

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Please

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-000581

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SC Court of Appeals

Harland Jones.....Appellant,

v.

Karen Robinson Respondent.

RECORD ON APPEAL – VOLUME II

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2018-CP-40-01518
	)	
HARLAND JONES,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KAREN ROBINSON,	)	
	)	
DEFENDANT,	)	

May 7, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROGER COUCH, JUDGE.

APPEARANCES:

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Attorney for the Plaintiff

ANDREW DELANEY, ESQ.
BRETT BAYNE, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. It appears to be a motion to
2 compel, looks like it's filed by the Plaintiff. State
3 your -- state your appearances first. I'll get that on
4 the record.

5 MR. JEFFERIES: Good afternoon, Your Honor. Lane
6 Jefferies for the Plaintiff, Mr. Harland Jones.

7 THE COURT: Mr. Jefferies.

8 All right. For the Defense?

9 MR. DELANEY: Andy Delaney, Your Honor, for Karen
10 Robinson. This is my co-counsel Brett Bayne and counsel
11 for the UIM carrier, Rogers Harrell.

12 THE COURT: All right. Thank you.

13 Yes, sir.

14 MR. JEFFERIES: Your Honor, in the interest of
15 judicial economy, the second motion on the list is a
16 motion for summary judgment.

17 THE COURT: Okay.

18 MR. JEFFERIES: And I believe, actually, that the
19 motion to compel is opposing counsel's motion to compel,
20 not mine.

21 MR. DELANEY: I believe that is correct, Your Honor.

22 THE COURT: All right.

23 MR. JEFFERIES: So it may make sense to proceed with
24 the summary judgment motion, hear the summary judgment
25 motion first.

1 THE COURT: That would be fine me.

2 MR. DELANEY: Your Honor, we filed a memorandum in
3 support of our motion for summary judgment today. We sent
4 a copy of it to your chambers. I have a copy for you if
5 you didn't get it.

6 THE COURT: I'm not sure I did, but go ahead and hand
7 it up if you like.

8 MR. DELANEY: Okay.

9 THE COURT: Thank you.

10 Yes, sir.

11 MR. DELANEY: Your Honor, once again, this is Andy
12 Delaney for the defendant, Karen Robinson.

13 This case arises out of a motor vehicle accident that
14 occurred on June 7, 2017. It was filed on June -- excuse
15 me, March 16th, 2018.

16 It is a -- my client was traveling on Old Bluff Road
17 traveling west. The plaintiff was on a bicycle initially
18 traveling east and turned left into my client's lane with
19 a resulting collision.

20 The complaint filed by the plaintiff alleges that the
21 defendant unlawfully attempted to pass the vehicle
22 immediately in front of her. The defendant crossed over
23 into the plaintiff's lane of travel, and the defendant
24 unlawfully traveled into the lane of oncoming traffic.

25 Your Honor, we have, obviously, engaged in extensive

1 written discovery and depositions. In particular, there
2 have been three depositions taken, that of the plaintiff,
3 Mr. Harland Jones, the defendant, Karen Robinson, and an
4 independent eyewitness who was traveling behind the
5 plaintiff immediately before the accident, a lady named
6 Michelle Murray.

7 Your Honor, we submitted the memorandum, and I think
8 looking at the testimony of it, none of the allegations
9 that have been asserted by the plaintiff are, in fact,
10 true. There is no question of material fact as to any of
11 them.

12 The plaintiff's own testimony is that he never saw
13 the defendant at any point prior to the accident. He
14 never saw her make any passing maneuvers. He never saw
15 the defendant do anything.

16 His plan was to turn, cross over into the oncoming
17 traffic, and he just did it because he said he felt like
18 it. The defendant also said she never crossed the double
19 yellow line. She never crossed into oncoming traffic.
20 She did nothing other than travel in her own lane of
21 traffic.

22 Perhaps most importantly is the independent witness,
23 Ms. Michelle Murray. She said she saw the defendant, my
24 client, approaching her. She was behind Mr. Harland Jones
25 at the time when he raised his left hand and then suddenly

1 turned left directly into my client's travel.

2 She said that the defendant never moved into oncoming
3 traffic. The defendant never -- was always within her
4 lane of traffic. The defendant never crossed the double
5 yellow line, and she never saw the defendant try to pass
6 anyone.

7 She saw -- the only thing she did see was that the
8 plaintiff turned suddenly into the defendant's path
9 without any reason or even any pathway that he was turning
10 into.

11 There is no issue of any material fact. The
12 defendant crossed into -- excuse me, the plaintiff crossed
13 into the defendant's lane for reasons unknown to us.

14 The plaintiff has filed a memorandum in opposition
15 and come up with a theory that the defendant attempted to
16 pass a vehicle, immediately got back over, and that's when
17 the accident occurred.

18 What's important about that is there is not a single
19 witness, no one, not even the plaintiff himself, that can
20 support that theory.

21 In fact, we asked the plaintiff -- and we have asked
22 since the beginning of this case to identify for us any
23 witnesses whatsoever that could support any of the
24 allegations in their complaint.

25 Your Honor, what we have is a discovery response --

1 if I may approach the bench.

2 THE COURT: You may.

3 MR. DELANEY: -- where we've asked specifically for
4 this very witness.

5 (Pause).

6 And in that you can see we asked -- in short, I'll
7 kind of recap this -- for any witness who is going to give
8 testimony that the defendant was speeding, the defendant
9 was not paying attention to the roadway at the time of the
10 subject collision, and/or that the defendant -- and this
11 is probably the most important part because this is what
12 they alleged happened here -- unlawfully attempted to
13 unlawfully pass a vehicle immediately in front of her at
14 the time the defendant caused the plaintiff to strike the
15 defendant's vehicle.

16 And as you can see here, that's none, not even the
17 plaintiff, not a single person can support the plaintiff's
18 theory that my client crossed the double yellow line,
19 tried to unlawfully pass the vehicle and led to this
20 collision. There is no question as to any fact in this --
21 in this case at all.

22 I would agree with one thing as pointed out by the
23 plaintiffs in his legal analysis in his memorandum in
24 opposition, and it says: "Plaintiff is entitled to the
25 presumption that each fact be personally observed."

1 It is true. I don't disagree with that at all, but
2 the problem is he didn't observe any of the things that
3 they have outlined in their memorandum for summary -- in
4 opposition to summary judgment.

5 No one has, not a single person has alleged -- has
6 seen or can provide any testimony to substantiate this
7 theory that my client crossed the double yellow line and
8 somehow ended up back in her lane of traffic leading to
9 the collision that involved the plaintiff.

10 There is no one out there to support any of this
11 including the plaintiff's own testimony. He testified
12 that he never saw her, never saw her cross the double
13 yellow line, never saw her do any of the things that he
14 alleged in his complaint.

15 So, Your Honor, not only is summary judgment
16 appropriate, but there was, in fact, no good faith basis
17 to bring the lawsuit in the first place. Because of that,
18 Your Honor, we're asking that summary judgment be granted.

19 THE COURT: Yes, sir.

20 MR. JEFFERIES: Thank you, Your Honor. To begin with
21 -- and Your Honor laid this out a lot better than I could
22 in a prior hearing today. It's a summary judgment motion.

23 It's not about weighing the evidence. They have two
24 witnesses. We have one. If it were about weighing the
25 evidence, we'd lose. It's not about that. It's about the

1 existence of evidence.

2 The statements of the witnesses under oath have to be
3 taken at face value. That's what a summary judgment
4 motion is.

5 The defense says that my client made an illegal left
6 turn immediately in front of the defendant and that he did
7 it for no reason, but the plaintiff has testified that he
8 made a legal signaled left turn in front of a different
9 car, not the defendant's car, and that he did it for a
10 reason.

11 In what Mr. Delaney is ignoring is not a single
12 person can testify in support of our theory is he's
13 ignoring the fact that there's direct evidence, and
14 there's circumstantial evidence.

15 Circumstantial is enough. We have both, but
16 circumstantial is enough to convict in a criminal court.
17 If we have a witness that, as an example, sees a man with
18 a gun go into a bank and hears five shots and the man with
19 a gun comes out of the bank. We go in there and there are
20 five dead people, that witness doesn't have to see those
21 people actually be shot. That witness can testify to what
22 he heard and saw, and the jury can draw its reasonable
23 conclusions. So there's circumstantial evidence.

24 But I'll tell you what the evidence is. To begin
25 with, the business of Mr. Jones not knowing he was, what,

1 for reasons unknown to us made a left turn because he felt
2 like it. That's not so.

3 In his deposition, Your Honor, page 38 -- pardon me,
4 37, lines 20 through 23, the question was: "When you were
5 turning, where exactly were you turning into?"

6 Mr. Jones says: "I was turning on the other side of
7 the road to go to my house." So he wouldn't do it because
8 he felt like it. He was doing it because he was going
9 home.

10 Their client says that he made an illegal turn.
11 Mr. Jones made an illegal turn, an unsignaled turn, but in
12 fact, Mr. Jones testified that he did signal before
13 turning left, in his deposition, page 29, lines 12 through
14 16; again page 35, lines 23 through 25 --

15 THE COURT: The Plaintiff was in the opposite lane of
16 travel approaching the Plaintiff?

17 MR. JEFFERIES: Correct, Your Honor. It's a passing
18 situation, two lane road, double yellow line.

19 THE COURT: Okay, double yellow line.

20 MR. JEFFERIES: They're coming -- oncoming at each
21 other.

22 THE COURT: All right. So he gives a signal that
23 he's turning left.

24 MR. JEFFERIES: That he's turning left, and here is
25 what else --

1 THE COURT: He's --

2 MR. JEFFERIES: And he does turn left, and here is
3 what he says. He sees a car coming in the other lane
4 toward him. He has testified to all of this -- and I can
5 give Your Honor the citations as to exactly where he says
6 it. He sees a car coming towards him. He signals to turn
7 left. That car sees him, slows down signaling that it's
8 okay to do that.

9 He begins to turn left. As he looks at that other
10 car, it's a blue car, he says, not a gray car like the
11 defendant's, and the person driving it is not the
12 defendant.

13 He is turning left in front of somebody that is not
14 the defendant. He testified to this. He testified that
15 there were two cars behind that car he was turning in
16 front of. That's the last thing he remembers. There's no
17 dispute that the defendant hit the plaintiff. Everybody
18 agrees to that.

19 THE COURT: But we're not -- we're not res ipsa
20 loquitur stage.

21 MR. JEFFERIES: Exactly, Your Honor. We're not. Res
22 ipsa would apply here, but we don't need res ipsa. What
23 applies here is simply the fact that we're entitled to,
24 first, reasonable inferences drawn from the testimony; and
25 second, at trial we would be entitled to circumstantial

1 evidence.

2 So here is a reasonable inference. If we take what
3 the plaintiff says as true, which we have to as
4 Mr. Delaney agrees, he turned left in front of a slowing
5 down car that had cars behind him.

6 The next thing that happens is the plaintiff gets hit
7 by the defendant, and everybody agrees to that. That
8 scenario is so common it's in our driver's manual.
9 Impatient drivers behind a slowing car that passes. It's
10 in our driver's manual how common that is.

11 That's the only inference. If what he says is true,
12 he turned in front of some car that wasn't the defendant,
13 and we all agree the defendant hit him. The defendant had
14 to pass that other car. There's no way around it.

15 There is no other way it could have happened if what
16 he says is true. Now, it is a question when we get to
17 trial of whether Mr. Jones is believed or whether the
18 defendant is believed, but the question today is, is there
19 testimony that's contradictory and there is.

20 He testified I turned in front of somebody else that
21 had two cars behind it. She says no. He turned right in
22 front of me. He says he turned in front of a car that had
23 seen his signal. This is in his deposition, page 28,
24 lines 17 through 19.

25 So it was cars behind her. So she slowed down and

1 let me know that I could turn in front of her.

2 He says that the driver that he turned in front of
3 signaled him to turn. The defendant denies that she
4 signaled plaintiff to turn.

5 So when she slowed down to let me know that it was
6 all right for me to turn in front of her, I proceeded to
7 turn in front of her. He says that the car he turned in
8 front of was not the defendant.

9 She says he turned in front of the defendant. She
10 swears he turned right in front of her. He says no. I
11 turned in front of a different car.

12 This in his deposition page 14 -- pardon me, page 29,
13 lines 17 through 22. The question was: "When you
14 mentioned the car being driven by a woman who may have
15 been your wife's cousin, is that the vehicle that hit
16 you?"

17 "No," he says. "That's the vehicle I was going to
18 turn in front of."

19 So there's a dispute there. The question -- again,
20 defendant denies --

21 THE COURT: Let me ask -- well, let me ask the
22 defendant about this.

23 MR. DELANEY: Yes, sir.

24 THE COURT: Is his testimony that he turned in front
25 of someone else, and all of the sudden he got hit by them?

1 MR. DELANEY: That is his testimony; that he turned
2 in front of his wife's cousin.

3 THE COURT: And somebody else?

4 MR. DELANEY: That's right, Your Honor, but then --

5 THE COURT: That's not the defendants.

6 MR. DELANEY: No, sir, not -- not us at all, but I
7 think some of his deposition testimony is being a little
8 bit taken out of context, and we have outlined a good bit
9 of that in our memorandum.

10 In fact, there's a couple of things I'd like to draw
11 to your attention.

12 THE COURT: All right.

13 MR. DELANEY: First addressing what Mr. Jefferies
14 asked about why the defendant -- excuse me. Why the
15 plaintiff turned, and this is left out completely.

16 It says: "When you were turning, where exactly were
17 you turning into?" This is part of the answer that Mr.
18 Jefferies gave: "I was turning on the other side of the
19 road to go to my house. I was turning in front of the
20 car. I was going to go still on -- well, on the left side
21 of the road for about a block or so before I turned into
22 my house."

23 "Why did you turn there to go a block up to your
24 house?"

25 "Because that's what I felt like doing at the time."

1 "So is there any particular reason you would have
2 chose to turn at that precise location?"

3 So "maybe. I don't know. I mean, I guess at a
4 particular location that I decided to turn at that point
5 in time."

6 So that's a little more context as to why he turned
7 and the explanation that he gave. In addition, this is
8 what he says. This is a pointed question to him: "At the
9 time of the collision, did you see anybody change lanes or
10 anything like that?"

11 The answer: "No."

12 "Do you recall seeing any vehicle attempt to make a
13 pass around another vehicle while you were riding your
14 bike?"

15 The answer: "No."

16 "So do you have any reason to believe that the
17 defendant attempted to pass a vehicle?"

18 "No. I don't have no reason."

19 Your Honor, if you believe -- the plaintiff is
20 entitled to reasonable inferences, not conjecture and wild
21 speculation that's unsupported by anyone.

22 To believe what they're putting forth in their
23 memorandum, the defendant would have had to have passed a
24 car, immediately got back over, struck Mr. Jones.

25 The car that the plaintiff -- excuse me, that the

1 defendant passed that is allegedly driven by his cousin,
2 his wife's cousin, would have seen it and leave the scene.

3 So the car that allegedly passed was driven by his
4 wife's cousin, she sees him get hit on a bicycle or
5 presumably sees it, and she leaves the scene. That's wild
6 conjecture.

7 There is no one to support anything, let alone his
8 own testimony, that contradicts what the plaintiffs are
9 putting forward today. There is nothing out there to
10 support this other than what the plaintiff's assertion in
11 this memoranda. There is nothing.

12 MR. JEFFERIES: Your Honor, it's -- it's a question
13 of who the jury believes. He says he turned left in front
14 of somebody other than the defendant.

15 Mr. Delaney would be right if we didn't all agree
16 that the defendant hit Mr. Jones. Mr. Jones certainly
17 couldn't say I turned left in front of some unknown
18 person, and that guy over there did it if there were no
19 other evidence.

20 But we know, we all agree that the defendant hit Mr.
21 Jones. He went in the hospital. That's a quarter million
22 dollars in medical damages, got konked in the head. He
23 doesn't remember being hit, but he remembers what leads up
24 to it.

25 He said under oath, I turned in front of a car that

1 wasn't the defendant. The defendant says no. He turned
2 right in front of me.

3 That right there all by itself is the -- is an issue
4 of fact. There are numerous others, is an issue of fact
5 that the jury has to resolve.

6 THE COURT: Anything further?

7 MR. DELANEY: No, sir, Your Honor. I clearly don't
8 believe this is any type of material issue of fact. There
9 is just nothing out there. There is no fact to --
10 conjecture and speculation.

11 THE COURT: Well, there's -- there's enough that's
12 going to get you past a motion for summary judgment. So
13 I'm going to deny the motion.

14 I'm not, again, weighing the evidence, but in the
15 course of -- I don't disagree with you that you have some
16 strong arguments. I'm not weighing that today. I'm just
17 deciding whether or not there are facts for the jury to
18 decide.

19 MR. JEFFERIES: Thank you, Your Honor.

20 THE COURT: The motion for summary judgment is
21 denied.

22 Now, are there other motions I need to deal with?

23 MR. BAYNE: Judge, there is a motion to compel that's
24 been filed -- and I'll be happy to kind of walk through
25 the heels of some of these issues that have already been

1 touched on.

2 Mr. Delaney touched on the allegations in the
3 complaint that the defendant allegedly changed lanes into
4 oncoming traffic, struck the defendant -- or struck the
5 plaintiff in that regard.

6 As part of the initial pleadings in this case, there
7 was a motion to dismiss one of our counterclaims that was
8 filed and a memorandum that was filed with it.

9 That's on one of the discovery responses that
10 Mr. Delaney handed up, but what is in that memorandum
11 signed by the plaintiff's counsel is that the plaintiff
12 will have witnesses who will testify that the defendant
13 was speeding; that the defendant was not paying attention
14 to the roadway at the time of the subject collision,
15 and/or the defendant unlawfully attempted to pass a
16 vehicle immediately in front of her at the time she, the
17 defendant, unlawfully caused the plaintiff to strike the
18 defendant's vehicle.

19 Upon receiving that on August 14th, 2018, we
20 delivered an interrogatory which I believe Your Honor has
21 in front of you.

22 THE COURT: I think I've seen that.

23 MR. BAYNE: Saying you have stated this. Tell us who
24 that person is.

25 THE COURT: The answers are to those interrogatories.

1 MR. BAYNE: Correct. We didn't get them initially.
2 We had to file a motion to compel. We came to court.
3 Judge Benjamin gave them 20 days to produce it.

4 THE COURT: I'm looking. They didn't identify
5 anyone.

6 MR. BAYNE: Right. They didn't answer it. She
7 issued a Rule to Show Cause. They finally said we don't
8 have anybody.

9 We proceeded to the deposition of the plaintiff in
10 March of 2019, on March 6th, and in that deposition for
11 the first time, the plaintiff testified that a friend of
12 his named Alex witnessed the accident.

13 He couldn't give us a last name. He couldn't give us
14 an address. He couldn't give us a phone number. He
15 couldn't give us any information about where he lives
16 other than somewhere in the woods.

17 THE COURT: Somewhere in the woods?

18 MR. BAYNE: Somewhere in the woods out near Winnsboro
19 is what we were told. So we have now in March of 2019
20 after discovery, after a Rule to Show -- after a motion to
21 compel, after an order granting the motion to compel after
22 a Rule to Show Cause, after saying there are no witnesses,
23 now there's a witness.

24 We also learned in that deposition -- and we heard
25 here today -- that this other car that might have been

1 there was driven by the plaintiff's wife's cousin.

2 The plaintiff knows who that is. In fact, he
3 testified that she came to the house to see him after all
4 of this. She, if this theory that the car cut back in
5 front of the plaintiff's wife's cousin happened, is an
6 eyewitness to this accident.

7 The testimony in the deposition was she doesn't want
8 to be involved in this. The interrogatory doesn't call
9 for tell us who the witnesses are if you want to be
10 involved.

11 THE COURT: Well, it's asked you to identify.

12 MR. BAYNE: Right.

13 THE COURT: Okay.

14 MR. BAYNE: So we are now 14 months into this case,
15 23 months since the accident happened. We have served
16 discovery. We have had the order. We have had the rule.

17 THE COURT: You can stop.

18 MR. BAYNE: Yes.

19 THE COURT: What's -- what's the deal?

20 MR. JEFFERIES: Your Honor, plaintiff's wife passed
21 away about six months ago --

22 THE COURT: I'm sorry.

23 MR. JEFFERIES: -- as I recall. The plaintiff
24 suffered serious trauma including head trauma in this
25 wreck, and his wife was really his -- his caretaker. His

1 memory -- and, Your Honor, we can swear him in and ask
2 questions right now --

3 THE COURT: I'm not concerned about the memory as
4 much as -- he remembered enough to identify what the
5 relationship was, and she was there.

6 MR. JEFFERIES: That's correct.

7 THE COURT: And that would lead me to believe that
8 there is someone in his family or his community or someone
9 who could identify who this person is and where they are
10 so they could gather that information.

11 MR. JEFFERIES: That's correct, Your Honor, and what
12 we found is we have tried to -- we want these witnesses,
13 obviously, because if they testify --

14 THE COURT: Well, I'm going to require that you get
15 them pretty quickly, I think, because this case has been
16 going on a long time.

17 MR. JEFFERIES: I agree, Your Honor, and we're
18 perfectly comfortable with that. We understand we can't
19 find Alex who lives --

20 THE COURT: I believe in full --

21 MR. JEFFERIES: -- in the woods.

22 THE COURT: I believe in full discovery, and I also
23 believe in not trying cases by ambush.

24 MR. JEFFERIES: We agree.

25 THE COURT: When are we going to have this witness's

1 name?

2 MR. JEFFERIES: Your Honor, I don't know that we can
3 find it. If Your Honor wants to give us 30 days and say
4 that's all you've got, we're comfortable with that.

5 THE COURT: How close is this case to trial?

6 MR. DELANEY: I believe, Your Honor, it's like in
7 June.

8 MR. BAYNE: It's on the July 8th or 9th roster, I
9 believe, last I checked, Judge.

10 THE COURT: Okay.

11 MR. BAYNE: And our motion that we filed calls to
12 produce that -- or we would ask the case be dismissed as a
13 sanction at this point for failing to disclose whatever
14 time Your Honor deems proper. Obviously, we would abide
15 by it.

16 THE COURT: Well, I mean, what I would do is I would
17 bar them from presenting the witness to give you time to
18 be prepared if they don't produce the person by a certain
19 point in time.

20 MR. BAYNE: Certainly, Judge.

21 MR. JEFFERIES: And we agree with that, Your Honor.
22 We're perfectly comfortable not being able to use that
23 witness.

24 THE COURT: All right. So you're looking at sometime
25 in July?

1 MR. BAYNE: I believe it's the July, the week after
2 July 4th.

3 THE COURT: Okay. If they don't have it by June 1st
4 if they don't have it, that witness will be prevented from
5 testifying.

6 MR. BAYNE: That will work, Judge.

7 MR. JEFFERIES: Thank you, Your Honor.

8 THE COURT: All right. Thank you very much.

9 MR. JEFFERIES: Your Honor, with respect to the
10 motion for summary judgment, will Your Honor, just Form 4
11 it?

12 THE COURT: I'll do a Form 4 on it.

13 MR. JEFFERIES: Excellent, Your Honor.

14 MR. DELANEY: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Whereupon, the proceedings were concluded.)
17
18
19
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23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th 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
Richland County, South Carolina, on the 7th day of May,
2019.

July 15, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2018-CP-40-01518

Harland Jones,)
Plaintiff,)
vs.)
Karen Robinson,)
Defendants.)
_____)

July 8, 2019

Columbia, South Carolina

B e f o r e:

The Honorable Alison Lee, Judge

A p p e a r a n c e s:

Lane Jeffries, Esquire
Attorney for the Plaintiff

Brett Bayne, Esquire
Andy Delaney, Esquire
Rogers Harrell, Esquire
Attorneys for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

-- NO EXHIBITS ENTERED --

1 (On the record at 10:53 a.m.)

2 THE COURT: Good morning. We're here on docket No.
3 2018-CP-40-01518, *Harland Jones vs. Karen Robinson*. The
4 Plaintiff is represented by Lane Jeffries. The Defendant's
5 represented by Andrew Delaney and Brett Bayne.

6 Counsel, I -- we're here for a jury trial. I know
7 that there are a number of motions that have been filed and
8 there are some preliminary issues that we need to take up,
9 and you briefly alluded to them this morning in the roster
10 meeting. And so let -- just so the record is clear, let's
11 talk about the -- the issue that's currently pending.

12 As I understand it, there was a motion to compel that
13 was filed a while ago and heard before Roger Couch who is a
14 retired Circuit Court judge. He issued an order on July
15 the 3, and on the same day there was a motion to alter or
16 amend pursuant to Rule 59.

17 And Mr. Jeffries, I believe you told me earlier at the
18 roster meeting that a copy was sent to him by U.S. Mail and
19 not by -- and not electronically.

20 MR. JEFFRIES: I don't believe one was sent
21 electronically. I know one was sent by U.S. Mail, and of
22 course, there's a 10-day time period to do that. So that
23 doesn't actually run --

24 THE COURT: Sure. And -- and certainly the motion --
25 the motion was filed within the 10 day period. The rule

1 just simply requires that a copy also be served on the
2 judge, and I just did not know in what format that took
3 place.

4 MR. JEFFRIES: That's correct, Your Honor, by U.S.
5 Mail.

6 THE COURT: And so there's also been a motion for
7 sanctions that was filed by the Defendant. That motion
8 was filed -- I don't have the exact date, but it was filed
9 back in June, the end of June. June 28, I believe.

10 And Judge Jocelyn Newman, who is the Chief
11 Administrative Judge, had indicated to the parties -- or
12 at least it's been communicated to me that that motion
13 would be heard by the trial judge prior to the -- to the -
14 - the trial in this matter.

15 And in conjunction with that motion, there were
16 several -- there was a memorandum filed and then there
17 were several exhibits that were attached.

18 Additionally, today Mr. Jeffries has filed a
19 chronology related to the motion, I guess for
20 reconsideration or just for -- in response to the motions
21 for sanction, I'm not sure which.

22 But I said what I would do today is let's -- let's
23 take up these issues before we get to where we are with
24 the trial.

25 And so Mr. Lane and -- Mr. Jeffries, I'm sorry, I'll

1 give you the opportunity to speak first since you're the
2 Plaintiff's counsel.

3 MR. JEFFRIES: Thank you, Your Honor. With respect
4 to the -- to the order of Judge Couch, the Defense has
5 taken the position that our motion to -- our Rule 59
6 motion is -- is posed just to delay. That's not the case.
7 Judge Couch heard the arguments back in May, early May.
8 He did not issue an order until July 3. There was nothing
9 for Plaintiff to file a Rule 59 against

10 We disagreed with what the Judge's instructions were.
11 The judge instructed Defense counsel to prepare a proposed
12 order stating certain things. We disagreed that that was
13 the correct ruling, and Plaintiff filed a Rule 59.

14 Of course, we would have done it that day had there
15 been a Form 4 or another order that we could have filed
16 against, but you can't file a Rule 59 until there's
17 actually an order to file it against.

18 As Your Honor knows, it's -- instructions from the
19 bench are not the order of the Court. The signed order is
20 the order of the Court.

21 We did not cause that delay. July 3, the moment that
22 order came out we read it, we understood it, we began
23 drafting the -- the Rule 59, and indeed, six hours later
24 we filed the Rule 59.

25 The reason for the delay is that Defense counsel --

1 and I'm not faulting them for doing it this way, but they
2 did it in the way that is out of what the rules say you're
3 supposed to do.

4 Judge Couch requested a proposed order. They didn't
5 e-file it as the rule say we're supposed to e-file so it
6 will go into Judge Couch's queue. They sent an email just
7 to Judge Couch, and Judge Couch, of course, is retired. I
8 don't know whether he has a law clerk or secretary or ---

9 THE COURT: He has no law clerk and no secretary.

10 MR. JEFFRIES: Right. So the email just goes to
11 Judge Couch's address. It's not copied to Richland County
12 Clerk of Court, it's not e-filed, it's not sent to anybody
13 with the Judiciary except for Judge Couch.

14 Two weeks go by. As far as we know Defense counsel
15 didn't do anything to follow up on that order. Didn't
16 call and say, "Hey, did you get it," didn't e-file it,
17 didn't do anything.

18 Two weeks go by and then Defense counsel reaches out
19 again by email, the same email to the same address that
20 didn't work the first time and follows up. Doesn't copy
21 the law clerk, doesn't copy anybody in the Judiciary. So
22 now we're 21 days after the hearing.

23 Two more weeks go by, June 14. It's now 38 days
24 after the hearing. Document has not been e-filed, hasn't
25 been sent to anybody except this one email address for

1 Judge Couch, and he hasn't responded to it yet. And as
2 far as we know, unless there's phone calls to Judge Couch
3 that we don't know about which I would find odd. I
4 wouldn't think they would make an ex parte call to Judge
5 Couch -- there's no follow up to it.

6 After the June 14 email, another week goes by, June
7 21, 45 days after the hearing. Again nothing has
8 happened. They email Judge Couch again. Judge Couch
9 responds to that email and he says -- and this is very
10 important, Your Honor -- he says, "I will make a ruling
11 next week." And that's contained right there in Exhibit
12 H. I will make a ruling next week.

13 So to the extent that Defense counsel's position was
14 well, there was already a ruling that you needed to comply
15 with, Judge Couch's email clearly belies that. The judge
16 himself, on June 21, says "I will make a ruling next
17 week." There is no ruling as of June 21.

18 On June 24, Judge Couch asked Defense counsel to e-
19 file the proposed order and they do.

20 Come July 3, about a week later, that order gets
21 entered. Now, at that stage it is 57 days after the
22 hearing, five days ahead of this trial, and all along, all
23 up until this point, Defense counsel has been describing
24 this order as something that is essential for trial, which
25 makes sense.

1 I mean, orders of -- of -- of the Court have meaning.
2 They're not advisory, they're not -- Judge Couch isn't
3 issuing an order that we can all just disregard, it didn't
4 happen.

5 So we agree with that decision. We -- and we never
6 contradicted that position. All throughout this 57-day
7 period, Defense counsel said, for instance, "We're up for
8 trial in July, Richland County, and we would need to have
9 the order in place by then as it relates to discovery
10 request." Need, as in mandatory, must have, something
11 required.

12 In Exhibit G, Defense counsel said the order, quote,
13 "relates directly to the ability to call witnesses at
14 trial." So that clearly has an affect.

15 In Exhibit J, Defense counsel describes the order of
16 Judge Couch as an order, quote, "barring witnesses from
17 trial." Barring witnesses from trial.

18 And then again, in Defendant's motion in limine, on
19 page 5, the order barred the non-disclosed witnesses from
20 trial.

21 So all the way up while Defense counsel was trying to
22 get this order signed, they're describing it as having
23 these mandatory affects and something absolutely essential
24 for trial.

25 The order gets signed, we file a Rule 59 that very

1 same day, and all of a sudden their position flip flops
2 and they say, quote -- in Exhibit K, quote, "The motion
3 does not need to be resolved prior to trial."

4 In Exhibit L, quote, "The ruling on that motion is
5 not needed to move forward with trial."

6 And then in their motion in limine (as read): "The
7 trial judge can independently make a ruling."

8 They were right the first time. They took the second
9 position when it looked like maybe there order was going
10 to get it undone. The order relates directly to the
11 calling of witnesses. It must have some affect.

12 It is currently pending. If it could be decided by
13 this Court, it could be decided today; but unfortunately,
14 the only judge who can overrule his own prior decision on
15 a Rule 59 is that judge. It can't be overruled by another
16 circuit judge.

17 So Judge Couch, if he were here today, could decide
18 that motion and trial could proceed immediately
19 thereafter, but he's just not here today. He just has to
20 make a ruling on that issue.

21 As a practical matter, what we see going forward is
22 one of two things would happen if the trial were to occur.
23 Either Your Honor would say, "Well, I agree. It doesn't
24 matter what Judge Couch said. Even though his order is
25 out there and under a Rule 59, we're going to go ahead

1 with trial and I'm going to let Mr. Jeffries call these
2 witnesses that Judge Couch says he barred."

3 Well, that would be great for me except for this.
4 So I go and I win trial let's say. There is zero chance
5 that the Defense is not going to appeal that decision. If
6 I win trial with witnesses that Judge Couch said have to
7 stay out, we're definitely going to appeal.

8 The flip side is also true. If the Court treats the
9 order of Judge Couch as if it had no affect and I don't
10 win at trial, then I'm bound to appeal it myself, and all
11 that can be avoided simply by -- you know, I've never seen
12 a case go forward with evidentiary rulings still pending
13 when the trial -- all the way through the end of the
14 trial. And this -- there's no chance this ruling's going
15 to made by Judge Couch mid trial.

16 I've never seen a trial where it was sent out to the
17 jury with an evidentiary ruling still undecided.
18 Somebody's got to decide before we start. It's a simple
19 thing. Judge Couch can decide it. He may deny our Rule
20 59. He probably will, which we'll -- he may deny it. If
21 he does fine, it's done and we can go on the very next
22 trial roster to try the case.

23 Maybe Your Honor has seen it, but I haven't. I have
24 not seen a judge start a trial say, "Well, we're just
25 going to leave that evidentiary issue aside and wait 'til

1 trial is over and a verdict rendered, and then undo it all
2 and start all over again. It just -- it's -- it's
3 unprecedented. It doesn't make sense and it's exactly
4 contrary to what Defense counsel told this Court for 57
5 days while they were trying to get this order.

6 The order matters and it has an affect on trial.

7 THE COURT: Mr. Bayne?

8 MR. BAYNE: Yes, Judge Lee. I will kind of go
9 through the chronology here. Mr. Jeffries titled this
10 "the chronology of Defendant's 48 day delay," and what
11 this is really about is that the Plaintiff's -- we're now
12 at 427 days since discovery was served and we still have
13 not had compliance with discovery, despite four different
14 orders from two different judges.

15 This order from Judge Couch granting a motion to
16 compel is not the first order granting motion to compel
17 that has been issued in this case. Judge Benjamin, back
18 in October, issued an order granting a motion to compel to
19 disclose these witnesses. The Plaintiff ignored it.
20 Ignored it so grossly that Judge Benjamin signed a rule to
21 show cause over there ignorance of the order, and it was
22 only then that they answered the discovery and I'll go
23 through that.

24 And when they answered it, they said, "We don't have
25 any witnesses at this point."

1 Well, where this starts is back in May. We served
2 discovery back in May of 2018, and that was your typical
3 standard interrogatories and it contained two questions
4 relating to witnesses. The first is identify your
5 witnesses. Give us their names, their contact
6 information, what they're going to testify to.

7 There's a second question, interrogatory No. 2, which
8 is included in all of this, which is give us a synopsis of
9 what that witness will testify to.

10 We didn't get a response to that, but on June 5 of
11 2018, the Plaintiff filed a memorandum with this Court
12 attached to a motion to strike one of our counterclaims.
13 They were -- we had filed a counterclaim related to the
14 frivolous proceedings sanction act. They filed a motion
15 to strike that.

16 In their memorandum that they filed with the Court,
17 they said at this point, in June of 2018 (as read):
18 "Discovery is expected to reveal witnesses to the events
19 giving rise to the subject motor vehicle collision who
20 believe the Defendant was speeding, the Defendant was not
21 paying attention to the roadway at the time of subject
22 collision, and/or the Defendant unlawfully attempted to
23 unlawfully pass a vehicle immediately in front of her at
24 the time she, Defendant, unlawfully caused Plaintiff to
25 strike Defendant's vehicle."

1 That was put into a signed memorandum filed with this
2 Court. It was argued in front of Judge Benjamin in
3 October, when she granted our motion to compel. So that
4 representation contained in that memorandum by the
5 Plaintiff was made to the Court both in June of 2018 and
6 in October of 2018 in front of Judge Benjamin.

7 Judge Benjamin ordered -- let me back up. Before we
8 got to the hearing with Judge Benjamin, we served a
9 supplemental interrogatory quoting this section, and said,
10 "You have said that you have witnesses that will say the
11 following. Who are they?" Didn't respond.

12 Judge Benjamin grants the motion to compel, Judge
13 Benjamin signs the rule to show cause; and at that point,
14 once the rule to show cause is filed, they finally respond
15 to the supplemental interrogatory that directly quoted
16 that section.

17 In the supplemental interrogatory that directly
18 quoted that question, the witnesses that will testify she
19 was speeding, driving erratically, all of that, their
20 answer was one word: None.

21 So they filed the motion, they told the Court they
22 had it. When the Court issued two different orders at
23 that point, they said actually we don't have these
24 witnesses and that put the matter to rest at that point.
25 They don't have the witnesses, fine.

1 We go to a deposition of the Plaintiff which had been
2 reset -- I believe it was four times due to both sides
3 having scheduling issues with it -- in March of 2019. In
4 March of 2019, on March 6, we take the deposition of Mr.
5 Harland Jones and he reveals at that point that there are
6 two witnesses that he knows about and has known about that
7 he claims witnessed the accident.

8 The first is a friend named "Alex," who he claims was
9 standing in his front yard, somewhere near his front yard,
10 and saw the whole thing. He couldn't give us Alex's last
11 name, he couldn't tell us where Alex lived, he couldn't
12 give us his phone number, he couldn't give us anything
13 about Alex, but he relied on Alex.

14 The second witness that Mr. Jones -- in March of
15 2019, after first telling us there were no witnesses, the
16 second witness is his wife's cousin. And his story in his
17 deposition is that -- and -- and by way of background, I
18 know you kind of read the pleadings, but the way this
19 accident happened is Mr. Jones was riding his bicycle down
20 Old Bluff Road and he turned left across a double yellow
21 line immediately in front of Ms. Karen Robinson, causing a
22 collision with her.

23 His story in the deposition is that as he was riding
24 his bicycle, his wife's cousin was coming in the opposite
25 direction. She brought her vehicle to a stop and waved

1 him across and taking that, plus the motion for summary
2 judgement argument, they are now asserting that Ms.
3 Robinson swerved around his wife's cousin, directly back
4 in front of her, struck Mr. Jones in the roadway, and then
5 his wife's cousin fled the scene, didn't want to be
6 involved having seen him be run down by a vehicle. That's
7 the current version we're working with here.

8 So at the end of the deposition we say we need Alex
9 and we need his wife's cousin because Mr. Jones, in his
10 deposition, refused to give her name, then said he didn't
11 know her name; then said he's talked to her about, but she
12 doesn't want to be involved in this case.

13 So we file another motion to compel, that is the
14 Judge Couch motion to compel. We also at that point
15 served request to admit based on the deposition testimony.
16 Notice of request to admit, this is the second set of
17 requests to admit, were answered on April 4, 2019.

18 The first question was (as read): "Admit Defendant
19 was within her lane of travel, not Plaintiff's lane of
20 travel, at the time of the collision." And the answer --
21 part of the answer that's pertinent is (as read):
22 "Plaintiff did not see Defendant strike him."

23 So the Plaintiff is admitting in the request to admit
24 he didn't see Defendant. In his deposition he admits he
25 never saw the Defendant. So he has no information about

1 what Ms. Robinson, the Defendant, did at all in the road
2 that day, which means all the allegations in the
3 complaint, all the statements in the June 5 memo, all the
4 statements to Judge Benjamin, all of the statements that
5 are being made -- when we get to the motion for summary
6 judgement and beyond -- have to come from somewhere
7 because Mr. Jones, the Plaintiff, says he doesn't have any
8 knowledge of that. He never saw it.

9 So there's somebody out there that has this
10 information that would ostensibly have been those
11 witnesses they said they didn't have eventually, and now
12 would be this Alex or the wife's cousin who doesn't want
13 to be involved and he doesn't know who she is.

14 We asked additional request to admit in there that
15 are all substantively the same because the answer is all
16 the same. But as an example (as read): "You have
17 alleged Defendant caused Plaintiff to strike the front of
18 Defense vehicle by traveling into the lane of oncoming
19 traffic. Admit this complaint -- this allegation is not
20 true, that that is -- there's no basis for that
21 allegation."

22 They deny it. (As read): "After conducting written
23 discovery in depositions it appears Defendant was no
24 longer traveling in the lane of oncoming traffic when she
25 wrongfully struck Plaintiff. Nonetheless, it was

1 Defendant's illegal passing maneuver in which she
2 unlawfully traveled in the land of oncoming traffic which
3 caused her to strike Plaintiff immediately after she
4 returned to the lane of westbound travel."

5 First response (as read): "Defendant says that he
6 never saw the -- or Plaintiff says he never saw the
7 Defendant." Second response (as read): "Here is how the
8 accident happened." Where does that come from? That's
9 what we've been trying to figure out since May of 2018.

10 So we send a third request to admit based solely on
11 that answer, and we quote, again, and we say (as read):
12 "Admit there's no deposition testimony -- because there
13 isn't -- no witness or any other material to support the
14 allegation asserted in these responses," and we quoted.

15 They denied it. So at that point, that is April 24,
16 they deny the request that is admit you don't have
17 deposition testimony, witnesses, or other material to
18 support this, which means they do.

19 On April 24, after saying they have it, saying they
20 have it, telling the Court they have it, then saying they
21 don't have it, then the Defendant -- or the Plaintiff
22 getting up and saying actually we have these witnesses
23 then denying it. Now we're in the request to admit
24 admitting -- by denying our request to admit, they're
25 admitting that there is something they have that supports

1 this narrative that they've never produced to us.

2 A few days later, in early May, the motion to compel
3 happens, but before the motion to compel is heard, our
4 motion for summary judgement was heard. That was heard
5 chronologically first. In that motion for summary
6 judgement, Mr. Jeffries stood up and said, "Alex wife's
7 cousin" -- made this same argument, this same sequence of
8 facts to the Court, in an argument to deny summary
9 judgement.

10 Judge Couch denied summary judgement, and then took
11 up the motion to compel and the gist of it was, "Judge, we
12 just heard statements from Mr. Jeffries that there are
13 these two witnesses who are going to say these things. We
14 have been asking since May of 2018. We have trial on July
15 8. They still haven't produced them.

16 After saying they have them, saying they don't have
17 them, saying they have them, admitting they have them by
18 request to admit, now arguing it to you, Judge Couch.
19 Where are they?"

20 From the bench that day, Judge Couch ordered Mr.
21 Jeffries to produce those witnesses by June 1. There was
22 no objection to that. He told him June 1 or they're
23 excluded. Mr. Jeffries takes exception with that part of
24 it.

25 We get now to this chronology that I didn't send

1 emails to the Clerk of Court or I didn't e-file it. The
2 directive from Judge Couch from the bench was -- I'm
3 pretty nearly quoting this because I remember it -- "I
4 don't have law clerk, I don't have an administrative
5 assistant, I have my email. Send my email -- send me a
6 copy of the order that is proposed and I will review it,"
7 which we did.

8 He didn't tell us to e-file it. He wanted to review
9 it first. So we sent it to him.

10 What is within the chronology that Mr. Jeffries
11 provided and what is also within our motion is an email
12 from Mr. Jeffries where he directly addresses the proposed
13 order. It's Exhibit C to his chronology. It's Exhibit --
14 I'm not sure which exhibit it is to our -- our motion,
15 Your Honor, but this is on May 13.

16 And this is what Mr. Jeffries said (as read): "What
17 I recall Judge Couch instructing you to put in the order
18 is that Plaintiff must comply with your discovery request
19 by identifying known fact witnesses on or before June 1,
20 2019. His Honor further instructed that any known fact
21 witnesses not disclosed on or before June 1, 2019, could
22 not be called by Plaintiff at trial."

23 Mr. Jeffries, on May 13, acknowledges that is the
24 order and ruling from the bench that was given. It was
25 not objected to. He says he disagrees with the sum of the

1 order itself, but what you see -- when Your Honor looks at
2 the 59, if you've had a chance to look at it, what you see
3 here in this chronology and what you've heard from
4 argument today is they still don't have any objection
5 they've ever raised to a June 1 deadline. They never
6 contested June 1.

7 The only contest they've raised to at this point is,
8 well, the order was dated after June 1, so how could we
9 possibly comply with a June 1 deadline?

10 Well, you comply because since May of 2018, we've
11 been asking for it in discovery. Rule 30 beyond requires
12 you to comply with that. The order of Judge Benjamin
13 twice, motion to compel and a rule to show cause,
14 compelled you to do that and you didn't do it. The order
15 from the bench on May 5 compelled you to do that, and you
16 didn't do it. That's how you comply, and they didn't do
17 it.

18 What's also interesting within all of these emails
19 Mr. Jeffries produced is he's on them.

20 THE COURT: He's what?

21 MR. BAYNE: He's on them. He's copied on all of
22 them. So our -- our efforts from the day we submitted the
23 order and -- and Your Honor as a judge knows, lawyers
24 email, like in asking the judge to do something, is not
25 something that's taken lightly. I try to avoid it as much

1 as possible, but we had a trial deadline coming up.

2 And so I waited, I emailed, but Mr. Jeffries is on
3 all of this. There's diligence to get this done, he knows
4 what the order says, he knows what the ruling was, he's
5 being copied throughout, never responds. Never responds
6 to the emails, never submits discovery request. There
7 were responses, never provides these names.

8 We go to a mediation, which is part of this motion
9 for sanctions, on June 21. And it's outlined in this
10 motion for sanctions, but at that mediation Akim
11 Anastopoulo shows up on behalf of the Plaintiff and he
12 says, "We have witnesses we're going to call to testify at
13 trial."

14 So on June 21 --

15 MR. JEFFRIES: Your Honor, if I can -- I hate to
16 interrupt. I don't use -- usually interrupt during the
17 argument of counsel, but what transpires during mediation
18 is subject to the confidentiality requirements of Rule 8
19 of the ADR rules.

20 It's -- there -- there's no exception that allows Mr.
21 Bayne to put onto this Court's record what our attorney
22 said during mediation. I mean, that's an ethical
23 violation, Brett. You can't do that, and I urge you ---

24 MR. BAYNE: It directly relates ---

25 MR. JEFFRIES: --- to stop doing that.

1 MR. BAYNE: --- to the motion.

2 MR. JEFFRIES: It -- whether it relates to the motion
3 or not, Your Honor, is immaterial. There is no exception
4 under Rule 8 for "it relates to my motion, I want to talk
5 about it." There are, I believe, six exceptions in Rule 8
6 and this isn't any one of them.

7 THE COURT: And I understand your point, and so I --
8 I think it was at least mentioned somewhere in -- in the
9 sanctions about some issues that occurred at -- during the
10 mediation. I think there were some documents that were
11 attached. And so just -- for the time being, just skip
12 over that just to make sure ---

13 MR. BAYNE: Yes, Judge.

14 THE COURT: --- there's no violation.

15 MR. BAYNE: Neither here nor there.

16 Following that, Judge Couch does respond and
17 indicates that he will make a ruling and then indicates
18 that he will sign the proposed order.

19 So on the day -- I believe it's June 24, Judge Couch
20 says, "I'm signing this order," after he's already ruled
21 from the bench. It's the same order that he ruled from
22 the bench.

23 On June 24, Mr. Jeffries knows what the order is. It
24 hasn't been filed yet, he can't file a 59, but he still
25 knows the substance on it. Still has never objected to a

1 June 1 deadline at that point, doesn't produce anything.

2 Waits until July 3, when the order is finally e-
3 filed. We had to call Paul and -- and get it routed
4 correctly. It's e-filed and then within six hours, we
5 have this lengthy Rule 59 motion that's filed. You've had
6 427 days to answer a very simple question: Who are the
7 witnesses? They can't do it. In six hours they can file
8 a motion relating to the fourth order now to produce these
9 people.

10 We don't get names that day either. Even though we
11 have the order from Judge Couch that's been filed and they
12 contest the sanctions and -- and the exclusion. We have
13 an order on June or July 3. They still don't tell us the
14 people are.

15 It's not until 4:04 p.m., on Friday, July 5, that we
16 get a supplemental response to discovery -- I don't
17 believe Your Honor has a copy of that yet. We just
18 received it via email on Friday night.

19 And in that email there are two new witnesses listed.
20 The first is someone named "Tracy Robinson," who is
21 identified -- Tracy Randolph, I apologize, Your Honor, who
22 is identified as a step-daughter of the defend -- or the
23 Plaintiff, and who's going to testify about the affects of
24 the injuries and the nature of the injuries and all of
25 that on the Plaintiff.

1 The late disclosure notwithstanding, they've known
2 about her probably their entire life, let alone since this
3 accident happened, and they've never disclosed her.

4 But the second one's the more troubling one. It is
5 someone named "Leddy Jackson," and Leddy Jackson is listed
6 and then it says -- I'm paraphrasing, but I don't have it
7 in front of me -- Ms. Jackson will testify to all the
8 relevant facts she knows about this case. That's it, no
9 contact information, no phone number, no address, no
10 summary or what is to be testified to.

11 They don't respond to interrogatory No. 2 which asks
12 specifically for the summary of what each witness expected
13 to testify is going to testify to, and they don't list Ms.
14 Jackson in the supplemental response, which is (as read):
15 "Identify the witnesses who are going to say that she was
16 speeding, swerving, driving erratically." She's not
17 listed there either.

18 We immediately responded to that email and said who
19 is Leddy Jackson, what is her information, and what is she
20 going to testify to. We asked about Interrogatory 2. No
21 response. No response Friday, no response Saturday, no
22 response Sunday, no response today.

23 After we conducted the -- the roster meeting, I asked
24 Mr. Jeffries, "Are you going to supplement with who Leddy
25 Jackson is and what she's going to testify to," and his

1 response was, "You already know the answer."

2 Again, we are now discussing whether this case is
3 going to be tried. Mr. Jeffries on -- at 4:04 p.m. on
4 Friday, after 427 days, identifies a witness -- after four
5 orders of a Court identifies a witness and doesn't tell us
6 who she is, what she is, what she knows, what she's going
7 to testify to. It's endemic of this case from start to
8 finish.

9 It would be different if we had interrogatories and
10 they answered them and then they found someone at the very
11 end and there hadn't been this process that we go through
12 where we've been diligent in trying to find these people
13 out. But this case has probably been for us, at least for
14 me, some of the most -- you know, going after, trying to
15 figure out who these people are.

16 But I remember -- we've filed the -- we've served two
17 sets of discovery, we've filed the motions, we've gotten
18 four orders, we've done the deposition, we've done two
19 sets of request to admit in almost 18 months, and they
20 can't answer the question. But they want to call people
21 to testify and they want to maintain this story that there
22 is people that are going to say these things and they
23 won't tell us who they are.

24 All of that round about gets to the 59, which is --
25 the substance of the 59 that was filed is there are

1 findings of fact in here that weren't made for trial at
2 the hearing level and the sanction issue. There is no
3 issue raised about the deadline of June 1 other than it's
4 before the signed order.

5 They don't contest that that -- that that date was
6 given at the hearing, they don't contest that they admit
7 they know about that date. They argue a technicality on
8 the date of the order, that they couldn't possibly have
9 complied because they had no idea June 1 was actually a
10 deadline, that Judge Couch was serious about June 1 when
11 he said it from the bench. That's essentially what
12 they're arguing here, and that's -- you know, it is what
13 it is.

14 But Your Honor, within that 59 is a -- is a series of
15 arguments made by Mr. Jeffries that the -- the decision,
16 the ultimate decision to admit or exclude witnesses is
17 within the trial court, and we agree with that. We do
18 agree that the trial court has that ultimate discretion.

19 Given the series of events we've had, what we're
20 facing at trial here is a situation where the trial judge,
21 Your Honor, can look at the facts independently and can
22 make that determination. They don't -- you don't have to
23 base the decision on Judge Couch's order. You can base it
24 on the hearing, you can base it on Judge Benjamin's order,
25 you can base it on Rule 30 and the 427 days in which they

1 have failed to disclose witnesses until 4:04 p.m. the
2 Friday before trial, a holiday weekend, and then failed to
3 respond to questions about that, trying to figure out who
4 these people are. That's the flip flop Mr. Jeffries
5 refers to at the end of his chronology.

6 We're not asserting that Judge Couch's order isn't
7 valid, binding, or needed. We're asserting that the
8 motion on the Rule 59 doesn't have to be heard before
9 trial because it doesn't touch directly on the issue at
10 trial which is Judge Lee, Your Honor, can make an
11 independent determination based on the totality of the
12 discovery abuse we're looking at and exclude witnesses
13 that were named at 4:04 p.m. Friday when they still
14 haven't been named.

15 I know Mr. Jeffries represented there's another
16 person that they're -- that they may decide to -- to
17 identify at this point.

18 So that's the nature of our position that the 59,
19 while filed, doesn't directly touch on this case in terms
20 of the Court's ability to make an independent
21 determination based on the discovery abuse, but those
22 witnesses are excluded.

23 The motion for sanctions, which we'll take up next --
24 actually I -- I think a proper sanction at this point is
25 potentially striking the complaint in its entirety, but

1 for the purpose only of the motion in limine, which we
2 filed in addition relating to these witnesses which is the
3 independent motion in limine, can be decided by this Court
4 such that this Court can choose to strike those witnesses
5 from trial based solely on the late disclosure, and the
6 *Jumper* factors, not based solely on Judge Couch's order,
7 which is subject to that Rule 59.

8 THE COURT: Yes --

9 MR. BAYNE: I know that was a lot of information.

10 THE COURT: Yes, sir, Mr. Jeffries.

11 MR. JEFFRIES: Your Honor, I would disagree with a
12 lot of what Mr. Bayne had to say, but we don't need to go
13 into all the unsupported factual elements and -- and
14 things that he's raised because none of it's relevant to
15 the issue before Your Honor.

16 Mr. Bayne is asking Your Honor to decide the Rule 59,
17 and he's suggesting that we filed it without proper
18 support and that it was frivolous, that it should be
19 denied. Whether he's right or wrong as to that is not
20 material because this Court isn't deciding the Rule 59
21 motion.

22 This is definitely a case where we have struggled to
23 identify witnesses. Our client was riding a bicycle, he
24 got hit by a car, he had several hundred thousand dollars
25 in medical damages. He -- if you saw a picture of the

1 car, which you may have in some of these motions, it's
2 significant damage to the car.

3 The guy was hospitalized for a long time. His memory
4 -- and Your Honor will see this when we do go to trial --
5 his memory is not what it was. We'd love to have easily
6 obtained every single one of these witnesses because it's
7 our burden, right, to prove our case. So we're not trying
8 to hold back.

9 We don't want to surprise anybody. We're not
10 suggesting that the trial go forward tomorrow or to
11 surprise these folks. We suggested that Judge Couch
12 finish ruling on the Rule 59 and the trial proceed then.
13 It's the opposite of surprise.

14 Mr. Bayne described Judge Couch's order. Just now
15 you heard it, Your Honor, as valid, bonding, and needed.
16 And at the same time said, "But Your Honor can disregard
17 it."

18 But the only way that he told Your Honor that you
19 could disregard it was to essentially rule the same way.
20 Your Honor's free to also disqualify these witnesses.

21 What Mr. Bayne hasn't addressed is how Your Honor
22 could, while this Rule 59 is pending as to Judge Couch's
23 motion, rule in our favor. If that's not possible while
24 this motion is pending, then the trial can't go forward.
25 If Your Honor's decision as to -- as to Mr. Bayne's motion

1 in limine, must be yes, the witnesses are excluded, then
2 it's really not a motion at all and -- and that's the
3 problem.

4 You can't have it both ways. It can't be valid,
5 binding, and needed and also of no affect. It purports to
6 exclude our witnesses.

7 Now, we agree about this email and the judge's
8 instructions, but Mr. Bayne only read you a part of that.
9 First off, their instructions, not an order from the
10 bench. And -- and that's -- Your Honor, that's black
11 letter law. I'll read it to you very briefly from Corbin
12 vs. Kohler.

13 THE COURT REPORTER: First name again?

14 MR. JEFFRIES: Corbin, C-o-r-b-i-n, vs. Kohler, K-o--
15 h-l-e-r. That's 351 SC 613.

16 The Court said, quote, "The written order is the
17 trial judge's final order, and as such constitutes the
18 final judgement of the Court. The final written order
19 contains the binding instructions which are to be followed
20 by the parties," end quote.

21 The final written order contains the binding
22 instructions, instructions on preparing an order from the
23 bench are not the written order, and as Mr. Bayne
24 conceded, we couldn't file a Rule 59 until there was a
25 written order.

1 Mr. Bayne suggested that, well, Jeffries didn't
2 object in some way prior to the written order being
3 issued. Well, I did. I raised the objection once, as is
4 proper, and said, "I don't think your proposed order is
5 proper," and at the hearing, I said, "Your Honor, I
6 disagree with this, but I understand the Court's holding."

