

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Case No. 2007-CP-42-1966

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**RECEIVED**

JUN 10 2013

S.C. Supreme Court

Raquel Martinez,

Petitioner,

v.

Spartanburg County and  
S.C. Association of Counties  
Self-Insurance Fund,

Respondents.

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**BRIEF OF RESPONDENTS**

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## STATEMENT OF ISSUES ON APPEAL

- I. DID THE COURT OF APPEALS CORRECTLY HOLD THAT THE RECORD CONTAINS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S DECISION THAT MARTINEZ DID NOT EXPERIENCE UNUSUAL OR EXTRAORDINARY CONDITIONS IN HER PARTICULAR EMPLOYMENT ON APRIL 4, 2005?
  
- II. DOES THE RECORD CONTAIN SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S DECISION REGARDING MARTINEZ'S FAILURE TO PROVE THE PROXIMATE CAUSE OF HER MENTAL DISORDER?

## STATEMENT OF THE CASE

Raquel Martinez was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff's Department. (App. I p. 69). On September 26, 2005, Martinez filed a Form 50 alleging that she had suffered a mental injury as a result of investigating an accident in which a Greenville County Deputy Sheriff had accidentally backed over and killed his two year old daughter. (App. I p. 483). On October 5, 2005, Spartanburg County and its carrier, the South Carolina Association of Counties Self-Insurance Fund (hereinafter collectively "Spartanburg County") filed their Form 51 denying that Martinez suffered a compensable mental injury as a result of any unusual or extraordinary condition of employment. (App I p. 484). At the hearing, Spartanburg County contended that Martinez was employed as a forensic investigator, that it was her job to investigate homicide and death cases, and that she was performing her regular job when she investigated the child's accidental death on April 4, 2005. (App. I pp. 64-65). Spartanburg County further contended that if Martinez suffered mental stress as a result of the investigation on April 4, 2005, it was just one factor and that there were other factors involved in her mental stress, including the death of her "cousin" from AIDS. (App. I p. 11). Spartanburg County contended that for a mental claim to be compensable, the job related stress must proximately cause the psychiatric injury, and not just be one of several factors. (App. I p. 65).

On November 20, 2006, the Single Commissioner issued his Decision and Order finding, inter alia, that the investigation of the accident on April 4, 2005 was not an unusual or extraordinary condition of employment and that there were other factors involved in Martinez's mental condition. (App. I pp. 35-57). On May 22, 2007, an Appellate Panel unanimously affirmed the Single Commissioner's Order. (App. I pp. 32-34).

Thereafter, Martinez filed an appeal with the Court of Common Pleas for Spartanburg County. (App. I pp. 477-479). On February 25, 2009 the Circuit Court reversed the Full Commission's Order on the ground that the Commission's Order lacked sufficient detail to enable the Court to determine whether those findings were supported by substantial evidence. (App. I pp. 13-31). The Circuit Court further found that the Commission erred as a matter of law in failing to use the analysis, as set forth in Doe v. S.C. Dept. of Disabilities and Special Needs, 377 S.C. 407, 660 S.E.2d 260 (2008), to determine whether the conditions of Martinez's job on April 4, 2005 were unusual or extraordinary. Lastly, the Court ruled that the Full Commission's finding that Martinez failed to prove that the conditions of her employment on April 4, 2005 proximately caused her mental injury was not supported by substantial evidence and was also affected by an error of law. Spartanburg County timely filed its Notice of Appeal with the South Carolina Court of Appeals on March 16, 2009. (App. I p. 476).

On June 15, 2011, the South Carolina Court of Appeals filed its Order reversing the decision of the Court of Common Pleas. (App. I pp. 1-10). Judge Williams, writing for the majority, concluded that the Commission's Order was sufficiently detailed to enable appellate review and that the record contained substantial evidence to support the Commission's decision that Martinez did not suffer an unusual or extraordinary condition of her particular employment on April 4, 2005. *See* Martinez v. Spartanburg County, 394 S.C. 224, 715 S.E.2d 339 (Ct. App. 2011). Because the Court of Appeals concluded that there was substantial evidence that Martinez did not suffer an unusual or extraordinary condition in her particular employment, the majority did not address the issue of "proximate cause." (App. I p. 6). In a separate concurring opinion, Chief Judge Few agreed that the record

contained substantial evidence that Martinez did not suffer an unusual or extraordinary condition of her employment. Additionally, Judge Few also concluded that the record contained substantial evidence to support the Commission's decision regarding Martinez's failure to prove proximate cause. (App. I pp. 6-10). Rehearing was denied on October 6, 2011. Martinez's Petition for Writ of Certiorari to the South Carolina Supreme Court was filed on November 2, 2010 and granted on February 7, 2013.

### **STATEMENT OF THE FACTS**

At the time of the hearing, Martinez was 47 years of age and had worked in law enforcement for approximately 28 years, including 11 years working for the South Carolina Probation and Parole Board, several years working as a store detective in North Carolina, and six and one-half years working for the Spartanburg County Sheriff's Department. (App. I pp. 68-71, 85-86). Martinez had held the position of Master Deputy Forensic Investigator with the Sheriff's Department for approximately four years. (App. I pp. 68, 71). She described her job duties as follows:

Going to a crime scene or to a scene to determine if there's a crime, collect evidence, take photographs of the area, take measurements, process for any kind of fingerprints or any other kind of forensic evidence, including D.N.A. If it's like a rape case, we collect the bedding to see if we can find any fibers or unusual hairs that wouldn't belong on it, and we do some of the testing at the Sheriff's office; others, we bag up, send to SLED using the proper protocol for chain of evidence. We download the photographs into a computer, and then we write two different reports in two separate computers to document everything so that we can testify in court at the time that the case comes up.

(App I p. 69). Captain Steven L. Denton of the Criminal Investigative Division of the Spartanburg County Sheriff's office, likewise described Martinez's job duties:

Forensics I.D. photograph all types of scenes, to include property crimes, violent crimes, just the gamut of crimes. You lift latent fingerprints; you process scenes for DNA, any type of evidence, any type of forensics evidence. You interview victims of crimes. You may interview suspects of crimes if you're taking evidence from their bodies. Certainly, death investigation, you come in contact with bodies, deceased bodies, and you also have a responsibility to be present at autopsies, which are usually performed at Spartanburg Regional Medical Center, at the County morgue. You interact with the Coroner's office; you interact with detectives and other personnel in uniform patrol. There's a host of things that a person in I.D. forensics would be responsible to do.

(App. I pp. 141-142).

On April 4, 2005, Martinez was sent to perform a forensic investigation of the death of a child. (App I p. 135). When she arrived at the scene, numerous law enforcement and emergency personnel were already present. Spartanburg Sheriff Chuck Wright was present as well as probably 6-7 Spartanburg County deputy sheriffs; 8-10 firefighters; 10 officers from the Greer Police Department, including the Police Chief; Captain Jolene Van Syl and Lt. Matt Hamby; the Greenville County Sheriff; several deputies from the Greenville County Sheriff's Department; and at least one ambulance. (App. I pp. 72, 155-156). The accident which Martinez was dispatched to investigate involved Greenville County Deputy Sheriff Anthony Johnson. (App. I p. 73). Officer Johnson had previously worked for the Spartanburg County Sheriff's Department (App. I pp. 95, 157), then worked for a short time with the Greer Police Department before taking a job with the Greenville County Sheriff's Department. (App. I p. 95). On April 4, 2005, Officer Johnson was departing his residence when he accidentally backed over his two year old daughter. (App. I pp. 133-134).

Martinez's only knowledge of the accident when she arrived was that there was a death of a child, that there had been a terrible accident, and that it involved a former

employee. (App. I p. 72). The accident was investigated by the Spartanburg County Sheriff's Department, because it occurred in Spartanburg County and the City of Greer did not have a forensic unit. (App. I p. 72). When Martinez arrived at the scene, Sheriff Wright was in the garage with the child's father who was very distraught. (App. I pp. 73, 134). Martinez could not identify the person in the garage with Sheriff Wright, but was told by fellow officers that it was Anthony Johnson. (App. I p. 73). The Sheriff spent 20-30 minutes in the garage talking with Officer Johnson. (App. I p. 73). The other officers stayed away from the garage, and Martinez never talked with Officer Johnson at the scene. (App. I pp. 74, 77).

