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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel Decision

Case No: 2020-200923

Kevin M. Todd.....Claimant, Respondent,

v.

Mike Roberts, D/B/A Mike Roberts Home Repair.....Employer,
and S.C. Uninsured Employers' Fund, ...Carrier,
Defendants,

of which S.C. Uninsured Employers' Fund is the Appellant.

RECORD ON APPEAL

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**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FULL COMMISSION APPELLATE PANEL
WCC FILE NO. 1320600**

Kevin M. Todd,

Appellant/
Employee/Claimant/

vs.

Mike Roberts d/b/a Mike Roberts
Home Repair,

and

S.C. Uninsured Employers Fund,

Employer,
Carrier,
Respondents/Defendants.

DECISION AND ORDER

**Considered at
Conference:**

Before the Full Commission Appellate Panel
on February 20, 2020 in Columbia, South Carolina

Appearances:

Gene M. Connell, Jr., Esquire, for Employee/Claimant/Appellant

Mike Roberts d/b/a Mike Roberts Home Repair,
Uninsured Employer appeared *pro se*

Samuel T. Brunson, Esquire, for S.C. Uninsured Employers Fund

Purpose of Hearing: To determine issues on remand from the South Carolina Court of Appeals
as per Order dated May 23, 2018.

Decision and Order: By Full Commission Appellate Panel

Filed:

May 18, 2020

I. STATEMENT OF THE CASE

This matter originally came before a Single Commissioner based on a Form 50 filed by the Claimant on February 28, 2014 alleging he sustained injuries by accident to his arms and torso arising out of and in the course of his employment for an accident on August 9, 2013. The Claimant has an average weekly wage of \$500.00 with a resulting compensation rate of \$333.33. The Claimant requested payment for past medical treatment, permanency and for temporary total disability. The Claimant's request for temporary compensation is for a period of temporary disability from August 9, 2013 through July 28, 2014. The Claimant also contended he has reached maximum medical improvement and requested an award for scarring. The Single Commissioner and the Full Commission denied the claim. The Claimant appealed to the South Carolina Court of Appeals

This matter is now before the Full Commission Appellate Panel based on an Order of Remand issued by the South Carolina Court of Appeals on May 23, 2018 in which the Full Commission's Order was vacated and this matter was remanded back to the Commission for decision. The issue for determination is whether the incident arose out of Todd's employment with Michael Roberts Home Repair and whether Todd's work on the salvage of a boat owned by Roberts provided any benefit to Mike Roberts or to Todd's employment with Michael Roberts Home Repair.

Briefly stated, on August 9, 2013, Todd was an employee of Michael Roberts d/b/a Michael Roberts Home Repair when Michael Roberts asked Todd to help Roberts salvage his boat. The work resulted in an explosion in which Todd was badly injured and was flown by helicopter to the University of North Carolina Burn Center. The question before the Commission is whether or not Todd was in the course and scope of his employment at the time of his injury.

We now review the evidence presented at the hearing along with the recent deposition of James Flom.

II. REVIEW OF EVIDENCE BY FULL COMMISSION APPELLATE PANEL.

A. Testimony of Holmes Adams.

The Claimant called Holmes Adams to testify. Holmes Adams was a subcontractor for Mike Roberts and did work for Mike Roberts for seven to eight months. (Tr. p. 11, lines 9-10). He further testified Kevin Todd, Bobby Days, Ryan Harrelson and James Flom all drew weekly paychecks. (Tr. p. 11, lines 15-17). He also testified that Todd did anything Mike Roberts asked (Tr. p. 12, lines 17,19) and that he did whatever needs to be done (Tr. p. 12, lines 20-21). He commented: "poor people got to eat and he (Kevin) did what was asked of him." (Tr. p. 12, lines 23-24).

Holmes also testified that Kevin Todd worked for Mike Roberts and received a weekly paycheck. (Tr. p. 13, lines 10-13) and that if Mike Roberts barked, Kevin jumped. (Tr. p. 13, lines 13-15). He further stated whatever Mike needed, Kevin handled. (Tr. p. 13, lines 16-19).

B. Testimony of James Marshall Flom.

The Claimant submitted an additional deposition of James Flom who testified that he also worked for Roberts and that Todd did anything that Roberts asked and that Todd worked on the boat as requested by Roberts.

C. Testimony of Michelle Bratcher.

Another witness, Michelle Bratcher, testified that she had lived with Kevin Todd for fourteen years (Tr. p. 21, lines 7-8); that Kevin worked for Mike Roberts (Tr. p. 21, line 15); that she worked for him for two years (Tr. p. 21, lines 18-19); that Kevin did everything for Mike (Tr. p. 21, lines 21-22); that anything Mike wanted Kevin did (Tr. p. 21, line 25); that other people worked

there including Bobby Days, James Flom and Ryan Harrelson (Tr. p. 22, lines 5-12); and she came to the scene of the accident and saw the accident as she was coming over the Waccamaw Bridge (Tr. p. 23, lines 1-25). She further testified that Kevin worked five or six days a week for Mike Roberts (Tr. p. 28, lines 8-12); that he was working for Mike Roberts on the day of the accident (Tr. p. 24, lines 11-12); and that Kevin repaired homes and also did many other things for Mike (Tr. p. 24, lines 23-25).

She further stated that Kevin took Mike Roberts' child to school and even laid brick pavers at his pool (Tr. p. 25, lines 2-7). She testified Kevin was called after hours by Mike to work (Tr. p. 25, lines 15-20). She further testified Mike Roberts paid wages to Kevin after the accident (Tr. p. 26, lines 1-2) and paid him when he was in the hospital (Tr. p. 26, lines 1-2). On cross examination, she testified that she had worked on a boat for Roberts (Tr. p. 30, lines 19-20). She again reiterated Kevin and the others she had named were employees, but Kevin was assigned to pay them weekly (Tr. p. 31, lines 20-23). She also said Roberts gave Kevin's dad money while he was in the hospital (Tr. p. 33, lines 1-10).

D. Testimony of Anthony Williams.

Also, at the scene of the accident was Anthony Williams (Tr. p. 38, lines 1-15) and he stated that he had been hired to do electrical work (Tr. p. 38, line 1). He testified he was paid to work on the boat that day (Tr. p. 38, lines 20-23).

E. Testimony of Kevin Todd.

Kevin Todd was called to testify. He stated that he had been employed for one and a half years with Mike Roberts (Tr. p. 44, lines 1-10); that he did anything for him (Tr. p. 44, lines 7-8); that he was on the clock and he took Roberts son to school (Tr. p. 44, lines 16-18); that Roberts paid him for that time (Tr. p. 44, line 18); that he paid the other employees for Roberts including Ryan

Harrelson, James Flom and Bobby Days (Tr. 44, lines 22-25); that he did "anything" (Tr. p. 44, lines 8-9); that he worked for Roberts on weekends (Tr. p. 44, lines 6-7); that he worked after hours (Tr. p. 45, line 10); that he was cleaning Roberts' boat on the clock (Tr. p. 46, lines 6-8); and that every minute he worked he got paid (Tr. p. 46, lines 9-11);.

Todd stated on the day of the accident he was on his way to a job at Quail Creek and Roberts told him to come to the Roberts' house and assist with repairs on the boat (Tr. p. 46, lines 18-20). He further stated he was supposed to "get Tony started on working on the boat" (Tr. p. 46, lines 18-19). Todd further said that before the explosion he was helping Williams drain the gas at Roberts' directions who was also there supervising the work. (Tr. p. 46, lines 21-24).

III. FINDINGS OF FACT

After due consideration of the claims and defense and after reviewing all the evidence contained in the records, the following Findings of Facts, as required under 42-17-40, S.C. Code of Laws, 2976 as amended are hereinafter set forth:

1. There is no dispute in the case as to an explosion on the boat injuring the Claimant on August 9, 2013. Further the work being performed benefitted the Employer and was at his direction.
2. The Claimant was airlifted and treated at the University of North Carolina Burn Center where he spent several weeks recovering.
3. We find that the Claimant was working on the boat in the course and scope of his employment with the Defendant Employer.
4. We find the Claimant was paid \$500.00 per week.
5. We find based upon witnesses Bratcher, Adams, Flom and Williams that the Claimant was in the course and scope of his employment when the explosion injured Todd.

6. We find that Claimant's work on the salvage boat benefitted both Roberts as the employer and Todd as the employee.

7. We find from a thorough review of the deposition testimony of another employee, Flom, that the Claimant's incident did arise out of and in the course and scope of his employment with Michael Roberts Home Repair.

8. We find by a preponderance of the evidence that Roberts had regularly incorporated boat repair and yard work/landscaping into his home repair business. This finding is based on the hearing testimony of the Claimant and Adams as well as the deposition testimony of Flom that these employees were regularly assigned and directed to perform these other tasks as part of their employment so they would not have to seek employment elsewhere. (9/25/14 Hearing Tr. p. 12-20; Depo. of Flom p. 7, lines 1-3).

9. We further find both Claimant and Roberts testified Claimant took employer's son to school each day and Claimant testified that as soon as he got to Mike Roberts' house and picked his son up, he was on the clock. (Hearing Tr. p. 44, lines 16-18).

10. We find Claimant testified he was "on the clock" every time he worked on the boat and that he was actually on his way to a jobsite at Quail Creek when he was told by Roberts to help another employee, Anthony Williams, get started on working on the boat. Claimant was paid for the entire time by Roberts. (Hearing Tr. p. 46).

11. Roberts continued to pay Claimant \$500.00 per week for three weeks after the injury.

12. We give greater weight to the testimony of Todd than the other witnesses.

13. We find that Roberts d/b/a Mike Roberts Home Repair regularly employed 4 or more individuals in furtherance of his business interests. This finding is based on the preponderance

of the evidence as a whole including the testimony of the claimant, James Flom, Holmes Adams, Michelle Bratcher, and Anthony Williams. As such, Mike Roberts is subject to the Act but did not maintain workers' compensation insurance as required by law. Thus, the South Carolina Uninsured Employers Fund is a proper party to this claim.

14. We find based on a review of the evidence Claimant suffered serious third degree burn injuries and scarring to both arms and both hands as a result of his work accident. Claimant's medical treatment included skin grafts taken from his legs.

15. We find Claimant was at maximum medical improvement for his burn injuries as of July 28, 2014 when he returned to work full duty for a new employer.

16. We find Claimant is entitled to a lump-sum back-payment of TTD benefits from August 9, 2013 until he returned to work full time on July 28, 2014.

17. We find Defendants are entitled to a credit of \$1,500 that the Employer paid directly to the Claimant after this injury.

18. We find Claimant's scarring is to body parts regularly exposed in his employment in construction and renovation work.

19. We find Claimant is entitled to 20 weeks of benefits for his resulting burn scarring and/or disfigurement. See S.C. Code Ann. Section 42-9-30(23).

20. We find Claimant is entitled to receipt of the award in a lump-sum.

21. We find that Employer is liable for all causally-related incurred medical treatment – including treatment to the University of North Carolina Burn Center, Conway Hospital and for the helicopter transportation to the University of North Carolina Burn Center. All payments shall be made pursuant to the South Carolina Workers' Compensation Fee Schedule.

22. We find Claimant is not entitled to any future medical treatment as none has been recommended that would tend to lessen his period of disability.

23. No hearing costs are assessed.

IV. AWARD

Pursuant to the above, the Employer is required to make the following payments to or on behalf of the Claimant:

The Claimant is awarded a lump sum back payment of temporary total benefits from August 9, 2013 to July 28, 2014 which equals 46.42 weeks and is \$15,473.17.

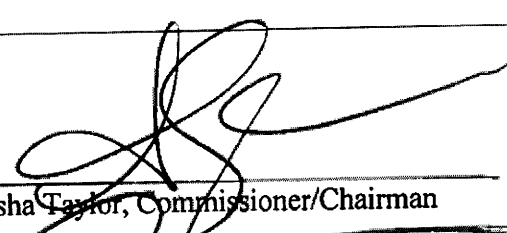
The Claimant is awarded 20 weeks of benefits for his resulting burn scarring and/or disfigurement in the amount of \$6,666.66.

The Claimant is awarded a lump sum of \$22,409.83, less \$1,500.00 that the employer paid directly to the Claimant after the accident.

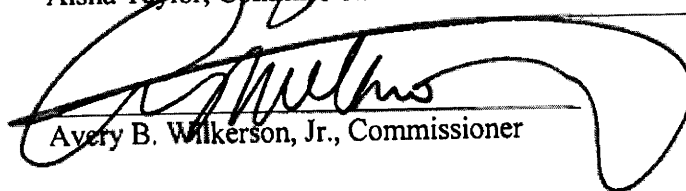
Accordingly, the Claimant is entitled to a lump sum payment of \$21,909.83.

In addition, the Employer is required to pay causally related medical bills to the medical providers pursuant to the Fee Schedule of the SC Workers' Compensation Act.

Should the Employer be unable or unwilling to provide the above payments, responsibility for those benefits shall fall to the SC Workers' Compensation Uninsured Employers' with the Fund having all rights of recovery and subrogation pursuant to Section 42-1-200 of the SC Workers' Compensation Act.



Aisha Taylor, Commissioner/Chairman



Avery B. Wilkerson, Jr., Commissioner



R. Michael Campbell, Commissioner

Date: _____, 2020

Order Served via E-Mail:

Gene M. Connell, Jr. Kelaher, Connell, & Conner PC GConnell@classactlaw.net Lisa C. Glover SCUEF lglover@saf.sc.gov	Samuel T. Brunson Brunson Law Firm Bublawn@earthlink.net
--	---

Order Served via USPS:

Mike Roberts dba Mike Roberts Home Repair 3334 New Road Conway, SC 29526	
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on May 18, 2020

PROCEEDINGS

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THE COURT Today's date is
September 25th, 2014 This is Workers' Compensation
Commission File Number 1320600 This is the case of
Kevin M Todd vs Mike Roberts d/b/a Mike Roberts
Home Repair There is no known carrier And Lisa
Glover is here to represent the Workers' Compensation
Uninsured Employers' Fund, the claimant is
represented by Gene M Connell, Jr , and Mr Roberts
is here pro se

Date of the accident is August 9th, 2013
The claimant has an average weekly wage of \$500 and a
corresponding compensation rate of 333 35

All right Before we move on to
objections, we do need to talk about Mr Roberts'
situation Previously this matter was before, I
believe it was Commissioner James who issued an order
postponing this giving Mr Roberts an opportunity to
obtain counsel

I understand, Mr Roberts, that you do not
have counsel here with you today, is that correct?

MR ROBERTS Yes, sir

THE COURT All right And then,
Mr Roberts, I'm going to swear you in because I need

1 to ask you some questions that are germane to this
2 matter If you'd raise your right hand Please
3 swear

4 MIKE ROBERTS,
5 after being duly sworn to tell the truth, testified
6 as follows

7 THE COURT All right You can sit down
8 We discussed in the pre-hearing conference about the
9 legal organization of your home repair business

10 MR ROBERTS Yes, sir

11 THE COURT And I asked you if it was a
12 legal entity, a legal person Is it an LLC
13 incorporated in any way?

14 MR ROBERTS No, sir

15 THE COURT Excuse me All right So
16 it's a sole proprietorship?

17 MR ROBERTS Yes, sir

18 THE COURT And being a sole
19 proprietorship, it is an extension of you and you can
20 represent yourself And so you will -- you will be
21 participating pro se here today

22 All right Are there objections to
23 jurisdiction, venue or APA submissions?

24 MR CONNELL None from the claimant, Your
25 Honor

1 MS GLOVER None from the Fund

2 MR ROBERTS No, sir

3 THE COURT All right And are you aware
4 of what I'm asking?

5 MR ROBERTS: To who --

6 THE COURT These are the APA submissions

7 MR ROBERTS: The hospital records

8 THE COURT All of what's up here
9 Medical records, I assume, is what it technically
10 should be

11 MR. ROBERTS: Probably not I'm not
12 denying he got hurt if that's the question

13 THE COURT And so you don't have any
14 objection to any of this coming in?

15 MR ROBERTS No

16 THE COURT: And then I understand what
17 your position is as to employment, but that's what
18 we're discussing So would you agree that this is
19 appropriate venue to decide that Workers'
20 Compensation Commission hearing?

21 MR ROBERTS: Yes, sir

22 THE COURT All right And the accident
23 took place where? Horry?

24 MR CONNELL Yes, sir

25 THE COURT All right So venue is not an

1 issue An injured worker is entitled to a hearing in
2 the county in which they were injured Obviously
3 that's logically impossible Ms Glover having been
4 a former commissioner can attest that with seven
5 commissioners, can't possibly go to 46 counties So
6 we had consolidated that to seven districts and have
7 hearings by district But since this accident
8 occurred in Horry, that is not an issue Mr Todd is
9 having a hearing in the county

10 All right So there are no objections to
11 jurisdiction, venue or APA submissions I think
12 we've covered all of that The Commission file
13 becomes a part of the record with the exception of
14 self-serving declarations and unstipulated medical
15 reports

16 All right We are here today,
17 Mr Connell, on the Form 50 that you filed on behalf
18 of your client If you would, as the moving party,
19 please place your client's position on the record

20 MR CONNELL Yes, Your Honor

21 It's our position that Mr Todd was in the
22 course and scope of employment when he was injured on
23 August 9th, 2013 in regard to a boat explosion He
24 was transported by the Horry County -- or the Conway
25 Fire Department to a Medevac helicopter and was taken

1 to University of North Carolina Burn Center where he
2 spent a number of weeks recovering

3 He has a third -- third-degree burns over
4 his arms and hands He was out of work from
5 8/9/2013 And he brought a letter from his current
6 employer that said he is currently working as of
7 July 28th, 2014 So we would ask for back temporary
8 total benefits from August 19, 2013 to July 28, 2014
9 He works as an electrician currently

10 We also believe that he's covered under
11 the act and that he was performing work in the course
12 of his line of duties And he had 18 -- I think I
13 told you about the impairment rating earlier He has
14 a burn involving 10 to 19 percent of body surface
15 with third-degree burns or less unspecified And
16 we'll let you look at his arms when we

17 THE COURT All right Ms Glover

18 MS GLOVER Commissioner, the Fund
19 contends that this is not a work-related accident
20 This did not happen within the course and scope of
21 Mr Todd's employment with Mike Roberts d/b/a Mike
22 Roberts Home Repair Mike Roberts Home Repair
23 engages in residential construction only They have
24 done no work on boats or boathouses This was a
25 purely personal venture wherein this accident

1 occurred

2 If you do find it compensable,
3 Commissioner, we agree with the average weekly wage
4 and compensation rate We would deny that he was
5 entitled to a temporary total benefit for the amount
6 of time that he has specified We would also contend
7 that Mr Roberts is entitled to a credit for \$5000
8 that he paid to the claimant He paid him \$500 per
9 week for an eight-week period of time And that
10 would be the Fund's position, Commissioner

11 THE COURT All right Mr Roberts

12 MR ROBERTS I mean, the same thing like
13 I said before I -- you know, I'm not denying he
14 worked for me I'm not denying that, you know, he
15 worked for Roberts Home Repair But we worked on
16 boats together on the side We done that He has a
17 boat in his yard right now that he don't have a title
18 to yet We done -- you know

19 THE COURT We don't need to get into all
20 that But it's your position that this is not a
21 work-related accident?

22 MR ROBERTS Had nothing to do with
23 Roberts Home Repair at all

24 THE COURT All right Very good
25 Anything else, Mr Connell?

1 MR. CONNELL No, Your Honor
2 THE COURT Anything else, Ms Glover?
3 MS GLOVER Nothing from the Fund
4 THE COURT Anything else, Mr Roberts?
5 MR. ROBERTS No, sir
6 THE COURT Mr Connell, you call your
7 witness Or your first witness
8 MR. CONNELL Holmes, come up here,
9 please, sir
10 THE COURT Come around and have a seat
11 here, sir All right Please swear the witness
12 HOLMES ADAMS,
13 after being duly sworn to tell the truth, testified
14 as follows
15 THE COURT. Please state and spell your
16 full name for the record, sir
17 THE WITNESS Holmes Adams H-O-L-M-E-S
18 A-D-A-M-S
19 THE COURT Thank you, sir
20 THE WITNESS. Yes, sir
21 THE COURT. Mr Connell, your witness
22 MR CONNELL Thank you, Your Honor
23 DIRECT EXAMINATION
24 BY MR CONNELL
25 Q Mr Adams, where do you currently work?