7 But what I'm not in the habit of is arguing with
8 judges. There's certainly no -- no reason, and any
9 sensible attorney would take this position, that when the
10 judge says, "Hey, I'm going to sign the proposed order,"
11 that I should chime in and say, "Oh, Judge, no. No, you
12 shouldn't do that." That's just argumentative.

13 The -- the judge has already said what he was going
14 do. My position is to wait 'til he does it and then
15 follow the rules and file a Rule 59. And the first
16 opportunity, whether or not it's Mr. Bayne's fault or not
17 -- he says the delay's not his fault, he complied with the
18 judge's instructions, he emails it.

19 Fine, but it's not our fault that the order didn't
20 come out until July 3, that that was the first opportunity
21 for us to say, "Well, we think you overstepped here. We
22 think that -- that this isn't based on any evidence." It
23 was the first opportunity we had to fully, within the
24 rules of civil procedure, object to that order.

25 THE COURT: Let -- let me ask you this. Obviously

1 you all were in a hearing in which Judge Couch presided.
2 He heard whatever information you provided to him, and he
3 -- he made a ruling from the bench, at least from what I'm
4 gathering, that -- that witnesses should be disclosed by a
5 certain date. And -- and from what I'm gathering also, at
6 the time that the motion hearing was held, there was still
7 plenty of time to be able to disclose that information.

8 So I -- I guess my question is: What was it about --
9 at least -- and -- and I understand an oral ruling from
10 the Court is not binding unless it's in writing and --
11 because the judge has the opportunity to change his mind
12 any time in -- his or her mind anytime between time of the
13 oral rule -- ruling to the written ruling. The rules say
14 it's the written ruling that governs.

15 And I wasn't at the hearing. I don't know how
16 certain, how forceful, how convinced Judge Couch was that
17 this was what his ruling was and that's what he wanted it
18 to be. What part -- what portion of that oral argument or
19 oral ruling did you disagree with? I mean, was -- I --
20 I'm just trying to understand that.

21 MR. JEFFRIES: Several portions, Your Honor, and --
22 and this was, of course, laid out in our Rule 59 memo.

23 One portion of it was that there's no -- Mr. Bayne
24 made any number of assertions, and these are all detailed
25 in our Rule 59 motion. No evidence that any of these

1 things are true.

2 One of them he asserts we said something in a
3 pleading on June 5, 2019. We didn't file any pleading on
4 June 5, 2019. So that's clearly wrong.

5 Other things were just not supported by any facts at
6 all. We came in and made arguments of counsel and that
7 was it. So that's an issue.

8 The second piece is barring every witness who wasn't
9 disclosed by the arbitrary deadline of June 1 from trial.
10 At that point trial hadn't even been set as I recall. I
11 could be wrong, but I'm 99 percent sure trial was not set
12 as of June 1. If I -- if I'm wrong, please correct me.

13 In any event, barring all those witnesses, I didn't
14 think 30 day -- well, No. 1, I didn't think barring was
15 proper at all. I didn't think 30 days was a sufficient
16 time frame or to the June 1 deadline was a sufficient time
17 frame.

18 Given the issues we had and -- and opposing counsel
19 knows this, when Mr. -- Mr. Jones testified about Alex, he
20 described Alex's living conditions. Alex lives literally
21 in a shack in the woods. These are not easy people to
22 find.

23 Mr. Jones's wife's cousin, the one in the hospital,
24 Jones isn't close to her. His wife passed earlier this
25 year, so his ability to say to her, "Hey, how do I get in

1 touch," that went away when the wife passed.

2 So we're trying to find these people, and had the
3 order come out that day and said you must do it by June 1
4 or they're going to be disqualified, we could have filed a
5 Rule 59 right then and said, "Judge, don't disqualify
6 them. Give us some more time." But we never had that
7 opportunity until July 3, and so all we're asking for is
8 that we get a fair hearing on the Rule 59 motion.

9 THE COURT: Let -- let me -- let me just say this, I
10 have my own opinions about what I've heard and what I can
11 read in the file, and -- and I -- if you know me at all,
12 you know that I go back and I -- I read documents out of
13 the file. So I -- I -- I know generally what's going on
14 with a particular file before -- by the time it comes up
15 for trial.

16 While I would agree that under certain circumstances
17 a trial judge could allow for witnesses to be presented
18 and testify despite the fact that they were not disclosed
19 in discovery, I think it depends and each judge gets to
20 make that decision based upon whatever information is
21 presented and based upon the arguments and the -- the
22 amount of prejudice it may cause for one side or the other
23 and whether there's an opportunity to be able to -- to
24 allow someone to be able to find out reasonably what that
25 witness is going to testify to and be able to come up with

1 -- and prepare adequately for the witness's testimony at
2 trial.

3 Those are all factors that go into it, and I
4 understand that that's what -- what -- what you -- what
5 you both argued actually.

6 Given this case, given the posture of the attorneys
7 in this case, I am not going to make that decision at this
8 particular point.

9 In other words, I'm going to give Judge Couch the
10 opportunity to -- to review the motion that's been filed
11 and for him to make a decision and because I -- because I
12 do believe that -- that this issue would -- would not be
13 put to bed, so to speak, unless there's a formal ruling
14 from Judge Couch.

15 If Judge Couch denies it, then it can go forward. If
16 he clarifies it, he's entitled to do that; or if he
17 changes his mind completely, he's entitled to do that.
18 Those are all possibilities under Rule 59.

19 So I -- I think it's appropriate for him to make the
20 decision. He heard the arguments, he knows what
21 information was presented to him. He knows what his
22 ruling was and what his intention was at the time that he
23 entered the ruling, and so I -- I'm going to let Judge
24 Couch make that ruling and make that decision.

25 As it relates to the motion for sanctions -- which I

1 have not heard, but I know where it's going -- I think
2 that -- I -- I cannot make that decision today based upon
3 what I've heard. Like I said, I may have my own opinions
4 one way or the other based upon everything I've seen and
5 heard and read, but that's not for me to do at this
6 particular point.

7 I think Judge Couch needs to make his -- make his
8 ruling, and then whoever -- I will certainly talk to Judge
9 Newman -- Newman about reconsidering the issue about
10 whether the -- the motion for sanctions should be heard at
11 trial or beforehand. I know she's trying to consolidate
12 it, but I'm sure there's a non-jury term coming up
13 sometime in which it could be heard separate and apart.

14 I'm not -- I'm not happy about the posture of the
15 case, but given the fact that the order was just issued on
16 July the 3, which was last week, last Wednesday, and it's
17 certainly within any party's right to file a motion to
18 reconsider, a Rule 59, and that's done within the 10-day -
19 - 10-day period, Judge Couch, who does not have a
20 secretary and does not have a law clerk, is holding court
21 in Lexington this week. I sent him a courtesy email
22 indicating that I had been informed that a Rule 59 on his
23 -- on this motion -- on this -- on his order had been
24 filed and from my understanding, a copy was mailed to him.

25 I -- and I just told him that it was on the trial

1 roster for this week, and that I was happy to continue it
2 so that he could consider it. If -- and -- and let it
3 just go for -- go that way, and he said he would -- he
4 would get to it as soon -- soon as -- he said he had not
5 yet received it and he would -- he would certainly take it
6 up promptly.

7 So I'm going to leave it at that, and I think -- I
8 think I need to stop there. And so I'm going to continue
9 this case. I will talk to Judge Newman about having the
10 motion for sanctions heard separately. She is Chief
11 Administrative Judge. If she thinks it's better just to
12 have it all wrapped into one, that's fine.

13 Whoever -- whenever it comes back, I don't know who -
14 - I don't know when it will happen and I don't know who
15 will be around, but I'll leave it at that.

16 And it would -- it certainly would be -- the only
17 other thing I think I -- I'm compelled to say is we have
18 discovery rules for a reason. We also have information in
19 the attorney's oath that you signed, and that when the
20 oath was re-written, everyone was required to -- to
21 reaffirm a new oath.

22 I just ask that you be mindful of your duties and
23 your responsibilities, and that you are careful in what
24 you put in writing and that you make sure that you are --
25 if you -- if you expect the rules to be followed, that you

1 need to follow the rules yourself. And I'll leave it at
2 that.

3 So with that, we'll continue this case.

4 MR. BAYNE: Thank you, Your Honor.

5 MR. JEFFRIES: Thank you, Your Honor.

6 (Off the record at 11:44 a.m.)

7 -- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 8th day of July, 2019.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

E/BONNIE H. KELLY

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

July 18, 2019

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2018-CP-40-01518
	)	
	)	
	)	
HARLAND JONES,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KAREN ROBINSON,	)	
DEFENDANT.	)	
_____	)	

August 13 and 14, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE; and a jury.

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

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HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

(IC) - Denotes In Camera

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P R O C E E D I N G S

THE COURT: This is Harland Jones v. Karen Robinson; is that correct?

MR. JEFFERIES: That's correct, Your Honor.

THE COURT: And who's for the Plaintiff?

MR. JEFFERIES: Your Honor, Lane Jefferies and Gus Anastopoulo for the Plaintiff, Harland Jones.

THE COURT: Lane Jefferies and who?

MR. JEFFERIES: Gus Anastopoulo.

THE COURT: Oh, okay.

MR. JEFFERIES: Thank you, Your Honor.

THE COURT: Is your daddy who I think he is?

MR. ANASTOPOULO: Uncle, Your Honor.

THE COURT: Uncle.

And I -- I know you two guys.

MR. DELANEY: Yes, sir, Your Honor.

THE COURT: Have you told her who you are off the record?

MR. DELANEY: We did.

THE COURT: Oh, you did?

MR. DELANEY: Beforehand, yes, sir, Your Honor.

THE COURT: And I assume this is y'all's motion; is that correct?

MR. DELANEY: Yes, sir, Your Honor.

MR. BAYNE: One of them is.

1 THE COURT: What now?

2 MR. BAYNE: One of them is.

3 THE COURT: Okay. You're both going to argue them?

4 MR. DELANEY: No, sir.

5 THE COURT: All right. Mr. Bayne, go ahead.

6 PRE-TRIAL MOTIONS

7 MR. BAYNE: Judge, just by way of very brief
8 background, this case involves a bicycle on automobile
9 collision. The Plaintiff was operating a bicycle on Old
10 Bluff Road when he made a left turn across the double
11 yellow line directly in front of a vehicle driven by
12 Ms. Karen Robinson, and was struck by that vehicle driven
13 by Ms. Karen Robinson.

14 The motion --

15 THE COURT: Bluff Road, he made a left turn in front
16 of her?

17 MR. BAYNE: Correct.

18 He's riding -- he's riding his bicycle and he turns
19 left right in front of her car across the double yellow
20 line. It's important to know there was not a turn there.
21 There was not a driveway. He testified that he just
22 decided he wanted to ride on the opposite side of the
23 road --

24 THE COURT: Well, so far, there's nothing wrong with
25 that, is there?

1 MR. BAYNE: Well, that's illegal in South Carolina,
2 which --

3 THE COURT: To cross the road is illegal?

4 MR. BAYNE: To -- to ride on the opposite side of the
5 road is illegal. To cross a double yellow line is, also,
6 illegal without failing to yield the right of way.

7 THE COURT: Now, my first question is this, was it
8 not granted to your client? But go ahead.

9 MR. BAYNE: Well, yes, Judge.

10 So that'll be one --

11 THE COURT: I won't stop you again, Mr. Bayne. Go
12 ahead.

13 MR. BAYNE: That -- that'll be one of the issues at
14 trial.

15 The motion for summary judgment deals with a very
16 narrow issue, which is Ms. Robinson has a counterclaim for
17 property damage against the Plaintiff. The motion for
18 summary judgment deals with his negligence per se for
19 violation of a statute, which we included within the
20 memorandum. What he has testified to is that he was
21 riding on the right side of the road and then he decided
22 to turn left to ride on the left side of the road and
23 cross that double yellow line.

24 The legislature has set out that bicyclists are
25 subject to the same laws and regulations as drivers of

1 vehicles. The statute requires under drivers that they
2 shall be driven only upon the right hand of the roadway,
3 unless directed or permitted to use another roadway by
4 official traffic control devices or police officers, which
5 includes bicyclists.

6 But the specific bicyclist section, which is
7 56-5-3430, states that a bicyclist may ride in the lane
8 other than the right-hand lane if only one lane is
9 available that permits the bicyclist to continue on his
10 intended route. So what we have is a statute in South
11 Carolina -- a series of statutes that govern the operation
12 of vehicles and bicycles limited to the right lane and the
13 right side of the roadway.

14 Mr. Jones admits that he decided on his own volition
15 to cross that double yellow line to ride on the opposite
16 side of the roadway, which is a violation of the statute,
17 which is negligence per se. That's not contested that he
18 made that decision.

19 That is, again, the very narrow issue of summary
20 judgment. It doesn't affect the trial moving forward. It
21 only affects the issue of the counterclaim being made by
22 Ms. Robinson against Mr. Jones.

23 So based on his acknowledgment of the violation of
24 statute that's set out in our memorandum that's been
25 produced in this case, we'd ask that the Court grant

1 summary judgment as to negligence per se relating,
2 specifically, to Ms. Robinson's counter claim.

3 THE COURT: So you're asking me to keep her out of
4 court, aren't you?

5 MR. BAYNE: Judge, we're still -- we would still be
6 moving forward on his negligence claims against
7 Ms. Robinson, whether she did anything wrong. It would
8 simply deal with -- it would essentially --

9 THE COURT: It's just acknowledging that he was, in
10 fact, negligent at the time --

11 MR. BAYNE: Correct.

12 THE COURT: -- and the jury will have to decide how
13 much. Okay.

14 MR. BAYNE: The jury will have to decide if she was
15 negligent. And if so, how much.

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

17 Yes, sir.

18 MR. JEFFERIES: Thank you, Your Honor.

19 Lane Jefferies.

20 And to be clear, Mr. Bayne is correct. There's
21 already been a motion for summary judgment as -- made by
22 Mr. Bayne as to his client's negligence. He asked that
23 the Court rule that his client was not negligent. And
24 what Judge Couch said was, well, I can't do that. There's
25 an issue of fact. So we're already into a comparative

1 negligence case because there's a factual dispute as to
2 the Defendant's negligence.

3 Regarding Mr. Jones alleged negligence, there are two
4 major problems with Mr. Bayne's argument. The first is
5 this, there's zero testimony anywhere or any eyewitnesses
6 who say they saw Mr. Jones, actually, ride against the
7 flow of traffic on the left side of the road.

8 Mr. Jones said he intended to do that. He was riding
9 on the right side of the road. He made a signal to turn
10 left. He began his turn. And before he could get to the
11 left side of the road, he got hit.

12 So whether it was an intention later to break the law
13 by riding against the flow of traffic, he never did. He
14 never finished his turn.

15 THE COURT: He never got across the road. The
16 chicken didn't cross the road.

17 MR. JEFFERIES: He didn't cross the road.

18 The second problem is, Your Honor, Mr. Bayne then
19 says, okay, well, if that's not the argument that's going
20 to prevail, he has a second one based on 56-5-1920, which
21 he says -- says -- makes it illegal to turn left across
22 that double yellow line. He's mistaken. 56-5-1920
23 applies to divided highways. This is not a divided
24 highway. This is --

25 THE COURT: Is it a one-way street? I don't

1 understand.

2 MR. JEFFERIES: No, Your Honor.

3 The statute distinguishes two things. 56-5-614
4 describes a divided highway -- defines a divided highway.
5 A divided highway has a median for a barrier or a
6 laned no-man zone in the middle.

7 So I-26 is a divided highway. Highway 17 between
8 Georgetown and Charleston is a divided highway. That's
9 56-5-614.

10 In contrast, 56-5-470 defines a laned roadway. A
11 laned roadway is a single piece of pavement that has
12 markings that show which lane goes which way. That's a
13 double yellow road with a double yellow line, or a dash
14 line in the middle. So what we have here is a laned
15 roadway.

16 So the statute that Mr. Bayne cites --

17 THE COURT: Let me ask you this question, did the
18 Plaintiff ever ride on the wrong side of the road?

19 MR. JEFFERIES: No, sir --

20 THE COURT: He never made it?

21 MR. JEFFERIES: He never made it. There is no
22 testimony that he ever made it.

23 THE COURT: Now, his intention is doing something
24 that's entirely different. That's your point --

25 MR. JEFFERIES: Absolutely.

1 THE COURT: All right.

2 MR. JEFFERIES: He may have intended to turn left to
3 go rob a bank, but he didn't make it.

4 THE COURT: He didn't make it to the bank.

5 MR. JEFFERIES: He didn't make it.

6 THE COURT: That's fine.

7 MR. JEFFERIES: He testified and an independent
8 witness testified that before making his left turn, he
9 signaled. So he did what you're supposed to do when you
10 turn left on a -- on a laned roadway. That -- the
11 question for the jury is, did he do that right in front of
12 the oncoming car? If he did right in front of the
13 oncoming car, then he was negligent. And if he didn't,
14 then he wasn't negligent and that is a jury question.
15 Only the jury --

16 THE COURT: All right. Thank you.

17 How about that, Mr. Bayne? He said he never rode on
18 the wrong side of the road. There's a difference between
19 being prohibited and, actually, doing something.

20 MR. BAYNE: Well --

21 THE COURT: Did he make it? Did -- did he make it to
22 the other side of the road? Was he going the wrong way
23 when he was hit?

24 MR. BAYNE: He was. And his bicycle --

25 THE COURT: Wait. You said he was. He said he

1 wasn't.

2 MR. BAYNE: Well, the -- the issue then becomes --
3 and this is from -- I guess this is from Mr. Jones'
4 deposition. He says, As I proceeded to turn in front of
5 the car, the next thing I know, I was in heaven.

6 So --

7 THE COURT: But your -- your motion for summary
8 judgment is based on something that did not occur; is that
9 correct?

10 MR. BAYNE: Judge, the issue here would be --

11 THE COURT: Well, no. Mr. Bayne, please, just answer
12 my question.

13 MR. BAYNE: Yes, he did turn, Judge. And --

14 THE COURT: All right. Did he make it across the
15 road? Was he ever on the wrong side of the road?

16 MR. BAYNE: Yes.

17 THE COURT: When?

18 MR. BAYNE: When he was hit.

19 THE COURT: Was that in the middle of the road or the
20 other side of the road?

21 MR. BAYNE: I can show you a photograph.

22 THE COURT: Sure.

23 MR. BAYNE: It was on the -- the middle --

24 THE COURT: Well, let me ask you this. Was he ever
25 riding -- was he on the left side of the road when he was

1 hit, or was he hit as he was crossing to get on the other
2 side of the road?

3 MR. BAYNE: He was perpendicular.

4 So it's as he was --

5 THE COURT: All right. Your motion is denied.

6 Okay. Now, when are y'all going to start trying this
7 case? 2:00 this afternoon? I'm here.

8 I'm going to deny your motion --

9 MR. BAYNE: I understand.

10 THE COURT: -- for summary judgment on that narrow
11 issue. It's a jury question. Let them decide. They'll
12 say he was negligent maybe 50 percent or more. I don't
13 know. As a matter of law, I don't think I can make that
14 decision here and now under the circumstances.

15 MR. BAYNE: Yes, sir.

16 THE COURT: It's nothing personal.

17 MR. BAYNE: We have -- we have one additional motion,
18 which deals with a request for costs relating to discovery
19 that was --

20 THE COURT: Yeah, sanctions.

21 MR. BAYNE: Yes, Judge.

22 THE COURT: Yeah. Go ahead.

23 MR. BAYNE: By way of background, again, this case is
24 about 18 months old at this point. For 18 months, we've
25 been chasing two ghosts of witnesses the Plaintiff has

1 asserted exist. Starting in June of 2018, the Plaintiff
2 said in filings before this Court, we have witnesses who
3 will testify to the facts that they just argued in the
4 prior motion. We asked for those witnesses in discovery
5 and they refused to provide them.

6 We went in front of Judge Benjamin in October. She
7 ordered them to produce. They didn't do it. She ruled
8 them in on a rule to show cause. And, at that point, they
9 said, actually, we don't have witnesses. Their response
10 was, no, there's no witnesses.

11 We get to the deposition of the Plaintiff in March.
12 And he says, Actually, there's two witnesses. There's
13 someone named Alex, and there's a wife's cousin. We
14 immediately filed another motion to compel. We asked for
15 that information. We didn't get it.

16 We went in front of Judge Couch on May 7th of 2019.
17 And at that hearing, he ordered them to produce those
18 witnesses by June 1st. Mr. Jefferies agreed to that on
19 the record at that hearing. They did not do it. We
20 proceeded to then inquire again, who are these witnesses?
21 They refused to provide them.

22 We showed up for trial on July 7th and it got
23 continued because a 59 had been filed challenging Judge
24 Couch's order. Judge Couch has now denied that 59, which
25 is an order that I sent to your chambers, Your Honor.

1 And the final piece of that -- there's, actually, two
2 issues. One is a -- a finding that they have failed again
3 to comply with discovery after four orders of the Court
4 and a bench ruling from a Judge. But he finds that they
5 failed to fully respond to Defendant's discovery requests.
6 He bars all witnesses that were not named in discovery by
7 June 1st. And the final is that as a result of
8 Plaintiff's failure to comply with my ruling and order,
9 Plaintiff may be sanctioned --

10 THE COURT: This is Judge Couch's --

11 MR. BAYNE: This is Judge Couch.

12 May be sanctioned in any manner. And he referred it
13 back to the chief administrative judge --

14 THE COURT: And what did she do?

15 MR. BAYNE: Judge Newman then referred it to you for
16 here at the trial.

17 THE COURT: That's fine. That's fine.

18 MR. BAYNE: And all we're asking for, Judge, is -- is
19 to submit an affidavit to recover our costs and fees
20 relating to discovery motions.

21 THE COURT: All right. We'll do that -- we'll do
22 that before we finish this trial. But I've got to hear
23 his response first.

24 What's your position, Mr. Jefferies?

25 MR. JEFFERIES: Your Honor --

1 THE COURT: I can read the order, so remember that.
2 Okay. So tell me something that's not -- you get my
3 point. Go ahead, sir.

4 MR. JEFFERIES: Yes, Your Honor.

5 Two days after Judge Couch issued his written order,
6 which was July 3rd -- Judge Couch issued his written
7 order. Two days later -- one of those days was, of
8 course, the 4th of July holiday. On July 5th, we
9 disclosed everything we knew about those two witnesses.
10 It was two days after Judge Couch's order. We didn't know
11 much.

12 The two witnesses Alex -- Mr. Jones testified in his
13 deposition that Alex was a witness to the wreck.
14 Mr. Jones, also, testified that Alex lived in a shack in
15 the woods near Winnsboro. He did not know an address. He
16 did not know a phone number. We attempted to find Alex.
17 We would love to have a witness. We did not find Alex.
18 No Alex. We found some shacks in the woods, but we did
19 not find Alex.

20 So all we know about Alex is --

21 THE COURT: I -- I'm going to ask you this, did you
22 comply with the terms of Judge Couch's order?

23 MR. JEFFERIES: Yes, Your Honor --

24 THE COURT: Did you fail to comply? Look, I can read
25 this myself. I'm asking for a straight answer on the

1 record, did you -- did you comply or not? "Yes" or "no"?

2 MR. JEFFERIES: Yes, Your Honor.

3 THE COURT: Okay. Fine. If I find out at the end,
4 then that's additional sanctions. If you're wrong -- do
5 you understand that? I will take this matter up later,
6 not pre-trial. At the conclusion of this case, I'll make
7 a decision on this argument.

8 Now, what time do y'all want to start this case?

9 MR. BAYNE: Judge, we're ready whenever you are.

10 THE COURT: All right. Let me make sure you get a
11 strike sheet.

12 MR. BAYNE: We received one yesterday --

13 THE COURT: Okay. You received one yesterday. Have
14 you had a chance to look at it?

15 MR. BAYNE: We have.

16 THE COURT: Are y'all ready to go, otherwise?

17 MR. BAYNE: As soon as you are, Judge.

18 MR. JEFFERIES: We're ready.

19 THE COURT: All right. Is the panel downstairs?

20 THE CLERK: Yes, Your Honor.

21 (Pause.)

22 THE COURT: Give us about 15 minutes or so. I've got
23 to get something from the clerk's office. We'll try to
24 pick a jury before lunch, stop, go to lunch, come back,
25 and resume. Is that good enough?

1 MR. BAYNE: And, Judge, for purposes of just trial
2 logistics, there are a total of three witnesses.

3 THE COURT: What now?

4 MR. BAYNE: There are a total of three witnesses --

5 THE COURT: Okay.

6 MR. BAYNE: -- from my understanding. We -- we may
7 be able to get it done today because --

8 THE COURT: All right. That's fine. That's fine.
9 Have y'all got proposed charges, or anything ready?

10 MR. BAYNE: I do, Judge.

11 THE COURT: All right. So we might be -- we'll
12 finish this case tomorrow sometime probably, maybe before
13 noon, maybe after noon maybe. But we'll argue and charge
14 likely tomorrow afternoon.

15 (WHEREUPON, a break was taken.)

16 (WHEREUPON, the jury panel entered the courtroom.)

17 THE BAILIFF: Your Honor, the jury panel is present.

18 THE COURT: Thank you.

19 Good morning, ladies and gentlemen.

20 How are y'all doing?

21 (WHEREUPON, members of the jury panel responded.)

22 THE COURT: It's still morning. Y'all don't seem too
23 happy to be here. I'm glad you're here serving with us.
24 The community, state, and country are glad you're here.

25 Now, ladies and gentlemen, at this time, we'll select

1 a jury in the case of Harland Jones, Plaintiff v. Karen
2 Robinson, Defendant. And this matter arose out of a
3 bicycle-vehicle collision that occurred on Old Bluff Road
4 in Richland County on June 7th, 2017. And it's an
5 automobile wreck case, bicycle, car.

6 Now, the Plaintiff, Mr. Jones, alleges that
7 Ms. Robinson, the Defendant, was negligent. Now, the
8 Defendant, Ms. Robinson, denies that she was negligent.
9 In fact, she asserts that it was the Plaintiff that was
10 negligent. We'll get into all that later. Car-bicycle
11 collision back on June 7th, 2017.

12 Now, some of the potential witnesses in this case,
13 members of the jury panel, will be Mr. Harland Jones.

14 Mr. Jones, will you stand up? You're facing the jury
15 panel. Will you stand up, sir?

16 This is Mr. Harland Jones.

17 Thank you, Mr. Jones.

18 You may sit down.

19 And the Defendant is Ms. Karen Robinson.

20 Ms. Robinson, if you'll be kind enough to stand up.

21 This is the Defendant, Ms. Robinson.

22 Thank you, Ms. Robinson.

23 Now, we've got Mr. Jones, Ms. Robinson.

24 And who's the other witness? I understood there was
25 three. Is there?

1 MR. BAYNE: It's Michelle Murray. She's at the
2 bottom of that page.

3 THE COURT: Michelle Murray.

4 MR. JEFFERIES: Your Honor, on the -- on the
5 Plaintiff's side, it will be Treacy Randolph and Lettie
6 Jackson --

7 THE COURT: Wait. Y'all come up here just a minute.
8 I just want to make sure I have all the names.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: All right. Now, members of the jury
11 panel, I had to make sure the potential witnesses that are
12 going to testify -- they are potential witnesses. You may
13 hear from them and you may not. But I need to call out
14 their names. And that's what I was trying to straighten
15 out up here.

16 JURY QUALIFICATION

17 THE COURT: Now, you have Mr. Harland Jones is the
18 Plaintiff. Ms. Karen Robinson is the Defendant. Other
19 potential witnesses in this case will be a Ms. Michelle
20 Murray, a Ms. Lettie Jackson, and Treacy Randolph. Treacy
21 Randolph, Lettie Jackson, and Michelle Murray are
22 potential witnesses in this case. And what I need to ask
23 you at this time, members of the jury panel, is this, any
24 member of this jury panel related by blood, or marriage,
25 or connected by employment to either party in this case or

1 any potential witness in this case? If so, please, stand.

2 Do you know the Defendant? Do you know the
3 Plaintiff? Do you know any of these witnesses? If you
4 think you do, if you know someone with a similar name,
5 please, stand.

6 Yes, ma'am. Your number, please? Your name and
7 number?

8 PROSPECTIVE JUROR: Yes. It's Marjorie Middleton,
9 #192.

10 THE COURT: #182?

11 PROSPECTIVE JUROR: #192.

12 THE COURT: #192?

13 PROSPECTIVE JUROR: #192.

14 THE COURT: And who do you think you know?

15 PROSPECTIVE JUROR: The Plaintiff.

16 THE COURT: You know the Plaintiff?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: You know Mr. Jones; right, Harland Jones?
19 How long have you known him?

20 PROSPECTIVE JUROR: Years.

21 THE COURT: Ma'am?

22 PROSPECTIVE JUROR: Years.

23 THE COURT: Is it 10 years? Is it 15 years? How
24 long would you guess?

25 PROSPECTIVE JUROR: More.

1 THE COURT: Ma'am?

2 PROSPECTIVE JUROR: More.

3 THE COURT: 20 years? 30 years?

4 PROSPECTIVE JUROR: Something like that.

5 THE COURT: Did y'all grow up together?

6 PROSPECTIVE JUROR: Not quite that, but --

7 THE COURT: Okay. But you've known him most of your
8 life?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: All right. Now, my question to you is,
11 would -- that relationship or the knowledge of the
12 Plaintiff, Mr. Jones, for all those years, would that or
13 could that affect your ability to be a fair and impartial
14 juror in the trial of this case?

15 PROSPECTIVE JUROR: No.

16 THE COURT: I know you maybe think you may not be
17 picked. But I'll ask the question, if you were selected,
18 would that affect your ability to give the Defendant a
19 fair trial?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: All right. Thank you, ma'am.

22 And what was your number again?

23 PROSPECTIVE JUROR: #192.

24 THE COURT: #192. Thank you.

25 Now, members of the jury panel, are you sensible, are

1 you aware of any bias or prejudice toward either party,
2 the Plaintiff or the Defendant? Do you know of any reason
3 why you cannot give both parties to this case a fair and
4 impartial trial based on the law and the evidence? Is
5 there anything about a wreck case that would make you feel
6 uncomfortable? If so, please, stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: All right. Ladies and gentlemen, the
9 Plaintiff, Mr. Jones, is being represented by Mr. Lane
10 Jefferies.

11 Mr. Jefferies.

12 And Mr. Gus Anastopoulo. And I need to ask you this
13 question, have you or any member of your immediate family
14 ever been represented by Mr. Douglas -- Lane Douglas
15 Jefferies, or Gus Anastopoulo of the Anastopoulo Law Firm?
16 If so, please, stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Thank you, gentlemen.

19 Have you or a member of your immediate family ever
20 been on the other side of a case involving the Anastopoulo
21 Law Firm?

22 (WHEREUPON, there was no response.)

23 THE COURT: Now, the Defendant in this case is being
24 represented by Mr. Brett Bayne and Mr. Andrew Delaney.
25 And they're from the firm McGoudelock -- let's see --

1 McAngus, Goudelock, and Courie. And they represent the
2 Plaintiff.

3 Gentlemen, you can take a seat.

4 Now, have you or any member of your immediate family
5 ever been represented by Mr. Delaney or Mr. -- Mr. Bayne?
6 I'm sorry. I lost my place. Mr. Bayne or Mr. Delaney?
7 If so, please, stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Additionally, ladies and gentlemen, have
10 you or a member of your immediate family ever been
11 represented by someone from the law firm of Murphy &
12 Grantland, specifically, Mr. Rogers E. Harrell? The
13 question is, do you know any of these lawyers? Knowing
14 them, would that affect your ability to be a fair and
15 impartial juror in the trial of this case?

16 (WHEREUPON, there was no response.)

17 THE COURT: Have you ever been on the other side of
18 the case or on the same side of the case with any of these
19 lawyers involved here today? If so, please, stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: Do y'all know any of the lawyers involved
22 here today? If so, please, stand.

23 Yes, sir. Your name and number, please?

24 PROSPECTIVE JUROR: Tim Gavigan, #103.

25 THE COURT: Gavigan?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: And who do you know?

3 PROSPECTIVE JUROR: I recognize Mr. Bayne.

4 THE COURT: You recognize Mr. Bayne?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: How do you know Mr. Bayne?

7 PROSPECTIVE JUROR: I go to [inaudible] the

8 University of South Carolina School --

9 THE COURT: What now?

10 PROSPECTIVE JUROR: University of South Carolina

11 School of Law. I recognize him --

12 THE COURT: Are you a lawyer?

13 PROSPECTIVE JUROR: I just took the bar. I'm waiting
14 for the results.

15 THE COURT: Good luck to you.

16 So how long have you known Mr. Bayne? I need to ask
17 this question.

18 PROSPECTIVE JUROR: Not personally, but I recognize
19 him from school for a couple years.

20 THE COURT: Okay. Would -- that relationship that
21 you described to me, would that affect your ability to be
22 a fair and impartial juror in a wreck case?

23 PROSPECTIVE JUROR: I think it would based on what
24 I've heard from my friends --

25 THE COURT: What now?

1 PROSPECTIVE JUROR: I think it would based on --

2 THE COURT: Okay. And what's your number again?

3 #103?

4 PROSPECTIVE JUROR: #103, yes, sir.

5 THE COURT: All right. Take your seat -- I'm going
6 to ask you to go have a seat in the back.

7 Now, members of the panel, there's some additional
8 questions I need to ask you before we select a jury in
9 this case. And these questions, they're neutral. They're
10 down the middle. We -- the object here today is to pick a
11 fair and impartial jury. And some of these questions go
12 to that.

13 So I hope no one is necessarily offended by any of
14 these questions. If you are, just let me know.

15 Where do I know you from?

16 (WHEREUPON, there was no response.)

17 THE COURT: You. Stand up.

18 PROSPECTIVE JUROR: Yeah. You and I have spent a lot
19 of nights at the Colonial Life Arena --

20 THE COURT: Where?

21 PROSPECTIVE JUROR: -- together. I said -- I'm two
22 down from you at the -- every basketball game.

23 THE COURT: Sir, are you a Gamecock fan or are you a
24 Clemson fan?

25 PROSPECTIVE JUROR: I'm lead [phonetic] writer for

1 the State newspaper.

2 THE COURT: Sit down.

3 He can't fool anybody.

4 Anyway --

5 PROSPECTIVE JUROR: I was hoping I could --

6 THE COURT: No, no. You're stuck with us.

7 Now, there's some additional questions, members of
8 the panel, I need to ask. I told you about the wreck. It
9 occurred back on June 7th, 2017. Now, do y'all have any
10 knowledge of this incident whatsoever in any way, shape,
11 or form?

12 (WHEREUPON, there was no response.)

13 THE COURT: This is a civil lawsuit, members of the
14 panel, where the Plaintiff seeks damages from the
15 Defendant. The Plaintiff has alleged the Defendant was
16 negligent and that this negligence caused the Plaintiff
17 damages.

18 There's, also, a counterclaim by the Defendant
19 against the Plaintiff. The Defendant alleges the
20 Plaintiff was negligent and that his -- his negligence
21 caused the Defendant damages. They're suing each other.

22 Based solely on this description and without hearing
23 any evidence in this matter, is there any member of this
24 jury panel who feels he or she would be unable to be a
25 fair and impartial juror for both the Plaintiff and the

1 Defendant? Once again, would it make you uncomfortable
2 being a juror in the case I so described? If so, please,
3 stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: I think that's taken care of #3, would
6 you agree, Mr. Bayne?

7 MR. BAYNE: Yes, sir.

8 THE COURT: And #4, is that fair enough?

9 MR. BAYNE: Yes, sir.

10 THE COURT: All right. I'll ask #5. Is any member
11 of the jury panel or their immediate family in possession
12 of any independent information asserting the allegations
13 involved in this lawsuit? If so, please, stand.

14 (WHEREUPON, there was no response.)

15 THE COURT: Has any member of the jury panel formed
16 any opinions concerning the relationship between the
17 parties in this lawsuit or the incident involving the
18 parties, which is the subject of this lawsuit, a
19 bicycle-car wreck?

20 Does any member -- does any juror have any business,
21 professional, family, or personal relationship with any of
22 the following witnesses or their immediate families? I
23 think I've covered that.

24 All right. Has any member of this jury panel or a
25 member of their immediate family ever been involved in a

1 personal injury or an automobile accident? If so, please,
2 stand.

3 All right. This is the way I'll do it. Ladies and
4 gentlemen, it's hard to escape not being in a wreck. So
5 if you or a member of your immediate family have ever been
6 in a car wreck, please, stand.

7 Everybody has been effected one way or another.

8 All right. I'll just go down the line. It might
9 take some time.

10 Your name and number, please?

11 PROSPECTIVE JUROR: Avary McGee, #189.

12 THE COURT: #189.

13 Was it you or a family member?

14 PROSPECTIVE JUROR: Me.

15 THE COURT: You.

16 How long ago was it?

17 PROSPECTIVE JUROR: 2016.

18 THE COURT: 2016.

19 Has that matter been resolved?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Did you file a claim or was a claim filed
22 against you?

23 PROSPECTIVE JUROR: I filed a claim.

24 THE COURT: Okay. The fact that you did so, would
25 that affect your ability to be fair during this case?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Thank you.

3 Yes, sir. Your name and number, please?

4 PROSPECTIVE JUROR: Andrew Davis, #62.

5 THE COURT: Was it you or a family member?

6 PROSPECTIVE JUROR: Me.

7 THE COURT: How long ago?

8 PROSPECTIVE JUROR: 10 years.

9 THE COURT: The matter has been resolved, I hope?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Did you file a claim or was a claim filed
12 against you?

13 PROSPECTIVE JUROR: I filed a claim.

14 THE COURT: Okay. 10 years ago. It's been resolved.
15 Would that or could that affect your ability to be
16 fair during this case?

17 PROSPECTIVE JUROR: It would not.

18 THE COURT: Thank you.

19 Your name and number, please?

20 PROSPECTIVE JUROR: Jeremy Moseley, #200.

21 THE COURT: What now, sir?

22 PROSPECTIVE JUROR: Jeremy Moseley, #200.

23 THE COURT: Was it you or a family member?

24 PROSPECTIVE JUROR: A family member, my wife.

25 THE COURT: Your wife.

1 How long ago was it?

2 PROSPECTIVE JUROR: 2017.

3 THE COURT: Has that matter been resolved?

4 PROSPECTIVE JUROR: It has not.

5 THE COURT: Okay. Is your wife making a claim or is
6 a claim being made against her?

7 PROSPECTIVE JUROR: My wife's making a claim.

8 THE COURT: Okay. It's unresolved.

9 Would that or could that affect your ability to be a
10 fair juror in this case?

11 PROSPECTIVE JUROR: No, Your Honor.

12 THE COURT: Are you sure about that?

13 (WHEREUPON, there was no verbal response.)

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

15 Your name and number, please, sir?

16 PROSPECTIVE JUROR: Thomas Dawson --

17 THE COURT: Lawson?

18 PROSPECTIVE JUROR: Dawson.

19 THE COURT: What's your number?

20 PROSPECTIVE JUROR: #66.

21 THE COURT: #66. If we added another six to that,
22 we'd all be in trouble.

23 Was it you or a family member?

24 PROSPECTIVE JUROR: It was me.

25 THE COURT: How long ago?

1 PROSPECTIVE JUROR: About four years ago.

2 THE COURT: Has that matter been resolved?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Did you file a claim or was a claim filed
5 against you?

6 PROSPECTIVE JUROR: Uh --

7 THE COURT: And if no claim was filed, it's okay.
8 No claim filed?

9 PROSPECTIVE JUROR: No claim filed.

10 THE COURT: All right. Would being in a wreck four
11 years ago affect your ability to be a fair juror in this
12 case?

13 PROSPECTIVE JUROR: No, sir.

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

15 Yes --

16 You may sit down.

17 Your name and number, please, sir?

18 PROSPECTIVE JUROR: Ramsey Bowers, #29.

19 THE COURT: #29.

20 Was it you or a family member?

21 PROSPECTIVE JUROR: Me.

22 THE COURT: How long ago was it?

23 PROSPECTIVE JUROR: The first one was at the age of
24 18. The last one, six weeks ago.

25 THE COURT: All right. The first one was 18 years

1 ago?

2 PROSPECTIVE JUROR: At the age of 18, 40 something
3 years ago.

4 THE COURT: I didn't quite understand you. I have
5 trouble hearing.

6 It was you; right? You said two of them?

7 PROSPECTIVE JUROR: Five of them.

8 THE COURT: Five of them. Well --

9 PROSPECTIVE JUROR: Your Honor, I --

10 THE COURT: No. Let me do the talking.

11 In those five wrecks, did you file a claim, or was a
12 claim filed against you, or was it both?

13 PROSPECTIVE JUROR: Both sides.

14 THE COURT: Okay. The last one was six weeks ago,
15 you said?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Okay. And that last one six weeks ago,
18 did you file a claim or is a claim being filed against
19 you?

20 PROSPECTIVE JUROR: I filed a claim.

21 THE COURT: Okay. In all those wrecks, five of them,
22 the last one as you descried, would they or could they
23 affect your ability to be a fair juror in this case?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Are you sure about that?

1 PROSPECTIVE JUROR: Absolutely.

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

3 And your name and number, please?

4 PROSPECTIVE JUROR: Andrew Ramspacher, #216.

5 THE COURT: What's your last name?

6 PROSPECTIVE JUROR: Ramspacher.

7 THE COURT: Okay. Was it you or a family member?

8 PROSPECTIVE JUROR: It was me.

9 THE COURT: How long ago?

10 PROSPECTIVE JUROR: 2012.

11 THE COURT: 2012.

12 Has that matter been resolved?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right. Did you file a claim or was a
15 claim filed against you?

16 PROSPECTIVE JUROR: Against me.

17 THE COURT: Against you?

18 PROSPECTIVE JUROR: Yeah.

19 THE COURT: Would that or could that affect your
20 ability to be a fair juror in this case?

21 PROSPECTIVE JUROR: No.

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

23 Yes, ma'am. Your name and number, please?

24 PROSPECTIVE JUROR: Kristi Juskiewicz, #155.

25 THE COURT: Jeffcoat, you said?

1 PROSPECTIVE JUROR: Juskiewicz.

2 THE COURT: Jeff --

3 PROSPECTIVE JUROR: Juskiewicz. There's a "K."

4 THE COURT: Your number is more important than your
5 name. What number are you?

6 PROSPECTIVE JUROR: #155.

7 THE COURT: All right. Was it you or a family
8 member?

9 PROSPECTIVE JUROR: It was me.

10 THE COURT: How long ago was it?

11 PROSPECTIVE JUROR: June 25th.

12 THE COURT: What?

13 PROSPECTIVE JUROR: June 25th.

14 THE COURT: Of this year?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Has that matter been resolved?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Okay. Are you filing a claim or is a
19 claim being filed against you?

20 PROSPECTIVE JUROR: I filed a claim.

21 THE COURT: You filed a claim.

22 Would that or could that affect your ability to be a
23 fair juror in this case?

24 PROSPECTIVE JUROR: No.

25 THE COURT: All right. Thank you, ma'am.

1 Yes, ma'am. Your name and number, please?

2 PROSPECTIVE JUROR: Brandi Robbins, #224.

3 THE COURT: Was it you or a family member?

4 PROSPECTIVE JUROR: Me.

5 THE COURT: It was you?

6 PROSPECTIVE JUROR: Yeah. About 20 years ago.

7 THE COURT: About 10 [sic] years ago.

8 Did you file a claim or was a claim filed against
9 you?

10 PROSPECTIVE JUROR: No claim was filed.

11 THE COURT: No claim was filed 10 years ago.

12 Would that or could that affect your ability to be a
13 fair juror in this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Thank you, ma'am.

16 Yes, sir. Your name and number, please?

17 PROSPECTIVE JUROR: Douglas Boykin, #31.

18 THE COURT: Boykin?

19 PROSPECTIVE JUROR: Boykin, yes, sir.

20 THE COURT: Was it you or a family member?

21 PROSPECTIVE JUROR: It was me.

22 THE COURT: How long ago?

23 PROSPECTIVE JUROR: 10 years ago.

24 THE COURT: 10 years ago.

25 It's been resolved, I'm sure; is that correct?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Did you file a claim or was a claim filed
3 against you?

4 PROSPECTIVE JUROR: Neither, sir.

5 THE COURT: Neither?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: It was resolved.

8 Would that affect your ability to be a fair juror in
9 this case?

10 PROSPECTIVE JUROR: No, sir.

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

12 Yes, ma'am. Your name and number, please?

13 PROSPECTIVE JUROR: Allyson Hathaway, #128.

14 THE COURT: Hathaway, #128.

15 Was it you, Ms. Hathaway, or a family member?

16 PROSPECTIVE JUROR: It was me.

17 THE COURT: How long ago?

18 PROSPECTIVE JUROR: 28 years ago.

19 THE COURT: You don't look like you were alive 28
20 years ago.

21 Was a claim filed against you or did you file a
22 claim?

23 PROSPECTIVE JUROR: No claim.

24 THE COURT: No claims filed.

25 Would that or could that wreck 28 years ago affect

1 your ability to be a fair juror in this case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Thank you, ma'am.

4 Yes, sir. Your name and number, please?

5 PROSPECTIVE JUROR: Robert Echols, #77.

6 THE COURT: Is that an orange shirt you have on?

7 PROSPECTIVE JUROR: It's, like, a -- it's, like,
8 corral, but, yeah.

9 THE COURT: That's okay. That's okay.

10 Your name and number?

11 PROSPECTIVE JUROR: What's that?

12 THE COURT: What's your number again?

13 PROSPECTIVE JUROR: #77.

14 THE COURT: All right. Was it you or a family
15 member?

16 PROSPECTIVE JUROR: It was me.

17 THE COURT: How long ago?

18 PROSPECTIVE JUROR: About six months ago.

19 THE COURT: Has that matter been resolved?

20 PROSPECTIVE JUROR: There were -- there were no
21 claims filed.

22 THE COURT: All right. No claims filed?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Would that or could that affect your
25 ability to be a fair juror?

1 PROSPECTIVE JUROR: No, sir.

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

3 Yes, sir. Your name and number, please?

4 PROSPECTIVE JUROR: Julian Gonzalez.

5 THE COURT: Who?

6 PROSPECTIVE JUROR: Julian Gonzalez.

7 THE COURT: And what's your number?

8 PROSPECTIVE JUROR: #110.

9 THE COURT: #110?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: All right. Was it you or a family
12 member, Mr. Gonzalez?

13 PROSPECTIVE JUROR: Me.

14 THE COURT: How long ago was it?

15 PROSPECTIVE JUROR: Two years ago.

16 THE COURT: Two years ago.

17 Has that matter been resolved?

18 PROSPECTIVE JUROR: No claims filed.

19 THE COURT: What?

20 PROSPECTIVE JUROR: No claims were failed.

21 THE COURT: Okay. Would that wreck or could that
22 wreck affect your ability to be a fair juror here?

23 PROSPECTIVE JUROR: No, Your Honor.

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

25 Yes, ma'am. Your name and number, please?

1 PROSPECTIVE JUROR: Deborah Smith, #245.

2 THE COURT: Ms. Smith, was it you or a family member?

3 PROSPECTIVE JUROR: It was myself.

4 THE COURT: How long ago?

5 PROSPECTIVE JUROR: About 34 years ago.

6 THE COURT: About when?

7 PROSPECTIVE JUROR: 34 years ago.

8 THE COURT: Okay. Did you file a claim or was a
9 claim filed against you?

10 PROSPECTIVE JUROR: No, no claims filed.

11 THE COURT: No claims filed.

12 Would a wreck 34 years ago affect your ability to be
13 a fair juror here?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Thank you.

16 Yes, sir. Your name and number, please?

17 PROSPECTIVE JUROR: Shawn Glover, #108.

18 THE COURT: Who?

19 PROSPECTIVE JUROR: Shawn Glover, #108.

20 THE COURT: All right. Mr. Glover, was it you or a
21 family member?

22 PROSPECTIVE JUROR: Me.

23 THE COURT: How long ago?

24 PROSPECTIVE JUROR: 2004.

25 THE COURT: Has that matter been resolved?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Did you file a claim or was a claim filed
3 against you?

4 PROSPECTIVE JUROR: I filed it.

5 THE COURT: All right. Would that or could that
6 affect your ability to be a fair juror here?

7 PROSPECTIVE JUROR: No.

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

9 Yes, sir. Your name and number, please?

10 PROSPECTIVE JUROR: Timothy Elezaer. I'm #81.

11 THE COURT: Was it you or a family member?

12 PROSPECTIVE JUROR: It was me.

13 THE COURT: How long ago?

14 PROSPECTIVE JUROR: Five years.

15 THE COURT: Has that matter been resolved?

16 PROSPECTIVE JUROR: It's been resolved.

17 THE COURT: Did you file a claim or was a claim filed
18 against you?

19 PROSPECTIVE JUROR: It was filed against me.

20 THE COURT: All right. Would that or could that
21 affect your ability to be a fair juror here?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Thank you, sir.

24 Yes, ma'am. Your name and number, please?

25 PROSPECTIVE JUROR: Kiley Fine, #92.

1 THE COURT: Who?

2 PROSPECTIVE JUROR: Kiley Fine.

3 THE COURT: And what's your number?

4 PROSPECTIVE JUROR: #92.

5 THE COURT: #92.

6 Was it you or a family member?

7 PROSPECTIVE JUROR: It was my mom.

8 THE COURT: Yourself, you said?

9 PROSPECTIVE JUROR: No. My mom.

10 THE COURT: Your mother.

11 How long ago?

12 PROSPECTIVE JUROR: Two years ago.

13 THE COURT: Two years ago.

14 Has that matter been resolved?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Do you know whether or not your
17 mother filed a claim or was a claim filed against your
18 mother?

19 PROSPECTIVE JUROR: She filed it.

20 THE COURT: Against her?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Would that or could that experience
23 affect your ability to be a fair juror here?

24 PROSPECTIVE JUROR: No.

25 THE COURT: All right. Thank you, ma'am.

1 PROSPECTIVE JUROR: David Stone, #255.

2 THE COURT: Was it you or a family member?

3 PROSPECTIVE JUROR: Myself.

4 THE COURT: How long ago?

5 PROSPECTIVE JUROR: Four years ago.

6 THE COURT: Three years ago?

7 PROSPECTIVE JUROR: Four.

8 THE COURT: Four.

9 Has that matter been resolved?

10 PROSPECTIVE JUROR: No claims filed.

11 THE COURT: Okay. Would that or could that affect
12 your ability to be a fair juror here?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: You said "no"; right?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: Okay. Thank you, sir.

17 All right. Yes, sir. Your name and number?

18 PROSPECTIVE JUROR: John Whitaker, #284.

19 THE COURT: You or a family member?

20 PROSPECTIVE JUROR: Family member.

21 THE COURT: Who was the family member?

22 PROSPECTIVE JUROR: My mom.

23 THE COURT: How long ago?

24 PROSPECTIVE JUROR: About seven years.

25 No claims.

1 THE COURT: Would that affect your ability to be a
2 fair juror?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Thank you, sir.

5 Yes, ma'am. Your name?

6 PROSPECTIVE JUROR: Tonna Robertson.

7 THE COURT: What number?

8 PROSPECTIVE JUROR: #226.

9 THE COURT: All right. Was it you or a family
10 member?

11 PROSPECTIVE JUROR: Myself.

12 THE COURT: Yourself?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: How long ago?

15 PROSPECTIVE JUROR: 20 years.

16 THE COURT: 20 years. I'll take you at your word.

17 All right. Was a claim filed against you or did you
18 file a claim?

19 PROSPECTIVE JUROR: No claim.

20 THE COURT: No claims filed 20 years ago.

21 Would that or could that affect your ability to be a
22 fair juror here?

23 PROSPECTIVE JUROR: No, it wouldn't.

24 THE COURT: Thank you, ma'am.

25 Yes, sir. Your name and number, please?

1 PROSPECTIVE JUROR: Daniel Halligan, #119.

2 THE COURT: Was it you or a family member?

3 PROSPECTIVE JUROR: Myself.

4 THE COURT: How long ago?

5 PROSPECTIVE JUROR: 18 years.

6 THE COURT: What?

7 PROSPECTIVE JUROR: 18 years.

8 THE COURT: Did you file a claim or was a claim filed
9 against you?

10 PROSPECTIVE JUROR: No claims.

11 THE COURT: No claims filed.

12 Would that wreck 18 years ago affect your ability to
13 be a fair juror here?

14 PROSPECTIVE JUROR: No, sir.

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

16 Yes, sir. Your name and number, please?

17 PROSPECTIVE JUROR: Brian Moak, #195.

18 THE COURT: Was it you or a family member?

19 PROSPECTIVE JUROR: Me.

20 THE COURT: How long ago?

21 PROSPECTIVE JUROR: July 21st of this year.

22 THE COURT: July of this year?

23 PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: Are you filing a claim or is a claim
25 being filed against you?

1 PROSPECTIVE JUROR: Against me.

2 THE COURT: You filed a claim?

3 PROSPECTIVE JUROR: Against me.

4 THE COURT: Against you?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Okay. Would that or could that affect
7 your ability to be a fair juror here?

8 PROSPECTIVE JUROR: No, sir.

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

10 Yes, ma'am. Your name and number?

11 PROSPECTIVE JUROR: Leigh Matthews, #183.

12 THE COURT: Ms. Matthews, was it you or a family
13 member?

14 PROSPECTIVE JUROR: My sister.

15 THE COURT: Your sister.

16 How long ago?

17 PROSPECTIVE JUROR: May.

18 THE COURT: May.

19 Has that matter been resolved?

20 PROSPECTIVE JUROR: No.

21 THE COURT: All right. Do you know if your sister is
22 making a claim or if a claim is being made against her?

23 PROSPECTIVE JUROR: My sister is making a claim.

24 THE COURT: You're making a claim -- your sister is
25 making a claim.

1 Would that or could that affect your ability to be a
2 fair juror here?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you.

5 You may sit down.

6 Yes, ma'am. Your name and number, please?

7 PROSPECTIVE JUROR: Quavia Williams Smith, #292.

8 THE COURT: Was it you or a family member?

9 PROSPECTIVE JUROR: Family member.

10 THE COURT: Who's the family member?

11 PROSPECTIVE JUROR: My spouse.

12 THE COURT: Your father?

13 PROSPECTIVE JUROR: My spouse.

14 THE COURT: Oh, your spouse. I'm sorry.

15 Did he file a claim or is a claim being filed against
16 him?

17 PROSPECTIVE JUROR: He filed the claim.

18 THE COURT: And how long ago was it again?

19 PROSPECTIVE JUROR: Nine years.

20 THE COURT: Nine years ago.

21 Oh, that matter's been resolved?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. Would that or could that
24 affect your ability to be a fair juror here?

25 PROSPECTIVE JUROR: No.

1 THE COURT: All right. Thank you, ma'am.

2 Yes, sir. Your name and number, please?

3 PROSPECTIVE JUROR: Jonathan Crabtree, #56.

4 THE COURT: Was it you or a family member?

5 PROSPECTIVE JUROR: Me.

6 THE COURT: How long ago?

7 PROSPECTIVE JUROR: Seven years ago.

8 THE COURT: It's been resolved?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Did you file a claim or was a claim filed
11 against you?

12 PROSPECTIVE JUROR: Filed against me.

13 THE COURT: All right. Would that or could that
14 affect your ability to be a fair juror here?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: All right. Thank you, sir.
17 Yes.

18 PROSPECTIVE JUROR: Joshua Goley, #109.

19 THE COURT: All right. Was it you or a family
20 member?

21 PROSPECTIVE JUROR: Family member.

22 THE COURT: Who was it?

23 PROSPECTIVE JUROR: Grandparent.

24 THE COURT: What?

25 PROSPECTIVE JUROR: Grandparent.

1 THE COURT: Your grandparent?

2 (WHEREUPON, there was no verbal response.)

3 THE COURT: How long ago was it?

4 PROSPECTIVE JUROR: May of this year.

5 THE COURT: May of this year.

6 Has that matter been resolved or is it still pending?

7 PROSPECTIVE JUROR: I am not aware --

8 THE COURT: You have no idea?

9 PROSPECTIVE JUROR: I'm not aware.

10 THE COURT: But the fact that your grandmother [sic]
11 was involved in an accident as you described it, would
12 that or could that affect your ability to be a fair juror
13 here?

