time. And as a consequence of
25 that one act, everything else happened. If that turn

1 hadn't been made, we would not be sitting in this
2 courtroom today. This lady would be out doing her regular
3 things, and she would not be subjected to constant pain,
4 loneliness, despair and possible further medical
5 treatment.

6 I made a mistake when I said despair. I've never
7 seen a person quite as gung-ho, still has that fighting
8 spirit that sustained her all her life when she got up on
9 that witness stand. It was tough. But she has it. And
10 she's not a person of despair. She's a person of hope,
11 and she hopes you all will listen to her and you will give
12 her a verdict that you believe is appropriate.

13 And I do need to add one other thing. In 1991, the
14 laws of this state changed somewhat. And we have a
15 doctrine known as comparative negligence, that is to say,
16 during the course of your deliberations, and the judge
17 will give you a lot of help with this with a -- some
18 paperwork, but you will have to determine how negligent
19 Mr. Holmes was and if this lady was negligent. Now, she
20 could be a little bit negligent. Any amount that you find
21 her to be negligent, the judge will take appropriate steps
22 to reduce her verdict, if you give her a verdict, by that
23 percentage. But as long as you find her to be less than
24 51% negligent, she can win. May not win as much. We're
25 advocating there should be no reduction in your verdict,

1 but if you see fit to clip it a little bit, that's within
2 your province. I can't get into that, but the judge will
3 fully explain that to you.

4 Again, I thank you very much not only for this
5 morning, but for three days this week and bearing with me,
6 us lawyers, in a kind of a complicated case in some
7 respects, but still it's a simple case when you boil it
8 all down to the bare bones. Thank you very much.

9 THE COURT: Thank you, Mr. Thompson.

10 Ladies and gentlemen, does anybody need a very short
11 break? Okay. All right. We'll take a short break and
12 then we'll hear from Mr. Harter. So if you'll go back and
13 we'll get you back out shortly. Okay.

14 (WHEREUPON, the jury exits the courtroom at 12:20 p.m.)

15 THE COURT: Okay. We'll be in a short recess.

16 (WHEREUPON, a recess is taken at 12:21 p.m.)

17 THE COURT: Let's bring the jury out, please.

18 (WHEREUPON, the jury entered the courtroom at 12:31 p.m.)

19 THE COURT: Mr. Harter, are you ready to make your
20 closing?

21 MR. HARTER: I am, Judge.

22 THE COURT: You may proceed.

23 MR. HARTER: Madam Forelady and ladies and gentlemen
24 of the jury, this will be my last opportunity to speak to
25 you. I want to join with the Court and with plaintiff's

1 counsel to thank you for your service and attentiveness to
2 the trial of this case. We have tried to move it along as
3 best we can.

4 And I think I told you in the very beginning, you as
5 jurors have taken an oath to be fair and impartial in this
6 case. And, you know, that's the significant thing about a
7 trial. It is based on testimony, and it is based on
8 evidence, and it is based on a rule of law. And, you
9 know, we all like to think there are defining moments in a
10 trial, but one of the defining moments is when you come in
11 here, put your hand on this Bible and then you address the
12 Court and the jury.

13 And the judge has taken an oath, all the lawyers have
14 taken an oath, and certainly you have taken an oath, too.
15 And your oath is, as you well know, to be fair and
16 impartial, and your oath is to dispense justice evenly.
17 It doesn't matter who you are, where you come from, how
18 old you are, or what you look like. You get treated the
19 same. The same rules apply to everybody in a case like
20 this.

21 And I told you at the beginning, and I hope I held
22 true to that, that Mrs. Watts is a very nice, sweet lady.
23 She had a very bad accident. She had a significant set of
24 injuries, but she had a very good and remarkable recovery,
25 and she has a tremendous outlook. And that speaks to her

1 spirit. So I didn't see a lady of despair and no hope. I
2 saw a lady that got up every morning just like the rest of
3 us and looked for something good out of that day. And I
4 hope that there is nothing that I ever said or would say
5 here today to suggest otherwise.

6 But what we're here today about, ladies and
7 gentlemen, is to decide legal responsibility and fault for
8 her damages, for her claim, for her injuries and for what
9 happened on August the 15th of 2013.

10 Now, I had to sit here and listen to some comments
11 about a young man that I hold in high regard. His name is
12 Barton Holmes. I heard reference and allegations that
13 Barton Holmes was irresponsible, wasn't trained, he's a
14 liar, he runs from the law, he runs from justice, he runs
15 from court. I heard about Barton Holmes' checkered past a
16 few minutes ago or an hour ago when this argument was
17 going on.

18 But I don't know what a checkered past is to y'all,
19 but to me, what you have seen and heard is a young man who
20 has some education, he has pursued higher learning, he was
21 a sheriff's deputy with the Laurens County Sheriff's
22 Office for several years, he was trained at the Criminal
23 Justice Academy, he was selected as an officer to be
24 involved in the DARE program to assist fifth-graders in
25 making good career decisions, and then, just like his

1 father, he made a choice, a conscious decision to enter
2 the military. And he didn't just enter the military. He
3 went in with a passion for airborne training in the Armed
4 Forces and Special Forces. And that unit doesn't exist
5 around here, so he joins a unit in Alabama where this all
6 starts.

7 And he joins the military. He sacrifices his time
8 here, sacrifices with his family, and I submit to you,
9 ladies and gentlemen, that this very moment, he's serving
10 honorably for our country and for our freedom. And I
11 believe that if there was any kind of checkered past to
12 amount to anything, that I believe these guys would have
13 really dug that out, and we'd have heard a lot about it.
14 But you didn't hear anything -- or I didn't hear anything
15 that was negative to suggest that Barton Holmes was
16 anything other than the young man that you saw in that
17 video deposition.

18 Now, let me clear the air about that video
19 deposition, too. That video deposition, and you'll have
20 this exhibit back there just so that -- and let me tell
21 you, we trust y'all. We trust you to fether through the
22 facts of this case and to come to the right conclusion.
23 And I want you to take everything you've heard, I'm asking
24 you to take everything you've heard into account.

25 But, ladies and gentlemen, I'm going to suggest to

1 you that in this case and in this argument that we heard
2 this morning, there are some rabbits that are just running
3 around here that don't lead us to anywhere. And I call
4 them red herrings. And I'm going to suggest to you,
5 ladies and gentlemen, that you are powerful enough, you've
6 listened tentatively enough to fetter through the red
7 herrings and the rabbits and get to the meat of the case.
8 And the meat of the case is Mrs. Watts' claim for damages.
9 And it depends on proof of negligence and proximate cause
10 and a violation of duty by Barton Holmes and/or the
11 Sheriff's Office.

12 And, you know, it's kind of funny. They say the
13 Sheriff's Office is the one that's responsible for this.
14 I mean, they're responsible for Barton Holmes' actions.
15 But who are they up here slamming? They're slamming
16 Barton Holmes. Not just his driving, but everything about
17 him, accusing him of being a liar, of just purposely
18 telling things that aren't true. And, ladies and
19 gentlemen, again, we trust you to wade through all of
20 that.

21 The judge will tell you, as you well know from
22 earlier comments, that you are to judge the believability
23 and the credibility of these witnesses. And I want to ask
24 you to think back about what you've heard. And I want to
25 ask you, too, to please, please, please, please don't

1 consider my characterization of what a witness says as the
2 gospel if you remember it differently. Go with your
3 recollection. And by the same token, if Mr. Thompson has
4 quoted a version of testimony or what a witness said that
5 is not in line with what you think or what you say, I hope
6 you will go with your version. I beg you to because that
7 is your oath and that is your responsibility.