Martinez testified that she considered Anthony Johnson a friend. (App. I p. 74). Johnson was only with the Spartanburg County Sheriff's Department for about 1-1½ years (App. I p. 95), and had left while Martinez was still in uniform patrol. (App. I p. 94). Martinez left uniform patrol to become a forensic investigator about 3½-4 years prior to the accident. (App. I p. 86). When Martinez and Anthony Johnson worked in uniform patrol, they both worked on the third shift. (App. I p. 111). The Sheriff's Department divided the County into eight zones and divided the third shift into "A", "B", and "C" platoons. (App. I pp. 111-112). Martinez and Johnson were assigned to different platoons and to different zones. Therefore, Martinez only worked two days out of the week at the same time that Johnson was working. (App. I p. 112). On those two days, Martinez would normally only see Anthony Johnson at roll calls at the beginning and end of the shift. (App. I p. 112). If Martinez's and Anthony Johnson's zones were busy, she might not see him at all. (App. I p. 113). Martinez had never met Anthony Johnson's wife or child and had never gone to his house. (App. I pp. 95-96). She did not socialize with Anthony Johnson. (App. I p. 96). She admitted that she and Anthony Johnson were not "best friends." (App. I p. 115).

Since it was close to her shift change when Martinez arrived, she asked Captain Denton if she had to work over her shift, or could the next shift work the accident. (App. I p. 75). Captain Denton advised her that she needed to process the scene. (App. I pp. 75, 136). Captain Denton testified that when he made the decision that Martinez should do the investigation, he was basically saying to her, “you’ve got to do your job.” (App. I p. 161).

As a part of her investigation, Martinez took 100-150 photographs, including photographs of the front lawn, the area where the body and car were located, and inside the house. (App. I p. 87). The reason for taking photographs was to determine whether the death had occurred the way it appeared or in some other way. (App. I p. 87). During the investigation, Martinez looked underneath the patrol car to determine if there was evidence that the child had been underneath the car. (App. I p. 79). She testified there were clumps of the child’s hair and skin on the tire and on the asphalt. (App. I p. 79). There were also fingerprints of a child’s hand dragging across the gasoline tank. (App. I p. 79). Martinez took photographs of the underside of the patrol car to show that the child had actually gone underneath the car. (App. I p. 88). In addition to photographs, Martinez’s job required her to take measurements of the position of the body, to collect evidence (including any DNA or fibers), and to move the body so that photographs of both sides of the body could be taken to determine if there were wounds on the underside of the body. (App. I pp. 88-89). Martinez testified that all these activities were a part of her regular duties as a forensic investigator. (App. I p. 89).

After Martinez had investigated the overall scene, she awaited the arrival of the State Highway Patrol’s “S” team to complete her investigation. (App. I pp. 76, 89-90). The Highway Patrol’s “S” team responds to all accidents involving patrol cars. (App. I pp. 76-

77). The "S" team would also take measurements and photographs of the accident scene. (App. I p. 90). After the "S" team had completed their investigation of the overall scene, Martinez moved the child's body so that she and one of the Highway Patrol investigators could photograph the child's body. (App. I p. 90).

Prior to this investigation, (App. I pp. 92,110). She had also investigated 24 cases involving suspicious deaths/homicides (App. I p. 92), and participated in approximately 24-26 autopsies in which the pathologist removed organs from the corpse. (App. I pp. 92-93). She testified that it was not unusual for a forensic investigator to see "blood and guts." (App. I p. 93). She had also been to fire scenes in which bodies had been burned, which she admitted could be quite gruesome. (App. I p. 93). When she had worked previously for the Greenville County Sheriff's Department, Martinez had gone to an accident scene where a dump truck had driven over a child's head. (App. I p. 101). Martinez did not actually perform the investigation, but she testified that the scene did not bother her and she did not cry or have nightmares thereafter. (App. I p. 105). She distinguished that accident scene because the child was not run over by a fellow police officer whom she knew. (App. I p. 106).

On another occasion, Martinez had investigated a motor vehicle accident in which two teenagers rolled a stolen vehicle, while attempting to escape capture. The driver was ejected from the car and the car rolled over him. (App. I p. 108). The teenager died in Martinez's arms after she had moved him to where he could breathe. (App. I p. 108). Martinez also testified that it was not uncommon for investigators to go to motor vehicle accidents in which the occupants had been decapitated or had lost an arm. (App. I p. 110). She also remembered one instance in which a man had accidentally shot his leg off with a

shotgun. (App. I p. 110). Martinez testified that her activities on April 4, 2005, of taking photographs, making measurements, moving the child's body, setting up barriers, etc., were all part of her regular job as a forensic investigator. (App. I p. 99).

Captain Denton testified that the Spartanburg County Sheriff's Department did not have a policy prohibiting employees from investigating an accident scene when they knew the victim. (App. I p. 143). Captain Denton had always maintained that regardless of who the victim was or who you know, even if it was the wife of the person doing the investigation, the officer had to work the investigation. (App. I p. 143). Captain Denton took the same position on April 4, 2005, even though the father of the victim was a person that Martinez had worked with on the third shift at the Sheriff's Department. (App. I p. 144). Captain Denton testified that he could have chosen to have somebody else come to the scene and work it, but he chose not to, because he would have worked the investigation "if the shoe had been on the other foot." (App. I pp. 143-144). Captain Denton also testified that forensic investigators normally touch dead bodies. (App. I p. 144). He testified that Martinez would have been in charge of processing the dead body at the accident scene on April 4, 2005. (App. I p. 138).

According to Captain Denton, taking photographs, making measurements, and moving the child's body at the accident scene on April 4, 2005 was an ordinary part of Martinez's job. (App. I p. 150). He testified that when Martinez was doing her investigation that day, it was an ordinary part of her job. (App. I p. 150). The only thing that was different according to Captain Denton was that the investigation involved a child and Martinez knew the child's father who had caused the accident. (App. I pp. 152-153). Captain Denton acknowledged that forensic investigators have to investigate the death of children. (App. I

pp. 151-152). He also testified that if he had sent any other forensic investigator to do the accident scene, they would have probably known Anthony Johnson as well, although he could not predict they would have the same reaction as Martinez. (App. I p. 154).

On April 18, 2005, Michael Adger Roberts, a cousin of Martinez's former husband, died of AIDS. (App. I p. 79). Martinez testified at the hearing that Michael lived with her and her former husband every summer and during school breaks. (App. I pp. 79-80). She considered him her "cousin," although he was not a blood relative. (App. I pp. 79-80). Martinez testified that Michael had tested HIV positive and developed AIDS. (App. I pp. 79-80). As a result of his disease, Michael developed cancers and had surgeries and other treatments over a long period of time. (App. I pp. 79-80). Martinez testified that it was hard to see Michael Roberts suffering so much, and it was some relief when he died. (App. I pp. 79-80). She testified that it bothered her when he died, and she cried the day he died and the day he was buried. (App. I p. 81).

On April 7, 2005, Martinez saw her family physician, Dr. John R. Wieder, regarding her blood pressure. (App. I p. 170). Dr. Wieder noted that Martinez was a sheriff's deputy and worked in the forensics department. (App. I p. 170). He indicated that there was a lot of stress on the job and that she worked alternating shifts. (App. I p. 170). However, there was no mention in his report of the accident investigation on April 4, 2005. Martinez saw Dr. Wieder again on April 19, 2005. (App. I p. 170). Dr. Wieder recorded the following history in his report:

She is very upset and crying. A very close friend and relative, a cousin with whom she was very close over the years, passed away yesterday. She is very upset about it. They were very close ever since they were little kids. She was very upset that she did not get to the hospital in time to say goodbye before he passed away.

(App. I p. 170). Dr. Wieder took Martinez out of work for a few days. (App. I p. 170). He noted that she would be helping with the funeral arrangements and wanted to attend the funeral. (App. I p. 170). At that time, he placed her on Xanax “to help her get through this trying time.” (App. I p. 172). Dr. Wieder saw Martinez again on April 25 and 29, 2005, May 5, 12, and 26, 2005, and June 24, 2005. (App. I pp. 172-179). In these office visits, Martinez never mentioned the accident investigation on April 4, 2005. (App. I pp. 172-179). In fact it was not until May 3, 2006, after filing her workers’ compensation claim, that Martinez advised Dr. Wieder about the incident with the child. (App. I p. 180).