14 PROSPECTIVE JUROR: It would not, sir.

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

16 Are y'all on the same row? I guess so. I can't --
17 my depth perception is not good today.

18 Your name and number, please, sir?

19 PROSPECTIVE JUROR: Audrey Corr, #54.

20 THE COURT: Was it you or a family member?

21 PROSPECTIVE JUROR: Myself.

22 THE COURT: How long ago?

23 PROSPECTIVE JUROR: Four years.

24 THE COURT: Has that matter been resolved?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Did you file a claim or was a claim filed
2 against you?

3 PROSPECTIVE JUROR: No claims.

4 THE COURT: No claim was filed. Four years ago, a
5 wreck.

6 Would that or could that affect your ability to be a
7 fair juror here?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: All right. Thank you, ma'am.
10 Y'all are on the same row; right?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: I can't -- are you?

13 (WHEREUPON, there was no response.)

14 THE COURT: Let me start with you.

15 Your name and number, please?

16 PROSPECTIVE JUROR: Shawn Mohammed, #196.

17 THE COURT: Was it you or a family member?

18 PROSPECTIVE JUROR: Myself.

19 THE COURT: How long ago?

20 PROSPECTIVE JUROR: Eight years.

21 THE COURT: Has it been resolved?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Did you file a claim or was a claim filed
24 against you?

25 PROSPECTIVE JUROR: I filed a claim.

1 THE COURT: Would that or could that affect your
2 ability to be a fair juror here?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: It would?

5 PROSPECTIVE JUROR: It wouldn't affect.

6 THE COURT: All right. You said it would affect your
7 ability to be a fair juror?

8 PROSPECTIVE JUROR: No. It wouldn't.

9 THE COURT: Oh, it would not.

10 All right. You may have a seat.

11 Thank you, sir.

12 Yes, ma'am. Your name and number, please?

13 PROSPECTIVE JUROR: Linda Antill, #7.

14 THE COURT: Was it you or a family member?

15 PROSPECTIVE JUROR: Me. And no other vehicle.

16 THE COURT: What now?

17 PROSPECTIVE JUROR: Myself. But there wasn't another
18 vehicle. I didn't hit a vehicle.

19 THE COURT: Were you a pedestrian?

20 PROSPECTIVE JUROR: I was driving --

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: -- and --

23 THE COURT: And you had a wreck?

24 PROSPECTIVE JUROR: No other car --

25 THE COURT: Did you file a claim or was a claim filed

1 against you? No claims filed?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: How long ago was this wreck?

4 PROSPECTIVE JUROR: About 16 years.

5 THE COURT: All right. Would that or could that
6 affect your ability to be a fair juror in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you, ma'am.

9 Yes, ma'am. Your name and number?

10 PROSPECTIVE JUROR: Maria Genovese, #104.

11 THE COURT: And was it you or a family member?

12 PROSPECTIVE JUROR: It was myself and my son.

13 THE COURT: Your husband.

14 How long ago was it, the wreck?

15 PROSPECTIVE JUROR: It was in 2007.

16 THE COURT: Has that matter been resolved?

17 (WHEREUPON, there was no response.)

18 THE COURT: Has it?

19 PROSPECTIVE JUROR: Yeah.

20 THE COURT: Okay. Did your husband file a claim or
21 was a claim filed against your husband?

22 PROSPECTIVE JUROR: No. It wasn't my husband. It
23 was myself and my toddler son.

24 THE COURT: Wait a minute. Slow down.

25 What did you say?

1 PROSPECTIVE JUROR: It wasn't my husband who was
2 involved.

3 THE COURT: Who was it?

4 PROSPECTIVE JUROR: My son.

5 THE COURT: Oh, I'm sorry.

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: At least, you're in the same family.

8 Now, it was your son.

9 How long was it?

10 PROSPECTIVE JUROR: 2007.

11 THE COURT: Has that matter been resolved?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: All right. Did your son file a claim or
14 was a claim filed against your son? Do you know?

15 PROSPECTIVE JUROR: We filed a claim.

16 THE COURT: All right. Y'all filed a claim.

17 All right. Would that or could that affect your
18 ability to be a fair juror here?

19 PROSPECTIVE JUROR: Yes, it would affect my
20 ability --

21 THE COURT: All right. And what's your number again?

22 PROSPECTIVE JUROR: #104.

23 THE COURT: #104.

24 Thank you, ma'am.

25 PROSPECTIVE JUROR: Thanks.

1 THE COURT: You may have a seat in the back.

2 (Pause.)

3 THE COURT: Yes, sir. Stand up again.

4 You said it wouldn't affect your ability; right?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Would not?

7 PROSPECTIVE JUROR: No.

8 THE COURT: You're on the same row, aren't you, I
9 guess?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: All right. Your name and number, please,
12 ma'am?

13 PROSPECTIVE JUROR: Carol Doonan, #302.

14 THE COURT: Was it you or a family member?

15 PROSPECTIVE JUROR: I was in an accident.

16 THE COURT: How long ago was it?

17 PROSPECTIVE JUROR: 10 years.

18 THE COURT: 10 years?

19 PROSPECTIVE JUROR: No claims filed.

20 THE COURT: All right. Would that or could that
21 affect your ability to be a fair juror?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: All right. Thank you, ma'am.

24 Yes, ma'am. Your name and number, please?

25 PROSPECTIVE JUROR: Kendra Entzminger, #84.

1 THE COURT: Was it you or a family member?

2 PROSPECTIVE JUROR: Myself.

3 THE COURT: How long ago?

4 PROSPECTIVE JUROR: July of 2018.

5 THE COURT: Of this year -- oh, 2018.

6 Has that matter been resolved?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Did you file a claim or was a claim filed
9 against you?

10 PROSPECTIVE JUROR: No claim.

11 THE COURT: No claims filed.

12 Would that or could that experience, the wreck,
13 prevent -- prohibit you from being a fair and impartial
14 juror in the trial of this case?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: All right. Thank you, ma'am.

17 Yes, sir. Your name and number, please?

18 PROSPECTIVE JUROR: Chun-yau Kwok, #166.

19 THE COURT: Mr. Kwok, was it you or a family member?

20 PROSPECTIVE JUROR: My wife.

21 THE COURT: How long ago?

22 PROSPECTIVE JUROR: About 30 years ago.

23 THE COURT: Almost 30 years ago?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And y'all are still married?

1 (WHEREUPON, there was no response.)

2 THE COURT: Y'all are still married?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. Good.

5 Did she file a claim or was a claim filed against
6 her? Do you know?

7 PROSPECTIVE JUROR: Against her.

8 THE COURT: Huh?

9 PROSPECTIVE JUROR: Against her.

10 THE COURT: Okay. Would that or could that
11 experience 18 [sic] years ago affect your ability to be a
12 fair juror here?

13 PROSPECTIVE JUROR: I don't think so.

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

15 Yes, ma'am. Your name and number, please?

16 PROSPECTIVE JUROR: Martaiya Valentine.

17 THE COURT: Was it you or a family member?

18 PROSPECTIVE JUROR: Myself.

19 THE COURT: Yourself?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: How long was it?

22 PROSPECTIVE JUROR: Last year.

23 THE COURT: Last year.

24 Has that matter been resolved or is it still pending?

25 PROSPECTIVE JUROR: Yes. It's --

1 THE COURT: It's been resolved?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Did you file a claim or was a claim filed
4 against you, ma'am?

5 PROSPECTIVE JUROR: A claim was filed against me.

6 THE COURT: All right. Would that or could that
7 affect your ability to be a fair juror here?

8 PROSPECTIVE JUROR: No.

9 THE COURT: All right. Thank you, ma'am.
10 Last, but not least. Your name and number?

11 PROSPECTIVE JUROR: Deidre Epps, #85.

12 THE COURT: Was it you or a family member?

13 PROSPECTIVE JUROR: It was me.

14 THE COURT: What?

15 PROSPECTIVE JUROR: It was me.

16 THE COURT: Okay. How long ago was it?

17 PROSPECTIVE JUROR: Over five years.

18 THE COURT: Five years ago?

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: Did you file a claim or was a claim filed
21 against you?

22 PROSPECTIVE JUROR: A claim was filed against me.

23 THE COURT: Would that or could that affect your
24 ability to be a fair juror in this case?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Are you sure about that?

2 (WHEREUPON, there was no verbal response.)

3 THE COURT: Thank you, ma'am.

4 Now, has any member of the jury panel or a member of
5 your immediate family been sued for any reason? I
6 probably should limit that, like breach of contract, or
7 something like that. Something other than a car wreck
8 that we went through. Any other reason anybody has sued
9 someone or been sued? If so, please, stand. And we don't
10 count Family Court either, like divorces and things like
11 that.

12 Yes, sir. You've been sued?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: How long ago was it?

15 PROSPECTIVE JUROR: 25 years.

16 THE COURT: All right. Was it a business dispute?
17 What was the case about?

18 PROSPECTIVE JUROR: It -- professional malpractice.

19 THE COURT: Okay. It was filed against you?

20 PROSPECTIVE JUROR: It was settled.

21 THE COURT: Okay. Would that or could that
22 experience affect your ability to be a fair juror here?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: In a wreck case?

25 PROSPECTIVE JUROR: No, sir.

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

2 Your name and number, please?

3 PROSPECTIVE JUROR: #109, Joshua Goley.

4 Sued or been sued?

5 THE COURT: What now?

6 PROSPECTIVE JUROR: Sued or been sued?

7 THE COURT: I'm sorry. I can't -- I can't understand
8 him.

9 What did he say?

10 PROSPECTIVE JUROR: Sued or been sued.

11 THE COURT: Jackie --

12 THE CLERK: Sued or been sued.

13 THE COURT: Sued or been sued.

14 PROSPECTIVE JUROR: And does that include immediate
15 family members or just myself?

16 THE COURT: Come up. Come up close. I can't --
17 What did he say?

18 PROSPECTIVE JUROR: Does that include immediate
19 family members?

20 MR. DELANEY: He asked if it included immediate
21 family members.

22 THE COURT: Yeah. Immediate family members.

23 I'm sorry. I listen all the time. I can't hear as
24 well -- sometimes, the acoustics in this courtroom --

25 What kind of case was it?

1 PROSPECTIVE JUROR: I'm not sure. I can describe the
2 circumstances.

3 THE COURT: All right. Would that experience affect
4 your ability to be a fair juror?

5 PROSPECTIVE JUROR: It would not, sir.

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

7 Yes, ma'am. Your number? Once again, your name?

8 PROSPECTIVE JUROR: #85.

9 And I think my brother was sued.

10 THE COURT: What?

11 PROSPECTIVE JUROR: I think my brother was sued.

12 THE COURT: You think your brother was sued?

13 PROSPECTIVE JUROR: Yeah.

14 But I'm not --

15 THE COURT: For what? Do you have any idea?

16 PROSPECTIVE JUROR: It had to do with his business
17 several years ago. But I don't know --

18 THE COURT: Would that or could that affect your
19 ability to be a fair juror here?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: All right. Thank you.

22 I think I've covered number #10, Mr. --

23 MR. BAYNE: Yes, sir.

24 THE COURT: Does any member of the jury panel feel
25 that he or she cannot apply the law as charged by me, the

1 Judge, in an equal and fair manner to both side? If so,
2 please, stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: If you can't -- once again, if you
5 can't -- if you think you can't be a fair juror in a wreck
6 case, let us know.

7 Does any member of the jury panel feel that a
8 Plaintiff in a personal injury action is automatically
9 entitled to punitive damages? If so, please, stand.

10 (WHEREUPON, there was no response.)

11 THE COURT: Now, is any member of the jury panel a
12 cyclist, motorcyclist, or I guess a -- I guess one, two,
13 or three, a unicycle, a motorcycle, a bicycle? If so,
14 please, stand.

15 All right. Were you involved in an accident while
16 you were riding a bicycle or a motorcycle?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: You were not?

19 PROSPECTIVE JUROR: No.

20 THE COURT: But you own a bike?

21 PROSPECTIVE JUROR: Motorcycle.

22 THE COURT: All right. Somebody just needed that
23 information is all.

24 Thank you.

25 Yes, sir. Bicycle, unicycle, or motorcycle?

1 PROSPECTIVE JUROR: Motorcycles and bicycles.

2 THE COURT: Motorcycle?

3 PROSPECTIVE JUROR: And bicycles.

4 THE COURT: Have you ever had a wreck and been sued
5 or sued somebody over that?

6 PROSPECTIVE JUROR: Wrecks, not sued.

7 THE COURT: What?

8 PROSPECTIVE JUROR: Wrecks, but not sued.

9 THE COURT: Okay. And when was this wreck?

10 PROSPECTIVE JUROR: 10 years ago.

11 THE COURT: And you were on the bicycle or
12 motorcycle? Which one was it?

13 PROSPECTIVE JUROR: Motorcycle.

14 THE COURT: Would that experience affect your ability
15 to be a fair juror here?

16 PROSPECTIVE JUROR: No.

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

18 Mr. Bayne, I'll defer to you, but I think I've asked
19 everything.

20 MR. BAYNE: Yes, sir.

21 THE COURT: All right. Mr. Jefferies, anything I did
22 not ask that you wish to include?

23 MR. JEFFERIES: No, Your Honor.

24 THE COURT: Are you good?

25 MR. JEFFERIES: Yes.

1 THE COURT: All right. Very well.

2 And, members of the jury panel, it's obvious why I
3 would have to ask that question involving a wreck case and
4 it did take a little time. But the whole object is to try
5 to pick a fair jury. And I think we'll be able to do that
6 because of your cooperation.

7 I thank you.

8 So, gentlemen, the strikes will be four and four with
9 the Plaintiff going first. Please strike the number to
10 the left.

11 Before we start, I need to make sure we're on the
12 same page with the strike sheet. Can I see y'all up here
13 for a minute?

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: All right. Having taken care of that,
16 once again, gentlemen, the strikes will be four and four
17 with the Plaintiff going first. And, please, strike the
18 number to the left of the name.

19 And, Mr. Jefferies, you may proceed.

20 JURY SELECTION

21 MR. JEFFERIES: Thank you, Your Honor.

22 The Plaintiff would strike #17.

23 THE COURT: #17.

24 THE CLERK: The Plaintiff strikes #17.

25 MR. BAYNE: The Defendant strikes #22.

1 THE CLERK: The Defendant strikes #22.
2 MR. JEFFERIES: The Plaintiff strikes #13.
3 THE CLERK: The Plaintiff strikes #13.
4 MR. BAYNE: Defendant strikes #16.
5 THE COURT: Number what?
6 MR. BAYNE: #16.
7 THE COURT: #15?
8 MR. BAYNE: #16, Your Honor.
9 THE CLERK: #16.
10 THE COURT: #16?
11 MR. BAYNE: Yes, sir.
12 THE CLERK: The Defendant strikes #16.
13 MR. JEFFERIES: The Plaintiff strikes #6, Your Honor.
14 THE CLERK: The Plaintiff strikes #6.
15 MR. BAYNE: The Defendant strikes #21.
16 THE CLERK: The Defendant strikes #21.
17 MR. JEFFERIES: Your Honor, the Plaintiff strikes
18 #14.
19 THE CLERK: The Plaintiff strikes #14.
20 MR. BAYNE: The Defendant strikes #20.
21 THE COURT: That was #20?
22 THE CLERK: Yes.
23 MR. BAYNE: Yes, Your Honor.
24 THE CLERK: The Defendant strikes #20.
25 Please strike an alternate using #23, #24, and #25

1 starting -- starting with the Plaintiff.

2 MR. JEFFERIES: The Plaintiff strikes #23.

3 THE CLERK: Plaintiff strikes #23.

4 MR. BAYNE: Defendant strikes #25.

5 THE CLERK: The Defendant strikes #25.

6 Please allow me to review your strikes.

7 For the Plaintiff, #17, #13, #6, and #14, alternate
8 #23; is this correct?

9 MR. JEFFERIES: That's correct.

10 THE CLERK: For the Defendant, #22, #16, #21, and 20,
11 and alternate #25; is this correct?

12 MR. BAYNE: Yes, ma'am. That's correct.

13 THE COURT: Yes.

14 THE CLERK: Ladies and gentlemen of the jury, as I
15 call your name, please, come to the jury box bringing any
16 personal items that you may have with you.

17 #77, Robert Echols.

18 (WHEREUPON, Robert Echols, a white male, came
19 forward.)

20 THE CLERK: #119, Daniel Halligan.

21 (WHEREUPON, Daniel Halligan, a white male, came
22 forward.)

23 THE CLERK: #108, Shawn Glover.

24 (WHEREUPON, Shawn Glover, a black male, came
25 forward.)

1 THE CLERK: #183, Leigh Matthews.

2 (WHEREUPON, Leigh Matthews, a white female, came
3 forward.)

4 THE CLERK: #128, Allyson Hathaway.

5 (WHEREUPON, Allyson Hathaway, a white female, came
6 forward.)

7 THE CLERK: #31, Douglas Boykin.

8 (WHEREUPON, Douglas Boykin, a black male, came
9 forward.)

10 THE CLERK: #195, Brian Moak.

11 (WHEREUPON, Brian Moak, a white male, came
12 forward.)

13 THE CLERK: #224, Brandi Robbins.

14 (WHEREUPON, Brandi Robbins, a black female, came
15 forward.)

16 THE CLERK: #207, Antwan Outen.

17 (WHEREUPON, Antwan Outen, a black male, came
18 forward.)

19 THE CLERK: #284, John Whitaker.

20 (WHEREUPON, John Whitaker, a white male, came
21 forward.)

22 THE CLERK: #245, Deborah Smith.

23 (WHEREUPON, Deborah Smith, a white female, came
24 forward.)

25 THE CLERK: #84, Kendra Entzminger.

1 (WHEREUPON, Kendra Entzminger, a black female, came
2 forward.)

3 THE CLERK: And the alternate is #303, Anthony
4 Farmer.

5 (WHEREUPON, Anthony Farmer, a white male, came
6 forward.)

7 THE COURT: Now, gentlemen, are there any matters
8 that need to be taken up at this time in connection with
9 the selection of this jury?

10 Anything from the Plaintiff?

11 MR. JEFFERIES: None, Your Honor.

12 THE COURT: The Defendant?

13 MR. DELANEY: No, sir, Your Honor.

14 THE COURT: All right. Thank you both.

15 Remaining members of the panel, I'll take this
16 opportunity to thank you for your participation in this
17 patriotic process. You see a government of the people, by
18 the people, and for the people cannot exist without the
19 people. That means your participation as jurors and all
20 you fine people who are here in Richland County, even if
21 you are a sports writer.

22 So I thank you all so very much.

23 If you'll go back downstairs to the jury assembly
24 room to await further instructions. Good luck to each and
25 every one of you.

1 (WHEREUPON, the remaining jury panel members exited
2 the courtroom.)

3 THE COURT: Now, members of this jury, I'm going to
4 ask that you not discuss this case in any way, shape, or
5 form until the very end of this case. That is, once
6 you've heard the Plaintiff's side, the Defendant's side,
7 once you've heard the arguments from the lawyers involved,
8 and once I tell you what the law is that applies to this
9 particular wreck case.

10 Until then, it would be unfair for you to begin
11 engaging in any preliminary discussions about the merits
12 of this case. It would be unfair to either side. The
13 time for that is to wait until the very end when you know
14 everything and when I send you back to the jury room to
15 deliberate. That's the time you discuss it.

16 And once you go back to the jury room, you can't talk
17 to anybody else about it. The main thing is don't talk
18 about this case in any way, shape, or form.

19 Keep your badges on through the course of your lunch
20 break so that no one inadvertently comes up and says
21 something to you as a juror you shouldn't hear.

22 And with that, I'll ask that you be back at 2:00.
23 We'll start at 2:00, try to, at least. And the bailiffs
24 will show you the jury room that we'll be using. And when
25 you come back from lunch, don't come back through the

1 courtroom, but go around through -- to the jury room as
2 the bailiffs will instruct you to.

3 So I hope you have a pleasant lunch. And we'll see
4 you all at 2:00.

5 Thank you so very much.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 12:40 p.m.)

8 THE COURT: I know both sides have some motions. Do
9 we have time to hear them now? We're going to make time.
10 Give me a short break and I'll come back and hear them. I
11 think both of y'all had motions in limine, or something.

12 MR. BAYNE: They should be short, Judge.

13 (WHEREUPON, a break was taken.)

14 THE COURT: Mr. Bayne, I thought I had your motions.
15 Do you have the motions? Have you filed it yet?

16 MR. BAYNE: I -- I did. I don't know if they've been
17 filed. I did submit them to the Court.

18 MR. ANASTOPOULO: I have a printed copy.

19 THE COURT: Let me take a look it. I have theirs. I
20 thought I had yours, but I don't see it off the top of my
21 head.

22 And y'all have exchanged them?

23 MR. BAYNE: Yes. I believe they were filed in -- the
24 first time this was up.

25 THE COURT: All right. Who wants to go first? I

1 know you both have motions.

2 MR. ANASTOPOULO: We'll begin, Your Honor, if that's
3 okay.

4 THE COURT: All right.

5 MR. ANASTOPOULO: So the first one --

6 THE COURT: You know, I do have difficulty hearing,
7 it appears to me. I don't think I do, but a lot of people
8 claim it. And I can't hear a lot of things. So speak up.
9 Turn up the volume.

10 MR. ANASTOPOULO: Yes, Your Honor.

11 THE COURT: You may proceed, Mr. Anastopoulos.

12 PRE-TRIAL MOTIONS

13 MR. ANASTOPOULO: So the first one relates to the
14 filing of this motion, which relates to any reference to
15 the existence of filing of this motion in limine, or the
16 fact that the Plaintiff has sought to exclude evidence, or
17 any ruling on the motion in limine by the Court.

18 Obviously, these are matters for the jury not to
19 decide on. These are matters --

20 THE COURT: What are you talking about, sir?

21 MR. ANASTOPOULO: Basically --

22 THE COURT: Because I --

23 MR. ANASTOPOULO: -- there is to be no mention of the
24 fact that we -- we argued these motions in limine --

25 THE COURT: Who's going to do that? Please, that's a

1 waste of time. I've never seen anybody do that.

2 MR. ANASTOPOULO: Right.

3 THE COURT: So that's -- if that's -- I don't think
4 it needs to be a motion.

5 MR. BAYNE: No objection.

6 THE COURT: Now, this is the deal. If any of y'all
7 cross the line, I won't hesitate to hold you responsible.
8 I don't care what your motions are. And, technically,
9 you've got to make them again anyway.

10 MR. ANASTOPOULO: Yes, Your Honor.

11 THE COURT: What's your next one?

12 MR. ANASTOPOULO: The next one is for -- relates to
13 law firm advertising. So that would be any reference or
14 suggestion that --

15 THE COURT: All right. What's -- what's the value of
16 that --

17 MR. ANASTOPOULO: Well, Your Honor, this --

18 THE COURT: No. Stop. Now, you stop.

19 Don't you advertise?

20 MR. ANASTOPOULO: Yes.

21 THE COURT: All right. So I don't know if they want
22 to or not.

23 But go ahead, Mr. Delaney.

24 MR. DELANEY: No, sir. I -- we're not -- we don't
25 intend to do that --

1 THE COURT: Okay. They don't intend to do that.

2 MR. ANASTOPOULO: Okay.

3 THE COURT: You know, this is -- this is a wreck
4 case.

5 MR. DELANEY: Yes, sir.

6 THE COURT: All right. So that's the second one.
7 What's the third one?

8 MR. ANASTOPOULO: The third one is for the
9 Plaintiff's bar. And this concerns any reference or
10 suggestion by Defense Counsel directly or indirectly
11 attacking the American court system, Plaintiff's
12 attorneys --

13 THE COURT: You're going to read it. I can read it.
14 What is this motion --

15 MR. ANASTOPOULO: So -- so this is, essentially, they
16 get up here and they say, Mr. Jones filed this lawsuit,
17 everyone's filing a lawsuit. There's lawsuits everywhere
18 in the --

19 THE COURT: Well, did he file it?

20 MR. ANASTOPOULO: He did file it.

21 THE COURT: What's your position? You know, I'm not
22 going to keep them from saying that your client filed a
23 lawsuit.

24 MR. DELANEY: Your Honor, I -- I'm not sure exactly
25 what --

1 THE COURT: I don't either.

2 MR. ANASTOPOULO: Well --

3 MR. DELANEY: But I --

4 THE COURT: Wait just a minute, son.
5 Go ahead.

6 MR. DELANEY: I don't intend to disparage the
7 Plaintiff's bar or anything along those --

8 THE COURT: This is a trial. And it'll be decided
9 who wins or loses.

10 Mr. DELANEY: Yes, sir. That's --

11 THE COURT: All right. What's your fourth one?

12 MR. ANASTOPOULO: And then the fourth one is for
13 excluding any testimony regarding the availability of
14 witnesses in general. So the fact that the Plaintiff may
15 have failed to call any witnesses -- or may have failed to
16 call any witness equally --

17 THE COURT: Because even in a civil case, it comes
18 down to what you present and what you don't present. I
19 don't understand that motion.

20 MR. ANASTOPOULO: Well, so, Your Honor, this really
21 turns on -- with doctors. You know, and it, generally,
22 comes up during closing when Defense Counsel will get up
23 and argue, you know, the Plaintiff has the burden --

24 THE COURT: Well, don't you have the burden? Can't
25 you call any doctor you want?

1 MR. ANASTOPOULO: Well, Your Honor, it really turns
2 on to the issue of making that a -- part of the evidence.
3 Obviously, the only argument that can be made during
4 closing is what's in evidence.

5 THE COURT: All right.

6 MR. ANASTOPOULO: And so you would -- you would,
7 essentially, have to make the fact that this witness
8 wasn't called a part of the evidence, which --

9 THE COURT: I disagree. Your motion is denied.
10 I don't think they're going to do it any way.
11 What's your position on this?

12 MR. ANASTOPOULO: Well --

13 THE COURT: Okay. What's -- go ahead.

14 MR. BAYNE: Judge, the only -- the extent that that
15 would get into would be dealing with burden of proof and
16 dealing with if you need evidence, then they have the
17 burden of bringing it to you, which is the law to be
18 charged to the jury in this case.

19 THE COURT: I -- go ahead.

20 MR. BAYNE: No. That's it. That's it, Judge.

21 THE COURT: All right. Yes, sir.

22 MR. JEFFERIES: Your Honor, if I may just shed some
23 light --

24 THE COURT: Yes. Sure.

25 MR. JEFFERIES: It's a little more narrow. It really

1 relates to equally available witnesses. So we agree, we
2 have --

3 THE COURT: I'm not going to limit the arguments on
4 anything. If it's a fact -- y'all are stretching this.
5 Okay. But go ahead. You can stretch it.

6 First of all, until the matter comes up -- even if I
7 rule on it, I can change my mind when the witness comes
8 up. If there's an area that you're concerned about, we'll
9 stop, send the jury out, and do it in camera. I'll have a
10 full record to base my decision on.

11 MR. JEFFERIES: Understood, Your Honor.

12 Thank you, Your Honor.

13 THE COURT: Give me your position, Mr. Bayne.

14 MR. BAYNE: As to our motions or --

15 THE COURT: No. As to the last one.

16 MR. BAYNE: Judge, just, again, I think the Plaintiff
17 has the burden or proof. We're entitled to address their
18 burden and who they should call, if anybody, to address
19 that burden. And we'll keep it to that.

20 THE COURT: I deny it. It's not going to be an issue
21 in this case.

22 Go ahead, Mr. Bayne, with your -- your motions.

23 MR. BAYNE: Yes, Judge.

24 And we have our motions. And there's a couple of
25 them that are just common sense. So when I get to that,

1 I'll just address it very briefly dealing with insurance,
2 and things like that so that they're on the record.

3 The main one is, number one, which is to come up
4 again by virtue of the Plaintiff's pre-trial brief and
5 something we addressed in pre-trial earlier. And that is
6 today, the Plaintiff has, again, identified a Ms. Lettie
7 Jackson and a Ms. Treacy Randolph.

8 Judge Couch -- as we discussed, there's been four
9 different orders from two different judges, Judge Benjamin
10 and Judge Couch, dealing with their discovery violations
11 and their refusal to identify witnesses. Judge Couch, on
12 July 24th, issued a final order on their Rule 59. So he
13 barred the witnesses.

14 They filed a Rule 59, and he denied it again. In
15 his -- in that, he went through what occurred at this
16 hearing and -- and what was dealing with that was that
17 there are witnesses that they purport to have that they
18 refuse to identify to us. And Judge Couch said --

19 THE COURT: What witnesses were identified before
20 Judge Couch that he isn't going to allow to testify?

21 MR. BAYNE: What his order indicates is any witness
22 that was not disclosed by June 1st is barred.

23 THE COURT: So any of the witnesses that have been
24 disclosed after that date?

25 MR. BAYNE: Yes.

1 THE COURT: All right.

2 MR. BAYNE: And those -- that is Lettie Jackson and
3 Treacy Randolph were not identified for the first time
4 until July 5th. On that day, they simply provided their
5 names. We asked for information about them. They refused
6 to respond. We showed up on Monday for trial. I asked
7 Mr. Jefferies, Are you going to tell us who these people
8 are?

9 He said, No, I'm not.

10 We didn't hear anything else about them again until
11 today when we get the pre-trial --

12 THE COURT: Well, I thought you said Judge Couch had
13 already ruled on --

14 MR. BAYNE: He had. He had. And that was going to
15 be before Judge Lee.

16 THE COURT: What about that, Mr. Jefferies? If Judge
17 Couch said you can't do it, I can't undo what he's
18 decided.

19 MR. JEFFERIES: Your Honor, I think that Your Honor
20 can for this reason. Judge --

21 THE COURT: Well -- go ahead. You tell me why I can.
22 Have you ever heard of Rule 4?

23 MR. JEFFERIES: Yes, Your Honor.

24 THE COURT: All right. Go ahead.

25 MR. JEFFERIES: However, Judge Couch has ordered --

1 you're not overruling Judge Couch's order. Judge Couch's
2 order is the nature of a motion in limine, same as Your
3 Honor's order here --

4 THE COURT: Well, did Judge Couch exclude any
5 additional witnesses after a certain date? Yes or no?

6 MR. JEFFERIES: Yes, he did.

7 THE COURT: Well, they're excluded then, aren't they?

8 MR. JEFFERIES: He --

9 THE COURT: Wait. Let me finish. He said they were
10 to be provided -- they were not disclosed prior to --
11 prior to Judge Couch's order; is that true?

12 MR. JEFFERIES: If I may correct what Mr. Bayne said.

13 First off, we did not refuse to identify them. We
14 identified them on July --

15 THE COURT: Did you meet the deadline imposed by
16 Judge Couch? Yes or no?

17 MR. JEFFERIES: Yes, Your Honor.

18 Can I explain how? Because that's important.

19 THE COURT: Well, both of y'all can't be right.

20 MR. JEFFERIES: We --

21 THE COURT: No. Let's start with this. Can we agree
22 both of y'all can't be right?

23 MR. JEFFERIES: I agree, Your Honor.

24 THE COURT: All right. Go ahead.

25 MR. JEFFERIES: Judge Couch's order was entered on

1 July 3rd.

2 THE COURT: Pull Judge Couch's order and tell me the
3 language that you're relying on that allows the -- these
4 witnesses to testify -- that they may not be excluded,
5 according to Mr. Bayne.

6 MR. JEFFERIES: I'm only going on the date of the
7 entry of the order. And I think we all agree it was
8 entered on July 3rd.

9 THE COURT: Let me help y'all out. I'm not here to
10 quibble with anybody. I'm not here to negotiate with
11 anybody. I'm here to make decisions. If I don't like
12 your argument, I'm just going to rule against you. I
13 don't care.

14 But my question to you is simple, did you disclose
15 these names before Judge Couch's order or not? Yes or no?

16 MR. JEFFERIES: Yes, Your Honor. We disclosed them
17 on -- pardon me --

18 THE COURT: All right. Stop --

19 MR. JEFFERIES: We --

20 THE COURT: Wait. No. You stop. Stop, please.

21 Mr. Bayne, now both of y'all can't be right. Who's
22 telling me the truth?

23 MR. BAYNE: Judge, Judge Couch issued his ruling from
24 the bench on May 7th to disclose by June 1st. They did
25 not do that. He issued a written --

1 THE COURT: Wait. Stop right there.

2 Is that so?

3 MR. JEFFERIES: That is correct.

4 THE COURT: All right. Go ahead.

5 MR. BAYNE: He then issued a written order
6 memorializing that on July 3rd. They did not disclose by
7 July 3rd. That is undisputed.

8 He then issued a 59 -- or the denial of 59 on July
9 24th. And that order memorializes the original order.
10 And it says, Any witness not identified by June 1st is
11 barred from trial.

12 And Mr. Jefferies agreed with that at the hearing.
13 It's in -- it's in the order by Judge Couch. So there
14 were no witnesses -- these witnesses that they're seeking
15 to call were not identified by the June 1st deadline as
16 contained in a bench ruling and two orders from Judge
17 Couch.

18 THE COURT: All right. Yes, sir.

19 MR. JEFFERIES: That is correct. The order was
20 memorialized on July 3rd. We disclosed the witnesses on
21 July 5th, and not just the name, but the name and address
22 of Treacy Randolph, which is what we had at the time.

23 We did not disclose the address of Lettie Jackson
24 because we didn't know. We still do not know the
25 address --

1 THE COURT: It doesn't matter whether you knew it or
2 not. He had a cutoff date that you didn't meet,
3 apparently.

4 MR. JEFFERIES: That's correct, Your Honor.

5 THE COURT: All right. The motion is granted. They
6 can't testify.

7 Let's move on to the next thing.

8 MR. BAYNE: Judge, motion number two is something
9 we'll just take up during the course of trial. And that
10 deals with testimony about medical expertise. If that
11 becomes an issue, we'll deal with that.

12 The third motion deals simply with the exclusion of
13 any medical records or bills that have not been produced
14 up to this point of discovery.

15 THE COURT: And what are those?

16 MR. BAYNE: We provided -- what's been provided to us
17 is Richland County EMS; Palmetto Health Richland Hospital
18 through June 29th, 2017; Dr. Hal Hunter [phonetic] Louis
19 through July 17th 2017; Eau Clair Cooperative Health
20 through July 27th, 2017, and the medical bills related to
21 that. We have not received any records following -- the
22 last date of record we received was July 27th.

23 THE COURT: But could you have gotten it from other
24 sources?

25 MR. BAYNE: Well, this was --

1 THE COURT: Did you subpoena the records --

2 MR. BAYNE: We did send subpoenas. And these are the
3 records we have. In his deposition, there was a
4 discussion of maybe he's seeing somebody else, maybe there
5 are more bills that they might --

6 THE COURT: But this is something you don't know?

7 MR. BAYNE: Something we don't know. This has never
8 been --

9 THE COURT: So you don't want them to be able to
10 produce any medical records that have not been produced?

11 MR. BAYNE: Correct.

12 THE COURT: Mr. Jefferies, what's your position?

13 MR. JEFFERIES: We agree. We would ask that that
14 simply go both ways. We have produced -- and I believe
15 Mr. Bayne can confirm -- \$244,000 worth of medical bills.
16 That's all we intend to produce --

17 THE COURT: Okay. First of all, I don't have a dog
18 in this fight. I really don't care one way or another.
19 But I have to make a decision and I'm trying to make a
20 fair one, but you're making it more difficult for me
21 sometimes.

22 So is there a problem with medical records or not?
23 Yes or no? Based on what you've got, \$24,000 --

24 MR. JEFFERIES: \$244,000 --

25 MR. BAYNE: Roughly that. As long as that's what

1 we're talking about, we're good.

2 THE COURT: All right. Fine. I can't predict what's
3 going to happen, what's going to fly out of some witnesses
4 mouth. If you object, I'll take it up and rule.

5 What's your next motion?

6 MR. BAYNE: Judge, the final two are just for the
7 record. And that is mention of settlement negotiations,
8 insurance, and summary judgment, which I know we don't do.

9 THE COURT: Everybody knows not to do that.

10 MR. BAYNE: Yes, sir.

11 That's all we have.

12 THE COURT: All right. Yes, sir, Mr. Jefferies.

13 MR. JEFFERIES: Just one comment on the medical
14 bills, Your Honor. We would ask that that rule simply
15 apply to both ways --

16 THE COURT: Well, of course --

17 MR. JEFFERIES: The Defense hasn't disclosed --

18 THE COURT: If they have some medical records that
19 they -- let's say if they have something in their
20 possession that you think they should disclose to you,
21 I'll take it up at that time. Right now, I don't know of
22 anything.

23 In the old days, the Defense lawyers always got the
24 Plaintiff's medical records from the Plaintiff. I don't
25 know whether they still do that or not. At least, that's

1 how it used to work when I came along.

2 Anything further?

3 MR. JEFFERIES: No, Your Honor.

4 MR. BAYNE: Nothing, Your Honor.

5 THE COURT: All right. Look, this is a wreck case.

6 And nobody is going to die, or go to prison, or go to
7 hell, or anything like that. Let's just do the best job
8 we can and get it over with. If you can't settle it, then
9 we have 12 jurors.

10 Y'all have a pleasant lunch. We'll see you back at
11 2:00.

12 Thank you all very much.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: Gentlemen, any matters we need to take up
15 before I bring the jury in? Is there any issue about how
16 I decided the pre-trial motions?

17 MR. DELANEY: Not from the Defendant, Your Honor.

18 MR. JEFFERIES: Not from the Plaintiff, Your Honor.

19 Your Honor, this -- this printer is just finishing
20 printing some pages. I don't know how to make it stop.

21 THE COURT: What now?

22 MR. JEFFERIES: This printer is just finishing
23 printing some pages. I know it's making a little noise.
24 It ought to stop in a second. I don't know how to make it
25 stop.

1 THE COURT: We'll wait on you.

2 MR. JEFFERIES: I apologize.

3 THE COURT: Tell the jury I'll call them in in just a
4 few moments. It'll be a few moments. Just tell them I'll
5 call them in in a few moments.

6 THE BAILIFF: Yes, Your Honor.

7 THE COURT: It's all right. Do what you need to do.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Bring the jury in.

10 MR. DELANEY: Your Honor, before they come in, do you
11 have a preference about whether we stand when they come in
12 or do you want us to remain seated?

13 THE COURT: It's an individual choice.

14 MR. DELANEY: Okay. I just wanted to make sure --

15 THE COURT: I always stood. But I don't care what
16 you do. I don't think you have to, but --

17 MR. DELANEY: All right.

18 THE COURT: But that was the -- it's up to you if you
19 want to stand. Just don't lay down on the floor.

20 (WHEREUPON, the jury came into open court at
21 approximately 2:23 p.m.)

22 THE BAILIFF: Your Honor, the jury is present.

23 INTRODUCTORY REMARKS

24 THE COURT: Welcome back, members of the jury.

25 I'm going to tell you what we refer to as a

1 preliminary charge, give you an outline of how things
2 should move forward.

3 Now, ladies and gentlemen of the jury, before the
4 case -- before the case begins, I'd like to tell you a
5 little bit about how matters will proceed.

6 The first thing that'll happen in this case is that
7 the attorney for the Plaintiff, that's Mr. Jefferies, who
8 brought this lawsuit -- his attorney, Mr. Jefferies, will
9 make what is known as an opening statement followed by a
10 similar statement by, I assume, Mr. Bayne or Mr. Delaney
11 on behalf of the Defendant.

12 Now, members of the jury, these opening statements
13 are not arguments. The arguments will come at the
14 conclusion of this case. The purpose of opening
15 statements is for each party to outline his or her claims
16 and the evidence which they intend to present in support
17 of these claims.

18 Following opening statements, each side will present
19 its evidence, once again, with the Plaintiff going first.
20 Evidence may take many forms, members of the jury. It may
21 be testimony. We'll have people live testifying from that
22 chair over there by the microphone, or documents,
23 photographs, or medical bills, or other similar pieces of
24 evidence.

25 You should pay close attention to all the evidence

1 which is presented by each party. You, the jury, are the
2 sole finders of the facts in the case. And no one else
3 will be permitted to weigh the evidence and render a
4 verdict based upon the evidence, what you hear here today.

5 After the evidence has been presented, the attorneys
6 will make their closing arguments. Unlike these opening
7 statements you're about to hear, theses final remarks will
8 be true arguments. That is at the end. Each side will
9 emphasize certain portions of the evidence and try
10 to persuade you to agree with their version of the
11 facts.

12 Now, after the arguments have finished, I'll explain
13 to you the law that applies to this case. You'll then
14 retire to the jury room to consider the facts and the law.
15 And once you've done so, you will return with a verdict --
16 with a verdict in favor of one side or the other.

17 Now, I'd like to make a few additional comments,
18 members of the jury. First, as I mentioned earlier,
19 although I am not -- I am the only person who can tell you
20 what the law is, you are the only ones who can determine
21 the facts.

22 Now, I do not have the right to indicate how I may
23 feel about the evidence presented. And throughout this
24 trial, my intention will be to act impartially toward each
25 party, the Plaintiff and the Defendant.

1 Second, now, from time to time, an attorney will
2 make -- will object to some bit of evidence the other side
3 is seeking to present. As in sports, business, or any
4 other structural activity, there are certain rules that
5 both sides must obey in the presentation of evidence.
6 These rules have a definite purpose. They ensure that the
7 information you receive is the most trustworthy and
8 reliable available.

9 An objection is a procedure we use for an attorney to
10 call a possible violation of the rules of evidence to my
11 attention. And for this reason, you should not hold an
12 attorney's objection against his client, nor you should --
13 nor should you conclude how I rule on an objection that I
14 favor one side or the other.

15 Members of the jury panel, my interest in this case
16 is that I have no interest in this case, except to try to
17 be fair and impartial to both sides, which at the
18 conclusion is the same interest you will have, to be fair
19 and just to both sides, at least, attempt to.

20 If somebody objects and I say "sustained," that means
21 I agree with the objection and the witness won't be
22 allowed to answer that question. If there is an objection
23 and I say "overruled," that means I disagree with that
24 objection and the witness should be permitted to answer
25 that question.

1 Now, I don't want you to conclude, like I said
2 earlier, one way or the other. It's just what I have to
3 do. It's my job. It doesn't mean I favor one side or the
4 other. But if you're worried about that, you can't take
5 that into account is what I'm trying to say.

6 And, finally, I ask that you pay the closest
7 attention possible to the evidence presented to you. I
8 will ask that you not take notes. For if the note taker
9 makes an error, his notes can be detrimental, not helpful
10 during the course of your deliberations.

11 So the time honored system is that you listen
12 carefully as an individual and collectively, then you can
13 render a fair and just verdict for both sides. That's the
14 time tested system that we use in this -- in this
15 courtroom. And I'm sure you each understand and will
16 follow that.

17 Now, with that in mind, we'll hear opening statements
18 on behalf of the parties. We'll first hear from
19 Mr. Anastopoulo or Mr. Jefferies.

20 MR. JEFFERIES: Mr. Jefferies, yes.

21 THE CLERK: Judge, I --

22 THE COURT: Oh, I'm sorry. Yeah. You need to swear
23 them. I should have done that already.

24 THE CLERK: Will you stand up, please? Will you,
25 please, raise your right hand?

1 (WHEREUPON, the jury was sworn at approximately
2 2:24 p.m.)

3 THE CLERK: Thank you.
4 And have a seat.

5 THE COURT: Now, members of the jury, everything I
6 just told you, you've got to realize now -- I'll back it
7 up a little bit. I should have done it when you were
8 under oath.

9 Now, we'll have Mr. Jefferies followed by
10 Mr. Delaney.

11 Mr. Jefferies, you may proceed, sir.

12 MR. JEFFERIES: Thank you, Your Honor.
13 May it please the Court.

14 THE COURT: Yes, sir.

15 OPENING STATEMENTS

16 MR. JEFFERIES: Y'all, 60,000 people. 60,000 people
17 get injured in car wrecks every year in South Carolina.
18 That's 160 people a day. One person injured every nine
19 minutes. And it keeps happening all across our state.
20 And it's particularly bad here in Richland County.

21 You know, there's 46 counties in South Carolina, only
22 five have more car wrecks than Richland does. And y'all
23 saw that this morning during jury selection when
24 practically everyone stood up and answered His Honor's
25 question about a car wreck.

1 With those kind of numbers -- and it's 2:00 in the
2 afternoon today, already 40 people would have been hurt.
3 Another 30 will get hurt before we go home. And it gets
4 worse every year. Every year, the number of people
5 injured in car wrecks in South Carolina goes up. It is a
6 major problem.

7 And a leading cause of that problem is driver's that
8 are just not paying attention. Now, fortunately, y'all
9 can do something about that. And that's why we have
10 rules. We have rules to prevent people from getting hurt.
11 And we all have the power to make sure that those rules
12 mean something.

13 All right. So what am I talking about? Rules like a
14 driver must never needlessly endanger others on the
15 highway. A driver must always keep a proper lookout to
16 see what's out there on the road, people and things that
17 are on the road. A driver who has a license restriction
18 requiring them to wear glasses has to wear their glasses
19 to drive.

20 And when a driver breaks those rules, when a driver
21 fails to make -- fails to keep a lookout, fails to see
22 what's on the road, doesn't wear their glasses, when a
23 driver breaks those rules and innocent people get hurt,
24 well, then that careless driver is responsible for that
25 harm.

1 Let's talk a second about what happened in this case.
2 Come back with me to July of 2016. There's a woman
3 renewing her driver's license. Her eyesight isn't good
4 enough. So she has a license restriction. She has to
5 wear glasses to drive. Now, she gets her license. And
6 right there on the back of it, it says, Corrective lens
7 restriction.

8 Fast forward almost a year, June 7, 2017. That same
9 woman goes out and gets in her car. She fires it up. She
10 heads out. She's not wearing her glasses.

11 A few miles down the road, she doesn't see the left
12 turn signal the bicyclist is giving. Other cars see it.
13 Other cars slow down. A car coming toward the bicyclist
14 sees that bicyclist signaling for the left turn, slows
15 down to let him turn in front.

16 But the woman without her glasses doesn't, and bam.
17 The bicyclist hits the hood, buckles it in, up across the
18 hood onto the wind screen, breaks the windshield, dents
19 the roof. And then his body is propelled out of the
20 roadway and into a ditch. And just like that, that
21 bicyclist's life is changed forever.

22 Y'all the bicyclist is Harland Jones. He's seated
23 right over here. The woman without her glasses who hit
24 him is the Defendant, Karen Robinson, at the far end of
25 the table.

1 As the Judge said, my name's Lane Jefferies. And I,
2 along with Gus Anastopoulo, represent Harland Jones in
3 this case. And we were forced to bring this action
4 because Ms. Robinson chose to violate the safety rule that
5 says you've got to keep a proper lookout, see what's out
6 there to be seen. She chose to violate the safety rule
7 that says that if you've got to wear glasses to drive,
8 well, you've got to wear glasses to drive. And when she
9 made those choices, she made Harland Jones her victim.

10 Now, we know that careless driving is one of the
11 leading causes of injuries and fatalities on South
12 Carolina's roads. Again, y'all saw that this morning.
13 And that's why we have these safety rules.

14 That's why our safety rules require that a driver
15 remain alert and oriented at all times while operating a
16 vehicle. That's why the safety rules require that you
17 keep a good lookout to see what's out there on the road.
18 That's why our safety rules require that a driver who has
19 to wear glasses to see, actually, wears them. Because
20 after all, thousands of pounds of steel running down the
21 road can cause a huge amount of damage, and especially to
22 a bicyclist.

23 But instead -- instead of following the simple safety
24 rule that says keep a good lookout, instead of following
25 the -- just the common sense of wearing your glasses if

1 you have to wear them to see, Ms. Robinson chose to go out
2 on the road with other people knowing that she didn't see
3 well enough. And when she did that, she endangered
4 everybody in her path. Had she just followed this simple
5 common sense safety rule, none of us would need to be here
6 today. Had she worn her glasses, none of this would have
7 happened.

8 You know, before we came to trial -- and y'all are
9 coming into this process toward the end. This lawsuit was
10 filed a while back. A lot of work gets done between now
11 and then. Before we came into trial, one of the things we
12 had to figure out was if there was any fault or possible
13 explanation for how this wreck happened. Because after
14 all, if Ms. Robinson didn't do anything wrong, well, then
15 it wouldn't be right for us to come in here and ask her to
16 take responsibility.

17 So before we came in here, we had to figure out what
18 happened. So we asked Ms. Robinson. She said the wreck
19 is completely not her fault. We asked Mr. Jones. He
20 said, Well, it's all her fault. Who to believe; right?
21 You know, sometimes, in cases, it's really hard to tell.

22 Fortunately, in this case, we have good evidence. We
23 have good evidence to help us figure that out. And you'll
24 see and hear that evidence. All right. You'll hear from
25 Harland Jones. You'll hear from the Defendant. You'll

1 probably hear from a couple other witnesses. You will see
2 Harland Jones' medical bills. He was three weeks in the
3 hospital.

4 And here's what that evidence will show you. All
5 right. The evidence will show you that Harland Jones was
6 out riding his bike as he does most every morning. He's
7 going to tell you he went down the roadway from his house.
8 And he was headed back. And as he headed back, he put out
9 his left hand, signaled to turn left.

10 He'll tell you that a car coming the other way -- a
11 blue -- not the Defendant's car, a blue car driven by
12 somebody else saw his signal, slowed down to let him turn
13 in front of that car. He'll tell you that he remembers
14 starting his turn. And he'll tell you that the next thing
15 he remembers on earth is waking up in a cast three weeks
16 later. You'll hear that from Harland Jones.

17 The Defendant will tell you that she knows her
18 driver's license says she has to wear corrective lenses.
19 She'll tell you she doesn't think she needs to, though.
20 She only needs them for reading. She'll agree that she
21 wasn't wearing them that day. She'll tell you that she
22 never saw Harland Jones signal to turn left.

23 She's going to deny -- she's going to deny that she
24 was behind that blue car that was letting Mr. Jones turn.
25 She'll deny that she got impatient and pulled around it.

1 She'll deny that it was only when she jerked the car --
2 her car back into her own lane that she saw why the blue
3 car was slowing down. And then it was too late. She'll
4 deny all that.

5 And when we considered all this evidence, when we
6 looked at all this, that's how we determined that
7 Ms. Robinson was a hundred percent responsible for this
8 wreck. But because she refused to accept responsibility,
9 because she refused to pay full and fair compensation, we
10 had to have this trial.

11 At the end of this case, Judge Manning is going to
12 send y'all back into the jury room. And you're going to
13 have a verdict form. And one of the things it's going to
14 ask you is how much you will allow on the verdict. And to
15 figure that out, there's only one thing that y'all are
16 allowed to consider. It's the level of harms and losses
17 that you'll see here in this courtroom. That's it. And
18 Judge Manning will tell you it's the law. And Mr. Bayne
19 and Mr. Delaney will agree. It's harms and losses only.

20 You know, the way I like to think about that is,
21 picture -- picture a box. And in that box go the harms
22 and losses. All right. And then imagine everything else
23 that somebody might consider and put all that stuff
24 outside the box.

25 So, for example, sympathy -- sympathy is outside the

1 box. You can't raise or lower your verdict because you
2 feel sympathy for one side or the other. It's outside the
3 box.

4 Now, you will probably feel sympathy. That could
5 happen. That's natural. That's human. But you can't
6 consider sympathy in reaching your verdict. You can't
7 consider whether the proper verdict might raise the prices
8 of things we all need to buy in order to drive, or if the
9 right amount of money seems like too much for one person.
10 All that stuff, it's all outside the box. Inside, it's
11 harms and losses, harms and losses only.

12 So it's our job, Mr. Anastopoulo's job and my job --
13 it's our job to show you those harms and losses, not to
14 get your sympathy. So that at the end of the case, you'll
15 have the information you need to determine how much it'll
16 take to fix, and to help, and to make up for the harms and
17 losses inside that box.

18 All right. So here's what you'll see about those
19 harms and losses. You're going to hear -- you're going to
20 hear that the force of this wreck was so strong that it
21 disabled the Defendant's car leaving it in the roadway.

22 You're going to hear about Harland buckling up the
23 hood, smashing the windshield, hitting the roof. You're
24 going to hear about him landing in the ditch. And you're
25 going to see those medical bills from the three weeks he

1 spent in the hospital. He's going to tell you about his
2 broken leg, and his broken ankle, and his separated
3 tailbone, his burst bladder. He's going to tell you about
4 those things. He's going to tell you about the pain that
5 continues. And, you know, those are just the physical
6 harms; right? The mental ones are worse.

7 The mental ones he's going to tell you about --
8 how -- how, now, he's confused a lot of the time. His
9 memory's not good a lot of the time, that he has to live
10 with that.

11 And he's going to tell you about how he recently, in
12 January of this year, lost his wife to cancer. Her name
13 was Linda. Harland called her "pretty lady." That was
14 his nickname for her around the house, pretty lady.

15 And what he's going to tell you is that all that pain
16 and those broken bones, that's nothing compared to this,
17 compared to the way he feels about not being there for his
18 pretty lady during the last year of her life. When she
19 needed him the most, he felt like he couldn't be there for
20 her. Worse, he was a burden on her because of his
21 injuries.

22 And then you're going to hear the Defendant tell you
23 that she, actually, sued Harland, the guy she hit. She
24 sued Harland for damaging her car. So those are the harms
25 and losses. And that's only some of them. You're going

1 to hear about more throughout this case.

2 And we're all here -- we're all here in this room,
3 really, to do three things. We're here to determine what
4 it'll take to fix, and to help, and to make up for those
5 harms and losses that you're going to see.

6 All right. So what do I mean by that? So some
7 things are fixable; right? There are certain things you
8 can fix with your verdict. Medical care costs. A verdict
9 for money damages for medical care costs fixes those
10 financial losses. If you allow money in your verdict for
11 Harland's medical bills, then those bills go away.

12 And you'll see those bills. And you'll get to take
13 them back into the jury room with you as evidence.
14 They're a part of the harms and losses that are inside
15 that box. And they're a part that you can fix with your
16 verdict. But they're really the smallest part of the
17 harms and losses. Because all that goes to somebody else.

18 The second thing we're here to do is for you to
19 determine what it'll take to help those things that can be
20 helped, that can't be fixed entirely. So, for example,
21 money alone will not automatically make Harland's injuries
22 heal. All right. But it can help. It can help make sure
23 he gets the best ongoing care to cure some of these things
24 or help to make sure that he gets the best ongoing care to
25 manage those symptoms into the future, help get him some

1 assistance for things he can't do around the house. So
2 that can help.

3 And then, finally, we're here for y'all to determine
4 how much it'll take to match the levels of the worst harms
5 and losses in this case. Okay. Those are the things that
6 can't be fixed and can't even be helped. It's things like
7 pain, humiliation, fear, embarrassment, the pain a husband
8 knows by not being there in the final months and days of
9 his wife's life the way he wanted to be.

10 And what you'll come to see is that those types of
11 harms and losses are the biggest part of what's inside
12 that box. And you'll know that that's true. Because at
13 the end of the case when Judge Manning instructs you on
14 the law, he is going to spend the greatest amount of time
15 talking about those types of harms and losses, those types
16 that can't be fixed and can't even be helped.

17 And he's going to do that because it's very important
18 that you understand them. And it's very important that
19 you understand how to calculate them. And we'll show you
20 some ways to do that. Because, yes, you can put a money
21 figure value on it.

22 Harland's a great guy. Harland, before this wreck,
23 he'll tell you, he was doing all right. Harland was doing
24 all right. Life wasn't perfect. But he had his pretty
25 lady. He was active in the church, part of a traveling

1 ministry. He was doing okay.

2 And the Defendant came along and in an instant
3 absolutely changed all of that. What you're going to see
4 during the course of this afternoon and maybe a little bit
5 tomorrow, you're going to see the evidence.

6 And what you're going to realize is that the evidence
7 you see, the facts and the truths that you see in this
8 courtroom make this the kind of case where I'm going to
9 have to come back in here at the end of the case and I'm
10 going to have to ask you for a verdict that is so large
11 that it will shock people who weren't in here, who didn't
12 see the harms and the losses that the Defendant caused.

13 All right. But y'all will have seen it. Y'all will
14 know what kind of case this is because you'll have seen
15 that evidence. You will have seen what happened to
16 Harland Jones' life because of the Defendant. And so
17 after seeing that, you'll understand why I'm going to come
18 back and ask you for a very significant verdict.