8 Now, getting to the issue about the video deposition
9 of having to go to Fort Benning, Georgia, I'm the one --
10 and this notice is entered as an exhibit. I'm the one
11 that initiated going to Fort Benning, Georgia to get
12 Barton Holmes' deposition and testimony. It's not like
13 they had to go run, get it. I'm the one that initiated
14 that. And, ladies and gentlemen, I'm the one that asked
15 those series of questions when this case began. That was
16 our evidence. That was Barton Holmes' testimony. So
17 don't let them suggest that they had to run down there to
18 get it. We are the ones that wanted to preserve that
19 testimony and bring it to you.

20 Now, as you consider testimony of witnesses, I want
21 to ask you to think back about did a witness really say
22 what Mr. Thompson said they said or was it a little bit
23 different? Now, let me go -- let me suggest to you that
24 what I heard from Mrs. Watts was that she had an accident
25 on August the 15th of 2013, and she indicated that this

1 accident happened, and we all know it happened on 76
2 between 10 and 11:00 at night. She said, according to the
3 deposition, according to the testimony, that as she was
4 traveling down 76 that night, that she saw no lights. She
5 said that she saw no lights at all in any direction, blue,
6 white, red or anything. She also said that she didn't
7 apply her brakes until after she hit Mrs. King's car.

8 So let's talk about lights for a second. And I'll
9 put that as Bullet Point Number 1, lights. Now,
10 Mrs. King, who the plaintiff also called, said she was
11 traveling down 76, and she was headed to work. And what
12 time did she have to be there?

13 She said she was traveling at a rate of about
14 35 miles per hour, and she said she was traveling about
15 two car lengths behind Barton Holmes. Now, if your common
16 sense tells you that's a safe distance, go with what your
17 common sense and driver experience tells you.

18 But in any event, there's a collision between Barton
19 Holmes' vehicle and the vehicle that Mrs. King is
20 operating. And when that collision occurs, the vehicles
21 end up generally like they are on this diagram. I submit
22 to you nobody disagrees with that.

23 Now, in Mrs. King's account of things, go with your
24 recollection, again, but I believe Mrs. King said she had
25 all of her lights on. I believe she said Barton Holmes

1 had all of his lights on, and that her vehicle was facing
2 in the direction of Clinton, and Barton Holmes' vehicle
3 was facing in the direction of Laurens, and that they both
4 had their lights on. Again, go with your recollection.
5 But I submit to you that Mrs. King said a couple of times
6 that Barton Holmes' lights were on at the time Ms. Watts
7 collided into the rear of her car. Go with your
8 recollection.

9 So I submit to you that at the time of this accident,
10 there were headlights from the King vehicle going in this
11 direction, there were taillights on the King vehicle, and
12 there were headlights on a deputy sheriff's car headed in
13 this direction, and, at the time of Ms. Watts' accident,
14 King says there were blue lights on that car.

15 Now, remember that person who came in the front door
16 with us on Monday morning, Mr. and Mrs. Common Sense.
17 Ladies and gentlemen, they described the whole area as
18 being pitch black dark, and does your common sense and
19 experience tell you that neither Barton Holmes nor
20 Ms. King had their lights on as they were traveling down
21 that road or after they stopped on 76 after their accident
22 occurred? Does it make sense to think there were no
23 lights at all? I submit to you, it doesn't make sense.
24 It's not consistent with the credible testimony, and it
25 just didn't happen that way.

1 And now, the area we're talking about is an area of
2 76 that is a straight stretch of road. It was a clear
3 night. There was no curve, no hill, no crest, no
4 obstruction, nothing to impair anybody's vision. And you
5 have photographs, numerous photographs taken from various
6 directions that show the visibility in this area and show
7 the roadway. And, ladies and gentlemen, I'm going to
8 suggest to you that anybody traveling down that roadway at
9 that time of night in this setting would have likely seen
10 lights, would have absolutely seen lights if they were
11 focused on what they were doing and if they were paying
12 attention.

13 Now, there's been discussion about Deputy Holmes
14 seeing a speeder as he passed McDaniel's Liquor Store or
15 Ned Kemp's Barber Shop. Ladies and gentlemen, I submit to
16 you those two establishments are not very far apart as you
17 are traveling down 76. But in any event, he is traveling
18 down 76 and indicates an intention to stop a speeding
19 motorist. But there is no indication of any obstruction
20 anywhere as you approach the scene of where this accident
21 occurred.

22 Now, again, please go with your recollections. But I
23 believe Corporal Duncan was asked, well, from this area up
24 here where the pictures were that he took by McDaniel's
25 Liquor Store, what is the distance from where these

1 pictures were taken? And I believe he said 800 feet.

2 Now, 800 feet, think about this. Mrs. Watts is
3 traveling 35 to 40 miles per hour on this road. The road
4 has clear visibility, no obstruction, and you can see for
5 800 feet. Now, 800 feet is over two football fields. 800
6 feet is over a tenth of a mile. And I would suggest to
7 you that there's nothing along this stretch of road that
8 night at that time that would have, in any way, suggested
9 that there wouldn't have been lights on, and somebody
10 traveling down 76 certainly would have been able to see
11 those lights.

12 Now, the other thing you've heard about, ladies and
13 gentlemen, in the case, is that there was some time
14 difference between these two accidents. Somebody says two
15 seconds, somebody says five, somebody says ten, somebody
16 says 15. I do not know. I was not there. But I do know
17 that the people that were there were all humans just like
18 me and you. They didn't have a stopwatch. They weren't
19 clocking things like they do in a basketball game or a
20 football game. And these people were interviewed after
21 they had been in an event, which I'm going to suggest to
22 you creates an adrenaline rush. And Mrs. King, when she
23 was interviewed with her attorney there, made the
24 statement that there was a two-second time lag between
25 these accidents. Two seconds.

1 Now, let's think about that for a minute. I know
2 Mr. Thompson might have suggested that her testimony was
3 totally, totally consistent all along and she stayed on
4 two seconds. I don't remember it that way. I remember
5 yesterday asking her, well, it could have been two, it
6 could have been five, it could have been more. I'm not
7 really sure. I'm not really sure. So, you know, when you
8 come in here, when you really think about it and the
9 adrenaline's over, you know, if you don't know what the
10 truth is, you don't know. You're not sure.

11 But I want to suggest to you if this accident with
12 Mrs. Watts striking the rear of Mrs. King's vehicle had
13 occurred within two seconds, wow, how could Mrs. Watts not
14 have seen it? How could she have missed it? If she's on
15 this road watching straight ahead, paying attention to
16 where she's going, how could she have missed it? How
17 could she not have seen any lights? Well, one person
18 might could wonder, well, heck, she got dazed, she got
19 knocked out, she didn't have a memory of that.

20 Ladies and gentlemen, I want to ask you again to
21 refer to the testimony that we read, and I didn't ask
22 Mrs. Watts any questions in here. She is a nice lady, and
23 being here today I know is -- or this week is not where
24 she would absolutely choose to be. But I didn't ask her
25 any questions, but we did read to you the things that she

1 had said before. And she had said before that she was not
2 knocked unconscious and she was not fazed.

3 Well, the other thing is, I want to make sure that's
4 right. I want to make sure that's right. Well, there's
5 some medical records, you know. And don't let the
6 plaintiff suggest to you that I dredged this thing up this
7 morning to bring it here. This is a part of Mrs. Watts's
8 medical chart that they got, and they put part of it in.
9 I'm fine with that, you know. But they didn't put this.

10 But this includes some information about Mrs. Watts,
11 and it includes information that, and as you heard the
12 custodian read here today directly from the record, she
13 didn't lose consciousness, she was alert and oriented, she
14 had no syncope episode, and she gave to the doctor at the
15 hospital her own history, and it note -- that notes
16 history came from patient. Now, I don't know whether it
17 did or not. We didn't -- we didn't create this record.
18 We didn't -- it's not anything that we have. This is the
19 record, and it says what it says. We have no way of
20 controlling that.