11

1 A Right now I'm employed at Myrtle Beach
2 Chevrolet Cadillac in Myrtle Beach

3 Q All right Have you ever worked for Mike
4 Roberts or Mike Roberts Home Repair?

5 A I was a subcontractor for Mike Roberts

6 Q All right And how long did you work for
7 him?

8 A I probably worked for Mike for seven,
9 eight months

10 Q All right

11 A Somewhere in there give or take Maybe
12 six

13 Q All right And besides yourself, who else
14 worked for him?

15 A I don't know about the rest of his
16 subcontractors That wasn't my gig I know Kevin
17 drew a weekly check, Bobby Days drew a weekly check,
18 Ryan Harrelson and James

19 Q All right Ryan Harrelson and James --

20 A Yeah

21 Q -- all drew weekly pay?

22 A The best of my knowledge, yes, sir

23 Q All right And were you involved or were
24 you there the day the boat -- the boat explosion?

25 A The day the boat exploded, no, sir, I was

1 not

2 Q All right

3 A The day before that, two days before that,
4 I had went by to look at the boat because I done the
5 mechanical end on the boat I pulled the plugs out
6 of it, got the motors running And I asked Mike, I
7 said, "What are you going to do with all that fuel in
8 the bottom of that boat?" He said, "I'm going to
9 pump it out in this drum " He had a trailer sitting
10 there with a drum I said, "Mike, there's people
11 that gets paid to handle hazardous materials You
12 got a couple hundred gallons of fuel and water mixed
13 laying in that boat You need to pay somebody to do
14 it and handle it right "

15 Q All right What did Mike Roberts Home
16 Repair do? What kind of work?

17 A We done everything I don't know his
18 companies or the banks that he done his work with
19 I'd pressure wash houses, get them cleaned up I've
20 painted for him, cut grass Just really whatever
21 needed to be done

22 Q All right Anything he asked you, you did
23 it?

24 A Pretty much You know, I mean, it's --
25 poor people got to eat.

1 Q And the houses that you were working on,
2 most of those are foreclosure houses, is that right?

3 A Could have been, yes, sir They were all
4 empty I think the bank owned them They were
5 getting ready to rent them, or we had to sling paint
6 in them or whatever the case was

7 Q All right And you know Mr Todd, I take
8 it?

9 A Yes, sir I know Kevin

10 Q And he worked for Mr Roberts?

11 A Kevin was on a weekly paycheck

12 Q All right And what would he do for
13 Mr Roberts?

14 A Whatever If Mike barked, he jumped

15 Q All right Okay Thank you That's all

16 A He was like a shop -- I guess the guy that
17 took care of bills and would run and go get material
18 for jobs and, you know, whatever Mike needed done,
19 Kevin handled it

20 MR CONNELL: All right That's all I
21 have Thank you, sir

22 THE COURT Ms Glover

23 MR CONNELL. Answer any questions that
24 they have

25 THE WITNESS. Oh, I'm sorry

1 THE COURT. You've got to answer their
2 questions Ms Glover

3 THE WITNESS Ain't no problem

4 CROSS-EXAMINATION

5 BY MS GLOVER

6 Q Is your last name Adams?

7 A Yeah

8 Q A-D-A-M-S or --

9 A Correct

10 Q Okay I thought you said A-D-M-E-S

11 Okay Now, you said that you worked as a
12 subcontractor for Mister --

13 A Uh-huh

14 Q -- Roberts? So Mr Roberts gave you
15 individual jobs to do?

16 A Yes, sir Yes, ma'am

17 Q Okay And then you completed the job
18 and --

19 A I'd complete the job, Mike would come by
20 and say, "All right, everything's looks good," and
21 I'd get paid

22 Q Okay Then you tell Mr Roberts how much
23 you would do the job for?

24 A Yeah We would negotiate a price before
25 it got started

15

1 Q Okay Now, when you were doing the actual
2 job, did Mr Roberts tell you how to do the job, or
3 did he leave that up to you?

4 A No He -- I mean, he'd tell me what
5 needed to be done, and I'd get it done

6 Q Okay Well, he wasn't there watching you
7 and standing over you telling you how to do your job?

8 A No No No Absolutely not

9 Q If the grass needed to be cut, you knew
10 how to cut the grass?

11 A Absolutely

12 Q If something needed to be pressure washed,
13 you knew how to pressure wash it?

14 A Yes, ma'am

15 Q If something needed to be painted, you
16 knew how to do that?

17 A Yes, ma'am

18 Q So would it be fair to say that
19 Mr Roberts would assign you a job, he would leave
20 for you to do it and --

21 A Yeah, pretty -- yes, ma'am Yes, ma'am

22 Q -- you would complete the task? And when
23 it was done, Mr Roberts would come back and look it
24 over to make sure it was done correctly?

25 A Yes, ma'am

1 Q Okay And were you paid on a per job
2 basis?

3 A Yes, I was Yeah

4 Q Okay So different jobs brought
5 different --

6 A Would pay different things, yes, ma'am

7 Q Brought in a different amount of money?

8 A Yes, ma'am

9 Q Okay And did you work anyplace else?

10 A At that time?

11 Q Yes

12 A No

13 Q Okay And have you also been a mechanic?

14 A I've been a mechanic for General Motors
15 for 26 years

16 Q Okay And you say you did the mechanical
17 work on this boat?

18 A Yes, ma'am

19 Q Okay Now, did you know Mr Todd and
20 Mr Roberts to -- were they personal friends to your
21 knowledge?

22 A No I've known Mike for years I did not
23 meet Kevin until I started working for Mike

24 Q Okay So you didn't know their prior
25 relationship before you started working there?

1 A Their prior relationship? No, ma'am Had
2 no clue

3 Q Now, as far as these other people that
4 you've named as being employees, you said Bobby, Ryan
5 and James?

6 A Uh-huh

7 Q And you testified that they drew a weekly
8 check?

9 A I can -- I cannot guarantee you that they
10 drew -- I know Bobby drew a weekly check Kevin drew
11 a weekly check Those are the two that I know for
12 sure

13 Q How do you know that?

14 A Because I -- we all hanging around his
15 house Friday afternoon, drink a cold beer, he'd hand
16 checks out

17 Q Okay

18 A But I have personally seen those two
19 collect their checks more than once

20 MS GLOVER- Okay Okay That's all the
21 questions I have

22 THE COURT All right Mr Roberts, you
23 get to ask questions

24 MR ROBERTS- Okay

25 THE COURT You don't get to have an

1 exchange

2 MR ROBERTS I understand

3 THE COURT You don't challenge, but you
4 do get to ask questions

5 CROSS-EXAMINATION

6 BY MR. ROBERTS

7 Q Did you know that me and Kevin were
8 friends outside of work?

9 A Yes

10 Q Did you know that me and Kevin took a boat
11 trip to Wilmington for the whole weekend on a boat?
12 And I took him and his wife and me and my wife, and
13 we went out a whole weekend on a boat in Wilmington

14 A Nope I did not know that

15 Q You did not know that?

16 A Nope

17 Q Okay Did you know -- how -- how do you
18 know that James Flawn worked for me at the time of
19 the accident?

20 A Because all them boys that's over there at
21 the house, over there -- over there off beside the
22 Conway Hospital that you was doing for the bank

23 Q Were you with me --

24 A A hundred percent of the time over there?

25 No

1 Q No Were you with me at Little River the
2 day James called me and quit prior to the accident
3 when James got mad at Bobby?

4 MR CONNELL. Objection, Your Honor
5 That -- that's not a question

6 BY MR ROBERTS

7 Q Was he with --

8 THE COURT No That is not a question
9 You have to confine yourself to questions

10 MR ROBERTS I'm sorry I just -- I was
11 asking if he was there No further questions

12 THE COURT All right Mr Connell

13 MR CONNELL Your Honor, he's under
14 subpoena Can he be released?

15 THE COURT If they don't have any -- if
16 Ms Glover doesn't have any questions

17 MS GLOVER Do you have any more
18 questions for him?

19 MR ROBERTS No

20 MS GLOVER We have no objection to him
21 being released, Commissioner

22 THE COURT All right

23 MS GLOVER We would just ask that he not
24 discuss his testimony with anybody as he leaves

25 MR CONNELL: I'm going to go get and

1 bring the next person

2 MS GLOVER Okay

3 THE COURT Yes, you cannot discuss what
4 you've testified to with folks who are waiting to
5 testify

6 THE WITNESS. Yes, sir

7 THE COURT. But you may go Thank you,
8 sir

9 THE WITNESS: Yes, sir Thank you

10 (Witness excused)

11 THE COURT. Ma'am, good to see you today
12 Have a seat, please

13 MICHELLE BRATCHER,
14 after being duly sworn to tell the truth, testified
15 as follows

16 THE COURT All right Put your hand
17 down Please state and spell your full name for the
18 record

19 THE WITNESS It's Michelle Bratcher
20 M-I-C-H-E-L-L-E B-R-A-T-C-H-E-R

21 THE COURT Spell your last name again,
22 ma'am I can't write that fast

23 THE WITNESS B-R-A-T-C-H-E-R

24 THE COURT Thank you so much,
25 Ms Bratcher

1 All right Mr Connell, your witness

2 MR CONNELL Thank you, Your Honor

3 DIRECT EXAMINATION

4 BY MR. CONNELL

5 Q Michelle, how long have you and Kevin been
6 living together?

7 A About 14 years

8 Q Do y'all have any children together?

9 A Yes I have a son 13 years old

10 Q All right Do you know whether or not
11 Kevin worked at Mike Roberts?

12 A Uh-huh

13 Q All right You've got to say yes or no
14 I'm sorry

15 A Oh, yes

16 Q Or when did he -- how long did he work for
17 him?

18 A I want to say probably about a year and a
19 half, maybe close to two years

20 Q And what did he do for him?

21 A A little bit of everything He did home
22 repairs, worked around the house Just really
23 everything

24 Q Anything he wanted?

25 A Yes

1 Q Okay Now, you know other people who
2 worked there?

3 A Yes

4 Q All right Tell me who they were, please,
5 ma'am

6 A Well, besides Kevin, Bobby Days

7 Q Bobby Days?

8 A I believe is the last name

9 Q All right

10 A James Flawn

11 Q Okay

12 A A guy -- Ryan Harrelson

13 Q All right

14 A And let's see Kevin, Bobby Days

15 Q Okay You've named Bobby Days, Ryan
16 Harrelson, James Flawn, Kevin

17 A Kevin

18 Q Anyone else?

19 A Let's see Bobby, James Flawn, oh, and
20 Holmes

21 Q All right I think he testified earlier
22 Okay Now, were you there the day that -- that
23 Mr Todd was injured?

24 A No

25 Q Did you come to the scene afterwards?

23

1 A Yes

2 Q All right Tell me what happened, please,
3 ma'am

4 A Well, after the phone call, I was headed
5 to the hospital and then when I looked -- as I was
6 going over the bridge, I looked to the right and seen
7 ambulances and fire trucks and realized it was more
8 serious than originally thought So I pull over and,
9 of course, he's in the ambulance getting ready to be
10 helicoptered off

11 Q All right So the Court knows, you were
12 going east on 501?

13 A Yes

14 Q Is that right?

15 A Yes

16 Q Went over the Waccamaw bridge?

17 A Yes Because you can see the boat --

18 Q All right

19 A -- right there from the bridge

20 Q And there's a hotel there, is there not?

21 A Yes

22 Q Was that where the accident happened?

23 A Not at the hotel but the house that's on
24 behind the hotel

25 Q All right Now, did Mr Todd go to work

1 that morning?

2 A Yes

3 Q And was that a regular morning when he --
4 that he went to work like every morning?

5 A Yes

6 Q All right And how many days a week did
7 he work for Mr Roberts?

8 A Five minimum but some days he would work
9 Saturdays

10 Q And the day that Mr Todd went to work,
11 was he working for Mr Roberts?

12 A Yes

13 Q And what kind of things would he do for
14 Mr Roberts?

15 A Well, usually he was like doing house
16 repairs He -- because we talked about his days,
17 what all he's done And, yeah, he was normally --
18 they would go to houses that were for rent or for
19 sale that needed to be repaired or things like that
20 And he would go and fix the houses up

21 Q Would Mr Roberts call and ask him to go
22 do other things for him?

23 A Oh, yes

24 Q All right For instance, tell -- give the
25 Judge a for instance about what they've -- what he'd

1 ask him to do

2 A Well, I mean, just really anything Like
3 personally at his house, he would want him to go
4 there and lay brick pavers for his pool or take his
5 child to school for him He did that almost every
6 morning

7 Q Mr Todd took his child to school every
8 morning?

9 A Yes

10 Q What time did he leave to go to work?

11 A 7 00 in the morning

12 Q What time did he get home at night?

13 A It varied It was never -- I mean,
14 generally 5 30, 6 00 o'clock sometimes

15 Q All right Would Mr Roberts call him
16 after hours and ask him to do something for him?

17 A Sometimes If there was like -- if
18 someone called from a rental property and their water
19 line busted per se, he would have to go and make that
20 service call

21 Q All right Now, how much money did
22 Mr Roberts give you or Mr Todd after Mr Todd was
23 injured and taken to the University of North Carolina
24 Hospital Systems?

25 A He -- when Kevin was in the hospital for

1 the two weeks, he did pay him for the two weeks that
2 he was in the hospital Paid him 500 a week

3 Q All right

4 A When he -- when we come back, if I'm not
5 mistaken, he gave him another 500 But then the week
6 after that, I think, is when the money started
7 dropping off

8 Q All right

9 A We went to his house to get money, and I
10 think he gave him a 100, maybe 200 and then that was
11 it No more

12 Q So how much total did he give him?

13 A I would say 15 plus -- I would say
14 probably about 1700 total

15 Q Now, did you all -- when I say "you all,"
16 I'm talking about either you or Mr Todd -- ask him
17 for additional monies?

18 A No

19 Q All right What conversation did either
20 you or Mr Todd have with Mr Roberts about getting
21 additional monies?

22 A I mean -- you mean as far as him just
23 trying to get his weekly pay?

24 Q Yes, ma'am

25 A Oh He would just call him like on a

1 Friday and ask him if -- you know, if he had --
2 because he supposed to been paying him -- what he
3 told us is while he was recouping he was going to pay
4 him And so when Kevin was calling him that Friday,
5 he told Kevin that he didn't have the money

6 Q All right

7 A And then that was really it We -- he --
8 we never asked for anymore We just kind of just let
9 it go

10 Q Okay All right Now, how long -- tell
11 me how long your husband was out of work? How
12 long --

13 A How long was he out?

14 Q Yes, ma'am

15 A Well, from, of course, the day it happened
16 to -- he just went back, I think, it's mid part of
17 July

18 Q July 28 sound --

19 A Yes

20 Q -- familiar?

21 A Yes

22 Q And where is he working now?

23 A Reliable Electric

24 Q And have y'all gotten bills from the
25 University of North Carolina Hospital Systems?

1 A Nonstop They won't stop coming in

2 Q How much are the bills?

3 A I haven't totaled them recently, but it
4 was over 300,000 the last time --

5 Q All right

6 A -- I calculated them

7 Q And how long was he in the hospital?

8 A Two weeks

9 Q And has he been back to the University of
10 North Carolina for treatment since then?

11 A Well, I mean, just the normal follow-ups
12 afterwards We went back twice

13 Q Okay Now, was your husband and
14 Mr Roberts ever in the boat business together?

15 A The boat business?

16 Q Yes, ma'am

17 A He was working on boats Well, I say
18 working on boats, that he was like -- I'm not really
19 sure what you would call it He was like adding
20 carpet and --

21 Q Mr Roberts was working on boats?

22 A Yes

23 Q Mr Todd wasn't in the boat business, was
24 he?

25 A No But he did call Kevin, you know, a

1 couple times like on a Saturday --

2 Q Okay

3 A -- and asked if he'd come over and help
4 him put carpet on a boat or whatever they were doing
5 to that boat But they wasn't in no boat business
6 together, no

7 Q And Mr Roberts would then sell those
8 boats?

9 A I'm not sure what he would do with them
10 I'm not sure

11 Q How many Saturdays and Sundays during the
12 period he worked for him did he -- would he call and
13 come do work -- other work for him?

14 A Just any kind of work in general?

15 Q Yes, ma'am

16 A I would say probably every -- sometimes
17 every Saturday but at least every other Saturday

18 Q All right And the day that this incident
19 happened, do you know what day of the week it was?

20 A Friday

21 Q All right Was that a normal workday for
22 him?

23 A Yes

24 Q The time that he worked for Mr Roberts,
25 did he normally work on every Friday?

1 A Oh, yes

2 Q Was Friday payday?

3 A Yes

4 Q All right And when would he get paid?

5 What time of the day?

6 A I'm not positive I'm assuming at the end
7 of the day

8 MR CONNELL Okay All right Thank
9 you, ma'am

10 THE COURT Ms Glover

11 CROSS-EXAMINATION

12 BY MS GLOVER

13 Q Ms Bratcher, how long have you all known
14 Mr Roberts?

15 A I only met him when Kevin started working
16 with him So about that -- a year and a half,
17 two-year time frame

18 Q Okay Did you ever work for Mr Roberts?

19 A Well, initially I was working on the boat,
20 and then I was going to start working for him
21 cleaning houses, but it didn't get to that point

22 Q Okay Now, you test- -- as far as these
23 other people that you testified that worked for
24 Mr Roberts, what was Bobby's job?

25 A I don't know the specifics I know that

1 when Kevin would talk about his days, I think Bobby
2 was about like him Just really did whatever was
3 required

4 Q Do you have any personal knowledge -- when
5 I say "personal knowledge," I mean, of your own
6 accord, what you've seen with your own eyes or heard
7 with your own ears, as to what each of these people
8 did for Mr Roberts, if anything?

9 A Well, I did hear --

10 Q I mean, other than what your husband may
11 have told you

12 A No I mean, not -- not really besides
13 just knowing that they would all like be remodeling
14 houses together I don't know which each did
15 individually No

16 Q Okay So you don't know what the nature
17 of each person's work relationship with Mr Roberts
18 was? You don't know if they were subcontractors or
19 independent contractors or employees?

20 A Well, I -- I say employees because Kevin
21 used to pay everybody And he used to tell me that
22 he would go by and drop everybody's pay off

23 Q But you don't know what that pay was based
24 on?

25 A No No

1 Q Okay Did you ever take any trips with
2 your husband and Mr Roberts and his wife?

3 A Uh-huh

4 Q Is that a yes?

5 A Yes I'm sorry

6 Q How often would y'all do that?

7 A Not that often I would say once every
8 few months maybe we would go out

9 Q Okay And you all would go out on a boat?

10 A We've only been out on the boat maybe once
11 or twice together

12 Q Okay Did you all go out on a boat
13 together like about three weeks before this happened?

14 A Three weeks before he got burnt? I don't
15 think it was that soon, no

16 Q Okay But it had been recent?

17 A Maybe within a couple months probably,
18 yeah

19 Q Okay And to your knowledge did Mike's
20 Home Repair ever do any work on boats as part of that
21 business?

22 A Like I said, within the last couple weeks
23 before he got burnt he was -- Kevin was going -- as
24 far as doing anything helping him on a Saturday
25 doing -- like I said, they were doing more like

1 upholsteries as far as I'm concerned

2 Q Okay In regards to the money that
3 Mr Roberts gave y'all, do you know if Mr Roberts
4 ever gave your husband's father any money or -- or
5 Mr Todd?