19 I appreciate y'all's time and attention.

20 Thank you.

21 THE COURT: Mr. Delaney.

22 MR. DELANEY: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 MR. DELANEY: Ladies and gentlemen, thank you for
25 being here.

1 I know that y'all have been here for a long time
2 today and were here yesterday for a while. My name is
3 Andrew Delaney, and along with Brett Bayne, we represent
4 Ms. Robinson.

5 And we heard a lot from Mr. Jefferies about their
6 version of how this accident happened and -- how it
7 happened. This accident happened on Old Bluff Road.
8 Mr. Jones was traveling east on Old Bluff Road. And
9 Ms. Robinson was traveling west on Old Bluff Road.

10 You'll hear from her. You'll hear from Mr. Jones.
11 And you'll hear from another lady. You'll hear from
12 another lady named Michelle Murray, who was directly
13 behind Mr. Jones when this accident occurred. And she's
14 going to have some really important things to say about
15 this.

16 You'll hear what Ms. Murray -- excuse me,
17 Ms. Robinson says about this accident. She was traveling
18 40 miles an hour. She stayed within her lane of travel
19 the entire time. She never attempted to pass anybody,
20 never crossed over the center line, never deviated from
21 her lane of travel at any point. She saw Mr. Jones. And
22 he immediately turned left in front of her. That's what
23 happened.

24 Now, you'll see some pictures. And you'll wonder,
25 well, why was he turning left into an area that there is

1 nothing to turn into? Mr. Jones' statement is, I just
2 felt like it. I wanted to ride against traffic back to my
3 house. That's what he'll -- that's what he'll testify to.

4 But not only will Ms. Robinson say that she didn't
5 cross the center line, that she wasn't speeding, that she
6 didn't do anything to cause this accident, Mr. Jones will
7 say, I never saw Ms. Robinson before this accident. I
8 never saw her cross the center line. I never saw her
9 attempt to pass anybody. He never saw any car try to do
10 any of those maneuvers. He never saw any car try to pass
11 anybody. He never saw any car trying to do anything
12 there, other than travel straight.

13 Now, we have this mysterious blue car that
14 Mr. Jones [sic] has mentioned to you about. If you
15 believe what they have said -- and today is kind of the
16 first time I've heard this version of the events.

17 And I believe what Mr. Jefferies said was that
18 Ms. Robinson crossed over the center line, I guess, for
19 whatever reason, then veered immediately back in front of
20 the blue car and struck Mr. Jones in the left lane of
21 travel. The other car left the scene, apparently, sees
22 this accident involving Mr. Jones and doesn't stick around
23 at all, if that's what happened.

24 But there's one person who can shed the most light on
25 that, and that's Michelle Murray. Michelle Murray had

1 been traveling behind Mr. Jones for a significant
2 distance. She sees him in the roadway. She's traveling
3 behind him. She sees him put his hand up to turn left.

4 She sees Ms. Robinson traveling in the opposite
5 direction. You'll hear Ms. Murray say, I never saw
6 Ms. Robinson cross the center line. I never saw her
7 attempt to pass anybody. I didn't see her do anything but
8 travel straight. And then all of the sudden, Mr. Jones
9 turned left into the lane. And Ms. Robinson had no
10 opportunity to stop or do anything else. That's how the
11 accident happened.

12 We've heard about this duty to -- I think -- if I
13 wrote it down right, to keep a proper lookout. Well, that
14 duty goes both ways. We've all driven. I'm sure most of
15 you have driver's licenses. And you can't just turn left
16 into oncoming traffic. I think that's probably one of the
17 most prominent things that we learn when we get our
18 driver's license. When you're driving straight -- when
19 you're driving straight, you have the right of way.
20 Mr. Jones turned left in front of her. For what reason,
21 we don't know. But that's what happened. That's exactly
22 what happened.

23 Those are the three people that are going to testify
24 here today, Mr. Jones, Ms. Robinson, and Ms. Murray.
25 Those are the three witnesses. That's it. That's what

1 happened in this accident is that Mr. Jones turned left in
2 front of Ms. Robinson.

3 Now, Mr. Jefferies made a big deal about Ms. Robinson
4 filing a counter claim. And that's what she did. He
5 didn't -- she did not initiate any type of suit against
6 him. She was sued by him as she -- because she was
7 traveling straight in her lane and he pulled in front of
8 her. When that happened, she filed a claim back for her
9 property damage. That's what happened. That's the
10 motivation that she -- why she filed a counterclaim.
11 That's it. Because he filed suit against her for turning
12 left in front of -- in front of her. That's as simple as
13 it gets.

14 Ladies and gentlemen, at the end of this -- it's --
15 it's a very simple case. There really is just three
16 witnesses. Listen to them closely.

17 I'm going to ask you to return a verdict on behalf of
18 my client because she didn't do anything wrong. There
19 will be no evidence that she did anything wrong. There
20 will be no one to testify that she crossed the center
21 line, that she attempted to pass anybody. No one will
22 testify to that, not even Mr. Jones. He's been deposed.
23 He didn't say that.

24 Ladies and gentlemen, I appreciate your time. And I
25 look forward to this case with you.

1 Thank you.

2 THE COURT: All right. You may proceed. Call your
3 first witness.

4 MR. JEFFERIES: Thank you, Your Honor.

5 The Plaintiff would call Mr. Jones' caretaker, Treacy
6 Randolph.

7 MR. BAYNE: Your Honor, may we approach?

8 THE COURT: Sure.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: Members of the jury, before we begin, go
11 to the jury room. There's an issue that can only be
12 resolved in your absence. And when I do this, take no
13 special notice. It's my job.

14 Thank you very much.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 2:52 p.m.)

17 THE COURT: Yes, sir.

18 MR. BAYNE: Judge, I didn't think we had anything to
19 take up. I thought your ruling earlier was very, very
20 clear. They are attempting to call one of the witnesses
21 that you said was excluded because --

22 THE COURT: How about that, Mr. Jefferies?

23 Everybody said they understood my ruling clearly. I
24 asked was there anything to take up before the jury came
25 in. The first thing you do -- and I've seen lawyers do

1 this before -- is call somebody that's been excluded.

2 Is that true?

3 MR. JEFFERIES: It -- Your Honor recounts the facts
4 exactly.

5 THE COURT: What now?

6 MR. JEFFERIES: Your Honor is correct. What Your
7 Honor said earlier -- and we believe this is a correct
8 statement of the law --

9 THE COURT: Well, you send the jury out before you
10 proffer. Do you understand that?

11 You can't call them in front of the jury. If you
12 want to proffer this testimony, you may do so. But you
13 can't do it in the presence of the jury.

14 You understand that, don't you?

15 MR. JEFFERIES: I do, Your Honor --

16 THE COURT: Well, why would you call a witness that
17 I've excluded in front of these jurors?

18 MR. JEFFERIES: Your Honor, my --

19 THE COURT: Because you didn't pay attention to my
20 ruling? You object to it? You don't like it? I don't
21 understand, I really don't.

22 MR. JEFFERIES: May I -- may I explain, Your Honor?

23 THE COURT: Yeah. You better.

24 MR. JEFFERIES: Okay. Your Honor instructed us that
25 the motions in limine were not final until raised in --

1 THE COURT: You're missing the whole point. You
2 don't call a witness that's been excluded. You proffer
3 that testimony in the absence of the jury, not in their
4 presence. There's no other way to do that.

5 Do you understand that?

6 And you should have said, Judge, we have a proffer to
7 make since you excluded this witness. But you're just
8 going to call the witness any way in front of this jury.

9 Is that what you did?

10 MR. JEFFERIES: My understanding, Your Honor, was --

11 THE COURT: I beg your pardon?

12 MR. JEFFERIES: My understanding, Your Honor --

13 THE COURT: No, no, no. I didn't -- don't quibble
14 with me about my ruling because I understand clearly. Go
15 back to Judge Couch's order. What date -- point two. You
16 have a copy of that.

17 And then before that, Judge Benjamin made a ruling
18 that was followed by Judge Couch. So here we are today.
19 You're clearly calling somebody in front of the jury I
20 excluded. This is how you do it. I have a motion to take
21 up in the absence of the jury. You proffer that. And
22 then I'll decide whether it comes in or not, not in front
23 of the jury, Mr. Jefferies.

24 Now, do you want to proffer this or not?

25 MR. JEFFERIES: At this stage, Your Honor, no. I --

1 I --

2 THE COURT: It doesn't matter to me. But you don't
3 call a witness that's been excluded in front of a jury.
4 The proper way to do so is, there's a matter of law I need
5 to take up in the absence of the jury. May I proceed and
6 make a record on my proffer?

7 You didn't do any of that. You just called this
8 witness that's been, technically, excluded from my
9 previous ruling in limine. You have a right to proffer
10 this. If that's what you want to do, by all means, do so.
11 Call this witness. Let's make a record.

12 MR. JEFFERIES: We -- we will --

13 THE COURT: No, no, no. Call him right now. Let's
14 see what he has to say. This is a proffer.

15 MR. JEFFERIES: Yes, Your Honor.

16 THE COURT: Now, I've already made my ruling. But
17 I -- we'll proffer the witness so you can make your
18 record.

19 Now, do you want to do so or not?

20 MR. JEFFERIES: Thank you, Your Honor.

21 Yes, I would like to --

22 THE COURT: All right. Please call the witness right
23 now.

24 Come on up. Him or her.

25 I'm sorry, ma'am.

1 MS. TREACY RANDOLPH FOSTER: That's okay.

2 THE COURT: I didn't clearly see you. Sorry. Come
3 on up.

4 THE CLERK: If you'll step over here. Okay.

5 THE BAILIFF: Please stand right here. Face the
6 clerk, please. Face the clerk.

7 Put your left hand on the Bible, please. Raise your
8 right hand.

9 THE CLERK: State your full name, please.

10 MS. TREACY RANDOLPH FOSTER: Treacy Randolph Foster.

11 THE CLERK: One more --

12 MS. TREACY RANDOLPH FOSTER: Treacy Randolph Foster.

13 THE CLERK: Foster?

14 MS. TREACY RANDOLPH FOSTER: Uh-huh.

15 THE CLERK: Will you spell your first name, please?

16 Ms. TREACY RANDOLPH FOSTER: T-R-E-A-C-Y.

17 THE CLERK: T-R-E-A-C-Y?

18 MS. TREACY RANDOLPH FOSTER: Uh-huh.

19 WHEREUPON,

20 TREACY RANDOLPH FOSTER,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 You can have a seat.

24 THE COURT: And there's another witness, I assume,
25 you're planning to proffer, too; is that correct?

1 There were two of them. Weren't there two witnesses
2 excluded by Judge Couch's order?

3 MR. DELANEY: Yes, sir. They were the two latest
4 witnesses that were name on July 5th. One was
5 Ms. Rudolph [sic], and the other was Lettie Jackson.

6 THE COURT: Okay. Well, do you want to proffer
7 those, too, while we're at it?

8 MR. JEFFERIES: I don't know yet, Your Honor, whether
9 to proffer Lettie Jackson --

10 THE COURT: When are you planning to decide, sir? We
11 just started the trial and you don't know when you're
12 going to proffer her.

13 They're not here, is that what you're telling me?

14 MR. JEFFERIES: Lettie Jackson is not here yet, Your
15 Honor. I don't know if I'll call her. It depends on what
16 Mr. Jones --

17 THE COURT: Mr. Jefferies, all right. You may
18 proceed, sir. Go ahead.

19 MR. JEFFERIES: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. JEFFERIES:

22 Q Ms. Randolph, can you tell us a little bit about your
23 relationship -- just kind of give us the big picture of
24 your relationship with -- with Harland Jones, how you know
25 him, that sort of thing?

1 A He was married to my mom. So he's my stepfather.

2 Q Okay. And your mother was -- was Linda Jones?

3 A Yes.

4 Q I'm very sorry to hear about her passing.

5 Today -- tell us how you came to be here today.

6 A Because I'm the person that -- now that my mom is
7 gone -- has to drive him where he has to go and take care
8 of what he needs to have taken care of.

9 Q Tell me what you mean by that, things that you take
10 care of that he needs to have taken care of. What sort of
11 things would you be talking about?

12 A Make sure he's properly dressed, make sure --

13 THE COURT: Mr. Jefferies, was -- is this an
14 eyewitness?

15 MR. JEFFERIES: Yes, Your Honor, damages witness.

16 THE COURT: I just wanted to make sure.

17 MR. JEFFERIES: Yes, Your Honor.

18 THE COURT: Go ahead.

19 Well, I think y'all disagree. Is she an eyewitness
20 or not?

21 MR. DELANEY: That's what I want to make sure, Your
22 Honor. She's a -- she's only a damages witness. She's
23 not an eyewitness, as far as I know, unless --

24 MR. JEFFERIES: Oh, I'm sorry, Your Honor --

25 THE COURT: No. Plain speaking, clear understanding.

1 I said eyewitness to the accident. Was she there?

2 MR. JEFFERIES: No. She was not an eyewitness to the
3 wreck, as far as I know.

4 THE COURT: Well, that's the impression I had why you
5 were calling her.

6 And what is she here for?

7 MR. JEFFERIES: She is here to testify to the effect
8 of the injuries on Harland Jones' life, his daily life,
9 how he gets around, how he --

10 THE COURT: Go ahead, Mr. Jefferies.

11 BY MR. JEFFERIES:

12 Q Ms. Randolph, you mentioned that you assist Harland
13 with taking care of himself --

14 THE COURT: Stop.

15 Go tell the jury there's a matter that I have to take
16 up and it -- it might be a while. Tell them to relax.
17 And I'll call them when I need them.

18 THE BAILIFF: Yes, Your Honor.

19 THE COURT: And be kind enough to bring me a cup of
20 ice, will you?

21 Thank you.

22 Sorry about that. But they're going to be wondering
23 what's happening when we just started before we even call
24 the first witness and --

25 MR. JEFFERIES: Understood, Your Honor.

1 THE COURT: You may proceed.

2 MR. JEFFERIES: Thank you, Your Honor.

3 BY MR. JEFFERIES:

4 Q You mentioned that you help Harland with a variety of
5 things. What sort of things do you help Harland with?

6 A Cooking, making sure that his clothes and stuff are
7 washed. He cannot drive. So I have to drive him around.
8 My husband and myself, but mainly my husband, helps with
9 all the yard work that he can no longer do.

10 Q All right. You mentioned cooking. Tell us a bit
11 about that. Why -- why do you do the cooking for Harland?

12 A Well, one day, I went to work and I thought he could
13 do it for himself. And I get a call from the fire
14 department because the house is smoking. And he was
15 confused.

16 Q What -- what had happened to cause the house to
17 smoke?

18 A I guess he left something on the iron that started
19 smoking out.

20 Q And the -- why did the fire department call you? Do
21 you know? Did they respond?

22 A Because it's part of the alarm system. And I was at
23 work. So, now, we just ask him to just -- we'll do it.

24 Q And when the fire department called you while you
25 were at work, what -- what did you do at that stage? Did

1 you have to leave work?

2 A Yeah. I left to go see what was going on, exactly
3 why the fire department was called, and why was there
4 smoke, you know, what was going on. And he just -- he
5 wasn't there. I mean, he -- he's there because he have
6 good days and bad days. But he was not -- I'm not a
7 medical doctor, but he was not there. He has his moments
8 where mentally he is just dazed. He paces. He walks back
9 and forth and -- yeah.

10 Q Do you do all the cooking? As far as you know, do
11 you do all the cooking for Harland now?

12 A What we've started doing is, like, we'll precook food
13 and we'll package it. And we'll say, if you need
14 something and we're not up here to get it for you, just
15 put it in the microwave.

16 So we've kind of -- my sister and I kind of have
17 taken that approach to trying to help him cook. We
18 haven't introduced Crock-Pots yet, but that's -- that's
19 the next step.

20 Q Tell me about clothing. You mentioned helping
21 Harland with his clothing. What -- what do you mean by
22 that?

23 A Because if it's left up to him, when he gets up to
24 put on clothes when he's not -- and I like -- would like
25 to say whether it -- it's not a good day, he'll put on

1 dirty clothes. Or his decision making ability is --
2 it's -- it's not sound decision making.

3 Q How was his decision making before June 7, 2017,
4 before he was hit on his bike?

5 A He was fine.

6 Q Did he dress himself?

7 A Yeah. He -- he drove. He didn't need us for
8 anything. I mean, he was fine. He cut his own grass.
9 He -- he has his lawn mower, so he cuts -- he cut his own
10 grass, and everything. He didn't need us for everything.

11 Now, it's almost like -- he can walk. But if he
12 walks up the steps, you have to be close by because he's
13 not fully walking like a person would without -- his
14 balance is off. So it's not like he's a baby and he needs
15 constant supervision. But, like, coming here, if he had
16 to walk up those steps, he would probably trip and fall.
17 And that's just the truth.

18 Q You help Harland get dressed, I think you said, so
19 that he wears the right clothes. Do -- how does his
20 laundry get done?

21 A We will do his laundry. And, I mean, he can do his
22 laundry. But we'll -- we'll assist him with his laundry
23 or make sure that it's done. I don't know if that's the
24 mental aspect or the physical aspect of it. But,
25 sometimes, the laundry room will just pile up. He'll just

1 put what -- whatever is there to put on.

2 Q You, also, mentioned driving, that you drive Harland
3 where he needs to go?

4 A Right. Because of the way that he does -- like,
5 sometimes, he'll just get up and just walk off like he's
6 not -- he's blank. He's pacing. The doctor has said he
7 cannot drive.

8 So, like, I -- he can't drive. So we have to get him
9 where he has to go, pharmacy, church, wherever. And even
10 at -- even at church, he's not -- he's not the same. He
11 made the decision to wear a tank top and a shirt
12 underneath and -- underneath his robe. And his -- and I
13 asked him why. And his answer to that was, it was hot,
14 it's hot, it's hot outside, it was hot that day. So, I
15 mean...

16 Q So you drive Harland wherever he needs to go now?

17 A Yeah.

18 Q And did you have to do that before the wreck?

19 A No.

20 Q How many days a week, on average, would you say you
21 have to drive Harland somewhere, or days a month,
22 whatever's --

23 A I mean, if he has -- if he has to go to the grocery
24 store, maybe once -- once a week. If he has to go to the
25 doctor -- and he hasn't had to go -- like, right now,

1 it's, like, sinus, stuff like that. And they're trying to
2 still run tests to find out, you know, what's going on
3 with him.

4 But, I mean, wherever you have to -- I would say, at
5 least, two -- two times a week. If it's not myself, then
6 I have to give it to somebody else to do, or ask someone
7 else to do it.

8 Q What about riding his bike? Do you see Harland ride
9 a bike anymore?

10 A No, no. Actually, the only reason that bike has not
11 been gotten rid of is because we just told him, just hold
12 on to it until you get a word that you can -- can -- but
13 he wants nothing to do with a bike.

14 Q Tell me about yard work. You mentioned sending other
15 people to do yard work. Tell me about that.

16 A You said I mentioned doing what now?

17 Q Yes. That you helped with yard work, or saw other
18 people doing yard work that Harland used to do.

19 A Right. No, I help with yard work. And if I'm not
20 doing the yard work, my husband is doing the yard work, or
21 my sister, or her husband that he would do. He has -- he
22 has quite a big -- big yard that he maintains.

23 And they have a lot of plants. So, therefore, he has
24 weed eating. He has -- he has a push mower, riding lawn
25 mower that he -- he can't do any of thing. He's tried.

1 We've, actually, tried to put him on the riding lawn
2 mower, but he's run into the shed with the riding lawn
3 mower. I mean, this is not us telling him, hey, you know,
4 just -- hey, go -- go ahead, cut grass, let's see what you
5 can do.

6 Because our desire is let him do what he can do.
7 But, you know, he's run into the shed. His coordination
8 is off. It's -- it's not there. He's -- he's not the
9 same.

10 Q Tell me about the yard. You said it's a big yard.
11 Is -- is that -- I don't know about where y'all live.
12 It's out in the country?

13 A It's about an acre that the -- the area that he
14 maintain on the norm. It's about an acre. However,
15 it's -- it's landscaped. It's heavily landscaped. So,
16 therefore, there's a lot of nuances to trying to keep it
17 together. Now, that was my mom's thing.

18 Q So it's not just a big field that you mow and you're
19 done. You've got all this other stuff to do?

20 A (There was no verbal response.)

21 Q Tell me about church. Are you familiar with how
22 Harland was with his church before the wreck?

23 A Yeah. He traveled with my mom. They -- well, her
24 thing was they were going to 50 states to pray for people
25 and witness to people, and stuff like that. And they

1 did -- they did a lot of that. They traveled to witness
2 and pray for people. And he was very active. And he's an
3 elder in the church. He's, also, a -- a preacher.

4 But since the accident, I mean, they -- I don't want
5 to sound messed up. But they'll let him speak because
6 that was his position. But, you know, when you're looking
7 at a person and they're not really making a whole lot of
8 sense a lot of times, that's pretty much what you're
9 getting.

10 Q And do you go to the same church Harland goes to?

11 A I don't go every Sunday, no.

12 Q Okay. Have you -- have you seen Harland in church?

13 A Yes, I have. And he paces.

14 Q Is it -- is it fair to say that he doesn't contribute
15 to the church in the same way he used to before the wreck?

16 A No, not at all.

17 Q Not at all?

18 A But he still sits on the pulpit. They try to give
19 him his normalcy.

20 Q I know this'll be hard. And I'm sorry to have to ask
21 you about this. But tell me about the -- the last year or
22 so of -- of your mother's life and taking care of her.

23 How was that? What was Harland able to do?

24 A Nothing, nothing.

25 Q Who took care of your mother?

1 A I did.

2 Q I'm so sorry.

3 We talked about cooking. We talked about clothing,
4 driving, yard work, church. Are there any other ways,
5 given your relationship with Harland, that you can see his
6 life is different after this wreck from before, things he
7 can't do, or can't do as well?

8 A It's just mainly his -- what he just would normally
9 be able to do, he -- he can't do. I mean, he -- I mean,
10 he can get up. He can eat, you know. He can feed
11 himself. He can wear the clothes well. But as far as him
12 making -- decision making and not have to have somebody
13 there to check and balance it, it's not there.

14 Q Is he the same person he was before the wreck?

15 A He goes in and out. But he's not the same person.

16 Q As far as you know -- and if you don't know, it's
17 okay. But as far as you know, is that ever supposed to
18 change or is he -- is this the new Harland for the rest of
19 his life? Do you know?

20 A The doctor says it's lasted since after the accident
21 and she doesn't foresee it changing, but they don't know.
22 So they -- they don't know.

23 MR. JEFFERIES: I appreciate your time.

24 Defense Counsel might have some questions for you.

25 THE WITNESS: That's fine.

1 MR. JEFFERIES: Thank you.

2 CROSS-EXAMINATION

3 BY MR. BAYNE:

4 Q Treacy, I'll be very brief.

5 A Thank you.

6 Q You weren't on the road that day when this --

7 A No, I wasn't.

8 Q Okay. So you didn't see Harland turn his bike in
9 front of Ms. Robinson's car?

10 A No, I didn't.

11 Q You didn't see Ms. Robinson operate her vehicle --

12 A No, I didn't.

13 Q Okay. Were you at the hospital right after this
14 happened?

15 A No, I wasn't.

16 Q Okay. When did you first get to the hospital after
17 this?

18 A I didn't get to the hospital until -- well, he wasn't
19 in the hospital by the time -- yes, he was. Yes, he was.
20 Because my mom was at the hospital. By the time --
21 because I was in New Orleans. And I got the call that he
22 had just been in an accident. And I got home probably
23 about four days later. Because we were burying a niece.

24 And ever since -- I mean, my mom has not -- didn't --
25 my mom did not leave the hospital. And she was hand and

1 foot with him. And then some of the other people from the
2 church were just taking her food, taking her what she
3 needed. Yeah.

4 Q Prior to today, have you spoken about this with
5 Harland's attorneys at all?

6 A About the --

7 Q About the accident.

8 A Yeah.

9 Q When was the first time after it happened?

10 A Well, when -- when my mom first spoke with the
11 attorneys to -- when they came to the house about doing
12 it -- I was -- I came off the road. I was coming back
13 home. And I just got off the road. And I -- I went
14 there. But that's -- that's about it.

15 Q So -- so that first time would have been when they
16 came to your house right after this had happened?

17 A For consultation.

18 Q Okay. Was that maybe June of 2017?

19 A I can't give you a date. I don't know.

20 Q But you were present at that meeting?

21 A I -- yes, I was there. Because I -- she said that
22 the -- the attorney was coming. So I went. And then she
23 spoke with -- it wasn't these guys. It was -- she spoke
24 with another person, yeah, for the consultation.

25 Q And that was before -- that would have been well

1 before June 1st, 2018; correct, which would have -- 2019,
2 which would have been just about two months ago? So it
3 was a year and a half ago; correct?

4 A Yeah. I can't give you an exact dates, but --

5 Q Sure.

6 A -- I could probably agree, yes.

7 Q Sure. But it wasn't -- it wasn't in the last two
8 months was the first time you met with them; is that
9 right?

10 A Right. I -- I wouldn't have -- I probably would not
11 have been here had my mom not passed.

12 Q I understand that. But --

13 A She was the first hand. She was hand and foot --
14 hand in hand handling him.

15 Q And I know that -- I know that's very sensitive for
16 you. But when was that? When did that happen?

17 A When did my mom pass?

18 Q Yes, ma'am.

19 A She passed in January. January 23rd, we laid her to
20 rest.

21 Q And since -- since that time until now, you've been
22 the primary caretaker for Harland; correct?

23 A Yes.

24 Q And you've been his stepdaughter for how many years?

25 A Since he was married to my mom.

1 Q Okay. Do you know about how long ago that was?

2 A I think they got married in 2003, four -- 2004.

3 Q Just a couple quick final questions. Are you aware
4 that -- that Harland has trouble seeing?

5 A No.

6 Q Okay. Were you aware --

7 A I mean, he wears glasses, I mean. But I don't -- I
8 don't know --

9 Q Were you -- were you aware that before this all
10 happened, he didn't have 20/20 vision even with glasses
11 on?

12 A No, no. I didn't -- I wasn't all in the business
13 like that. Again, my mom was capable of handling all that
14 and didn't need me in -- in her marriage. So, no.

15 MR. BAYNE: Thank you very much.

16 THE COURT: Anything further?

17 MR. JEFFERIES: No, Your Honor.

18 THE COURT: You may step down.

19 Thank you very much.

20 Who's next, Mr. Jefferies -- or you don't have
21 anything else; is that correct?

22 MR. JEFFERIES: Pardon me, Your Honor?

23 THE COURT: Do you have anything else you need to
24 proffer?

25 MR. JEFFERIES: No, not -- not at this time, Your

1 Honor.

2 THE COURT: All right. Bring the jury back in.

3 THE BAILIFF: Yes, Your Honor.

4 THE COURT: My ruling remains the same in accordance
5 with Judge Couch's order and Judge Benjamin's order.

6 They're excluded. They weren't revealed before June 1st.

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

9 THE BAILIFF: Your Honor, the jury is present.

10 THE COURT: All right. Welcome back, members of the
11 jury. There was a legal issue I had to hear and could
12 only resolve in your absence.

13 All right. Thank you for your patience.

14 Mr. Jefferies, you may call your witness.

15 MR. JEFFERIES: Thank you, Your Honor.

16 The Plaintiff calls Mr. Harland Jones.

17 THE BAILIFF: Stand right there and face the clerk,
18 please.

19 Place your left hand on the Bible, your left hand,
20 please, sir. Face the clerk. Raise your right hand,
21 please.

22 THE CLERK: State your full name, please.

23 THE WITNESS: Harland Jones.

24 THE CLERK: Excuse me?

25 THE WITNESS: Harland Jones.

1 WHEREUPON,

2 HARLAND JONES,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 You can have a seat right up there.

6 THE COURT: Mr. Deeds [phonetic], help him with the
7 microphone.

8 Mr. Jones, you have to speak into the microphone.

9 I'd ask that you speak loudly and clearly, sir.

10 Thank you.

11 Mr. Jefferies.

12 MR. JEFFERIES: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. JEFFERIES:

15 Q Harland, how did you get here today?

16 A My stepdaughter, Treacy Randolph -- Treacy Randolph
17 Foster.

18 Q She -- your stepdaughter drove you?

19 A Yes, she did.

20 Q Is driving you around the only thing that your
21 stepdaughter, Treacy Randolph, does for you?

22 A No. She helps me around the house, cooks for me.
23 And her and her husband do the yard work and everything
24 for me.

25 Q Why does Ms. Randolph cook for you, Harland?

1 A I'm not able to do it.

2 Q Tell us about that. Is that something that happened
3 after the wreck or...

4 A Yes, after the wreck.

5 Q And when you say you're not able to do it, why?
6 What -- what happens if you do, if you try to?

7 A I might forget something on the stove, or something
8 like that, or leave it on there too long.

9 Q Has that happened before?

10 A Yes, it did.

11 Q What -- tell us about that. What happened when you
12 did that, when you forgot and left something on the stove?

13 A I left it on the stove, and it started smoking, and
14 almost caught the house on fire. The alarm went off. And
15 my stepdaughter came -- came over.

16 Q Was she the only one that came?

17 A (There was no response.)

18 Q Your stepdaughter came. How -- how did your
19 stepdaughter know? Did you call her?

20 A No. The fire department called her.

21 Q So after --

22 A And my sister-in-law was over there.

23 Q After that -- after the fire department called and
24 your stepdaughter, Ms. Randolph, came, did you do any
25 cooking after that yourself or...

1 A No, I didn't.

2 Q You mentioned yard work. Tell us -- tell us about
3 that. Did you used to do yard work before the wreck?

4 A Yes, I did.

5 Q Tell us about --

6 A My whole yard, I used to clean it, cut it, and do
7 what needed to be done.

8 Q Tell us about your yard. A little yard? A big yard?
9 What's it like?

10 A About an acre.

11 Q A big kind of field or manscape -- manicured,
12 landscaped, that sort of thing?

13 A Yes. It's got trees, and fruit trees, and palm
14 trees, and all that.

15 Q Who does that work now?

16 A My stepdaughter and her husband.

17 Q So that's Treacy Randolph?

18 A Yes, Treacy Randolph Foster and her husband.

19 Q And her husband.

20 What about other parts of -- of your daily life?

21 What about, you know, getting dressed, and getting --
22 getting to church, those sorts of things?

23 A Yeah. She helps me get my clothes out, and get to
24 church, and help dress me, make sure I'm dressed right.

25 Q And did you ever need help with that before -- before

1 this wreck?

2 A No, I didn't.

3 Q Let's talk a little bit about your life before the
4 wreck. You're originally -- tell us where you're
5 originally from.

6 A Columbia.

7 Q Where -- where'd you go to high school?

8 A Lower Richland.

9 Q Lower Richland.

10 Did you go to school after that anywhere?

11 A Truck driving school.

12 Q Whereabouts was that?

13 A NEI in Spartanburg.

14 Q I got you. NEI, you said?

15 A Yeah, NEI in Spartanburg.

16 Q NEI in Spartanburg.

17 Did you drive a truck for a living for a while or did
18 you do something else. What'd you do?

19 A (There was no response.)

20 Q Are you okay? Do you need a glass of water?

21 A (There was no response.)

22 Q I can get you a glass of water. If I don't sip on
23 water all day, I start coughing like that, too.

24 Here you go, sir.

25 A Thank you.

1 Q Yes, sir.

2 Tell us about what you did for a living back before
3 the wreck.

4 A I had stopped driving trucks.

5 Q Did you work? And I don't mean, like, on the day of
6 the wreck. But -- but leading up in the years prior, did
7 you work other places?

8 A Yeah. I worked in a plant.

9 Q What kind of plant did you work in?

10 A A manufacturing plant that builds locks for trucks.

11 Q And what did you do there at that manufacturing
12 plant?

13 A Build locks for trucks.

14 Q Build locks for trucks?

15 A Uh-huh.

16 Q What was your job? Would you like --

17 A Machine operator.

18 Q Machine operator.

19 You mentioned Ms. Randolph giving you a ride to
20 church. Tell us about your involvement in the church back
21 prior to the wreck. What'd you do in the church?

22 A I was a preacher, and teacher, and a traveler.

23 Q Where all did you travel to?

24 A 50 United States and about three countries.

25 Q You went to all 50 United States?

1 A Yes. And about three countries.

2 Q And three countries.

3 What's the name of your church?

4 A Apostle by Faith Incorporated Church.

5 Q That -- that's right here in Columbia?

6 A Yes. It's right here in Columbia off of Smith
7 Street.

8 Q Did your wife go to church with you, Linda?

9 A Yes.

10 Q Was she -- I guess she --

11 A She -- she was a pastor.

12 Q She was a pastor?

13 A Yes. And I was an elder next to her.

14 Q I -- I know this is hard you talking about Linda
15 because I know she passed. But tell us a bit about that
16 relationship and -- back before the wreck.

17 A As I said, we traveled. And she was a pastor at a
18 the church. And I was an elder of the church. We both
19 were in the church.

20 Q And how long were y'all married for, Harland?

21 A About 14 years, since 2004.

22 Q And I called her Linda. But you had a different name
23 for her, I think?

24 A Yes. Pretty lady.

25 Q You called her that around the house?

1 A Yes. Around the house and when we were out from the
2 house, except in church.

3 Q I have a nickname for my wife, but if I use it
4 outside of the house, she gets mad at me, so I don't say
5 it.

6 Tell us about -- tell us about after your wreck. And
7 I -- I know Linda had her health issues then. But tell us
8 how that process was, what you were able to do for her.

9 A I wasn't -- for about a year when she was dying, I
10 couldn't do nothing for her. Because I had to take care
11 of myself.

12 Q Do you know who took care of her?

13 A Yes, her daughter and church members.

14 Q Harland, I want to ask you about the wreck. Let's go
15 back to that day, June 7th of 2017. Give us a little
16 context. You get up in the morning. Kind of walk us
17 through that. Tell us what happens between you getting up
18 and --

19 A Yes. I -- as I got up, me and a partner of mine used
20 to go clean yards and do little things that people needed
21 done to make a little extra money. And I told him to hold
22 on. I always tell him to hold on, let me go ride my bike,
23 get me some exercise. Because the doctor told me I had
24 needed to lose a couple of pounds.

25 So he took me to the pawnshop to get a bicycle.

1 Because I was just going to go to Walmart and just go pick
2 up me a bike. And he said, Why go spend all that money at
3 Walmart when you can go straight to a pawnshop?

4 So we went to the pawnshop. And I got a bike for
5 about \$60. And I was just riding that bike every morning
6 before we went out before he come over to my house. And
7 I -- before we go out -- before we head out, I would go
8 ride the bicycle up the skreet [sic] for about a mile and
9 back down the skreet.

10 And when I -- on this certain day, when I came back,
11 I was coming back up the skreet and I made -- I needed to
12 get on the other side of the skreet to turn in my yard.
13 Because I was -- I was going -- you normally ride on the
14 right side of the skreet. But when I had to turn to get
15 back over -- I had to turn -- when I went down the skreet,
16 I had to turn back over on the left side of the skreet.

17 So I know I had to turn back on the right side of the
18 skreet -- get on the right side and get on my -- right
19 side of the skreet and turn in my yard.

20 Q Did you signal before you turned?

21 A Yeah, yeah. I put my hand out -- left hand out. And
22 this lady in a car, they said was a cousin, she -- she
23 gave me eye contact. She slowed down for me to turn in
24 front of her.

25 So when she gave me the eye contact to turn in front

1 of her, I immediately looked -- I immediately turned in
2 front of her because there were cars behind her. So she
3 was the first car in front of all those cars. So she
4 slowed down. And all the other cars slowed down.

5 Q Now, that lady driving that car that slowed down that
6 you turned in front of, was that the Defendant,
7 Ms. Robinson?

8 A No.

9 Q Who was it?

10 A They said she was my wife's cousin.

11 Q Do you know her name?

12 A Lettie Jackson.

13 Q Lettie Jackson?

14 A Uh-huh. That's what they said her name was.

15 Q And what color of car -- did you see what color car
16 Lettie Jackson was driving?

17 A No. I didn't see it. They said it was a blue car.
18 I'm not quite sure what color it was.

19 Q But you are sure it wasn't the Defendant driving?

20 A No.

21 Q Okay. So tell me what happens next. You -- you put
22 out your -- you said you put out your signal?

23 A Yeah. I put out my left hand to turn. And when I
24 put out my left hand to turn, the next thing I know I'm in
25 heaven. And when I was in heaven, I seen -- I seen such

1 pretty, beautiful roses, and plants, and flowers. And the
2 sky was pretty and blue. And I said, the only thing you
3 see -- the only time you see this is when you're dead.

4 And I heard a voice behind me. I don't know what the
5 voice was. But the voice behind me said, That's because
6 you is dead. And when I looked back around I saw Jesus
7 this close up to me, face-to-face. And he just looked at
8 me. And I looked at him. And it was just -- he was
9 sitting on this gold throne chair.

10 And when I looked down in the hole -- there was a
11 hole right there beside me from heaven to earth. And I
12 saw this body laying across me. And I said, Well, who is
13 that body laying across me?

14 And the voice behind me said, That's your wife.
15 She's praying for you because she don't want you to feel
16 the pain.

17 So I called her pretty lady. And I put my hands
18 together like this and said, Pray, pretty lady, pray. And
19 then I woke up with my hand up like that in -- in our
20 front room.

21 Q Do you remember anything after you started that turn
22 until you woke up in your house?

23 A No. I don't remember nothing but the heaven part.
24 That's all I remember. And I woke up in the house.

25 Q How are you doing now, Harland? I mean, we're now a

1 little over two years -- just a little over two years
2 after that wreck. How are you?

3 A I have my good days and bad days.

4 Q Tell us about your good days first. Are they as good
5 as your good days before the wreck?

6 A Yeah. Today is a good day. But my bad days, I can't
7 remember. And I sleep all the time.

8 Q Today's a good day?

9 A Yes. Today's a good day. I pray for every day to be
10 a good day.

11 Q I know it'll be hard. But tell us about the bad
12 days. What are they like?

13 A As I said, I can't remember nothing. And I forget
14 things. And I sleep all the time. And I pray to have a
15 good day.

16 Q When you woke up back there at the house, you said
17 your arm was up there. Why was your arm up in the air?

18 A My wife said after she prayed for me, she said, my --
19 I lifted up my arm. And she came out and prayed for me.
20 And when she prayed for me, that's -- after she prayed for
21 me and brought me back to life, she said I lifted up my
22 arm.

23 Q What parts of you -- what parts of you were hurt?

24 A Well, I know my leg because I -- I can't move my leg
25 like I used to. They told me all my insides, and my leg,

1 and everything was [inaudible] from the inside. That's
2 what I was told.

3 Q After you woke up, were you able to walk right then
4 and there?

5 A No. I think it was about a month before I could be
6 able to walk.

7 Q What did you do in the meantime for that month?

8 A My wife had -- I had laid in the bed. And she had to
9 change me and wipe me down. I -- I urinated on myself.
10 And she changed me. And I used the bathroom in the bed.
11 And she made sure I was clean, and everything.

12 Q And was she -- at the time, was -- was Linda
13 suffering with her own health issues at the time?

14 A Not at that moment.

15 Q That came later?

16 A Yes.

17 Q How did you -- tell us about you starting to walk
18 again. Did you just suddenly start walking all right or
19 did you work your way into it?

20 A I started working my way into it little bit by little
21 bit.

22 Q Did you have to use any sort of assistance in that --

23 A Yeah. I used crutches and -- crutches and -- and a
24 wheelchair.

25 Q And how long did that go on for before you could walk

1 without crutches, or without a wheelchair, or anything?

2 A Almost a month.

3 Q Now, you didn't walk with a cane when you came up
4 here today. I didn't see one.

5 A No, I didn't.

6 Q Are you back to walking the way you used to walk
7 before the wreck?

8 A No, I'm not.

9 Q How is it different now?

10 A I walk real -- real slow and I walk with a limp.

11 Q Do you know if that's ever going to get better?

12 A I couldn't tell you.

13 Q What about working in the yard now -- now that you
14 have that limp? Can you work in the yard like you used
15 to?

16 A No, I can't. I just sit in the house a lot.

17 Q What about riding the bike? Do you ever ride the
18 bike?

19 A No. I don't ride the bike.

20 Q I guess you don't ride that bike, but any -- no other
21 bike?

22 A No. I -- I don't ride no bike.

23 Q What about driving?

24 A No. They tell me I can't drive right now.

25 Q Will you ever travel around again like you used to

1 with the church?

2 A I pray to.

3 Q I want to ask you about some medical bills.

4 MR. JEFFERIES: Would Your Honor care for a copy of
5 the medical bills?

6 MR. BAYNE: We have no objection.

7 THE COURT: Okay. Without objection.

8 This is the video that was mentioned earlier?

9 MR. BAYNE: These are the bills.

10 THE COURT: Okay.

11 MR. JEFFERIES: Thank you, Your Honor.

12 May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 How many pages? Give us a count.

15 It will be Plaintiff's Exhibit No. 1.

16 I'm guessing 22, 23 --

17 MR. JEFFERIES: Roughly 21. Let me count them real
18 fast.

19 THE COURT: Just take your time.

20 (Pause.)

21 MR. JEFFERIES: It looks like 30 pages, Your Honor.

22 THE COURT: All right, sir.

23 BY MR. JEFFERIES:

24 Q Harland, just take a look through these 30 pages
25 right there. Do you recognize those 30 pages as your

1 medical bills?

2 THE COURT: Well, let's go ahead and mark it as
3 Plaintiff's Exhibit No. 1. It hasn't been marked yet.
4 It's without objection. Let's mark it first, please.

5 BY MR. JEFFERIES:

6 Q Harland, let me grab those back from you. We'll mark
7 this exhibit real quick. I'll bring it right back to you.

8 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
9 identification and admitted into evidence.)

10 BY MR. JEFFERIES:

11 Q Harland, I'm showing you an exhibit that's been
12 marked as Plaintiff's Exhibit No. 1. And I just want to
13 ask you if those are your medical bills?

14 A Yes, yes. They send bills to the house.

15 Q All right. Well, are those the bills you've got at
16 the house?

17 A Yes.

18 Q All right. And do those bills look the same as what
19 you've got at the house? They don't look like there's any
20 changes or anything to them?

21 A No.

22 Q Harland, tell us what the total amount of those bills
23 are?

24 A \$235 -- \$235 -- \$238.75.

25 THE COURT: Mr. Jefferies --

1 THE WITNESS: 75 cents.

2 THE COURT: Do you want -- do you want to clarify
3 that?

4 MR. JEFFERIES: Yes, Your Honor.

5 BY MR. JEFFERIES:

6 Q \$235,200 and -- pardon me. I'll say it again.
7 \$235,238.75?

8 A Yes.

9 Q Well, I said that wrong, too. About \$235,000; is
10 that right?

11 A Yes.

12 Q All right. That's even easier. You see why I'm not
13 a math major.

14 All right. So that's your bills from Palmetto Health
15 Richland for roughly \$235,000?

16 A Yes, correct.

17 Q Do you remember any of your time being in Palmetto
18 Richland? Do you remember being in the hospital or did
19 you wake up afterwards?

20 A I woke up afterwards.

21 Q Do you have any understanding how long you were in
22 Palmetto Health Richland?

23 A No, I sure don't.

24 Q These bills are for your entire stay, though, at
25 Palmetto Health Richland?

1 A Yes.

2 Q It looks to me like -- I want you to take a look and
3 tell me if you agree. But it looks like the earliest date
4 on here would be June 7th of 2019 [sic]?

5 A Yeah.

6 Q The date of the wreck?

7 A Uh-huh.

8 Q And it looks like the latest date is June 28, 2017.
9 So about two weeks, three weeks later?

10 A Yeah.

11 MR. JEFFERIES: Your Honor, may I publish these to
12 the jury?

13 THE COURT: Sure.

14 You just have one copy?

15 Go ahead. You may do so. It's in evidence.

16 (Pause.)

17 THE COURT: Now, Mr. Jefferies, you may continue to
18 question the witness, if you like.

19 MR. JEFFERIES: Thank you, Your Honor.

20 I'm going to ask him about another -- another exhibit
21 here. If we can just label these Plaintiff's Exhibit Nos.
22 2, 3, and 4.

23 THE COURT: Show them to the other side.

24 MR. JEFFERIES: Yes, Your Honor.

25 Any objections, Brett?

1 (WHEREUPON, the attorneys were talking over each
2 other.)

3 THE COURT: So Plaintiff's No. 2 is without
4 objection?

5 MR. BAYNE: Yes, sir.

6 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
7 identification and admitted into evidence.)

8 THE COURT: And what is it exactly, Mr. Jefferies?
9 More medical --

10 MR. JEFFERIES: More medical records, Your Honor.

11 THE COURT: Okay.

12 MR. JEFFERIES: Plaintiff's Exhibit Nos. 2, 3, and 4,
13 Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, Plaintiff's Exhibit Nos. 3 and 4 were
16 marked for identification only.)

17 BY MR. JEFFERIES:

18 Q All right. Harland, I want to show you a few more
19 exhibits. This is Plaintiff's Exhibit No. 2. Can you
20 tell me, are those the bills you got from Carolina
21 Anesthesia?

22 A Uh-huh.

23 Q And what is the amount of those bills, Harland?

24 A It's 500,000 -- 217,000 -- \$217.

25 Q \$5,217.

1 A Uh.

2 Q Okay. And are these your bills from Palmetto Health
3 Specialists?

4 A Yeah, 3,000.

5 Q 3,038; is that right?

6 A Uh-huh.

7 Q And take a look at these. Are those your bills from
8 the EMS -- Richland County EMS?

9 A Yeah, 587.

10 Q 587,000 [sic]. We might have one more bill. So I
11 just want to make sure I get them all. Bear with me just
12 one moment, please.

13 (Pause.)

14 MR. JEFFERIES: Your Honor, if I could take just a
15 moment of the Court's time.

16 THE COURT: Take your time.

17 (Pause.)

18 MR. JEFFERIES: This will be Plaintiff's Exhibit No. 5.

19 (WHEREUPON, Plaintiff's Exhibit No. 5 was marked for
20 identification only.)

21 BY MR. JEFFERIES:

22 Q Harland, I'm going to show you another bill from Eau
23 Clair Cooperative Health, which is Dr. Ash. And when
24 Mr. Bayne and I added it up, we get \$160. Do you get \$160
25 when you add it up, too?

1 A Uh-huh.

2 Q You do?

3 A (There was no verbal response.)

4 MR. JEFFERIES: Okay. I know that doesn't change a
5 lot, but we want to be right.

6 BY MR. JEFFERIES:

7 Q All right. I want to show you then a summary here
8 real quick and see if I have my math right.

9 MR. JEFFERIES: And this will be the last one for the
10 day, the medical bills, Plaintiff's Exhibit No. 6.

11 (WHEREUPON, Plaintiff's Exhibit No. 6 was marked for
12 identification only.)

13 MR. JEFFERIES: Thank you.

14 BY MR. JEFFERIES:

15 Q All right. Harland, I'm showing you a summary of all
16 the bills we just looked at. And I just want you to look
17 and see if all those numbers look right and see if that
18 total, 244,000, looks right.

19 A Yeah.

20 Q That does?

21 A (There was no verbal response.)

22 MR. JEFFERIES: Your Honor, may I publish these to
23 the jury?

24 THE COURT: Yes, sir.

25 MR. JEFFERIES: Thank you.

1 BY MR. JEFFERIES:

2 Q So, Harland, just to make sure I understand. Your
3 testimony is you went to the hospital the day of the
4 wreck. You have roughly \$244,000 in medical bills; is
5 that right?

6 A Uh.

7 Q Is that "yes"?

8 A Yes, yes.

9 Q Okay. And you were in there, as far as you
10 understand, about three weeks?

11 A That's what I was told.

12 MR. JEFFERIES: All right. I don't have any more
13 questions for you right now. Mr. Bayne and Mr. Delaney
14 might have some questions. I might have some follow-up.

15 So if you'll, please, just answer their questions.

16 THE WITNESS: Uh-huh.

17 MR. BAYNE: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. BAYNE: Your Honor, if I may, I'm going to mark
20 this as Defendant's Exhibit No. 1 to save time.

21 THE COURT: Are those five or six? How many are
22 those?

23 MR. BAYNE: It's four photos, Judge.

24 THE COURT: Four photos?

25 MR. BAYNE: Yes, sir.

1 THE COURT: Of the car or scene?

2 MR. BAYNE: All at the scene of the accident.

3 THE COURT: Okay.

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

6 MR. BAYNE: Thank you.

7 BY MR. BAYNE:

8 CROSS-EXAMINATION

9 BY MR. BAYNE:

10 Q Mr. Jones, it's good to see you again.

11 You mentioned on direct examination that you used to
12 be a truck driver; correct?

13 A I started.

14 Q Okay. But you drove trucks for a living for a little
15 while?

16 A I started.

17 Q Okay. And that would involve driving a truck on the
18 roadway; correct?

19 A Yes.

20 Q In doing that, you would have had to follow a number
21 of laws, and regulations, and rules; correct?

22 A Yes.

23 Q Things like yielding the right of way to somebody
24 coming in an opposite direction; correct?

25 A Yes.

1 Q Things like keeping a proper lookout to make sure you
2 don't cause an accident; correct?

3 A Yes.

4 Q When you're driving a truck, if you're at an
5 intersection, you couldn't just turn left in front of
6 other cars, could you?

7 A No.

8 Q If you did that, you'd be responsible for causing an
9 accident; right?

10 A Correct.

11 Q Okay. You -- also, when driving a truck, you
12 couldn't cross over that double yellow line; correct?

13 A No, I couldn't.

14 Q That double yellow line, that means no passing. You
15 don't cross that line; right?

16 A Yes.

17 Q Okay. And if you did that and caused an accident,
18 that would be your fault as well; correct?

19 A Correct.

20 Q Okay. On the day of this accident, we've heard you
21 were riding your bicycle down Old Bluff Road; right?

22 A Yes.

23 Q And you were on the right-hand side in the right lane
24 of travel; is that correct?

25 A I was on --

1 Q Let me -- let me back up. You went down Old Bluff
2 Road one way, didn't you?

3 A Yes.

4 Q And then you turned around and came back the other
5 way?

6 A Yes. I was in the right-hand side trying to get back
7 on the left-hand side.

8 Q Right. And you were on the right-hand side because
9 you drive on the right-hand side of the road; is that
10 right?

11 A (There was no response.)

12 Q When you operate a vehicle or a bicycle, you operate
13 on the right-hand side of the roadway, don't you?

14 A No. When -- when necessary -- I was trying to get
15 back on the left-hand side of the road.

16 Q And I understand you were trying to get there. But
17 we're not talking about what you were trying to do yet.
18 I'm just talking about in that moment when you're driving
19 a vehicle on a roadway, you drive it on the right-hand
20 side of the roadway; correct?

21 A You need to be.

22 Q Okay. And I'm going to show you a series of
23 pictures. And these are four photos that have been
24 identified as Defendant's Exhibit No. 1. And you've seen
25 these photos before when we did your deposition. And I'm

1 just showing those to you and I'm going to ask you, are
2 those pictures of the roadway, and the car, and the
3 bicycle from this accident?

4 A That's what I was shown. But I -- I didn't --

5 THE COURT: Stop, Mr. Bayne. You're going to have to
6 let us know what exhibit you're --

7 MR. BAYNE: Certainly, Your Honor. It is --

8 THE COURT: -- referring to, the number. Is it
9 Exhibit No. 5?

10 MR. BAYNE: Defendant's Exhibit No. 1.

11 THE COURT: Oh, the four photos?

12 MR. BAYNE: Yes, sir. All one exhibit.

13 THE COURT: All right.

14 BY MR. BAYNE:

15 Q Let me -- let me ask you this. This is the third
16 page of Defendant's Exhibit No. 1. Is that your bicycle?

17 A Yes.

18 Q Okay. And from the photos you looked at, is that Old
19 Bluff Road? Is that the road that we're talking about?

20 A Yes. Yes, it is.

21 Q Okay. And the car that is there -- I know you didn't
22 see the car. But is it your understanding that is
23 Ms. Robinson's car?

24 A That's what I was told.

25 MR. BAYNE: Your Honor, at this time, we would move

1 Defendant's Exhibit No. 1 into evidence.

2 THE COURT: Without objection?

3 MR. JEFFERIES: No objection, Your Honor.

4 (WHEREUPON, Defendant's Exhibit No. 1 was admitted into
5 evidence.)

6 BY MR. BAYNE:

7 Q We'll look at those again.

8 When you were riding that day, though, you were
9 riding on the right-hand side of the road; correct?

10 A Yes, I was.

11 Q And -- and you were riding that way. And then at
12 some point, you decided you were going to turn left across
13 that double yellow line; is that right?

14 A I made a signal to turn left to get back on the right
15 side of the road to turn in my yard.

16 Q But before you made that signal by raising your hand,
17 you made the decision that you were going to cross that
18 double yellow line and go into the oncoming lane of
19 travel; is that right?

20 A (There was no response.)

21 Q In other words, you didn't do it on accident, did
22 you?

23 A I looked in -- I looked at the lady that was right
24 beside me. I looked at her, made my left-hand signal.
25 And she gave me the okay to turn in front of her.

1 Q I -- and I want to back up. And I'm trying -- I'm
2 trying to move through this very slowly so we make sure we
3 get all these details.

4 Before you saw any cars or put your hand up, you made
5 the decision that you were going to leave that right-hand
6 lane and cross the double yellow line; correct?

7 A That's what you do.

8 Q Okay. And to do that, you then -- you said you put
9 your hand up; right?

10 A Yes.

11 Q And that's when you began to start your turn across
12 that double yellow line into the oncoming lane; is that
13 right?

14 A Yes.

15 Q And it was your testimony here today that there was
16 some type of car that was slowing down; is that correct?

17 A Yes. The car that was in front -- the vehicle in
18 front of all those other cars.

19 Q And you've testified previously, that car never,
20 actually, came to a stop at all, did it?

21 A It slowed down for me to turn in front of it.

22 Q The person who was driving that car that you've said
23 you saw didn't wave you across; right?

24 A It slowed down for me to get in front of it.

25 Q I understand it slowed down. But at no time did

1 anybody, actually, wave you, or give you a hand signal, or
2 any sign, other than slowing down a car to go across that
3 roadway, did they?

4 A Yes. She slowed down. She looked at me and gave me
5 the signal and slowed down for me to get in front of her.

6 Q The signal that she gave you was slowing down; is
7 that right?

8 A And she looked at me, and I looked at her.

9 Q But she didn't wave her hand and say, come on across?

10 A She gave me -- she looked at me and she slowed down
11 for me to get in front of her.

12 Q And it was your testimony on direct examination that
13 the person driving that car, you were told, was your
14 wife's cousin; correct?

15 A Correct.

16 Q And so that means that your wife's cousin saw this
17 accident happen; is that right?

18 A I couldn't tell you.

19 Q Okay. Well, your testimony was that you turned left
20 in front of your wife's cousin and then you were in
21 heaven; correct?

22 A A car had -- a car had to hit me. It wasn't my
23 wife's cousin's car.

24 Q That means in your story about what happened, the
25 other car -- that would be Ms. Robinson's car -- had to

1 have gone around your wife's cousin and struck you;
2 correct?

3 A She had to go around a couple of cars --

4 Q So --

5 A -- across the double line --

6 Q Right --

7 THE COURT: Stop. Give him a chance to answer the
8 question --

9 MR. BAYNE: I understand.

10 THE COURT: -- Mr. Bayne, please.

11 BY MR. BAYNE:

12 Q So it's your testimony that -- from what your
13 understanding is Ms. Robinson had to go around a bunch of
14 cars in front of your wife's cousin and hit you; is that
15 right?

16 A Not in front of my wife's cousin, but she had to come
17 up where I was --

18 Q Okay.

19 A -- beside my [sic] cousin.

20 Q And that person -- your wife's cousin that
21 Ms. Robinson, you're saying, sped around, got in front of,
22 and hit you then fled the scene; is that right?

23 A No. She didn't flee the scene.

24 Q Well, you know she wasn't there when the police
25 arrived; right?

1 A Yeah -- I don't know. I don't know what -- I don't
2 know what -- I -- I wasn't there.

3 Q You know she --

4 A She had to be there because they -- because from the
5 pictures, her car was wrecked.

6 Q You know she's never given a statement in this case;
7 right?

8 A Excuse me?

9 Q You know she's never given a statement in this case;
10 right?

11 A She never gave a statement -- I don't know what --
12 what happened.

13 Q Okay. In your deposition when we talked to you
14 previously, we talked to you, specifically, about
15 Ms. Robinson's car. Do you remember all that?