21 But I would suggest to you if these two accidents had
22 occurred seconds apart, two seconds apart, there would
23 have been no way that anybody that was looking where they
24 were going could have -- and was alert, paying attention,
25 could have missed seeing lights or could have missed being

1 a witness to that very first accident. And Mrs. Watts
2 told you she didn't see any lights, she didn't see any
3 car, she didn't apply any brakes until she hit that car.

4 And I submit to you that, ladies and gentlemen, in
5 connection with the issue about how soon these accidents
6 occurred one after another, given the witness testimony,
7 it's something that just depends on what I alluded to
8 earlier, the mystery of human perception.

9 And, you know, Mr. Thompson made a lot of reference
10 to Barton Holmes, statements he made. Ladies and
11 gentlemen, the Highway Patrol investigated this accident.
12 It was not an investigation done by the Laurens County
13 Sheriff's Office. So, I mean, his statement is what it
14 is, and you had a chance to look at him, you had a chance
15 to hear him. And was he direct and responsive to the
16 questions? Was he evasive? Was he confident and sure
17 about his answers? He's not here today. I couldn't
18 present him to you live, but I did everything I could to
19 bring him here for you to evaluate. And I submit to you
20 that his testimony, his account of this incident has been
21 consistent throughout, and he has presented what he
22 believes to be credible evidence and testimony in this
23 case. And the other witnesses you heard, go with your
24 recollection as to how consistent they were with any other
25 statements they have made.

1 Now, again, ladies and gentlemen, this accident
2 occurs as Mrs. Watts is traveling down 76 in this
3 direction. She explained the case in here a little bit to
4 you yesterday in response to her lawyer's questions, not
5 mine. And, again, go with your recollection. She said,
6 Well, there might have been lights on. I'm not sure.
7 Might have been a blue light on. I'm not sure. I just
8 don't know. But she also said, I looked down, and then I
9 looked up and the crash happened. I looked down, and I
10 looked up, and the crash happened. I don't know why she
11 hit the back of that car, but she did.

12 And the judge is going to read to you the law that
13 applies to the case, and as he's told you before, if y'all
14 disagree with it, you can't. You've got to follow his
15 rules. If I say something about the law that he's going
16 to charge, don't go with me. Go with him.

17 I do not believe the judge is going to issue a charge
18 to you about anything that says sudden emergency. I do
19 not believe that's going to be in the charge, and I would
20 challenge you, encourage you to listen for that because I
21 would not be aware that would be in the charge.

22 I will also tell you that I don't believe there's
23 anything that you're going to hear insofar as the law is
24 concerned that says, well, you know, if you're a driver of
25 16, the standard is different, or if you're a driver of 65

1 or older, the standard is different. We all have the same
2 responsibilities as to the rules of the road and
3 maintaining a proper lookout. And I'm going to tell you,
4 I believe the judge will tell you that every motorist has
5 a duty to maintain a proper lookout, to pay attention to
6 what's happening ahead of them, it's common sense, and to
7 brake, stop, slow, or do whatever you need to do in order
8 to avoid a collision with another vehicle.

9 And, ladies and gentlemen, again, I wasn't there, but
10 you've heard evidence and testimony, and what you've heard
11 is that the King vehicle rear-ended the Holmes vehicle.
12 No dispute about that. King hit Holmes from the rear.
13 Well, King was driving 35. What time did she have to be
14 at work? What time did this happen? How far back was she
15 from Holmes? Go with your recollection. But it happened.
16 It happened.

17 And we're not here about who caused or what happened
18 here in this accident. I mean, that's not what this case
19 is about. I submit to you what we're here about is
20 Mrs. Watts' accident that happens sometime later.

21 And the issue that you're going to be -- the legal
22 issue that the judge will charge you about is a thing
23 called proximate cause. What was the cause of Mrs. Watts'
24 accident, and what was the cause of her damage and
25 injuries? Well, I'm going to suggest to you that the

1 cause, based on what you've heard here -- and she's got
2 the burden of proving this. Her lawyers have brought this
3 case, you know, and her lawyers presented all of their
4 witnesses and we presented ours. But what was the
5 proximate cause of this accident? And I'm going to
6 suggest to you that the proximate cause of this accident,
7 because of the roadway conditions, the environment, that
8 the proximate cause of this accident was, for whatever
9 reason, she was not paying proper attention.

10 Now, you know, there is a game of dominoes, and it's
11 an interesting game. And, you know, if the dominoes are
12 lined up correctly and you hit one, they all go down.
13 But, ladies and gentlemen, if the dominoes are not lined
14 up correctly in the first place, and these dominoes are
15 not lined up, you knock one down, it doesn't cause the
16 others to fall. So the game of dominoes has a lot of
17 angles and sides to it, and I'm going to suggest to you
18 that this domino theory doesn't sustain itself because the
19 dominoes don't line up.

20 Now, you know, in the world of sports, they have
21 these things called the instant replay of an event. You
22 usually don't have that. You usually don't have any kind
23 of instant replay where you can go back and look at
24 information and make sure the call is right. But they do
25 in sports. They can go back, and the refs and go back and

1 look at this thing, and they can come back and say the
2 ruling on the field stands or blah, blah, blah. But
3 they're doing that to take advantage of technology, and
4 they're doing that to make sure they get it right, because
5 we're all human and we make calls in the fray and all the
6 circumstances going on, and sometimes we're not right, and
7 we want to try to get it right, if we can.

8 And I'm going to suggest to you that there is a piece
9 of evidence that is out there that may be, and I suggest
10 is useful to you in determining the facts that you have to
11 rely on in this case. And it comes from a surveillance
12 video that was positioned, and you heard Matt Cagle talk
13 about he had his video equipment set up to monitor his
14 recycling scrap metal business. And one camera kind of
15 went towards Laurens, one camera went toward Clinton, and
16 that Channel 5 and 6 captured some events which were taken
17 by the MAIT team and secured. And we brought them in, and
18 these -- this video is now evidence for you, and you will
19 have a chance to take it and look at it in the jury room
20 if you like.

21 Now, there are two eyes here. Y'all are going to be
22 24 eyes. Okay. Go with your eyes. Don't go with mine.
23 But I do want to ask you to consider what I'm going to
24 tell you or show you on this surveillance video. And as
25 you do, I want you to keep in mind the description, the

1 dynamics, the mechanics of what we're talking about here
2 in this case. And the mechanics of what we're talking
3 about here in this case involve a vehicle operated by
4 Barton Holmes that is traveling on 76, and a vehicle
5 that's operated by Ms. King on 76.

6 Now, Barton Holmes and Ms. King all say that Barton
7 Holmes did a U-turn. And if he did a U-turn, you could
8 maybe see or expect where his lights would go. So Barton
9 Holmes, according -- if he had his lights on would be
10 traveling in Lane Number 1 and make a turn that would have
11 taken him back in the direction or faced his vehicle back
12 in the direction of Laurens.

13 I invite you to look at this video on Channel 5 and
14 pay attention to what is happening before. You see
15 lights, I'm going to suggest, moving in each direction on
16 76. Lights moving. At some point in time, and I'm going
17 to suggest to you it might be right around 58:07 that the
18 video might show you some evidence that would indicate
19 that there was lights that panned around in this direction
20 and made possibly a U-turn. But you decide that.

21 MR. THOMPSON: Your Honor, we object to this
22 testimony of Mr. Harter's about the video.

23 THE COURT: He can argue the video so long as he does
24 not add anything to what the video may depict.

25 MR. HARTER: Thank you, Judge.

1 THE COURT: You may proceed.

2 MR. HARTER: Just look at Section 58:07 and see what
3 you think. See what you think. See if you see any lights
4 pan to the left.