6 A He did when we was in the hospital

7 Q Okay

8 A He gave his father one of -- one of the
9 weekly \$500 that he got paid
10 MS. GLOVER. Okay I don't have any other
11 questions

12 THE COURT All right Any questions,
13 Mr Roberts?

14 MR ROBERTS. Yes, sir

15 CROSS-EXAMINATION

16 BY MR ROBERTS

17 Q Do you recall me giving you any more than
18 \$500 any week?

19 A Huh-uh

20 Q Do you recall --

21 THE COURT REPORTER Is that a no?

22 THE WITNESS No I'm sorry No

23 THE COURT But you need to answer yes or
24 no, please

25

1 THE WITNESS No

2 BY MR. ROBERTS

3 Q Do you recall me giving extra money for
4 gas for y'all to go back and forth up there after
5 y'all came home in your kitchen?

6 A No You gave me a \$100 for cleaning that
7 boat --

8 Q Right

9 A -- is what you gave me

10 Q Do you recall me giving Kevin an extra \$50
11 to buy gas because y'all were going to Chapel Hill
12 that next day?

13 A No I know you had asked me before that
14 you would give me gas money, and I never took it

15 Q Were we all personal friends besides work?

16 A We were

17 Q Didn't we go out almost every single
18 weekend together?

19 A We didn't go out

20 Q I mean, not out of town but out in public
21 together at night? We would go out, Kimberly's,
22 Fatz

23 A Not every --

24 Q Didn't we go out -- there for weeks we
25 went every other -- just about every weekend, is that

1 right?

2 A Not every weekend, no We -- we would get
3 out and go to your house and grill out or order
4 pizza So yeah

5 Q You made a statement that Kevin took my
6 child to school every day I agree with that
7 Didn't I also -- didn't ~~Kevin~~ -- I take ~~Kevin~~
8 places, also, your child? Didn't he go with me to
9 the river to Georgetown one day and didn't I --
10 didn't he hang around with my little boy some, too?
11 They played video games together, is that true?

12 A Very rarely but yes

13 Q But they hung around together?

14 A But Kevin took your child daily

15 Q Oh, yeah I'm not denying that Not one
16 bit in the world I mean, my little boy loves Kevin
17 to death Asked about him all the time I'm not
18 denying that I'm just asking do you recall us going
19 on a boat trip to Wilmington together?

20 A Oh, yes

21 Q Okay Do you recall me and Kevin standing
22 in your kitchen and talking about how, when we got
23 that boat ready, we were going to take a trip on it,
24 all of us together? We were working on it and that
25 was going to be our toy?

1 A No You told me that you were going to
2 buy that boat That you were looking into that boat
3 and you were going to buy that boat, and then we
4 could all -- we was going to take the -- take your
5 boat out, yeah

6 Q Do you remember me and Kevin going -- I
7 don't know if you knew about this But do you
8 remember me and Kevin going to Hague Marine at --
9 near Murrells Inlet over there and looking at a
10 50-foot houseboat before that boat ever came along?

11 A No

12 MR ROBERTS Okay Thank you

13 THE COURT Mr Connell, any other
14 questions?

15 MR CONNELL. Just one

16 REDIRECT EXAMINATION

17 BY MR CONNELL

18 Q The boat that had the explosion, that
19 wasn't the boat that you went for a ride on, was it?

20 A No

21 Q The boat that had the explosion, where
22 did -- where did that come from?

23 A The man that lived right around the corner
24 from where his father lived gave him the boat

25 Q All right Was it sunk in the river?

1 A Yes It was sunk
2 MR CONNELL: Okay No further questions,
3 Your Honor
4 THE COURT Ms Glover
5 MS GLOVER I don't have any other
6 questions
7 THE COURT Any other questions,
8 Mr Roberts?
9 MR ROBERTS: No, sir
10 THE COURT All right Thank you, ma'am
11 You may step down
12 (Witness excused)
13 MR CONNELL: All right, sir You can go
14 all the way up Sit in that blue chair
15 THE COURT Right up here, sir All
16 right Please swear the witness
17 ANTHONY WILLIAMS,
18 after being duly sworn to tell the truth, testified
19 as follows
20 THE COURT All right You're going to
21 need to speak up, sir, because everybody has got to
22 hear you
23 THE WITNESS. All right
24 THE COURT Please state and spell your
25 full name for the record, sir

1 THE WITNESS. Anthony R Williams

2 THE COURT. Spell that

3 THE WITNESS. A-N-T-H-O-N-Y, Renard,
4 R-E-N-A-R-D, Williams, W-I-L-L-I-A-M-S

5 THE COURT: All right Thank you,
6 Mr Williams Mr Connell, your witness

7 DIRECT EXAMINATION

8 BY MR. CONNELL

9 Q All right Mr Williams, were you present
10 on the day the boat explosion occurred?

11 A Yes, sir

12 Q How did you get to come to that particular
13 place?

14 A Kevin gave me a call and said that Mike
15 needed a hand working on his boat, and I was supposed
16 to be doing some electrical work on it that day

17 Q All right What do you know about
18 electrical work?

19 A I'm an electrician

20 Q All right And were you going to be paid
21 for your work?

22 A Yes, sir

23 Q And who told you you were going to be paid
24 for your work?

25 A Mike told Kevin and Kevin told me

1 Q Now, were you injured in the explosion?

2 A Yes, sir

3 Q What happened to you?

4 A I got burnt on my arm, second-degree burns
5 from here (indicating) down to my wrist

6 Q All right And you weren't working for
7 Mike Roberts prior to this?

8 A No, sir

9 Q That was a one-day request?

10 A From my understanding, I might have gotten
11 some more work from him

12 Q All right

13 A If everything worked out all right that
14 day

15 MR CONNELL All right That's all I
16 have, Your Honor

17 THE COURT. Ms Glover

18 CROSS-EXAMINATION

19 BY MS GLOVER

20 Q Mr Williams, you said that Kevin called
21 you?

22 A Yes, ma'am

23 Q Okay And what was the extent of the
24 conversation between you and Kevin?

25 A He was -- basically I needed some work,

1 and he said that Mike needed some helpers, and he
2 wanted me to help him work that day on the boat and
3 that was pretty much it

4 Q Okay Were you just there for the day?

5 A From my understanding if everything worked
6 out all right that day and he had more work, he would
7 have put me to work

8 Q Okay Were you unemployed otherwise?

9 A Yes, ma'am

10 Q Okay You weren't working as an
11 electrician anywhere and just having the day off on
12 that day when this happened?

13 A Not at the time

14 Q Okay Are you employed now?

15 A Yes, ma'am

16 Q Okay And when did you start back to
17 work?

18 A I went to work out of town for about a
19 year, and then I started working for Reliable
20 Electric about three months ago

21 Q Okay And does Kevin work at Reliable
22 Electric?

23 A Yes, ma'am

24 Q Okay When did Kevin start working at
25 Reliable Electric?

1 A About three months ago

2 Q Okay And what was the discussion that
3 you had with Mr Roberts in regards to you staying on
4 working for him? What was going to be your job?

5 A Well, actually, ne was kind of joking
6 about it when I got to his house that morning, and he
7 was saying that Kevin said that I was a pretty good
8 electrician And he pretty much was just joking
9 around that Kevin was, you know, a bumner-type guy
10 and stuff like that But if everything worked out
11 pretty good that day and I needed some work, he'd put
12 me to work

13 Q Doing what? Electrical work?

14 A Electrical work Whatever he needed done
15 Things he needed fixed or whatever the case may be

16 Q Okay And are you aware of what kind of
17 business Mr Roberts has?

18 A I was under the impression that he worked
19 on houses They did some subcontracting work for
20 banks and stuff like that

21 Q Okay He's engaged in residential
22 construction What work history do you have being in
23 residential construction?

24 A I have about five years doing residential
25 electrical work

1 Q Doing what?

2 A Wiring houses

3 Q Okay That's electrical work Do you
4 have any experience doing any building, any
5 carpentry?

6 A No, ma'am

7 Q Okay Did you get paid for the work that
8 you did that day?

9 A No, ma'am

10 Q Or did you get a chance to do any work?

11 A Well, we worked about six hours, but I
12 didn't get paid for it

13 Q Okay And what did you do? Did you do
14 electrical work on the boat or mechanical work?

15 A Well, I started working on the
16 receptacles, but me and Kevin was trying to pump gas
17 out of the tank of the boat So we had a primer and
18 we was trying to get it primed and we couldn't get it
19 primed And then Mike took the primer from us and
20 took the hose off of it and started pounding it with
21 his hand And then once he got started, the gas
22 started coming out of it And when he went to put
23 the hose back on it, that's when the fire start

24 MS GLOVER Okay I don't have any other
25 questions

1 THE COURT Any questions, Mr Roberts?

2 MR ROBERTS No, sir

3 THE COURT Any other questions,
4 Mr Connell?

5 MR CONNELL: No, Your Honor Can he be
6 excused? He's under subpoena

7 THE COURT. Any objection?

8 MS GLOVER No objection

9 THE COURT All right You may be
10 excused, sir Thank you

11 (Witness excused)

12 THE COURT All right Have a seat, sir
13 Swear the witness, please

14 KEVIN M. TODD,
15 after being duly sworn to tell the truth, testified
16 as follows

17 THE COURT All right Since you're a
18 party to the case, I won't make you spell your name
19 But please state your name for the record

20 THE WITNESS. Kevin Todd

21 THE COURT All right Thank you,
22 Mr Todd Mr Connell, your witness

23 MR CONNELL Thank you, Your Honor

24 DIRECT EXAMINATION

25 BY MR CONNELL

1 Q Kevin, were you employed at Mike Roberts
2 Repair?

3 A Yes, sir

4 Q How long had you been employed there?

5 A It's been about a year and a half
6 Something like that, about a year and a half

7 Q All right What did you do for him?

8 A Anything Painting Might be on a roof
9 one day putting shingles on or helping him, or I
10 might be underneath a house one day doing plumbing

11 Q All right Work on boats?

12 A I helped him occasionally on stuff he
13 had -- he done his self or one of his partners helped
14 him

15 Q All right Take his child to school?

16 A Yes, sir And by the way, once I got to
17 his house and picked his son up, I was on the clock
18 He paid me from that time That's the difference

19 Q All right And you paid other employees,
20 I think, is that right?

21 A Yes

22 Q Which other employees did you pay?

23 A I paid Ryan Harrelson, James Flawn and
24 Bobby Days Not all the time Occasionally But I
25 have

1 Q All right When he wasn't around, you
2 make -- you would do the paying?

3 A Yeah When he was busy doing stuff,
4 that's -- I done that for him

5 Q All right Worked for him on the weekend?

6 A Yeah

7 Q Worked for him on Saturdays?

8 A Yeah

9 Q Would he call you after hours?

10 A Yeah

11 Q And what kind --

12 A Not much but occasionally, yes

13 Q All right And what kind of a -- what
14 would he ask you to do?

15 A The same thing I was just mentioning I
16 might had to go on a call, might had to work on a
17 leaky toilet or -- you know, just anything

18 Q All right What was he going to do with
19 the boat that he'd gotten out of the river?

20 A Well, the guy told him that if he could
21 get it out of the river, he could have it You know,
22 and then we tried to get it out of the river and we
23 couldn't -- we didn't exceed [sic] And so the man
24 that owned the boat originally, he -- he called and
25 hired a fellow to get it out He's a recovery guy

1 Q All right

2 A And he got it out And once he did, we
3 pulled it around to his father's house And then we
4 were trying to clean it up because he wanted to keep
5 it

6 Q Were you on the clock then?

7 A Yeah

8 Q All right

9 A Every minute of every day I was with him
10 working wise on -- I got paid

11 Q All right And what -- before the
12 explosion happened, what kind of work did you do on
13 the boat?

14 A That -- that day I wasn't supposed to been
15 there long I was on the way to a job at Quail
16 Creek

17 Q Okay

18 A I stopped by to get Tony Williams started
19 on working on the boat

20 Q All right

21 A And it just led on to me trying to help
22 him get the -- get the gas and stuff out of the tanks
23 in there and that's when it -- the explosion
24 happened

25 Q All right Now, how long were you in the

1 hospital?

2 A Two weeks

3 Q All right Show the Judge, if you would,
4 the scarring you have on your right and left arms

5 A Can I stand?

6 Q Sure Is that the discoloration that's on
7 your arm --

8 A Yeah

9 Q -- on the right and the left side?

10 A That's the -- that was skin -- the seven
11 skin grafts off my legs and that's -- that's how it
12 ended up

13 Q All right Did you have a short sleeve
14 shirt on that day?

15 A Yeah And there you can see where my
16 short sleeve was

17 Q All right

18 A On both sides

19 THE COURT All right Thank you And
20 for the record, you have scarring on both arms from
21 where your short sleeve -- the shirt sleeve from --
22 covered from that point down to your wrist Is that
23 a fair statement, sir? I need something for the
24 record

25

1 THE WITNESS. Yeah Yeah Yes, sir All
2 the way up my hand on this one (indicating)

3 THE COURT: And so it goes on the back of
4 your hand?

5 THE WITNESS. All the way up my finger I
6 mean, it burnt a piece of that pinky off

7 THE COURT. All right Is that on both
8 hands, sir?

9 THE WITNESS: Not hand Just this one

10 THE COURT Okay Just on the left On
11 the right it stops about where? The wrist?

12 THE WITNESS. Yeah Well, yeah

13 THE COURT: Just above the wrist?

14 THE WITNESS. Yeah

15 THE COURT Okay And on the left it
16 extends down the back of your hand and on your
17 fingers?

18 THE WITNESS: At the whole -- whole arm
19 from just above the elbow to the -- my fingertips

20 THE COURT All right I just need
21 something for the record

22 MS GLOVER. Commissioner, I would ask
23 that you also note that it's not keloidal

24 THE COURT. Yes It is not keloidal
25 Thank you

1 BY MR CONNELL

2 Q Were you partners in the boat or an owner
3 of the boat?

4 A No

5 Q And Mr Roberts --

6 A And he told -- and he told me right out of
7 his mouth that -- he said that he didn't want me to
8 be involved because I didn't have the money -- have
9 the money to put in it

10 Q All right Now, were you paid \$5000
11 during the time that you were -- you were out of work
12 by Mr Roberts?

13 A No, sir No, sir

14 Q How much did you get?

15 A Like I said, like -- it was -- he paid me
16 the two weeks I was in there

17 Q Okay

18 A In the hospital And then after I got out
19 I think one other full-time full week

20 Q All right

21 A And then I had to call him And then I --
22 you know, and -- and he said that he didn't have the
23 money because he had bills, too

24 Q Okay So --

25 A And I left it alone I quit I quit

1 messing with him

2 Q All right And you're back at work now,
3 is that right?

4 A Yes, sir

5 Q And you went back to work at Reli- -- or
6 you went to work at Reliable Electric, is that
7 correct?

8 A Yes, sir

9 Q And I think you gave me a letter You
10 just brought me today showing it You went back to
11 work July 28th?

12 A Yes, sir That's it

13 Q You got that from your -- from the boss
14 at --

15 A Yeah

16 Q -- Reliable Electric?

17 A My employer, yeah

18 MR CONNELL. Your Honor, we'd like to
19 offer this as an exhibit

20 THE COURT. Objection?

21 MS GLOVER No objection

22 THE COURT. Objection, Mr Roberts?

23 MR ROBERTS. No, sir

24 THE COURT All right Mark that as
25 Claimant's Exhibit 1

1 (Claimant's Exhibit No 1 was marked for
2 identification)

3 MR CONNELL. Thank you, Your Honor

4 BY MR CONNELL

5 Q Now, tell me how -- tell the Judge how
6 you're doing now with the scarring

7 A Well, I mean, it's still a little tight
8 Sometimes if I hold my arms one way too long, it's
9 tight for me to pull them up And, I mean, as far as
10 picking up weight for long periods of time it
11 starts -- my -- I guess this nerves, it burns
12 occasionally I mean, every day it's something
13 minor But, I mean, it hurts some every day I
14 mean, it kind of messes me up the way I work because
15 of the stuff I do I pull wire But, I mean, I just
16 have to bear it I mean, it burns this -- like just
17 a bunch of needles sticking in it That's what it
18 is

19 Q And you're back doing work, it sounds
20 like, right?

21 A Well, I try I mean, I'm an electrician
22 foreman, and I have people to help do my job

23 Q And you're still getting medical bills, is
24 that right?

25 A Yeah

1 Q Have you had any contact with Mr Roberts
2 since you've asked him if he was going to pay you
3 back in --

4 A No

5 Q Has he contacted you?

6 A He tried

7 Q All right But you haven't talked to him?

8 A No

9 Q And did you ever go for a ride on the boat
10 that was -- that y'all were working on that day?

11 A No

12 MR CONNELL All right I think that's
13 all I have Thank you Answer any questions they
14 have

15 THE COURT: Ms Glover

16 CROSS-EXAMINATION

17 BY MS GLOVER

18 Q Mr Todd, how many times have you worked
19 on boats for Mr Roberts or with Mr Roberts?

20 A I -- it's maybe five times

21 Q And how many trips have you taken with
22 Mr Roberts with your spouses on one of those boats?

23 A One

24 Q And you were paid \$500 per week?

25 A Yes, ma'am

1 Q You got paid every Friday?

2 A Yes, ma'am

3 Q Okay As you testified, he called you out
4 to work on a Saturday or something Did he pay you
5 any extra money for doing that or --

6 A Yeah

7 Q -- did you just draw your 500? How
8 much --

9 A I mean, it depends on what I had to do and
10 how much time I had involved in that day If I had
11 to go out for a couple of hours, I mean, he might
12 would give me an extra 50, something like that I
13 mean, depends on the work and how long I stayed out
14 If I stayed out the whole Saturday, it was another
15 100 bucks

16 Q Okay

17 A If half -- half, it was 50

18 Q Okay Do you recall telling some of the
19 medical professionals up at UNC Hospital that this
20 was not work related? That it was a personal venture
21 that you were doing?

22 A No It was not personal to me

23 Q Okay If your medical records indicate
24 that that -- that you told them that, would you
25 disagree with that?

1 A I don't know what I told them when I was
2 up there because I -- they had me so doped up, and I
3 was in so much pain they -- there's no telling what I
4 told them

5 Q Okay

6 A But, you know, I mean, I don't know I
7 mean, I -- there ain't no telling what I said

8 Q Okay But if it's in those records, you
9 don't dispute that, do you?

10 A Well, probably not because I didn't
11 know -- I mean, you know, I didn't know what I was --
12 I didn't -- I wasn't in my straight mind

13 Q Okay Now, you said --

14 A You know, I wasn't in my straight mind

15 Q Okay You said on the date that this
16 happened you were on your way to a job in Quail -- I
17 think you said Quail Road?