16 A (There was no response.)

17 Q There were a lot of questions. But, in general, we
18 talked about Ms. Robinson's car. Do you remember that?

19 A What about?

20 Q Well, just that we did. We talked about whether or
21 not you saw her and what she was doing on the roadway?

22 A Yeah. I told you I don't -- like -- like I told you,
23 I don't remember.

24 Q That's right.

25 A I don't remember nothing --

1 Q You're -- I apologize, Mr. Jones. You can -- you can
2 finish that.

3 A I don't remember that. I don't know anything but
4 what I just told you.

5 Q Your testimony was that you never saw Ms. Robinson
6 cross that double yellow line; correct?

7 THE COURT: Stop. Are you cross-examining him on the
8 deposition?

9 MR. BAYNE: I -- well, I'm cross-examining him on his
10 memory of what occurred. I can rephrase that question.

11 THE COURT: All right. But you keep referring to his
12 deposition.

13 MR. BAYNE: Yes, sir.

14 THE COURT: So let me ask you this question, is it
15 his memory at the deposition or --

16 MR. BAYNE: I'm going memory right now. I'll go
17 deposition if I --

18 THE COURT: All right. Members of the jury, let me
19 tell you what a deposition is. I don't know if all of you
20 know or not. But some testimony in this case was -- shall
21 be presented to you by way of deposition.

22 A deposition is a document containing sworn testimony
23 given by a witness outside of court in the presence of
24 lawyers for each party who may ask questions of the
25 witness. This testimony is entitled to the same

1 consideration as if -- and is to be judged as to
2 credibility and weight by you in the same manner or same
3 way as if the witness were present and gave the testimony
4 from the stand. It is then for you, the jury, to
5 determine which one you believe, so to speak, if there's
6 any dispute.

7 Does that make sense to you?

8 Out of court, both sides were there. They can use it
9 to cross a witness on direct examination. They can use it
10 for almost any reason.

11 Sorry, Mr. Bayne.

12 MR. BAYNE: That's fine.

13 Thank you, Judge.

14 THE COURT: All right. Any objection to my
15 definition of what a deposition is?

16 (WHEREUPON, there was no response.)

17 THE COURT: All right. You may continue, sir.

18 BY MR. BAYNE:

19 Q And, Mr. Jones, what you previously told us was you
20 never saw Ms. Robinson's car cross that double yellow
21 line; correct?

22 A I never saw it. But she had to in order to hit me.

23 Q Well, my question was limited to what you saw. When
24 you were riding down the roadway in that right-hand lane,
25 you never saw her cross that double yellow line, did you?

1 A No. I never saw anything. I don't remember
2 anything.

3 Q When you were riding down the roadway in that
4 right-hand lane, you never saw Ms. Robinson's car in your
5 lane of travel coming towards you --

6 MR. JEFFERIES: Objection, Your Honor. This is the
7 third or fourth time he's asked the same question. It's
8 been --

9 THE COURT: Sustained. Asked and answered.

10 BY MR. BAYNE:

11 Q Mr. Robinson [sic], at no time that day did you ever
12 see Ms. Robinson's car; is that correct?

13 A No, I -- I sure didn't.

14 Q So when you tell us what you remember or what you
15 think happened, that's what you're guessing happened based
16 on what you've put together --

17 MR. JEFFERIES: Objection, Your Honor. He's clearly
18 stated he doesn't remember. He hasn't made any guesses.

19 THE COURT: And, specifically, what's your objection?

20 MR. JEFFERIES: The mischaracterization of -- of this
21 witnesses testimony. He's putting words in his mouth
22 about guessing --

23 THE COURT: This is cross-examination. What is he
24 supposed to do?

25 Your objection is overruled.

1 BY MR. BAYNE:

2 Q And I'll rephrase that, Mr. Jones. When you said
3 that must be what happened, you didn't, actually, see
4 that; is that correct?

5 A I didn't see anything happen.

6 Q Okay. I'm going to show you this Defendant's Exhibit
7 No. 1 again. And -- and we're going to look at the first
8 picture there. And I'm going to ask you to look at that.
9 In that picture on Page 1 of Defendant's Exhibit No. 1,
10 that shows what you understand to be Ms. Robinson's car
11 and your bicycle; is that correct?

12 A Correct.

13 Q And in that picture, Ms. Robinson's car is in her
14 lane of travel; is that right?

15 A No. That -- that -- that's in my lane of travel.
16 That's in the lane that I was in.

17 Q Your testimony is that in this photograph,
18 Ms. Robinson's car and your bicycle are in your lane of
19 travel on the left-hand side of the road; is that correct?

20 A Right-hand side of the road.

21 Q And that's what I'm asking you. Is -- Ms. Robinson's
22 car that's in front of your bike there, is that on the
23 right-hand side or the left-hand side?

24 A That's on the right-hand side.

25 Q So Ms. Robinson was in her lane of travel in this

1 photograph; correct?

2 A No. She's in my lane of travel.

3 Q We'll let the jury look at it.

4 Let's go a little bit -- to Page 4, which is a rear
5 shot of Ms. Robinson's car. In this photograph, is
6 Ms. Robinson's car in her lane of travel or in your lane
7 of travel?

8 A It's --

9 THE COURT: Now, Mr. Bayne, you have to help us out.
10 Which of the four photographs are you --

11 MR. BAYNE: I'm sorry, Judge. This is Page 4 labeled
12 as DEF194.

13 THE COURT: All right.

14 BY MR. BAYNE:

15 Q In this picture, is that car in her lane of travel or
16 is it in your lane of travel?

17 A This car right here is in their lane. That car right
18 there is still in my lane of travel.

19 Q Well, and you understand that the car in the middle
20 of this picture, that's Ms. Robinson's car, don't you?

21 A I don't know.

22 Q Okay. But you'd agree with me this car in the center
23 of the picture is in its own lane of travel; is that
24 right?

25 A Yes.

1 MR. BAYNE: Okay. May I publish these to the jury,
2 Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. BAYNE:

5 Q As a result of this accident, Mr. Jones, you filed a
6 lawsuit; correct?

7 A Correct.

8 Q And in that lawsuit, there are a number of
9 allegations about how this accident happened; is that
10 right?

11 A Correct.

12 Q One of those is that the Defendant -- that's
13 Ms. Robinson -- unlawfully attempted to pass a vehicle
14 immediately in front of her. Do you remember that?

15 A That's what I was told.

16 Q Okay. That's what you were told?

17 A Yes. I don't -- I don't know anything.

18 Q And I -- and this is the last time I'll ask this.
19 But you didn't, actually, see that happen; is that right?

20 A I didn't see anything happen.

21 Q You, also, have some -- some trouble with your eyes,
22 don't you, Mr. Jones?

23 A But that didn't play a factor. I wear eye glasses.

24 Q Well, you do have vision issues since you were a
25 child, don't you?

1 A Yes. But that didn't -- that didn't take effect that
2 day.

3 Q You said you can barely see out of your left eye; is
4 that right?

5 A That's why I wear glasses.

6 Q But even with glasses, you don't have 20/20 vision;
7 is that correct?

8 A Correct.

9 MR. BAYNE: Just one second, Your Honor.

10 THE COURT: Anything on redirect, Mr. Jefferies?

11 MR. BAYNE: Just one -- one second.

12 THE COURT: Oh, you haven't finished. I'm sorry.

13 (Pause.)

14 BY MR. BAYNE:

15 Q Mr. Jones, I've asked you a lot about Ms. Robinson's
16 car crossing that line on your side of the road. But you
17 never saw any car cross that double yellow line that day,
18 did you?

19 A No. I haven't -- I seen -- I don't know anything.
20 And I didn't see anything.

21 Q The only vehicle that you know of that crossed that
22 double yellow line was your bicycle; is that correct?

23 A I -- I wasn't across the double yellow line. I
24 didn't cross the double yellow line.

25 Q Okay. Is it your testimony that you were hit in the

1 right lane in your lane of travel?

2 A Yes.

3 MR. BAYNE: Thank you very much, Mr. Jones.

4 Those are all the questions I have.

5 THE COURT: Mr. Jefferies.

6 MR. JEFFERIES: Redirect, Your Honor.

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. JEFFERIES:

10 Q Harland, I know there's a lot of things you don't
11 know. And I understand that. You know you got hit by a
12 car; right? I mean, there's no question about that, is
13 there?

14 A Correct.

15 Q And, as far as you know, no one's ever denied or
16 disputed that it was Ms. Robinson that hit you; isn't that
17 right?

18 A No. No one has ever denied it.

19 Q So you got hit by Ms. Robinson. I know Mr. Bayne
20 asked you a lot of questions about who was in whose lane.
21 Was she in your lane? Were you in her lane of travel? I
22 find all that lane of travel talk a little confusing.

23 Do you agree with me that when two vehicles are in a
24 wreck, they're in the same lane? That's -- because they
25 touched; right? You all were both in the same lane at the

1 same time. That's why there was a wreck, wasn't there?

2 A Correct.

3 Q That blue car that you turned in front of, you said
4 she signaled to you by -- by looking at you. Do -- do you
5 mean like y'all made eye contact?

6 A Yes.

7 Q Kind of the way you do when you turn and you look and
8 the other guy sees you?

9 A Uh-huh.

10 Q And you know if you're looking in their eyes, they're
11 telling you it's okay to turn?

12 A Yes.

13 Q They're not going to look in your eyes and then run
14 over you?

15 A Yes. She -- she slowed down.

16 Q And made eye contact with you?

17 A Uh-huh.

18 Q When you went across that double yellow line, were
19 you, like, veering into the other lane like a head-on
20 collision? Or were you making a left turn that you'd
21 signaled for?

22 A I didn't cross the double yellow line. I just went
23 to go turn.

24 Q And you had your arm out?

25 A Yeah.

1 Q You were signaling?

2 A I was going to turn. But they said I turned in front
3 of her.

4 Q You mentioned earlier that the doctor told you to
5 start riding a bike for exercise?

6 A Yes.

7 Q Is that -- how long before this wreck did the doctor
8 tell you to do that? Was it weeks? Months? Years?

9 A About a month.

10 Q About a month.

11 And had you been riding every day for a month, or
12 close to it?

13 A Correct.

14 Q Every day.

15 So you knew about turn signals?

16 A Correct. I see it on TV. And I read about it.

17 Q And why do you use a turn signal on a bike? Why do
18 you use your arm?

19 A To let -- to let the other person know that you're
20 turning.

21 Q And why is that especially important for a bicyclist?

22 A To let the car know that you're turning in front of
23 them.

24 Q Because when there's a wreck between a car and a
25 bike, it's the bicyclist that really gets hurt, isn't it?

1 A Correct.

2 Q Is there any chance at all that you forget to signal?

3 A No. There's no chance at all.

4 Q You mentioned that day that your buddy that you
5 worked with had come over to the house and might have seen
6 the wreck. Is that the guy named Alex, the guy you worked
7 with?

8 A Yes, yes. He told me that he didn't see --

9 MR. BAYNE: Objection to hearsay, Your Honor.

10 BY MR. JEFFERIES:

11 Q Did you ever try to find Alex?

12 THE COURT: Stop. First of all, the practice is you
13 stand up when you have an objection --

14 MR. BAYNE: I'm apologize, Your Honor --

15 THE COURT: -- let's do that, first of all.

16 But what's your objection, sir?

17 MR. BAYNE: Objection to hearsay testimony by the
18 witness.

19 THE COURT: What was the question again?

20 MR. JEFFERIES: I believe the questions was just
21 whether it was Alex that was with him that day.

22 MR. BAYNE: I think the question was what did Alex
23 see --

24 THE COURT: If that's the question, it's okay. I
25 didn't hear the first part. I'm sorry.

1 So let's back up. That's the question you're asking
2 now, then listen to the answer you want, sir.

3 All right. Go ahead.

4 BY MR. JEFFERIES:

5 Q Was it Alex that was with you that day you got hit
6 that came over to the house? Or do you remember?

7 A Yes, it was him.

8 Q Okay. Did you try to find Alex after that so he
9 could come testify?

10 A Yes. But he said --

11 Q Did you find him?

12 A Yeah, yeah. But he said he didn't see anything.

13 Q Okay. So it was no good for him to come here and
14 testify if he didn't see anything?

15 A Yes.

16 MR. JEFFERIES: That's all the questions I have,
17 Mr. Jones.

18 THE COURT: Anything on recross?

19 MR. BAYNE: Just briefly, Judge.

20 RECROSS-EXAMINATION

21 BY MR. BAYNE:

22 Q Mr. Jones, you're aware that bicyclists have to
23 follow the exact same rules as drivers --

24 THE COURT: That's not in response to redirect,
25 Mr. Bayne.

1 MR. BAYNE: Your Honor, it goes directly to the
2 signaling --

3 THE COURT: What?

4 MR. BAYNE: It goes directly to the signaling with
5 his hand --

6 THE COURT: Was that a question asked on redirect?
7 Was it?

8 MR. JEFFERIES: I did ask about signaling, Your
9 Honor.

10 THE COURT: Okay. I just wanted to make sure.
11 Go ahead.

12 BY MR. BAYNE:

13 Q Mr. Jones, you're aware that bicyclists have to
14 follow the exact same rules, and regulations, and laws
15 that drivers do on the roadway; correct?

16 A Correct.

17 Q And a driver and a bicyclist can't just turn in front
18 of a car because they put their hand out; is that correct?

19 A Yes, if you signal.

20 Q Right. You have a duty to make sure it's safe to do
21 that; is that right?

22 A Yes.

23 MR. BAYNE: Okay. Thank you, Mr. Jones.

24 THE COURT: Anything further of this witness?

25 MR. JEFFERIES: Nothing further, Your Honor.

1 THE COURT: You may step down, Mr. Jones.

2 And, members of the jury, I'm going to give you a
3 short break and try to find out what's remaining for the
4 day. I'm probably going to let you go home at 5:00. The
5 first day, you didn't know you were going to be on a jury.
6 And it's probably what I'm going to do. But I'll talk to
7 y'all about it a little bit further.

8 But y'all go to the jury room. And ask about whether
9 anybody has any child care problems and needs to be
10 somewhere. But just don't talk about the case.

11 Go to the jury room for a few moments.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 4:05 p.m.)

14 THE COURT: Sometimes, I do have trouble hearing up
15 here. So I ask you to speak a little louder.

16 Anything we need to take up outside of their
17 presence? We're all on the same page now?

18 MR. JEFFERIES: Your Honor, just -- just a procedural
19 question. We intend next to call the Defendant herself.
20 In terms of timing, we --

21 THE COURT: Well, it doesn't matter. We'll stop when
22 we stop. But over the years, I've found -- I'll check
23 with the jury. But they -- they didn't know they were
24 going to get picked. So they probably want to get out of
25 here about 5:00. And they're more important than I am for

1 certain.

2 So I'm going to try to see if they have any child
3 care problems, anything like that. We'll try to finish
4 the witness, if we can. If we can't, we'll have tomorrow.

5 MR. JEFFERIES: Right. That -- that was my thought,
6 Your Honor. Instead of breaking midway through the
7 Defendant, I'll be -- I'll be glad --

8 THE COURT: Yeah. If she's going to be here for
9 30 minutes -- it's, like, 4:45, I look at y'all and it's
10 going to take longer -- I'll just wait and see. But,
11 generally, you know, you want to stop before 5:00. But
12 we're at a good stopping point. No matter what time it
13 is, we'll stop.

14 And who -- is the third witness this --

15 MR. BAYNE: Ms. Murray is a video deposition. She's
16 about 28 minutes. And we could do that. I know it's out
17 of order. But we could, certainly, do that today.

18 THE COURT: Let's just see how it plays out. But if
19 it's 5:00, I'm probably going to stop right then and
20 there. But I'll see if they have any child care problems.

21 MR. DELANEY: And, Your Honor, obviously, we defer to
22 you and the jury. But if -- I mean, if you wanted to stop
23 today and we pick this up in the morning, I think --

24 MR. JEFFERIES: I was --

25 THE COURT: If we get to 5:00, boom, I'm going to

1 stop --

2 MR. DELANEY: Yes, sir. I meant even if you wanted
3 to stop now and then --

4 THE COURT: No, no, no.

5 MR. DELANEY: Okay.

6 THE COURT: We can get a lot of it in.

7 MR. DELANEY: Okay.

8 THE COURT: Certainly, we can get the direct in. I
9 don't know about cross. But it's kind of -- direct -- you
10 know what --

11 MR. DELANEY: Yes, sir.

12 THE COURT: So we'll just -- we'll just see how it
13 plays out. But, typically, on Monday, you know, they want
14 to go home. I'll see if there's any issue.

15 We'll be in recess for a few moments.

16 (WHEREUPON, a break was taken.)

17 THE COURT: This is the situation. It is now 4:18.
18 We can stop for the day, resume in the morning where we
19 won't need to break it up. That might be the best thing
20 to do. Let's just stop for the day. We can do everything
21 tomorrow morning, and argue, and charge tomorrow
22 afternoon.

23 See, I don't have any idea how long your direct's
24 going to take, your cross is going to take.

25 MR. JEFFERIES: Understood.

1 THE COURT: So let's just send them home. And we'll
2 resume in the morning.

3 Bring the jury in.

4 If that's okay, I just wanted to --

5 MR. JEFFERIES: No objection, Your Honor.

6 (WHEREUPON, the jury came into open court at
7 approximately 4:24 p.m.)

8 THE BAILIFF: Your Honor, the jury is seated.

9 THE COURT: All right. Welcome back, members of the
10 jury.

11 What I've decided to do -- it's a good stopping point
12 right now. I think we're going to hear from the --
13 Ms. Robinson tomorrow and a deposition witness that's
14 going to take about 28 minutes.

15 So rather than squeeze all that in, I'm going to just
16 send you home now. And we'll resume in the morning at
17 9:30.

18 Okay. I, again, remind you, please, don't talk about
19 this case in any way, shape, or form. It's unfair to
20 either side for you to do so. I trust and hope you have a
21 pleasant and restful evening. And I'll see y'all tomorrow
22 morning at 9:30.

23 UNIDENTIFIED JUROR: I -- I didn't get to see the
24 pictures.

25 THE COURT: What now?

1 UNIDENTIFIED JUROR: I didn't get to see the
2 pictures, me and the lovely young lady.

3 THE COURT: We'll make sure you see them in the
4 morning.

5 UNIDENTIFIED JUROR: Okay.

6 THE COURT: All right. So don't worry about
7 anything. Get a good night's sleep. We'll see you
8 tomorrow morning at 9:30. You just can't talk about the
9 case with anybody.

10 Thank you all very much.

11 Are you going to be able to make it on time?

12 UNIDENTIFIED JUROR: Yes, sir.

13 THE COURT: You'll be able to make it on time?

14 UNIDENTIFIED JUROR: Yes, sir.

15 THE COURT: Okay. We'll see you in the morning.

16 UNIDENTIFIED JUROR: Thank you, sir.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 4:25 p.m.)

19 THE COURT: I'll see you all in the morning. If you
20 think of anything, we'll take it up then.

21 (WHEREUPON, the proceedings were concluded at
22 approximately 4:26 p.m., to be reconvened on
23 Wednesday, August 14, 2019.)
24
25

1 WEDNESDAY, AUGUST 14, 2019

2 THE COURT: So is everyone ready?

3 Now, Mr. Jefferies, you said you had an objection
4 about reading the deposition. What is it, sir?

5 MR. JEFFERIES: That's correct, sir.

6 The witness should be called to testify live.
7 There's no provision in the rule that --

8 THE COURT: Slow down.

9 MR. JEFFERIES: Pardon me, sir.

10 THE COURT: That's all right.

11 MR. JEFFERIES: The witness should be called to
12 testify live. She doesn't live more than a hundred miles
13 away. She lives 12 miles away in Hopkins. There's no
14 evidence that she's deceased, or insane, or hospitalized,
15 or in jail --

16 THE COURT: That's enough.

17 MR. JEFFERIES: -- or any of those.

18 THE COURT: Mr. Bayne.

19 MR. BAYNE: Yes, Judge.

20 To begin with, the deposition was noticed for trial.
21 It was taken by video. Everyone [phonetic] was present.

22 Ms. Michelle Murray, we served a trial subpoena on
23 her for appearance here at trial. She is not present.
24 She --

25 THE COURT: Where is she?

1 MR. BAYNE: We don't know for sure. I spoke to her
2 on Friday. And her son was in a bicycle accident, irony
3 of ironies in this case. And she was taking time off from
4 work for that. She has --

5 THE COURT: Have you spoken to her since Monday?

6 MR. BAYNE: I have not spoken to her since Monday. I
7 have --

8 THE COURT: Why don't you call her right now and see
9 if you can get her?

10 MR. BAYNE: I can call her and find out --

11 THE COURT: Relax, gentlemen. These issues come up.
12 We'll try to resolve them.

13 MR. BAYNE: Yes, sir.

14 And, like I said, under -- under 32(a)(4), service of
15 a subpoena, failure to appear is one of the exceptions to
16 play the video deposition. And that's what we plan to --

17 THE COURT: Okay. That's fine.

18 How about that, Mr. Jefferies?

19 MR. JEFFERIES: I haven't seen the subpoena, Your
20 Honor.

21 THE COURT: Well, he's got it right there. He will
22 show it to you now.

23 MR. JEFFERIES: I'm -- I'm sure he will.

24 THE COURT: Please show it to him.

25 MR. JEFFERIES: This is the first we've heard -- but

1 we would have called had we known he tried to serve it.

2 The subpoena looks like it's dated on the 8th. And,
3 Your Honor --

4 THE BAILIFF: This is the Foreperson.

5 THE COURT: I'm sorry. Go ahead, Mr. Jefferies.

6 MR. JEFFERIES: The subpoena does not tell the
7 witness when to appear. It says, For date and time,
8 witness can be called during the week of August 12th.
9 Exact time to be determined.

10 Mr. Bayne just said he hasn't called her this week to
11 tell her when to show. It's no wonder she's not here.
12 The subpoena doesn't tell her when to come.

13 THE COURT: All right. Mr. Bayne.

14 MR. BAYNE: Judge, I -- I would note -- I'm happy to
15 call her. We served the subpoena. 32(a)(5), also, sets
16 out that, essentially, when the need for the witness
17 arises, we call her. We noticed her for deposition. We
18 recorded her video. They asked her every single question
19 they ever wanted to ask her about this case. They're,
20 obviously, free to --

21 THE COURT: You know, this is getting tedious over a
22 wreck case. Both sides, come on. It's a wreck case.

23 MR. BAYNE: And that's -- and that's why we carved it
24 down to 28 minutes.

25 THE COURT: What now?

1 MR. BAYNE: That's why we carved it down to 28
2 minutes, to get in and out, to play what she saw, and be
3 done with her testimony.

4 THE COURT: That's -- that's fine. You should call
5 her at some point time.

6 MR. BAYNE: Yes, sir.

7 THE COURT: If you can't get her -- I mean, I can --
8 I can delay the trial until we can find her, get her here.

9 So I want you both to realize, let's get through this
10 witness first. And we'll take up this issue later on.

11 MR. BAYNE: Sure.

12 THE COURT: But that's -- that's a good foundation
13 for both of y'all to argue. And, like I said, my interest
14 in this case is I have no interest in this case. Y'all
15 need to understand that. I don't care one way or the
16 other. But I'm trying to do the best I can by both of
17 you. Let's let it go with that.

18 We'll take it up when the time comes when we finish
19 with Ms. Robinson; is that correct?

20 MR. JEFFERIES: Thank you, Your Honor.

21 MR. BAYNE: Yes, sir.

22 THE COURT: All right. Bring the jury in.

23 THE BAILIFF: Yes, Your Honor.

24 THE COURT REPORTER: Judge, did you want me to mark
25 this?

1 THE COURT: What?

2 THE COURT REPORTER: Did you want me to mark this as
3 an exhibit?

4 THE COURT: Yes.

5 THE COURT REPORTER: Yes, sir.

6 (WHEREUPON, Court's Exhibit No. 1 was marked for
7 identification and admitted into evidence.)

8 THE COURT: And I want everybody to know the Foreman
9 will be -- he works with EMS. Y'all might know that, the
10 juror.

11 MR. DELANEY: Yes, sir.

12 THE COURT: He had to work last night so he has on
13 his uniform this morning. Does anybody have a problem
14 with that?

15 MR. DELANEY: No, Your Honor.

16 MR. JEFFERIES: No, sir.

17 THE COURT: I just wanted to make sure.

18 (WHEREUPON, the jury came into open court at
19 approximately 9:52 a.m.)

20 THE BAILIFF: Your Honor, the jury is present.

21 THE COURT: All right. Welcome, Mr. Foreman, members
22 of the jury.

23 Now, Mr. Foreman, I've got to ask you a question.
24 Moak, M-O-A-K; is that correct?

25 JUROR #195, BRIAN MOAK: Yes, sir.

1 THE COURT: Do you know Ron Moak? Are you any
2 relation to --

3 JUROR #195, BRIAN MOAK: He's a second cousin, yes,
4 sir.

5 THE COURT: Second cousin. Okay. With a name like
6 Moak, there can't be too many people --

7 JUROR #195, BRIAN MOAK: No. There's not a lot of
8 us, no, sir.

9 THE COURT: So are y'all ready?

10 I think you're going to call the Defendant,
11 Ms. Robinson; is that correct?

12 MR. JEFFERIES: That's correct, Your Honor.

13 The Plaintiff calls the Defendant, Karen Robinson.

14 THE COURT: Come around, Ms. Robinson.

15 THE BAILIFF: Stand right here, please. And face the
16 clerk.

17 Place your left hand on the Bible and raise your
18 right hand, please.

19 WHEREUPON,

20 KAREN ROBINSON,
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat.

23 State your full name for the record.

24 THE COURT: And, members of the jury, I might have
25 said this yesterday. But either side can call -- like,

1 the Defense can call the Plaintiff. The Plaintiff can
2 call the Defendant.

3 DIRECT EXAMINATION

4 BY MR. JEFFERIES:

5 Q Good morning, Ms. Robinson.

6 A Good morning.

7 Q I'll try to be brief with this. A few questions for
8 you. You -- on June 7th of 2017, you hit Harland Ron --
9 Harland Jones on his bike; right?

10 A Mr. Jones crossed into my path and we collided
11 together.

12 Q The front of your car hit the right side of his bike;
13 right?

14 A The bicycle collided in the front of my car --

15 THE COURT: I -- I think you need to speak up just a
16 little bit, please, ma'am.

17 THE WITNESS: The bicycle collided in front of my
18 car, yes. That's what happened.

19 BY MR. JEFFERIES:

20 Q The bicycle collided into the front of your car?

21 A Yes.

22 Q What part of your car made contact with the bicycle?

23 A The front part.

24 Q Okay. And what part of the bicycle did it make
25 contact with?

1 A His middle part.

2 Q The right side middle part?

3 A Of his bicycle.

4 Q Of his bicycle?

5 A The right side of the bicycle.

6 Q Okay. In the middle?

7 A Yes.

8 Q Where the seat and the pedals are?

9 A Yes.

10 Q So your car -- if I were riding the bike, your car --
11 like this, right where he was sitting on his right side;
12 correct?

13 A Yes.

14 Q All right. So your car hit his bike. Now, I'm not
15 talking about how that came to be. I'm just asking you,
16 your car hit his bike. His bike wasn't going sideways,
17 was it? He didn't come sideways and hit your car. Your
18 car hit his bike; right?

19 A He turned in the front of my car and we collided.

20 MR. JEFFERIES: Bear with me a moment.

21 (Pause.)

22 BY MR. JEFFERIES:

23 Q Do you remember a deposition that I took with you?

24 Do you remember I asked you questions? We sat in

25 Mr. Bayne's office and I asked you a series of question

1 under oath. Do you remember that?

2 A That was last year.

3 Q Yes, it was. The summer of last year.

4 A Yes.

5 Q Do you remember that?

6 A Yes.

7 Q All right. Do you remember me asking the question --

8 THE COURT: Stop. Show her the deposition. Okay.

9 All right. Members of the jury, I think I explained
10 to you yesterday what a deposition was.

11 MR. JEFFERIES: May I approach?

12 THE COURT: You may open it.

13 MR. JEFFERIES: I didn't know whether Your Honor
14 wanted to unseal it or not.

15 THE COURT: I have trouble buttoning my shirt in the
16 morning.

17 And refer to the page and line number.

18 BY MR. JEFFERIES:

19 Q I'm handing you the transcript from your deposition.

20 All right. Ms. Robinson, now that you've had a
21 chance to take a look at that transcript -- but before we
22 get into the specific questions, you remember that you
23 were sworn in under oath; right?

24 A Yes.

25 Q Just like you were today?

1 A Yes.

2 Q You swore to tell the truth, the whole truth, nothing
3 but the truth?

4 A Yes.

5 Q All right. And you remember I asked at the end if
6 you didn't understand any of my questions. You said, no,
7 you understood them. Do you remember that?

8 A Yes.

9 Q Okay. You said you answered truthfully and fully;
10 right?

11 A Yes.

12 Q Okay. So one of my questions to you was -- and this
13 is on Page 11, Line 8. I said --

14 THE COURT: Give her a chance to find it, please.

15 BY MR. JEFFERIES:

16 Q And just let me know when you're there.

17 A Page 11, Line 8?

18 Q Page 11, Line 8.

19 A Yes.

20 Q And my question to you was, So while you were
21 driving -- make sure I understand. While you were driving
22 west on Old Bluff Road, the front of your car struck
23 Mr. Jones; correct?

24 And what was your answer to that?

25 A Yes.

1 Q And I asked you then on Line 13, was there damage to
2 your vehicle?

3 And you said?

4 A Yes.

5 Q And where was the damage to your vehicle?

6 And you said the windshield, the top; right?

7 A Yes.

8 Q Okay. And I asked you if there was any damage to
9 either side of your vehicle. On Line 21, what did you
10 say?

11 A The side, no.

12 Q Or to the back?

13 A No. There wasn't any.

14 Q Okay. If you turn to the next page, Page 12. Line
15 9 -- pardon me, Line 18. Because you asked me to rephrase
16 and I rephrased it for you.

17 On Line 18, I said, When the front of your vehicle
18 struck Mr. Jones' bike, did you hit the right side of the
19 bike, or the left side, or was it head on? How was it?

20 And what did you say?

21 A It was in the middle.

22 Q And I clarified, Was it the right side of the bike or
23 the left side of the bike?

24 And the very next page at the top, what did you say?

25 A The right side.

1 Q It was the right side.

2 And then toward the bottom of Page 13, I asked you,
3 So the front of your vehicle, the bumper, the windshield,
4 the top hood struck the right side of Mr. Jones' bike area
5 where the pedals and seat are; is that correct?

6 And you said?

7 A That's to the best of my knowledge.

8 Q Okay. And then I asked you, Okay. After your car
9 struck the right side of Mr. Jones on his bicycle, tell me
10 what happened next.

11 And you said? This is on Line 3, the following page,
12 Page 14.

13 A Everything stopped.

14 Q Okay. So regardless of how Mr. Jones came to be in
15 front of you, don't you agree with me that your car struck
16 the right side of Mr. Jones' bike? He did not run into
17 your car, you ran into his bike?

18 A We collided as he crossed over the line into my path.

19 Q What's the purpose of a turn signal? Isn't the
20 purpose of a turn signal to give a warning of a turn?

21 A Yes.

22 Q It is?

23 A (There was no verbal response.)

24 Q Now, you heard Harland Jones testify that he gave a
25 turn signal; right? That he stuck his arm out to the left

1 and he signaled for a left turn. You heard that?

2 A Yes.

3 Q Okay. You heard your own lawyer, Mr. Delaney, agree
4 that Harland Jones gave a left turn signal in his opening.
5 You heard him say that, too; right?

6 A Yes.

7 Q All right. You heard your own lawyer, Mr. Delaney,
8 say that he has a witness, Michelle Murray, who'll say the
9 same thing, left turn signal. She saw -- and this is
10 y'all's witness. She saw Harland Jones give a left turn
11 signal. You heard him say that, too; right?

12 A Yes.

13 Q But you didn't see Harland Jones give a turn signal,
14 did you?

15 A Well, to my knowledge is that if you're on a bicycle,
16 how can you turn in front of a car when there's no turning
17 lane?

18 Q No, no. That wasn't my question. My question was,
19 you didn't see Harland Jones give the left turn signal
20 that everybody else saw, did you?

21 A What I seen is Mr. Jones had his hand --

22 THE COURT: Ma'am, you --

23 THE WITNESS: -- out --

24 THE COURT: Let me stop you. This is
25 cross-examination [sic]. You can answer the question.

1 You've got to answer it "yes" or "no." You can explain
2 your answer. But if he asks you a question like that,
3 you've got to say "yes" or "no." You have an opportunity
4 to explain it. And, of course, your lawyer will get a
5 chance to present anything else.

6 MR. JEFFERIES: Thank you, Your Honor.

7 THE COURT: Ask the question again, sir.

8 BY MR. JEFFERIES:

9 Q So the question is, did you see the same left turn
10 signal that everybody else saw giving you warning of the
11 turn?

12 A No.

13 Q No?

14 A No.

15 Q You did not see that left turn signal?

16 A No.

17 Q And I think that agrees with your answer in this
18 case. Do -- do you remember the answer that your
19 attorneys filed on your behalf?

20 A (There was no response.)

21 Q I can show it to you. Do you remember it at all?

22 A (There was no response.)

23 Q I'll bring it up.

24 THE COURT: What page are we talking about,
25 Mr. Jefferies?

1 MR. JEFFERIES: Bear with me just a moment, Your
2 Honor. I'll --

3 THE COURT: Yes, sir. Take your time.

4 MR. JEFFERIES: I'll identify it.

5 (Pause.)

6 MR. JEFFERIES: We're at paragraph 44.

7 BY MR. JEFFERIES:

8 Q Let me know when you're there.

9 A 44?

10 Q Are you there?

11 A Yes.

12 Q Paragraph 44.

13 All right. So that's your answer. That's the
14 official court document that you and your lawyers filed;
15 right? And in paragraph 44, you said, Defendant had no
16 warning of Plaintiff's illegal left turn. That's what you
17 said, you had no warning; is that right?

18 A Yes.

19 Q All right. Because you didn't see that turn signal
20 that everyone else saw; right?

21 A Yeah.

22 Q Because if you'd have seen that turn signal -- the
23 purpose, as you said earlier, a turn signal -- the purpose
24 is to give warning of a turn. And had you seen that turn
25 signal, you'd have had the warning, wouldn't you?

1 A I didn't expect Mr. Jones to turn in front of me.

2 Q And isn't that why we have a turn signal? Because
3 how else would you know when people turn? My question
4 was, if you'd have seen that turn signal, you'd have had
5 warning of the turn, wouldn't you?

6 A Yes.

7 Q But you drove along that day, June 7th of 2017. You
8 were not wearing your glasses, were you?

9 A No, sir.

10 Q You didn't even have your prescription glasses in the
11 car with you that day, did you?

12 A They're in my purse.

13 Q They're in your purse.

14 So you had your prescription glasses with you in the
15 car in your purse, but you weren't wearing them?

16 A No. They're just for reading.

17 Q Did you drive here today?

18 A Yes.

19 Q Did you wear your prescription glasses to drive here
20 today?

21 A No.

22 Q Let me just understand this. You weren't wearing
23 your prescription glasses on June 7, 2017 when you hit
24 Harland Jones; right?

25 A No, I wasn't.

1 Q And you didn't wear them when you drove here today?

2 A No, sir.

3 Q And that's because you don't think you need to wear
4 glasses to drive; isn't that right?

5 A They're just for reading.

6 Q All right. So you -- you think that you don't need
7 glasses to drive; is that correct?

8 A They're prescription reading glasses.

9 Q So my question is, do you think you need glasses to
10 drive a car?

11 A No, sir.

12 Q Are you aware that the State of South Carolina
13 disagrees with you on that?

14 A No. I'm not aware of that.

15 MR. JEFFERIES: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 MR. JEFFERIES: If we can make this Plaintiff's -- I
19 think this would be Plaintiff's Exhibit No. 7.

20 (WHEREUPON, Plaintiff's Exhibit No. 7 was marked for
21 identification only.)

22 THE COURT: Any objection?

23 MR. DELANEY: No, sir, Your Honor.

24 THE COURT: All right. Plaintiff's Exhibit No. 7 is
25 in without objection.

1 (WHEREUPON, Plaintiff's Exhibit No. 7 was admitted into
2 evidence.)

3 BY MR. JEFFERIES:

4 Q Now, Ms. Robinson, I'm showing you Plaintiff's
5 Exhibit No. 7. I've turned to the second page of that.
6 Do you recognize what that exhibit is?

7 A My driver's license.

8 Q All right. This is the one you showed me during your
9 deposition. I took a picture of it; right?

10 A Yes.

11 Q And it was issued on July 20th of 2016; right?

12 A Yes.

13 Q Almost but not quite a year before you hit Harland
14 Jones on his bicycle; right?

15 A Yes.

16 Q Okay. Flip over to the first page of that driver's
17 license.

18 A Okay.

19 Q And do you see right there in the middle of the page
20 a big word, Restrictions? Do you see that?

21 A Yes.

22 Q All right. And what does it say underneath that
23 word, "Restrictions"?

24 A Corrective lens.

25 Q Corrective lens.

1 So the State of South Carolina disagrees with you
2 about whether you can drive without glasses, doesn't it?
3 You have a corrective lens restriction on your driver's
4 license, don't you?

5 A Yes.

6 Q And, yet, you drove here today without your
7 corrective lenses; right?

8 A Yes.

9 Q And you drove into the side of Harland Jones on his
10 bicycle without your corrective lenses; isn't that right?

11 A We collided, yes.

12 Q Without your corrective lenses on?

13 A Yes.

14 Q And you did not see the turn signal that everybody
15 else saw without your corrective lenses on; isn't that
16 right?

17 A Yes.

18 Q Are you aware that it's against the law to drive
19 without corrective lenses when your license has a
20 corrective lens restriction?

21 A No.

22 Q You didn't know that?

23 A No, I didn't.

24 Q Would you be surprised to know that Section 56-12-20
25 of the South Carolina Code says it's unlawful for a person

1 whose vision requires correction in order to meet the
2 minimum standards of the department to divide -- to drive
3 a motor vehicle in this state without the use of the
4 correction?

5 A No, I didn't.

6 Q So you were breaking the law on those two days. Do
7 you know that's a misdemeanor?

8 A No, I didn't.

9 Q Yeah. You can get fined a hundred dollars or put in
10 jail for 30 days.

11 So you agree with me that when you -- you -- the
12 front of your car struck the side of Mr. Jones' bike, you
13 were not wearing your corrective lenses as required by
14 law?

15 A Yes, I wasn't.

16 Q And you agree with me now that you were breaking the
17 law because you were required by statute to wear those
18 glasses?

19 A I did not know that.

20 Q Well, you know it now; right?

21 A (There was no response.)

22 Q Do you agree with me now that you were breaking the
23 law?

24 A I haven't read it, so.

25 Q I'm sorry. Do you agree with me now that you were

1 breaking the law by not wearing your glasses?

2 A I haven't read anything on that. So if you want to
3 bring it up, I can read it.

4 MR. JEFFERIES: I'll do that for you.

5 Your Honor, I think we've put Plaintiff's Exhibit No.
6 7 into evidence without objection.

7 THE COURT: It's been admitted without objection.

8 MR. JEFFERIES: May I publish this --

9 THE COURT: You may publish it to the jury.

10 MR. JEFFERIES: -- to the jury?

11 BY MR. JEFFERIES:

12 Q May I see that, Plaintiff's Exhibit No. 7, please?

13 A (Witness complied.)

14 MR. JEFFERIES: You can pass that around.

15 We can make this Plaintiff's Exhibit No. 8.

16 THE COURT: First, I've got to ask, is there no
17 objection?

18 MR. DELANEY: Your Honor, it's the first time I've
19 seen this particular --

20 THE COURT: What is it?

21 MR. DELANEY: I believe it's the statute.

22 THE COURT: Is there any objection?

23 MR. DELANEY: I don't think so.

24 THE COURT: All right. That's fine.

25 Plaintiff's Exhibit No. 8 --

1 What statute is it, Mr. Jefferies?

2 MR. JEFFERIES: It is Section 56-1-220 of the South
3 Carolina Code.

4 THE COURT: All right, sir.

5 (WHEREUPON, Plaintiff's Exhibit No. 8 was marked for
6 identification and admitted into evidence.)

7 BY MR. JEFFERIES:

8 Q All right. Ms. Robinson, I'm going to hand you
9 Section 56-1-220 of the South Carolina Code. You can read
10 the whole thing, if you like. But the part I'm pointing
11 toward is down at the bottom of this first page, Section C
12 and Section D. If you want to take a look at those. And
13 let me know when you're finished reading.

14 A I'm finished.

15 Q Okay. And so do you agree with me that Section C
16 says that if your vision needs to be corrected to meet the
17 minimum standards that that correction has to be noted on
18 the driver's license?

19 A Yes.

20 Q Okay. And do you agree with me that Section D says
21 that if you have that noted on your driver's license, it's
22 unlawful to drive without your glasses?

23 A Yes.

24 Q And you were driving without your glasses?

25 A Yes.

1 Q So you were breaking the law. Yes?

2 A Yes.

3 Q Yes.

4 You said earlier that the purpose of a turn signal is
5 to give warning of a turn. You -- is that correct? Is
6 that what you said earlier?

7 A He did not give a turn signal.

8 Q You didn't see a turn signal, did you? You didn't
9 see the turn signal that everyone else saw, did you?

10 A (There was no response.)

11 Q Did you?

12 A No, I didn't.

13 Q And had you seen his turn signal, you'd have had
14 warning of the turn, wouldn't you?

15 A (There was no response.)

16 Q Had you seen a turn signal, that would have given you
17 warning of a turn, wouldn't it?

18 A The signal that he gave was an arm out, not an arm --
19 like, a turning signal. Like, he's holding his arm up
20 from being hit. That's the signal that he gave.

21 Q Well, that's the first time we've heard that. You
22 said earlier you had no warning at all. Everyone else
23 said --

24 A I was trying to explain it to you.

25 Q So you didn't see this, arm straight out to the side

1 that everybody else saw that Harland Jones swears he gave?

2 You didn't see that?

3 A No.

4 Q Okay. And had you seen that, what everyone else saw,
5 that arm straight out to the left, you'd have had warning
6 of a turn, wouldn't you?

7 A Yes.

8 Q How are you going to get home today?

9 A They're in my purse.

10 Q I thought you said those were reading glasses in your
11 purse?

12 A Those are the glasses that I have.

13 Q Okay. So the glasses you had in your purse back on
14 June 7th of 2017 --

15 A They're the same glasses in my purse.

16 Q Same glasses now?

17 A Yes.

18 Q Are you going to wear them today?

19 A Yes.

20 Q Because it'd be illegal to do otherwise; right?

21 A Yes.

22 Q And they were in your purse on June 7th of 2017;
23 right?

24 A Yes.

25 Q And you could've worn them. You could have followed

1 the law and put them on, as the State of South Carolina
2 requires; right?

3 A Yes.

4 Q But you didn't, did you?

5 A No.

6 Q And you didn't see the turn signal that everyone else
7 saw, did you?

8 A No.

9 Q And you hit Harland Jones on the right side of his
10 bike, didn't you?

11 A He collided in front of my car.

12 Q With the right side of his bike?

13 A Yes.

14 MR. JEFFERIES: That's all I have for now.

15 THE COURT: Mr. Delaney.

16 MR. DELANEY: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. DELANEY:

20 Q Good morning, Ms. Robinson.

21 A Good morning.

22 Q Much has been made about turn signals. Are you aware
23 of any provision in the law in South Carolina that if you
24 give a turn signal, you're just allowed to turn?

25 A No.

1 Q There's not one, is there?

2 A No.

3 Q Okay. Ms. Robinson, where -- where do you live? Can
4 you tell the jury where you live?

5 A 40 -- 42 Old Bluff Road.

6 Q Okay. You may need to lean just -- forward just a
7 little bit --

8 A 42 Old Bluff Road.

9 Q -- just so they can hear you.
10 Old Bluff Road, where this accident occurred?

11 A Yes.

12 Q Is that a road that you are familiar with?

13 A Yes.

14 Q How often would you say that you've traveled on that
15 road?

16 A Two to three times a day.

17 Q For how -- how many days?

18 A Every day.

19 Q Most of your life?

20 A Yes.

21 Q Okay. So is that -- that's a road that you're very
22 familiar with?

23 A Yes.

24 Q What's the speed limit on that road?

25 A 45.

1 Q Okay. On this particular day right before this
2 accident occurred, how fast were you going?

3 A 40 miles per hour.

4 Q All right. You were going about 40?

5 A Yes.

6 Q Okay. And you're aware that there's a double yellow
7 line that separates the two lanes of travel on Old Bluff
8 Road?

9 A Yes.

10 Q Okay. That particular morning right before the
11 accident occurred, do you remember about what time it was?

12 A Around 9:30.

13 Q Okay. Where were you going that morning?

14 A To my dentist's office.

15 Q You were going to the dentist's office?

16 A Yes.

17 Q Did you have an appointment that morning?

18 A No.

19 Q What was the purpose of your visit to the dentist
20 that day?

21 A For a consultation.

22 Q Did you have a set time that you needed to be there?

23 A No.

24 Q Okay. This was just a consult that you arrived and
25 you would have been seen as he could fit you in?

1 A Yes.

2 Q Okay. Did you see Mr. Jones before this accident
3 occurred?

4 A About five or seven seconds before we collided.

5 Q Okay. So just before the collision, you saw him?

6 A Yes.

7 Q Okay. No problems with the vision there. You saw
8 him?

9 A Yes.

10 Q Okay. And did you see him turn left across the
11 double line directly in front of -- in your lane of
12 travel?

13 A Yes.

14 Q Okay. This particular --

15 MR. DELANEY: I believe, Your Honor, the pictures
16 have already been marked.

17 May I approach the witness?

18 THE COURT: Yes, sir.

19 BY MR. DELANEY:

20 Q Ms. Robinson, I'm going to show you what has been
21 marked as Defendant's Exhibit No. 1. And it's a series of
22 four pictures. And, in particular, you can take a look at
23 all of them.

24 But what I would point you to is -- and let me know
25 when you've had a chance to look at those sufficiently.

1 A Okay.

2 Q In those pictures, is there anywhere that you would
3 have anticipated Mr. Jones turning into?

4 A No.

5 Q Is there any road there?

6 A No, there's none.

7 Q Is there any driveway there?

8 A No, there's none.

9 Q Is there any pathway there?

10 A No, there's none.

11 Q Is there anywhere for a bike to go, except for
12 directly across the road into a ditch?

13 A Yes.

14 Q That's -- that's correct.

15 Would you have anticipated that he would have turned
16 left there?

17 A Not expected, no.

18 Q Okay. Immediately before this accident happened,
19 tell the jury what you were doing and what happened
20 leading up to the impact.

21 A I had just left home to go see my dentist. And I was
22 on my day -- last day off from work. And I was going to
23 shut [phonetic] down. And I was going to go out and eat
24 with a girlfriend later on that day.

25 So I was just riding up the highway, as I usually do.

1 And five to seven seconds, I saw Mr. Jones cross in front
2 of me. And it was no warning, no anticipation of the
3 stopping in time enough. He just directly swerved his
4 bike in the front of my car.

5 I applied my brakes, but it wasn't time enough to
6 stop. And there was no skid marks in the road. That's
7 why I know I was not speeding. And I -- with that
8 happening that quick, there was no time to stop.

9 And I'm sorry that Mr. Jones was hurt. But I have no
10 part in the accident of how it happened. It wasn't
11 expected. I know where Mr. Jones lives. And it's not
12 where he was turning. We all know each other down in that
13 neighborhood. And it was a shocker to me. And I cried.

14 MR. DELANEY: Your Honor, may I approach and grab a
15 tissue?

16 THE COURT: Sure.

17 THE WITNESS: It hurt me to my heart that that
18 happened to him. And I jumped out of the car. And I
19 asked him what was he thinking? And why did he do this?

20 But my heart hurt for him. Because nothing like
21 that ever have happened in my life before. And to know
22 somebody that you went to school with -- it hurt.

23 But I had nothing to do with it. And I'm sorry it
24 happened. It's a hurtful thing. And I had no part of it.
25 I tried to stop. But he turned so quickly in front of my

1 car. There's no skid marks. There's nothing. I tried to
2 go over and there wasn't time.

3 BY MR. DELANEY:

4 Q Ms. Robinson, do you need just a second?

5 A I'm good.

6 Q Okay. And I'm sorry you're having to relive this
7 moment as -- as well.

8 The accident that -- that did happen between you and
9 Mr. Jones, where did that accident occur?

10 A On Old Bluff Road.

11 Q Okay. Was it in your lane of travel?

12 A Yes.

13 Q Was any part of it in what would have been Mr. Jones'
14 lane of travel?

15 A No.

16 Q Okay. This particular day, immediately before this
17 accident occurred, did you ever leave your lane of travel?

18 A No, not near Mr. Jones.

19 Q Okay. Did you ever attempt to pass anyone on Old
20 Bluff Road that day?

21 A I went around a car. But it was way -- way down away
22 from this accident.

23 Q Okay. And anywhere near where Mr. Jones was, did you
24 try to pass any type of car?

25 A No.

1 Q Okay. Did you ever cross the center line in any
2 vicinity before this accident occurred?

3 A No, I didn't.

4 Q Okay. A lot of times there's folks -- I'm surprised
5 we haven't heard any phone allegations. Your phone that
6 day, where was -- where was it?

7 A In my purse.

8 Q Were you on the phone in any way?

9 A No, sir.

10 Q Were there any distractions in your car?

11 A No.

12 Q Okay. Much has been made about this -- this vision
13 restriction. And -- and what you have said is the glasses
14 were for reading; is that right?

15 A Yes.

16 Q And you can drive without the need for these glasses?

17 A Yes.

18 MR. DELANEY: Okay. Your Honor, I need to mark an
19 exhibit. I believe it's Defendant's Exhibit No. 2. This
20 is a property damage estimate.

21 MR. JEFFERIES: No objection, Your Honor.

22 THE COURT: All right. It's Defendant's Exhibit
23 No. 2?

24 MR. DELANEY: I believe that's correct, Your Honor.

25 THE COURT: And what is it?

1 MR. DELANEY: This would be the property damage
2 estimate for Ms. Robinson's --

3 THE COURT: What now? I'm sorry.

4 MR. DELANEY: The property damage estimate for
5 Ms. Robinson's car.

6 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
7 identification and admitted into evidence.)

8 BY MR. DELANEY:

9 Q And this is a multi-page document, Ms. Robinson. And
10 I'm going to refer you to --

11 MR. DELANEY: And, Mr. Jefferies, it's toward the
12 back. It's got a reference of Page 7.

13 BY MR. DELANEY:

14 Q Ms. Jones -- excuse me. Ms. Robinson, as difficult
15 as this may be, your car was damaged in this accident; is
16 that correct?

17 A Yes.

18 Q It was damaged in this collision?

19 A Yes.

20 Q And that was through no fault of your own?

21 A No.

22 Q Okay. And you have brought a property damage claim
23 against Mr. Jones in reaction to the suit that was filed
24 against you?

25 A Yes.

1 Q Okay. And what is Defendant's Exhibit No. 2 is an
2 estimate from Dick Smith body shop for your car?

3 A Yes.

4 Q Do you see that?

5 A Yes.

6 Q Okay. And that's for a 2014 Nissan Sentra?

7 A Yes.

8 Q Okay. And if you would, just read for the jury that
9 number on Page 7 of that particular document. It says
10 there's how much damage there? It's under the "cumulative
11 effects of supplements." It's the last number there.

12 A 8,261 and 81 cents.

13 Q So \$8,261.81?

14 A Yes.

15 Q Okay. And that's -- that's the property damage that
16 was done -- the costs to repair your car?

17 A Yes.

18 MR. DELANEY: Your Honor, if you would give me just
19 one second.

20 THE COURT: Yes, sir.

21 (Pause.)

22 MR. DELANEY: Your Honor, that's all the questions I
23 have for this witness.

24 Thank you.

25 THE COURT: Mr. Jefferies.

1 MR. JEFFERIES: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. JEFFERIES:

4 Q Ms. Robinson, are you -- are you still looking at
5 Page 7 of this exhibit, Defendant's Exhibit No. 2?

6 A (There was no response.)

7 Q Can you look there in the middle of it for me? Have
8 you got it?

9 A Uh-huh.

10 Q Mr. Delaney just said -- and I think you answered
11 yes, that the costs to repair your car was \$8,261.81;
12 isn't that right?

13 A Yes.

14 Q You didn't pay \$8,261.81, did you?

15 A No.

16 Q No.

17 What did you pay? It looks like it says, Customer
18 paid \$100. You paid a hundred dollars, didn't you?

19 A Yes.

20 Q Who paid the other eight thousand --

21 THE COURT: Stop.

22 Y'all need to approach.

23 (WHEREUPON, a bench conference was held.)

24 MR. JEFFERIES: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 BY MR. JEFFERIES:

2 Q Let me just clarify. This is just a "yes" or "no"
3 question. I don't want you to unnecessarily elaborate.

4 The amount of property damage to your car that you
5 paid for was not \$8,000. You paid \$100; isn't that right?

6 A Yes.

7 Q Mr. Delaney asked you if you anticipated or expected
8 Harland Jones to turn where he turned. And you said, no,
9 you didn't anticipate or expect it; isn't that right?

10 A Yes.

11 Q Would you agree with me that if we could always just
12 read the minds of other drivers and anticipate and expect
13 what they were going to do, we wouldn't need turn signals,
14 would we? I can tell when my neighbor's turning into his
15 driveway because I know he lives there. He doesn't need
16 to signal for me because I know he lives there.

17 Isn't the reason we signal is when we're going to do
18 something that the other driver can't anticipate and can't
19 expect? Isn't that why we have turn signals?

20 A Yes.

21 Q Now, Mr. Delaney's right. He -- he asked you if you
22 agree that you can't just signal and turn. And you agree
23 with that; right?

24 A Yes.

25 Q All right. And it's just like you can't just

1 jaywalk; right?

2 A Yes.

3 Q And kids can't just play basketball in the street;
4 right?

5 A Yes.

6 Q What about the flip side of that? When somebody does
7 something, like, maybe they signal and turn too fast, can
8 you just run them over?

9 A No.

10 Q No.

11 Or if somebody jaywalks, you can't just hit them, can
12 you?

13 A No.

14 Q Or kids are playing basketball in the street. You
15 can't just run them over on account of they're not
16 supposed to be there, can you?

17 A No.

18 Q And so that's one of the reasons you have to be alert
19 and see what's in the street so that you can avoid it,
20 even if it's not maybe supposed to be there; isn't that
21 right?

22 A Yes.

23 Q And that's one of the reasons that the State of South
24 Carolina requires certain people to wear glasses. Just
25 like I'm wearing glasses now, because I can't see what's

1 on this paper. Isn't that why?

2 A Yes.

3 Q And Mr. Delaney asked you if you could see Harland
4 Jones for five to seven seconds. And you said you could;
5 isn't that right?

6 A That's about the timeframe of the accident, yes.

7 Q I'll tell you, I can see this page for five to seven
8 seconds. And I bet you can, too. You can see that it's
9 there, can't you?

10 A Yes.

11 Q All right. But I can look at it for five to seven
12 seconds. I can look at it for five to seven minutes and I
13 can't read the words on it because my eyes aren't good
14 enough. But if I put on my glasses, I can read it.

15 So just because you saw a man on a bike, had you had
16 your glasses, you could have seen the signal that
17 everybody else saw, couldn't you?

18 A He turned within five to seven seconds.

19 Q Based on what you saw; right?

20 A There was nothing -- nothing I could do.

21 Q Based on what you saw, there was nothing you could
22 do; right?

23 A Yes.

24 Q Do you accept responsibility for any part of this
25 wreck?

1 A No.

2 Q Do you think it's okay to drive without glasses that
3 the law requires you to drive with, and if you hit
4 somebody, zero responsibility for you, none?

5 A Yes.

6 Q Wow.

7 A little bit ago, you said you were sorry about this.
8 And -- and you cried about that.

9 A Yes.

10 Q And we saw that. But at the same time, you sued
11 Harland Jones; right? You've got the answer up there,
12 Page 9, Paragraph A. You said that you'd have to spend
13 significant amounts of money for care, treatment services,
14 and other needs. You sued him for that, didn't you?