Martinez was seen at the Spartanburg Regional Hospital Emergency Room on April 24, 2005 complaining of syncope and a migraine headache. (App. I pp. 181-187). The Emergency Room report noted that Martinez was under increased stress that week due to a death in the family. (App. I p. 186). It was the Emergency Room physician’s impression that Martinez was having a grief reaction. (App. I p. 187). The report does not mention the incident on April 4, 2005, involving the child’s death. (App. I pp. 181-187).

On August 7, 2005, Martinez was hospitalized at Spartanburg Regional Medical Center. (App. I p. 192). Dr. Caston’s admission report indicated that Martinez was admitted due to delirium thought to be related to Benzodiazepine withdrawal symptoms. (App. I p. 192). He noted that Martinez had been given Xanax by her family doctor but had not taken the medication for 3-5 days. (App. I p. 191). He further recorded under “Social History” that Martinez apparently had recent problems with uncontrollable hypertension and that the patient’s best friend recently died. (App. I p. 191). The Emergency Room triage report noted:

Per EMS report pt is Deputy Sheriff “who just went crazy in her house.” Broke all windows in house and patrol car. Kicked in doors. Thinks it’s year 1800 and she’s on the Missouri River. Per family patient has no hx of this behavior.

\* \* \* \* \*

Patient continues to be agitated and speaking about red horses running through unit, asking how to do a jewish birth when changing from a girl into a boy, pt thinking picture on wall records what she doing. Pt thinks she’s here related to giving birth.

(App. I pp. 195-196).

In his discharge report of August 9, 2005, Dr. Caston stated under “Social History” that:

The patient had no previous history of psychiatric care. The patient apparently had recent problems with uncontrollable hypertension and also had problems with anxiety, insomnia and depression related to the death of her best friend who apparently was a male cousin.

(App. I p. 204). (Emphasis added). There was no mention in his discharge report of the death of the child on April 4, 2005.

On August 10, 2005, Martinez was admitted to the Carolina Center for Behavioral Health. (App. I p. 275). In the admission report, Dr. Ralph J. Castriotta, stated the reason for the admission as:

The patient was admitted after being hospitalized briefly at SRMC. She ended up there after having a brief reaction, possibly psychotic in nature to abruptly stopping her Xanax. She started the Xanax 2 mg a day 6 weeks ago after suffering an acute anxiety reaction to the death of a relative. She was vulnerable at the time due to stressors at work. She works as a police officer. She feels she was in an emotionally vulnerable state when the relative died. This heightened her reaction to it. She was placed on Xanax. She did reasonably well. She felt

that she needed to get off the medication. She did so basically by stopping it. She then deteriorated and had poor sleep. She had decreased ability to get a sense of the world around her. She finally lost touch with reality and was hospitalized. She has little recall of the events that occurred during the time she lost touch with reality.

(App. I p. 275). (Emphasis added). It was also noted by Dr. Castriotta that Martinez's brother suffered from depression. (App. I p. 276). Dr. Castriotta's diagnosis was psychosis secondary to withdrawal from Benzos and rule out bipolar versus OCD. (App. I p. 276). Martinez was discharged from the Carolina Center for Behavioral Health on August 11, 2005, and was seen in follow-up by Dr. Castriotta. (App. I p. 277)

On August 22, 2005, Dr. Castriotta interviewed Martinez and noted that she became very confused during the interview. (App. I p. 279). Dr. Castriotta discovered that Martinez had been overtaking her Lortab medication. (App. I p. 282). In fact, Martinez had taken 120 Lortabs since August 5, 2005, which was roughly 60 mg a day. (App. I p. 282). For that reason, Martinez was re-admitted to the Carolina Center for Behavioral Health on August 22, 2005. (App. I p. 282). On August 23, 2005, Dr. Castriotta was interviewing Martinez and asked her why she was overtaking her medicine. (App. I p. 282). Martinez told Dr. Castriotta for the first time about the incident in which the police officer had run over his own two-year-old child. (App. I p. 282).

Martinez was hospitalized again at the Carolina Center for Behavioral Health from September 28, 2005 to October 20, 2005. In his discharge diagnosis, Dr. Shane Sherbondy stated that Martinez had a bipolar disorder, not otherwise specified, post-traumatic stress disorder, opium abuse, and benzodiazepine abuse. (App. I pp. 286-287). He also noted that Martinez had a borderline personality disorder. (App. I p. 287). Following her discharge from the hospital, Martinez continued under the care of Dr. Sherbondy. In his office note of

September 29, 2005, Dr. Sherbondy stated that Martinez was no longer working and was seeking long term disability. (App. I pp. 289, 292). He also stated that Martinez did not want to find a new job, because it could not pay as well. (App. I p. 292). On November 9, 2005, Dr. Sherbondy noted Martinez was still pretty fragile and working toward a disability claim. (App. I p. 293).

On June 8, 2006, Martinez was evaluated by Dr. John F. Abess, a Charleston psychiatrist. Dr. Abess took an extensive history from Martinez which included sexual assaults over a two year period during her childhood by a male friend of the family and being raped at age 19 by a friend of her youngest brother. (App. I pp. 320-326).

Martinez described her work experience to Dr. Abess as follows:

She recalls her first autopsy occurred at age 18. Frequently, she has to take measurements of bullet holes. 'We would have to take photos from every angle and behind from inside the skull and from inside the body.' She estimates having participated in about 2 or 3 dozen autopsies. If there was an unattended death, she would have to determine if it was natural or if there was a crime. She estimates having been an investigator at 50 to 100 death scenes. 'It never bothered me.' 'I have always been able to take grizzly stuff.'

(App. I pp. 323-324). Martinez stated that 10 years ago she had taken Luvox for approximately 1½ years for depression. (App. I p. 325). At that time she went through an employee's assistance program. Martinez indicated this was the result of having been separated and divorced. (App. I p. 325).

As a result of his evaluation, Dr. Abess made a primary psychiatric diagnosis of post-traumatic stress disorder, recurrent episode, and chronic bipolar I effective disorder. (App. I p. 333). He also diagnosed prescription medicine abuse associated with primary diagnosis and a personality disorder. (App. I p. 333). Dr. Abess advised that there was

evidence of the existence of bipolar mood disorder prior to April 4, 2005, although the diagnosis was not officially recognized. (App. I p. 334). He also indicated that there was evidence that Martinez's post-traumatic stress disorder also existed prior to April 4, 2005, in that Martinez had developed symptoms consistent with post-traumatic stress disorder after her rape at age 19. (App. I p. 334). It was Dr. Abess' impression that both the accident investigation on April 4, 2005 and the death of her ex-husband's cousin from AIDS in mid-April 2005 were factors in the exacerbation of Martinez's pre-existing bipolar disease. (App. I p. 334). He also felt that the accident investigation could have led to a recurrence of a previously experienced post-traumatic stress disorder which occurred when she was sexually abused for about 18 months from age 7-8 while living in Puerto Rico and after being raped at age 19. (App. I p. 335). However, Dr. Abess advised that the discontinuation of Xanax by Martinez along with the initiation of the anti-depressant Zoloft was the actual precipitant cause for the development of a manic manifestation of her bipolar disorder. (App. I p. 335). Dr. Abess noted that Martinez had a persisting affective disorder, which based on medical records, revealed itself early in her life. (App. I p. 335). He noted that this disorder was genetically developed and the patient had one sibling with a similar disorder. (App. I p. 335).

## **STANDARD OF REVIEW**

Whether a causal connection exists between employment and an alleged injury is a question of fact for the South Carolina Workers' Compensation Commission. Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C.

490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court's review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). "Substantial evidence" necessary to support a decision of the Commission is:

'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'

Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *see also*, O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995) (The determination of witness credibility and the weight to be accorded evidence is reserved to the Commission.). The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Etheredge v. Monsanto Company, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998).

The appellate court's review of the Commission's findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record, rather than reweighing the evidence presented to the Commission. *See generally*, Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 30, 459

S.E.2d 324, 327 (Ct. App. 1995). The appellate court is prohibited from overturning findings of fact of the Commission, unless there is no reasonable probability that the facts could be as related by the witness upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162, 163 (1992).