18 A Quail Creek

19 Q Quail Creek Excuse me What kind of job
20 were you headed to?

21 A It was a -- it was a foreclosed house for
22 a bank he worked for And we was trying to get
23 every -- all the floor and the stuff back in it to
24 sell And we -- you know, we was kind of on --
25 getting to be on a deadline and we was having to

1 work -- you know, work on it to get it to where the
2 bank could sell it And that's what I was doing or
3 supposed to been doing

4 Q Okay Now, did Mr Roberts call you to
5 ask you to come help with the boat, or did you just
6 go --

7 A Yes, he did

8 Q -- out there to take Anthony Williams out
9 there?

10 A He wanted me to get those guys up there,
11 and he called -- that's what he wanted me to do
12 Yes he called me to bring those guys to the job that
13 morning, the -- the boat job to get them started
14 Then I'd go on to work

15 Q So who did you take out there besides
16 Anthony Williams?

17 A There was another guy, but he didn't see
18 anything that happened in the boat Because me and
19 Anthony Williams and Mike Roberts was in the boat
20 when it happened It was Don Strausser He -- he
21 come in He's one of my friends that I worked with
22 doing electrical work along with Tony Williams
23 There was two guys -- they -- they got laid off at
24 the same time, and they was needing a little bit of
25 work And this -- when I talked to Mike and he said,

1 yeah, sure, bring them in to work on the boat and
2 that's what I did

3 Q Okay What is the business address for
4 Mike's business?

5 A It's 3334 New Road

6 Q Okay And where did this incident take
7 place?

8 A At his father's house I don't -- it's
9 Waccamaw Lane or Drive I don't know the physical
10 address

11 Q Okay But it's not one and the same
12 place?

13 A No

14 Q And did you go back to work for Mike after
15 this -- after you got out of the hospital?

16 A I tried but I couldn't do it I mean, I
17 tried to get out, but I didn't work I went -- I'd
18 come to his house and we'd go -- you know, he'd --
19 we'd ride around a little bit to jobs But I didn't
20 never get back to work I couldn't do it

21 Q Okay

22 A I tried it for a couple days and I had to
23 go back home and I couldn't stand it

24 Q Okay Now, did you hang out with
25 Mr Roberts --

1 A Yeah

2 Q -- other than work?

3 A Yeah We'd go hang out at his house He
4 had a little place behind his house that we'd hang
5 around and, you know, shoot crap You know, they
6 like to play guitar and stuff We'd get out there
7 and maybe drink a little bit, you know But, you
8 know, that was just

9 Q And did you know Mr Roberts before you
10 started working for him?

11 A I knew of him

12 Q Okay But you all became friends after
13 you started working for him?

14 A Yeah

15 Q Okay Did you start looking for work
16 anywhere before you were hired on with Reliable?

17 A No

18 Q No Was that the first job you started
19 looking for work?

20 A Uh-huh

21 Q I mean, after those two days, you tried to
22 go back to work for Mr Roberts?

23 A Yes I mean, I tried it because -- I
24 mean, I had bills and I had bills to pay But my
25 body couldn't -- wouldn't let me I couldn't do it

1 I mean, they told me I -- the doctor said I needed to
2 be out for a year because I couldn't be in the sun
3 Because all my -- all my scarring would darken and
4 wouldn't never lighten Just the heat Because my
5 arms, they do not sweat The sweat glands was burnt
6 out of them They won't sweat at all where the
7 scarring is

8 Q What kind of work did you do before you
9 went to work with Mr Roberts?

10 A I was an electrician

11 Q Okay And did you get laid off from your
12 job as an electrician?

13 A Uh-huh The work was getting slow, and
14 they just laid a bunch of people off

15 Q Okay Who were you working for?

16 A Electric Service of South Carolina

17 Q Okay And how long were you out of work
18 before you started working with Mr. Roberts?

19 A About three or four months

20 Q How did Mr Roberts pay you? Did he pay
21 you in cash or with a check?

22 A Cash

23 Q Okay Now, during the time that you were
24 out of work from electrical -- you say Electrical
25 Service of South Carolina?

1 A Electric, yeah Uh-huh

2 Q Were you doing unemployment?

3 A Yeah

4 Q Okay Did you continue to draw
5 unemployment once you started working for
6 Mr Roberts?

7 A About

8 Q I'm sorry?

9 A It was I think -- about two to three weeks
10 into working with him I did

11 Q Okay Now, you said that you paid Ryan,
12 James and Bobby occasionally What -- how did that
13 come to be?

14 A Because he'd be doing something at home or
15 whatever he'd be doing and he would split their money
16 up that he was going to give them in separate --
17 separate stacks And said give this to this person,
18 this one and this one And that's how, you know, on
19 a Friday occasionally

20 MS. GLOVER Okay I don't have any other
21 questions

22 THE COURT. All right Mr Roberts

23 CROSS-EXAMINATION

24 BY MR ROBERTS

25 Q I paid you \$500 a week, right?

1 A Yeah

2 Q What about on the -- now, you say that
3 just because I paid you \$500 a week, that Monday
4 through Friday anytime you were with me you were on
5 the clock, right?

6 A After certain hours

7 Q Do you think you were still on the clock
8 on them days we knocked off at 12 00 o'clock, went to
9 the river and rode down there and drank beer before
10 we got home from work?

11 A That's up to you

12 Q Were you on the clock?

13 A Yeah, because you paid me

14 Q I paid you \$500 a week

15 A Yeah That includes whether --

16 Q On the days you were sick, didn't I still
17 pay you \$500 a week?

18 A Whether I was working or not Sir, you
19 was --

20 Q When you were out --

21 A -- paying me \$500 a week

22 THE COURT· All right, guys

23 BY MR ROBERTS

24 Q When you were out with the flu, didn't I
25 still pay you \$500 that week?

1 A Yeah Apparently that's how you done it
2 I did not -- I did not ask for it

3 Q Not for everybody No, you did not ask
4 for it I paid you \$500 a week We messed with
5 boats together We were friends Did I -- do you --
6 do you have a boat in your yard that came out of a
7 boat deal me and you worked together that you still
8 ain't got the title for?

9 A Yeah Because I needed a new boat and I
10 was paying for it until all this happened

11 MR ROBERTS· No further questions

12 THE WITNESS Don't think it was for free,
13 sir

14 THE COURT: All right Any other
15 questions, Mr Connell?

16 MR CONNELL Just one

17 REDIRECT EXAMINATION

18 BY MR CONNELL

19 Q August the 9th, 2013 was a Friday that
20 this happened?

21 A Yes, sir

22 Q And you worked Monday through Friday?

23 A Yes, sir

24 MR. CONNELL. All right Thank you

25 THE COURT. Ms Glover

1 MS. GLOVER I don't have any other
2 questions

3 THE COURT Anything else, sir?

4 MS. GLOVER. Anything else?

5 THE COURT: All right You can step down
6 (Witness excused)

7 THE COURT. Other witnesses, Mr Connell?

8 MR CONNELL No, Your Honor We would
9 just ask you take judicial notice of the fact that
10 August 9th, 2013 was a Friday

11 THE COURT. So noted Ms Glover

12 MS. GLOVER Commissioner, I'd like to
13 call Mr Roberts

14 THE COURT. Mr Roberts

15 MR ROBERTS Yes, sir

16 THE COURT Come up and have a seat
17 Remind you, you're already under oath

18 MR ROBERTS. Okay

19 THE COURT But you are still under oath

20 MR. ROBERTS Yes, sir

21 THE COURT: All right

22 MR ROBERTS Yes, sir

23 THE COURT State your name for the
24 record

25 MR ROBERTS Michael Roberts

1 THE COURT All right Thank you, sir

2 Ms. Glover

3 DIRECT EXAMINATION

4 BY MS GLOVER

5 Q Mr Roberts, are you a business owner here
6 in town?

7 A Yes, ma'am

8 Q What is the name of your business?

9 A Roberts Home Repair

10 Q Okay And what is the business address
11 for Roberts Home Repair?

12 A 3334 New Road

13 Q Okay That's here in Conway?

14 A Yes, ma'am

15 Q And how long have you had that business?

16 A Going on five years

17 Q Okay And what is the primary function of
18 that business?

19 A We do home repairs We mostly only work
20 for financial institutions of some sort Due to the
21 fact of the way the economy is, sometimes it's hard
22 to collect the money from an individual

23 Q Okay So you mainly work on houses that
24 are primarily like bank foreclosures?

25 A Foreclosed house, foreclosed rental

1 corporations We work on some -- we got a -- like a
2 foreclosed rental corporation we work on We keep it
3 up, do the maintenance to it, you know, because
4 they're renting it But it's on the market as a
5 corporation for sale

6 Q Okay

7 A We work on foreclosed properties

8 Q Does your business ever do any work on
9 boats?

10 A No, ma'am

11 Q And you know Mr Todd?

12 A Yes, ma'am

13 Q Okay How long have you known Mr Todd?

14 A I've known Kevin off and on I mean, for
15 years I didn't really hang out with him all the time
16 until he started coming to work with me But, I
17 mean, I've known him -- I -- his brother is one of my
18 best friends

19 Q Okay But since he started working for
20 you, you two developed a friendship?

21 A I mean, I really liked Kevin He come to
22 work with me We -- the first week -- the first week
23 he come to work with me he ended up coming over to
24 the house one -- one night that week And we hung
25 out and cooked and drank beer and hang around and

65

1 build a fire and just -- we was both -- we both liked
2 the same things We both liked, you know, hanging
3 out like that And so we kind of -- it was like
4 little dam at -- "Old Dam at Little Lamb " I mean,
5 we just -- we hung out together We like -- we
6 enjoyed each other

7 Q Okay Now, did you and Mr Todd have
8 occasion to work on boats on the side?

9 A We messed with boats on the side He -- I
10 went to his house one Saturday and helped him put a
11 motor on his boat We -- you know, we messed with
12 boats We both liked the water, we both like to
13 fish, we both got little boys, you know I mean, we
14 messed with boats I've always messed with boats

15 Q Okay Now, have you and Mr Todd and both
16 of your wives taken trips together on boats that you
17 guys have worked on?

18 A Yes, ma'am

19 Q About how many times have y'all done that?

20 A We went out of town overnight one time
21 One time we went to Bucksport one night on the boat
22 Went after dark and rode on a big ski boat we had
23 Me and Kevin has took -- Lord knows we've been to the
24 river bunches of times together We'd go during the
25 day You know what I mean? Like I -- like I told --

1 well, some days, you know, we would -- once we had
2 made enough money Like if we worked until 12 00
3 o'clock and I had enough hours to bill for it and
4 we -- I had made some money and I felt comfortable
5 doing it, we might knock off right then and go to the
6 river You know what I mean? Just load up Load
7 the cooler up and go to the river and stay until his
8 wife got off work or until he had to go get his
9 little boy

10 Q Okay And did you -- was Mr Todd at your
11 beck and call?

12 A He was my right-hand man I trusted him
13 because I knew I could leave him money He never
14 tried to steal nothing from me or nothing like that
15 So when things come that needed -- I needed somebody
16 that I trusted, I called him I -- I'm not going to
17 say he was at my beck and call You know what I
18 mean? I knew there were certain times that there
19 weren't no sense in calling him, you know, because he
20 weren't coming But, yeah, he did -- he did a lot
21 for me because I trusted him He -- like I say, and
22 I've told you this before, he was my -- at the time,
23 he was my best friend I mean, we -- yeah I mean,
24 I talked to him every day, and on the weekends I
25 still talked to him every day His wife used to pick

1 on me His wife and my wife said we had a bro-mance
2 because we talked -- we talked a couple times every
3 single day

4 Q Now, let's go to the date that this
5 happened on August the 9th of 2013 Can you tell us
6 about that date?

7 A We were working on a house like he said
8 We had a -- we had a deadline that was coming up, and
9 we were fixing to get in a bind And we were trying
10 to get that boat ready, and me and him had talked
11 about taking it to Wilmington We had took another
12 boat to Wilmington before

13 And that morning we got up to go to work
14 and we -- he had -- like he said, he had a guy right
15 there that needed -- needed some work And, you
16 know, occasionally somebody come along that needed a
17 day's work If it was where I could oblige them and
18 maybe pay them to do something, I would You know
19 what I mean? If somebody was in a bind, I still do
20 that If somebody comes along, I try to do that
21 But that day he said he had a couple buddies right
22 here that needed something to do One of them was
23 going to wash the boat and the other one was going to
24 go through and check the fuses and all in it since it
25 had been brought up out the water

1 And so we went over there And I had
2 called the chemical company on 905 They had brought
3 us some drums to put the bad gas in They were going
4 to remove it from the property We went over there
5 The afternoon before after work, me and him had
6 pumped some of it out And like -- like Holmes had
7 said earlier, we was trying to put it into a plastic
8 drum and that weren't going to work And then we
9 found out it was illegal to haul it on the trailer in
10 that plastic drum So we said, now scratch this So
11 we went and got the metal drums Well, we didn't
12 have no problem pumping it the day before So while
13 Kevin was there, I said let's stick this pump in the
14 thing real quick right here and let it be pumping out
15 and you can go ahead to work And the next thing I
16 knew, there was a fire

17 Q Okay Now, in regards to Anthony
18 Williams, he testified that he came to work -- did
19 you call Kevin and tell Kevin to bring some people
20 with him --

21 A Kevin said he had two friends that needed
22 to work And like I said before, anytime -- if I
23 can -- you know, if somebody comes along especially
24 people with a family I mean, I got kids I know
25 how it is If they -- if I can work them a day and

1 pay them and they -- you know what I mean to try to
2 help them out, then I'll try to do that

3 Q Now, did you have any conversation with
4 Mr Williams about him possibly continuing to work
5 for you?

6 A I had told him that if he done a good job,
7 if something came up down the line where I might
8 could use him again, that I would, you know I mean,
9 and if another day would have came up where I could
10 have used him for a day and helped him out, you know,
11 and he couldn't find a job, I would have helped him
12 out again But it weren't not no long-term
13 employment or nothing like that We hadn't talked
14 about that I don't talk to nobody about that until
15 I see what they're going to do

16 Q There was no promise for future work?

17 A No, ma'am I don't make anybody a promise
18 until I've seen them work and I know how they going
19 to do things

20 Q Okay Now, in regards to the other people
21 whom they've testified were you employees, Bobby

22 A Bobby Days worked for me full time at the
23 time

24 Q Okay At the time How long did Bobby
25 work for you?

1 A Bobby's worked for me off and on He's
2 quit and come back I don't know how long he'd been
3 here that time He's done quit again since then and
4 come back and quit again I think he might have been
5 here maybe three months or something if that long

6 Q How long would he work and then quit?

7 A He might work two or three weeks sometimes
8 and quit, he might work three months and quit, he
9 might quit the next day Just according to how it
10 struck him You know, he'd all -- he'd just come
11 back when he didn't have nothing to do And he was
12 washed up and needed somebody to help him, he'd call
13 me

14 Q Okay And what about James?

15 A James Flawn was not working for me at the
16 time of it He had already quit He actually had a
17 confrontation with Bobby and that's why he did quit
18 James Flawn did not work for me at the time, but he
19 had worked for me in the past

20 Q Okay How long before this accident
21 happened and James quit working for you?

22 A Several weeks

23 Q Okay And Ryan?

24 A Ryan Harrelson never worked for me by the
25 hour I subbed work around He would be there a lot

1 of times Ryan would be around a lot Me and Ryan
2 has been friends for 20 years And Ryan would be
3 around sometimes But I sub-worked Ryan I did not
4 pay Ryan by the hour or by the day or anything like
5 that

6 Q Okay So you basically subbed work to him
7 like you subbed work to Holmes Adams?

8 A Yes, ma'am

9 Q Okay So you --

10 A I subbed jobs to Ryan I subbed -- I
11 subbed him a cabinet job one time putting in
12 cabinets I subbed him little electrical trim outs
13 and stuff like that, you know

14 Q Okay And Mr Adams testified that you
15 would give him a job assignment and that he would do
16 it as he saw fit, then you would come and say yea or
17 nay and then pay him?

18 A Right I didn't care how they done it
19 As long as the end product was what it was supposed
20 to be That's the way a subcontract worked

21 Q So you didn't stand over Mr Adams or Ryan
22 when they were doing the jobs?

23 A I didn't care how long it took them to do
24 it I was going to get the same price whether it
25 took them an hour or three days

1 Q Okay And what about Kevin?

2 A Kevin worked for me by the hour

3 Q Okay

4 A I mean, or not by the hour Kevin was on
5 salary I mean, he worked -- I paid him \$500 a week
6 regardless

7 Q Okay

8 A If he was out sick, I still paid him \$500
9 If we decided to knockoff at 12 00 o'clock three days
10 right there in the middle of the week and go to the
11 river, I still paid him \$500 If we went to go mess
12 with a boat somewhere or another You know, during
13 the day we went and bought parts for his boat Or
14 the day he bought his boat was during the week He
15 bought his boat on a Wednesday We worked it out on
16 a deal where I'd bought another boat, and he ended up
17 with that one It was on a Wednesday right during
18 the middle of the week, and I still paid him \$500
19 that week I paid him \$500 every week

20 Q So everybody that was on salary, you paid
21 them \$500 a week whether they were --

22 A Not everybody

23 Q I said everybody that was on salary

24 A No, ma'am

25 Q Okay Who --

1 A Kevin Todd was on salary Nobody else was
2 like that Everybody else worked by the hour And
3 if they knocked off at 4 30, then they got paid till
4 4 30

5 Q Okay

6 A Kevin -- like I said, Kevin was my friend
7 I knew Kevin's youngin I knew his wife I paid
8 Kevin the same thing every Friday because he had to
9 have the money to pay his bills And Kevin, like I
10 said before, was very honest I knew I could count
11 on him He was always dependable to come to work
12 He was always on time, you know And so I paid Kevin
13 regardless because I felt like Kevin was an asset to
14 me

15 Q Okay So you paid him when he was out
16 sick?

17 A I paid him when he was out sick

18 Q And you paid him when you guys finished
19 work before the end of the day?

20 A Oh, yeah I've paid him in the middle of
21 the week before on a Wednesday when he needed the
22 money because he had a bill he had to pay and he
23 needed his paycheck early I mean, I'd pay him like
24 on a Wednesday and still pay him for Thursday and
25 Friday even though he ain't worked it yet Because I

1 knew he was going to come and he needed the money

2 Q Okay

3 A Friday weren't always a payday Sometimes
4 I paid him on Thursday I have paid him on Monday
5 You know what I'm saying? It's just if he needed
6 something, he'd always come to me and I'd try to help
7 him

8 Q Okay Now, you were injured in this
9 explosion as well, right?

10 A Yes, ma'am

11 Q Okay And how are you doing?

12 A I'm doing good I mean, I still got scars
13 and one of my hands is still a little bit tight
14 But, I mean, I'm doing good

15 Q Okay Now, have you -- now, as far as the
16 money that you paid Kevin and/or his family, you
17 still say it was up to \$5000?