15 A Yes.

16 Q And you sued him because the nature of your injuries
17 and damages may require you to spend significant sums of
18 money in the future. You sued him for that, too, didn't
19 you?

20 A Yes.

21 Q We haven't seen any evidence of that, have we?

22 A (There was no verbal response.)

23 Q You sued him for lost wages, past and future. We
24 haven't seen any evidence of that, have we?

25 A If you need any, I did miss almost a month of work.

1 Q From hitting Harland Jones?

2 A Yes.

3 Q Do you have any evidence, documents, anything like
4 that?

5 A I have doctors statements, bills.

6 Q Can we produce them? Can we see them --

7 A I didn't bring any with me.

8 Q You were so sorry that you sued Harland Jones because
9 he may deprive you of income opportunity in the future;
10 right?

11 A Yes.

12 Q And you were so sorry that you sued Harland Jones and
13 said that the pain and shock of your injuries had resulted
14 in the loss of enjoyment of life, changes in your
15 personality, detriment to your health and well-being?

16 A Yes.

17 Q And you sued Harland Jones and said that you're going
18 to have to spend significant sums of money to replace and
19 repair property damage; isn't that right?

20 A Yes.

21 Q So you were so sorry about this wreck that you sued
22 Harland Jones for all of those things. And it turns out
23 what you had to spend was a hundred dollars; isn't that
24 right?

25 A I lost wages from work. And I cannot sleep at night.

1 And this is a reminiscent again in my head over again and
2 over again of this accident, yes.

3 Q And that's how you feel after being in the car?

4 A Yes.

5 Q How do you imagine he feels on the bike?

6 A Yes.

7 MR. JEFFERIES: That's all I have, Your Honor.

8 THE COURT: Anything further?

9 MR. DELANEY: Nothing further.

10 THE COURT: You may step down, Ms. Robinson.

11 Now, members of the jury, I'm going to give you a
12 short break. There's a matter I need to take up with the
13 attorneys. Just don't talk about this case.

14 Thank you very much.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 10:31 a.m.)

17 THE COURT: Did you have any success, Mr. Bayne, in
18 trying to locate this witness.

19 MR. BAYNE: I believe we have, Judge. She's --
20 Ms. Murray?

21 THE COURT: Oh, she's here?

22 MR. BAYNE: She's not here yet, no. She's on her
23 way.

24 THE COURT: Okay.

25 MR. BAYNE: She's coming.

1 THE COURT: Okay. We'll take a break. And we'll
2 wait for her to get here.

3 MR. BAYNE: She said by 11:00.

4 THE COURT: We'll be at ease. Just let me know when
5 she gets here. 28 minutes -- we'll resolve that. If
6 she's going to be here, there's nothing to argue about.

7 (WHEREUPON, a break was taken.)

8 THE COURT: All right. Mr. Jefferies, so you
9 officially rest; is that correct?

10 MR. JEFFERIES: That's correct.

11 THE COURT: This isn't for the record --

12 MR. JEFFERIES: Oh, and before I do, Your Honor, we
13 just want to make sure that we put exhibits -- Plaintiff's
14 Exhibit Nos. 3 through 6 into evidence. I believe that
15 was without objection. I just wanted to put it on the
16 record.

17 THE COURT: Okay.

18 (WHEREUPON, Plaintiff's Exhibit Nos. 3, 4, 5, and 6
19 were admitted into evidence.)

20 MR. JEFFERIES: And having entered those, we then
21 rest.

22 THE COURT: Motions, Mr. Bayne? Mr. Delaney?

23 MOTIONS

24 MR. DELANEY: Yes, sir.

25 We would move for a directed verdict on the issue of

1 negligence, Your Honor. That the Plaintiff's negligence
2 greatly exceeds 50 percent. And I believe there's a
3 particular case on point, if I may -- I've got a copy of
4 it.

5 THE COURT: Sure. I'd be happy to look at it.

6 MR. DELANEY: I'm going to murder the name of the
7 Defendant. But I believe it was called Bloom v. Ravoir.

8 THE COURT: I've murdered a lot of names.

9 MR. DELANEY: And this is a case that I believe --

10 THE COURT: Do you have a copy of it?

11 MR. DELANEY: I'm going to hand him one as well.

12 THE COURT: Okay. That's fine.

13 MR. DELANEY: And in this case, it's -- it's very
14 similar facts -- factual scenario. The Plaintiff was in
15 Charleston, was crossing a street, and was struck as a
16 pedestrian as he was doing so. And in that particular
17 case, the trial court granted summary judgment. The Court
18 of Appeals overturned that grant. And then the Supreme
19 Court reversed the appellate court.

20 THE COURT: That happened to me last week.

21 MR. DELANEY: Sir?

22 THE COURT: That happened to me last week.

23 MR. DELANEY: Okay. And they -- the Supreme Court
24 stepped in and said, no, that was an improper reversal.

25 And in that case -- and, obviously, we're --

1 comparative negligence is an issue for the jury. In this
2 particular case, there's some really constructive language
3 here. Ordinarily, comparison of the plaintiff's
4 negligence without a defendant is a question of fact for
5 the jury to decide. And it goes on.

6 In a comparative negligence case, the trial court
7 should only determine, as a matter of law, if the sole
8 reasonable inference, which may be drawn from the
9 evidence, is that plaintiff's negligence exceeded
10 50 percent.

11 In that case, it went on to say, Here, the undisputed
12 facts are that the plaintiff attempted to cross the
13 street, but did not do so in a safe and reasonable manner.
14 Any factual issues which may exist as to the defendant's
15 fault in this accident cannot alter the inescapable
16 conclusion that, as a matter of law, the defendant's --
17 excuse me, the plaintiff's negligence exceeded 50 percent.

18 And it's very similar to this case where it's
19 undisputed that Mr. Jones made a left turn and did so
20 failing to yield the right of way to the Defendant, and
21 did so in an unsafe manner. There's been no evidence
22 that -- presented that Ms. Robinson crossed the center
23 line, that she attempted to pass anybody, that she was
24 speeding in any manner, in fact, did anything to cause
25 this accident whatsoever. The sole argument it seems that

1 the Plaintiff's relying on is that she had a corrective
2 lens restriction on her license.

3 THE COURT: And she didn't see the turn signal.

4 MR. DELANEY: And -- and she didn't see the turn
5 signal.

6 But even if she did not see the turn signal, the --
7 the mere fact that using a turn signal does not give the
8 operator of that vehicle or this particular bicycle in
9 this situation a free pass just to turn whenever they feel
10 necessary, even -- especially when you do it in an unsafe
11 and unreasonable manner as Mr. Jones did.

12 It's because of that, we would move for a directed
13 verdict finding that Mr. Jones' negligence greatly
14 exceeded 50 percent. And there's no way that a reasonable
15 jury could -- could find otherwise.

16 Thank you, Your Honor.

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

18 Mr. Jefferies.

19 MR. JEFFERIES: Thank you, Your Honor.

20 Summary judgment or directed verdict is appropriate
21 only when the sole inference is that the Plaintiff's
22 negligence exceeded.

23 This case of Bloom v. Ravoira is different in a
24 number of respects. The conclusion of the Court in that
25 case was the only inference to be drawn from this evidence

1 is that Bloom entered the street quickly and without any
2 warning to other drivers. And where it reached that
3 decision that -- that's the only inference that he entered
4 the street quickly and without any warning is because a
5 disinterested witness testified that the accident occurred
6 a split second after Bloom entered the street, not five to
7 seven seconds as here.

8 And both Bloom and the driver testified that -- that
9 neither one saw each other. So the driver says it was so
10 quick that she didn't even see --

11 THE COURT: Relax, Mr. Jefferies. That motion is
12 denied. I think it's an issue for the jury to resolve.

13 Next motion.

14 MR. JEFFERIES: Thank you, Your Honor.

15 MR. DELANEY: No other motions, Your Honor.

16 THE COURT: And I guess we can take up the aspect of
17 punitive damages for both sides. I don't think it is a
18 punitive damages case. But I'll be happy to hear at the
19 conclusion of the case your motion for punitives.

20 I think it's a simple accident. We'll get to that
21 later on. But I'm just giving you a heads up. I don't
22 think it's a punitive damages case. But I'll hear your
23 arguments later on.

24 Anything else we need to take up?

25 Do you have any motions?

1 We're all set? Any motions?

2 MR. JEFFERIES: I --

3 THE COURT: You can make a motion for a directed
4 verdict, if you want. It's denied.

5 MR. JEFFERIES: I'll let them present their case
6 first.

7 THE COURT: Let the jury resolve this case.
8 That's -- I think that's what needs to --

9 MR. JEFFERIES: Thank you, Your Honor.

10 THE COURT: And she's here now?

11 MR. BAYNE: Not yet.

12 THE COURT: Okay.

13 MR. BAYNE: Let me go check, Judge. She's --

14 THE COURT: I told the jurors we were waiting on a
15 juror [sic]. They understand that this is the delay.

16 So just take your time.

17 (WHEREUPON, a break was taken.)

18 THE COURT: Everybody's ready now?

19 MR. BAYNE: We're ready, Judge.

20 THE COURT: All right. Bring the jury in.

21 THE BAILIFF: Yes, Your Honor.

22 THE COURT: And you're still going to show something?

23 MR. BAYNE: Sure. I'm going to use it to show
24 pictures and --

25 THE COURT: Okay. That's fine.

1 You've seen the pictures; right, Mr. Jefferies?

2 MR. JEFFERIES: If they're the exhibits from the
3 deposition, then, yes.

4 THE COURT: Okay.

5 MR. BAYNE: This --

6 THE COURT: If an issue comes up, just let me know.

7 MR. BAYNE: This is Defendant's Exhibit No. 1. So
8 it's just the pictures that are already in evidence.

9 THE COURT: Okay. And let's see. Which witness is
10 this, Mr. Bayne?

11 MR. BAYNE: It's Michelle Murray.

12 We had one of the jurors yesterday, if you remember,
13 asked --

14 THE COURT: What now?

15 MR. BAYNE: One of the jurors yesterday said he
16 hadn't seen the photos. So I figured, let's just --

17 THE COURT: Oh, yeah.

18 MR. BAYNE: -- make it big and everyone can see.

19 THE COURT: All right. Two of them said that.

20 MR. BAYNE: Yes, sir.

21 THE COURT: M-U-R-R-A-Y or --

22 MR. BAYNE: M-U-R-R-A-Y.

23 (WHEREUPON, the jury came into open court at
24 approximately 11:07 a.m.)

25 THE BAILIFF: Your Honor, the jury is present.

1 THE COURT: Welcome back, Mr. Foreman, members of the
2 jury.

3 The Plaintiff has rested their case.

4 And, now, we'll hear evidence and presentation on
5 behalf of Ms. Robinson from the Defense.

6 MR. BAYNE: Yes, sir.

7 Thank you, Judge.

8 We'd call Ms. Michelle Murray to the stand.

9 THE COURT: Ms. Murray.

10 THE BAILIFF: If you would, please, ma'am, stand
11 right here and face the clerk, please.

12 Place your left hand on the Bible here, right here,
13 please. Raise your right hand.

14 WHEREUPON,

15 MICHELLE MURRAY,
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Please have a seat.

18 State your full name for the record.

19 DIRECT EXAMINATION

20 BY MR. BAYNE:

21 Q You need to state your full name for the record,
22 Ms. Murray.

23 A My full name is Michelle Lee [phonetic] Murray.

24 Q And, Ms. Murray, just tell the jury a little bit
25 about yourself, who you are, and what you do for a living.

1 A I'm a mother of two, a son and a daughter. I'm a
2 customer service advocate at BlueCross BlueShield. And
3 I'm, also, a licensed cosmetologist. And that's pretty
4 much it.

5 Q And you -- were you at work earlier today?

6 A I was.

7 Q And did you have to take off work to be here for
8 this?

9 A I did.

10 Q Okay. It's my understanding that you were an
11 eyewitness to the accident between Ms. -- Mr. Harland
12 Jones and Ms. Karen Robinson; is that right?

13 A That's correct.

14 Q Okay. I'm going to show you a photograph that's been
15 entered into evidence as Defendant's Exhibit No. 1. And
16 this is Page 1 of that so that everyone can see what we're
17 talking about here.

18 And what I'd like you to do, first, is just tell the
19 jury on that day what you were doing as you were driving
20 your car down Old Bluff Road.

21 A Well, I was headed down Old Bluff Road to pick up my
22 mom. And as I got on to Old Bluff Road, I noticed
23 Mr. Jones ahead of me on the bicycle. So I kind of broke
24 my speed. And we proceeded down Old Bluff Road.

25 And once we got to a certain point, Mr. Jones put up

1 a hand signal. And being that we're all from the same
2 neighborhood, it was -- you know, I knew it was before he
3 got to his house. So I'm thinking maybe he's signaling to
4 let me know that he's going to make a left turn, which I
5 had already broken my speed. Because I'm behind him on a
6 bicycle.

7 So we traveled on a little bit more. And then all of
8 the sudden, he made a left turn, at which point, I
9 screamed. I let out a scream. Because, you know, in my
10 mind -- and I'm just -- I'm getting upset thinking about
11 it. But I let out a scream. Because I could see the
12 other car coming.

13 And, as I said, it was before he got to his house.
14 So I wasn't expecting him to turn so soon. But he did.
15 And, like I said, I screamed. And then I stopped. I hit
16 my brakes. And I stopped.

17 Q Why did you scream?

18 A Because I knew -- with the other car being as close
19 as it was, I knew what the outcome was, you know. I mean,
20 there was no way that he was not going to hit the other
21 car.

22 Q Okay. And you -- I want to touch on one other thing
23 and then we'll talk about the picture and kind of walk
24 through that. You said he put a hand up as a signal. But
25 you didn't think he was going to turn right there; is that

1 correct?

2 A That's correct.

3 Q Why didn't you think he would turn right there?

4 A Because it was more or less trees and brush there.
5 And it was before he got to where he lived.

6 Q Okay.

7 A I was expecting him to turn where he lived, not near
8 the trees and the brush.

9 Q Okay. This picture -- can you see this picture from
10 where you're sitting? I know it's kind of at an angle.

11 THE COURT: And what's the exhibit? That's
12 Defense --

13 MR. BAYNE: Your Honor, this is Defendant's Exhibit
14 No. 1.

15 THE COURT: Defendant's Exhibit No. 1.

16 MR. BAYNE: Yes, sir.

17 BY MR. BAYNE:

18 Q Can you see that?

19 A I can see it.

20 MR. BAYNE: Members of the jury, can y'all all see
21 that?

22 (WHEREUPON, the jurors indicated in the affirmative.)

23 BY MR. BAYNE:

24 Q So on this picture there are -- there's three cars
25 and there's a -- it looks like an SUV sort of at the very

1 back in that photograph. This car on the right-hand side,
2 it looks like a black car. And I have a little -- kind of
3 a laser pointer on it there. What car is that?

4 A That's my car.

5 Q Okay. And this car that's sort of in -- right in the
6 middle of the picture, we have a -- a red dot we're going
7 to put on it right there. Who's car is that?

8 A Ms. Robinson's.

9 Q Okay. And then the bicycle belongs to Mr. Jones?

10 A Correct.

11 Q Okay. When we look at this picture, your car that's
12 on the right-hand side, that black car, is that in your
13 lane of travel or is that in the oncoming lane of travel?

14 A That's in my lane.

15 Q Okay. So you were driving on the right-hand side of
16 the road in your lane of travel; is that --

17 A Correct.

18 Q All right. And as I understood your testimony,
19 Mr. Jones was driving or riding his bicycle in front of
20 your car; correct?

21 A Correct.

22 Q So he was on that right-hand side of the road as
23 well; is that right?

24 A That's correct.

25 Q And his bicycle in this picture is, actually, in the

1 oncoming lane of travel on the left-hand side; is that
2 right?

3 A That's right.

4 Q Okay. When Mr. Jones began that turn left and you
5 said you screamed, was he in that right lane or was he in
6 the left lane of this picture when he started that turn?

7 A When he started, he was in the left lane -- I mean
8 the right -- the right lane right in front of me.

9 Q And did he turn and cross the double yellow line?

10 A He did.

11 Q And did he end up in the oncoming lane of travel?

12 A Right. That's correct.

13 Q Where the bike is resting there, from what you recall
14 of the scene, is that where his bike came to rest after
15 being hit?

16 A As far as --

17 Q And I can show --

18 A As far as I can remember.

19 Q Let me -- I'll show you a little bit closer up, if
20 that'll help. So this is --

21 MR. BAYNE: Your Honor, this is Defendant's Exhibit
22 No. 1. Page 3 is what we're showing right now.

23 BY MR. BAYNE:

24 Q So, Ms. -- Ms. Murray, this is, obviously, a little
25 bit closer up. And in this picture, your car is invisible

1 because it's cut off there on the right-hand side.

2 From what you recall at the accident that day, is --
3 where the bicycle is located, is that where it came to
4 rest after being hit by Ms. Murray's vehicle -- or
5 Ms. Robinson's vehicle?

6 A Yes, from what I recall.

7 Q Ms. Robinson's car that we see in the back of this
8 picture, this little red dot, is that where her car came
9 to stop after the collision?

10 A Yes.

11 Q Okay. When the collision happened, where was
12 Ms. Robinson's car? Which lane was she in?

13 A In the -- well, it'd be the oncoming lane for me.

14 Q Was she in her lane of --

15 A Her lane, correct.

16 Q At any point that day as you were coming down the
17 roadway -- let me back up.

18 As you were coming down the roadway, did you see
19 Ms. Robinson coming towards you?

20 A I did in a distance.

21 Q At any point from the distance up until the collision
22 happened, did you ever see her vehicle come into your lane
23 of travel that you were driving?

24 A No.

25 Q At any point that day, did you ever see her vehicle

1 cross over the double yellow line, which would then be
2 into your lane of travel?

3 A No.

4 MR. BAYNE: And, Your Honor, this is Defendant's
5 Exhibit No. 1, Page 4.

6 BY MR. BAYNE:

7 Q So, Ms. Murray, in this photo -- I've shown you this
8 before when we did your deposition. This is, obviously,
9 coming from Ms. Robinson's direction; is that correct?

10 A (There was no response.)

11 Q In other words, I'll show -- put a little red dot up
12 here. Is -- the red dot, is that Ms. Robinson's car?

13 A Yes.

14 Q Okay. And then over here on the left-hand side,
15 there's this black car with some folks around it. Is that
16 your car?

17 A That is my car.

18 Q So this picture that we're looking at is on -- from
19 Ms. Robinson's point of view heading down Old Bluff Road;
20 is that correct?

21 A That's correct.

22 Q And at the time of the collision, is that the lane
23 that Ms. Robinson's car was in?

24 A Yes.

25 Q And I know I've asked you this, but you didn't see

1 Ms. Robinson's car ever cross over this double yellow line
2 that we have here in the -- in the middle of the roadway;
3 correct?

4 A Correct.

5 Q As you were coming towards this accident scene,
6 Mr. Jones is in front of you. You're driving there. Were
7 there any other cars in front of you or in front of
8 Mr. Jones that you saw?

9 A No.

10 Q Were there any cars in front of Ms. Robinson that you
11 saw?

12 A No.

13 Q Am I correct in understanding that the only vehicles
14 you saw on the road that day would have been yours,
15 Ms. Robinson's, and then Mr. Jones' bicycle?

16 A That's correct.

17 Q Nobody after the collision happened drove away from
18 the scene and left, did they?

19 A That's correct.

20 Q After the collision happened, what did you do?

21 A Well, I stopped my car. And I immediately -- I
22 jumped out to go and check on Mr. Jones. And I assured
23 him that everything was going to be all right.

24 And then I called 911. And the -- the lady from 911
25 asked if I had anything in my car where I could keep him

1 comfortable until someone got there. And -- but I just,
2 you know, kind of talked to him and -- and let him know
3 that I had called 911 and help was on the way and, you
4 know, that sort of thing.

5 And Ms. Robinson, of course, she was visibly upset.
6 And, you know, she was just kind of, you know, hysterical.
7 And I also -- I told her that I had called 911. Because I
8 knew she wasn't capable. But, yeah, I just kind of, you
9 know, tried to comfort him.

10 Q And -- and you said you called 911. Did you stay at
11 the scene and speak to law enforcement?

12 A I did. I did.

13 Q And did you tell them the same thing you've told us
14 here today about what you saw?

15 A I did.

16 Q Backing up just very briefly. Before the accident
17 happened when Mr. Jones was riding his bicycle and he
18 starts to turn left, how quickly did that accident happen
19 when he started to turn and the collision occurred?

20 A From when he started to turn?

21 Q Sure.

22 Was -- was there a significant gap in time where he
23 was in that roadway or was it sort of a split second kind
24 of thing?

25 A It was very quickly.

1 Q Okay.

2 A It was very quickly. Like I said, I screamed because
3 I was just in disbelief.

4 Q And you said you screamed because you knew an
5 accident was about to happen?

6 A Yes.

7 Q From your observations looking at -- as this was
8 unfolding, was there anything you saw Ms. Robinson could
9 have done to avoid that collision?

10 MR. JEFFERIES: Objection, Your Honor.

11 THE COURT: It calls for --

12 MR. JEFFERIES: Speculation on her part.

13 THE COURT: -- a conclusion. Speed, time, and
14 distance -- your question's improper. I agree.

15 MR. BAYNE: Certainly, Judge.

16 BY MR. BAYNE:

17 Q Ms. Murray, are you required to wear eye glasses when
18 you operate a vehicle?

19 A No.

20 Q Did you have any vision impairments that day that
21 would have kept you from seeing clearly what occurred on
22 the roadway?

23 A No.

24 Q Are you aware of any right, or law, or statute that
25 let's somebody turn in front of a car because --

1 MR. JEFFERIES: Objection, Your Honor. That's --

2 THE COURT: What's the purpose?

3 MR. JEFFERIES: She's not a legal expert. She's a
4 fact witness.

5 MR. BAYNE: All I'll say is this is the same question
6 that was asked of Ms. Robinson. I think it's fair --

7 THE COURT: There was no objection.

8 MR. BAYNE: I understand --

9 THE COURT: The objection is sustained.

10 BY MR. BAYNE:

11 Q Ms. Murray, are you aware of the rights and duties of
12 a driver on the roadway?

13 A Yes.

14 Q Are you familiar with the obligation that somebody
15 who's operating a vehicle has to operate it safely?

16 A I am.

17 Q In your experience, are you required to yield to a
18 vehicle that's coming towards you when you're turning?

19 A Yes.

20 Q Did Mr. Jones do that --

21 MR. JEFFERIES: Objection, Your Honor. That's a
22 legal conclusion about whether he yielded --

23 THE COURT: I -- you know, I really can't quite hear
24 you. So will y'all approach for just one second?

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: The objection is sustained.

2 MR. JEFFERIES: Thank you, Your Honor.

3 BY MR. BAYNE:

4 Q Ms. Murray, you're aware that we're here because a
5 lawsuit was filed against Ms. Robinson; correct?

6 A Correct.

7 Q I'm going to show you what Mr. Jones and his
8 attorneys have alleged happened in this lawsuit. And
9 there's three specific sentences I want to talk to you
10 about and ask you if that's what you saw. The first is --

11 MR. JEFFERIES: Objection, Your Honor. He's
12 publishing these pleadings to the jury.

13 THE COURT: What?

14 MR. JEFFERIES: He's publishing the pleadings to the
15 jury. He can read them. He can't be showing the jury
16 pictures of the pleadings.

17 THE COURT: That's -- well, that's correct. Well,
18 they don't go back in the jury room, let me put it that
19 way.

20 Let me see what it is.

21 MR. JEFFERIES: It's still displayed to the jury,
22 Your Honor --

23 THE COURT: Let me -- just calm down.

24 MR. BAYNE: It's a portion.

25 THE COURT: They just don't go back to the jury for

1 deliberations. But he can show -- like you questioned
2 him.

3 Objection is overruled.

4 BY MR. BAYNE:

5 Q All right. Ms. Murray, the first is number eight is
6 at the time of the subject incident, the Defendant -- and
7 that's Ms. Robinson -- unlawfully attempted to pass a
8 vehicle immediately in front of her. Did you see that
9 happen that day?

10 A I did not.

11 Q Number nine is that once the Defendant -- that's
12 Ms. Robinson -- unlawfully attempted to pass the vehicle
13 in front of her, she crossed into Plaintiff's lane of
14 travel, which, also, would be your lane of travel. Did
15 you see that that day?

16 A I didn't.

17 Q And number 10 is that the Defendant caused the
18 Plaintiff to strike the front of Defendant's vehicle by
19 unlawfully traveling into the lane of oncoming traffic.
20 Did you see that that day?

21 A I didn't.

22 MR. BAYNE: Just one second, Your Honor.

23 THE COURT: All right.

24 (Pause.)

25 MR. BAYNE: Ms. Murray, those are all the questions I

1 have.

2 I thank you again for being here today and taking
3 time away from work for us.

4 THE WITNESS: You're welcome.

5 MR. BAYNE: Thank you very much.

6 Judge, I'm just putting Defendant's Exhibit No. 1
7 back --

8 THE COURT: Yes, sir.

9 MR. BAYNE: -- with the Court.

10 THE COURT: Mr. Jefferies, do you intend to use the
11 monitor?

12 MR. JEFFERIES: If I may have just a moment to --

13 THE COURT: Yeah, yeah. Take your time.

14 MR. JEFFERIES: That would be great.

15 Thank you, Your Honor.

16 (Pause.)

17 MR. JEFFERIES: I'm technologically challenged right
18 now while this downloads. I'll begin with something else
19 and come back.

20 CROSS EXAMINATION

21 BY MR. JEFFERIES:

22 Q Ms. Murray, I do appreciate your time in coming over.
23 And I want to ask you about what you did see, not what you
24 didn't see. We talked last -- actually, it was my law
25 partner, Roy Willey, he asked you some questions.

1 And as I remember what you said, you said you got on
2 Old Bluff Road and you were behind Harland Jones. He was
3 riding his bike; right?

4 A That is correct.

5 Q And he was in the right-hand lane ahead of you?

6 A Correct.

7 Q Riding down -- riding down the right-hand side. And
8 was he directly ahead of you, or over near the right
9 shoulder, or over near the center line? Whereabouts was
10 he?

11 A I would have to say -- I mean, I would say
12 directly --

13 Q Kind of directly in front of you?

14 A Yeah. He was -- he was -- we were both in the same
15 lane. I can say that.

16 Q Okay. And you traveled behind him maybe three or
17 four minutes before he put up that hand signal?

18 A (There was no response.)

19 Q That's what you told Roy. Does that sound about
20 right?

21 A Yeah, yeah. That's about right, about three or four
22 minutes.

23 Q So you're behind him three or four minutes. Once he
24 put up the hand signal, you said shortly thereafter, maybe
25 a few seconds maybe, he made a left turn?

1 A That's correct.

2 Q That's correct.

3 All right. And during that few seconds from the time
4 he put up the hand signal, I think you told Roy that once
5 he put out the hand signal, I started breaking my speed
6 even more. So you -- you slowed down when you saw the
7 hand signal?

8 A Of course.

9 Q Because you were --

10 A Yeah, yeah. I had already broken my speed. But, of
11 course, when, you know, he put up the hand signal, I
12 slowed down even more.

13 Q And you slowed down because if he was going to turn,
14 you, obviously, didn't want to run into him; right?

15 A Right.

16 Q Yeah.

17 Were it not for that warning that you saw that
18 Mr. Jones was going to turn, that could have been a
19 problem. You've got two or three seconds of I'm about to
20 turn; right? Because he had his hand out for a couple of
21 seconds. And you saw that; right?

22 A Okay. Could you repeat that question?

23 Q Yes.

24 And you had two or three seconds of warning that
25 Mr. Jones -- that Harland was going to turn left because

1 he had his hand out?

2 A Correct.

3 Q Signaling a left turn?

4 A That's correct.

5 Q And I know Mr. Bayne asked you to speculate about
6 what Ms. Robinson might have done had she seen the signal.
7 But you know what you did, you slowed down; right?

8 A I did slow down.

9 Q Because you saw that signal?

10 A Yeah. I did slow down.

11 Q You told Roy -- he asked you if there was anything
12 unusual about the way Harland was riding his bike. You
13 said, No, he was just a guy riding a bicycle; right?

14 A Correct.

15 Q Nothing -- nothing strange about that. And, again,
16 he gave a hand signal that he was going to be making a
17 left turn. And you saw that?

18 A Correct.

19 Q Okay. I think we can do this just the old fashion
20 way. This is part of Defendant's Exhibit No. 1. And it
21 is the third page of Defendant's Exhibit No. 1. Do you
22 remember this picture right here? You talked about it
23 just a little bit ago.

24 A I do.

25 Q And I'm holding it up so the jury can see. It's not

1 as well as the TV, but. And you said that that's where
2 the bike came to rest. You saw that?

3 A Correct.

4 Q And this is where the car stopped?

5 A Correct.

6 Q Okay. So prior to that, these two, obviously, made
7 contact; right? There was a -- there was a collision?

8 A Correct.

9 Q Where is Mr. Jones' body in this -- in this picture?
10 Can you see it in the picture?

11 A It's not in the picture.

12 Q Is it out here, like, in the ditch somewhere?

13 A It was on the side near the ditch.

14 Q Near the ditch.

15 Okay. So the collision would have had to have
16 occurred back here somewhere where this car is; right?

17 A (There was no response.)

18 Q Okay. Because the car -- the -- the collision
19 couldn't have occurred up here if the car didn't back up.
20 You said this is where it happened. It stopped; right?

21 A I -- well, I can't say exactly where it happened.
22 But, based on the pictures, it does appear that that's
23 where it happened.

24 Q Where it happened.

25 All right. Did you see Ms. Robinson, like, back her

1 car up after the collision?

2 A I -- I didn't.

3 Q Okay. So this bike got propelled here by the
4 collision?

5 A It's -- it's -- yes. As far as the picture shows,
6 yes.

7 Q And Harland got propelled over here into the -- out
8 of the frame of the picture by the collision?

9 A Correct.

10 Q And you -- take a close look at this vehicle. You --
11 you recognize this as being Ms. Robinson's car?

12 A Correct.

13 Q Okay. I want to show you a closer-up photo. This
14 gives a little more -- a little more detail for you to
15 see.

16 MR. JEFFERIES: This is the same one -- as
17 Defendant's Exhibit No. 2.

18 MR. BAYNE: No objection.

19 MR. JEFFERIES: Thank you.

20 BY MR. JEFFERIES:

21 Q Now, this is a closer-up view of the car. Do you
22 recognize that?

23 A I do.

24 Q All right. And is this how the car -- how
25 Ms. Robinson's car looked immediately after the collision?

1 Is that how you saw it?

2 A As far as I remember. Because I -- I wasn't really
3 focused at -- looking on her car -- at her car immediately
4 after. I went to Mr. Jones. But as far as I remember.

5 MR. JEFFERIES: We would mark this as Plaintiff's
6 Exhibit No. 8.

7 THE COURT REPORTER: Plaintiff's Exhibit No. 9.

8 MR. JEFFERIES: Plaintiff's Exhibit No. 9.

9 THE COURT: This is a blow-up from which exhibit?

10 MR. JEFFERIES: Pardon me, Your Honor.

11 THE COURT: This is a blow-up of which exhibit?

12 MR. JEFFERIES: It is Defendant's 207 [sic]. So
13 it'll be Plaintiff's Exhibit No. 9.

14 (WHEREUPON, Plaintiff's Exhibit No. 9 was marked for
15 identification and admitted into evidence.)

16 BY MR. JEFFERIES:

17 Q Had you seen Ms. Robinson's car prior to this wreck?

18 A In passing.

19 Q Okay. Did you notice if this on the hood was all
20 buckled in prior to the wreck?

21 A It wasn't.

22 Q Was the windshield all smashed prior to the wreck?

23 A Not -- it wasn't.

24 Q And the roof caved in prior to the wreck?

25 A It wasn't.

1 Q Now, you saw, actually, the physical contact, I think
2 you said, in your deposition when you were talking to Roy
3 Willey. You said you saw the two -- the vehicle hit
4 the -- hit the bicyclist; is that right?

5 A I -- I saw when the bicyclist turned and made impact
6 with the vehicle.

7 Q Okay. And then you said you saw Harland's body, I
8 think, go up on the -- on the hood, not all the way over
9 the car, but up onto the hood, and the windshield, and the
10 top, I think you said.

11 A And -- yeah. I did -- I did say as far as I could
12 remember.

13 MR. JEFFERIES: Your Honor, may I publish this photo
14 to the jury?

15 THE COURT: Yes, sir.

16 BY MR. JEFFERIES:

17 Q Ms. Murray, did you see Harland Jones after this
18 wreck back in June of 2017?

19 A After the wreck?

20 Q Yeah. Like when he was recovering in the hospital,
21 or around the house, or anything.

22 A No.

23 Q Okay. And you hadn't seen him again until today?

24 A Correct.

25 Q So just to make sure I'm clear. You're following

1 behind Harland Jones for three or four minutes. You see
2 him put up a left turn signal for a few seconds; right?

3 A Right.

4 Q Enough time for you to slow down so you don't
5 rear-end Harland Jones; right?

6 A Right.

7 Q And then Harland turns and there's the collision;
8 right?

9 A Right.

10 MR. JEFFERIES: That's all I have.

11 Thank you very much for your time. I appreciate it.

12 THE WITNESS: You're welcome.

13 MR. BAYNE: No redirect, Judge.

14 And can we release Ms. Murray from -- from her
15 subpoena?

16 MR. JEFFERIES: No -- no objection.

17 (WHEREUPON, there was a disruption in the courtroom.)

18 MR. JEFFERIES: Siri thinks it's okay, too.

19 THE COURT: Anything further?

20 MR. BAYNE: Judge, the Defense rests in this case.

21 THE COURT: I beg your pardon.

22 MR. BAYNE: The Defense rests in this case.

23 THE COURT: Okay. Now, you heard that. Now,
24 apparently, you have heard all the evidence you're going
25 to receive in this case.

1 At this point in the trial, I need to have a legal
2 discussion, so to speak, with the lawyers. And then we'll
3 have another meeting that'll last a little while.

4 I'm going to send you to the jury room. And the food
5 is supposed to be here at, like, 12:00.

6 I'm trying to think, gentleman.

7 So the food should be here at 12:00. I think we need
8 to start back -- let's see. It's 11:33. Let's see.
9 1:30. We've got to have a charge conference that might
10 take -- that might be tedious, to be honest with you.
11 Let's shoot for 1:30.

12 MR. DELANEY: That's -- that's fine with us, Your
13 Honor.

14 THE COURT: All right. 11:30, 12:30. Let's shoot
15 for 1:30. That's two hours. Your food will be here at
16 12:00. And we've got some work to do. And I think by
17 1:30, we'll be ready to argue and charge in this case.
18 Okay.

19 Once again, I've got to ask you not to talk about it.

20 So I'll ask you to go to the jury room right now.
21 I'll chat with you for a little bit.

22 If you want to go out somewhere, I'll see how the
23 lawyers feel about that before we resume this afternoon.
24 Okay.

25 So just don't talk about this case. And I'll chat

1 with you in just a moment.

2 (WHEREUPON, the jury was excused from open court at
3 approximately 11:34 a.m.)

4 THE COURT: All right. Let me hear motions.

5 Mr. Jefferies, do you have any?

6 MOTIONS

7 MR. JEFFERIES: I do, a very narrow directed verdict
8 motion, Your Honor, if you'll bear with me.

9 Section 56-1-220.

10 THE COURT: That's the glasses?

11 MR. JEFFERIES: Glasses.

12 It's uncontroverted that the Defendant was not
13 wearing her glasses that she was required to wear.
14 There's zero factual dispute about that. It is a
15 statutory violation.

16 So we would ask that -- not that any particular
17 amount of her negligence be established. But she is
18 negligent, as a matter of law, because of that statutory
19 violation. It might only be one percent the jury gives to
20 her. But, as a matter of law, they -- no reasonable jury
21 could find otherwise. Because she concedes on the stand
22 to violating that statute. And it's directly relevant
23 here because her -- her defense is largely I didn't see
24 him make a turn signal. And she conceded she wasn't
25 wearing her legally required glasses.

1 THE COURT: Thank you, sir.

2 MR. DELANEY: Thank you, Your Honor.

3 We'd, obviously, oppose that motion.

4 THE COURT: What?

5 MR. DELANEY: We would, obviously, oppose that
6 motion.

7 We heard from Ms. Robinson who said, yes, that's a
8 restriction on her license. But she doesn't need those
9 glasses --

10 THE COURT: That's what she said. What -- what does
11 the law say? That's the question here. If the law
12 says and it's on her driver's license --

13 MR. DELANEY: Correct.

14 THE COURT: -- if it says she's supposed to be
15 wearing her glasses when she drives, how -- how are you
16 going to get around that? I'm sorry. Explain it. It's
17 contrary to the statute, is it not?

18 MR. DELANEY: It -- it is, Your Honor.

19 THE COURT: Okay.

20 MR. DELANEY: Other than what her testimony was that
21 she didn't need them to drive during the day --

22 THE COURT: That's besides the point. It's what the
23 law says that's more important. You know, I think he's
24 entitled to a directed verdict as to some negligence, but
25 not -- not 50 percent, or anything like that. I'm trying

1 to figure it out. So, you know, the law is the law. I
2 can't change that.

3 Yes, sir, Mr. Jefferies.

4 MR. JEFFERIES: In answer to Your Honor's trying to
5 figure it out, I was -- the only suggestion I would make
6 is that it's simple enough to address on the verdict
7 form --

8 THE COURT: What now?

9 MR. JEFFERIES: It's simple enough to address that
10 when we get to the verdict form that it's been found, as a
11 matter of law, that the Defendant is, at least, partially
12 negligent. And then it goes --

13 THE COURT: Because she failed to wear her glasses.
14 That would be reason.

15 Any other motions?

16 MR. DELANEY: Yes, sir, Your Honor.

17 We renew our motion for a directed verdict on the
18 issue -- renew my motion for directed verdict.
19 Particularly, I think Bloom is now even more applicable.
20 And I believe Mr. Jefferies references that Bloom had this
21 independent eyewitness who came forward. It's exactly
22 what we heard --

23 THE COURT: Yeah. But this is a pedestrian matter --
24 no bicyclist, and then a road at an intersection with a
25 red light. There's a lot of differences in this case.

1 But go ahead.

2 MR. DELANEY: Well, you're absolutely right. And I
3 believe that Bloom is --

4 THE COURT: Okay. Go ahead.

5 MR. DELANEY: There is even more of a situation where
6 there was no intersection at all. And In Bloom --

7 THE COURT: Well, I disagree. Okay. So that means
8 you lose that. Now, denied.

9 Yes, sir, Mr. Bayne.

10 MR. BAYNE: Judge, the other is a directed verdict as
11 to the same statutory issue, which is Mr. Jones admits to
12 crossing a double yellow line. The testimony --

13 THE COURT: Well, let's slow down a little bit. If
14 he's legally riding his bicycle on a roadway and he gives
15 a signal, whether she saw it or not, an independent
16 eyewitness says he gave a signal.

17 Is he on the other side of the road yet?

18 MR. BAYNE: The -- the uncontroverted evidence is
19 that he was in the oncoming lane of travel when the
20 collision --

21 THE COURT: He was turning. He has a right to turn.

22 MR. BAYNE: But --

23 THE COURT: Your motion is denied.

24 What's next? Anything else?

25 MR. JEFFERIES: That's it, Your Honor, from the

1 Plaintiff.

2 THE COURT: And it's nothing personal. But I've got
3 to make a decision one way or the other. I can't split
4 the bait.

5 Let's address the issue of punitive damages. Like I
6 said a moment ago, I don't think this is a punitive
7 damages case. You can make your motion for it, go ahead.
8 It's going to be denied.

9 MR. JEFFERIES: We move that punitive damages be
10 included on the verdict form for the simple reason that --

11 THE COURT: It's denied. Okay.

12 MR. JEFFERIES: Can I -- --

13 THE COURT: Go ahead. Explain it. Explain it.

14 MR. JEFFERIES: Yeah. I just want to put that on the
15 record. I just --

16 THE COURT: Okay. That's fine. And this is not a
17 punitive damages case. And the Court of Appeals might
18 disagree with me and the Supreme Court might disagree with
19 me. It's my decision. I don't think it is. It's just an
20 accident.

21 MR. JEFFERIES: Two things, Your Honor.

22 THE COURT: I don't know what's going to -- what's
23 going to be --

24 Go ahead.

25 MR. JEFFERIES: Two things.

1 First, the statutory violation that Your Honor
2 already ruled a directed verdict on gives us a technical
3 ability to get punitive damages --

4 THE COURT: I know it does.

5 MR. JEFFERIES: And then as to a realistic ability to
6 get punitive damages, we have a Defendant up here who
7 concedes that she broke the law, concedes she broke it
8 again today. She says she's going to do it in the future.

9 And -- and -- and her own attorney is arguing it's
10 okay because she doesn't think she needs to comply.

11 THE COURT: Well, what's the point? It's another
12 question for another time, but not here and now.

13 Your motion is denied.

14 MR. JEFFERIES: Thank you, Your Honor.

15 THE COURT: No punitive damages.

16 Anything else?

17 MR. BAYNE: Do we need to discuss charges right
18 now --

19 THE COURT: Yeah, yeah, yeah. Come on back in
20 chambers. It's a lot -- it's a lot of stuff to go over.
21 That's why I gave the jury two hours. But I think we'll
22 finish by then. Maybe we won't. We'll see.

23 (WHEREUPON, a lunch break was taken.)

24 (WHEREUPON, Court's Exhibit No. 2 was marked for
25 identification and admitted into evidence.)

1 THE COURT: Is everybody ready?

2 MR. BAYNE: Yes, Your Honor.

3 Well, real quick, one issue. And I know this is sort
4 of standard for closing argument. But in opening
5 statement, there was a -- it was about a five-minute trip
6 down static -- stats -- dealing with stats about
7 automobile accidents in Richland County and the State of
8 South Carolina. None of that has come into evidence here
9 today. I just ask that we caution to make sure that we
10 don't get into there are 60,000 accidents. There is one
11 every eight seconds, whatever it is --

12 THE COURT: Well, we can, certainly, use this wreck,
13 not all -- and that's fair enough. But you didn't object
14 so I --

15 MR. BAYNE: I'm just -- before it's --

16 THE COURT: Well --

17 MR. BAYNE: -- done in closing, I want to make
18 sure --

19 THE COURT: I think you're experienced enough to stay
20 away from that at this point.

21 All right. And, just for the record, there was a
22 question as to punitive damages. I denied it based on
23 your argument. You can renew it again at the end of my
24 charge, if you want. But I think you might be protected
25 with -- on the record by my making this note. I think

1 you're covered.

2 MR. JEFFERIES: I believe we're -- if Your Honor -- I
3 believe we're protected.

4 Your Honor, I don't know how much time you've
5 allotted. I'm not going to take --

6 THE COURT: Well, what are you all going to do? I
7 don't care. There's an old statute that says you can't go
8 more than two hours. Actually, cut it at, like, 30
9 minutes or so.

10 MR. JEFFERIES: And maybe I'll keep two minutes back
11 for a rebuttal.

12 THE COURT: Well, I'm not going to stop you, except
13 as a last resort.

14 MR. BAYNE: If I go two hours, you can sanction me.

15 THE COURT: Okay.

16 MR. JEFFERIES: Fair enough.

17 THE COURT: And I'll do a little explanation before
18 we get started. You have the burden, you go first. I
19 think it will all turn out okay. At least, we hope so.

20 All right. Bring the jury in.

21 (WHEREUPON, the jury came into open court at
22 approximately 1:40 p.m.)

23 THE BAILIFF: Your Honor, the jury is present.

24 THE COURT: All right. I'll just come down here
25 since the TV screen is already there.

1 Mr. Foreman, and, members of the jury, we've reached
2 a point in this trial where you will hear the final
3 arguments, the closing arguments by the parties. Under
4 our system, since the Plaintiff has the burden of proof,
5 we'll first hear from Mr. Jefferies, followed by
6 Mr. Bayne. And since the Plaintiff does have the burden
7 of proof under our system, Mr. Jefferies will have an
8 opportunity to respond or to reply to Mr. Bayne's argument
9 on behalf of the Defendant.

10 Now, what we have here is the Plaintiff has the
11 burden of proof in terms of his principle injuries and
12 everything. When it comes to the counterclaim filed by
13 Ms. Robinson, she has the burden of proof. It's the same
14 standard that you'll hear me tell you about for the
15 Plaintiff applies to the Defendant, by the greater weight
16 or the preponderance of the evidence.

17 Now, with that little brief sketch of mine, I'd
18 invite your keen and close attention to final arguments.
19 Mr. Jefferies, Mr. Bayne, followed by Mr. Jefferies, and
20 then my charge. Okay.

21 Thank you all so very much.

22 Mr. Jefferies, you may proceed, sir.

23 MR. JEFFERIES: Thank you, Your Honor.

24 May it please the Court.

25 THE COURT: Yes, sir.

1 MR. BAYNE: Just may I move to see what's on the
2 screen?

3 THE COURT: What?

4 MR. BAYNE: I'm moving to see what's on the screen --

5 THE COURT: Oh, yeah. That's fine. That's fine.

6 CLOSING ARGUMENTS

7 MR. JEFFERIES: So far, so good in the technology
8 department.

9 Y'all, thank you for your patience.

10 I know this hasn't been the longest trial in the
11 world, but it hasn't been the shortest either. And we
12 appreciate you hanging in there with us as we go through
13 the process. And I know Mr. Jones -- Harland Jones
14 appreciates it as well.

15 Y'all, it's been 798 days since June 7th of 2017.
16 It's been 798 days since the Defendant, Ms. Robinson, hit
17 Harland Jones while he was on his bicycle. What began as
18 a simple bike ride turned into this, wreckage on the road,
19 body in the ditch, serious accident.

20 It's, also, been 798 days that Ms. Robinson has
21 refused to accept any responsibility at all for what's
22 happened. It's been 798 days up through today when you
23 heard her say, again, today, not responsible at all. Zero
24 percent responsibility, according to Ms. Robinson.
25 798 days that she claims she's done nothing wrong.

1 And it's been 798 days that Harland has had to live
2 with his injuries. Are they better now than they were?
3 Yeah. But you can see them. You can see them. He
4 isn't -- he isn't back to the way anybody would want to
5 be. It's been 798 days that he's lived with that and has
6 lived with the Defendant and her attorneys telling him
7 it's all his fault, all his fault.

8 So in a little bit, you're going to go right back
9 through that door right there, which is probably the next
10 to the last time. You're going to come in and give a
11 verdict. And when you go through that door, you're going
12 to take a few documents with you. All right. You're
13 going to take this evidence, all these documents that were
14 put into evidence.

15 And you're going to take a verdict form. And the
16 Judge is going to show you that verdict form. You're
17 going to have two jobs when you get back there. The first
18 is to fill out the verdict form. And it's really not the
19 first.

20 Before you do that, you have another job. And that
21 job is to talk. Talk about what you saw. Talk about why
22 you feel the way you do about the evidence, to share your
23 opinions with each other to explain why you have those
24 opinions.

25 Because, remember, each one of you, every one of you

1 took an oath to follow the law. And you took an oath to
2 apply that law, as the Judge will give it to you, to the
3 facts that you've seen here. And that's why you have to
4 explain yourself to each other. Because nobody has a
5 right to make you break that oath. If somebody wants you
6 not to follow the law, you've got to say, hey, that's not
7 the law the Judge gave us. We all might have thoughts
8 about what the law ought to be. But the law in this
9 courtroom is what Judge Manning says it is.

10 So we have an oath -- y'all have an oath to follow
11 that law. And you're going to apply the law to the facts,
12 the facts that you've seen. And the only facts are the
13 facts that came into this courtroom. That's all the
14 evidence.

15 The evidence are these pictures. And the evidence is
16 the testimony you've heard. And you can judge that
17 credibility of testimony just in your everyday life. You
18 have common sense. You've lived with people telling you
19 things, true, not true, half true. You use that everyday
20 experience to judge that credibility.

21 And the evidence is the medical bills, and the damage
22 estimate, a copy of the driver's license, those things.
23 You're going to take all that back to the jury room with
24 you.

25 And here's the really important part about why you're

1 going to talk through this is you have to reach a decision
2 unanimously. All of y'all have to agree, everyone.
3 That's why you've got to explain what you saw in evidence.
4 That's why you have to call somebody if they say, hey, I
5 think the law should be this. You say, no, the Judge says
6 it's not that, it's this.

7 And if they still won't come around, you send a note
8 out. And the Judge will explain the law again. Because
9 he wants to get it right. We only want to do this once.
10 We only want to do this once. So you'll go through that
11 and you'll reach a unanimous verdict.

12 So here's what I'm going to do for the next few
13 minutes. I want to talk to y'all a little bit about ways
14 that you can talk about the evidence, ways that you can
15 talk about the law to help you reach that unanimous
16 verdict.

17 Preponderance of the evidence, that's something the
18 Judge is going to tell you about. It's one of the first
19 things he's going to tell you about. It's a legal
20 standard. It's a legal word. Most people don't use it in
21 regular life. But all it means is this, more likely than
22 not, just more likely than not. Not the same standard as
23 in a criminal case, beyond a doubt -- beyond a reasonable
24 doubt, not clear and convincing. It just means ever so
25 slightly, more likely than not.

1 And one of the ways I like to think about it --
2 you'll hear the Judge say this, I believe, there's a pair
3 of scales. And when we start this trial, those scales are
4 balanced exactly even, 50/50. And it's our burden, the
5 Plaintiff's burden, Harland Jones' burden to make those
6 scales move just a little bit. All it takes -- all it
7 takes is the weight of a feather, one feather to push that
8 scale down just a little. If the evidence is ever so
9 slightly in favor of the Plaintiff, then the Plaintiff has
10 met his burden. And if it's not, if they stay equal or if
11 they tilt in favor of the Defendant, well, then we have
12 failed. So that's all it is, the weight of a feather.

13 Here's the legal language you're going to hear. The
14 burden of proof in a case is by a preponderance of the
15 evidence. A preponderance of the evidence simply means
16 such evidence as when considered and compared with that
17 opposed to it has more convincing force and produces in
18 your minds the belief that what is sought to be proved is
19 more likely true than not. Just the weight of a feather,
20 more likely true than not.

21 You're going to see on your verdict form a paragraph
22 that looks like this. The Court finds, as a matter of
23 law, that the Defendant was negligent in failing to wear
24 her glasses. The Court's already made that decision.
25 There's one element of negligence that the Judge has

1 already decided. It's a thing called negligence per se.

2 Our law says if you break a statute, then that is
3 negligence, just breaking it. And you heard the Defendant
4 admit she wasn't wearing her glasses. So that's been
5 established. That element of the Defendant's negligence
6 has been established.

7 Now, she could be negligent in other ways, too.
8 Failure to keep a sharp lookout, failure to avoid an
9 object in the road. There's a number of things that she
10 could be negligent about. But that one's been
11 established.

12 So let's talk for a second about negligence.
13 Negligence -- I'll give you some more legal language.
14 Negligence means that a person has done something that a
15 reasonable person would not have done, or failed to do
16 something that a reasonable person would have done in the
17 same situation. Most of us call it carelessness.

18 All right. You do something that reasonable people
19 won't do, that's careless. That's negligent. Or you
20 failed to do something that reasonable people would do.
21 That's negligence. Not paying attention, not wearing your
22 glasses when you're driving a car if it's required.
23 That's all negligence.

24 There's some elements listed down here, the formal
25 elements of negligence in the law, duty, breach,

1 causation, and damages. So what does all that mean?
2 Duty. Duty is that thing that you're supposed to do, the
3 thing that reasonable people do.

4 So, for instance, there's a common law duty. There's
5 a common law duty. It's not in the statute. It's just
6 our body of common law decided by courts. A duty to keep
7 a proper lookout for other persons or objects on the
8 highway. And it's not just to look, but to, actually,
9 exert. You can't just glance. You have to see what's
10 there to be seen.

11 And the Judge is going to tell you that you have that
12 duty, even when you have the right of way. If you're
13 driving down the road and you have the right of way and
14 somebody jaywalks, you have a duty to be looking for them
15 and avoid them, if you can. And the reason for that's
16 simple. We don't want to live in a world where the
17 penalty for jaywalking is death because you got hit by a
18 car. The penalty for a kid running in the street after
19 his ball should not be death because he got hit by a car.

20 So you have a duty to keep a proper lookout not only
21 for people doing what they're supposed to do, but for
22 people who screw up. You have a duty to lookout for them.
23 You've got to do that. Proper lookout. And not just
24 looking, but actual observation.

25 So if you're back in the jury room and someone says,

1 well, she looked. You say, well, that's not enough.
2 You've got to look to see what's there to be seen. It's
3 not just a glance. It's a looking to make sure the road
4 is clear.

5 One of the other elements you saw in there was
6 proximate cause. It's another fancy legal word.
7 Something that produces a chain of events which in the end
8 brings about the injury. Here's the key to proximate
9 cause. Proximate cause doesn't mean the only cause. It
10 just means one of the causes, more than one thing. In
11 fact, most times, it's more than one thing that's
12 proximate cause; right?

13 You think of, for example, a drunk driver who's
14 driving drunk and he's speeding and gets into a wreck.
15 Well, which of those was the proximate cause? Well, the
16 answer is they both were, more than likely. Drunkenness
17 probably caused the wreck. Speeding probably caused the
18 wreck. So there can be more than one proximate cause.
19 All it has to be is, at least, one of the causes.

20 Think about that with the eye glasses. Eye glasses
21 might not be the only cause of distraction. But if they
22 were one of the causes, then you've found proximate cause.

23 Finally, there's foreseeability is a part of
24 proximate cause. That's not too much at issue here.
25 Foreseeability means, we're not held responsible for

1 things that nobody could have imagined happening. All
2 right. When an asteroid comes out of space and hits,
3 well, we're not responsible for that. It's only the
4 things that are foreseeable.

5 So you have to think about that. Is it foreseeable
6 that if you don't wear your required glasses that you
7 might fail to see something? Well, I think we all agree
8 that's foreseeable. Because you have to wear glasses if
9 your license says to wear them.

10 So, again, proximate cause, more likely than not. So
11 think about this. Is it more likely than not that had the
12 Defendant been paying good attention, she'd have seen
13 Harland? Is it more likely than not that had she worn her
14 government required glasses to drive she would have seen
15 Harland? That's the question.

16 You know, the Judge is going to tell you a little bit
17 about this, but this is negligence as a matter of law.
18 This is what the judge has already decided. Negligence as
19 a matter of law is when you violate a statute. So that's
20 already been determined. A person whose vision is
21 corrected has the correction noted on his license, that's
22 the law.

23 The second part of that law, it's unlawful to drive
24 without the glasses. It's simple. So that's why the
25 Judge was able to decide that. Because the failure to

1 follow those rules is negligence as a matter of law. It's
2 not even a question for the jury. The only question is,
3 did that contribute to the accident?

4 So you're going to see on your verdict form, again,
5 the Court finds, as a matter of law, the Defendant was
6 negligent in failing to wear her glasses. The question
7 for you is, do you find that the Defendant's negligence
8 proximately caused the Plaintiff's injuries? That means
9 failing to wear the glasses, not paying attention. Is
10 that, at least, one of the causes of the injuries. And if
11 you find that the answer is yes, you check "yes" right
12 there on the verdict form.

13 Now, something else we're going to talk about is
14 comparative negligence. All right. That happens a lot.
15 When a person is negligent and the other person says,
16 well, you were negligent, too. We were both negligent.
17 It's the same standard.

18 The Defendant has accused Harland of being negligent.
19 Do you know what? Maybe he was. Maybe he did turn a
20 little too close in front of that car. Maybe he
21 contributed to this accident, too. It's usually the case,
22 by the way. It's almost never that it's all one person's
23 fault and none of the other; right? There's usually --
24 think about your own experience. If something goes wrong,
25 maybe there's something both people could have done to

1 avoid it. So that's comparative negligence.

2 So you're going to see a blank on this verdict form
3 that says, Taking the combined negligence that caused the
4 Plaintiff's injuries and the Defendant's injuries -- you
5 know, the Defendant has some damages, too. She's got that
6 hundred dollars in -- in damage to her car. I mean, she
7 suffered some, too.