5 And then after that, immediately after that, what
6 happened in the King-Barton Holmes accident? The vehicles
7 came to a stop, one facing toward Clinton, and one facing
8 toward Laurens. I'm going to invite you to look to see if
9 any of the lights which would be evidence of vehicles
10 moving up and down 76 stop. I invite you to look and see
11 if you see any lights stop or become stationary. And that
12 may be around 58:09.

13 Ladies and gentlemen, I want to ask you to pay
14 attention to the video, the surveillance video after
15 58:09, and as you do, make your determination as to
16 whether or not you see vehicles drive in this direction
17 from Clinton -- from Laurens, I'm sorry, toward Clinton
18 passing those stationary blue lights. How many vehicles
19 do you see drive past those stationary blue lights? And
20 then, ladies and gentlemen, I want to ask you to focus or
21 look at a section of the video at or around 10:58:47
22 and/or 46 -- 49 and see if you find anything worthwhile or
23 evidence that would indicate to you that Mrs. Watts'
24 vehicle veers off from this roadway and strikes a fence.

25 You know, I'm going to tell you, I represent some

1 radiologists sometimes, and radiologists look at this
2 world where they look at images, you know. And they have
3 findings on those images, and sometimes those images are
4 so findings [sic]. But you look at them. They know what
5 to look for. And sometimes when you look at images the
6 first time, you don't see them, you don't see anything.
7 But then as you -- and, ladies and gentlemen, y'all are
8 detectives today because you're looking for the truth, and
9 that's what we want. I want the truth. Whatever it is, I
10 want the truth.

11 And let me tell you something. I don't see this
12 stuff as good guy, bad guy, you know. I'm old enough to
13 think I want to come in here and I want to see the right
14 thing done, and I want to see the truth come out. But
15 like the Waldo thing, you know, the thing where they used
16 to have the drawing and you would -- there would be this
17 image in there and you'd look for it. Well, where's Waldo
18 or whatever it is? Waldo, where is he? You know, where
19 is he? And then you see him, and every time you look at
20 it, you see Waldo, you know.

21 I'm going to suggest to you -- and I'm not asking you
22 to review this thing bunches of times. You review it
23 whenever you want. But there are images in there that I
24 think are enlightening that will support and prove
25 important facts in this case, and they will prove, I

1 submit to you, that there were lights on Ms. King's
2 vehicle, Barton Holmes had lights on, and that there was a
3 significant -- and you go with your calculations about the
4 time delay between what this video shows as to what
5 appears to be the collision involving Barton Holmes and
6 Ms. King and then the later collision involving Ms. Watts.
7 But I'm trying to give you kind of the heads-up, the
8 narrative, invite you to look at it again with your
9 trained eyes, 24 eyes. You may see fine things much
10 different than me. I invite you to do that.

11 But I offer this to you as evidence that I submit
12 would indicate that there were lights on out there, there
13 was a significant time delay between these two impacts,
14 that other vehicles move through the area without any
15 difficulty, and that Mrs. Watts' vehicle sometime,
16 multiple seconds later, you figure out when that is, she
17 collides with the King vehicle.

18 And if I could, I'd like to pick up with maybe
19 segment around 58. I'm sorry. Pick up around 57 -- 57.
20 And we're just going to play it. Just going to play it.

21 (WHEREUPON, Defendant's Exhibit Number 6, a video, was
22 played in open court)

23 MR. HARTER: Vehicle movement, lights.

24 (WHEREUPON, Defendant's Exhibit Number 6, a video,
25 continued to play in open court)

1 MR. HARTER: 58:07 coming up.

2 (WHEREUPON, Defendant's Exhibit Number 6, a video,
3 continued to play in open court)

4 MR. HARTER: Lights stationary.

5 MR. BRYAN: Your Honor, we had specific directions
6 about comments.

7 THE COURT: Again, he cannot add anything that is not
8 depicted on the video.

9 MR. HARTER: I won't. We won't. We aren't.

10 (WHEREUPON, Defendant's Exhibit Number 6, a video,
11 continued to play in open court)

12 MR. HARTER: 47 is coming up.

13 (WHEREUPON, Defendant's Exhibit Number 6, a video,
14 continued to play in open court)

15 MR. HARTER: Stop.

16 Ladies and gentlemen, again, you know your
17 responsibilities. I don't have to remind you of that any,
18 any more. But the judge will also, I believe, make it
19 clear in his instructions that we're not to decide cases,
20 we're not to decide legal responsibility based on sympathy
21 or compassions or emotions or those kind of things. And
22 Mrs. Watts has a very compelling situation as far as her
23 injury's concerned. But your challenge, your
24 responsibility is to follow the law and decide whether
25 there is legal responsibility for the Sheriff's Office in

1 this case.

2 And when you go back to deliberate, the judge will
3 give you a verdict form, and in that verdict form, you're
4 going to be asked to check certain boxes and answer
5 certain questions. I mean, there are just a couple of
6 them, but you're going to be required to answer a few
7 questions, and one of those questions is whether or not
8 the Sheriff's Office or Barton Holmes was negligent in any
9 way. And based on the facts that we have here, two
10 rear-end collisions like we have, I submit to you the
11 answer to that question is no.

12 The next question would be, another question would be
13 was Barton Holmes in any way, what he did, if he was
14 negligent, was it the proximate cause of any damages or
15 injuries by or of Mrs. Watts? And I submit to you, ladies
16 and gentlemen, that it wasn't. Just like those dominoes,
17 one doesn't line up, it doesn't knock down the other.

18 And then the other question or another question you
19 might get to or might be required to answer was what
20 and/or to what extent was Mrs. Watts herself responsible
21 or negligent? And I would submit to you that there is
22 significant proof that Mrs. Watts' own driving that
23 evening, nice a lady as she is, was unfortunately the
24 cause and/or the reason for her injuries in this accident.
25 You heard what she described, you saw the evidence, you

1 heard the witnesses. But, ladies and gentlemen, I submit
2 to you that the Sheriff's Office is not responsible to
3 Mrs. Watts for her damages and/or injuries in this case.
4 The evidence, I believe, clearly shows why and how it
5 happened.

6 Again, you have no friends to reward or enemies to
7 punish. And I just again remind you to go back, use your
8 good common sense, and I pray that you will render a
9 verdict that speaks the truth.

10 And God bless you in your deliberations, and thank
11 you for your service here today in the trial this week.

12 THE COURT: Thank you, Mr. Harter.

13 Mr. Thompson, any brief rebuttal argument you would
14 care to make?

15 MR. THOMPSON: Brief.

16 Ladies and gentlemen of the jury, I'd like to respond
17 to a few things Mr. Harter has mentioned to you. The Fort
18 Benning issue, yes, Mr. Harter was the one who put the
19 thing together for us to go to Fort Benning, not
20 Mr. Holmes. My point was that Mr. Holmes would not be
21 here. He put us to the trouble of driving that way 16
22 some hours to deal with him, and he's still not here.

23 Mrs. King's testimony was that there was not blue
24 lights until after she and Mr. Holmes had their accident.
25 That was her testimony. At that time a blue light was put

1 on, and two seconds later, Mrs. Watts hit.

2 Now, if you're driving down a road and a blue light
3 comes on, you only have two seconds to react. I think
4 it's unreasonable for you, for anyone to have been able to
5 escape with such a short time interval from crashing into
6 the back of the King car.

7 Now, Mr. Harter has indicated in here to you that
8 Mrs. King drove into the back of the deputy's car. That
9 is not the case. She drove into the right rear panel. He
10 turned sideways, gave her a perpendicular shot, and she
11 shot into that area of the car, not the back of his car.
12 You have to remember, a car going down the road at
13 40 miles an hour is traveling probably close to 60 feet a
14 second. And when you're covering that much ground, it
15 doesn't take long to cover distance.

16 All these photos were taken in the daytime that
17 defense counsel has laid out here for you. That is not a
18 true representation of the night of August 15, 2013.
19 Those are daylight photos. And even if you do look at
20 them, you see that there are some dips down in there that
21 are difficult to see.