Of special note is that where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharpe, 336 S.C. at 160, 519 S.E.2d at 105; *See also*, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) ("Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of fact are conclusive.") Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

## ARGUMENTS

### I.

**THE RECORD CONTAINS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S DECISION THAT MARTINEZ DID NOT SUFFER AN UNUSUAL OR EXTRAORDINARY CONDITION IN HER PARTICULAR EMPLOYMENT ON APRIL 5, 2005.**

Mental injuries caused solely by emotional stress are compensable if the emotional stimuli or stressors are incident to or arise from unusual or extraordinary conditions of employment. Stokes v. First National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988);

Powell v. Vulcan Materials Co., 299 S.C. 325, 384 S.E.2d 725. In order to recover workers' compensation benefits, a Claimant must prove both:

- (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.

Frame v. Resort Services, Inc., 357 S.C. 520, 529, 593 S.E.2d 491, 496 (S.C. App. 2004).

Moreover, the requirement of "unusual or extraordinary conditions in employment" refers to the conditions of the particular job in which the injury occurs, not to the conditions of employment in general. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). The statute and our case law speak of *conditions* of employment and not the frequency of an event occurring. Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012). The standard to be applied is whether the work conditions at issue were unusual compared to the particular employee's normal strains. Id. at 457, 535 S.E.2d at 443; Doe v. S.C. Dept. of Disabilities and Special Needs, 377 S.C. 346, 349-350, 660 S.E.2d 262 (2008).

In the instant case, the Commission found that Martinez had not encountered an unusual or extraordinary condition in performing her specific job on April 4, 2005. The Commission's findings were clearly supported by substantial evidence, such that reasonable minds could reach the decision reached by the Commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). This was the conclusion reached by the South Carolina Court of Appeals. Respondents submit that the Circuit Court had improperly substituted its own

opinion and view of the evidence for that of the Commission, and basically re-wrote the Commission's findings of fact.<sup>1</sup>

The Court of Appeals determined that the Commission properly examined the facts of what occurred on April 4, 2005 to determine if the investigation Martinez performed was truly unusual or extraordinary.

According to Martinez, her job entailed:

- (1) Collecting evidence;
- (2) Taking photographs of the area;
- (3) Taking measurements;
- (4) Processing fingerprints or other forensic evidence including DNA;
- (5) Taking photographs of and moving bodies;
- (6) Downloading photographs into a computer; and
- (7) Writing two different reports in two separate computers to document everything.

(App. I pp. 69, 87-90). Martinez testified that she documented the accident scene on April 4, 2005, extensively to determine that the accident had occurred the way it appeared. (App. I p. 88). She took 100-150 photographs, including photographs of the front lawn of the house, the area around the child's body including underneath the car, and inside the house. (App. I p. 88). She also took measurements of the position of the body and collected any kind of DNA or fibers. (App. I pp. 88-89). Martinez testified that the reason the victim's body is moved or turned over is to determine if there is any evidence of harm (gunshot wound or stab wound) on the other side of the body. (App. I p. 89). Significantly, Martinez admitted that taking photographs, measurements, collecting evidence, and moving the body of the child were all part of her job as a forensic investigator. (App. I p. 151). Similarly, Captain Denton testified that when Martinez was taking photographs, making

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<sup>1</sup> In footnote 3 of its Order, the Circuit Court set out its own rendition of the facts. The Circuit Court never discussed or examined any of the Commission's findings of facts under the substantial evidence rule. Rather, the Circuit Court engaged in re-weighing the evidence, which was beyond its scope of review. O'Banner v. Westinghouse Elec. Corp., *supra*.

measurements, and moving the body, she was doing her ordinary job. (App. I p. 88). Clearly, all of these activities were not unusual compared to the normal strains of her job.

However, Martinez contends that the fact that the child's father was Anthony Johnson, a former officer with the Spartanburg County Sheriff's Department whom she knew, made the investigation "unusual or extraordinary." Captain Denton, however, testified that the Sheriff's Department had no policy prohibiting employees from investigating an accident scene where they know the victim. (App. I p. 143). Captain Denton took the same position on April 4, 2005 and required Martinez to work the investigation. (App. I pp. 143-144).

The evidence established that Martinez had only known Anthony Johnson for about 1-1½ years during the time that he was employed by the Spartanburg County Sheriff's Department. (App. I p. 95). Martinez never socialized with Anthony Johnson (App. I p. 96) and had never met Johnson's wife or child. (App. I p. 95). Also, while Martinez and Anthony Johnson had worked the same shift at the Spartanburg County Sheriff's Department, they were assigned to different platoons and worked different zones. (App. I pp. 111-112). Therefore, there were only two working days each week that Martinez actually worked at the same time as Anthony Johnson, and they might only see each other at roll call at the beginning or end of the shift. (App. I p. 112).

Martinez candidly admitted that she and Anthony Johnson were not "best friends." (App. I p. 115). Interestingly, Martinez testified that she did not know whether her reaction would have been the same if the officer who had run over his child had worked on the second shift instead of the third shift. (App. I p. 116). Moreover, Officer Johnson left the

Spartanburg County Sheriff's Department at least 3½ years before this accident.<sup>2</sup> After Johnson left the department, the only times that Martinez saw him was when they would occasionally bump into each other while both were on duty, such as when Johnson might drop off a prisoner. (App. I p. 96).

Over the course of her career as a forensic investigator, Martinez had been involved in 100-150 death calls, including 24 cases involving suspicious deaths/homicides (App. I pp. 92, 110). She participated in approximately 24-26 autopsies where the pathologist removed organs from the body. (App. I pp. 92-93). She admitted that it was not unusual for a forensic investigator to see "blood and guts." (App. I p. 93). She had also been to gruesome fire scenes in which bodies had been badly burned. (App. I p. 93). While she was working previously for the Greenville County Sheriff's Department, Martinez had gone to an accident scene where a dump truck had driven over a child's head. (App. I p. 101). She admitted that the scene did not bother her and she did not cry or have nightmares thereafter. (App. I p. 105). The sole difference, according to Martinez, was that the child was not run over by a fellow police officer with whom she was acquainted. (App. I p. 106).

Martinez also testified that it was not uncommon for investigators to go to motor vehicle accidents in which the occupants had been decapitated or had lost an arm. (App. I p. 110). On one occasion, Martinez had investigated a motor vehicle accident in which two teenagers rolled a stolen vehicle, while attempting to escape capture. The driver was ejected from the car and the car rolled over him. (App. I p. 108). On that occasion, the teenager died in her arms after she had moved him to where he could breathe. (App. I p. 108). She also remembered another instance in which a man had accidentally shot his leg off with a

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<sup>2</sup> Martinez testified that Anthony Johnson left the department while she was still in uniform patrol. (App. I p. 94). Since Martinez had been a forensic investigator for 3½-4 years (App. I p. 71), it is clear that he had left his Spartanburg County employment at least 3½-4 years before the accident.

shotgun. (App. I p. 110). Martinez admitted that her activities on April 4, 2005, of taking photographs, making measurements, moving the child's body, setting up barriers, etc., were all part of her regular job as a forensic investigator. (App. I p. 99).

Captain Denton testified that forensic investigators are required to investigate the deaths of children. (App. I pp. 151-152). Martinez contends that this was the first investigation that she had performed where a child had been run over by someone she knew. However, she admitted to prior investigations involving children. It is not speculation to say that the longer a forensic investigator works the broader variety of cases he or she will experience. Thus, the gaining of knowledge and experience by working new and various types of accidents is not an "unusual or extraordinary" condition of employment any more than an attorney's first trial or a surgeon's first operation could be considered an "unusual or extraordinary" condition of employment. A "first experience" is not by definition "unusual or extraordinary." Furthermore, as recently pointed out by the Supreme Court, "in defining what constitutes unusual and extraordinary, the statute and our case law speak of *conditions* of employment and not the frequency of an event occurring." Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012)(citing S.C. Code Ann. § 42-1-160; Shealy v. Aiken County, 341 S.C. at 456, 535 S.E.2d at 442).

As affirmed by the Court of Appeals, substantial evidence exists in the record to support the Commission's finding that Martinez did not encounter an extraordinary or unusual condition on April 4, 2005, in the course and scope of her employment with Spartanburg County. Martinez implores this Court to re-weigh the evidence in the record and come to a different conclusion. However, even if "the record contains conflicting evidence, this Court may not weigh the evidence." Watt v. Piedmont Automotive, 384 S.C.

203, 681 S.E.2d 615 (Ct. App. 2009). The proper examination for this Court is not to determine which side the evidence supports, but rather to determine if the Commission's decision to deny benefits was supported by substantial evidence in the record. *See generally, Watt v. Piedmont Automotive*, 384 S.C. 203, 681 S.E.2d 615 (Ct. App. 2009); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); *Howell v. Pacific Columbia Mills*, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); *Brown v. Jordan Oil Co.*, 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); *O'Banner v. Westinghouse Electric Corp.*, 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995). Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. *See McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992). Because substantial evidence exists to support the Commission's decision, and reasonable minds could reach the conclusion reached by the Commission, the Commission's decision should stand and the opinion of the Court of Appeals should be affirmed.

Martinez's contention is that the investigation was "unusual or extraordinary," because it involved a child of a former officer with whom she had previously worked. Of the sixteen (16) "Findings of Fact" made by the Commission, eight (8) directly addressed Martinez's contention that she encountered an unusual or extraordinary condition in her employment on April 4, 2005. The pertinent findings of fact were:

3. Claimant's job as a forensic investigator required her to collect evidence in homicide, suicide and other death cases on a regular basis. Claimant testified to seeing accident victims who were decapitated, without arms and legs, and "the worst trauma imaginable." **Claimant admitted it was not unusual for a forensic investigator to see "blood and guts."** However, she contended that the incident on April 4, 2005 was different.

4. Claimant contended that working the death case of a child who was run over by a fellow police officer was unusual and

extraordinary. She stated that police officers have a "special bond." **However, Claimant was not a close friend of the fellow officer, Anthony Johnson, although she worked on the same shift, and they would occasionally see each other at shift changes. She did not personally know the officer's wife or child, had never visited their home, and had never socialized with Anthony Johnson or his family.**

5. Claimant had been to an investigation previously while working for the Greenville County Sheriff's Department in which a child's head had been run over by a dump truck. Claimant testified that the accident did not bother her. **She stated that if that type of situation bothered her, she would never have chosen to be a forensic investigator.**

6. Claimant had investigated and worked up approximately 100-150 death cases in her 3-4 years as a forensic investigator. She had also investigated approximately 24 suspicious death/homicide cases and participated in approximately 24-26 autopsies. **These investigations were a usual and ordinary part of her job.** Claimant also testified about an investigation of an auto accident in which an injured teenager had died in her arms.

7. When Claimant went to a crime scene, she would take up to 100 photographs and move the body. She also took measurements and put up barriers to prevent people from seeing the accident scene. **This was a part of her usual and ordinary job.**

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10. CPT Steve Denton testified that the accident scene of the child's death on April 4, 2005 was a terrible sight but that Claimant was doing her ordinary job that day in investigating the death of the child. CPT Denton required the Claimant to stay and perform the accident investigation because that was her job. **The fact that the death scene involved the death of a child of a former Spartanburg County Deputy Sheriff did not remove the situation from being a part of her regular job.**

11. Spartanburg County Sheriff's Office had no rule prohibiting its employees from going to accident scenes where they knew the victim. CPT Denton testified that he had always maintained and still maintained that **no matter who the victim was, the Sheriff's Department investigators were required to work the accident scene.**

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**14. Investigating the death of a child, even the child of a former Sheriff's Deputy, was not an unusual or extraordinary condition of Claimant's employment.**

(App. I pp. 54-56). (Emphasis added). The Court of Appeals addressed Finding of Fact 4, above. In that Finding (among others), the Commission disagreed with Martinez's main argument that her past working relationship with Officer Johnson made her investigation "unusual or extraordinary." Thus, the role for any reviewing Court is to determine whether substantial evidence exists to support the Commission's decision regarding the nature of Martinez's past relationship with Officer Johnson and whether it made the conditions of her particular employment unusual or extraordinary on April 4, 2005.

Martinez makes the same argument today that she has made since the outcome of her original workers' compensation hearing. Martinez asserts that her position regarding her relationship with Officer Johnson should be accorded greater weight. Martinez's "thin blue line" argument, regarding her relationship with Officer Johnson, makes much of testimony that Johnson and Martinez "backed each other up." (App. I p. 111). She asserts that this is an undisputed fact and cannot be ignored. By this very assertion, it could not be clearer that Martinez is asking this Court to re-weigh the evidence in the record.

Martinez essentially takes the position that the fact that she and Johnson "backed each other up" is a more important fact than those facts actually relied upon by the Commission. And yet, the evidence established that Martinez only worked with Anthony Johnson for 1-1 ½ years during the time that he was employed by the Spartanburg County Sheriff's Office. (App. I p. 95). Martinez and Johnson were assigned to different platoons at the Spartanburg County Sheriff's Office, and they worked different zones. (App. I pp. 111-

112). They might see each other at roll call or at the end of a shift on the two days that they worked at the same time. (App. I p. 112). However, they were not social friends and their families did not socialize together or know each other. (App. I pp. 95-96).

Martinez testified that she did not know whether her reaction would have been the same if the officer who had run over his child had worked on a different shift. (App. I p. 116). Additionally, and perhaps the most important piece of information which Martinez consistently overlooks is the fact that Officer Anthony Johnson left the Spartanburg County Sheriff's Office at least 3 ½ years prior to this accident, while Martinez was still serving on Uniform Patrol. (App. I p. 94). Martinez and Anthony Johnson had not worked together for at least 3 ½ to 4 years prior to this accident. Respondents are in no way asserting that a bond of friendship cannot develop between police officers, as Martinez suggests. Rather, Respondents are pointing to specific, substantial evidence in the record which supports the Commission's findings regarding the relationship between Martinez and Anthony Johnson.

Neither Martinez nor Captain Denton testified regarding any specific instances where she backed up Johnson, or vice versa. While Martinez cites an abundance of Captain Denton's testimony from the initial hearing, Martinez fails to discuss any of Denton's testimony that the Commission actually used to support the findings in its Decision and Order. As pointed out by the Court of Appeals, Captain Denton testified that taking photographs, making measurements, and moving the child's body at the accident scene on April 4, 2005 was an ordinary part of Martinez' job. (App. I p. 150). There was no policy prohibiting employees from investigating an accident scene when they knew the victim. (App. I p. 143). With regard to Martinez's and Captain Denton's testimony, the possibility of drawing two different conclusions from the evidence does not prevent the Commission's

findings from being supported by substantial evidence. See Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). In sum, there is substantial evidence in the record to support the Commission's decision that Martinez did not suffer an unusual or extraordinary condition in her particular employment on April 4, 2005.

Martinez relies largely on Doe v. SC Dept. of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (2008) in support of her argument that an error of law exists because the Commission (and apparently the Court of Appeals) failed to undertake the proper legal analysis. However, the Court in Doe made no new ruling of law that would in any way affect the Commission's findings in this case.<sup>3</sup> In fact, the Supreme Court's majority decision in Doe supports the Respondents' argument that the Commission's decision should be upheld. Additionally, when the instant case is examined in the light of Chief Justice Toal's concurring opinion, Respondents' argument that the Commission's decision should be upheld finds even greater support.

In Doe, the employee alleged a work related mental injury. The Commission denied benefits, finding that it was not unusual for patients to move from one facility to another, for workers to be subjected to aggressive behavior from patients, or for patient care to change. The Circuit Court reversed based on a lack of substantial evidence to support these findings of fact. The Court of Appeals reversed the Circuit Court and reinstated the findings of the Commission, finding that there was substantial evidence in the record to support the Commission's conclusion of no unusual or extraordinary conditions. The Supreme Court reversed the Court of Appeals, because the factual evidence relied upon by the Court of

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<sup>3</sup> This comparison between the "extraordinary and unusual" and the "normal strains of Claimant's employment" is supported by the language used by the majority in Doe v. South Carolina Department of Disabilities and Special Needs, 377 S.C. 346, 351, 660 S.E.2d 260, 262 (March 24, 2008). It is also supported by this Court's decision in the recent case, Watt v. Piedmont Automotive, 384 S.C. 203, 681 S.E.2d 615 (Ct. App. 2009).

Appeals was improperly taken out of context and did not support the Court of Appeal's conclusion. *See Doe, supra* at 350, 660 S.E.2d at 262. The Supreme Court in Doe did not reweigh any evidence (as the Circuit Court did in this case). Rather, the Supreme Court examined the Commission's findings of fact and determined that the record was void of any substantial evidence that would support the Commission's findings.

In summary, Doe is a "substantial evidence" case. The Court reviewed the findings of fact to determine if there was substantial evidence to support the Commission's findings. The instant case is readily distinguishable from Doe, because not only are the facts totally different but also because the record is replete with substantial evidence to support the Commission's findings. Chief Justice Toal's concurring opinion in the Doe case, though not the law of the case, does provide her guidance as to the analysis to be employed under Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988). In the Chief Justice's view, the Court of Appeals and the Commission erred because:

In my view, that fatal flaw is the focus on the ordinary aspects of Petitioner's employment to the exclusion of an examination of the extraordinary, and the consequent use of those ordinary aspects to support the conclusion that Petitioner's injury is not compensable.

Doe at 352, 660 S.E.2d at 263. Chief Justice Toal asserted that the question of substantial evidence need not be reached, because the Commission made a reversible error of law.

In this case, the Commission examined all aspects of Martinez's investigation including those that Martinez asserted were unusual. There was no "elephant in the room" that was overlooked or ignored. The Commission's examination was squarely in line with the Chief Justice's concurring opinion in Doe. The Commission examined Martinez's testimony about how her conditions of employment on April 4, 2005 were unusual or

extraordinary and how it affected her. Martinez explained exactly what she believed was “unusual or extraordinary” about April 4, 2005:

- Q. Had you ever investigated a scene like the April 4<sup>th</sup>, 2005, scene before that day where a fellow officer was involved with the death of his own child?
- A. No. I’ve never—like I said, I’ve never done anything that involves somebody that I know in any kind of violent crime.

(App. I p. 84). However, Captain Denton testified that, with regard to crime scene investigations, “I’ve always maintained that we are to work it no matter what, and I maintained it that day.” (App. I p. 143) With regard to his instruction to Martinez to process the April 4, 2005 incident, Captain Denton further testified:

- Q. And when you made that decision, you were basically saying, “You’ve got to do your job,” right?
- A. Yes.

(App. I p. 161) The Commission found in comparing Martinez’s testimony and the evidence regarding her job duties, that Martinez had not met her burden of proving that the conditions of her employment on April 4, 2005 were, “for her, unusual or extraordinary....” Doe at 352, 660 S.E.2d at 263. There was no error of law for improperly analyzing this case under Doe.

At the Court of Appeals, Chief Justice Few expanded upon this notion in his concurring opinion. He stated that the “circuit court erred in reversing the commission on this point of law. Its ruling is based on a misapplication of the reasoning of *Doe* to the facts of this case.” Martinez at p. 236. The Doe case involved major changes to Doe’s long-term employment conditions. Her usual and ordinary job changed overall, making the conditions which caused Doe’s mental injury unusual and extraordinary. However, as discussed fully

by Chief Judge Few, the instant case did not involve major overall changes in Martinez's long-term working conditions. Instead, it involved a single investigation that Martinez alleges was unusual or extraordinary. The Commission compared that investigation, including Martinez's assertions of why the investigation was unusual or extraordinary, to the normal conditions of Martinez's employment. The Full Commission did not commit any error of law under Doe and Stokes v. First Nat'l Bank. More importantly, the Commission pinpointed specific evidence in the record to show a reviewing Court that their decision is supported by substantial evidence:

4. Claimant contended that working the death case of a child who was run over by a fellow police officer was unusual and extraordinary. She stated that police officers have a "special bond." **However, Claimant was not a close friend of the fellow officer, Anthony Johnson, although she worked on the same shift, and they would occasionally see each other at shift changes.** She did not personally know the officer's wife or child, had never visited their home, and had never socialized with Anthony Johnson or his family.

5. Claimant had been to an investigation previously while working for the Greenville County Sheriff's Department in which a child's head had been run over by a dump truck. Claimant testified that the accident did not bother her. **She stated that if that type of situation bothered her, she would never have chosen to be a forensic investigator.**

10. CPT Steve Denton testified that the accident scene of the child's death on April 4, 2005 was a terrible sight but that Claimant was doing her ordinary job that day in investigating the death of the child. CPT Denton required the Claimant to stay and perform the accident investigation because that was her job. **The fact that the death scene involved the death of a child of a former Spartanburg County Deputy Sheriff did not remove the situation from being a part of her regular job.**

(App. I pp. 54-56). (Emphasis added). The Commission did examine whether the conditions at the accident investigation on April 4, 2005, were unusual or extraordinary in comparison to the normal conditions of Martinez's employment. There was no error of law.

The cases cited by Martinez do not support a reversal of the Court of Appeals opinion. The Shealy case dealt with the cumulative effects of numerous stressors related to “deep cover” undercover police agent work, including the combination of a serious death threat, Shealy’s layoff from his job, and subsequent loss of police protection over several months resulted in conditions of employment that were, for Shealy, unusual or extraordinary. As stated above, the Doe case involved major changes to Doe’s long-term employment conditions. Her usual and ordinary job changed overall, making the conditions which caused Doe’s mental injury unusual or extraordinary. Both Doe and Shealy are distinguishable from the instant case under the exact same logic that the Supreme Court has recently used in the Bentley case when it affirmed the denial of workers’ compensation to a police officer who shot and killed a suspect in the line of duty.

In Bentley, the Petitioner was a deputy sheriff who shot and killed a suspect in a single incident on October 21, 2009. The Supreme Court was mindful “not to compare apples and oranges, but rather to examine cases involving [Bentley’s] particular profession as a deputy sheriff or law enforcement officer.” Bentley at p. 428. The Supreme Court distinguished Shealy because of the cumulative effects surrounding the nature of the issues related to the dangerous deep undercover police work performed by Shealy. In Bentley, the alleged mental injuries resulted from a single shooting incident on October 21, 2009. The potential for and use of deadly force was a standard or necessary condition of Bentley’s particular job as a deputy sheriff. The Supreme Court cited as substantial evidence the testimony of the witnesses, Bentley’s training, and department policy in affirming the conclusion that the October 21, 2009 shooting incident was not an unusual or extraordinary condition of employment.

This same logic can not only be applied to distinguish Doe, which also involved the cumulative effects of major changes to Doe's long term conditions of employment, but is also readily applicable to the instant case. As pointed out by Chief Judge Few, the only aspect of Martinez's employment alleged to be unusual or extraordinary is the nature and character of the April 4, 2005 investigation. Martinez does not argue long-term job changes. See Martinez at p. 236, 238. Thus, both Martinez and Bentley were law enforcement officers in the normal course of their regular conditions of employment when the alleged precipitating event occurred. Just like in Bentley, the record in the instant case contains the same types of substantial evidence including witness testimony, training history, and department policy. The Bentley case, in combination with the numerous cases that instruct this Court to give deference to the Commission as fact finder and not to undertake to reweigh any conflicting evidence, is persuasive and should guide this Court, in keeping with Bentley, to affirm the decision of the Court of Appeals.

## II.

**THE RECORD CONTAINS SUBSTANTIAL EVIDENCE  
TO SUPPORT THE COMMISSION'S DECISION  
REGARDING MARTINEZ'S FAILURE TO PROVE  
THE PROXIMATE CAUSE OF HER MENTAL  
DISORDER.**

Because the Court of Appeals concluded that there was substantial evidence that Martinez did not suffer an unusual or extraordinary condition in her employment, the "proximate cause" issue was not reached. Respondents contend that this Court, like the Court of Appeals, need not reach the "proximate cause" issue given the substantial evidence in the record supporting the Commission's decision that Martinez did not encounter an unusual or extraordinary condition of employment on April 4, 2005.

However, in his concurring opinion, Chief Judge Few elected to address “proximate cause.” As such, should this Court elect to address the “proximate cause” requirement, then Respondents submit that the proper analysis is for this Court to determine whether there is substantial evidence in the record to support the Commission’s finding that the accident investigation on April 4, 2005, was only a factor in Martinez’s mental condition, and therefore did not proximately cause her mental condition.

Chief Judge Few pointed out three findings of fact made by the Commission (Finding of Fact 8, 9, and 16) and confirmed that the record contains ample evidence to support these findings. Should this Court address “proximate cause,” Respondents submit that there is in fact substantial evidence supporting the Commission’s decision that Martinez failed to prove proximate cause and the Commission’s decision should be affirmed.

In Nawa v. Wackenhut Corporation, 288 S.C. 250, 341 S.E.2d 800 (1986), the employee contended that job related stress need only be a “contributing cause” of an injury to be compensable under the Workers’ Compensation Act. Nawa, 288 S.C. at 252. The Court of Appeals rejected this contention:

[A] claimant must prove an employee’s death is proximately caused by an accident arising out of employment. South Carolina requires the employee’s job be more than one factor, to any extent, in the injury or death.

Nawa at 252. More recently, in Frame v. Resort Services Inc., 357 S.C. 520, 593 S.E.2d 491 (2004), the Court of Appeals held:

In order for [a claimant] to recover workers’ compensation benefits, he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) **that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.**

Frame, at 529, 496 (Emphasis added).

Furthermore, in Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000), the employee, like Martinez, was a police officer. Shealy had gone undercover during the course of his employment as a narcotics agent and alleged that unusual and extraordinary conditions of employment caused a mental injury. The Shealy Court held:

In order for Shealy to recover workers' compensation benefits, he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were **the proximate cause** of his mental breakdown.

Shealy at 459. Shealy was unable to prove by a preponderance of the evidence that a proximate relationship existed between his mental injuries and the extraordinary and unusual conditions of his employment. Like Martinez in this case, Shealy was suffering from non-work-related outside stressors. Because of the non-work-related outside stressors, Shealy could not prove the required proximate relationship by the greater weight of the evidence.

The law of South Carolina requires that the unusual and extraordinary conditions of employment and a Claimant's alleged mental injury be proximately related. This is precisely the analysis employed by the Commission in the instant case. The Commission examined all the evidence in the record and determined that Martinez did not meet her burden of proving that any job-related stressors on April 4, 2005, proximately caused her mental condition. The Commission found that Martinez had experienced other non-work-related stressors in April of 2005, namely the death of her "cousin." The Commission found that Martinez did not mention the April 4, 2005 investigation until approximately four months after the incident. Prior to that, Martinez had been placed on an anxiety medication because of her "cousin's" death and had been hospitalized on two occasions due to a withdrawal reaction after she abruptly stopped her Xanax medication that had been prescribed by her family

doctor after her “cousin’s death.” It was Martinez’s burden to prove that the conditions of her employment on April 4, 2005 and her alleged mental injury were *proximately related*. The Commission found that the credible and reliable medical evidence established that the accident investigation on April 4, 2005, was only **one** factor amongst others in the development of Martinez’s psychiatric condition.

Martinez’s “cousin” passed away from AIDS on or about April 18, 2005. (App. I p.

79). Martinez testified that his death affected her:

It affected me. Michael, my cousin, Michael Adger Roberts - - and forgive me, I call him my cousin, I’m so used to it. He’s my ex-husband’s cousin, but he lived with us every summer when - - after my husband and I got married, he and his brother would come and stay with us in the summer and during school breaks and things. So I considered him my cousin, but he is not flesh and blood. He’s my ex-husband’s cousin. . . .

I knew he had been H.I.V. positive. He had been gay for years. I knew he was H.I.V. positive and, and then he got AIDS, and from what I understand, the two most virulent ways of dying with AIDS is either certain cancers or with certain pneumonia. He had the problem with the cancers. So he had had off-and-on surgeries and treatment for the cancer, and he suffered for so long that it was - - we - - we spent as much time as we could together, but it was hard to see him suffering so much, and it hurt badly when he died. I mean, that’s somebody that I love, somebody that I half raised, but it was a relief, too, ‘cause there had been so much suffering. So it bothered me. It would have been crazy not to let it bother me. But it didn’t destroy my life or anything.

(App. I pp. 79-80).

The first medical attention that Martinez received for emotional stress was from her family doctor, John R. Wieder, M.D. on April 19, 2005. Dr. Wieder recorded the following history:

This 46-year-old, white female who is a sheriff's deputy here, comes today to have her blood pressure checked. She is on Lotrel 5/20 and Coreg 6.25 mg. She takes Lotrel in the morning, and the Coreg once a day at bedtime. **She is very upset and crying. A very close friend and relative, a cousin with whom she was very close over the years, passed away yesterday. She is very upset about it. They were very close ever since they were little kids. She is very upset that she did not get to the hospital in time to say goodbye before he passed away.**

(App. I p. 170). (Emphasis added). As a result of her stress, Dr. Wieder took Martinez out of work for a few days and sent a note to Sheriff Wright to advise him of the situation. Dr. Wieder also placed Martinez on Xanax "to help her get through this very trying time." (App. I p. 172). Significantly, Martinez did not mention to Dr. Wieder about the accident investigation on April 4, 2005. Martinez returned to Dr. Wieder on April 25, 2005 for elevated blood pressure. Dr. Wieder sent Martinez to Mary Black Memorial Hospital where she was admitted for her blood pressure. (App. I p. 172). Martinez returned to Dr. Wieder on April 29, 2005, after being hospitalized for three days at Mary Black Memorial Hospital. (App. I p. 173). Dr. Wieder noted that Martinez had trouble focusing and thinking straight, which he believed was due to the Xanax "and the fact that she has been through a rough time the last few days." (App. I p. 174). Again, Martinez did not mention to Dr. Wieder the accident investigation on April 4, 2005. Martinez returned to Dr. Wieder on May 5, 12, 26 and June 2, 7, 24, 2005. Martinez never mentioned in any of the office visits that she had any stress related to the accident investigation of April 4, 2005. (App. I pp. 174-179).

On August 7, 2005, Martinez was transported by EMS to Spartanburg Regional Medical Center because of "patient behavior suggesting psychiatric problems." (App. I p. 199). The EMT report indicated that Martinez had been taken off Xanax and placed on Zoloft about 1-2 weeks ago. Martinez was seen at the hospital by a psychiatrist, Dr. Chris

Caston. Dr. Caston noted that the reason for Martinez's admission was delirium thought to be related to Benzodiazepine withdrawal symptoms. It was noted that Martinez had not had Xanax in 3-5 days and this resulted in bizarre behavior like breaking windows at her house and in her patrol car. Under social history, Dr. Caston noted "apparently the patient's friend recently died." (App. I p. 192). Dr. Caston's diagnosis was clinical psychiatric disorders, Benzodiazepine withdrawal delirium, and anxiety disorder. In his discharge note of August 9, 2005, Dr. Caston stated:

The patient is a 46 year old white female who has been admitted due to delirium thought to be related to benzodiazepine withdrawal symptoms. The patient has not had Xanax in 3 to 5 days.

\* \* \* \* \*

The patient had no previous history of psychiatric care. The patient apparently had recent problems with uncontrollable hypertension and also had problems with anxiety, insomnia and depression **related to the death of her best friend who apparently was a male cousin.**

(App. I p. 204). (Emphasis added).

On August 10, 2005, Martinez was admitted to the Carolina Center for Behavioral Health for a psychiatric evaluation. A comprehensive assessment was performed at the hospital which noted that Martinez's chief complaint was:

I became psychotic last Sunday. I tore my home up and tore my police car up. I'm glad I didn't hurt anyone because I carry a gun. I stopped taking Xanax and became psychotic.

(App. I p. 350). It was further noted in the assessment that the precipitating event had been:

**My cousin died midApril 2005 and I took Xanax for my nerves. I stopped taking Xanax 1-2 weeks ago and became psychotic.**

(App. I p. 350) (Emphasis added). Martinez was evaluated by Dr. Ralph J. Castriotta, on August 11, 2005. Dr. Castriotta noted in his report the reason for the admission as:

The patient was admitted after being hospitalized briefly at SRMC. She ended up there after having a brief reaction, possibly psychotic in nature to abruptly stopping her Xanax. She started the Xanax 2mg a day 6 weeks ago **after suffering an acute anxiety reaction to the death of a relative.** She was vulnerable at the time due to stressors at work. She works as a police officer. **She feels she was in an emotionally vulnerable state when the relative died. This heightened her reaction to it. She was placed on Xanax.** She did reasonably well. She felt that she needed to get off the medication. She did so basically by stopping it.

(App. I p. 275). (Emphasis added). It was not until Martinez was re-admitted to the Carolina Center for Behavioral Health on August 22, 2005 that Martinez first mentioned the accident investigation of April 4, 2005. (App. I p. 279).

Martinez was also evaluated by Dr. John F. Abess, a Charleston psychiatrist, on June 8, 2006. It is important to note that Martinez had suffered significant traumatic events throughout her life. During her childhood in Puerto Rico, Martinez was sexually assaulted for almost two years by a male friend of her family. Martinez did not tell her parents about the sexual assault until the family moved back to the United States. Martinez advised Dr. Abess that this experience taught her that she did not like being a victim and she was determined never to be a victim again. (App. I pp. 321-322). Martinez also advised Dr. Abess that she had been raped at age 19 by a friend of her youngest brother. Again, Martinez never told her parents because of fear of the action that her family would take. Martinez advised Dr. Abess that after the rape she did not want to go out of the house or have any relationship "with guys." (App. I p. 322). Martinez further advised that after the rape, she did not tolerate anything from anyone. (App. I p. 323). Martinez also became depressed in 1996 and was prescribed Luvox which she took for 1½ years. (App. I p. 325). At that time, she went to an Employee Assistance Program (EAP). Martinez advised that

she was unhappy during this period because of her separation and divorce from her husband.

(App. I p. 325). Dr. Abess also noted Martinez's description of her job:

She estimates having participated in about 2 or 3 dozen autopsies. If there was an attended death, she would have to determine if it was natural or if there was a crime. She estimates having been an investigator at 50-100 death scenes. 'It never bothered me.' 'I have always been able to take grizzly stuff.'<sup>4</sup>

(App. I pp. 323-324).

It was Dr. Abess' impression that Martinez had post traumatic stress disorder by history after being sexually abused in childhood and being raped at age 19. (App. I p. 330).

It was also Dr. Abess' impression that Martinez had a pre-existing Bipolar Disorder. (App. I pp. 331-333). In that regard, Dr. Abess stated in his report:

Bipolar Disorder is a heredity or genetic disorder. It can appear de novo due to the individual's unique genetic coding, or it can be handed down from parents. The clinical expression of the illness or an exacerbation of the illness can be triggered by a variety of experiential and environmental factors. In Claimant's case, strong emotions associated with the work related accident investigation on 4 April 2005 and the death of her ex-husband's cousin in mid April 2005 were factors in the exacerbation of her pre-existing bipolar illness. The discontinuation of Xanax along with the initiation of the antidepressant Zoloft was the actual precipitant for the development of a manic manifestation of her bipolar disorder. This psychotic reaction is better explained as a manic mood state than as a withdrawal delirium because at the time of her admission to the emergency room, her vital signs were normal. A withdrawal delirium from Xanax would be expected to cause tachycardia (false pulse) and hypertension (elevated blood pressure). Finally, Claimant is currently taking substantive anti-psychotic doses of Seroquel. If her psychotic mood state was attributable to a Withdrawal Delirium from Xanax, the anti-psychotic medication would be needed for

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<sup>4</sup> Dr. Abess noted in his mental status exam that when providing the details of her investigation into the child's death, Martinez did not demonstrate any difficulty talking about the event. Neither did she manifest tears, falter in her speech or show anger. In fact, she never cried during the entire interview with Dr. Abess. (App. I p. 332).

only a few days. Claimant, therefore, has a persisting effective disorder which the record shows revealed itself early in her life. Such disorders are genetically developed and the patient has one sibling with a similar disorder.

(App. I pp. 334-335). (Emphasis added). Dr. Castriotta was also suspicious that Martinez may have a bipolar disease. In his evaluation of August 11, 2005, Dr. Castriotta's Axis I diagnosis was "psychosis secondary to withdrawal from Benzo's; rule out bipolar versus OCD." (App. I p. 276). Dr. Shane Sherbondy, a psychiatrist with Carolina Center for Behavioral Health, also gave a discharge diagnosis of:

Axis I: Bipolar Disorder, not otherwise specified. Post traumatic stress disorder.

(App. I p. 286). All of the above evidence conflicts with Martinez's position that her psychological problems were proximately caused by the events of April 4, 2005. However, Martinez accuses the Court of Appeals of "cherry picking" evidence and argues that the proximate cause requirement would preclude compensability of her claim as an aggravation of a pre-existing mental condition. Martinez's argument is unpersuasive and once again should be viewed as nothing more than an effort to cite evidence that conflicts with that relied upon by the Commission with the goal of having this Court to re-weigh the evidence in the record. Martinez desires for this Court to accord greater weight to the evidence that she alleges favors her case. However, even if "the record contains conflicting evidence, this Court may not weigh the evidence." Watt v. Piedmont Automotive, 384 S.C. 203, 681 S.E.2d 615 (Ct. App. 2009).<sup>5</sup>

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<sup>5</sup> Respondents take exception to Martinez's closing argument that Respondents have somehow sought to characterize Martinez as "damaged goods unworthy of either compassion or compensation no matter what later befalls them." Respondents have never made disrespectful or disparaging comments about Martinez in this manner, or based legal arguments upon the same.

This Court should be guided by the Shealy case, where the Court addressed a very similar situation and upheld the Commission's finding that the Appellant's non-work-related job stressors prevented proof by a preponderance of the evidence that the alleged mental injury and the unusual and extraordinary conditions of employment were proximately related. As pointed out in this Brief, by Chief Judge Few in his concurring opinion, and also as demonstrated by the Record itself, the Commission's decision regarding proximate cause is supported by substantial evidence.

Despite the fact that there is no need for this Court to examine any issues related to proximate causation in view of the Commission's correct finding of no unusual or extraordinary conditions of employment, the decision of the Commission should nevertheless be affirmed because Martinez did not meet her burden of proving her alleged mental injury was proximately related to her employment on April 4, 2005, and there is substantial evidence to support the Commission's decision.

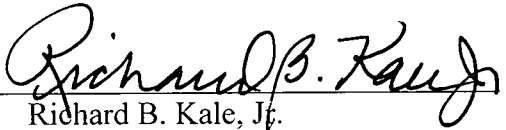
## **CONCLUSION**

The findings of fact made by the South Carolina Workers' Compensation Commission should be affirmed in full because they are supported by substantial evidence. The Commission's findings of fact were specific and the Commission's analysis was legally proper. There is substantial evidence in the record to support the Commission's finding that Martinez did not encounter an unusual or extraordinary condition in her particular employment on April 4, 2005. Furthermore, though the issue was not reached by the Court of Appeals, substantial evidence also exists in the record to support the Commission's finding that the events of April 4, 2005 did not proximately cause Martinez's mental

condition. The opinions of the South Carolina Workers' Compensation Commission and the South Carolina Court of Appeals should be affirmed.

Respectfully submitted,

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June 10, 2013

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Case No. 2007-CP-42-1966

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JUN 10 2013

**S.C. Supreme Court**

Raquel Martinez,

Petitioner,

v.

Spartanburg County and  
S.C. Association of Counties  
Self-Insurance Fund,

Respondents.

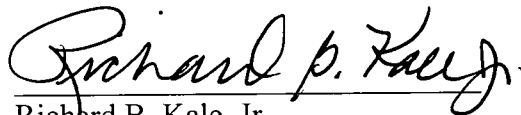
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**PROOF OF SERVICE**

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I certify that I have served the Brief of Respondents on Raquel Martinez by depositing copies of it in the United State Mail, postage prepaid, on June 10, 2013, addressed to her attorneys of record, J. Kevin Holmes, Esquire, and David T. Pearlman, Esquire, The Steinberg Law Firm, P.O. Box 9, Charleston, South Carolina 29402-0009 and Chadwick D. Pye, Esquire, P.O. Box 6346, Spartanburg, South Carolina 29304.

June 10, 2013



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