8 So what you do is you take a look at that and say,
9 okay, out of a hundred percent, how much of the negligence
10 was the Plaintiff's and how much was the Defendant's?
11 That's it. You might put it at 80/20. You might put it
12 at 80/20 the other way. You might put it at 50/50. I see
13 a lot of cases where it's 50/50. You might say it's 50
14 percent to the Plaintiff, 50 percent to the Defendant,
15 half and half.

16 Here's the important thing about that. We have a
17 rule in the law that says that if the Plaintiff's
18 negligence is more than 50 percent, nothing, nothing.
19 They get away paying nothing for what happened.

20 So if you want to make sure that Harland Jones gets
21 nothing and they get away with paying nothing, then put
22 Harland -- put the Plaintiff at 51. And he'll go out of
23 here with nothing. But if you want to make sure that he
24 gets some compensation, even though it was maybe partially
25 his fault, you would put 50, or something even less than

1 50. You will portion it between the two.

2 The next thing on your verdict form is going to be a
3 question about actual damages. And actual damages are
4 just what you'd think they are. They're damages in
5 satisfaction of all of his injuries, and all hers, too, to
6 put the person back in the same position they were in
7 before the wreck happened, as nearly as possible.

8 Because all we can do is pay money. That's all the
9 court system is set up to do is pay money. We do not --
10 if you find in favor of Harland, there's no law that
11 allows Harland to go run into the Defendant with his car.
12 That can't happen. All that happens is some money gets
13 paid.

14 So it's never -- never -- you know, money never makes
15 up for all of it. All right. We talked about that
16 earlier. There are certain things money just can't fix.
17 But if you have, money, it can help you go see doctors, go
18 to physical therapy, go do those sorts of things.

19 So it's through the payment of money. And it's the
20 same standard. The amount of damages is a preponderance
21 of the evidence. You don't have to work it out to a
22 mathematical certainty. But you can't guess. You can't
23 guess.

24 So if you determine that there's some fault here and
25 you want to determine how much the damages are, you look

1 at the medical bills. You -- you look at the testimony --
2 and we'll show you some of those -- you look at the
3 testimony. And you, based on the preponderance of the
4 evidence, determine what that is.

5 And I'll tell you, there's a number of types of
6 actual damages. Our law lists about 20 some odd of them.
7 I narrowed it down to the four or five that seem to really
8 be in evidence here; right?

9 The most obvious one, starting at the bottom, medical
10 expenses. You heard Harland testify that he has about a
11 quarter of a million dollars in medical expenses, \$244,000
12 in medical bills. Most of that is from his initial
13 three-week stay in the hospital.

14 There's a whole manner of other things, anxiety and
15 depression. You heard Harland testify about on good days,
16 like yesterday when you saw him in the courtroom, he can
17 get around some. Yesterday was one of his good days.

18 But on bad days, he doesn't even get out of the bed.
19 He doesn't get out of the bed. That's an element of
20 actual damages, loss of enjoyment of life. I don't know
21 why the law calls it that. You know what that is? That's
22 just the inability to do normal lifetime things that we
23 all do. If you like gardening and you can't garden
24 anymore, that's loss of enjoyment of life. If you like
25 cooking and you can't cook any more, loss of enjoyment of

1 life. All the things you can't do. If you like riding a
2 bike for exercise and you can't ride a bike anymore, loss
3 of enjoyment of life.

4 Mental anguish, that's pretty obvious what that is;
5 right? That's -- when you think about Harland losing his
6 wife -- and it's not the Defendant's fault that Harland
7 lost his wife. It's just her fault that she injured him
8 at the worst time possible right when his wife needed him
9 the most. And you can imagine, based on what Harland
10 said, how that made him feel.

11 And then, obviously, pain. It hurts when you get hit
12 by a car; right? You've seen in evidence the medical
13 expenses, 244,241.55. So that's kind of an easy number to
14 come to; right? You just look that up. There it is, 244.

15 How do you arrive at these other numbers? Well,
16 there's a couple of things. One way I'll tell you about
17 is what we call the per diem method. And it's -- it's
18 kind of simple math, simple enough that I can do it.

19 It's been 798 days since Harland got hit. All right.
20 798 days, 24 hours in a day. That's 19,152 hours from the
21 time Harland got hit until right now.

22 So what if you said -- and I'm pulling this number
23 out of the -- out of the air just to show you an example.
24 I'm not saying this is the right number. The right number
25 might be higher, it might be a lot lower. I don't know.

1 But if you said that what he suffered, pain and
2 suffering, was worth \$10 an hour for those 19,000 hours,
3 then that would be \$191,520 for pain and suffering. Or if
4 you said that the mental anguish is valued at \$10 per
5 hours, it would be \$191,520. Same thing for loss of
6 enjoyment of life.

7 And if you were to add all those up -- and, again,
8 I'm using this -- this purely as an example. If you were
9 to add those up, you get damages, including the medical
10 expenses, all the way up through today, not anything in
11 the future. But it's just over a million dollars, just
12 over a million dollars.

13 Now, what if you say, Lane, that's crazy. It's not
14 worth \$10 an hour. It's worth a dollar an hour. Half
15 that time, he was sleeping; right? Well, there's the math
16 for that; right? Pain and suffering. Now, it's only
17 19,000, not a hundred and one -- or a hundred and 91.
18 It's 19,000. You add that up. 19,000, another 19,
19 another 19, another 19, and then these medical expenses of
20 244. It's a total of 320,000. Those are just examples.

21 You might say it's worth more. You might say it's
22 not even worth a dollar an hour, it's worth 50 cents.
23 That's just a way of getting at how to value it; right?
24 It's been 798 days. It's been 19,000 hours.

25 Then you think about the future. Because that's an

1 element of damages. What about the future? Because
2 Harland only gets to bring one lawsuit. He gets three
3 years to do it in. And he can only bring one. It's not
4 like if he needs an operation six months from now or a
5 year from now, he can come back and ask for more money.
6 He can't. So this is it.

7 Now, he didn't testify that he was going to need an
8 operation. But he did testify that his -- the way he is
9 now is likely the way he's going to stay. And nobody
10 contradicted that.

11 So we think about that, preponderance of the
12 evidence. The only testimony you heard about Harland
13 Jones' future is what he had to say. It's more likely
14 than not that he's going to continue on as he is, unable
15 to cook, unable to drive, unable to dress himself, to do
16 his own laundry. That's his future.

17 And the Judge is going to tell you there's a thing
18 that's really a legal fiction. It's a thing in South
19 Carolina called the South Carolina Life Expectancy Tables.
20 It's a table put out by the government. It says anytime
21 you have a court case and you need to figure out how long
22 somebody's going to live, you just look it up.

23 And when you look it up for Harland -- you know, he
24 testified he was 50 years old. He's about to turn 51 here
25 at the end of this month. If you look up on that table,

1 South Carolina says he's going to live another 28.28
2 years. Now, might he live longer? Sure. He might live
3 not quite as long. But on average, that's what the state
4 says, 28 years. And the Judge will tell you that's the
5 number you use.

6 So work that out. 28 years, 365 days of the year.
7 That's 10,220 days. You've got 24 hours in day. That's
8 245,820 more hours that Harland's going to live just the
9 way he is now.

10 So you think about what's that worth. Well, he
11 testified he's in some pain now. But I think we can all
12 figure out that the pain he's in now is not nearly as bad
13 as the pain he was in when he first got hit; right? He's
14 better than he was. He's just not back all the way.

15 So is that worth \$10 an hour? Well, it's probably
16 not worth as much as the last 798 days were. That was
17 really bad. Let's just say it's worth a buck an hour to
18 live the rest of his life just the way he is now. I don't
19 think I'd take a buck an hour to do that. A buck an hour
20 seems fair. Maybe you think it's worth more. Maybe you
21 think it's worth less. But here's the math. If it's a
22 dollar an hour, and there's 245,820 for your pain, and 245
23 for mental anguish, and 245 for loss of enjoyment, and 245
24 for his depression. And that total is at a dollar an
25 hour. And seven for the minimum wage. A dollar an hour.

1 That total is \$983,280.

2 So you start adding those numbers up. And, remember,
3 I said that this was going to come to a really big number.
4 It comes to a really big number. Past medical of 245,000,
5 past loss of enjoyment, mental anguish, all those things
6 of somewhere between 320 and a million. Future damages of
7 roughly a million. When you add those up using those
8 numbers -- and, again, you might use different numbers.
9 You get somewhere between one and a half million dollars,
10 two and a quarter million dollars.

11 And that -- I tell you what, if I hadn't have been in
12 the courtroom, I'd fall out of my chair when I heard that
13 number. A man gets hit on a bike and his lawyer comes in
14 here and asks for a million and a half, two million
15 dollars.

16 But then think about what you saw. Think about this;
17 right? And think about the rest of his life. And that
18 this money is a buck an hour, a dollar an hour. Nobody
19 would trade places with Harland for a dollar an hour. So,
20 yeah, it's a big number until you realize the damage.

21 So you're going to come to that section. The
22 Plaintiff's damages, Please state the total amount of
23 actual damages. So, again, the numbers I gave you were
24 examples. You might have different numbers. The medical
25 bills are easy. They're just right there in black and

1 white. Those other numbers, y'all will just have to talk
2 through it and say what's it worth? A dollar an hour? 50
3 cents? \$5? Whatever it is, you'll put whatever total you
4 come to in this blank.

5 You're not going to reduce it for his percentage of
6 negligence. Say, you decide it's 50/50. All right. You
7 put the full amount of Harland's damages in there. The
8 Judge will then say, well, Harland, you're half at fault,
9 so we need to reduce it by 50 percent. The Judge handles
10 that. You just figure out what you think the full amount
11 is.

12 The same is true for the counter claim for
13 Ms. Robinson. She's alleged that she has some damages.
14 If you find that Harland did something wrong to cause her
15 damages, you're going to go through that same process.
16 And you're going to put the same number in here, whatever
17 you think her damages are. Maybe you think it's 8,000
18 like the bill says. Maybe you think it's \$100 like she
19 said she, actually, paid. You put that in there. And
20 then the Judge will reduce hers the same way. That's what
21 it is.

22 So all I ask you to do -- I don't make these
23 decisions. I just try to show a way to work through it so
24 you can talk to each other, see if you can figure these
25 things out. If you think that Ms. Robinson's negligence

1 caused, at least, in part, Harland's damages, you check
2 that box for "yes." You figure out what those damages
3 were, medicals, injuries, and all that. And you write
4 that in the blank.

5 And remember what I said. If you put more than 50
6 for Harland Jones, you're deciding that he shouldn't get
7 anything, that they should walk away free. She has
8 8,000 -- or a hundred dollars in damages. He has a
9 quarter of a million. And he should have to pay a quarter
10 of a million while she pays a hundred. It doesn't seem
11 right.

12 You're going to get to take this all back with you.
13 But I just wanted to show it to you before I come back up
14 again after Mr. Bayne speaks. Look at this. Wear your
15 glasses. If you don't, this happens and this happens.

16 Thanks y'all.

17 THE COURT: Mr. Bayne.

18 MR. BAYNE: Yes, sir. Give me just one second, Your
19 Honor.

20 (Pause.)

21 MR. BAYNE: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. BAYNE: Members of the jury, my name is Brett
24 Bayne. I know I've kind of spoken with you from the side
25 over here when we've been doing some examinations. And I

1 have the pleasure of representing Ms. Karen Robinson in
2 this case.

3 And I want to start with an observation, which is
4 this is the first time that I've tried a case where the
5 Plaintiff's Counsel hasn't gotten up and told you what
6 happened in the accident. We heard a lot about millions
7 and millions and millions of dollars of damages. Not a
8 single word about what, actually, happened.

9 And what I want to do is walk you through this trial
10 and sort of try to figure out why that is. Because,
11 yesterday, Mr. Jefferies stood up here in opening
12 statement and he told you he was going to prove a lot of
13 things. And he told you a story about the accident.

14 He said he was going to prove to you that Mr. Jones
15 was riding his bicycle, that he was signaled across the
16 roadway by his wife's cousin. That Ms. Robinson was
17 driving, swerving, speeding, whatever she was doing. She
18 cut around a bunch of cars, cut back in front of the
19 wife's cousin, and struck Mr. Jones.

20 Mr. Jones took the stand and that was his story. In
21 fact, at one point, despite the pictures that we'll look
22 at in a second, he said, Well, I was in my lane of travel
23 when I got hit. We know that's not true. And then we
24 broke for the day. We went home overnight. We came back
25 today. And that story's gone. That story doesn't exist

1 any more because Ms. Robinson testified. And
2 Mr. Jefferies didn't ask her a single question about it.

3 Ms. Murray came in and testified. She came from
4 work. She's an independent eyewitness. Not a single
5 question about all these other cars that, apparently, were
6 on the roadway, that, apparently, fled the scene of the
7 accident and had -- wanted nothing to do with what
8 happened.

9 So let's talk through why we're here. And let's talk
10 through the story you've been told. And let's talk
11 through what the evidence shows happened.

12 We're here because the Plaintiff caused an accident.
13 He was riding his bicycle. He decided because he felt
14 like it that he was going to turn left in front of a car
15 across a double yellow line. He blames Ms. Robinson for
16 that decision.

17 He hired the Anastopoulo Law Firm to file a lawsuit.
18 We've heard a lot about Ms. Robinson suing him. How dare
19 she sue him. She didn't sue him. She was sued. She
20 filed a counterclaim for her property damage, as she is
21 required by law to do. It's sort of a you use it or you
22 lose it type situation. And that's what she did.

23 When the lawsuit was filed blaming her, containing a
24 bunch of allegations that we'll get into in a second, she
25 said, well, I have property damage. And I need to be

1 compensated for it. And that's something we've talked
2 about here today.

3 The Judge at the end of this -- and Mr. Jefferies put
4 a lot of law up on the screen. I'm going to sort of
5 paraphrase what some of these issues are. And I want you
6 listen to it. Because Judge Manning is going to talk to
7 you about those.

8 We've got burden of proof. We've got preponderance
9 of the evidence. We've got all these things. The burden
10 of proof means that the party that brought this claim, the
11 Plaintiff, has to prove what he's alleged. He has to
12 prove that story. He has to prove that Ms. Robinson is at
13 fault, that she did something wrong, that she caused this
14 accident. She wasn't wearing her glasses. That is a
15 violation of statute. Did that cause the accident?
16 That's the question.

17 The Judge is going to tell you that a bicyclist on
18 our roadways -- and you may or may not know this. But a
19 bicyclist has the exact same duties and rights as somebody
20 driving a car. They have to follow all traffic signs.
21 They have to stop at a red light, stop at a stop sign.
22 They have to yield the right of way. They can't ride in
23 oncoming traffic. They have to do the same things people
24 driving cars do.

25 When you're driving a car and you come to an

1 intersection -- we'll talk about it in a second. We
2 weren't even at an intersection here, but assume we are.
3 When you're driving, you don't get to just turn left
4 across oncoming traffic because you put a blinker on. You
5 have to obey the rules of the road. You have to yield the
6 right of way and make sure that what you are doing is
7 safe. A bicyclist, like a driver, is required to give the
8 right of way, and required to keep a proper lookout, and
9 safely operate the vehicle or the bicycle.

10 You're going to hear about a statute that's going to
11 be charged. There's three or four of those. It is
12 illegal for a bicyclist to leave the right lane of travel,
13 unless there is no other option. You're going to hear
14 that they can't ride in oncoming traffic, unless there is
15 no other option.

16 The testimony that we'll go through, but that you
17 heard is that Mr. Jones did that because he felt like it.
18 He said, You know what? I'm tired of riding on the right
19 side. I'm going to ride on the left side. He crossed
20 that double yellow line into oncoming traffic and caused
21 an accident. And it's illegal to ride anywhere except
22 that right side.

23 The Judge is, also, going to tell you about the
24 statute dealing with left turns that applies to driver's,
25 and bicyclists, and anybody operating a vehicle. That it

1 is illegal to make a left turn without making sure it's
2 clear to do so, signal or not, turn signal, horn, hand
3 waving in the air, a big LED sign that says, hey, I'm
4 turning left. It doesn't matter. If it is not clear to
5 do so, you can't do it.

6 Mr. Jones on that witness stand -- and you heard me
7 ask him this question, and we'll talk about it again --
8 has truck driver training. And I asked him, If you turn
9 left in front of somebody and it's not clear, who's at
10 fault?

11 He said, Well, I would be. He admitted it. If I did
12 it and it wasn't clear, I'm at fault.

13 So let's talk about this impossible story. And,
14 candidly, I don't know if we're still going with this
15 story. But this is what has been told to you in opening
16 statement. It's what was told to you from the witness
17 stand. It's what's contained in the pleadings.

18 The Plaintiff said that he was riding his bike on Old
19 Bluff Road when he decided he needed to make this left
20 turn across a double yellow line. That area had no turn
21 in. We'll look at those pictures in a second. It was a
22 wooded area with a ditch. So there wasn't a left turn to
23 make. It was just, let's turn and see what happens.

24 The Plaintiff told you that a car -- and he said it
25 was a blue car -- came -- didn't come to a stop, but was

1 slowing down and gave me the signal with her eyes, not
2 waved me across, not stopped, gave me a signal with her
3 eyes to turn in front of the car. He said on that stand
4 that there were, at least, two cars behind that car.
5 Because I asked him, Does that mean Ms. Robinson came out
6 of the car?

7 He said, Well, there were, at least, two more cars.

8 So we've got three cars on the roadway on the
9 opposite side of travel that would have been in front of
10 Ms. Robinson that Mr. Jones was turning in front of.

11 What's important about the wife's cousin giving him
12 the signal is Mr. Jones told you he can't really see out
13 of his left eye. And even with glasses, he doesn't have
14 20/20 vision. So how close did he have to be to this car
15 that gave him the signal to see that? And think about how
16 close he had to be when he was starting to make this turn
17 in front of this mystery blue car in order to make that
18 turn.

19 As he begins to make that turn, his testimony -- and
20 he said, I guess this must be what happened. Nobody has
21 testified to this. No friends have come out of the
22 woodwork. No eyewitnesses have shown up. But he said
23 that Ms. Robinson had to have gone into the oncoming lane
24 of travel, come around three cars. She had to then swerve
25 back in front of the wife's cousin. You've seen the

1 pictures. She had to square her car in the lane. She
2 then had to strike Mr. Jones. That's the story. That she
3 came from three cars back into oncoming traffic back into
4 the lane of travel in that narrow window between the
5 bicycle and the car that gave him the signal, squared that
6 car, and hit him.

7 The wife's cousin driving that car gave the signal,
8 then flees the scene, doesn't want to be involved. For
9 some reason, she sees it and isn't here. She sees it.
10 She doesn't get out of her car and see what happened. She
11 sees it. She doesn't stay and talk to the police officers
12 and say, this is what I saw. She flees the scene. The
13 two cars behind the wife's cousin, also, flee the scene.

14 So we have three cars who see, allegedly,
15 Ms. Robinson cut into oncoming traffic, swerve around
16 them, hit a guy on the bicycle. And they all leave. They
17 want nothing to do with this case.

18 Michelle Murray, who did come talk to you, was
19 riding -- driving her car behind the Plaintiff. She sees
20 what happens. And we'll go through her testimony. And
21 she stops. She calls the police. She checks on
22 Mr. Jones. She checks on Ms. Robinson. And she waits for
23 the police. And in this version of events, you have to
24 believe she sat there and waited for them to come so she
25 could lie to the police about what she saw. So she could

1 make up a story. A story that happens to be the exact
2 thing Ms. Robinson's told you. But she made up that
3 story.

4 Ms. Murray then comes to a deposition. You heard
5 Mr. Jefferies talk about when -- when that deposition was
6 taken. She's put under oath and told the same story.

7 So she went through all this trouble to stay at the
8 scene, call the police, talk to the police, come to a
9 deposition, get under oath, lie to us there, and then come
10 to trial today and lie to all of you. You have to believe
11 that is what happened in order to believe that story.

12 So what that does is it requires you to believe that
13 this wife's cousin who saw it fled the scene. The three
14 cars -- or two other cars who saw it fled the scene. That
15 Ms. Murray saw it, lied to police, lied in deposition, and
16 lied to you. And that Ms. Robinson's lying to you about
17 it now. That's the story you've been told. That's what
18 the Plaintiff has alleged happened.

19 That's not what happened. What happened is much
20 simpler. The Plaintiff was riding his bicycle on Old
21 Bluff Road. Michelle Murray was behind him. And
22 Ms. Robinson was driving in the opposite direction. It's
23 a two-lane road. We've seen that picture. Ms. Robinson
24 was in her lane of travel and she never left it.

25 Mr. Jones told you that he never saw her leave. And

1 he never saw her cross the double yellow line. Ms. Murray
2 told you she never saw her leave and never saw her cross
3 the double yellow line. And Ms. Robinson said that she
4 didn't cross that double yellow line and wasn't in the
5 oncoming lane of travel. At all times, these cars were
6 where they were positioned.

7 The Plaintiff then decided to illegally turn left and
8 cross that double yellow line into oncoming traffic. He
9 did that because he felt like it. He wanted to ride on
10 the other side of the road. When he turned left directly
11 in front of the car, that's when the accident happened.
12 The proximate cause of this accident is the decision to
13 turn left directly in front of a car.

14 Now, what we've got is a problem with this story.
15 Because the first version of events requires you to
16 believe all of those ridiculous fact sets, and that all
17 these people are lying. This version of events requires
18 you to believe that Mr. Jones didn't see the car at all.
19 That's what he says. I never saw the car. And that
20 becomes important when we talk about duty to keep proper
21 lookout, the duty to pay attention.

22 If Ms. Robinson's the only car on the roadway, which
23 is what everyone's testified to, why didn't he see her?
24 What was Mr. Jones doing before he turned left? Why
25 wasn't he paying attention?

1 Because Ms. Robinson testified -- and we'll get to
2 the eye glasses. But she saw Mr. Jones. There's no
3 question about it. Mr. Jones says, I never saw a car.
4 And it was right there. It was five to seven seconds
5 coming down the road. And he turned right in front of it.
6 And he says, I never saw it. It's either his vision or he
7 wasn't paying attention.

8 So this is these pictures we've seen. And,
9 yesterday, we realized we passed them around and y'all
10 didn't really get to see them. So what I wanted to do was
11 blow it up and label them for you so that we made sure we
12 were clear on what was going on.

13 And so on the right side of this picture, we have
14 Ms. Michelle Murray. That is that right-hand lane of
15 travel Michelle was driving in. Mr. Jones was in front of
16 Ms. Murray. And her car, you see it's a little bit
17 further up. She hit her brakes. She stopped her car.
18 Mr. Jones was in that right-hand lane of travel. That's
19 when he turned left across this double yellow line
20 directly in front of Ms. Karen Robinson.

21 And you remember, Ms. Robinson, when she testified,
22 one of things she said was, I hit my brakes to stop. And
23 she said, I kind of went right. That's one of the things
24 she said here today. And look where the wheels are on the
25 right-hand side of that car. They're on that fog strip,

1 those rumble strips on that line, which is consistent with
2 that testimony that is, he cuts in front of me. I hit my
3 brakes. I jerked right trying to avoid him. But she
4 said, I couldn't stop in time. It was too close. That's
5 consistent with these photographs.

6 This is that one a little bit closer up. It's the
7 one you've, also, seen. And this, obviously, cuts out
8 Ms. Murray's car because we're dealing with just the
9 roadway. But this is the photo Mr. Jones looked at and
10 said, Yeah, that lady's in my lane of travel. She's in my
11 lane there. We know that's not true. That's the oncoming
12 lane of travel that Ms. Robinson was driving in at the
13 time Mr. Jones cut directly in front of her.

14 This is the photo that y'all didn't really see until
15 today. And this is Ms. Robinson's point of view. So this
16 is coming down Old Bluff Road where she is driving. And
17 what you don't see in this picture is directly in front is
18 the bicycle, because we've seen it from that other angle.

19 So this is the field of view that Ms. Robinson had as
20 she's coming down the roadway. And what you see, again,
21 here is that these right tires end up sort of on that
22 white paint line, which is consistent with that testimony
23 that as she's coming down the road, Mr. Jones cuts in
24 front of her. She jerks right, hits her brakes, and comes
25 to a stop.

1 And then this picture sort of sums up what happened
2 here; right? We look back at this picture. And we've
3 heard Ms. Murray's testimony that he put his hand up, but
4 I didn't think he was going to turn because there's
5 nowhere to turn.

6 We heard Ms. Robinson say, I saw him coming in the
7 other direction. She said, I saw a hand at one point.
8 She said, it wasn't a signal. There was a dispute over
9 that. But there was nowhere to turn. Why would he be
10 turning in front her? There's nowhere to turn. That's
11 the question; right? Why are we turning here? There's no
12 reason to turn.

13 Well, what we end up with when we look at this
14 picture is, functionally, where this accident happened.
15 That Mr. Jones is riding on that right-hand side of the
16 road. And he decides to turn left and cross the double
17 yellow line into a ditch, and woods, and trees where
18 nobody would expect that to happen.

19 We talk about foreseeability. It was one of those
20 words Mr. Jefferies used. That's not foreseeable. Why
21 would somebody turn left right in front of a car into the
22 woods? That doesn't make sense. And it doesn't make
23 sense because there's no logic to it. It's was a mistake
24 that Mr. Jones made when he turned in front of that car.

25 So Mr. Jones -- what did Mr. Jones talk about?

1 First, what he saw. And there's really three people
2 that's here. He never saw Ms. Robinson cross the double
3 yellow line. He admits he never saw Ms. Robinson in his
4 lane of travel before he crossed that double yellow line.
5 And he admits he never saw Ms. Robinson pass any cars.
6 Ms. Murray says the exact same thing. Ms. Robinson says
7 the exact same thing. They all agree on it.

8 What he knew. This is where his truck driving comes
9 in. He's a trained truck driver. He knows the rules of
10 the law. Regardless of what the statute says, you have to
11 do what the law says you have to do. He knows the rules.
12 He knew that failing to yield to a car is a violation. He
13 knew that failing -- or crossing a double yellow line is a
14 violation.

15 He admitted you can't just turn in front of a car
16 because you put a signal on. He said that would be the
17 cause of an accident. And that's what he did. And what
18 he did, he failed to yield to cross that double yellow
19 line. And he decided I'm just going to turn in front of
20 this car. Whether he saw it or not, he made that choice.

21 Mr. Jones claims a couple of things. And we'll talk
22 again. We've talked a lot about this story. But one of
23 the things he said was, I was in my own lane when I got
24 hit. And we know that's not true. We know that's not
25 true because Ms. Murray told us that's not true. We know

1 that's not true because the photos prove that's not true.

2 He guesses that Ms. Robinson swerved around cars.

3 We've talked about that story. There are no cars. There
4 were no people. That story doesn't make sense.

5 He claims his wife's cousin was on the roadway and
6 she gave him the signal to turn left. Where is she? Why
7 did she flee the scene? What would she have to say about
8 this? That's the burden of proof. That's -- if you want
9 to prove it, you bring those people in here to say it.
10 You don't make up this story and tell the jury.

11 The complaint we talked about briefly this morning
12 with Ms. Murray. These are the three material allegations
13 that have been made since the very beginning of this case,
14 that the Defendant unlawfully attempted to pass a vehicle
15 immediately in front of her. That's what they've alleged.
16 It didn't happen. It didn't happen.

17 That once the Defendant unlawfully attempted to pass
18 the vehicle in front of her, she crossed into the
19 Plaintiff's lane of travel. That didn't happen.

20 That the Defendant caused the Plaintiff to strike the
21 front of Defendant's vehicle by unlawfully traveling in
22 the lane of oncoming traffic. That didn't happen. This
23 is the allegations that have been made. That is the story
24 you were told yesterday. And it didn't happen.

25 Ms. Karen Robinson testified that she was driving in

1 her own lane of travel. That she didn't cross into that
2 oncoming lane of travel. That she didn't cross that
3 double yellow line. She was not on her cell phone. She
4 was not distracted. She was not speeding. And there is
5 no evidence of any of those things.

6 She said she saw the Plaintiff on his bike when he
7 suddenly turned left in front of her. What she said was,
8 I saw him for about five to seven seconds. That is a
9 straight road. She's driving down that road. She sees
10 the guy on the bike coming towards her. And he says --
11 she says, he suddenly turned in front of me.

12 And the big dispute was, was there a signal? Was
13 there a hand? Did she have glasses on? Did she not? She
14 wasn't wearing glasses. But she saw Mr. Jones. This
15 isn't a situation where she says I never saw him, it must
16 be the glasses. She saw him.

17 And if you remember the questioning about the
18 signals -- Mr. Jefferies kept asking about that. And she
19 interrupted and said, Can I explain? And what she said
20 was, I saw the hand. I don't think it was a signal. So
21 this whole she never saw him do anything is not true. She
22 saw a hand. It wasn't a signal. Why wasn't it a signal?
23 Because there was nowhere to turn. It's not foreseeable
24 that somebody would turn left into a ditch and woods.

25 So while there was an arm that went up, she didn't

1 think it was for turning. She didn't have any reason to
2 expect that this guy would just cut his bike across a
3 double yellow line right in front of her car. When he did
4 that, she stopped immediately. She got on her brakes and
5 stopped. She tried to avoid it, but she couldn't because
6 it was right there.

7 We talked about the glasses. This accident, the
8 simplest way to put this is it didn't happen because she
9 wasn't wearing her glasses. That has nothing to do with
10 whether or not Mr. Jones was going to get hit that day.
11 Glasses or not, he cut that bike directly in front of her
12 car.

13 We know that because Ms. Murray testified. She was
14 an independent eyewitness. She doesn't have a
15 relationship with either of these parties. She has no
16 friends to reward here today. She had no enemies to
17 punish. She doesn't have any animosity. She came here
18 from work to tell you what she saw. She was driving
19 behind Mr. Jones when he turned left in front of
20 Ms. Robinson.

21 And what she said was she didn't expect him to turn.
22 She saw the arm go up. She recognized it as a signal.
23 But she didn't expect there would be a turn because there
24 was nowhere to turn. She didn't believe that that was
25 foreseeable.

1 And then she said, When I saw it happening, I
2 screamed.

3 I said, Why? Why did you scream?

4 She screamed because she was witnessing an accident
5 happen. It was that quick. It wasn't a situation where
6 he turned and it was five, six, seven, eight, nine, 10
7 seconds and, oh, this might happen. It was when he
8 started that process, I screamed because this accident was
9 happening in front of my eyes. And it happened. There
10 wasn't this window of time where somebody could have
11 avoided a collision. It was instant.

12 She testified very clearly -- and it wasn't really
13 contradicted -- that Ms. Robinson never left her lane of
14 travel. And Ms. Robinson never crossed that double yellow
15 line. And Ms. Robinson was never in that oncoming lane of
16 travel. She testified the collision occurred entirely
17 within Ms. Robinson's lane of travel. She testified that
18 the car and the bike in those photos we have were not
19 moved post-accident.

20 There were a lot of questions about that. Did she
21 back her car up? Did she move it? No. Where the car
22 came to stop and where the bike came to rest are where
23 those two pieces of -- those two vehicles were when this
24 collision happened. That's how we know it happened
25 completely within that lane of travel. She, also,

1 testified that there were no other cars there.

2 So this story about these multiple cars that all of
3 them fled the scene. She says they weren't there. There
4 was no car in front of her. There was no car in front of
5 Ms. Robinson. There were no other cars on the scene at
6 all. There were no other people that hung around as
7 eyewitnesses to testify. She fully refutes the wife's
8 cousin's story. And that's what she knows. Her testimony
9 shows us that that just isn't what happened in this case.

10 So let's talk about the harms and losses that we
11 heard about this morning -- or yesterday. Ms. Robinson
12 suffered significant damages to her car. And those were
13 caused by Mr. Jones. And she's not looking to get rich.
14 She's not looking to even make money off of this case.
15 She just wants her damages paid for that were invoiced and
16 billed as a result of this collision that Mr. Jones
17 caused.

18 Mr. Jefferies kept saying a hundred dollars, a
19 hundred dollars, a hundred dollars. The Judge is going to
20 be very clear with you that what has been paid is not the
21 measure of damages. If that were the case, Mr. Jones
22 would have zero dollars in damages because he hasn't paid
23 those bills --

24 MR. JEFFERIES: Objection, Your Honor. There's no
25 evidence as to payment of Mr. Jones bills. He's making

1 this up.

2 MR. BAYNE: Your Honor, he said they were -- they
3 were all outstanding.

4 THE COURT: Come up here.

5 That's all right.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: Members of jury, go to the jury room.
8 I'll bring you back shortly.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 2:36 p.m.)

11 THE COURT: Yes, sir, Mr. Jefferies.

12 MR. BAYNE: Judge, the -- or go ahead.

13 MR. JEFFERIES: I --

14 THE COURT: I think he objected --

15 MR. BAYNE: First, what's the objection, I guess?

16 MR. JEFFERIES: Let me make the objection.

17 THE COURT: What now?

18 MR. JEFFERIES: Let me make the objection --

19 THE COURT: That's -- that's why I sent the jury out.
20 Go ahead.

21 MR. JEFFERIES: The objection is this, Your Honor,
22 Mr. Bayne just said in his closing that Harland Jones
23 hasn't paid any of his medical bills. There's no evidence
24 of that. Mr. Bayne was present when Your Honor cautioned
25 me to be very, very careful about insurance payments --

1 THE COURT: I know.

2 All right. Did you say that, Mr. Bayne?

3 MR. BAYNE: Judge, I said that. And the reason I
4 said that --

5 THE COURT: Well, the question's not why you said it.
6 Is it in evidence?

7 MR. BAYNE: It is in evidence because --

8 THE COURT: We'll have the court reporter go back and
9 find it.

10 MR. BAYNE: If I can explain --

11 THE COURT: Go ahead. Go ahead.

12 MR. BAYNE: The Plaintiff has the burden of proof in
13 proving his damages.

14 THE COURT: I understand that.

15 MR. BAYNE: There is no evidence that he has paid any
16 of these bills. And he made payment of bills an issue in
17 closing. Mr. Jefferies made that an issue by saying,
18 she's only paid a hundred dollars of the bills. So --

19 THE COURT: Well, that's what she said. You didn't
20 object. When he asked the question, that was her answer.

21 MR. BAYNE: I understand. I understand. But --

22 THE COURT: And he's objected.

23 Now, we'll take our time to go back if --

24 Your objection, again, was he said he had not paid
25 any of his bills?

1 MR. JEFFERIES: That's correct, Your Honor.

2 And there is zero evidence --

3 THE COURT: I don't remember any testimony about
4 whether he paid the bills or not. It never came up.

5 MR. BAYNE: If I may, Judge, there is not testimony
6 about it. And that's --

7 THE COURT: There's not testimony.

8 Well, why'd you say that then?

9 MR. BAYNE: Because they haven't established --

10 THE COURT: No, no, no. It's got to be in evidence.
11 You can't just -- this is important enough --

12 See if you can find that?

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: We'll be at ease.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Do you have any idea about where it might
17 be?

18 MR. JEFFERIES: Your Honor, he has conceded it's not
19 in there.

20 THE COURT: Well, I want to be clear. You said that
21 the independent witness said she didn't think he was going
22 to turn. But you didn't finish with because he lived
23 further down the road. Now, I didn't understand that. I
24 didn't say anything about it. But let's see if we can
25 find it.

1 THE COURT REPORTER: Judge, I've got what Mr. Bayne
2 said in his closing argument. "Mr. Jefferies kept saying
3 a hundred dollars, a hundred dollars. The Judge is going
4 to be very clear with you that what has been paid is not
5 the measure of damages. If that were the case, Mr. Jones
6 would have zero dollars in damages because he hasn't paid
7 those bills." And then Mr. Jefferies objected.

8 MR. JEFFERIES: And there's no evidence that --

9 THE COURT: Was it in evidence that he has not paid?

10 MR. JEFFERIES: There's -- no evidence was introduced
11 that he hasn't paid.

12 THE COURT: I mean, I -- I don't care because I've
13 got to make a decision. Is there anything in the record
14 that suggests that he has not paid these bills?

15 MR. JEFFERIES: No.

16 THE COURT: It shouldn't even be an issue.

17 MR. BAYNE: We need to go back through his direct.

18 THE COURT: Well, we'll go back. Because --

19 MR. BAYNE: Judge, and immediately preceding that is
20 the rule is going to be the amount of the bills that were
21 charged here. I mean, that's what was said. And so I'm
22 saying the -- it was an example --

23 THE COURT: Well, is there anything in evidence one
24 way or the other that says anything about the payment of
25 his bills? Yes or no? I don't think there is.

1 But go back and find it.

2 (WHEREUPON, a break was taken.)

3 (WHEREUPON, during the break, a portion of
4 Mr. Harland Jones testimony was played in open court.)

5 MR. JEFFERIES: We're back on the record now?

6 THE COURT: Yes. We're back on the record.

7 Go ahead.

8 MR. JEFFERIES: Your Honor, the motion for the
9 mistrial is based on this, as Your Honor just discovered
10 by reviewing the testimony, there's no evidence about
11 payment of Harland Jones' medical bills. There's no
12 evidence to support Mr. Bayne's allegation during the
13 closing that those bills are unpaid.

14 The problem is -- the reason we moved for a mistrial,
15 not just the objection, is there's no unringing that bell.
16 I just stood up and looked into the eyes of 12 jurors and
17 told them ways to get to a million or two million dollars.

18 And, now, Mr. Bayne has told them -- oh, we don't
19 even know if this is true, but it's, certainly, not in
20 evidence. Oh, by the way, Jefferies is lying to you. The
21 bills are unpaid. Harland Jones doesn't actually -- he
22 didn't pay that money. He's not out that money. There's
23 no curative instruction that can fix that --

24 THE COURT: Thank you, Mr. Jefferies.

25 Mr. Bayne.

1 MR. BAYNE: Judge, and I know we talked
2 off-the-record. Again, the statement being made within
3 the context that it was -- Mr. Jefferies represented to
4 the jury -- and your charge would say the only thing that
5 can be paid is what's been paid out-of-pocket. That
6 was -- that was --

7 THE COURT: Forget --

8 MR. BAYNE: And -- and --

9 THE COURT: No, no, no. We're talking about
10 Mr. Jones' testimony, not -- not cross-examination of
11 Ms. -- Ms. Robinson.

12 MR. BAYNE: Right.

13 But within the context of that statement, it was that
14 is not what the Judge is going to tell you. What the
15 Judge is going to tell you is it is the bills in full.
16 Because if he told you that it was just what's paid, it's
17 zero. And it's zero because there's no evidence he's paid
18 any bills.

19 So if the standard that the Plaintiff is going to
20 give to the jury is what you have to award is what has
21 been paid, there is --

22 THE COURT: No, no, no. We never get to that point.

23 MR. BAYNE: But that's what he said. And --

24 THE COURT: I don't think he -- well, I just
25 listened. He -- all he said was \$240,000, is that your

1 medicals?

2 Yes, sir.

3 No further questions.

4 MR. BAYNE: Judge, that's what he said in his closing
5 was that the damages to her are what she paid. And what I
6 was saying was --

7 THE COURT: Well, you should have -- you should have
8 objected.

9 MR. BAYNE: I didn't want to because --

10 THE COURT: Well, I -- that's my fault, I guess.

11 MR. BAYNE: But -- but the point is if --

12 THE COURT: Well, no. The point is you should have
13 objected to that and you did not. And having not
14 objected, you go on and think you have the right to do
15 something that's -- I -- do you see my point? You should
16 have objected.

17 MR. BAYNE: I -- I understand, Judge. I'm not trying
18 to argue --

19 THE COURT: Well, you're doing a good job of it. But
20 go ahead.

21 MR. BAYNE: The brief issue is simply if the standard
22 is the evidence --

23 THE COURT: There's nothing -- there's nothing about
24 a standard. What's the standard? You've got to -- I'll
25 tell you what, either one of y'all point to a case or a

1 rule that would help me rule for you, I'll be glad to do
2 so.

3 MR. BAYNE: I don't --

4 THE COURT: No. Pick a case, any case anywhere in
5 the world that says you have the right to do that, and
6 I'll let you do it.

7 And you pick a case anywhere in the world that says
8 he should do it.

9 I'll give you five minutes. Okay.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Any success?

12 MR. JEFFERIES: No -- no, sir.

13 MR. BAYNE: Judge, I have one case that might be
14 guidance on this.

15 THE COURT: You know, the jury has been out so long
16 now, I --

17 MR. DELANEY: Yes, sir.

18 THE COURT: This becomes a salvage operation.

19 MR. BAYNE: This is -- this is Mcalvey [phonetic] v.
20 Ferre, F-E-R-R-E. When an objection is timely made to
21 improper remarks [inaudible] the Judge should overrule the
22 objection and give a curative charge to the jury and
23 instruct defendant counsel to desist the improper remarks.

24 THE COURT: I didn't understand you, but.

25 MR. BAYNE: Citing Madden v. Cox, 284 --

1 THE COURT: What year is that?

2 MR. BAYNE: This case is 1989. And it is a Court of
3 Appeals case from -- it doesn't say which judge.

4 THE COURT: And does that support your position?

5 MR. DELANEY: Well, I think it supports the -- in --
6 in response to the mistrial, not the position of -- if
7 there was an error made that it can be addressed by
8 curative instruction from --

9 THE COURT: Oh, yeah. Curative. That's one option,
10 other than a mistrial.

11 What's your position, Mr. Jefferies?

12 MR. JEFFERIES: Certain things can be cured, other
13 things can't. That is so essential to the case. And it
14 was the same thing Your Honor cautioned me not to
15 accidentally say and mistry the case. It is so essential
16 to the case. There's no unringing the bell. The jury
17 can't unhear the fact that --

18 THE COURT: Well, hold on, Mr. Jefferies. Explain it
19 to me in detail, if you can.

20 MR. JEFFERIES: Because I went up to the jury and I
21 talked to them about his medical bills and I talked to
22 them about a million dollars to two and half million
23 dollars --

24 THE COURT: Yeah. I remember that.

25 MR. JEFFERIES: I gave those examples. There's

1 nothing to suggest that it ever entered the juries mind
2 that Harland hadn't paid those bills.

3 THE COURT: There's nothing in the juries mind that
4 he had paid them either.

5 MR. JEFFERIES: That's correct. And that is the
6 supposition that the juries supposed to make, that it's
7 the amount billed.

8 For Mr. Bayne to stand up and say Harland didn't pay
9 those bills. First, we don't even know that that's true.

10 Secondly --

11 THE COURT: Well, the point is there's nothing in
12 evidence about payment of bills one way or the other.

13 MR. JEFFERIES: Nothing in evidence.

14 And, Your Honor, I couldn't stand up and say she's
15 got plenty of insurance, but you're not allowed to
16 consider that and then have Your Honor give a curative
17 instruction. That is so prejudicial that it destroys the
18 case. This is the exact same thing going the other way.

19 THE COURT: I don't know that it's the exact same
20 thing.

21 MR. JEFFERIES: Well, it's -- it's identically
22 prejudicial, Your Honor. His bills are the issue.

23 THE COURT: I get the point.

24 Thank you.

25 Anything further?

1 MR. DELANEY: Yes, sir Your Honor.

2 I think the -- the first issue that needs to be
3 resolved by the jury is the liability. And I --

4 THE COURT: The first issue that needs to be resolved
5 is me right now and whether or not I grant a mistrial or
6 not. I'm not trying to be funny, but come on.

7 MR. DELANEY: Yes, sir.

8 And what I was getting to is I think the primary
9 issue is -- before we get to the issue of a mistrial, the
10 most important issue they need to decide is the liability.

11 And then what was misspoken here was an issue of
12 damages, which I believe Your Honor could be -- if there
13 is an error in damages as we move forward, that's an error
14 that can be cured by an additur motion, a new trial after
15 we get a verdict. But I think to go this far and start
16 over again when the primary issue is the liability --

17 THE COURT: Well, you know, gentlemen, once again --

18 MR. DELANEY: Yes, sir.

19 THE COURT: If there's an objection, I have to deal
20 with it. If there's no objection, then it's moot. If you
21 relied on the fact that you didn't object to -- in the
22 record that's not there, that creates a problem. I'm
23 not -- I'm not mad at anybody, or anything.

24 The last thing I want to do is declare a mistrial.
25 But I'm very close to doing it.

1 MR. JEFFERIES: Your Honor, we don't -- there's no
2 way around declaring a mistrial because they can't
3 unhear --

4 THE COURT: You've said that five times,
5 Mr. Jefferies. You're repeating yourself.

6 You know, in the 25 years I've been doing this, I've
7 declared five mistrials. Anyway, I think I will in this
8 case, though.

9 Reluctantly, I will grant your mistrial, Mr. Jefferies.
10 Bring the jury in.

11 MR. JEFFERIES: Thank you, Your Honor.

12 THE COURT: Everybody get ready to do this again in a
13 week or so.

14 And the last thing -- trust me, the last thing I want
15 to do is grant your motion, but I will reluctantly.

16 (WHEREUPON, the jury came into open court at
17 approximately 3:07 p.m.)

18 THE BAILIFF: Your Honor, the jury is present.

19 THE COURT: Will you move that out of the way for me?

20 THE BAILIFF: Yes, sir.

21 THE COURT: All right. Mr. Foreman, and, members of
22 the jury, a legal issue arose based on the closing
23 arguments by the parties. And sort of -- reluctantly,
24 I've decided to declare a mistrial in this case for
25 strictly a legal reason. It has nothing to do with y'all

1 and how you would have decided this case.

2 But -- so that concludes your services on this
3 particular case and for the week. I know there's nothing
4 else scheduled, so.

5 I want to thank you for your patience and
6 participation in the process.

7 I know if we'd have gotten to you, y'all would have
8 returned a fair verdict. But we won't get that far. But
9 that's my decision. I reluctantly make it, but I think I
10 should.

11 And, Mr. Echols, stand up for me. I'm glad you look
12 like your mother. I saw her last night at the Publix and
13 told her I would pick on you a little bit.

14 So I think you go to Clemson, don't you?

15 JUROR #77, ROBERT ECHOLS: Yes, sir.

16 THE COURT: What year are you at Clemson?

17 JUROR #77, ROBERT ECHOLS: I'll be a sophomore this
18 year.

19 THE COURT: A sophomore.

20 Well, I knew her when your mother practiced. But
21 that's -- I guess with four other kids besides you, that
22 became a little difficult.

23 JUROR #77, ROBERT ECHOLS: Yeah. I was -- I'm the
24 oldest.

25 THE COURT: You're the oldest?

1 JUROR #77, ROBERT ECHOLS: Yes, sir. I think -- I
2 think she stopped practicing two or three -- maybe two
3 years after I was born. I'm not -- I'm not sure.

4 THE COURT: Are you the reason?

5 JUROR #77, ROBERT ECHOLS: Maybe.

6 THE COURT: But in any event, I want to thank you
7 all.

8 And I told your mother I'd pick on you.

9 JUROR #77, ROBERT ECHOLS: Yes, sir.

10 THE COURT: So you're free to go back downstairs to
11 the jury assembly room where you will await for further
12 instructions.

13 Thank you all so very much.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 3:09 p.m.)

16 THE COURT: I'll notify Judge Newman. And she'll put
17 you on track for rescheduling.

18 *****END OF TRANSCRIPT OF RECORD*****
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 13th and 14th days of August, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 19, 2019

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2018CP4001518
	)	
HARLAND JONES,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KAREN ROBINSON,	)	
	)	
DEENDANT,	)	

September 27, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

LANE JEFFERIES, ESQ.
Attorney for the Plaintiff

BRETT BAYNE, ESQ.
ANDREW DELANEY, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

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CERTIFICATE OF REPORTER 61

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	transcript	32	
2	affidavit	34	
3	social media posting	39	
4	emails	47	

1 THE COURT: We're on the record in 2018-CP-40-1518,
2 Harland Jones vs Karen Robinson and others.

3 Mr. Jefferies is here representing the plaintiff.
4 Mr. Brett Bayne and Andy Delaney are here representing the
5 defendants.

6 Ms. Catherine Hart is here. You have the UIM, I take
7 it?

8 All right. Good morning. So we have a motion for
9 sanctions filed by the defense. We have a plaintiff's
10 motion for sanctions. We have a motion for sanctions,
11 another motion for sanctions filed by the plaintiff, and
12 then a motion to quash or strike filed by the defense. So
13 what do we need to start with?

14 MR. JEFFERIES: Your Honor, I'd say we just take them
15 in the order that they are on the roster. They are
16 June 27th motion for sanctions which is a motion, I
17 believe, for sanctions related to mediation.

18 THE COURT: Okay.

19 MR. JEFFERIES: Your Honor, if I may make just two
20 additional comments, and I'll flesh out this argument, one
21 of these later.

22 First, we believe -- and I can show, Your Honor --
23 Your Honor has requested -- this motion has been waived
24 because it wasn't heard when it was set to be heard back
25 in August. That's another argument.

1 A major issue is that Mr. Bayne, I understand,
2 intends to introduce confidential statements made during
3 the mediation that are protected by the ADR Rules, and in
4 order to counteract that, we are going to have to do the
5 same.

6 We don't think that's proper. We don't think there's
7 any exception for Mr. Bayne to talk about what happened
8 during mediation, but what we would appreciate is Your
9 Honor hearing that issue, making a ruling on it so that
10 neither of us are potentially running -- well, in Mr.
11 Bayne's instance, any further running afoul of the Rule 8
12 of ADR and mine since I don't want to run afoul of it at
13 all.

14 THE COURT: Okay. All right. Mr. Bayne.

15 MR. BAYNE: Judge, and I guess initially just
16 addressing that one point is when it deals with alleged
17 violations of the ADR Rules, the proper procedure is to
18 file a motion and to file a memorandum under seal which we
19 filed with Judge Newman in order to protect the
20 confidentiality of that, but certainly somebody has to
21 hear that motion, and I think the most proper person is
22 probably a circuit court judge.

23 So there has to be some form of disclosure of what
24 occurred either at the mediation or during the mediation
25 related to that.

1 I would add just -- and we'll get to this later,
2 Mr. Jefferies was not present at the mediation. So
3 there's been no affidavit filed by the person who was
4 present.

5 So I'm not certain what factual arguments
6 Mr. Jefferies is going to be able to get into since he was
7 not present at the mediation or anything. What he states
8 would be hearsay or would be uncorroborated at that point,
9 but if I may -- and I submitted the memorandum that we
10 served on Judge Newman.

11 I have a copy of what is essentially pleadings and
12 discovery responses that I'll reference here today. Those
13 are all things that have been filed in the case or
14 discovery between the parties or the transcripts from the
15 various hearings that I'll reference.

16 I'll actually -- just to deal with the assertion that
17 this has either already been heard or it has been waived,
18 we'll start at the back which is tab 20 which is the
19 transcript from the first trial in this matter that ended
20 in a mistrial and --

21 MR. JEFFERIES: Your Honor, respectfully, and I hate
22 to interrupt. Did Your Honor rule on the Rule 8?

23 THE COURT: Yes. Rule 8 clearly sets forth
24 circumstances that are limited exceptions to the
25 confidentiality rules of ADR, and Rule 8 of the ADR Rules,

1 Section B, it allows disclosure to the Chief
2 Administrative Judge in a report, and it also allows for
3 any disclosure by law or by a professional -- disclosures
4 required by law or by a professional code of ethics.

5 So I think we're fine to talk about these issues.
6 There's a case that just recently came out on -- in the
7 past 30 days dealing with this specific issue and so --

8 MR. BAYNE: And I noted, Your Honor.

9 THE COURT: -- that's my ruling.

10 MR. BAYNE: Our disclosure was made directly to Judge
11 Newman via an unfiled memorandum, so it would not appear
12 in the Public Index for purposes of maintaining that
13 confidentiality.

14 So I'm going to go through kind of the history of
15 this case. It's going to take a little while, but I'll
16 start with just what has been heard in the first place.
17 On tab 20 is the transcript from -- it's portions of the
18 transcript from the pretrial and motions in limine.

19 Specifically, on page 18 it's about the fourth page
20 in of that transcript is line three through line seven.
21 I'll actually go into detail as we get into this, but it's
22 Judge Manning's ruling that, "if I find out at the end,
23 then that's additional sanctions. If you're wrong, then
24 you understand that. I will take this matter up later not
25 at pretrial. But at the conclusion of this case, I'll

1 make a decision on the argument."

2 The case ended in a mistrial, so there was no
3 conclusion in which to take that up. So that hasn't
4 actually been heard or ruled upon yet because we didn't
5 get into the details of what needed to be done at that
6 hearing, but backing up sort of to the start of this case.

7 So this case involved the plaintiff who was on a
8 bicycle on Old Bluff Road, a two-lane road here in
9 Columbia. He was riding his bike on Old Bluff Road when
10 he made what is an illegal left-hand turn across a double
11 yellow line directly in front of the car driven by
12 Ms. Karen Robinson.

13 That caused a collision between the two of them.
14 That collision occurred in Ms. Robinson's lane. It
15 occurred after Mr. Jones had crossed that yellow line into
16 Ms. Robinsons' lane.

17 Mr. Robinson -- and we'll kind of get into those
18 details -- I'm sorry, Mr. Jones has been deposed, finally,
19 in March which is part of all of this, and his testimony
20 in sum is he doesn't remember anything about the accident
21 except starting to turn.

22 He also testified that he never saw Ms. Robinson's
23 car, and that he has no information he can give us about
24 what she was doing, where she was, speed, lane, anything
25 like that.

1 So we start with the complaint, the complaint that
2 was filed in this case which is subject to Rule 11. And
3 in that complaint, it's on tab one, there are a number of
4 very specific allegations -- it's sorry, it's on tab two.
5 Tab one is the summons that have been made.

6 And specifically, it's paragraphs eight, nine and
7 ten, and what the plaintiff has alleged in this
8 pleading -- and this is back when it was filed was
9 March 2018 that at the time of the subject incident,
10 defendant unlawfully attempted to pass a vehicle
11 immediately in front of her; that once the defendant
12 unlawfully attempted to pass the vehicle in front of her,
13 she crossed over into the plaintiff's lane of travel.
14 That the defendant caused the plaintiff to strike the
15 front of defendant's vehicle by unlawfully traveling into
16 the lane of oncoming traffic.

17 So those are the allegations that are raised in the
18 complaint which presumably should have some form of
19 factual basis or some form of good faith basis that that
20 will be what the evidence shows.

21 At this time, we haven't had the chance -- since this
22 is the answer or the complaint, we haven't deposed the
23 plaintiff to find out he actually doesn't know any of this
24 stuff.

25 So we file an answer. There is a motion within the

1 answer, and Plaintiff files a motion to dismiss a
2 counterclaim. It was a counterclaim under the Frivolous
3 Claims Proceeding Act.

4 In that, that is tab 3, they make a very interesting
5 argument to the court in this signed document that they
6 filed on June 5th, 2018, and that is located on page five.
7 It's the second paragraph about halfway down.

8 What the plaintiff alleged on June 5, 2018 in this
9 pleading or in this memorandum is discovery in this case
10 is expected to bring witnesses to the events giving rise
11 to the subject motor collision who believe --

12 THE COURT: Hold on. You're reading a little bit --

13 MR. BAYNE: Sorry, I apologize.

14 THE COURT: You're reading -- I switched paragraphs.
15 I'm sorry.

16 MR. BAYNE: It's paragraph two on page five, and it's
17 about a little less than half-way down. It starts with
18 the word "upon information and belief".

19 THE COURT: Hold on just a second.

20 MR. BAYNE: Yes, sir.

21 (Pause.)

22 THE COURT: Okay. Just don't -- don't read too fast.
23 The court reporter, she can only type so fast.

24 MR. BAYNE: Yes, sir, I understand.

25 So on June 5th, 2018, the plaintiff files this

1 document asserting that they believe they're going to have
2 witnesses who will testify the defendant was speeding.

3 The defendant was not paying attention to the roadway
4 at the time of the collision and/or the defendant
5 unlawfully attempted to unlawfully pass a vehicle
6 immediately in front of her at the time she, Defendant,
7 unlawfully caused Plaintiff to strike the defendant's
8 vehicle.

9 So that is an assertion being made at that time.
10 They are -- they have or believe they have witnesses who
11 is are going to testify that.

12 THE COURT: Okay. That's in response -- that is a
13 motion to dismiss the defendant's counterclaim for
14 frivolous actions?