22 Mr. Harter indicated that we were not here to clear
23 Barton Holmes. I believe that was his words. If they
24 were different, please remember what he said and what you
25 believe what he said. We are here to stress and urge and

1 convince you that Mr. Holmes is the one who started this
2 whole thing off.

3 And the dominoes were not crooked. If they were
4 crooked, Mrs. Watts would never have been involved in the
5 thing. She would have been outside the sphere of the
6 falling of the dominoes. And I believe His Honor will
7 tell you something about an emergency situation occurring
8 and how one is to be judged in reacting to that. He may
9 not use the exact term "sudden emergency."

10 Now, this video you've seen does not capture the
11 first accident, and it captures very little of the second
12 accident.

13 The medical records. Mr. Harter did put in a medical
14 record. And the doctors, nurses or whoever, we don't know
15 who put some language in here attributable to aspects of
16 Mrs. Watts's then condition. I submit to you that this
17 runs counter to all the evidence that's been put into your
18 hands over the last several days. If it indicates some
19 type of speed, this is something that was prepared
20 sometime after the accident by third parties. It does
21 indicate that there was some communications with Ms. Watts
22 in the preparation of this document, but what her
23 condition was then, how much drugs she was on, what they
24 had done to her to keep her alive, so on and so forth, I
25 do not believe that a great deal of believability or

1 credibility or trustworthiness is reflected in that
2 particular document.

3 The lighting, the accidents and all of the things
4 that took place on that night have been fully testified to
5 by numerous people. And the lack of blue lights were not
6 only testified to by Ms. Watts, who, if she was on the
7 wreck within two seconds, it would be maybe very difficult
8 to remember what all was going on around her at that time,
9 white or blue lights. But Mr. Williams testified very
10 clearly, clairvoyantly and without hesitation that he saw
11 no blue lights. And Ms. King testified there were no blue
12 lights until she and Mr. Holmes collided, and then two
13 seconds later the Watts car is in behind them. It's a
14 chain reaction, and I submit to you that the domino theory
15 has got lights in this case, and it could be applied in
16 this case just like a chain reaction type of a situation.

17 And I ask that you return to your jury room, consider
18 all the evidence, consider the Court's charge and come
19 back and render a verdict which will have to be unanimous
20 and that that verdict be in favor for Ms. Watts for the
21 damages and the suffering she's gone through and what she
22 faces for the balance of her life.

23 Thank you very much.

24 THE COURT: Okay. Thank you, Mr. Thompson.

25 Ladies and gentlemen, in one minute we're going to go

1 ahead and break for lunch before I give you the charge.
2 It's 1:30.. I know everybody's hungry, but I just want you
3 to keep your seat for just a minute. We need to tend to
4 something back here.

5 (Pause in proceedings.)

6 THE COURT: All right. Ladies and gentlemen, if
7 you'll go back to your jury room and enjoy your lunch.
8 You do not need to rush getting through lunch. So all of
9 you go back. Again, no discussion to be started yet. And
10 once we finish lunch, and then we'll get you back out and
11 I will charge you the law applicable to this case, okay?
12 Have a good lunch.

13 (WHEREUPON, the jury exits the courtroom at 1:32 p.m.)

14 THE COURT: I'm going to give them at least
15 30 minutes for lunch. I've got another matter to attend
16 to. And the lawyers won't mess with your stuff so you're
17 okay, but I just need to deal with something else here
18 real quickly.

19 (WHEREUPON, a recess is taken at 1:32 p.m.)

20 (WHEREUPON, the jury entered the courtroom at 2:33 p.m.)

21 CHARGE ON THE LAW

22 THE COURT: Ladies and gentlemen, I hope you enjoyed
23 the lunch from Palmetto Fine Foods.

24 All right. Madam Forelady and ladies and gentlemen
25 of the jury, I now will charge you the law applicable to

1 this case. You must consider the charge as a whole and
2 not focus on some portions to the exclusion of other
3 portions.

4 I remind you that during this trial, you and I have
5 had certain duties to perform. As the trial judge, it's
6 been my responsibility to preside over the trial of this
7 case, and I also have the duty to rule on the
8 admissibility of evidence offered during this trial. You
9 are to consider only the evidence before you. If there
10 was any testimony ordered stricken from the record during
11 this trial, I don't recall that, but if there were, you
12 must disregard that testimony. You are to consider only
13 the testimony which has been presented from the witness
14 stand to be considered by you in your jury deliberations.

15 I have the additional duty to charge you the law
16 applicable to this case, and it's your duty as jurors to
17 accept and apply the law as I now state it to you. If you
18 think you have any idea as to what the law is or what the
19 law ought to be and it does not agree with what I tell you
20 what the law is, then you must forget your idea because
21 you're sworn to accept the law and to apply the law
22 exactly as I state it to you.

23 In every case tried in this court before a jury, the
24 jury becomes and is the sole and exclusive judge of the
25 facts. I told you that on Monday. A trial judge cannot

1 comment on or make any statement about the facts in the
2 case. Since you are the sole judges of the facts, do not
3 think by anything I have said during this trial that I had
4 any opinion about the facts in this case. The law does
5 not allow me to have an opinion about the facts.

6 Now, the burden of proof, and you've already heard
7 this, the burden of proof in this case is by a
8 preponderance of the evidence. A preponderance of the
9 evidence simply means the greater weight of the evidence.
10 It is evidence which as a whole shows that the facts
11 sought to be proven is more likely true than not true, and
12 this can be illustrated by imagining a set of scales.
13 When the case begins, the scales are completely even.
14 After all the evidence has been presented, if the scales
15 remain even or if they tip even slightly in favor of the
16 defendant, then the plaintiff has failed to meet her
17 burden of proof and would not be entitled to recover in
18 this case. If, on the other hand, the scales tip even
19 slightly in favor of the plaintiff, the plaintiff will
20 have met her burden of proof and you should return a
21 verdict for the plaintiff.

22 The preponderance of the evidence is not determined
23 by the number of witnesses. Instead it must be determined
24 by the greater weight of all the evidence.

25 Now, ladies and gentlemen, there are two types of

1 evidence generally presented during a trial, that being
2 direct evidence and that being circumstantial evidence.
3 Direct evidence is the testimony of a person who claims to
4 have actual knowledge of a fact such as an eyewitness. It
5 is evidence which immediately establishes the main fact to
6 be proved.

7 Circumstantial evidence, however, is proof of a chain
8 of facts and circumstances indicating the existence of a
9 fact. It is evidence which immediately establishes
10 collateral facts from which the main fact may be inferred.

11 Circumstantial evidence is based on inference and not
12 on personal knowledge or observation. It is proof that
13 does not actually establish the fact in question but that
14 asserts or describes something else from which you may
15 either reasonably infer the truth of the fact or at least
16 reasonably infer an increase in the probability that the
17 fact is true.

18 For circumstantial evidence to be sufficient to
19 warrant the finding of a fact, the circumstances must lead
20 to that fact with reasonable certainty.

21 The facts and circumstances should be considered in
22 light of ordinary experience and common sense. The
23 existence of a fact cannot be based on speculation,
24 surmise or conjecture.

25 The law makes absolutely no distinction between the

1 weight or value to be given to either direct or
2 circumstantial evidence, nor is a greater degree of
3 certainty required of circumstantial evidence than that of
4 direct evidence.

5 Now, necessarily, one of your duties is to determine
6 the credibility of witnesses who have testified in this
7 case. Credibility simply means believability. It becomes
8 your duty as jurors to evaluate the evidence and determine
9 which evidence convinces you that it is true.

10 In determining the believability of witnesses who
11 have testified in this case, you may believe one witness
12 over several witnesses or several witnesses over one
13 witness; you may believe a part of the testimony of a
14 witness and reject the remaining part of the testimony of
15 that same witness; you may believe the testimony of a
16 witness in its entirety or reject the testimony of a
17 witness in its entirety; you may consider whether the
18 witness has an interest in the result of the trial,
19 whether the witness is prejudiced towards either the
20 plaintiff or the defendant, the opportunity for the
21 witness to have seen the matters and things about which
22 the witness may testify, and the way the witness acts on
23 the witness stand.

24 Now, Madam Forelady and ladies and gentlemen of the
25 jury, I'm going to now describe for you or tell you,

1 rather, certain laws that are applicable to this case as
2 it relates to operation of a motor vehicle. First is
3 driver's duty of care. The operator of a motor vehicle is
4 required to use the same care that would be used by a
5 person of ordinary reason and prudence if that person were
6 driving the same vehicle at the same time and place and
7 under the same circumstances.

8 Duty to keep a proper lookout: Motorists have a
9 common law duty to keep a reasonable lookout to avoid
10 hazards on the roadway. In addition, motorists are
11 required by statute to adjust their speeds to reasonable
12 and prudent levels considering the actual and potential
13 hazards that exist.

14 Duty to keep vehicle under control: The driver of an
15 automobile also has a duty to keep the automobile under
16 proper control so that the driver is able to slow down,
17 stop or turn the automobile to avoid colliding with other
18 vehicles, pedestrians and objects lawfully on the road.

19 Duty not to follow more closely than is reasonable:
20 The driver of a motor vehicle shall not follow another
21 vehicle more closely than is reasonable and prudent,
22 having due regard for the speed of such vehicles and the
23 traffic upon and the condition of the highway.

24 Duty to drive at a reasonable speed: A person shall
25 not drive a vehicle on a highway at a speed greater than

1 is reasonable and prudent under the conditions and having
2 regard to the actual and potential hazards that existed.
3 Speed must be so controlled to avoid colliding with a
4 person, vehicle or other conveyance on or entering the
5 highway in compliance with legal requirements and the duty
6 of a person to use care. The driver of a vehicle shall
7 drive at an appropriate reduced speed when approaching and
8 crossing an intersection or railway grade crossing, when
9 approaching and going around a curve, approaching a hill
10 crest when traveling upon any narrow bridge, narrow or
11 winding roadway and when special hazard exists with
12 respect to pedestrians or other traffic or by reason of
13 weather or highway conditions.

14 A driver has a duty to adjust the speed to conditions
15 and hazards. The driver of every vehicle is required to
16 drive at an appropriate reduced speed when hazards exist
17 with respect to weather or highway conditions. A motorist
18 whose vision is obscured by unfavorable weather conditions
19 must exercise care commensurate with the conditions of
20 travel.

21 Driving on roadways laned for traffic: Whenever any
22 roadway has been divided into two or more clearly marked
23 lanes for traffic, the following rules in addition to all
24 others consistent herewith shall apply. A vehicle shall
25 be driven as nearly as practical entirely within a single

1 lane and shall not be moved from the lane until the driver
2 has first ascertained that such movement can be made with
3 safety.

4 Turning movements and required signals: No person
5 shall turn a vehicle or move right or left upon a roadway
6 unless and until such movement can be made with reasonable
7 safety nor without giving an appropriate signal. A signal
8 of intention to turn or move right or left when required
9 shall be given continuously during not less than the last
10 100 feet traveled by the vehicle before turning.

11 No person shall stop or suddenly decrease the speed
12 of a vehicle without first giving an appropriate signal to
13 the driver of any vehicle immediately to the rear when
14 there is opportunity to give such signal.

15 Limitations on turning around: The driver of any
16 vehicle shall not turn such vehicle so as to proceed in
17 the opposite direction unless such movement can be made in
18 safety and without interfering with other traffic. No
19 vehicle shall be turned so as to proceed in the opposite
20 direction upon any curve or upon the approach to or near
21 the crest of a grade where such vehicle cannot be seen by
22 the driver of any other vehicle approaching from either
23 direction within 500 feet.

24 Operation of authorized emergency vehicles: The
25 driver of an authorized emergency vehicle, when responding

1 to an emergency call or when in the pursuit of an actual
2 or suspected violator of law, may exercise the privileges
3 set forth herein but subject to conditions also set forth
4 herein. The driver of an authorized emergency vehicle
5 may, one, park or stand; two, proceed past a red or stop
6 signal or stop sign but only after slowing down as may be
7 necessary for safe operation; three, exceed the maximum
8 speed limit if he does not endanger life or property;
9 four, disregard regulations governing direction of
10 movement or turning in specific directions. The
11 exemptions only apply when the authorized emergency
12 vehicle is making use of an audible signal and visual
13 signals.

14 An authorized emergency vehicle being used as a
15 police vehicle need not use an audible signal nor display
16 a visual signal when the vehicle is being used to, one,
17 obtain evidence of a speeding violation; two, respond to a
18 suspected crime in progress when use of an audible and/or
19 visual signal could reasonably result in the destruction
20 of evidence or the escape of a suspect; or three, surveil
21 another vehicle or its occupants who are suspected of
22 involvement in a crime.

23 The driver of an authorized emergency vehicle is not
24 relieved from the duty to drive with due regard for all
25 persons.

1 Now let me explain to you the concept of negligence.
2 The plaintiff claims that the defendant was negligent and
3 should compensate the plaintiff for the injuries the
4 plaintiff suffered as a result of the defendant's
5 negligence. In order to prove that the defendant was
6 negligent, the plaintiff must prove by a preponderance or
7 greater weight of the evidence the following four
8 elements: one, duty of care; two, breach of this duty;
9 three, proximate cause; and four, damages.

10 First, the plaintiff must prove by a preponderance or
11 greater weight of the evidence that the defendant owed the
12 plaintiff a duty of care. This is a question of law which
13 I have decided that there was a duty of care owed. If
14 there was a duty of care, which I have found that there
15 is, then you must decide the remaining three questions,
16 the first of these is whether the defendant has proven by
17 a preponderance or greater weight of the evidence that the
18 defendant breached the duty of care by a negligent act or
19 omission.

20 Negligence means that a person had done something
21 that a reasonable person would not have done or has failed
22 to do something that a reasonable person would have done
23 in the same situation. The plaintiff must therefore prove
24 by a preponderance or greater weight of the evidence that
25 she suffered damages as a result of the defendant's breach

1 of duty.

2 Finally, the plaintiff must prove by a preponderance
3 or greater weight of the evidence that the damages were
4 proximately caused by the defendant's breach of duty.
5 Proximate cause is something that produces a natural chain
6 of events which in the end brings about the injury. It is
7 the direct cause of the injury.

8 To prove that the defendant's negligence proximately
9 caused the plaintiff's injury, the plaintiff must first
10 prove causation in fact. This is proven by showing that
11 the injury would not have occurred but for the defendant's
12 negligence.

13 The plaintiff must also prove legal cause. Legal
14 cause is proven by showing that the injury was
15 foreseeable. This means that the injury occurred as a
16 natural and probable consequence of the defendant's
17 negligence. The plaintiff must prove that some injury
18 from the defendant's negligence was foreseeable but does
19 not have to prove or the plaintiff does not have to prove
20 that the particular injury that occurred was foreseeable;
21 however, the defendant cannot be held responsible for
22 things which could not be expected to happen.

23 Proximate cause does not mean the only cause. The
24 defendant's act can be a proximate cause of the
25 plaintiff's injury if it was at least one of the direct

1 concurring causes of the injury.

2 Now, ladies and gentlemen, if you decide that the
3 plaintiff is entitled to a verdict, your next step would
4 be to decide how much money the defendant should be
5 required to pay. Actual damages are to compensate the
6 plaintiff for the plaintiff's injuries or loss and to put
7 the plaintiff as near as possible in the same position
8 that the plaintiff was in before the incident occurred.
9 In other words, actual damages would be the actual losses
10 and expenses which the plaintiff has suffered because of
11 the defendant's negligence.

12 The following are actual damages that you have the
13 right to consider: one, pain and suffering. Pain and
14 suffering compensates the plaintiff for physical
15 discomfort and emotional response to the sensation of pain
16 caused by the injury itself. There is no definite
17 standard by which to compensate the plaintiff for pain and
18 suffering. You have the authority to determine the
19 amount, if any, to be allow for pain and suffering using
20 calm and reasonable judgment to ensure that the damages
21 are just and reasonable in light of the testimony and
22 evidence presented in this case.

23 Two, loss of enjoyment of life: Loss of enjoyment of
24 life compensates the plaintiff for limitations on the
25 plaintiff's ability to participate in and derive pleasure

1 from the normal activities of daily life.

2 Three, medical expenses: The plaintiff must prove
3 that the expenses were reasonable and necessary.

4 Four, mental suffering: Mental suffering,
5 apprehension, shock, fright, emotional upset, humiliation
6 and anxiety either present or expected in the future can
7 be properly considered as an element of damages. The
8 amount of damages for mental suffering cannot be exactly
9 measured.

10 Now, and you heard this during closing argument,
11 there's a concept called comparative negligence. The
12 defendant claims that the plaintiff's own negligence
13 proximately caused the plaintiff's injuries. If you find
14 that the defendant was negligent, you must then decide
15 whether the plaintiff was negligent. The defendant must
16 prove by a preponderance or greater weight of the evidence
17 that the plaintiff breached a duty of care which
18 proximately caused the plaintiff's injuries.

19 The same law which I have just told you concerning
20 the plaintiff's proof of negligence, use that same law in
21 deciding whether the defendant -- whether the plaintiff
22 was negligent. In other words, the same law which I have
23 told you to use in deciding whether the defendant was
24 negligent should be used in your decision whether the
25 plaintiff was negligent.

1 If you find that the negligence of both the plaintiff
2 and the defendant proximately caused the plaintiff's
3 injuries, you must then decide how much the negligence of
4 the plaintiff contributed to the plaintiff's injuries and
5 how much the defendant's negligence contributed to the
6 plaintiff's injuries. In deciding the percentages of
7 negligence of the plaintiff and the defendant, you may
8 consider, among other things, the following factors: one,
9 whether each party's conduct was only inadvertent or
10 whether it was engaged in with an awareness of the danger
11 involved; two, the magnitude of the risk created by each
12 party's conduct including the number of persons endangered
13 and the possible severity of the injury; three, the
14 significance of the goal that each party was trying to
15 reach and the need to achieve the goal in that manner;
16 four, each party's capabilities and abilities to realize
17 and eliminate the risk involved; five, the particular
18 circumstances confronting each party at the time the
19 conduct occurred such as the existence of an emergency
20 requiring a quick decision; six, the relative closeness of
21 the casual relationship of the negligent conduct of the
22 defendant and the harm to the plaintiff; and lastly,
23 seven, whether the conduct of either party involved a
24 violation of a safety statute or regulations.

25 Now, I'm going to give you written questions on a

1 special verdict form for you to reach a verdict. I'm
2 going to hand it to you for just a minute because I'm
3 going to explain it and I want you, Madam Forelady, to
4 have it in front of you. The form will have spaces for
5 you to write your decisions about the percentage of
6 negligence, if any, of both parties which proximately
7 caused the plaintiff's injuries.

8 Now, Mr. Bolt, if you will hand this to the forelady,
9 please.

10 The first two questions on the verdict form ask you
11 to decide whether the defendant was negligent, and if so,
12 whether the defendant's negligence was the proximate cause
13 of the plaintiff's injuries. Questions 3 and 4 ask the
14 same questions about any negligence of the plaintiff.
15 Follow that so far? Okay.

16 Question 5 asks you to decide the percentage of each
17 party's negligence which proximately caused the
18 plaintiff's injuries. And the percentages must add up to
19 100 percent.

20 Question 6 asks you if the plaintiff's negligence was
21 greater than the defendant's negligence. If so, the
22 plaintiff would not be entitled to any damages and your
23 verdict would be for the defendant. If, however, you find
24 that the plaintiff's negligence was equal to or less than
25 the defendant's negligence, you would answer Question 7

1 which asks you to determine the total amount of damages
2 suffered by the plaintiff.

3 Do not reduce the plaintiff's total damages based on
4 the percentage of negligence of any party. After you have
5 answered the questions, I will compute the amount of
6 damages for which the defendant would be responsible based
7 on the percentage of the defendant's negligence that you
8 have decided proximately caused the plaintiff's injuries.
9 You are to determine only the total amount of the
10 plaintiff's damages and enter that figure on the verdict
11 form.

12 Is the form clear? I'll be glad to answer any
13 questions that you have about the form.

14 So you go to Question Number 1, was the defendant
15 negligent? Yes or no. And depending upon what you -- how
16 you answer, you either stop or you go on, and you continue
17 with that, okay?

18 Now, all 12 of you must agree on the verdict.
19 The verdict must be unanimous, and it cannot be based on
20 any sympathy, passion, prejudice, emotion or any other
21 consideration not in evidence in this case. And when you
22 have reached a unanimous verdict, Madam Forelady, you are
23 to notify the bailiff so they can notify the Court that
24 you have reached a verdict.

25 Okay. Now, I want all 14 of you to go back to the

1 jury room, and do not begin your deliberations yet. I
2 want to talk with the lawyers to make sure that there are
3 no corrections, additions to the Court's charge. And if
4 there are not, then Mr. Bolt will deliver to you the
5 exhibits. You've already got your verdict form. You hold
6 onto that. I'm also going to give you a copy of the
7 charge that I just read to you for your use in whatever
8 manner you want to use it, if at all.

9 So don't begin your deliberations yet. Go back.
10 When Mr. Bolt brings the exhibits and the court charge to
11 you, that will be your cue for two things to happen: the
12 two alternates will need to exit the jury room and come
13 back into the Court for further instructions, and then you
14 would begin your deliberations. There is paper, and pen,
15 pencil back there for your use in your deliberations and
16 if you have any questions at any point.

17 So, if you'll go back, don't begin your deliberations
18 yet.

19 Oh, one other thing, too, Madam Forelady. We have a
20 computer that is designated strictly for jury use -- don't
21 take it yet. I'll just give it to Mr. Bolt -- in playing
22 any disk, DVDs that are into evidence. So that's at your
23 disposal if you decide that you want to use that. There's
24 nothing on the computer other than the ability to play
25 something.

1 Okay. All right. So go back to the jury room,
2 please.

3 (WHEREUPON, the jury exits the courtroom at 2:55 p.m.)

4 THE COURT: All right. Other than what has been
5 noted on the record, are there any exceptions or
6 objections to the Court's charge? Plaintiff?

7 MR. THOMPSON: The verdict form has got to be in some
8 order, some list, somebody first, somebody second. I
9 would ask the Court just to charge the jury that the order
10 of what they do has no significance, that you had to put
11 it in some order and that's the order you chose.

12 THE COURT: Oh, you're referring to they make a
13 decision about the defendant first and then a decision
14 about the plaintiff as it relates to negligence?

15 MR. THOMPSON: Yeah. In other words, you sometimes
16 get into that in a criminal case where the judge gives
17 them verdict forms and it's got to be in some format, I
18 know that, some order. But I've been used to judges
19 saying you're to assign no significance to the order in
20 which this is prepared.

21 THE COURT: Okay. All right. I'll consider that.
22 Anything else as it relates to the charge other than
23 what's been noted on the record?

24 MR. THOMPSON: Nothing other than a casual comment
25 that I don't understand. Is that -- maybe it's because

1 I've been so long out of the game.

2 THE COURT: Did I say something you didn't
3 understand? Is that what you're saying?

4 MR. THOMPSON: No. I don't understand why the charge
5 in its entirety goes to the jury.

6 THE COURT: Oh, that I give them because that
7 hopefully will minimize the amount of questions that they
8 ask and they have something that they can look at.

9 MR. THOMPSON: Okay.

10 THE COURT: It doesn't always, now. It doesn't
11 always.

12 But, Mr. Harter, do you have, other than what's been
13 noted on the record, any objections to the Court's charge?

14 MR. HARTER: No objection. But I was going to point
15 out one thing. I was looking at the draft. I may have
16 been looking at the earlier ---

17 THE COURT: We corrected that.

18 MR. HARTER: The 7 ---

19 THE COURT: Changed 8 to 7.

20 MR. HARTER: That's all.

21 THE COURT: That was corrected.

22 MR. HARTER: Thank you.

23 THE COURT: Okay. All right. So, Mr. Thompson, you
24 want me to instruct the jury that there's no significance
25 to placing the defendant information first concerning

1 negligence as 1 and 2 and the plaintiff 3 and 4.

2 MR. THOMPSON: Right. It just has to be in some
3 order.

4 THE COURT: Okay. All right. Let's go ahead before
5 I bring the jury out to do that, we're going to go off the
6 record, get with the court reporter, make sure we got all
7 the exhibits so then Mr. Bolt can walk back with the jury
8 with those exhibits.

9 MR. HARTER: Judge, can I comment about the form?
10 This is the way I think to orderly go about it with
11 comparative negligence stuff in it. I mean, I've never
12 seen -- you know, if there's a verdict for the plaintiff,
13 verdict for the defendant, that's one thing. But this is
14 fashioned to give -- to let the jury work methodically
15 through that. So I would -- it's not like a
16 plaintiff/defendant -- you know, "we find for the
17 plaintiff, we find for the defendant" thing.

18 THE COURT: Right.

19 MR. HARTER: This is kind of fashioned to deal with
20 this comparative thing. I think you got it right.

21 THE COURT: Well, the first person that they have to
22 make a determination on as to negligence is the defendant
23 because if they find no negligence, that stops right
24 there. So I'm not going to bring the jury out. But your
25 point is so noted on the record.

1 MR. THOMPSON: All right. Thank you, sir.

2 I think we've already gone through the ---

3 THE COURT: You have?

4 (WHEREUPON, a recess is taken at 3:01 p.m., and the jury
5 begins deliberations. Court's Exhibit Numbers 7 and 8
6 were marked for identification.)

7 (WHEREUPON, proceedings reconvened at 4:15 p.m.)

8 THE COURT: We're going to give you another option is
9 for the jury to come out here, watch it on the big screen
10 and everybody will not be in here.

11 JURY FOREPERSON: That's fine.

12 THE COURT: Is that fine? And then I'll also have
13 Mr. Bolt back at this door, and then when you're finished,
14 you just knock at the door and let them know you're
15 finished, okay? We'll get it ready to where all you have
16 to do is just hit a button to get it on, okay?

17 So it's going to take a few minutes to get this, all
18 right? So if you'll just go back and continue doing
19 whatever you're doing, and then as soon as we're ready,
20 we'll get you out here, but we'll all exit the courtroom.

21 JURY FOREPERSON: That sounds fine.

22 THE COURT: Okay. Thank you, ma'am.

23 (WHEREUPON, a recess is taken at 4:16 p.m.)

24 (WHEREUPON, proceedings reconvened at 4:58 p.m.)

25 THE COURT: Okay. It's my understanding, the jury

1 has reached a verdict. Is everybody ready to receive the
2 verdict?

3 MR. BRYAN: Yes, sir.

4 THE COURT: All right. Mr. Bolt, if you'll bring the
5 jury in.

6 (WHEREUPON, the jury entered the courtroom at 5:00 p.m.)

7 THE COURT: Madam Forelady, without telling me the
8 verdict, it's my understanding that you have reached a
9 verdict in this case; is that correct?

10 JURY FOREPERSON: Yes, sir.

11 THE COURT: Okay. And is the verdict unanimous among
12 the 12 of you?

13 JURY FOREPERSON: Yes, it is.

14 THE COURT: Okay. Would you hand the verdict form to
15 Mr. Bolt and he can hand it to me.

16 Madam Clerk, would you publish, please.

17 VERDICT

18 THE CLERK: Yes, sir.

19 Your Honor, in the case of Martha Foster Watts vs.

20 Laurens County Sheriff's Department, Case Number

21 2015-CP-30-624, as to Question 1, was the defendant

22 negligent, the answer is no. Signed by the foreperson,

23 Staci A. Pillus.

24 Ladies and gentlemen, if that be your verdict, please
25 indicate by raising your right hands.

1 (WHEREUPON, all jurors raised their right hands.)

2 THE CLERK: Thank you.

3 THE COURT: All right. Let the record reflect that
4 all 12 hands went up.

5 Does the plaintiff wish individual polling of the
6 jury?

7 MR. THOMPSON: No, sir.

8 THE COURT: Okay. Ladies and gentlemen, I want to
9 thank you for your jury service. The verdict that a jury
10 reaches in any case does not matter to me at all. What
11 does matter is that a jury perform their duties
12 conscientiously, diligently and efficiently, and I believe
13 that you have done that. This trial lasted a little bit
14 longer than I think we all anticipated and you hung in
15 there with us. You were patient with us when we kept you
16 back in the jury room a little longer than maybe we all
17 would like.

18 But I want you to understand and appreciate the fact
19 that juries play a tremendous and important role in our
20 justice system. After you were selected and back in the
21 jury room, I told the remaining jury panel that we are so
22 fortunate to have the greatest justice system ever
23 created. I think even Mr. Thompson alluded to the fact in
24 his closing that our country is the only country remaining
25 that has a jury system. So juries play a tremendous part

1 in our justice system so I want you to know how important
2 your role has been in this case, and I thank you very much
3 for serving. And I hope that you have learned some things
4 that maybe you did not otherwise know, and I sincerely
5 hope that if you are summoned again to this courthouse or
6 any other courthouse to serve on jury duty, whether it's
7 in the civil arena or the criminal arena, that you will
8 gladly accept that invitation.

9 I like to shake the hands of my jurors as they are
10 leaving the courtroom, so I'm going to come down and do
11 that now. You are free for the rest of the week. We do
12 have -- the clerk has work excuses if you need that for
13 employment. You will be mailed a check for your jury
14 service. Unfortunately, state law does not allow for much
15 compensation for juries, so don't expect a very large
16 check. But I'm going to come down and shake your hand.
17 And you are free to go, and certainly since this is
18 Thursday, you are free for the rest of the week.

19 (WHEREUPON, the jury exited the courtroom at 5:03 p.m.)

20 THE COURT: If the plaintiff wishes to file any
21 posttrial motions, certainly you have ten days to do that
22 if that's your desire.

23 I commend the attorneys on both sides for the
24 excellent job that you did in representing your respective
25 clients. Unfortunately, as you guys know and girls know,

1 you know, you've got to have one side to win and one side
2 to lose. That's just the way it shakes out. But I do
3 commend the hard work that you folks put into this case.

4 Thank you very much.

5 (WHEREUPON, Court's Exhibit Nos. 9 and 10 were marked for
6 identification; proceedings concluded at 5:05 p.m.)
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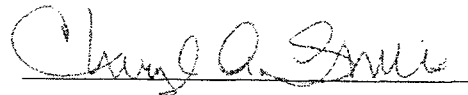
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Laurens County, South Carolina, on the
16th, 17th, 18th, and 19th day of April, 2018.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

December 9, 2019



Cheryl A. Smith, CVR-M
Court Reporter