18 A I'm saying it was eight weeks

19 Q Okay You gave him --

20 A I'm saying

21 Q -- eight weeks -- you gave him \$500 --

22 A And I had gave him some other money, too

23 Q Okay So at a minimum you paid him \$500
24 for eight weeks?

25 A Yeah

1 Q Okay Now, was Kevin Todd doing work for
2 Mike's Home Repair when this boat explosion occurred?

3 A No We were stopped at my parents' house
4 We were on the way to the job We stopped at my
5 parents' house to mess with that boat Like I said,
6 he had them two buddies that needed to work I was
7 going to let them work on the boat that day I'd had
8 a good week, and I had some extra money, so I was
9 going to let -- pay them to do it so that I wouldn't
10 end up over there doing it because I was wanting to
11 take it out that weekend

12 MS. GLOVER. Okay I don't have any other
13 questions

14 THE COURT Mr Connell

15 CROSS-EXAMINATION

16 BY MR CONNELL

17 Q He was on a salary on the day the accident
18 happened, is that right?

19 A He was on salary every day

20 Q All right And that was a Friday, was it
21 not?

22 A I thought it was on a Thursday, but it
23 might have been on a Friday

24 Q All right What time did you expect him
25 to come to work?

1 A He come every morning He come up at the
2 house He'd be there sometime between 7 00 and 7 15
3 every day

4 Q Pick your child up and take him to --

5 A He used to take my little -- yes He took
6 my little boy to school a lot of days My little boy
7 loved Kevin to death

8 Q All right Now, did you bring any records
9 for Mr. Days and how you paid him?

10 A No, sir I just told you he worked for me
11 by the hour

12 Q All right Did you bring any records, any
13 check stubs, any of that nature?

14 A No, sir

15 Q All right Did you bring any records for
16 Ryan Harrelson?

17 A No, sir

18 Q All right Did you bring any records for
19 James Flawn?

20 A No, sir

21 Q And do you have any records as to what you
22 said you paid Kevin?

23 A No, sir

24 Q Do you -- I think you said you paid \$5000,
25 but now you're saying you paid him four? Is that --

1 A I said I gave him other money I remember
2 paying him for eight weeks is four I said I had
3 gave him extra money, too

4 Q Okay Well, it's important to us to know
5 what you -- exactly the amount

6 A I don't remember the exact amount So if
7 you want to call it 4000 and we can all be safe, I'll
8 call it 4000 because I know it was that much But I
9 know it was more than that

10 Q All right Did you pay it all to him
11 directly?

12 A No, sir, I did not pay it all to him
13 directly

14 Q Did you pay it to his wife?

15 A I gave his wife the money one time I
16 gave his daddy the money a couple of times I went
17 to his house myself one time, and he weren't there
18 So I gave it to his daddy and he took it across the
19 street to him after he come home

20 Q Was it a paycheck or --

21 A No, sir It was \$500 in cash But I
22 really don't think he's disputing that Mr Jackie
23 gave him the money

24 Q And you authorized him to get these other
25 people to work on the boat, is that right, that day?

1 A Yes, sir

2 Q And you were going to pay them, is that
3 right?

4 A Yes, sir

5 Q How much were you going to pay them to
6 work on the boat?

7 A We hadn't talked about it Just kind of
8 like if you pay somebody to wash your car You know
9 what I'm saying? The same thing

10 Q You didn't get a price up front?

11 A No, sir

12 Q And there's no question, is there, that
13 Monday through Friday Kevin was getting paid \$500 a
14 week, right?

15 A There's no question that Kevin was on a
16 \$500 a week salary There is a question of whether
17 Monday through Friday he was always working Because
18 if he decided to knockoff earlier to run to his house
19 to do something, I let him do it If he decided he
20 didn't need to come -- he couldn't come to work until
21 a little bit later time, I let him do it When his
22 wife's dog was having puppies and he had to knockoff
23 in the middle of the day to check on them, I let that
24 happen

25 Q All right

1 A Yeah He worked for me Monday through
2 Friday, sometimes Saturday And like his wife said,
3 he has come and helped me on Sunday before But he
4 was on \$500 a week salary He was not on the clock
5 at all times Monday through Friday

6 Q And you weren't keeping the clock? It was
7 a \$500 -- \$500 you worked the week, right?

8 A Right

9 Q Now, on the day this particular incident
10 happened, you were with him, were you not?

11 A Uh-huh

12 Q And what time do you think it was in the
13 morning?

14 A That it happened?

15 Q Yes, sir

16 A I'm not sure Kind of like he said
17 earlier Now, it -- the way I took so much pain
18 medicine and everything after that, I ain't got a
19 clue what time it was

20 Q But you called him to come down there,
21 isn't that right?

22 A No, sir We left my house together and
23 stopped by there on the way to the job

24 Q You guys were in the truck together?

25 A Yeah We were riding together in his

1 truck

2 Q You wanted to make sure you got that boat
3 job started by getting some -- getting those people
4 working on what you wanted them to have done, didn't
5 you?

6 A I mean, I guess so I mean, the way
7 you're wording that like you're trying to say -- push
8 me in that I'm saying something I'm telling you --

9 Q I'm just

10 A -- me and Kevin messed with boats on the
11 side together all the time We stopped that morning
12 on the way to the job because he had a couple of guys
13 that needed to work that day No different than if
14 you had a guy that was going to come to your house
15 and wash your car I was going to let him wash the
16 boat The other guy was going to check the fuses in
17 it They needed a day's work Me and Kevin stopped
18 by there on the way to the job that we were doing and
19 Kevin -- because Kevin knew the guys They were his
20 friends They needed help I was trying to help
21 them And we stopped by there that morning on the
22 way

23 Q True it was your boat, right?

24 A Yes, sir

25 Q And true you authorized Kevin to get some

1 people to work on it, correct?

2 A No I didn't authorize him to get some
3 people to work on it I authorized him to let his
4 two friends that had contacted him needing something
5 to do work on it

6 Q And it was on a Thursday or Friday?

7 A Yes, sir

8 Q Whichever day, you would agree he was on
9 salary that day?

10 A He was not on salary when we was there
11 working on that boat I will not agree to that

12 Q Did you take any money out?

13 A Sir?

14 Q Did you take any money out of his 500-week
15 salary because he was --

16 A I didn't take no money out of nothing for
17 his \$500 a week salary No different than me and him
18 went to the river drinking beer during the day

19 Q All right

20 A I weren't paying him for that, I promise
21 you

22 Q But you had him get two employee -- two
23 people working --

24 A I did not have him get two people He got
25 two people and asked me could he use them

1 Q Yeah Because you wanted to get the boat
2 finished, ready to go to the river?

3 A No, sir No, sir

4 Q Didn't you want to get the boat ready to
5 go to the river?

6 A I wanted to get the boat ready to go, but
7 I did not ask him to find nobody to help them He
8 weren't pushing to try to get that done for me
9 Those were his two friends that needed help And I
10 agreed to help them for him because he was my friend

11 Q Yes, sir And you also agreed to pay him,
12 right?

13 A I paid him every week regardless

14 MR CONNELL: Yes, sir That's what I
15 thought Okay Thank you

16 THE COURT REPORTER Excuse me a moment

17 (Off the record)

18 THE COURT All right Anything else you
19 want to add, Mr Roberts?

20 THE WITNESS: I just want to add that I --
21 you know, I'm not a legal adviser by no shape or
22 form I'm -- I don't understand a lot about what's
23 happening here But we were two friends that had fun
24 together on the side We played with toys together
25 on the side We worked hard and we played hard We

1 had four-wheelers and boats and we messed with stuff
2 together all the time He can -- however -- he can
3 word the questions however he wants to ask me But
4 I'm telling you in my own words, I paid him for
5 working on that job I made the money to pay him
6 with working on the job We messed with boats
7 together That was fun It was no different than
8 him stopping at my house that morning and helping me
9 get them -- or helping me get that fuel pumped out of
10 that tank It's no difference than the week before
11 or two weeks before that during the middle of the day
12 we had went to his house to work on his boat I was
13 still pay -- I mean, he was on -- he was on salary
14 then We were at his house working on his boat We
15 done stuff like that That had nothing to do with
16 Roberts Home Repair That's all I wanted to say
17 Working on boats, his boat, my boat, our boats, that
18 didn't have nothing to do with Roberts Homes Repair
19 and that's all I want to say about it

20 THE COURT. All right Any other
21 questions, Ms Glover?

22 REDIRECT EXAMINATION

23 BY MS GLOVER

24 Q What time did y'all get there to start
25 working on the boat? Do you recall?

1 A I'm not sure I could say He got to the
2 house normally around between 7 15 and 7 30 We left
3 shortly thereafter that We went -- you know, we
4 stopped by there We -- I imagine we was probably
5 there about 8 30 probably

6 Q Okay And so y'all -- were y'all -- did
7 y'all work on that until the explosion happened from
8 8 30 on?

9 A Uh-huh

10 THE COURT REPORTER. Is that a yes?

11 THE WITNESS Yes, ma'am I'm sorry

12 Yes

13 BY MS. GLOVER

14 Q And so the explosion occurred maybe like
15 around 11 00 o'clock or so or

16 A I'm thinking somewhere between 10 30 or
17 11 00 But thereagain, I can't be positive to the
18 moment Because, like I say, from the time of that
19 explosion until probably a week later, everything is
20 kind of like hazy

21 MS. GLOVER Okay Commissioner, I would
22 just ask -- refer you to the EMS Run Report with the
23 times that they were dispatched to the location

24 THE COURT All right Thank you

25 MS GLOVER: I don't have anything else

85

1 THE COURT: Mr Connell?

2 MR. CONNELL: No, Your Honor

3 THE COURT: All right Anything else,

4 Mr Roberts?

5 MR. ROBERTS: No, sir Thank you

6 THE COURT: All right You may step down

7 THE WITNESS: Thank you

8 (Witness excused)

9 THE COURT: Any other witnesses,
10 Ms Glover?

11 MS. GLOVER: No more witnesses,
12 Commissioner

13 THE COURT: All right Mr Roberts, you
14 have any other witnesses?

15 MR ROBERTS. No, sir

16 THE COURT: Then that concludes this
17 proceeding or this hearing

18 (The hearing concluded at 5 40 p m)
19
20
21
22
23
24
25

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1320600

KEVIN M. TODD, Employee,

Claimant,

vs.

DECISION AND AWARD

MIKE ROBERTS DBA MIKE ROBERTS
HOME REPAIR
Employer, and

S.C. UNINSURED EMPLOYERS FUND

Defendants.

HEARING:

Held in Conway, South Carolina,
on September 25, 2014

APPEARANCES:

Employee/Claimant represented by
Kelaher, Connell & Connor, PA of Myrtle Beach,
South Carolina, with Gene M. Connell, Jr.,
Esquire, appearing.

The Uninsured Employer appeared Pro Se.

The SC Uninsured Employers' Fund, Columbia,
South Carolina, with Lisa C. Glover, Esquire,
appearing.

PURPOSE OF THE HEARING:

To determine issues as set forth on WCC Forms
50 and 51 and all other issues under the
Regulations of the South Carolina Workers'
Compensation Commission.

OPINION AND AWARD:

Honorable Gene McCaskill, Commissioner

FILED:

March 30, 2015

APA SUBMISSIONS

The parties submitted the following medical records and documents without objection under the Administrative Procedures Act and Regulations of the Workers' Compensation Commission.

On behalf of the Claimant:

APA #	PROVIDER	DATES	PAGE NUMBERS
1	UNC Medical Records	8/09/13-08/23/13	1-192
2	UNC Medical Records	8/13/13-08/23/13	193-498
3	UNC Medical Records	8/09/13-08/23/13	499-684
4	Conway Fire Department	8/09/13	685-690

On behalf of the EMPLOYER and UEF:

	None		
--	------	--	--

STIPULATIONS

FIRST: This claim was heard before the undersigned Commissioner in accordance with notices timely and properly served upon all parties of interest.

SECOND: The South Carolina Workers' Compensation Commission has jurisdiction of the parties and the subject matter of this claim and venue is proper in Horry County.

THIRD: The uninsured Employer was subject to the South Carolina Workers' Compensation Act as of the date of the Claimant's injury and in violation by not having insurance.

FOURTH: The Commission's file was made part of the record with the exception of unstipulated medical records and self-serving declarations.

OBJECTIONS

No objections to jurisdiction, venue or APA submissions.

STATEMENT OF THE CASE

The Claimant filed a WCC Form 50 on February 28, 2014, alleging he sustained injuries by accident to his arms and torso arising out of and in the course of his employment on or about August 9, 2013. The Claimant contends he has an Average Weekly Wage of \$500.00 with a resulting Compensation Rate of \$333.33. The Claimant requests payment for past medical treatment. The Claimant requests temporary compensation for his period of temporary disability from August 9, 2013 through July 28, 2014. The Claimant contends he is has reached Maximum Medical Improvement and request an award for scarring.

The uninsured employer, Mike Roberts, did not file a Form 51 but did attend the hearing. Mr. Roberts appeared Pro Se. Upon questioning by the undersigned Mr. Roberts acknowledged understanding that he was given an opportunity to retain legal counsel at a prior hearing but failed to do. Mr. Roberts further acknowledged that his business is a sole proprietorship and not required to have legal counsel. Finally, Mr. Roberts acknowledged and agreed that he would represent himself.

The South Carolina Uninsured Employers' Fund filed a Form 51 on March 19, 2014 generally denying the claim. The Fund further denied the claim on the basis that this injury did not occur in the course and scope of Claimant's employment. This incident occurred while Claimant was engaged in a personal venture with his Employer.

REVIEW OF THE EVIDENCE

The Claimant submitted various documents and medical records into evidence pursuant to the APA. The Claimant called three witnesses to testify on his behalf before testifying himself. The Claimant first witness was Holmes Adams. Mr. Adams testified that he worked for Mike Roberts's dba Mike Roberts Home Repair, herein referred to as Employer, as a subcontractor for seven to eight months. He testified that the employer did work cleaning up houses that were bank foreclosures. Mr. Adams testified that he and the employer negotiated a price for each job before the work commenced. Mr. Adams testified that the employer assigned him a task and he would complete it. He further testified that the employer did not supervise his work but inspected it upon completion.

Mr. Adams also testified that the employer had three other employees besides the Claimant. Mr. Adams testified that Bobby Day, Ryan Harrelson and James Flawn worked for the Employer. Mr. Adams testified that he was not present on the date of accident but previously did some mechanical work on the boat in question. Mr. Adams currently works for Chevrolet Cadillac in Myrtle Beach.

Michelle Bratcher testified next. She is the girlfriend of the Claimant. Ms. Bratcher testified that the Claimant worked for the employer along with Bobby Day, Ryan Harrelson and James Flawn. Ms. Bratcher admitted on cross examination that she did not personally know the employment relationship between these persons and the employer. Ms. Bratcher testified that Claimant's job duties were mainly home repairs but did anything the employer asked of him. For example, Claimant went on service calls after hours. He also took the employer's son to school.

Ms. Bratcher testified that Claimant helped the employer work on boats but that

was not his regular job. She further testified that she and the Claimant socialized with the employer and his family outside of work to include taking boat trips. Ms. Bratcher further testified the employer gave Claimant \$1700.00 after the accident. Finally, Ms. Bratcher testified that the Claimant was out of work from the date of accident until July 28, 2014. She testified that the Claimant is currently working for Reliable Electric.

Anthony Renard Williams testified next. Mr. Williams testified that he was called by the Claimant. The Claimant told him that the Defendant/Employer needed help doing some electrical work on his boat. Mr. Williams testified that he is an electrician. Mr. Williams testified that he was to be paid for working on the date of accident and if things worked out he would possibly do more work for Defendant/Employer as he was unemployed. Mr. Williams testified that he was present when the explosion occurred and was injured.

The Claimant testified on his behalf. The Claimant is thirty-six (36) years old. The Claimant resides with girlfriend Michelle Bratcher and their son. The Claimant's work history work is an electrician.

The Claimant testified that Mike Roberts was his boss/supervisor. He testified that they were personal friends as well. Claimant testified that there were at least four (4) employees working for the Defendant Company. Claimant testified that his job duties included painting, roofing, plumbing and anything else he was asked to do. Claimant also testified that he was always on the clock when he was with Defendant/Employer. This included while working on boats with the Defendant/Employer. Claimant also testified that he paid his co-workers on several occasions at the behest of Mr. Roberts.

The Claimant testified he was hurt while working for the uninsured Defendant/Employer on Friday, June 14, 2014. The Claimant testified that he along with Anthony Williams and Mike Roberts were trying to clean up a boat owned by Defendant/Employer. The boat was pulled out of the river and had gas in the tank. The boat was located in the river behind the Defendant/Employers' fathers home and not on a jobsite. Claimant testified they were trying to pump the gas out of the tank when the explosion occurred. Claimant testified that he was burned on his left arm just above the elbow down to his fingertips and on the right arm just above the elbow down to his wrist.

Claimant testified that he was hospitalized at the University of North Carolina Hospital from the date of accident until August 23, 2013. Claimant underwent several skin grafts. Claimant testified that while he was hospitalized and out of work Defendant/Employer paid him a total of \$1,700.00.

Claimant testified that he returned to work for two days but could not do the work. Claimant further testified that he is currently working as an electrician with Reliable Electric. He started this job on July 28, 2014. Claimant testified that he did not seek other employment between the time he tried to return to work with the Defendant/Employer and securing this job.

Claimant testified that he is currently having problems with pain and skin tightness.

On cross-examination, the Claimant testified that he worked on boats with the Defendant/Employer on five (5) occasions. He also testified that he took boat trips with Defendant/Employer along with their spouses.

Mike Roberts, owner of Mike Roberts's dba Mike Roberts Home Repair, testified on

his behalf. Mr. Roberts testified that he has been in business for about five years. He further testified that the primary function of the business is to do repair and/or maintenance work on homes and rental properties owned by financial institutions. The business does not do any repairs to boats.

Mr. Roberts testified that Claimant worked for him in the home repair business. Mr. Roberts testified that he and Claimant became personal friends as they worked together. Mr. Roberts further testified that he and the Claimant worked on boats owned by both parties as personal ventures. Mr. Roberts testified that they took trips together on the boats once they were repaired.

Mr. Roberts testified that he paid the Claimant a salary of Five Hundred dollars (\$500.00) per week. Mr. Roberts further testified that the Claimant was the only employee who was on salary. He paid everyone else an hourly wage. He also testified that he paid the Claimant his weekly salary even if they finished work early or if the Claimant was out sick.

Mr. Roberts testified that Bobby Days was an hourly employee at the time of the accident. He further testified that James Flawn was not employed on the date of accident. He quit several weeks before the date of accident due to a confrontation with Bobby Days. Mr. Roberts testified that Anthony Holmes and Ryan Harrelson were subcontractors.

Mr. Roberts testified that on the date of accident he and the Claimant were on the way to a job when they decided to stop by his father's house and work on the boat. Mr. Roberts contends they were not engaged in any work for Mike Robert's Home Repair. Mr. Roberts testified that while he was trying to pump gas from the tank of the boat into a

metal drum an explosion occurred. Mr. Roberts testified that he suffered burns to his arms and hands.

Mr. Roberts testified that he gave the Claimant at least Four Thousand dollars (\$4,000.00) while he was hospitalized and out of work. Mr. Roberts testified that he gave the Claimant or other family members Five Hundred dollars (\$500.00) per week for eight (8) weeks.

FINDINGS OF FACT

After due consideration of the claim and defenses and after reviewing all the evidence contained in the record, the following findings of fact as required under §42-17-40, South Carolina Code of Laws, 1976 as amended, are hereinafter set forth:

FIRST: The Claimant alleges that he suffered severe burns arising out of and within the course and scope of his employment on August 9, 2013.

SECOND: The Defendant/Employer asserts that the Claimant's injuries were not the result of a work-related accident.

THIRD: The Defendant/Employer, who was advised of his right to counsel, represented himself.

FOURTH: There is no dispute in the case as to the mechanism of the injury. The Claimant was severely burned working on a boat belonging to the Defendant on August 9, 2013.

FIFTH: The Claimant was air-lifted to and treated at the University of North Carolina Burn Center where he spent a number of weeks recovering.

SIXTH: The question at bar at this hearing was whether the work on the boat was in the course and scope of the Claimant's employment by the Defendant/Employer.

SEVENTH: The Claimant's position was that he was paid a salary of \$500.00 per week by the Defendant/Employer and anything the Defendant/Employer asked him to do could be considered work because he paid him a salary.

EIGHTH: The exchange between the Claimant and the Defendant/Employer when the Defendant Employer cross-examined the Claimant is illustrative of that point.

Q: What about on the-now, you say that just because I paid you \$500.00 a week, that Monday through Friday anytime you were with me you were on the clock; right?

A: After certain hours.

Q: Do you think you were still on the clock on them days we knocked off at 12:00 o'clock, went to the river and rode down there and drank beer before we got home from work?

A: That's up to you.

Q: Were you on the clock?

A: Yeah, because you paid me.

(Transcript, page 60, lines 2-12)

NINTH: Based on the testimony the Claimant, the Claimant's girlfriend-Michelle Bratcher, Holmes Adams, and the Defendant, it is clear that the Claimant not only worked for the Defendant/Employer, the two interacted socially outside of work. The extent of that interaction is subject to interpretation, but they clearly were interacting socially

before this accident.

TENTH: For me to believe the Claimant, I have to believe that all the times he spent with the Defendant/Employer was time for which he was paid. That conclusion is simply not supported by the facts.

ELEVENTH: The Claimant and Defendant/Employer took at least one boat trip-on a different boat-with their mates. If the Defendant/Employer is to be believed-and I do as to this fact-the Claimant and the Defendant spent additional time together on and around boats that was not work time.

TWELVETH: The Defendant/Employer's business is Mike Robert's Home Repair. Work related to that business has nexus to home repair and maintenance, not working on boats.

THIRTEENTH: The houses that the business worked on were owned by financial institutions. The Defendant/Employer personally owned this boat.

FOURTEENTH: The Defendant/Employer paid Holmes Adams and Anthony Williams to work on the boat that exploded. Mr. Adams is a subcontractor who also works on houses for the Defendant/Employer. Mr. Williams was contracted for an electrical job on the boat and was present and injured in the explosion. That was the first time he had worked for the Defendant/Employer. He testified that he was never paid for that work. (The Claimant, Defendant/Employer and Mr. Williams were all injured in the explosion. The Claimant's injuries were the most serious). It is interesting to note that Mr. Williams and the Claimant both now work for the same employer.

FIFTEENTH: There is no testimony in this case that anyone other than the Claimant was paid a salary by the Defendant/Employer.

SIXTEENTH: There is a note in the record from Monika C. Atansesian who is a social worker at UNC Medical Center which reads in part, "Pt. is a 35yo Caucasian male admitted to burn surgery service on 8/9/13 for treatment of 10% second degree flash burns to his bilateral upper and lower extremities (L>R) sustained when he was working on his boat's engine and there was a gas fire followed by an explosion that injured pt. Pt. stated that they been salvaging the boat from the bottom of the river and were drying off the engine etc, and so the explosion was completely unexpected. Pt. stated he was doing this on his personal time and was not working..."

SEVENTEENTH: The Claimant contends he was on some much medication, he could not remember what he said.

EIGHTEENTH: This case comes down to who and what to believe.

NINETEENTH: While I do not believe everything the Defendant said, his account is the more believable as to the facts of this case.

TWENTIETH: The Claimant has the burden of proof since this is a denied claim. When I consider the evidence as a whole, the Claimant simply has not met his burden. The Claimant failed to prove that he was working for the Defendant/Employer's home repair business at the time of the accident; and that what he was doing at the time of the explosion was in the course and scope of his employment.

TWENTY FIRST: These finding are based on the testimony and the record when reviewed as a whole.

TWENTY SECOND: All benefits under the South Carolina Workers' Compensation Act are hereby denied.

CONCLUSIONS OF LAW

After due consideration of the claim and defenses and after reviewing all the evidence contained in the record, the following Conclusions of Law as required under §42-17-70, South Carolina Code of Laws, 1976 as amended, are hereinafter set forth:

FIRST: The burden of proof applicable to a claim for Workers' Compensation benefits is the preponderance of the evidence. The Claimant must establish by a preponderance of the evidence the facts that will entitle him to an award. Walsh v. U.S. Rubber Company, 120 S.E. 2d 685 (1961); Herndon v. Morgan Mills, Inc., 143 S.E. 2d 376 (1965). The Claimant did not meet his burden of proof in establishing his claim by a preponderance of the evidence that he was injured in the course and scope of his employment as outlined in section 42-1-160.

ORDER AND AWARD

Based upon the above Findings of Fact and Conclusions of Law it is hereby

ORDERED, ADJUDGED AND DECREED the Claimant, Kevin Michael Todd, failed to prove by a preponderance of the evidence that he suffered compensable injuries while in the course and scope of employment as outlined in section 42-1-160. It is further,

ORDERED, ADJUDGED AND DECREED the Claimant, Kevin Michael Todd, claim for benefits under the South Carolina Workers' Compensation Act is DENIED AND DISMISSED with prejudice subject to his appellate rights.

IT IS SO ORDERED.

No Hearing costs are assessed in this matter.


Commissioner Gene McCaskill

Cc: Gene Connell, Jr., Esquire
Lisa Glover, Esquire
Mike Roberts dba Mike Roberts Home Repair

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

March 30, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W C C FILE NO 1320600

RECEIVED
JUN 01 2016
SC Court of Appeals

KEVIN M TODD

EMPLOYEE/CLAIMANT/APPELLANT

V

MICHAEL ROBERTS dba
MICHAEL ROBERTS HOME REPAIR

EMPLOYER/DEFENDANT/RESPONDENT

AND

S C UNINSURED EMPLOYERS' FUND, DEFENDANT/RESPONDENT

Appellant Panel Review held in Columbia, South Carolina on July
20, 2015, per notices timely and properly served on all parties of
interest

Appellate Panel Decision and Order filed

January 12th, 2016

APPEARANCES

Claimant/Respondent, represented by Gene M
Connell, Jr , Esquire, of Surfside Beach, South
Carolina

Defendant/Employer did not make an appearance

Defendant/Respondent South Carolina Uninsured
Employers' Fund represented by Lisa C Glover, of
Columbia, South Carolina

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Ms. Bratcher testified that Claimant helped the employer work on boats but that was not his regular job. She further testified that she and the Claimant socialized with the employer and his family outside of work to include taking boat trips. Ms. Bratcher further testified the employer gave Claimant \$1700.00 after the accident. Finally, Ms. Bratcher testified that the Claimant was out of work from the date of accident until July 28, 2014. She testified that the

Claimant is currently working for Reliable Electric

Anthony Renard Williams testified next. Mr. Williams testified that he was called by the Claimant. The Claimant told him that the Defendant/Employer needed help doing some electrical work on his boat. Mr. Williams testified that he is an electrician. Mr. Williams testified that he was to be paid for working on the date of accident and if things worked out he would possibly do more work for Defendant/Employer as he was unemployed. Mr. Williams testified that he was present when the explosion occurred and was injured.

The Claimant testified on his behalf. The Claimant is thirty-six (36) years old. The Claimant resides with girlfriend Michelle Bratcher and their son. The Claimant's work history work is an electrician.

The Claimant testified that Mike Roberts was his boss/supervisor. He testified that they were personal friends as well. Claimant testified that there were at least four (4) employees working for the Defendant Company. Claimant testified that his job duties included painting, roofing, plumbing and anything else he was asked to do. Claimant also testified that he was always on the clock when he was with Defendant/Employer. This included while working on boats with the Defendant/Employer. Claimant also testified that he paid his co-workers on several occasions at the behest of Mr. Roberts.

The Claimant testified he was hurt while working for the uninsured Defendant/Employer on Friday, June 14, 2014. The Claimant testified that he along with Anthony Williams and Mike Roberts were trying to clean up a boat owned by Defendant/Employer. The boat was pulled out of the river and had gas in the tank. The boat was located in the river behind the Defendant/Employers' fathers home and not on a jobsite. Claimant testified they were trying to pump the gas out of the tank when the explosion occurred. Claimant testified that he was

burned on his left arm just above the elbow down to his fingertips and on the right arm just above the elbow down to his wrist

Claimant testified that he was hospitalized at the University of North Carolina Hospital from the date of accident until August 23, 2013. Claimant underwent several skin grafts. Claimant testified that while he was hospitalized and out of work Defendant/Employer paid him a total of \$1,700.00.

Claimant testified that he returned to work for two days but could not do the work. Claimant further testified that he is currently working as an electrician with Reliable Electric. He started this job on July 28, 2014. Claimant testified that he did not seek other employment between the time he tried to return to work with the Defendant/Employer and securing this job.

Claimant testified that he is currently having problems with pain and skin tightness.

On cross-examination, the Claimant testified that he worked on boats with the Defendant/Employer on five (5) occasions. He also testified that he took boat trips with Defendant/Employer along with their spouses.

Mike Roberts, owner of Mike Roberts's dba Mike Roberts Home Repair, testified on his behalf. Mr. Roberts testified that he has been in business for about five years. He further testified that the primary function of the business is to do repair and/or maintenance work on homes and rental properties owned by financial institutions. The business does not do any repairs to boats.

Mr. Roberts testified that Claimant worked for him in the home repair business. Mr. Roberts testified that he and Claimant became personal friends as they worked together. Mr. Roberts further testified that he and the Claimant worked on boats owned by both parties as

personal ventures Mr Roberts testified that they took trips together on the boats once they were repaired

Mr Roberts testified that he paid the Claimant a salary of Five Hundred dollars (\$500 00) per week Mr Roberts further testified that the Claimant was the only employee who was on salary He paid everyone else an hourly wage He also testified that he paid the Claimant his weekly salary even if they finished work early or if the Claimant was out sick

Mr Roberts testified that Bobby Days was an hourly employee at the time of the accident He further testified that James Flawn was not employed on the date of accident He quit several weeks before the date of accident due to a confrontation with Bobby Days Mr Roberts testified that Anthony Holmes and Ryan Harrelson were subcontractors

Mr Roberts testified that on the date of accident he and the Claimant were on the way to a job when they decided to stop by his father's house and work on the boat Mr Roberts contends they were not engaged in any work for Mike Robert's Home Repair Mr Roberts testified that while he was trying to pump gas from the tank of the boat into a metal drum an explosion occurred Mr Roberts testified that he suffered burns to his arms and hands

Mr Roberts testified that he gave the Claimant at least Four Thousand dollars (\$4,000 00) while he was hospitalized and out of work Mr Roberts testified that he gave the Claimant or other family members Five Hundred dollars (\$500 00) per week for eight (8) weeks

FINDING OF FACTS

After due consideration of the claim and defenses and after reviewing all the evidence contained in the record, I make the following findings of fact as required under §42-17-40,

South Carolina Code of Laws, 1976 as amended, are hereinafter set forth

- 1 The Claimant alleges that he suffered severe burns arising out of and within the course and scope of his employment on August 9, 2013
- 2 The Defendant/Employer asserts that the Claimant's injuries were not the result of a work-related accident
- 3 The Defendant/Employer, who was advised of his right to counsel, represented himself
- 4 There is no dispute in the case as to the mechanism of the injury. The Claimant was severely burned working on a boat belonging to the Defendant on August 9, 2013
- 5 The Claimant was air-lifted to and treated at the University of North Carolina Burn Center where he spent a number of weeks recovering
- 6 The question at bar at this hearing was whether the work on the boat was in the course and scope of the Claimant's employment by the Defendant/Employer
- 7 The Claimant's position was that he was paid a salary of \$500.00 per week by the Defendant/Employer and anything the Defendant/Employer asked him to do could be considered work because he paid him a salary
- 8 The exchange between the Claimant and the Defendant/Employer when the Defendant Employer cross-examined the Claimant is illustrative of that point

Q What about on the now, you say that just because I paid you \$500.00 a week, that Monday through Friday anytime you were with me you were on the clock, right?

A After certain hours

Q Do you think you were still on the clock on them days we knocked off at 12:00 o'clock, went to the river and rode down there and drank beer

before we got home from work?

A That's up to you

Q Were you on the clock?

A Yeah, because you paid me

(Transcript, page 60, lines 2-12)

9 Based on the testimony the Claimant, the Claimant's girlfriend-Michelle Bratcher, Holmes Adams, and the Defendant, it is clear that the Claimant not only worked for the Defendant/Employer, the two interacted socially outside of work. The extent of that interaction is subject to interpretation, but they clearly were interacting socially before this accident.

10 For me to believe the Claimant, I have to believe that all the times he spent with the Defendant/Employer was time for which he was paid. That conclusion is simply not supported by the facts.

11 The Claimant and Defendant/Employer took at least one boat trip-on a different boat-with their mates. If the Defendant/Employer is to be believed-and I do as to this fact-the Claimant and the Defendant spent additional time together on and around boats that was not work time.

12 The Defendant/Employer's business is Mike Robert's Home Repair. Work related to that business has nexus to home repair and maintenance, not working on boats.

13 The houses that the business worked on were owned by financial institutions. The Defendant/Employer personally owned this boat.

14 The Defendant/Employer paid Holmes Adams and Anthony Williams to work on the boat that exploded. Mr. Adams is a subcontractor who also works on houses for the

Defendant/Employer Mr Williams was contracted for an electrical job on the boat and was present and injured in the explosion That was the first time he had worked for the Defendant/Employer He testified that he was never paid for that work (The Claimant, Defendant/Employer and Mr Williams were all injured in the explosion The Claimant's injuries were the most serious) It is interesting to note that Mr Williams and the Claimant both now work for the same employer

- 15 There is no testimony in this case that anyone other than the Claimant was paid a salary by the Defendant/Employer
- 16 There is a note in the record from Monika C Atanesian who is a social worker at UNC Medical Center which reads in part, "Pt is a 35yo Caucasian male admitted to burn surgery service on 8/9/13 for treatment of 10% second degree flash burns to his bilateral upper and lower extremities (L>R) sustained when he was working on his boats' engine and there was a gas fire followed by an explosion that injured pt. Pt stated that they been salvaging the boat from the bottom of the river and were drying off the engine etc, and so the explosion was completely unexpected Pt stated he was doing this on his personal time and was not working "
- 17 The Claimant contends he was on some much medication, he could not remember what he said
- 18 This case comes down to who and what to believe
- 19 While I do not believe everything the Defendant said, his account is the more believable as to the facts of this case
- 20 The Claimant has the burden of proof since this is a denied claim When I consider the evidence as a whole, the Claimant simply has not met his burden The Claimant failed to prove that he was working for the Defendant/Employer's home repair business at the

time of the accident, and that what he was doing at the time of the explosion was in the course and scope of his employment

21 These finding are based on the testimony and the record when reviewed as a whole

22 All benefits under the South Carolina Workers' Compensation Act are hereby denied

CONCLUSION OF LAW

The burden of proof in a claim for workers' compensation benefits is the preponderance of the evidence. The Claimant must establish by a preponderance of the evidence the facts that will entitle him to an award under the Workers' Compensation Act. *Walsh v U S Rubber Co*, 120 S E 2d 685 (S C 1965). The Claimant did not meet his burden of proof in establishing his claim by a preponderance of the evidence that he was injured in the course and scope of his employment as outlined in section 42-1-160.

IS THEREFORE ORDERED that the Claimant, Kevin M Todd, failed to prove by a preponderance of the evidence that he suffered compensable injuries while in the course and scope of his employment as outlined in section 42-1-160. It is further,

ORDERED, ADJUDGED AND DECREED the Claimant, Kevin Michael Todd, claim for benefits under the South Carolina Workers' Compensation Act is DENIED AND DISMISSED with prejudice subject to his appellate rights.

AND IT IS SO ORDERED

Within the statutory period, counsel for the Appellant filed an Application for Review in the case setting forth her reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on July 20, 2015. All proffered testimony has been taken. Such, together with all documentary evidence has been delivered by oral argument to the individual members of the Full Commission and has been under study and consideration.

By appeal, Appellant respectfully submits the following:

1. The Hearing Commissioner erred in finding the Claimant was engaged in a personal venture with his Employer.
2. The Hearing Commissioner erred in finding that for him to believe the Claimant he would have to find all the times he spent with the Claimant was time for which he was paid.
3. The Hearing Commissioner erred in concluding that the Employee could only be on the job if he worked in the home business setting when in fact the evidence shows he does other tasks for the Employer.
4. The Hearing Commissioner erred in finding that because the Employer owned the boat that the Claimant was not on the job.
5. The Hearing Commissioner erred in finding that the case comes down to who and what to believe.

ORDER

IT IS THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on March 24, 2015 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel

IT IS FURTHER ORDERED,

FINDING OF FACTS

After due consideration of the claim and defenses and after reviewing all the evidence contained in the record, the following findings of fact as required under §42-17-40, South Carolina Code of Laws, 1976 as amended, are hereinafter set forth

- 1 The Claimant alleges that he suffered severe burns arising out of and within the course and scope of his employment on August 9, 2013
- 2 The Defendant/Employer asserts that the Claimant's injuries were not the result of a work-related accident
- 3 The Defendant/Employer, who was advised of his right to counsel, represented himself
- 4 There is no dispute in the case as to the mechanism of the injury The Claimant was severely burned working on a boat belonging to the Defendant on August 9, 2013
- 5 The Claimant was air-lifted to and treated at the University of North Carolina Burn Center where he spent a number of week recovering
- 6 The question at bar at this hearing was whether the work on the boat was in the course and scope of the Claimant's employment by the Defendant/Employer
- 7 The Claimant's position was that he was paid a salary of \$500.00 per week by the

Defendant/Employer and anything the Defendant/Employer asked him to do could be considered work because he paid him a salary

- 8 The exchange between the Claimant and the Defendant/Employer when the Defendant Employer cross-examined the Claimant is illustrative of that point

Q What about on the-now, you say that just because I paid you \$500 00 a week, that Monday through Friday anytime you were with me you were on the clock, right?

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(Transcript, page 60, lines 2-12)

- 9 Based on the testimony the Claimant, the Claimant's girlfriend-Michelle Bratcher, Holmes Adams, and the Defendant, it is clear that the Claimant not only worked for the Defendant/Employer, the two interacted socially outside of work. The extent of that interaction is subject to interpretation, but they clearly were interacting socially before this accident

- 10 For us to believe the Claimant, we have to believe that all the times he spent with the

Defendant/Employer was time for which he was paid. That conclusion is simply not supported by the facts.

- 11 The Claimant and Defendant/Employer took at least one boat trip on a different boat with their mates. If the Defendant/Employer is to be believed and we do as to this fact, the Claimant and the Defendant spent additional time together on and around boats that was not work time.
- 12 The Defendant/Employer's business is Mike Robert's Home Repair. Work related to that business has nexus to home repair and maintenance, not working on boats.
- 13 The houses that the business worked on were owned by financial institutions. The Defendant/Employer personally owned this boat.
- 14 The Defendant/Employer paid Holmes Adams and Anthony Williams to work on the boat that exploded. Mr. Adams is a subcontractor who also works on houses for the Defendant/Employer. Mr. Williams was contracted for an electrical job on the boat and was present and injured in the explosion. That was the first time he had worked for the Defendant/Employer. He testified that he was never paid for that work. (The Claimant, Defendant/Employer and Mr. Williams were all injured in the explosion. The Claimant's injuries were the most serious.) It is interesting to note that Mr. Williams and the Claimant both now work for the same employer.
- 15 There is no testimony in this case that anyone other than the Claimant was paid a salary by the Defendant/Employer.
- 16 There is a note in the record from Monika C. Atanesian who is a social worker at UNC Medical Center which reads in part, "Pt. is a 35yo Caucasian male admitted to burn surgery service on 8/9/13 for treatment of 10% second degree flash burns to his bilateral upper and lower extremities (L>R) sustained when he was working on his

boats' engine and there was a gas fire followed by an explosion that injured pt Pt stated that they been salvaging the boat from the bottom of the river and were drying off the engine etc, and so the explosion was completely unexpected Pt stated he was doing this on his personal time and was not working "

17 The Claimant contends he was on some much medication, he could not remember what he said

18 This case comes down to who and what to believe

19 While we do not believe everything the Defendant said, his account is the more believable as to the facts of this case

20 The Claimant has the burden of proof since this is a denied claim When we consider the evidence as a whole, the Claimant simply has not met his burden The Claimant failed to prove that he was working for the Defendant/Employer's home repair business at the time of the accident, and that what he was doing at the time of the explosion was in the course and scope of his employment.

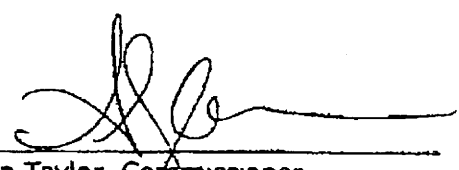
21 These finding are based on the testimony and the record when reviewed as a whole

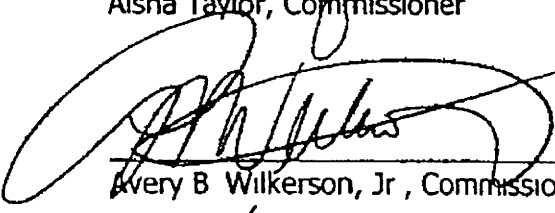
22 All benefits under the South Carolina Workers' Compensation Act are hereby denied

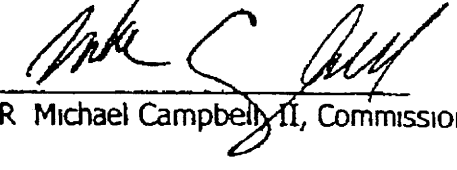
AND IT IS ORDERED.

FULL AFFIRMATION

CONCUR


Aisha Taylor, Commissioner


Avery B. Wilkerson, Jr., Commissioner


R. Michael Campbell II, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties or if there is an unrepresented party(ies) by depositing a copy hereof postage paid in the United States mail, first class addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies)

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Kevin M. Todd, Appellant,

v.

Michael Roberts d/b/a Michael Roberts Home Repair,
Employer, and S.C. Uninsured Employers' Fund,
Respondents.

Appellate Case No. 2016-000181

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-215
Submitted April 3, 2018 – Filed May 23, 2018

VACATED AND REMANDED

Gene McCain Connell, Jr., of Kelaher Connell &
Connor, PC, of Surfside Beach, for Appellant.

Lisa C. Glover, of Columbia, for Respondents.

PER CURIAM: In this workers' compensation case, Kevin Todd appeals the order of the Appellate Panel of the South Carolina Workers' Compensation Commission (the Appellate Panel) denying his claim for benefits under the South

Carolina Workers' Compensation Act (the Act).¹ Todd argues the Appellate Panel erred in (1) not finding Todd's injury to be compensable although he was directed by his employer, Michael Roberts, to conduct a personal errand; (2) not ruling that Roberts directed Todd to conduct a personal errand; and (3) finding Todd to be engaged in a personal venture. Todd also asserts (4) the Appellate Panel's findings are irrelevant and erroneous to the issue in this case. We vacate and remand to the South Carolina Workers' Compensation Commission (the Commission).

1. We find the Appellate Panel's findings of fact and conclusions of law are not sufficiently detailed to allow us to determine whether the decision was erroneous. *See Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("The findings of fact of [the Appellate Panel] must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings."); *id.* ("Implicit findings of fact are not sufficient. Whe[n] material facts are in dispute, the [Appellate Panel] must make specific, express findings of fact."). Although the Appellate Panel's order stated Todd was not injured in the "course and scope of his employment," its order made no explicit mention of whether the accident arose out of his employment and did not contain an express finding of fact addressing Todd's argument that he was performing a private errand at the behest, and for the benefit, of his employer. *See* S.C. Code Ann. § 42-1-160(A) (2015) (stating that, to be compensable under the Act, an injury by accident must be one "arising out of *and* in the course of employment" (emphasis added)); *see also West v. All. Capital*, 368 S.C. 246, 254, 628 S.E.2d 279, 283 (Ct. App. 2006) ("A key factor in determining entitlement to compensation under [the course of employment] prong is whether an employee's activity benefited the employer.").

Without these key factual determinations, we must remand because we cannot determine whether the Appellate Panel's findings are unsupported by substantial evidence or controlled by an error of law. *See Hicks v. Piedmont Cold Storage, Inc.*, 335 S.C. 46, 48, 515 S.E.2d 532, 533 (1999) ("A court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact."); *Turner v. Campbell Soup Co.*, 252 S.C. 446, 450, 166 S.E.2d 817, 818

¹ As an initial matter, we note that Respondents—the South Carolina Uninsured Employers' Fund and Michael Roberts—failed to file a final Respondents' Brief with this court. Rule 208(a)(4), SCACR, provides in part: "Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper."

(1969) (finding remand is appropriate when the Appellate Panel fails to make an essential finding of fact or when its findings are so indefinite or general as to afford no reasonable basis for the appellate court to determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to the findings); *id.* at 450, 166 S.E.2d at 818–19 ("To hold otherwise would in such cases make the determination of the rights of the parties turn upon the neglect of the [Appellate Panel] to make essential findings of fact, or require the appellate court to make the omitted findings of fact which our statute forbids." (quoting *Drake v. Raybestos-Manhattan, Inc.*, 241 S.C. 116, 124, 127 S.E.2d 288, 292–93 (1962))). Thus, we vacate the Appellate Panel's order and remand the case to the Commission for it to determine whether the incident arose out of Todd's employment with Michael Roberts Home Repair and whether Todd's work on the salvaged boat provided any benefit to Roberts or to Todd's employment with Michael Roberts Home Repair.

2. Because our resolution of the prior issue is dispositive, we decline to address the remaining issues on appeal. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

VACATED AND REMANDED.²

LOCKEMY, C.J., and WILLIAMS and KONDUROS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

Dec 18 2020

SC Court of Appeals

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. FILE NO.: 1320600

KEVIN M. TODD,)
)
Claimant,)
)
-vs-)
)
MIKE ROBERTS, DBA Mike Roberts Home Repair.,)
)
Employer,)
)
SOUTH CAROLINA UNINSURED)
EMPLOYERS' FUND,)
)
Defendants.)
_____)

**MOTION TO TRANSFER
MATTER TO THE
FULL COMMISSION**

TO: Amy Bracy, Judicial Director of the South Carolina Workers' Compensation Commission; Commissioner T. Scott Beck; Gene M. Connell, Jr., Attorney for the Claimant; and Mike Roberts, d/b/a Mike Roberts Home Repair, Alleged Employer:

Pursuant to Regulation 67-215 of the South Carolina Workers' Compensation Act, the South Carolina Uninsured Employers' Fund hereby moves that the above matter, currently set for a Hearing *De Novo* on September 20, 2019 be transferred to an Appellant Panel of the Full Commission and that the Hearing *De Novo* be cancelled. The grounds for this Motion are as follows.

1. This matter arises out of an accident which occurred on August 9, 2013 when the Claimant suffered severe burns as a result of a gasoline explosion. The Claimant alleged that his injuries arose out of and in the course of his employment with Mike Roberts, d/b/a Mike Roberts Home Repair. A Hearing was held before Commissioner Gene McCaskill on September 25, 2014. Following that Hearing, Commissioner McCaskill issued an order on March 30, 2015

denying that the Claimant's injuries arose out of and in the course of his employment and denying benefits.

2. The Claimant timely filed an Appeal of Commissioner McCaskill's Order on April 9, 2015 alleging numerous errors. On July 20, 2015, an Appellant Panel review was held in Columbia, South Carolina. The Appellant Panel issued a Decision and Order on January 12, 2016 affirming Commissioner McCaskill's denial of benefits in this case.

3. Following the Appellant Panels ruling, the Claimant filed an Appeal with the South Carolina Court of Appeals on January 28, 2016. On May 23, 2018, the Court of Appeals in an unpublished decision, vacated the Full Commissions' Order and remanded the matter to the Appellant Panel of the Workers' Compensation Commission. The Court of Appeals held that the Appellant Panels finding the Fact and Conclusions of Law were not sufficiently detailed to allow the court to determine whether the decision was erroneous. The Court of Appeals simply vacated the Appellant Panels Order and remanded the case to the Commission to make certain determinations. The Court of Appeals did not order a Hearing *De Novo*. (See Attached Decision)

4. When the matter was returned to the Judicial Department, the matter was reassigned to a single Commissioner. The Uninsured Employers' Fund believes this was in error.

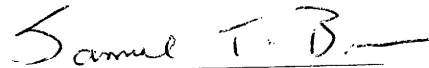
5. Based upon the Supreme Court decision of Russell V. Walmart Stores, a Hearing *De Novo* is improper. A complete record exists from the 2014 Hearing and an Appellant Panel Review, with a proper Order, has been requested by the Court of Appeals. There has been no reversal or request for a new hearing.

Thus, the South Carolina Uninsured Employers Fund moves that this matter be returned

to the Appellant Panel of the Workers' Compensation Commission for a new Appellant Panel review as ordered by the South Carolina Court of Appeals.

AND I SO MOVE,

RESPECTIFULLY SUBMITTED.



Samuel T. Brunson,
Attorney for the Uninsured Employers' Fund
P.O. Box 431
Florence, South Carolina 29503
(843) 669-8111

Florence, South Carolina

September 12, 2019

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1320600**

Kevin M. Todd,

Employee,

Vs.

Mike Roberts, d/b/a Mike Roberts Home Repair,

Employer,

South Carolina Uninsured Employers' Fund,

Defendants,

CERTIFICATE OF SERVICE

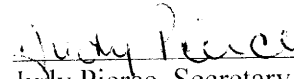
I, Judy Pierce, secretary to Samuel T. Brunson, Attorney for the Defendant's in the within action, do hereby certify that on September 12, 2019, the annexed Original Motion to Transfer Motion to Full Commission was filed with the SC Workers' Compensation Commission and served upon all parties as shown below:

Commissioner T. Scott Beck
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715
(By Mail and Email)

Gene Connell, Jr., Esquire
Kelaher Connell & Conner, P.C.
P.O. Drawer 14547
Surfside Beach, SC 29587
(By Mail and Email)

Mike Roberts,
Mike Roberts Home Repair
3334 New Road
Conway, SC 29526

Amy Bracy, Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715



Judy Pierce, Secretary to
Samuel Brunson, Attorney at Law
Post Office Drawer 431
Florence, South Carolina 29503
(843) 669-8111

Florence, South Carolina

September 12, 2019

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*

GENE M. CONNELL, JR.

L. SIDNEY CONNOR, IV

LISA POE DAVIS

*OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

September 17, 2019

via EMAIL (bublaw@earthlink.net)
AND ORDINARY MAIL

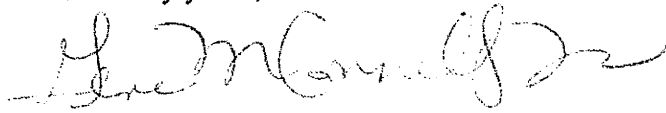
Samuel Thompson Brunson, Esquire
Samuel T. Brunson Law Offices
PO Drawer 431
Florence, SC 29503

Re: *Kevin M. Todd v. Michael Roberts d/b/a Michael Roberts Home Repair and*
S.C. Uninsured Employers' Fund
W.C.C. File No. 1320600
Our File No. 2014-0046C

Dear Bubba:

Enclosed please find Notice of Deposition of James M. Flom regarding the aforementioned case.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr./ms

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

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FAX: 238-5050

September 17, 2019

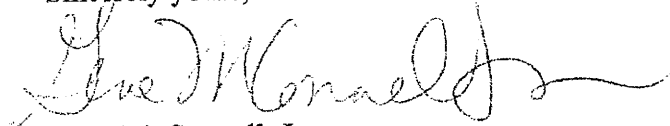
Mike Roberts d/b/a Mike Roberts Home Repair
3334 New Road
Conway, SC 29526

Re: *Kevin M. Todd v. Michael Roberts d/b/a Michael Roberts Home Repair and
S.C. Uninsured Employers' Fund*
W.C.C. File No. 1320600
Our File No. 2014-0046C

Dear Mr. Roberts:

Enclosed please find Notice of Deposition of James M. Flom in regard to the
aforementioned case.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr./ms

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1320600

Kevin Michael Todd,

Claimant,

vs.

Michael Roberts d/b/a Michael Roberts
Home Repair,

Employer,

S.C. Uninsured Employers' Fund,

Carrier,

**NOTICE OF DEPOSITION
OF JAMES M. FLOM**

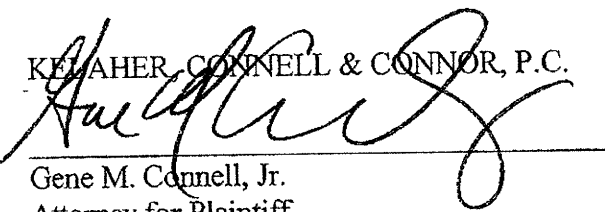
TO: SAMUEL T. BRUNSON, ESQUIRE, ATTORNEY FOR THE CARRIER AND MIKE ROBERTS DBA MIKE ROBERTS HOME REPAIR:

YOU WILL PLEASE TAKE NOTICE that the undersigned, attorney for the Claimant, will take the deposition of **James M. Flom**, at **Law Offices of Kelaher, Connell & Connor, P.C., 1500 U.S. Hwy. 17 N., Surfside Beach, SC, 29575 at 10:00 a.m. on Friday, September 20, 2019**, on oral examination pursuant to Section 42-3-160 of the *South Carolina Code of Laws*, 1976, before a notary public or before some other officer authorized by law to take depositions.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery for use at trial and for all other purposes as are permitted under the rules of the Commission and all applicable statutes and laws.

You are invited to attend and take such part as is fit and proper.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
Attorney for Plaintiff
P. O. Drawer 14547
Surfside Beach, S. C. 29587
(843)238-5648

September 17, 2019
Surfside Beach, S. C.

Date of Deposition: September 20, 2019
Time of Deposition: 10:00 o'clock A.M.
Name of Court Reporter: Ray Swartz & Associates

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1320600

Kevin Michael Todd,

Claimant,

vs.

Michael Roberts d/b/a Michael Roberts
Home Repair,

Employer,

S.C. Uninsured Employers' Fund,

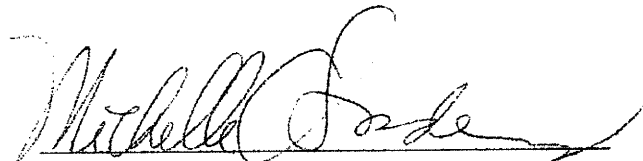
Carrier,

AFFIDAVIT OF MAILING

I, the undersigned, do hereby certify that on the 17 day of September 2019, I have served a copy of a Notice of Deposition Subpoena to James M. Flom for the taking of his deposition by personally depositing in a United States Postal Service mail box, postage prepaid, addressed to the attorney for the Employer/Carrier indicated below and via email to bublaw@earthlink.net:

Samuel Thompson Brunson
Samuel T. Brunson Law Offices
PO Drawer 431
Florence, SC 29503

Mike Roberts d/b/a Mike Roberts Home Repair
3334 New Road
Conway, SC 29526


Michelle C. Sanders

Michelle Sanders

From: Gene Connell
Sent: Tuesday, September 17, 2019 12:00 PM
To: 'bublaw@earthlink.net'
Subject: Todd Vs. Mike Roberts SCWCC File No. 1320600
Attachments: 20190917114732749.pdf

Notice of Deposition of James Flom attached.

Gene Connell, Jr.
KELAHER, CONNELL & CONNOR, PC
PO Drawer 14547
Surfside Beach, SC 29587
843.238.5648
gconnell@classactlaw.net

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

KEVIN MICHAEL TODD,	)	WCC File No.: 1320600
	)	
Employee/Claimant,	)	
	)	
-vs-	)	DEPOSITION OF:
	)	
MIKE ROBERTS, dba MIKE ROBERTS	)	JAMES MARSHALL FLOM
HOME REPAIR,	)	
	)	
Employer.)	)	

Given before Molly C. Powell, Court
Reporter and Notary Public, on Friday, September 20th,
2019, at Kelaher, Connell, Connor, PC, 1500 Highway 17
North, Surfside Beach, South Carolina, commencing
at 10:06 o'clock, a.m.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
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A P P E A R A N C E S

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For the Defendant: Kelaheer, Connell, Connor, PC
By: Gene Connell, Esquire
1500 Highway 17 North
Surfside Beach, SC 29587

via phone

For the Claimant: Brunson Law Firm
Samuel Brunson, Esquire
511 West Evans Street
Florence, SC 29501

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INDEX TO EXHIBITS:

No exhibits were proffered.

1 (James Marshall Flom, being duly sworn,
2 testified as follows:)

3 DIRECT EXAMINATION BY MR. CONNELL:

4 Q. What was your limitation on what you could do as
5 a general contractor?

6 A. Actually it was a residential license. Off the
7 top of my head, my limitations, basically, uh,
8 limited to residential and subbing for general
9 contractors and commercial work, and we carried
10 a million dollar liability policy and at the
11 time I carried ghost workman's comp policy.

12 Q. So you had a license to be a residential home
13 builder?

14 A. Yes, sir. I did.

15 Q. How long were you a residential home builder?

16 A. From 2003 until, I want to say my license went
17 inactive, I believe 2014.

18 Q. Okay. And did you build homes or did you -

19 A. Mostly residential remodeling, remodeling homes,
20 kitchens, all manner of home repair basically,
21 and additions. We tried to break into the home
22 building market but it was saturated it was a
23 little tough which is one of the reasons I
24 decided to go to law school

25 Q. All right. So do you know Mike Roberts?

1 A. Yes, sir. I do.

2 Q. Tell me how you know Mike Roberts.

3 A. I was introduced to Mike Roberts by a good
4 friend of mine in the construction industry who
5 was an electrician who was also doing some part
6 time work for Mike Roberts. I was introduced to
7 Mike Roberts sometime in 2012 when I began going
8 to Horry Georgetown Technical College. I worked
9 for Mike Roberts, and I'm confused on the dates
10 here, but I want to say I stopped working for
11 Mike Roberts in weeks or up to one month of this
12 incident happening to Kevin Todd.

13 Q. Are you saying a month before Mr. Todd was
14 injured you stopped working for Mr. Roberts?

15 A. Yes, sir. A month, a matter of weeks to one
16 month. No longer than one month. I literally
17 left employment with Mike Roberts and I want to
18 say a few weeks later this accident occurred.

19 Q. And you say you left employment, was Mr. Roberts
20 paying you by the hour?

21 A. Yes, sir. By the hour and by the day in some
22 instances.

23 Q. How long did you worked for Mr. Roberts?

24 A. I worked for Mike Roberts most of my time while
25 I was at Horry Georgetown Technical College from

1 about 2012 to about the time of this incident.
2 I want to say 2015 but I don't exactly remember
3 the date this happened.

4 Q. And during the course of time from 2012 to 2015
5 what type of things would you do in regard to
6 work with Mr. Roberts?

7 A. Well, that was the interesting thing. We did a
8 little bit of everything. I got signed on
9 immediately with the understanding that we were
10 - He was also involved in residential
11 remodeling, working primarily for Horry County
12 State Bank, but as it turned out Mike had his
13 fingers in many other pots and had ideas of boat
14 repair and entrepreneurial activities outside
15 the scope of construction so it became quickly
16 apparent to me that I basically had to do any
17 and everything that I was ordered to do, be it
18 laying sod at his home or doing construction at
19 one of these bank jobs at one of these bank
20 jobs. Whatever Mike asked we did.

21 Q. Okay. You said you laid sod at Mr. Roberts'
22 home?

23 A. I actually personally laid sod with Kevin Todd
24 at Mike Robert's home. One of the things Mr.
25 Roberts wanted to keep us on in employment as a

1 benefit to himself. He wanted Kevin and us
2 around and in order for us not to seek
3 employment somewhere else, uh, he'd have us do
4 all sorts of things. I've personally worked on
5 boats with Mr. Roberts and Kevin Todd as well,
6 although I'm not qualified to work on boats. I
7 don't know how well I was helping them but we
8 did all of that under the same exact pay scale
9 as we were being paid whether I was doing
10 construction at a commercial or residential site
11 or whether I was in his shop working on a boat.

12 Q. Okay

13 A. It was all basically the same. We all did what
14 Mike said that day.

15 Q. All right. And that would include any personal
16 errands he wanted you to run for him?

17 A. Yes, sir. Anything Mike wanted you to do you
18 had to do it and that is one of the things that
19 ended up ending my employment with him. Mike
20 wanted me to do all manner of things which was
21 taking away from my college education and I
22 wanted to be a lawyer, not do construction
23 anymore. Mike would ask you to do anything and
24 basically if you wanted to keep your job you had
25 to do what Mike would ask.

1 Q. Did you have to babysit his kids for instance?

2 A. No, but I had to remodel his back yard. I don't
3 think I ever watched his children but I was
4 around his house a lot. We were always there.
5 He would always find something for us to do.
6 Mike is the kind of guy who will keep you there
7 after hours cleaning up his house before Melanie
8 got home, moving things around.

9 Q. All right. You said something about working on
10 a boat; what boat were you working on?

11 A. Well, there were several. That was one of
12 Mike's side entrepreneurial deals. Mike was
13 always talking about wanting to get into the
14 boat industry as far as remodeling, selling
15 boats, cars, Rvs, as well. Mike fancied himself
16 as someone who could remodel boats and, uh, that
17 was something that he was into and he had a shop
18 right off of 701 in Conway right by Salty's
19 Liquor and Dry-cleaning and that is where he
20 would do most of the boating work at. He would
21 also do it at his father's dock, his father's
22 river house as well.

23 Q. Okay. So do you know anything about a boat that
24 sunk in the river, a boat that was raised, a
25 boat that Mr. Todd was injured on; do you know

1 anything about that?

2 A. Yes, sir. Yes, sir. I do. As I said I left
3 just a matter of weeks before this happened and
4 I was in close communication with - Matter of
5 fact the man who introduced me to Mike was still
6 working there for Mike during this time. They
7 were actually cleaning up Mike's father's
8 property. Mike had the entire company out there
9 cleaning up the property while Mike and Kevin
10 were working on the sunken boat that day.

11 Q. All right.

12 A. I was actually getting calls that day about what
13 was going on because one of the guys working
14 that day thought it was a little weird, it was a
15 catastrophe really, even before the boating
16 thing happened. He didn't want to be there. It
17 was obvious. Not Kevin but the guy I knew. It
18 was just kind of a real rigamarole that day.
19 They were kind of doing a little bit of
20 everything.

21 Q. What was the name of that fellow that was there?

22 A. That was Ryan Harrell.

23 Q. Who else can you name that worked there?

24 A. There were a couple of guys that I didn't really
25 know that well. I can't actually name them.

1 Q. Okay.

2 A. Yeah. I didn't know them that well but I know
3 there were other people there that day.

4 Q. And he had other jobs going at that time for
5 Horry State Bank; is that right?

6 A. Yes, sir. Yes, sir. Mike used his employees to
7 do everything and we had just had the storm and
8 the boat to be salvaged that Mike figured he
9 could make some money off of. He just had his
10 entire company doing whatever he wanted them to
11 do at whatever moment and that was basically the
12 style as it was. You know, I, of course, didn't
13 want to be out raking up hurricane debris and
14 doing whatever somebody told me. Also, he
15 didn't pay very well and I said it was taking
16 away from my college career so that's why I
17 left.

18 Q. Okay. Was there anything that he asked you to
19 do that you refused to do?

20 A. After a while he wanted me to do more involved
21 construction work and I did refuse to do that
22 because I knew he wasn't paying. Uh, I became
23 very aware that the combination of Mike not
24 having a proper business license, not having
25 insurance, not having workman's comp, and also

1 with his drug and alcohol addiction was not the
2 best place for me to be.

3 Q. Okay.

4 A. Another reason that I ended up leaving.

5 Q. Okay. Were you there when the boat was raised
6 from the Waccamaw River?

7 A. No, sir. I did go see the boat. It was on the
8 dock there at his father's house and I did see
9 the boat after the accident. Actually, now that
10 I think about it, after the accident I got back
11 in touch with Mike. He wanted to be nice and I
12 ended up seeing him for about a month, and I
13 don't remember exactly when that was but I did
14 get a chance to go to his father's property and
15 see the boat there. You could see it from the
16 bridge and everybody could see it. Mike tried
17 to draw me back after this. When Mike lost
18 Kevin he kind of lost his right hand man. Kevin
19 was the employee that would stick by Mike and
20 also I guess it was hard for Kevin to find other
21 employment and Kevin believed everything Mike
22 told him. When Mike lost Kevin it kind of put
23 Mike at a loss so Mike reached out to everyone
24 who had ever worked for him and tried to
25 establish something else but again, the drugs

1 and alcohol really kicked in for him there so I
2 wanted to stay away. Plus, I was going to go to
3 Coastal Carolina University so I was like I'm
4 done with construction.

5 Q. Okay. The Court Reporter asked if you could go
6 a little bit slower.

7 A. Yes, sir. I'm very sorry.

8 Q. So you had actually been asked to work on the
9 boat yourself; is that right?

10 A. Not that particular boat. At that time I was on
11 the outs with Mike. We were not getting along
12 at that time.

13 Q. You were asked to work on other boats that he
14 was interested in; is that right?

15 A. Yes, sir. Bass boats. The boat in question that
16 caused the accident was actually a larger cabin
17 cruiser. The boats I worked on for Mike were
18 like bass boats that friends of his would bring
19 into the shop. We would detail them out and put
20 some diamond tread on them. You know, Mike, uh,
21 as a personal side note, I didn't think he made
22 many good improvements which is probably why the
23 business didn't pan out.

24 Q. So I'm understanding that if you worked for Mike
25 Roberts you did anything he asked you regardless

1 of what it was; is that right?

2 A. Yes, sir. Or else you didn't have a job. If
3 you weren't willing to put 110 percent in for
4 him then he didn't want you around. He always
5 maintained it as if he was doing us a favor,
6 like he was keeping us employed.

7 Q. Okay.

8 A. If I don't have anything for you today you guys
9 are going to cut grass, you'll go to my dad's
10 and clean up trash. Mike's father also owned
11 property and trailers off of 544 and he would
12 send us over there to work on those properties.
13 Mike basically always had something, something
14 for us to do whether it was construction related
15 but it was always strictly under his employment.
16 In fact I tried many times to get - because
17 Mike actually did have some good connections at
18 Horry County State Bank and I tried many times
19 to get Mike to allow me to use my license and my
20 business savvy and experience to go into
21 something with him and make a go at build houses
22 but Mike was adamant. He did not want to be a
23 partner with me. He wanted to keep me as an
24 hourly guy so he could use me but he also wanted
25 me to be there all the time, which that caused

1 me a huge rift. I was not going to just sit
2 there and work hourly or by the day doing
3 everything while my life wasn't going anywhere.

4 Q. How much did he pay you an hour?

5 A. It amounted approximately to \$100 a day and
6 those days would range anywhere from eight to 10
7 hours, sometimes less.

8 Q. Okay.

9 A. Yes, sir.

10 Q. How about Kevin Todd, do you know what he was
11 paid?

12 A. I was told once by Mike in a kidding, laughing
13 way when we were drinking that he paid Kevin
14 less than me.

15 Q. Okay.

16 A. But I don't know exactly what he paid Kevin.

17 Q. Okay. Answer any questions that Bubba has.

18 A. Yes, sir.

19 CROSS EXAMINATION BY MR. BRUNSON:

20 Q. Sir, my name is Bubba Brunson and I'm a lawyer
21 here in Florence; I have just a few questions
22 for you.

23 A. Yes, sir.

24 Q. You say you think you began working for Mr.
25 Roberts in 2012?

1 A. Yes, sir. Yes, sir. It was either the end of
2
3 2012. I know it was when I first started my
4 educational career at Horry Georgetown Technical
5 College.

6 Q. Were you going to school -

7 A. Yes.

8 Q. - full time then?

9 A. Well, sort of full time but I was basically a
10 part time student because I would have classes
11 only two days a week. I would have three days a
12 week plus weekends to work so for me it was much
13 easier to work for Mike because he was willing
14 to let me work that schedule until the end there
15 when he started demanding me to come in and help
16 him do certain things and I had to say no. I
17 had to go to school.

18 Q. And you believe you stopped working about a
19 month before this accident?

20 A. Yes, sir. Yes, sir. It was literally within a
21 month to a few weeks time frame there. I was
22 very interested in what was going on at the
23 company because Mike and I were on the outs at
24 the time and I had a friend there who was
25 telling me what was going on. Basically Mike
 was going out of control. That's the thing.

1 Mike likes cocaine. He likes to drink and he
2 likes to have people do whatever is going on so
3 it became entertaining from my perspective.

4 Q. The accident happened on August 9th, 2013 so -

5 A. Oh, goodness. All right.

6 Q. So you think you would have worked there up
7 until July or so, 2013?

8 A. Yes, sir. Yes, sir.

9 Q. You began working for Mr. Roberts at the end of
10 2012 so you would have worked for him seven to
11 eight months?

12 A. No, sir. I must have started working for Mike
13 Roberts a little earlier. I honestly can't tell
14 you now because I have nothing on me as far as
15 my paperwork but I feel like I worked for him
16 for a year.

17 Q. That's fine, but you were not working when this
18 accident happened?

19 A. Yes, sir. But only for about a month and I
20 actually went back to work for Mike after the
21 accident happened for a small period of time
22 until he went really out of control.

23 Q. All right. And you never went back to work for
24 him after this?

25 A. Like I said, after the accident I did go back to

1 work for him for a small period of time and then
2 we just really started to butt heads and I
3 started to realize the guy was kind of a real
4 loser so I immediately stopped and that might be
5 why my recollection is off. I know I worked for
6 him right up to the time I went to Coastal
7 Carolina University. I haven't thought about
8 this incident in a very long time.

9 Q. Sure.

10 A. It's been years and so, you know, that's why my
11 dates are a little fuzzy but I know I worked
12 before and after this accident. Unfortunately I
13 was not there for a period of a month, probably
14 a month before the accident and a month
15 following the accident.

16 Q. Thank you, sir. That's all I have.

17

18 (Deposition concluded at 10:25 o'clock, a.m.)

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1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF BERKELEY)

4
5 I, Molly C. Powell, Court Reporter and Notary Public,
6 certify that I did have James Marshall Flom to appear
7 before me at 10:06 o'clock, a.m. at Kelaher, Connell,
8 Connor, PC, 1500 Highway 17 North, Suite 209, Surfside
9 Beach, South Carolina; that the witness was sworn and
10 cautioned to tell the truth, the pages constitute a true
11 and accurate transcript of the testimony given at that
12 time and place.

13 I further certify that I am not of counsel or kin to any
14 of the parties to this cause of action, nor am I
15 interested in any manner in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal this the 1st day of October, 2019.

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Notary Public for South Carolina

My Commission Expires: March 4, 2029

Dec 18 2020

SC Court of Appeals

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1320600

KEVIN M. TODD,

Claimant,

-vs-

MIKE ROBERTS, DBA Mike Roberts Home Repair.,

Employer,

EMPLOYERS' FUND,

Defendants.

INTERIM ORDER

This matter was scheduled to be heard by the Undersigned Commissioner on September 20, 2019 at 10:00 a.m. in Marion, South Carolina. The purpose of the Hearing was to determine issues based upon a remand from the South Carolina Court of Appeals. Basically, the matter had been set for a Hearing *de novo*.

It appears that this case was originally heard by Commissioner Gene McCaskill in September of 2014 and an Order was issued by Commissioner McCaskill on March 30, 2015. Appeals were taken from Commissioner McCaskill's Order. On January 12, 2016, the Appellant Panel of the Full Commission issued an Order affirming Commissioner McCaskill's prior Order.

The matter was then appealed to the South Carolina Court of Appeals. The Court of Appeals, in an unpublished decision, vacated the Full Commission's Order. The decision was not reversed.

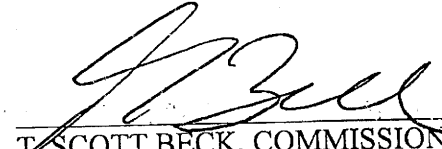
The South Carolina Employers' Fund contends the matter should not have been returned to a single Commissioner for a Hearing *de novo*. A Motion has been filed to transfer the case to

the Full Commission based upon the recent Supreme Court decision of Russell V. Walmart Stores.

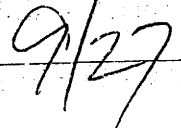
Pursuant to Commission Regulations, this Motion must be heard by the Judicial Conference of the Full Commission. That conference next meets on October 21, 2019.

Thus, the Motion to transfer the file back to the Full Commission is hereby forwarded to the Judicial Conference of the Workers' Compensation Commission. The Hearing originally set for September 20, 2019 is postponed pending a decision from the Judicial Conference.

AND IT IS SO ORDERED.


T. SCOTT BECK, COMMISSIONER
SC Workers' Compensation Commission

Columbia, South Carolina

, 2019

Order served via USPS:

Gene M Connell, Jr., Esquire Kelaher, Connell & Connor, PC PO Drawer 14547 Surfside Beach, SC 29587	Samuel T Brunson, Esquire Brunson Law Firm PO Box 431 Florence, SC 29503
Ellen Goodwin, Esquire Gallivan White & Boyd, PA PO Box 10589 Greenville, SC 29603	Lisa Glover, Esquire SC UEF PO Box 210039 Columbia, SC 29221
Mike Roberts d/b/a Mike Roberts Home Repair 3334 New Road Conway, SC 29526	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawnee DeBruhl on September 27, 2019

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Kevin M. Todd v Mike Roberts dba Mike Roberts Home Repair
SCWCC: 1320600
Commissioner: Wilkerson

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference a **Motion to Transfer the Matter to Full Commission**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
☒ Granted. _____ Denied. _____ Dismissed _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____ Barden _____ James
_____ Beck ☒ Campbell _____ Taylor
_____ McCaskill _____ Wilkerson

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

10/21 2019
CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

NOT PARTICIPATING:

☒

☒

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 21 day of October, 2019.

By: Valerie D. Deller
SCWCC Judicial Department

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS
*OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

November 13, 2019

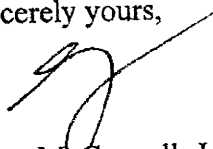
Judicial Department
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: *Kevin M. Todd v. Michael Roberts d/b/a Michael Roberts Home Repair and
S.C. Uninsured Employers' Fund*
W.C.C. File No. 1320600
Our File No. 2014-0046C

Dear Commission:

I am attaching to this letter a copy of a transcript of a deposition which was taken recently, prior to this matter being remanded to the full commission. The deposition was taken in contemplation of a single commissioner trial before Commission Beck. I would ask that this deposition transcript be attached to the record. Should you have any questions, please do not hesitate to call me.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr./bas
Enclosures

cc: Samuel T. Brunson, Esq. w/enclosure
Mike Roberts w/enclosure

Corrected
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Kevin M. Todd v Mike Roberts dba Mike Roberts Home Repair
SCWCC: 1320600
Commission Panel: Wilkerson, Campbell, Taylor; Chair
Order Assigned to Commissioner: Taylor
Remand

Gene M. Connell
Samuel T. Brunson
Mike Roberts

Claimant/Appellant
SCUEF/Respondent
Pro Se/Respondents

This matter was discussed by the South Carolina Workers' Compensation Full Commission Appellate Panel. The Commissioners considered the matter and have issued the following instructions.

1. By Order of the Court of Appeals dated May 23, 2018, the Full Commission's Order was vacated and this matter was remanded back to the Commission for a determination as to whether the incident arose out of Todd's employment with Michael Roberts Home Repair and whether Todd's work on the salvaged boat provided any benefit to Robert of Todd's employment with Michael Roberts Home repair.
2. On July 16, 2018 the matter was sent to a Single Commissioner for a hearing de novo. The scheduled hearing before the Single Commissioner was postponed three times over the course of the next several months at the request of one or more of the parties.
3. On September 16, 2019, Defendant UEF filed a Motion to Transfer the claim back to the Full Commission pursuant to Russell, which was grated by way of Judicial Conference Order dated October 21, 2019.
4. On November 13, 2019, the parties submitted the deposition transcript of James Marshall Flom, which was admitted into the record before the Full Commission.
5. After review of the evidence as a whole including the original testimony of the Claimant and the deposition testimony of another employee, Mr. Flom, I find Claimant's incident did arise out of and in the course and scope of his employment with Michael Roberts Home Repair.
6. I also find Claimant's work on the salvaged boat provided benefits to both Mr. Roberts as the employer and Mr. Todd as the employee.
7. The findings of compensability as noted above are based on a preponderance of the evidence as a whole including the following:
 - a. I find a preponderance of the evidence supports a finding that Mr. Roberts had regularly incorporated boat repair and yardwork/landscaping into his home repair business. Based on the hearing testimony of the Claimant and Mr. Adams as well as the

- deposition testimony of Mr. Flom, employees were regularly assigned and directed to perform these other tasks as part of their employment so they would not seek employment elsewhere. (9/25/14 Hr. Tr. Pp. 12-12; Depo. of Flom p. 7, ll. 1-3).
- b. Both Claimant and employer testified Claimant took employer's son to school, each day and Claimant testified that as soon as he got to Mike Roberts' house and picked his son up, he was "on the clock." (Hr. Tr. P. 44, ll. 16-18).
 - c. Claimant testified he was "on the clock" every time he worked on the boat and that he was actually on his way to a jobsite at Quail Creek when he stopped by Roberts' house to help another employee, Anthony Williams, set started on working on the boat. Claimant was paid for the entire time. (Hr. Tr. P. 46).
 - d. Mike Roberts continued to pay Claimant \$500 per week for 3 weeks after the injury. We gave greater weight to the testimony of Claimant over than Mr. Roberts or Claimant's wife in this instance.
8. We find Mike Roberts d/b/a Mike Roberts Home Repair regularly employed 4 or more individuals in furtherance of his business interests. This finding is based on the preponderance of the evidence as a whole including the testimony of the Claimant, James Flom and Holmes Adams. As such, Mike Roberts was subject to the Act and did not have or maintain workers' compensation insurance. The SCUEF is liable for this claim.
9. Claimant sustained serious 3rd degree burn injuries and scarring to both arms and both hands as a result of his work accident. Claimant's medical treatment included skin grafts taken from his legs.
10. We find Claimant is at maximum medical improvement for his burn injuries as of July 28, 2014 when he returned to work full duty for a new employer.
11. Claimant is entitled to a lump-sum back-payment of TTD benefits from 8/9/13 until he returned to work full time on July 28, 2014. Defendants are entitled to a credit of \$1,500 that the employer paid directly to the Claimant after this injury.
12. We find Claimant's scarring is to body parts regularly exposed in his employment in construction and renovation work.
13. We find Claimant is entitled to 20 weeks of benefits for his resulting burn scarring and/or disfigurement. S.C. Code Ann. Section 42-9-30 (23).
14. We find Claimant is entitled to receipt of all awards in a lump-sum.
15. Defendants are liable for all causally-related previously incurred medical treatment – including treatment with UNC. All payments shall be made pursuant to the S.C. Fee Schedule.
16. Claimant is not entitled to any future medical treatment as none has been recommended that would tend to lessen his period of disability.
17. No hearing costs are assessed.

Mr. Connell please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at chollmon@wcc.sc.gov or call at 803.737.5737

Judicial

Transmitted via email this 21 February 2020

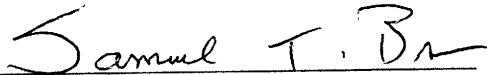
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Dec 18 2020

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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December 18, 2020