15 MR. BAYNE: Correct.

16 THE COURT: Okay.

17 MR. BAYNE: So they assert at that time that the
18 counterclaim is factually improper because there is
19 evidence.

20 THE COURT: Because there is evidence --

21 MR. BAYNE: Correct.

22 THE COURT: Got it.

23 MR. BAYNE: And not even evidence. There are
24 witnesses that are going to say that. So immediately,
25 shortly thereafter, we filed sort of supplemental

1 discovery requests that we already sent initial discovery
2 quoting that.

3 That is tab number four is the response, but what you
4 see in there is -- let me back up. If you'll go to tab
5 five, Your Honor, is the interrogatories that were sent to
6 the Plaintiff, the first supplemental interrogatories.

7 There's only one. It's number one, and we cite to
8 that memorandum -- and we quote that language. We say,
9 "State the full name, address and contact information,
10 including telephone number, email address of the witness
11 or witnesses in reference to paragraph two, page five, of
12 that motion," and we quote it.

13 Then we ask, obviously, any statements and anything
14 like that. So we sent that out. That is August 14th,
15 2018, and there is no response to it. So we have to -- at
16 that time, we then have to file a motion to compel
17 discovery responses, and that motion to compel is heard in
18 October 2018 with Judge Benjamin who issues a Form 4 order
19 which is located on tab number eight.

20 It's just a standard Form 4 that says, "Motion to
21 compel granted, remaining records and all supplemental
22 responses should be received in 20 days."

23 Plaintiff did not within 20 days answer that
24 supplemental interrogatory that asked for the
25 identification of these witnesses. They have told the

1 court in order to defeat our counterclaim that they have.

2 So Judge Benjamin at that point, we filed a motion.
3 She grants a Rule to Show Cause. That's tab number nine.
4 She granted the Rule to Show Cause on October 30, 2018.

5 After that Rule to Show Cause is granted, the
6 plaintiff responds to that supplemental interrogatory
7 that's tab number ten and answers they don't have the
8 witnesses that they asserted they have. The answer is
9 none, and that's on tab ten, plaintiff's answer to
10 defendant's second set of interrogatories.

11 So at this time now we have been -- we have pleadings
12 that allege a set of facts. We have a memorandum filed
13 with the court that has argued there are witnesses who
14 will support that, and then we send discovery requests,
15 and after a Rule to Show Cause they say actually we don't
16 have those witnesses.

17 So that issue largely dies right there until we get
18 to March of 2019 when we can finally depose the plaintiff,
19 and when we depose the plaintiff, he now discloses what he
20 believes to be at least two witnesses to the accident.

21 The first is a guy named Alex who doesn't have a last
22 name who lives somewhere in the woods who happened to be
23 at his house and saw the whole thing, and he's known about
24 him since the beginning.

25 The second is someone who we don't have their name at

1 the time who he claims is his wife's cousin who was on the
2 roadway that day who was driving in front of our client
3 who stopped her car to waive Mr. Jones across, and that
4 she is going to say that our client swerved around and
5 struck Mr. Jones.

6 So immediately following that deposition we filed a
7 motion to compel on March 7th, 2019. That's tab number 11
8 citing all of this prior history discovery.

9 We have the allegations. We have the facts asserted.
10 We have the motion. We have the Rule to Show Cause. You
11 told us there was nobody. Now, back here in March 2019,
12 we're now getting back into maybe there's these witnesses
13 you previously said didn't exist.

14 So in addition to the motion to compel, tab 12 is a
15 second set of requests to admissions. We filed those, we
16 served those shortly after March 7th. They were answered,
17 and what is in tab 12 was the answer given to us by the
18 plaintiff to some questions.

19 One of them was, for example, "Admit defendant was
20 within her lane of travel, not plaintiff's lane of travel,
21 at the time of collision."

22 The answer given, which is instructive to the
23 complaint and some of these sanction issues, is:

24 "Plaintiff did not see the defendant strike him.

25 Plaintiff admits after defendant struck him, defendant's

1 car was kind of pointed in the west -- pointed in the
2 westbound lane of travel. Plaintiff's body was found
3 along the westbound lane of travel."

4 So that admission is consistent with the deposition
5 which is I didn't see it. It's consistent with his trial
6 testimony which I'll get to which is I didn't see
7 anything.

8 Number two is -- and this is where we get into the
9 specific allegations that I mentioned at the beginning,
10 that's seven, eight, and nine. "You have alleged the
11 defendant caused the plaintiff to strike the front of
12 defendant's vehicle by unlawfully traveling in the lane of
13 traffic. Admit this allegation from your complaint is not
14 true."

15 At this time when we send this, not a single person
16 has testified. Not a single witness has been identified
17 who will say this other than these two new people named in
18 the deposition who one doesn't have a name. It's the
19 wife's cousin. One is a guy named Alex who lives in the
20 woods.

21 They deny that and say, "After conducting written
22 discovery and depositions, it appears the defendant was no
23 longer traveling into oncoming traffic when she wrongfully
24 struck plaintiff. Nonetheless, it was defendant's illegal
25 passing maneuver in which she unlawfully traveled in the

1 lane of oncoming traffic which caused her to strike the
2 plaintiff immediately after she returned to the westbound
3 lane of travel."

4 That's the same answer given to the next question
5 which is also quoting part of that complaint. So the
6 plaintiff admits that he didn't see any of this.

7 The plaintiff in response to the Rule to Show Cause
8 says we don't have the witnesses who will testify to this.
9 At this time, nobody has been identified who will testify
10 to this. Nobody has testified to that, but the request to
11 admit is denied again asserting this version of events
12 that involved swerving into oncoming traffic and swerving
13 around into vehicles.

14 So we respond to that request to admit with a third
15 request to admit attempting further to clarify this issue,
16 and that's tab number 13.

17 We say, "Admit there is no deposition testimony,
18 witness, or any other material to support the allegations
19 asserted in the plaintiff's response to defendant's second
20 set of requests for admission that states" -- and then we
21 quoted it. They just simply denied them. So in that --

22 MR. JEFFERIES: Your Honor, I hate to interrupt, but
23 we're here on a motion for sanctions for ADR abuse for us
24 allegedly sending the wrong guy to mediation.

25 I'm not hearing anything related to that. I'm just

1 wondering when we're getting to that. The only question
2 before this court in this first motion is whether sending
3 Gus Anastopoulo was the wrong thing for us to do and
4 whether we should be sanctioned for it.

5 This is interesting, but unless Mr. Bayne can tie it
6 together, we're wasting an awful lot of the Court's time
7 at this stage.

8 THE COURT: I have got nothing else to do.

9 Go ahead.

10 MR. JEFFERIES: Understood, Your Honor.

11 MR. BAYNE: Thank you, Judge.

12 So this is the third request to admit, but the second
13 dealing with this issue. At that time, they -- we said
14 you don't have any deposition testimony or evidence that
15 will support the assertion and request to admit two, and
16 they just deny it with no further explanation.

17 So from that point forward, the motion to compel we
18 had filed is set before Judge Roger Couch here in Richland
19 on March 7th, 2019.

20 On tab 14, I included the transcript from that
21 hearing where we had -- we argued motions for summary
22 judgment, and then we argued motion to compel.

23 In the motion for summary judgment if Your Honor
24 reviews it, what is essentially argued at that time is
25 there is an issue of material fact because there are these

1 witnesses who are going to testify to these things.

2 Witnesses have never been named at this time.

3 Witnesses -- we don't know who they are. We don't have
4 their names beyond wife's cousin and Alex in the woods.

5 So Judge Couch denies the motion for summary
6 judgment. He -- based on that, he hears the motion to
7 compel, and that's sort of at the back of this transcript.
8 And he grants our motion to compel.

9 Within than is a discussion that occurs between all
10 counsel and Judge Couch which is that Judge Couch is going
11 to give some period of time for the plaintiff to comply
12 with these discovery requests, or he is going to bar
13 witnesses from trial.

14 Mr. Jefferies agrees with him in the hearing. He
15 states that -- and this is on page 21, for example --
16 well, let me scoot down. Yeah, page 21 line 17 through
17 19.

18 Mr. Jefferies: "I agree, Your Honor, and we're
19 perfectly comfortable with that. We understand we can't
20 find Alex who lives in the woods. We agree."

21 Page 22, line two through four. "Your Honor, I don't
22 know that we can find it. If Your Honor wants 30 days and
23 say that's all you got, we're comfortable with that."

24 That kind of continues in this discussion of these
25 witnesses, so Judge Couch at that hearing from the bench

1 issues a ruling that the witnesses are to be disclosed --
2 any unnamed witnesses are to be disclosed by June 1st
3 otherwise they're barred.

4 He asks counsel for the defense to prepare a proposed
5 order granting that motion to compel. We do that. That's
6 submitted, I believe it was by May 13th.

7 In the -- there's some issue after that which is
8 where a lot of this starts even though we're kind of all
9 the way down this road.

10 Judge Couch doesn't file the order by June 1st
11 because of something dealing with Judge Couch. We
12 continually kind of asked him about it. He ended up
13 filing it on July 3rd.

14 Well, what we have within that period of time that's
15 contained in the -- there is a motion to alter or amended
16 that's filed, and then there is -- this is tab 17 which is
17 the memorandum in opposition of the alter or amend and
18 then ultimately, Judge Couch's order which is tab 19 to
19 the alter or amend.

20 And what's contained in there are emails and
21 communications between Mr. Jefferies and the court and
22 Mr. Jefferies and myself where he acknowledges the
23 deadline of June 1st.

24 For example, on tab 17, this is page three -- and
25 there is an email kind of screen shot in the middle there

1 where it says, "For example, what I recall Judge Couch
2 instructing to put in the order was that plaintiff must
3 comply with the discovery requests by identifying known
4 fact witnesses on or before June 1st."

5 So aside from at the hearing, we have an
6 acknowledgment of that. We then have an email later, we
7 have an acknowledgment.

8 Well, June 1st comes and goes, and no witnesses are
9 identified. We end up in a mediation on June 20th, 2019
10 which is what precipitated the filing of the motion for
11 sanctions, but what is only one part of this because Judge
12 Couch's order that is after mediation then also indicates
13 the plaintiff may be sanctioned for these abuses that
14 we're talking about here.

15 So we get to mediation, and I filed that memorandum.
16 And Mr. Jefferies fails to appear at the mediation. He
17 sends Gus Anastopoulo who is an associate at the firm.

18 Mr. Anastopoulo is not the counsel of record. He has
19 never appeared in any part of this case until he shows up
20 at the mediation. He is not on any pleadings. He is not
21 on any e-mails. He has never corresponded at any point in
22 this case.

23 Rule 6(b)(3) requires the party's counsel of record
24 to appear. I've done a search to try to find out if there
25 is clarification on what specifically is defined as the

1 party's counsel of record.

2 I think it's obvious, at least, it is the named
3 counsel of record but whether or not somebody else can
4 qualify under this rule is -- I think may be open to
5 interpretation but at least hasn't been decided.

6 But what I did attach in the memorandum that was
7 filed is a number of communications between Mr. Jefferies
8 and our office and other attorneys in our office and
9 memorandums in other cases where Mr. Jefferies expresses
10 that he is very clear and understands that I, being
11 Mr. Jefferies have to appear and that you, being Mr. Bayne
12 or Delaney or whoever he is writing to, has to appear at
13 this mediation.

14 That's contained in that memorandum under the
15 exhibits that we listed, and I highlighted several
16 sections of it in there as to how to deal with that.

17 Essentially, when you look back at all of those --
18 and I don't know if Your Honor has had a chance to review
19 them prior to today, but there is this constant refrain
20 that the party of record means me and you. That's who's
21 got to be there, the people who are actually dealing with
22 this case that know their clients, that are acting in the
23 case, that have done things on the case. That didn't
24 happen. We didn't know that was going to happen.
25 Otherwise, we could have either rescheduled it or worked

1 out something.

2 We get to mediation, and Mr. Gus Anastopoulo shows
3 up, and this is what is getting into this memorandum, but
4 just from observation, he didn't appear to even know who
5 the clients were. He had material facts about the case
6 incorrect. He had medical damages incorrect.

7 He then says we have a one-in-ten chance of winning
8 this case, but that's why you have got to pay us a lot of
9 money. He then changes it to this case is more like a
10 game of Russian roulette and explained how Russian
11 roulette works.

12 He didn't know there was a counter-claim for property
13 damage. That appeared to be a surprise that -- to his
14 client and to him that we were asking for money because we
15 had property damage claims arising out of this case.

16 We broke from that portion of mediation after we did
17 our openings. Mr. Brown, who was the mediator, went and
18 spoke to the plaintiff who made a demand of \$500,000. We
19 sent a counter back, and they left.

20 And so we have a problem with who is attending the
21 mediation in the first place. We have a problem with a
22 good faith effort to mediate the case which is if this
23 case has the kind of value that we're talking about, you
24 don't send somebody who doesn't have a clue what's going
25 on to the mediation.

1 We attempted to resolve that issue. I included
2 within the memorandum, I sent an e-mail to Mr. Jefferies
3 directly outlining those issues and trying to figure out
4 how we could come to a resolution to solve that problem,
5 and it was ignored. It got no response.

6 I know what I've seen since then is, I guess, an
7 email signature that says I have to call him between four
8 and 4:30 in 5-minute increments to talk to him. Candidly,
9 I didn't do that. I didn't call him between four and
10 4:30 to discuss the mediation, but what I did do is sent a
11 multi-paragraph email outlining the conduct of the
12 mediation attempting to resolve that problem before I
13 filed the motion. Because this is the first time I ever
14 filed a motion related to mediation, because, generally,
15 one: Mediation works; and two, we can resolve any issues
16 that arise. So that e-mail was ignored, and that's what
17 precipitated the filing of this motion.

18 Following that mediation -- let me back up. One
19 additional thing that happened at that mediation is that
20 Mr. Anastopoulo -- at that time, it was June 20th. We are
21 now three weeks past this deadline of June 1st, says oh,
22 yeah, we have eyewitnesses who are going to come testify.

23 He had no idea there was an order from Judge Couch,
24 and the written order hadn't been filed, but he had no
25 idea there was a ruling that said those witnesses are

1 barred. So we get past this mediation.

2 Judge Couch on July 3rd issues his order. Within a
3 matter of hours, a Rule 59 is filed by Mr. Jefferies
4 alleging that he doesn't have a time machine, so he can't
5 comply with the June 1st order because it's after
6 June 1st.

7 So we opposed that. We end up in a hearing on Monday
8 July 7th with Judge Lee because we were supposed to start
9 trial on Monday. The question at that hearing was can we
10 proceed with trial while there is a Rule 59 sitting out
11 there? I apologize, July 8th, Your Honor. That's on tab
12 18.

13 The transcript of that hearing is located there on
14 tab 18, and there's about 40 pages, but what is most
15 pertinent in there is a very specific question Judge Lee
16 asked at the end which was did you contest that June 1st
17 deadline? Did you tell Judge Couch we can't meet that?

18 He says yes, we never would have agreed that to that,
19 to Judge Lee. That is directly contradicted by the
20 statements made to Judge Couch on May 7th, and in that
21 email, he is saying we understand it's a June 1st
22 deadline.

23 Judge Lee continues the case at that point to let
24 Judge Couch issue a ruling. Judge Couch does so. He
25 issues an order denying the Rule 59. That's at tab 19.

1 When Judge Couch issues that ruling, he does a pretty
2 thorough job explaining why it's being denied. He also
3 includes the deposition -- not deposition, but the hearing
4 transcripts where Mr. Jefferies agreed to those dates
5 which is, obviously, contradicted in the Judge Lee
6 hearing, and he reaches the conclusion that is several
7 parts that compliance with my order was required by
8 June 1st.

9 The record reflects the plaintiff agreed to June 1st
10 and agreed to the discovery penalty of exclusion of
11 unnamed witnesses for a failure to comply with the
12 June 1st deadline.

13 "The plaintiff has failed to fully respond to
14 defendant's discovery request, the identification,
15 conduct, information, summary of the testimony of unnamed
16 factual witnesses."

17 "He has failed to comply with my May 7th ruling, my
18 July 13th written order. The failure to comply with my
19 May 7th ruling and July 3rd written order results in the
20 inability to use any witness unidentified as of June 1st
21 at trial as further agreed to by the plaintiff."

22 And then, "As a result of the plaintiff's failure to
23 comply with my ruling and order, plaintiff may be
24 sanctioned in any manner according to South Carolina Rules
25 of Civil Procedure Rule 37. The determination of

1 sanctions, if any, therein shall be referred to the Chief
2 Administrative Judge for Richland County."

3 So that is -- we get back to Judge Manning for trial.
4 That's what was discussed at the beginning. He said, I'm
5 going to hold off on that, but when you look at that Judge
6 Manning transcript before page 17 and 18, it's 14, 15, 16,
7 end of 17 is Judge Manning asking Mr. Jefferies very point
8 blank did you comply with Judge Couch's order.

9 He says, Yes, we did, and he says -- and I'll just
10 pull to that. He says, "I can read the order, sir.
11 Remember that. Tell me something that's not. Do you get
12 my point? Go ahead."

13 "Yes, Your Honor," and he discusses it. Then he
14 says, "I'm going to ask you this: Did you comply with the
15 terms of Judge Couch's order to name witnesses by
16 June 1st?"

17 "Yes, Your Honor."

18 So that's the response at that time being given to
19 Judge Manning over that issue. Judge Manning defers any
20 sanctions until the end of trial. The trial ended up in a
21 mistrial, so we never got to that point. So now it's back
22 in the queue.

23 We then had a motion in limine to exclude those
24 witnesses that he claimed he wanted to call. He had
25 actually brought somebody to trial named -- I think it was

1 Teresa Robinson, something like that, and she was not
2 named previously neither.

3 And so Judge Manning again went through that. That's
4 on 77, 78, 79 asking the same questions. "Is this a
5 witness you named before June 1st? Did you comply with
6 all of that?"

7 It's continued. "Yes, we complied with the order"
8 when it is demonstratively clear it did not occur. So
9 Judge Manning excludes those witnesses from trial.

10 We do opening statements, and Mr. Jefferies calls as
11 the first witness one of the excluded witnesses which then
12 lead to having to send the jury out and do proffered
13 testimony and things like that.

14 So that is sort of in a nutshell where we're at with
15 the sanctions issue, with the ADR sanctions, and it bleeds
16 into the deposition motions which exist which are the
17 deposition that was noticed that we filed a protective
18 order.

19 We filed a motion to quash on is one of these
20 witnesses that was never named by June 1st that has been
21 barred from testimony by Judge Couch on two occasions and
22 by Judge Manning on two occasions in that trial.

23 And they're -- it's inconsistent with Judge
24 Benjamin's rulings on the motion to compel and the Rule to
25 Show Cause. So that is less of an issue because they went

1 ahead and did the deposition anyway despite the pending
2 motions, but we filed those motions because now, the
3 plaintiff is getting into trying to take depositions of
4 people that have never been named in discovery prior to
5 that June 1st deadline in order to, I believe circumvent
6 around -- well, given the right to cross-examine if he
7 appears, so there is no prejudice.

8 But the issue is we have three different judges with
9 six different rulings, six of the same rulings
10 functionally over discovery abuses and violations that we
11 have been chasing for over a year trying to get this case
12 in the right spot, and then we get to a mediation and the
13 attorney of record doesn't show up.

14 The attorney who does show doesn't have the
15 functional working knowledge of the case, and there's not
16 a good faith effort to mediate the case at that point.

17 So while the case wouldn't have gotten settled, I
18 don't think if we're talking those numbers, there was no
19 effort made, and we ended up proceeding from there, having
20 to get additional orders, having to go to trial once,
21 probably have to go to trial again at the end of October.

22 But our position on this is when you look at this
23 whole case in totality, it's not a single event. It's not
24 just one person showing up for mediation that shouldn't
25 have been there.

1 It's an aggregate sum of issues, and they are
2 specific. They are particularly egregious. It's a
3 pattern on this case in particular from start to finish
4 that has led to the need to file this motion in the first
5 place, and the ADR Rules provide for sanction power under
6 Rule 37.

7 Any remedy under 37 including dismissal of the case,
8 and given the sum total of everything we're talking about
9 that is incorporated within the concept of doing a good
10 faith mediation, we think it's proper for the court to
11 dismiss the complaint with prejudice and strike it as a
12 sanction for both the discovery issues but particularly
13 the ADR issues, and that's our presentation, judge.

14 THE COURT: All right. Thank you.

15 MR. BAYNE: Thank you.

16 THE COURT: Mr. Delaney, do you need to say anything?

17 MR. DELANEY: No, sir, Your Honor.

18 THE COURT: Okay.

19 All right. Mr. Jefferies?

20 MR. JEFFERIES: Thank you, Your Honor. May it please
21 the Court. Starting a long time ago, the defense has cast
22 this as a frivolous lawsuit.

23 Their first counterclaim was under the Frivolous
24 Civil Proceedings Sanction Act. Mr. Bayne is correct. We
25 filed a motion to dismiss that counterclaim. It had a

1 factual basis, but more importantly, it had a legal basis
2 which was that the Frivolous Civil Proceedings Sanction
3 Act does not provide for a cause of action.

4 It's very clear that it must be raised by a motion at
5 the conclusion of the case. That -- in fact, that's found
6 on page four of our motion to dismiss. So that was the
7 thrust of it.

8 It wasn't based on any alleged facts. It's based on
9 the law says there is only one way to do this. You raise
10 it by motion at the conclusion of the case. Our motion to
11 dismiss was granted, and that counterclaim went away.

12 It's worth noting, too, that it's not a frivolous
13 lawsuit, and it's not me saying that. It's this court has
14 said it on three occasions.

15 As Your Honor knows, if a plaintiff survives a motion
16 for summary judgment, then that plaintiff is immune to a
17 motion for sanctions under the Frivolous Civil Proceedings
18 Sanctions Act because what that surviving motion for
19 summary judgment does says that there are facts involved,
20 at least some, to support the position.

21 And to be frivolous, there has to be no facts and no
22 law. We have not only survived one motion for summary
23 judgment. We've survived two motions for summary
24 judgment.

25 The defense brought a motion for summary judgment as

1 to our client's negligence. They lost. The defense
2 brought a motion for summary judgment as to the absence of
3 negligence in their claim. They lost.

4 At trial, we made a motion for a directed verdict and
5 we won. Judge Manning determined as a matter of law that
6 the defendant was guilty of negligence per se.

7 So we have more than shown that this is not a
8 frivolous action. We've survived two summary judgment
9 motions and one directed verdict motion on negligence per
10 se.

11 Here today, Your Honor, the motion that is on this
12 court's roster is a June 27th motion for sanctions, and
13 that motion for sanctions which I have here and the court
14 can see it, of record is wholly related and exclusively
15 related to mediation.

16 So to the extent that Mr. Bayne is arguing that any
17 sanctions are appropriate because of everything he alleged
18 with respect to the discovery, witnesses named or not
19 named, depositions taken, I'm not going to challenge all
20 of that factually because none of that is before the
21 court.

22 The only motion is this June 27th motion which --
23 it's a single page, Your Honor, and it is based on this.
24 It says, "Defendant Karen Robinson by and through her
25 undersigned counsel hereby moves this court for a hearing

1 and an order sanctioning plaintiff and plaintiff's counsel
2 for violations of ADR Rule 6."

3 "Plaintiff failed to participate in mediation as
4 required by Rule 6. Defendant is requesting sanctions
5 pursuant to ADR Rule 6, 8 and 10, and South Carolina Rules
6 of Civil Procedure 11 and 37."

7 As this case is set for trial the week of July 8th,
8 2018 the defendant requested an expedited hearing with the
9 administrative judge.

10 "The undersigned attempted to resolve this matter
11 with plaintiff's counsel on June 21st, 2019. As of this
12 filing, plaintiff's counsel has not responded."

13 "The motion requires the submission of confidential
14 statements of record consistent with SCADR rules.
15 Accordingly, this motion is being filed with the clerk of
16 court. The undersigned will submit a memorandum in
17 support of exhibits directly to the Honorable Jocelyn
18 Newman as administrative judge for Richland County and
19 will copy all counsel on the same."

20 The motion is then signed by Mr. Bayne, so the only
21 thing before this court right now, Your Honor, is the
22 question of sanctions related to mediation.

23 I would point out, Your Honor, as well, that to the
24 extent any motion for discovery sanctions is pending at
25 all -- which we don't concede it is -- but if it's pending

1 at all, it would be pending before Judge Manning.

2 Your Honor, if I may hand up a copy of the trial
3 transcript.

4 THE COURT: Sure.

5 MR. JEFFERIES: And can we mark this as a Court's
6 exhibit, Your Honor?

7 THE COURT: Sure.

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

10 MR. JEFFERIES: If Your Honor would turn to me --
11 that is -- for economy, that is printed double sided. The
12 backside of the page.

13 THE COURT: Okay.

14 MR. JEFFERIES: Beginning at line 17, Mr. Bayne
15 brings his -- raises his motion for discovery sanctions,
16 says we have -- we have one additional motion which deals
17 with a request for costs relating to discovery that was --
18 on line 20, the Court says, Yeah, sanctions.

19 Mr. Bayne says, Yes, Judge.

20 And then continuing. The Court says, Go ahead.

21 Mr. Bayne begins to give his argument, and continuing
22 on page 14, page 15, 16, 17 and the top of 18, Mr. Bayne
23 makes the same argument that Your Honor just heard today
24 with respect to discovery, and what Judge Manning then
25 says beginning on line three, top of page 18 is, "Okay,

1 fine. If I found out at the end, then that's additional
2 sanctions."

3 He's talking to Mr. Jefferies, myself. "If you're
4 wrong, you understand that. I will take this matter up
5 later in the trial. At the conclusion of this case, I
6 will make a decision on this argument."

7 So if that discovery motion is still pending at all,
8 it is under advisement with Judge Manning who heard the
9 argument the first time. It's not -- number one, it's not
10 on this roster, and it couldn't be because Judge Manning
11 already heard it and took it under advisement. So the
12 only thing on this roster related to sanctions against the
13 plaintiff's side is the mediation sanctions.

14 Your Honor, there are -- I just want to kind of skip
15 the procedural part. We believe the mediation sanctions
16 motion has been made, but I'll come back to that. I'd
17 rather address the substance first, so Your Honor can hear
18 that part.

19 The substance is this, Your Honor. As you just
20 heard, the case is not frivolous. Two motions for summary
21 judgment, motion for a directed verdict. The reason that
22 mediation failed had nothing to do with who we sent to
23 mediation.

24 I will hand up, Your Honor -- and I agree with
25 Mr. Bayne that this affidavit has not been filed, but no

1 affidavits on either side have been filed because of Rule
2 8 of the ADR Rules.

3 And indeed, Your Honor, as we were under the
4 understanding that this motion had already been resolved
5 at trial, we didn't provide any of this before today
6 because we understood it was resolved. We had obtained
7 this -- Brett, this affidavit.

8 May I approach, Your Honor?

9 THE COURT: Yes.

10 MR. JEFFERIES: And can we mark this as Plaintiff's
11 2?

12 COURT REPORTER: The last one was a Court's Exhibit.

13 MR. JEFFERIES: Pardon me, yes, sir [sic]. Court's
14 Exhibit, I apologize.

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

17 MR. JEFFERIES: Your Honor is holding the affidavit
18 of Gus Anastopoulo. He is the nephew of Akim Anastopoulo
19 who is the named partner in our firm.

20 Gus has worked with our firm, as the affidavit says,
21 since 2015. He was sworn in as an attorney almost a year
22 ago, November 27, 2018.

23 Contrary to what Mr. Bayne has alleged without any
24 factual support, by the way, Gus has worked on this case
25 since the beginning. He worked on it as a law clerk, when

1 he became a lawyer. He worked on the case.

2 As Gus says in here, "I have and I continue to
3 consult regularly on this case with fellow attorneys, Lane
4 Jefferies, Roy Willey, Eric Poulin and others in our
5 firm."

6 And if Your Honor will note, on any email exchanges
7 that go back and forth on this case, that the email
8 address on the plaintiff's side is
9 teamjeffries@googlegroups.com. That is a group mailing
10 list. It goes to roughly a dozen people within our firm:
11 Myself, Roy Willey, Eric Poulin, Gus Anastopoulo, several
12 law clerks. It goes to a whole group of people. Every
13 single message except for one that Brett sent to me on the
14 day of mediation is sent to that team address.

15 So contrary to what Mr. Brett -- or Mr. Bayne alleges
16 without any evidence to support him, Gus Anastopoulo has
17 been involved in these e-mails. Mr. Anastopoulo says he
18 consulted with all of us in preparation for mediation in
19 this case, and we reached a consensus as to how mediation
20 was going to go forward; that's correct. We determined
21 how mediation would go forward. Gus went and did what we
22 asked him to do.

23 There were two claims, Your Honor. Our claim against
24 the defendant. Defendant's counterclaim back against the
25 plaintiff. As to our claim against the defendant, the

1 plaintiff had roughly \$250,000 in medical bills, 244 and
2 change.

3 So just thinking of those as damages -- and there was
4 no dispute that they resulted from the wreck. They were
5 day-of meds, so that wasn't really an issue. It wasn't
6 like they were disconnected in time. Just thinking of
7 those damages alone, not anything else, not pain and
8 suffering, just those damages alone, roughly a quarter of
9 a million dollars.

10 The demand that was made was 600,000. We offered to
11 settle for 600,000 in mediation. That's about
12 two-and-a-half times the meds. That is a perfectly
13 reasonable opening offer in mediation.

14 Typically that's how -- as Your Honor knows, that's
15 how mediation goes. The plaintiff starts high. The
16 defense starts very low, and somewhere in between they
17 meet in the middle.

18 So we started at two and a half times medical bills
19 alone which is certainly within the range that a jury
20 might reach, and we were willing to negotiate down from
21 there.

22 My understanding from Mr. Anastopoulo, from Gus
23 Anastopoulo, is that there was no counteroffer; that no
24 money was offered. That was that, because defense took
25 the position that later turned out to be wrong that this

1 was frivolous; that the plaintiff was bringing a frivolous
2 claim.

3 Now, as to defendant's counterclaim back against the
4 plaintiff, defendant produced no medical bills to support
5 her claim. The only damages that defendant ultimately
6 came forward with at trial was a bill for \$8,000 for
7 repairs to her car of which she conceded at trial she only
8 actually only paid \$100 herself, and what Mr. Bayne did
9 was demand that our client who is indigent and because he
10 was riding a bicycle didn't have any sort of automobile
11 insurance, had zero resources, demanded that our client
12 pay \$41,000, five times the defendant's property damages.

13 Do you remember our initial offer to settle was
14 two-and-a-half times our client's damages? Defendant's
15 offer was five times their damages and four and -- ten
16 times her actual sustained loss of 100 bucks.

17 So if anyone was staking out -- and I'm not saying
18 that their side is unreasonable making that demand, but
19 what I am saying, Your Honor, is our demand which was far
20 more modest in light of the damages can't be unreasonable
21 if their demand wasn't unreasonable.

22 THE COURT: The difference is that they actually have
23 witnesses to the incident and you don't.

24 MR. JEFFERIES: That's correct, Your Honor, and that
25 goes into the liability question, and as the court, this

1 court has determined three times, there was -- and this is
2 at -- one before trial and two at trial, Your Honor. It
3 was a question of fact, a question of fact as to who was
4 liable.

5 The court decided at trial, once again, that it was a
6 question of fact as to who was liable, and then the court
7 ruled in our favor on a directed verdict saying their
8 client was negligent per se for failing to wear her
9 glasses which she was required to wear, and that's
10 important because she said she didn't see our client. She
11 didn't see him signal, make a signal for a turn.

12 So their position that the case was frivolous is --
13 later turned out not to be true. The court actually ruled
14 in our favor and found their client guilty of negligence
15 per se.

16 All that is to say, Your Honor, the position that the
17 parties took, our position was reasonable, their position
18 was for a much higher multiple, but it was an opening
19 position. We did not take an unreasonable position.

20 Your Honor, I would -- the next part is kind of
21 troubling to me because what happened next was that -- and
22 I'm quoting from what Mr. Anastopoulo says here, "Brett
23 Bayne, counsel for defendant, stated that if we did not
24 meet defendant's demand, Mr. Bayne would seize plaintiff's
25 assets to the extent he would be left with virtually

1 nothing, and he would also sue the Anastopoulos Law Firm at
2 the end of this." Gus Anastopoulos considered that to be
3 an improper threat, and the mediation ended at that stage.

4 Your Honor, what I would propose caused the breakdown
5 beyond just parties having a different view of the case is
6 Mr. Bayne's disdain for mediation.

7 May I mark this as Court's 3?

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

10 MR. JEFFERIES: If I may, Your Honor.

11 THE COURT: Can you show me one filing prior to the
12 mediation that Gus Anastopoulos is on?

13 MR. JEFFERIES: No, Your Honor.

14 THE COURT: Can you tell me one hearing that Gus
15 Anastopoulos ever appeared at on the record in the case
16 prior to mediation?

17 MR. JEFFERIES: No, Your Honor.

18 THE COURT: Okay.

19 MR. JEFFERIES: And I will circle back to that
20 because I know Your Honor will want a further explanation
21 of that. What --

22 THE COURT: Can you show me where in the ADR Rules
23 that says that the counsel of record doesn't have to show
24 to the mediation?

25 MR. JEFFERIES: Your Honor, the ADR rules do say the

1 counsel of record needs to appear. The ADR rules haven't
2 changed since the advent of e-file.

3 Back in the day, I started my career with McNair. I
4 worked for Henrietta Golding. Henrietta would very often
5 say, "I have a motion this afternoon. You go argue it."
6 So this was before e-filing. So I go into the courthouse,
7 and I appear by appearing. I show up.

8 I'm there with the McNair Law Firm. We represented
9 this particular client, and I argue it. Now, if I was
10 going to continue to do work on the case, I might
11 subsequently actually file a Notice of Appearance. If I
12 wasn't, I didn't but I appeared by appearing, and that's
13 the same thing we have here.

14 THE COURT: That's not what it says. It says counsel
15 of record.

16 MR. JEFFERIES: I understand, Your Honor.

17 THE COURT: Was he even a lawyer when the lawsuit was
18 filed?

19 MR. JEFFERIES: Not when the lawsuit was filed, no,
20 Your Honor. He became a lawyer almost a year ago and
21 worked on this case as an attorney for roughly seven
22 months.

23 THE COURT: But he never filed anything. He never
24 made an appearance. He never went to court, and he is not
25 on any filing. I mean, you all have got like five and six

1 people's names on every single document that's in this
2 thing, and his name isn't on any of it.

3 MR. JEFFERIES: Your Honor, I believe we only have
4 four names on this.

5 THE COURT: It's an estimate, Mr. Jefferies.

6 MR. JEFFERIES: I understand. Well, the reason I
7 bring that up, and this is important. Now that e-filing
8 exists, there is a tension that we've seen from the bar --
9 I mean from the bench, and we're trying to manage that.

10 So it used to be -- like when I showed up for
11 Henrietta, I wouldn't necessarily enter an appearance just
12 to argue one motion.

13 THE COURT: We're talking about ADR. We're not
14 talking about a court appearance.

15 MR. JEFFERIES: I understand, Your Honor. The point
16 I'm driving at is this: If we add -- and Judge Brown, if
17 you were to ask Judge Brown about this, he'll tell you
18 that he gave me exactly this talk and this caution. If we
19 add an attorney through a Notice of Appearance every time
20 that we send an attorney from our firm to argue something,
21 we end up with a dozen attorneys.

22 What Judge Brown cautioned us on is that's too many.
23 You then, Mr. Jefferies, have no ability to Rule 601
24 conflict anything. You have no -- you must send attorneys
25 to trial. We're confused about who represents whom, and

1 the caution was keep it limited what you put onto the
2 e-filing system.

3 THE COURT: Okay.

4 MR. JEFFERIES: To try to do that.

5 THE COURT: Your answer is what I call deflection,
6 okay. Tell me where in the ADR Rules that says you can
7 send someone other than the counsel of record.

8 MR. JEFFERIES: The words do not say that, Your
9 Honor. We believe that Gus Anastopoulo became a counsel
10 of record the moment he showed up. He appeared.

11 THE COURT: You're really going to take that
12 position?

13 MR. JEFFERIES: Your Honor, he appeared by appearing.
14 That's how we always --

15 THE COURT: Okay. We're -- this is real court. This
16 is not -- we don't appear by appearing.

17 The ADR Rules say counsel of record must appear.
18 This isn't workers comp. law. This isn't some Workers'
19 Compensation Commission where I don't even know what those
20 people do down there.

21 The ADR Rule says the party's counsel of record. So
22 the party's counsel of record, according to all these
23 filings that I have read -- let me find one.

24 It says Lane Jefferies, Roy Willey, I guess that's
25 how you say his name, Eric Poulin. There's three on that

1 one. There's four on a couple of them, but he -- there is
2 no notice of appearance filed with the court in any way,
3 shape, or form.

4 MR. JEFFERIES: Not before mediation.

5 THE COURT: All right. There wasn't at mediation.

6 MR. JEFFERIES: No. That's correct, Your Honor.

7 THE COURT: Yes. That's the whole point of my
8 conversation.

9 MR. JEFFERIES: That's correct.

10 THE COURT: So whatever Judge Brown told you in Judge
11 Brown's world doesn't matter. This is not about who -- I
12 mean, people show up to court all the time and make
13 arguments for other people in their office, but this has a
14 very specific rule because there's a big difference in
15 showing up to argue a motion to dismiss and showing up to
16 something that the court system has designed as a
17 good-faith basis to settle cases.

18 MR. JEFFERIES: Yes, Your Honor. And with respect to
19 that issue, that's where we believe that the mediation
20 broke down is there was no good faith on the defense side.

21 The document Your Honor is holding, the Court's
22 Exhibit --

23 THE COURT: I mean, the person they've been talking
24 to in the case for a year didn't even show up.

25 MR. JEFFERIES: Your Honor, Gus Anastopoulo followed

1 my instructions and the instructions of Eric Poulin.

2 THE COURT: Where does it say in the ADR Rules you
3 can do that?

4 MR. JEFFERIES: Your Honor, the words --

5 THE COURT: The answer is nowhere.

6 MR. JEFFERIES: That's correct, Your Honor. That's
7 correct, Your Honor.

8 Gus didn't take a position different from ours that I
9 was responding to Your Honor's point about, Gus not being
10 counsel of record. He didn't take a position different
11 from ours. He took the position we instructed him to
12 take.

13 THE COURT: What does that matter?

14 MR. JEFFERIES: The --

15 THE COURT: It doesn't say you can send whoever you
16 want to as long as they follow your instructions.

17 MR. JEFFERIES: I understand Your Honor's thinking on
18 that. I was responding to Your Honor's question about
19 whether it was conducted in good faith. Gus did not take
20 a wild position that we told him not to take.

21 THE COURT: Gus thought there were witnesses to the
22 case.

23 MR. JEFFERIES: According to Mr. Bayne.

24 THE COURT: Yes, that were going to be allowed to
25 testify even after a circuit court judge had told you,

1 counsel of record, that they would not.

2 MR. JEFFERIES: Your Honor, if I may -- and I
3 understand the direction we're -- we're going here. If I
4 may finish putting my argument on the record.

5 THE COURT: Absolutely.

6 MR. JEFFERIES: If Your Honor will look at Court's
7 Exhibit 3 and this -- Court's Exhibit 3 came to my
8 attention from another client of mine when Mr. Bayne
9 appeared in that other case, and I was saying to my other
10 client we need to get mediation rescheduled.

11 What he said to me was, "Why? Because they clearly
12 don't think it works."

13 I said, "What do you mean?"

14 He said, "I Googled it," and he showed me this. I
15 downloaded these. These are not from my client. These
16 are all from Mr. Bayne's Twitter or Instagram webpage, all
17 right.

18 The very first thing begins with when you impasse the
19 mediation, peace was never an option. That was
20 Mr. Bayne's public posting about mediation. All right.
21 You turn to the second page --

22 THE COURT: Now, your description -- the record will
23 reflect what is in here, but your description of that
24 first page is not accurate. So keep going.

25 MR. JEFFERIES: I apologize, Your Honor. In what

1 respect is it -- I don't understand how it's inaccurate.

2 THE COURT: It appears to be a Twitter handle that
3 has the name Brett H. Bayne, and it appears to have a
4 picture of him. And then it -- the person who is making
5 the post says when you impasse the mediation. Then what
6 is attached inside the post is what we call a meme.

7 MR. JEFFERIES: Understood, Your Honor.

8 THE COURT: M-E-M-E.

9 MR. JEFFERIES: Yes. But Mr. Bayne will confirm the
10 person posting that is Mr. Bayne.

11 THE COURT: Well, I haven't -- Mr. Bayne hasn't
12 confirmed that, but you can keep going.

13 MR. BAYNE: The next page, Your Honor -- and this is
14 the one that I think is most important to my client was
15 Mr. Bayne's view of plaintiff's attorneys across the
16 board.

17 It says defense attorney: Why don't you give me a
18 demand, and we'll see if we can get the case resolved.

19 In response, every plaintiff's attorney, \$1 million.
20 Every plaintiff's attorney, Your Honor.

21 It continues on, When you're up against an opposing
22 counsel, you're kind of like you seem like a decent
23 fellow. I'd hate to kill you. It continues on after
24 that.

25 All of this -- and this is my client, my other client

1 looking at this and saying I'm bringing this to your
2 attention because I believe that Mr. Bayne, based on what
3 he is posting on social media, has no intention of
4 settling these cases. He views all plaintiff's attorneys,
5 every plaintiff's attorney as unreasonable.

6 He relishes in impassing mediations. He brags about
7 various other things. That's not before the court. We
8 believe that is the issue that caused the mediation to
9 break down, not our coming with an offer of two-and-a-half
10 times the meds, perfectly reasonable in a case where --
11 where the only party that the court ever found was
12 negligent was the defendant.

13 Your Honor, the second point I would make is this:
14 This motion for sanctions, ADR sanctions, was waived by
15 Mr. Bayne quite some time ago back in August, and it was
16 waived because he abandoned it. He did not argue it. He
17 requested through a series of e-mails, Your Honor, if I
18 may hand this up as Court's Exhibit number 4.

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

21 MR. JEFFERIES: Court's Exhibit number 4, Your Honor.

22 That exhibit, Your Honor, is an email exchange
23 between Mr. Bayne and -- including myself and Chief Admin.
24 Judge Jocelyn Newman.

25 Mr. Bayne requests a hearing on this motion. He

1 files the motion and asks for an expedited hearing. That
2 was on June 27th, filed the motion, expedited hearing
3 requested, and then he e-mails Judge Newman that same day
4 and says, I filed a motion for sanctions related to
5 mediation. It's attached.

6 He mentions that the case is on the roster for
7 July 8, and he really needs have this motion heard before
8 the trial because one of the items of relief sought is a
9 dismissal.

10 In the subsequent email on June 27th, Mr. Bayne says
11 to the court, states to the court, the defendant will take
12 up the motion with the trial judge pretrial.

13 Thank you -- Judge Newman: "Sounds good. Thank you
14 for your assistance with attempting to set that. We will
15 address the issues during the pretrial with the trial
16 judge."

17 Now that trial on July 8th is ultimately continued.
18 On July 24th, Mr. Bayne reaches out again and asks to have
19 the motions for sanctions heard pretrial.

20 He says, "Judge Newman, I'm following back up on this
21 matter." He attaches the motion again.

22 He then says, "This matter has actually already been
23 reset on the roster for August 12th. However, we still
24 have a motion for sanctions and a motion for summary
25 judgment which need to be heard."

1 The following day he follows up with the judge and
2 asks that the motion for sanctions be heard on July 29th
3 or July 31 or August 12th. We reply and say, "July 29 and
4 31, in addition to being only four and six days away which
5 is not sufficient notice, we have conflicts on those
6 dates."

7 So Judge Newman goes to the third date of
8 August 12th. The date proposed by Mr. Bayne, and she
9 instructs counsel to appear on August 12th prepared to
10 argue all motions. That's the email on August 7th, 2019.

11 From Judge Newman: "Counsel, please be here on
12 Monday morning at 9:00 a.m. for the roster meeting. You
13 should be prepared to argue all outstanding motions. If
14 the motions for summary judgment are denied, you should be
15 prepared to begin trial."

16 So we appear on August 12th, everybody appears. The
17 Clerk of Court informs us that Judge Manning has been
18 delayed in travel. The motions and the trial will begin
19 the following day on the 13th. Everybody appears on the
20 13th. Mr. Bayne appears. He argues the defendant's first
21 motion which is a motion for summary judgment. That
22 motion is denied.

23 The Court asked, "When do you want to start trying
24 the case?"

25 Mr. Bayne says, "We have one more motion." And, Your

1 Honor, this is all in the transcript that I handed up on
2 page 14. Mr. Bayne says, "We have one more motion, not
3 two more. One, more motion. That's 14 page 17. That
4 motion relates to discovery sanctions."

5 And that is heard from pages 14 through the top of
6 18, and then the Court says on page 18, "We'll make a
7 decision on this argument at the conclusion of the case."

8 Then the Court says, "Now what time do y'all want to
9 start this case?"

10 And Mr. Bayne replies, "Judge, we're ready whenever
11 you are." This is page 18, lines eight and nine.

12 Mr. Bayne never raises this motion for sanctions
13 related to mediation despite Judge Newman's clear
14 instruction that all outstanding motions were to be heard
15 at that date and time.

16 Failing to do that is waiving that motion. By the
17 way, Your Honor, we take the same twist to our motion.
18 When Mr. Bayne waived his motions for sanctions, we let
19 ours go, too.

20 We do not like to ask for sanctions. Ultimately, we
21 felt we had to in this case because of how we were getting
22 beaten up, but when -- I thought Mr. Bayne was being a
23 gentleman by letting it go. We let ours go, too. Our
24 position is that both of those are now waived.

25 What Mr. Bayne can't do -- and, Your Honor, I would

1 refer, Your Honor, to Rosen, Rosen, Hagood vs. Hiller, 307
2 SC 331. It's 1992 Court of Appeals case, and what that
3 case says is when you fail to appear for motions, it's
4 proper to determine that the motions have been abandoned,
5 stricken or denied.

6 That's the same result reached in what appears to be
7 an unpublished case GBNS Corp. vs. City of Florence which
8 is 2005 WL 7083837 in which the court equates failure to
9 appear and argue with abandonment. So failure to argue
10 that when Judge Newman instructed us to argue all motions
11 abandons it.

12 What Mr. Bayne can't do -- and listen, I understand
13 his reluctance to argue the motion. He just lost two back
14 to back, was about to lose three more. I understand why
15 he might not want to argue with that, Judge, but what he
16 can't do is argue his motion on the day it's set to be
17 heard in hopes of getting a friendly judge or a friendlier
18 time or something down the road. That was the day that
19 motion should have been heard then, if at all, and it
20 wasn't.

21 So for all of those reasons, Your Honor, what we
22 would ask first is any sanctions related to discovery are
23 clearly not before this court. So that would have to be
24 denied in its entirety.

25 As to motions related to -- sanctions related to

1 mediation, we don't think that issue is before the court
2 either because it was waived. If the court were to
3 determine that it was not waived, we would suggest
4 sanctions are not appropriate.

5 We sent a person, an attorney, who appeared -- by the
6 way, subsequent to that and argued the trial with me,
7 tried the case with me and took the same position that I
8 would have taken had I been there, that position was
9 reasonable, far more reasonable than the defense's
10 position.

11 And on top of that, we did not disparage the
12 mediation process and indicate to the whole world that we
13 don't think it works or that all plaintiff's attorneys are
14 unreasonable. So for that reason, as well, if this Court
15 were to determine that the motion is properly heard today,
16 we suggest that it be denied.

17 THE COURT: All right. Mr. Bayne, any response?

18 MR. BAYNE: Just very briefly. I think Mr. Delaney
19 has a little bit, as well.

20 All I'm going to add is all of the discovery issues I
21 went over are actually contained in the motion that was
22 filed, memorandum that was filed.

23 It's actually the first half of the motion is dealing
24 with all of the issues dealing with discovery and all of
25 the issues with testimony and Judge Couch and all of that

1 are actually contained within this memorandum that has
2 been submitted to the court.

3 Other than that, I don't have anything to add. I
4 think Mr. Delaney has a few things.

5 MR. DELANEY: Your Honor, it may or may not be
6 relevant. This is in response to what Mr. Jefferies said.
7 With respect to the motion for summary judgment that was
8 argued in front of Judge Couch, that motion was denied
9 because Mr. Jefferies alleged at that hearing, which was
10 held immediately before the motion to compel hearing, that
11 they had witnesses that would support their case.

12 Because they alleged they had witnesses to support
13 their cases, even though they had not yet been identified,
14 Judge Couch denied our motion. So that was the reasoning
15 behind it.

16 There was no rubber stamping that their claim was
17 valid. It was because they alleged at that time they had
18 witnesses that would support their case. Just as a point
19 of clarification -- and I'm not sure whether it's relevant
20 to your decision in this case but just to clarify things.

21 THE COURT: Okay.

22 MR. DELANEY: Thank you, Your Honor.

23 THE COURT: Anything else, Mr. Jefferies?

24 MR. JEFFERIES: Your Honor, I would say that Judge
25 Couch's order speaks for itself. Judge Couch ruled based

1 on what our client testified to at the scene himself, not
2 any witnesses -- and it would not have been proper for
3 Judge Couch to rule on speculative witnesses.

4 He ruled on what our client himself said. What our
5 client said was, I turned left in front of a blue car
6 driven by somebody that was not the defendant, a different
7 lady.

8 And what Judge Couch determined was, Well, that is a
9 material issue of fact. If you say you turned in front of
10 a blue car driven by somebody else and we all agree that
11 the collision was a gray car driven by defendant, then
12 there is a dispute as to how this wreck happened.

13 The defendant says there was no blue car, there was
14 nobody else. It was just you. So on that, based on what
15 our client saw, Judge Couch granted summary judgment.

16 Judge Manning at trial with the benefit of everything
17 laid out denied summary -- pardon me, denied summary
18 judgment. Judge Couch denied summary judgment to the
19 defendant pretrial.

20 At trial, Judge Manning denied summary judgment to
21 the defendant. At trial, Judge Manning denied their
22 motion for directed verdict, and at trial Judge Manning
23 granted our motion for directed verdict as to the
24 defendant's negligence per se.

25 So we are a long way from a frivolous lawsuit when

1 the only motion establishing negligence as a matter of law
2 to get granted is the plaintiff's, and the court
3 determines as a matter of law the defendant was negligent.
4 That's about as far as you can get from a frivolous
5 lawsuit.

6 THE COURT: Why did you tell Judge Manning that you
7 had complied with Judge Couch's order?

8 MR. JEFFERIES: Here is why, Your Honor. And Judge
9 Manning asked for further argument at the end of the case
10 to explain.

11 Judge Couch issued his order orally, not the final
12 order, nothing that you could file or Rule 59 to ask him
13 to reconsider. You have to wait for the final order to
14 come out.

15 So the date for performance was before the final
16 order came out. So before there was any ability of ours
17 to say that's not enough time or this isn't right, that
18 date for performance would have gone by.

19 So Judge Couch issued his order. We immediately,
20 within I think 30 minutes but the record would reflect
21 maybe it's a couple of hours, we immediately filed a Rule
22 59.

23 Judge Couch ultimately denied our Rule 59, and as
24 soon as he did, as soon as his order became effective, we
25 answered the question. The answer, unfortunately, was, We

1 don't know who these witnesses are, so we can't find them.

2 We did it immediately after that order became
3 effective. So that's why I gave Judge Manning the answer,
4 yes. He asked me to explain later. He didn't want to get
5 into that before trial, but that's why the answer was
6 there. As soon as that order took effect, we complied
7 with it.

8 THE COURT: I suggest you not take that position in
9 the future.

10 MR. JEFFERIES: I understand, Your Honor.

11 THE COURT: That's a bad decision. If a judge gives
12 you a deadline, whether or not there is a written order, I
13 suggest you comply with it or file a motion.

14 MR. JEFFERIES: Understood, Your Honor.

15 THE COURT: Okay. Anything else from the defense?

16 MR. BAYNE: Nothing on that, Judge.

17 The other -- the other motion I've already addressed,
18 but it's the deposition, motion to quash and motion for
19 protective order from deposition.

20 THE COURT: Who so who has been noticed? There is a
21 witness that's been noticed for a deposition now?

22 MR. BAYNE: Well, the deposition was ultimately taken
23 over our objections and over these motions, but one of the
24 witnesses, Ms. Tracy Randolph, was identified in July,
25 July 5th.

1 After the June 1st deadline, Judge Manning barred her
2 from testimony at trial. Once the trial was mistried,
3 Mr. Jefferies noticed her deposition to take her
4 deposition.

5 We filed the protective order, motion to quash, asked
6 the deposition, at least hold off so the court could rule
7 upon. They declined to work with that and took her
8 deposition.

9 I don't know if it's moot at this point because it's
10 been taken or not, but it's out there that I guess we're
11 seeking depositions of folks that were not identified in
12 discovery that have already been on at least four
13 occasions by two judges barred from trial.

14 THE COURT: Okay.

15 MR. JEFFERIES: May I address that argument, Your
16 Honor?

17 THE COURT: Sure. I mean, the deposition has been
18 taken at this point.

19 MR. JEFFERIES: We believe it is. We believe it is
20 moot. I would say this. There are more reasons to take a
21 deposition other than because that witness may appear at
22 trial. That witness may have knowledge of other
23 admissible evidence, documents, those sorts of things, et
24 cetera.

25 We just want to find this out. The second is -- now

1 that this is going to be retried, we understand the ruling
2 on this witness not appearing. Preliminary rulings as to
3 the exclusion of evidence are, of course, preliminary.
4 The ultimate decision is up to the trial judge, as with
5 any motion in limine.

6 So the trial judge could, probably wouldn't, but
7 could take a different view and allow that testimony in,
8 but assuming the trial judge did what we would expect and
9 say, No, that testimony does not come and agree with Judge
10 Couch, then we are to preserve that issue for appeal.

11 We have to proffer that evidence so that the
12 appellate court can determine whether that decision if it
13 was in error was a harmless error or not. So we have to
14 proffer that testimony.

15 So there's yet another reason to take the deposition
16 of that witness so we know what they have to say, so we
17 know what we can proffer to the Court.

18 And all of this -- by the way, Your Honor, this case
19 is now set for trial the end of October. Whatever
20 prejudice there might have been back in June and July
21 about late disclosure of witnesses when the case was set
22 for trial in July, all of that was cured at the trial on
23 August 12th.

24 So since August 12th, we all know everything. So to
25 the extent that there could be any claim of prejudice

1 because oh, we didn't know about this person, by the time
2 trial rolls around, everyone will have known about these
3 people for two-and-a-half months.

4 THE COURT: Are you really taking that position?

5 MR. JEFFERIES: No, Your Honor. I'm taking the
6 position that regardless --

7 THE COURT: You're taking the position that
8 regardless of the fact that the plaintiff repeatedly
9 abused and disregarded circuit court judge's orders, the
10 defense isn't on prejudice any more?

11 MR. JEFFERIES: No, Your Honor. I'm saying that
12 there is a reason to -- at least two reasons to take that
13 deposition that are perfectly acceptable.

14 THE COURT: I heard the reason you took the
15 deposition, but you moved from that to the defense isn't
16 prejudiced anymore because now the trial has been moved to
17 later.

18 MR. JEFFERIES: Well, Your Honor.

19 THE COURT: Even though, you know, we ignored Judge
20 Benjamin's order. We ignored the Rule to Show Cause. We
21 ignored Judge Couch's order. We ignored Judge Manning's
22 order. Now they're not under anymore -- now they're not
23 prejudiced now because we have got it delayed long enough
24 that they know who the person is going to be.

25 MR. JEFFERIES: Respectfully, Your Honor, we don't

1 think they are prejudiced, and we didn't have the trial
2 delayed. The trial was delayed because Mr. Bayne referred
3 to evidence not in the record in his closing, and we were
4 forced to move for a mistrial which Judge Manning granted.

5 THE COURT: And again, that answer is what we call
6 deflection that had nothing to do with what I just said.

7 All right. I'll let you all know my decision by
8 early next week. Thank you very much.

9 MR. BAYNE: Thank you, Judge.

10 MR. JEFFERIES: Thank you, Your Honor.

11 MR. DELANEY: Thank you. Have a good weekend.

12 THE COURT: You all, too.

13 MR. DELANEY: Thank you, sir.

14 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th 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
Richland County, South Carolina, on the 27th day of
September, 2019.

October 3, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter