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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Robert E. Hood, Circuit Court Judge

Appellate Case No. 2022-001218
Case No. 2018-CP-40-4835

Joseph P. Sellaro, ... Respondent,

v.

The South Carolina Department of Social Services
and the Richland County Sheriff's Department, ... Defendants,

Of which, The South Carolina Department of
Social Services is the..... Appellant.

RECORD ON APPEAL - VOLUME II
(pp. 371-738)

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Karen Gilman - Direct examination
By Mr. Garfield

1 THE WITNESS: Yes, ma'am.

2 KAREN GILMAN, being first duly
3 sworn, testified as follows:

4 THE CLERK: Thank you.

5 MR. GARFIELD: And, Your Honor, just for housekeeping,
6 could Mr. Dozier be excused from any Court obligations?

7 We have no---

8 THE COURT: Any objection, Mr. Brehmer?

9 MR. BREHMER: No, sir.

10 THE COURT: Mr. Summers.

11 MR. SUMMERS: Oh, no, sir.

12 THE COURT: All right. Thank you, Mr. Dozier. You're
13 excused from your subpoena.

14 MR. DOZIER: Thank you.

15 THE COURT: Tell me your name, ma'am. I'm sorry.

16 THE WITNESS: Karen Gilman.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MR. GARFIELD:

20 Q. Good morning.

21 A. Good morning.

22 Q. Can you please introduce yourself to the jury?

23 A. Hi. My name's Sergeant Karen Gilman with the Richland
24 County Sheriff's Department.

25 Q. Okay. I'd like you to tell the jury a little bit about

1 yourself.

2 where are you from originally?

3 A. California.

4 Q. Okay. where in California?

5 Not that I know a whole lot about California.

6 A. It's, at the time, was a small town called Lancaster.

7 It's about 45 minutes northeast of LA.

8 Q. And when did you move to the State of South Carolina?

9 A. We moved here in 2005.

10 Q. And you've lived here ever since?

11 A. Yes, sir.

12 Q. And you've already stated that you work with the

13 Richland County Sheriff's Department?

14 A. Yes.

15 Q. And when were you hired with the Richland County

16 Sheriff's Department?

17 A. I was hired in 2012 and I began my employment January
18 of 2013.

19 Q. 2012. Began employment in 2013.

20 when did you go to the -- well, before I ask you about
21 the academy, what was your first assignment as a sheriff's
22 deputy?

23 A. Here at the courthouse.

24 Q. In this courthouse?

25 A. Yes.

1 Q. Okay. And you went to the South Carolina Criminal
2 Justice Academy?

3 A. I did.

4 Q. And when did you attend there?

5 A. Twice actually. So, the first one was in 2013.
6 Everybody has to go through the legals, learn all the laws,
7 and then the second time was as a Class I officer at -- in
8 2014.

9 Q. Okay. And so your first assignment was at the
10 courthouse.

11 Could you share with us any future assignments you had
12 along the way during your career?

13 A. After working at the courthouse I became an SRO and
14 worked at Bridge Creek Elementary for approximately one
15 year. And after that I was assigned to a -- Region 1 for
16 probably less than a year. They did some shuffling around
17 and then I worked in Region 2. I worked with Region 2 in
18 about five years and I've been in Region 6 since 2020.

19 Q. And you said SRO.

20 What does that stand for?

21 A. School, school resource officer.

22 Q. So this would be a sheriff's deputy assigned to that
23 school?

24 A. Yes, sir.

25 Q. For law enforcement purposes?

1 A. Yes.

2 Q. Okay. And your rank with the Sheriff's Department
3 currently is what?

4 A. Sergeant.

5 Q. And when were you promoted to sergeant?

6 A. February of this year.

7 Q. Okay. Congratulations. This case is about events that
8 occurred in February of 2016.

9 what rank did you have at that point?

10 A. I was deputy.

11 Q. A road deputy?

12 A. Yes.

13 Q. And on February 27th of 2016, do you remember what
14 day of the week that was?

15 A. Saturday.

16 Q. Okay. And Saturday, February 27th, which -- were you
17 working on that day?

18 A. Yes, sir.

19 Q. And what shift was that?

20 A. I was on night shift, which is from 18:00 hours to
21 06:00 hours.

22 Q. Okay. And for us civilians that would be 6:00PM---

23 A. 6:00---

24 Q. ---to 6:00AM?

25 A. Yes, sir.

1 Q. Okay. So while a lot of us are sleeping you're out
2 there working?

3 A. Yes, sir.

4 Q. And you were working at this time what region?

5 A. Region 2.

6 Q. And can you tell us what the geographical boundaries
7 are just roughly of Region 2 in Richland County?

8 A. It's the -- from Farrow Road to Percival Road up to
9 Mallet Hill and down to Beltline --

10 Q. Okay.

11 A. -- approximately.

12 Q. Do you recall this particular evening --

13 A. Yes, sir.

14 Q. -- this shift?

15 Okay. Tell me did you have an occasion to receive a
16 call about Mrs., Mrs. Sellaro or the events we are here
17 today --?

18 A. Yes, I did.

19 Q. Okay. Can you tell the jury what, what you recall from
20 that?

21 A. Yes, I was called. The dispatch contacted -- sent out
22 a call for a -- what they call a welfare check at Mr.
23 Sellaro's address and we were instructed to call the, the
24 Coroner's Office, which usually means something obviously
25 happened with death.

1 So, I made contact with Deputy Coroner Dozier and asked
2 him what the situation was, what we were responding to the
3 address for to which he, you know, informed me that Mr.
4 Sellaro's wife had been in an accident and did not survive,
5 that they were -- she was his -- her -- yes, she was his
6 primary caregiver and that we needed to respond to the
7 situation to assess for a possible EPC in regards to his
8 care.

9 Q. Okay. And a possible EPC?

10 A. Correct.

11 Q. Doesn't mean that somebody's definitely gonna be EPC'd?

12 A. Absolutely not.

13 Q. Okay. And we've heard a lot about EPC.

14 A. Right.

15 Q. EPC stands for what?

16 A. Emergency protective custody.

17 Q. Okay. And emergency protective custody, I'll just ask
18 it the same way I've asked with other folks, what does that
19 mean to you as a law enforcement officer?

20 A. The definition of --?

21 Q. Sure. Absolutely.

22 A. Okay.

23 Q. Well, not necessarily the legal definition.

24 A. Oh.

25 Q. But what is a -- what -- from a law enforcement

1 officer's prospective---

2 A. Okay.

3 Q. ---what is EPC?

4 A. So, emergency protective custody, to me, is in response
5 to a situation where it could be several different reasons.
6 We are called to the scene to assess whether or not an
7 individual's immediate welfare is at stake, if there's any
8 type of imminent danger, possible injury, possible anything
9 that could be detrimental to that person.

10 Q. Okay. Could it be that the person could just be a
11 child?

12 A. Absolutely.

13 Q. Could this be someone that could not take care of
14 themselves properly like a child or a vulnerable adult?

15 A. Yes.

16 Q. Okay. Had you ever been a part of the EPC process
17 before February, 2016?

18 A. Yes.

19 Q. In other words, what---

20 A. I, I was an SRO. There's a lot of that happened.

21 Q. Okay. And so, on this particular evening, you've said
22 that you were called out for a possible EPC.

23 what, if anything, did that mean to you, just those
24 words?

25 A. That meant that I was being called to the scene to

1 determine the welfare of Mr. Sellaro and whether or not he
2 was going to need care by either a relative or care at the
3 hospital or just to make sure that his environment was safe
4 for him to be at home alone considering that his sole
5 caregiver to what was communicated to us had passed.

6 Q. Very good.

7 So, did you have an occasion to go to the home?

8 A. Yes.

9 Q. If you could describe what you encountered there?

10 A. After talking to the deputy coroner and waiting for him
11 to respond from the hospital, I responded to 1832 Crestview
12 and was going to standby and wait for everyone else to get
13 there, which was the deputy coroner, highway patrol, and the
14 victim's advocate which was Investigator Gaymon.

15 So, I didn't want to pull up in front of his house and
16 startle him for any reasons. I actually pulled up in front
17 of a neighbor's house and stood by and waited for other
18 vehicles to arrive.

19 Upon their arrival, we had to standby for highway
20 patrol because when it involves a death from an accident,
21 highway patrol is going to accompany the coroner.

22 So, they arrived and they went to the door and knocked
23 on the door for a long period of time. I mean not several
24 long period of time but enough they were trying to arouse
25 someone who was apparently sleeping.

1 So the highway patrol, there were two officers, a male
2 and a female, and along with the coroner and Ms. Outlaw,
3 they entered into the residence after he opened the door and
4 I waited outside and I believe Investigator Gaymon waited
5 outside with me.

6 Once the death notification was made and the highway
7 patrol exited the location, that's when myself and
8 Investigator Gayman entered into the residence to assess the
9 situation.

10 Q. And Investigator Gaymon is with what police agency?

11 A. Richland County Sheriff's Department.

12 Q. And what was his role or title?

13 A. Victim's advocate.

14 Q. So, you being a road deputy and a victim's advocate
15 both with the Sheriff's Department are now in the house?

16 A. Yes.

17 Q. Okay. Who, who else is in the house at that time?

18 A. Ms. Outlaw and Deputy Coroner Dozier and, of course,
19 Mr. Sellaro.

20 Q. Okay. What, if anything, do you recall at this point?

21 A. I recall that we were trying to initially discover if
22 there was any family members that, you know, we could --
23 that the coroner could make contact with. He also is the,
24 the contact that will, you know, make notifications to the
25 family, any extended family members. So he was trying to

1 find out more information in regards to family.

2 Mr. Sellaro was obviously stunned by the news that he
3 had received earlier, which is completely understandable.
4 And while we were -- we were having conversation not -- we
5 didn't jump straight into, you know, when did you eat, how
6 long have you eaten, you know. We had compassion and
7 conversation to give him time to absorb what, you know, he
8 just heard, understandably, very devastating news.

9 Between the three of us, questions were asked about
10 whether or not he -- whether or not his wife was his sole,
11 sole caretaker and I don't remember what his reply was as
12 specifically to that question. I don't believe he answered
13 the question. But then we asked him about eating, does he
14 remember the last time he was, you know, had had any food.
15 I recall that he did not remember the last time he had eaten
16 food.

17 We asked him, when his wife isn't home, what kind of
18 food, you know, how does he take care of himself, feed
19 himself. He said there are TV dinners in the refrigerator
20 to which I checked and there are -- there were several TV
21 dinners in the refrigerator. I didn't see any evidence of,
22 in the sink, in regards to, you know, somebody eating,
23 rinsing something out, anything like that.

24 Then, in regards to his medical conditions, we were
25 concerned about the diabetes due to the fact that it didn't

1 appear that, you know, while his wife was gone all day, that
2 he checked his blood sugar or ate consistently in order to,
3 you know, maintain that healthy blood sugar level.

4 we asked him -- Ms. Outlaw asked him if he had his
5 blood testing kit. I'm not a nurse. I don't know technical
6 words for any of those things. So bear with me.

7 So, that was -- he brought that out. I think -- I
8 believe it was sitting on the kitchen table. He brought
9 that out and began to just withdraw Insulin into the needle
10 to which Ms. Outlaw stopped him abruptly and said you didn't
11 test your blood sugar yet. You can't just shoot yourself up
12 with Insulin right now and it was at that point that I
13 determined that EMS needed to be called to the situation.

14 Q. Thank you for all that.

15 So, when you say at that point you determined, we'll
16 get back to that in a moment cause that point is
17 significant. I'm gonna ask you questions about that. But
18 up and to that point -- you mentioned Ms. Outlaw a couple
19 times.

20 Did you have an occasion to speak with Ms. Outlaw to
21 gain an understanding of what she could provide for you?

22 A. I did. I did ask her specifically in regards to her
23 relationship to the situation. Like who are you to this
24 family. She explained that she was the best friend of
25 the -- Mr. Sellaro's wife and was -- had very specific

1 details about how -- what her experiences were in the home
2 and what she had to do for her husband on a daily basis to
3 care for him and that he -- she was the one that made sure
4 all of these things happened, the taking care of the
5 Insulin, making sure, you know, he ate. Basically she gave
6 the impression that these things would not occur without his
7 wife being present.

8 Q. Did that concern you at all?

9 A. Yes. Very.

10 Q. Why?

11 A. Well, in the -- in a situation for an EPC, you have a
12 certain amount of time to assess the situation. I, I don't
13 have -- there isn't going to be doctor's tests or, you know,
14 I only have what's in front of me and I was very concerned
15 about Mr., Mr. Sellaro and he was confused. I do understand
16 that he did have a devastating -- he did receive some
17 devastating news. So that's understandable that you're, you
18 know, not feeling so great and, even so, that's also going
19 to be a factor in whether you're going to do what you need
20 to do to take care of your health issues.

21 My concern about that is I, I have a choice. Looking
22 at the situation, looking at how he was acting, looking at
23 the fact that it did not appear that he had eaten, it did
24 not appear that, you know, he was in the right mind to be
25 able to manage his diabetes, I could, I could not walk away

1 from the situation and then, by chance, come back tomorrow
2 and find him in a diabetic code of -- that's -- coma.

3 That's what I'm faced with at that very moment.

4 Like I could walk away but then what?

5 You know, what's gonna happen, what could happen. I
6 have to -- I have to ask myself that question, what could
7 happen if I don't do something now to help this man.

8 Q. Would it be fair to say that that's the method that you
9 chose to utilize police protection?

10 A. Yes.

11 Q. What is a mandatory reporter or like anybody who's a
12 professional in South Carolina that would be subject to the
13 Mandatory Reporting Statute?

14 A. Mandatory reporting is law enforcement officers,
15 teachers, doctors, nurses.

16 Q. There -- I know there's a whole list of professions.

17 A. Yeah. Those are the ones that, you know, are the most
18 commonly---

19 Q. When you---

20 A. ---used.

21 Q. ---worked in the school system --

22 A. Uh-huh.

23 Q. So what you're saying is I -- teachers,
24 administrators---

25 A. Uh-huh.

1 Q. ---staff, faculty are mandatory reporters?

2 A. Correct.

3 Q. Law enforcement?

4 A. Yes.

5 Q. Same way as an SRO, you would of been a mandatory
6 reporter?

7 A. Yes.

8 Q. Are, are you a mandatory reporter now --

9 A. Yes.

10 Q. -- just being a Class I officer?

11 A. Yes.

12 Q. If -- you, you talked about options or alternatives.

13 A. Uh-huh.

14 Q. Had you gone in there, could you have legally saw what
15 you saw, experienced what you experienced, and then, excuse
16 me, simply walked out?

17 MR. BREHMER: I'm gonna object. He asked for a legal
18 conclusion from a lay witness.

19 THE COURT: Sustained.

20 Q. So in this method that you chose --

21 A. Uh-huh.

22 Q. -- you said that, at that point, excuse me, that, at
23 that point, you summoned for an EMS?

24 A. Yes.

25 Q. What is the difference between EPC'ing someone, excuse

1 me, and summoning for an ambulance or an EMS or is that the
2 same thing?

3 A. Not necessarily. There's several reasons why you're on
4 scene that you may even call for an ambulance to further
5 assess a situation since they are medical professionals. In
6 regards to testing his blood pressure, blood pressure, his
7 Insulin levels, you know, heart rate, anything else that
8 could be going on with him, I don't have those tools and I'm
9 not a medical professional. So, there could be that to help
10 further assess the situation.

11 Also we were gonna -- we're gonna take into the
12 situation -- we're gonna take into consideration any, what
13 has been said previously, any relatives, any neighbors,
14 anybody. Is there somebody who can come and help this man
15 and make sure that he remains safe in his home.

16 Q. Whose decision was it to EPC Mr. Sellaro on this night?

17 A. Mine.

18 Q. You summoned an ambulance.

19 Tell us what happened next.

20 A. I believe, at that point, his blood sugar was tested
21 and it was report -- reportedly high. Well, first let me
22 back up.

23 So, the ambulance -- we had told -- I had told Mr.
24 Sellaro that he was gonna need to go to the ambulance, that
25 I was taking him into protective custody. I did not feel

1 comfortable leaving him at home, and, therefore, I had an
2 ambulance coming who was going to transport him, as per
3 procedure, to the hospital for further assessment, things
4 that we, as law enforcement, can not do obviously. But
5 there at the hospital, he's going to get the assessment that
6 he needs and DSS also is involved and they also have ways to
7 get him help, resources, anything. So it's a -- so a
8 conglomeration of things that are only going to help Mr.
9 Sellaro to care for himself to be independent.

10 So, the ambulance came. At first when I told him, you
11 know, what was happening, he was not happy and I understand
12 that. No, nobody really would be. He told me he was gonna
13 fight me and I, you know, calmly stated no, you're not gonna
14 fight me and he then -- the ambulance pulled up and I said
15 well, Mr. Sellaro, it's time, it's time for us to go. Can
16 you get a coat and then we're gonna get on this gurney and
17 we're gonna go.

18 He said yes, ma'am, got up, got his coat, and walked
19 out to the gurney and got on the gurney and then was in DSS
20 custody --

21 Q. Okay. Before you---

22 A. -- or not. Sorry.

23 Q. And I interrupted you. You said I'm sorry.

24 what were you gonna say?

25 A. He -- it's not DSS custody. He was in the, you know,

1 inside the ambulance being cared for by EMS. As per policy,
2 they get transported. A deputy or a representative from
3 Richland County Sheriff's Department will follow them to the
4 hospital and they will stand by until a DSS caseworker
5 responds to the scene and then they are, they are turned
6 over to DSS custody to be cared for from that point forward.

7 Q. Are these roles totally separate?

8 A. Yes, sir.

9 Q. The Sheriff's Department and DSS?

10 A. Yes.

11 Q. There has been -- my apologies. There has been some
12 mention about a female officer shoving him, pushing
13 Mr. Sellaro or anything like that. That's all. I don't
14 have a question yet about that.

15 It -- at any point did you push or shove Mr. Sellaro?

16 A. No, sir, I did not.

17 Q. At any point did you ever make contact with his person?
18 Did you ever touch him at any point?

19 A. The only time that I touched him is when I was
20 assisting him down the stairs like holding his arm.

21 Q. Okay. To make -- to do -- for what purpose?

22 It may be obvious---

23 A. So that he would not fall.

24 Q. There is also a mention in the EMS run report something
25 about a piece of paper or a cardboard paper with a number on

1 it.

2 Do, do you know anything about that?

3 A. Yes. So I don't remember whose number it was or what
4 number Mr. Sellaro was asking about. But he wanted a
5 specific phone number that he stated was on the frigerator
6 (sic) and I went to the frigerator. He said it was on the
7 cardboard. I got the, I got the number for him and I gave
8 it to him and he carried that with him on to the ambulance.
9 It was not pinned to him in any way, shape, or form.

10 Q. Okay. And was there a -- did he appear to have his own
11 cellphone?

12 A. No.

13 Q. Did you ever tell him anything of the sort like, sir,
14 you're under arrest?

15 A. Never.

16 Q. After he said he wanted to fight you, and you said, you
17 know, to whatever it is, let's just go ahead and get your
18 coat, did he, did he remain, you know, a little resistant or
19 did he calm down or what was his demeanor at that point?

20 A. At that point, surprisingly, he was just very
21 submissive.

22 Q. So, when you were helping him downstairs, he didn't---

23 A. No.

24 Q. ---give you any sort of resistance or anything like
25 that?

1 A. Not at all.

2 Q. And when he was placed on the gurney, was he compliant
3 with the EMS personnel?

4 A. Yes.

5 Q. Okay. No one had to use force on him or anything like
6 that?

7 A. No.

8 MR. GARFIELD: Just one moment, Your Honor.

9 (Pause.)

10 Q. Sergeant Gilman, so after Mr. Sellaro left in the EMS,
11 did you ever have an occasion to see him again?

12 A. Yes.

13 Q. And can you tell us what the circumstances were of that
14 event?

15 A. So, this, this situation stuck with me. It was
16 horrible to think that a man whose wife was his caretaker
17 and died in one night and, you know, at the same time was
18 put in a situation of being EPC'd. I did frequently drive
19 by and check on his residence, since I worked in the area,
20 to just make sure it was okay unsure if he was coming back
21 to it at all, because once he goes to the hospital, I don't
22 have any say or knowledge of what occurs after that.

23 So, one day when I was patrolling and driving by, I
24 noticed that he was standing outside in the carport. And so
25 I pulled up and stopped and got out of my car and I waved to

1 him and he came up to -- he had a chain link fence around,
2 oops, around his house and, you know, there were dogs
3 outside. I think there was one or two dogs roaming in and
4 out of the front door cause it was open.

5 So, he came up to the chain link fence and I asked him
6 how he was doing. I told him it was good to see him home
7 and then he proceeded to explain to me some of what you've
8 already heard occurred while he was at the hospital being
9 there for 10 days, missing his wife's funeral, the
10 experience with his sister-in-law, and the DSS workers to
11 which I have no knowledge of and I just asked him -- I, I
12 told him obviously that I was really sorry about the
13 experiences that he had. It's been a rough time. How was
14 he holding up.

15 He thanked me for stopping by and also, you know,
16 acknowledged that an, an understanding that I had to do what
17 I did that night for his safety.

18 Q. Okay. It's been six years.

19 Do you regret EPC'ing this gentleman?

20 A. No.

21 Q. Let me have one point of clarification before I sit
22 down because, when I do, I may have -- not have another
23 opportunity to ask the first line of questions.

24 When you first came to his house, you said you were
25 there first, you were there for a period of time before

1 other first responders came.

2 Is that right?

3 A. Correct.

4 Q. So you were what, basically sitting in your patrol car?

5 A. Yes.

6 Q. You were able to see the house?

7 A. Yes.

8 Q. You were able to see his yard?

9 A. Yes.

10 Q. Could you describe the condition of his yard and this
11 is the night of the EPC?

12 A. There appeared to be -- it appeared to be kind of
13 unkempt I guess would be how I would describe it and there
14 was some clutter in and around the carport area.

15 Q. Did it look like it was freshly mowed to you?

16 A. No.

17 Q. Okay. And, and do you recall anything, if any, the
18 condition of his house, his kitchen, his living room, and
19 inside of his house?

20 A. There was a lot of clutter, a lot of dog food. There
21 were a lot of appliances or something on the counters. We
22 weren't able to go to any other part of the house. Not even
23 the -- not the room that he was reclining in where the dogs
24 were. He had advised us that one of the dogs was pretty
25 aggressive so to stay out of that side of the house.

1 Q. And you managed to do that hopefully?

2 A. Oh yes.

3 Q. Okay. Sergeant Gilman, I think that's all. Thank you
4 very much. Please answer any questions --.

5 A. Yes, sir.

6 MR. SUMMERS: May it please the Court.

7 THE COURT: Yes, sir.

8 THE WITNESS: Is it possible for me to get some water?

9 THE COURT: Sure.

10 THE WITNESS: That's mine.

11 THE COURT: Just one second.

12 okay?

13 THE WITNESS: Thank you.

14 MR. GARFIELD: Yes, ma'am. There you go.

15 THE WITNESS: Thank you, ma'am. Appreciate it.

16 CROSS-EXAMINATION

17 BY MR. SUMMERS:

18 Q. I understand.

19 A. The mouth gets dry.

20 Q. Good to go?

21 A. Yes, sir.

22 Q. Very good.

23 Good morning, Sergeant Gilman.

24 A. Good morning.

25 Q. You understand my name is Lake Summers and I represent

1 DSS in this matter?

2 A. Yes, sir.

3 Q. Just a few questions based upon what you and
4 Mr. Garfield just discussed.

5 Your understanding was that the late Mrs. Sellaro was
6 the sole caregiver for Mr. Sellaro?

7 A. Correct.

8 Q. And you've described to Mr. Garfield your thought
9 process in making the decision to place Mr. Sellaro in
10 emergency protective custody, correct?

11 A. Correct.

12 Q. And you wanted him to be safe?

13 A. Yes.

14 Q. And just speak up as loud as you can.

15 A. Yes. Absolutely.

16 Q. And you wanted to help him?

17 A. Yes.

18 Q. And you felt he would be safe after his admission at
19 the hospital?

20 A. Yes.

21 Q. You felt he would be helped upon his admission to the
22 hospital?

23 A. Of course.

24 Q. And you also described your impression and belief that
25 my agency, DSS, would provide Mr. Sellaro resources to help

1 him kind of get back on his feet after the sudden loss and
2 tragic loss of his late wife?

3 A. Yes, that's their role.

4 Q. And in other questions towards the end, Mr. Garfield
5 had you describe Mr. Sellaro telling you when you visited --

6 A. Uh-huh.

7 Q. -- that you had to do what you had to do for his
8 safety?

9 A. Correct.

10 Q. I very much appreciate you answering my questions.
11 That's all I've got.

12 A. Okay.

13 THE COURT: All right.

14 CROSS-EXAMINATION

15 BY MR. BREHMER:

16 Q. Good morning, officer.

17 A. Good morning.

18 Q. I want to go through a few things with you.

19 Mr. Sellaro was compliant with some of the police
20 requests, was he not?

21 A. Yes.

22 Q. He opened the door, correct?

23 A. Correct.

24 Q. I mean y'all didn't knock the door down. He opened
25 it---

1 A. Yeah.

2 Q. ---when you summonsed him to the door?

3 He answered questions like what's your date of birth,
4 what's your social security number, correct?

5 A. I do not recall any of those questions being asked.

6 Q. Okay. But you do know that he gave that information,
7 correct?

8 A. No, sir.

9 Q. Okay. All right. Now -- and when you asked him about
10 his diabetes, he went and got his Insulin, did he not,
11 correct?

12 A. He did. It was on the table.

13 Q. And he also had the presence of mind, I think you've
14 testified in direct examination, that he told you not to go
15 in the other room because the dog was aggressive that was in
16 that room, did he not?

17 A. He did.

18 Q. Okay. And can we both agree that that's a pretty lucid
19 statement, correct?

20 A. Well, it's an obvious statement.

21 Q. Okay. Well, it's -- one, it shows that he's aware that
22 the dog's there, correct?

23 A. Well, they were barking.

24 Q. He's aware that you're there and he was aware that you
25 don't know the dog and that that may not come out to a good

1 result, correct?

2 A. I'm at---

3 MR. GARFIELD: Objection. Just it's sort of compound
4 and speculative in nature.

5 THE COURT: Okay. Overruled.

6 You can go ahead.

7 Q. Okay. So -- okay. And he was answering your
8 questions, was he not?

9 A. For the most part.

10 Q. For the most part.

11 Okay. Now, would you mind telling the jury who Mr. Ben
12 Bolding is?

13 A. He's a deputy with the Richland County Sheriff's
14 Department --

15 Q. Okay.

16 A. -- or was.

17 Q. Okay. And Ben Bolding was not present at the Sellaro
18 house on February the 27th, 2016, was he?

19 A. No.

20 Q. Okay. And you were not present at the March 1, 2016,
21 probable cause hearing, were you?

22 A. I was not.

23 Q. Okay. And it is not true that everything that was
24 asked of Mr. Sellaro to do on February the 27th, 2016,
25 that he was unable to do, is it?

1 A. It is not true?

2 Q. That right -- that's right.

3 It is not true that everything that was asked of Mr.
4 Sellaro to do on February the 26th or February 27th,
5 2016, he was not able to do, is it?

6 A. Well, there was some things he was not able to do.

7 Q. That's not my question.

8 My question is---

9 A. Okay. I don't understand your question.

10 Q. Ma'am?

11 A. I don't understand your question.

12 Q. My question's very sim---

13 A. You're using double negatives.

14 Q. Please let me ask my question and then we'll---

15 A. Okay.

16 Q. It is not true that everything that was asked of Mr.
17 Sellaro on February 27th, 2016, he was unable to do, is
18 it?

19 A. I disagree.

20 Q. Okay. You disagree that he was unable to do everything
21 that was asked?

22 A. You said that he was not able to---

23 Q. Okay.

24 A. ---not do what he was unable---

25 Q. He was---

1 A. If you could rephrase the question that would be
2 helpful.

3 Q. It is not true that Mr. Sellaro was unable to do
4 everything asked of him on February 27th, 2016, is it?

5 A. So you're telling me it's not true that he was not able
6 and I'm telling you I disagree he was not able.

7 Q. Okay. He was able to answer your questions, correct?

8 A. Some of them, yes.

9 Q. Okay. He was able to tell you what his date of birth
10 was, wasn't he?

11 A. I didn't ask him what his date of birth was.

12 Q. He was able to let you in the house, wasn't he?

13 A. He let them open the door, yes.

14 Q. Okay. So, we can agree he was able to let you in the
15 house, right?

16 A. He did.

17 Q. Okay. Okay. He was able to tell you there was a dog
18 in the other room that may attack you, correct?

19 A. He did.

20 Q. Okay. He was able to tell you that he had had a TV
21 dinner that -- wasn't he?

22 A. No, he did not tell me that.

23 Q. Okay. Didn't you testify earlier that he told you he
24 had had a TV dinner for dinner?

25 A. No, I did not.

1 Q. Okay. Did you go to the check -- refrigerator to check
2 if there were TV dinners?

3 A. I did.

4 Q. Okay. And there were?

5 A. There were.

6 Q. Okay. Okay. Now, you didn't attend this probable
7 cause hearing at all, did you?

8 A. I was not notified.

9 Q. That's not my question.

10 You did not attend?

11 A. No, I did not.

12 Q. Okay. You were the person that made the decision to
13 have him taken into emergency protective custody but you did
14 not appear at the March 1, 2016, hearing, correct?

15 A. Correct.

16 Q. And you agree that Ben Bolding had no personal
17 knowledge of the events of February 27, 2016, at the Sellaro
18 residence?

19 A. No, I do not agree.

20 Q. Okay. He wasn't there?

21 A. He wasn't.

22 Q. Okay.

23 A. Doesn't mean he doesn't have knowledge.

24 Q. I said personal knowledge, ma'am.

25 A. No, he was not there.

1 Q. Okay. Okay. Okay. Thank you, ma'am.

2 REDIRECT EXAMINATION

3 BY MR. GARFIELD:

4 Q. Okay. Sergeant Gilman, the things asked by law
5 enforcement of Mr. Sellaro to do such as go through the
6 diabetes checklist, did it appear that he was doing that
7 correctly to you?

8 A. No.

9 Q. Did you consider that a significant omission?

10 A. Yes.

11 Q. Why?

12 A. Due to diabetes and the care -- being able to take care
13 of the condition of diabetes is detrimental to someone's
14 survival.

15 Q. I don't have anything else.

16 Thank you, judge.

17 MR. SUMMERS: No further questions for DSS, Sergeant.

18 MR. BREHMER: Nothing further.

19 THE COURT: Thank you, ma'am.

20 All right. Who's next?

21 MR. GARFIELD: Your Honor, the defendant sheriff would
22 called Reginald Gaymon.

23 THE COURT: All right. Come forward please, sir.

24 THE CLERK: Could you state your full name please?

25 THE WITNESS: Reginald Jerome Gaymon.

Reginald Gaymon - Direct examination
By Mr. Garfield

1 THE CLERK: Would you spell your last name please?

2 THE WITNESS: G-A-Y-M-O-N.

3 THE CLERK: Thank you.

4 REGINALD GAYMON, being first duly
5 sworn, testified as follows:

6 THE CLERK: Thank you. You can have a seat right
7 there.

8 DIRECT EXAMINATION

9 BY MR. GARFIELD:

10 Q. Good morning.

11 A. Good morning.

12 Q. And I was standing over there.

13 Did you, did you introduce yourself yet?

14 Could you introduce yourself---

15 A. Oh, yeah. I'm sorry.

16 Q. ---to the jury?

17 A. Reginald---

18 Q. Sorry.

19 A. ---Jerome Gaymon. R-E-G-I-N-A-L-D. Last name of
20 Gaymon. G-A-Y-M-O-N.

21 MR. GARFIELD: Okay. Is that mic picking up?

22 THE COURT: Sounds like that mic may have went off.

23 MR. GARFIELD: It did it seemed.

24 THE WITNESS: Oh, I'm sorry. Forgive me. I --.

25 THE COURT: Try it now, Reggie.

1 THE WITNESS: I pressed my -- I put my folder on the
2 push button. Forgive me.

3 THE COURT: That's okay.

4 A. Reginald Jerome Gaymon. R-E-G-I-N-A-L-D. Last name of
5 Gaymon. G-A-Y-M-O-N.

6 Q. Well, you only have three microphones up there. So --.

7 A. Yeah.

8 Q. Okay. Where are you currently employed?

9 A. I'm employed at the State Ethics Commission.

10 Q. And do you have a title?

11 A. I'm an investigator.

12 Q. Okay. I want to make sure I was addressing you
13 appropriately.

14 Investigator Gaymon?

15 A. Yes. Correct.

16 Q. Investigator Gaymon, where are you from originally?

17 A. Sumter, South Carolina.

18 Q. And can you tell us about your educational background?

19 A. Yes. I graduated from Furman High School in Sumter.

20 Went to Wofford College and graduated in 1987 with a
21 sociology degree, and then was employed by the Richland
22 County Sheriff's Department.

23 Q. When were you hired with the Richland County Sheriff's
24 Department?

25 A. In 1987.

1 Q. I know it's gonna show, show a little tenure here.

2 A. Yes, sir.

3 Q. You were hired in 1987.

4 who was the sheriff back then?

5 A. Sheriff Frank Powell.

6 Q. Okay. And you were -- let me just walk you through

7 1987.

8 were you employed continuously through 1987 --

9 A. Yes.

10 Q. -- until recently?

11 A. Until -- I was at the Richland County Sheriff

12 Department until December of 2000.

13 Q. So your first stint would of been roughly 13 years?

14 A. That's correct.

15 Q. Okay. And would it be correct to say you served under
16 three sheriffs?

17 A. That's correct, yes, sir.

18 Q. And what was your reason for leaving in 2000?

19 A. I was hired at SLED, State Law Enforcement Division.

20 Q. Okay. And what were you hired at SLED to do?

21 A. To do investigations. I was assigned to the Midlands
22 Region for SLED.

23 Q. And how many years did you serve as a SLED
24 investigator?

25 A. Thirteen years.

1 Q. So that gets us to 2013 roughly?

2 A. Yes, sir.

3 Q. Okay. And what, what, if anything, happened?

4 where'd you work in 2013?

5 A. I retired from SLED and went back to the Richland
6 County Sheriff's Department and initially became the -- an
7 investigator with -- for financial crimes.

8 Q. And did you have any other duties or roles at the
9 Sheriff's Department --

10 A. Sure.

11 Q. -- during this most recent phase?

12 A. Sure. I was invited to become a victim advocate while
13 I was at the Sheriff's Department, and that's where I was
14 during the time of this particular case.

15 Q. Okay. So, it's fair to say you've been a law
16 enforcement officer, I'm doing some quick math, for 35
17 years?

18 A. Thirty-five years, yes, sir.

19 Q. Yes, sir.

20 And at this particular time in February of 2016, you
21 served with the victim's advocate---

22 A. Yes, sir.

23 Q. ---division at the Richland County Sheriff's
24 Department?

25 A. That is correct.

1 Q. Tell me a little bit about that as, as far as just the
2 make up.

3 who all -- like I don't necessarily need to know names
4 but how did the chain of command work?

5 what was your role there?

6 A. I was an investigator assigned to investigations. But
7 my role and primary duties was a victim advocate. And what
8 we would normally do was assist the victims of Richland
9 County that are victims of crime to access resources that
10 are -- that may help them through whatever situation they
11 may be going through.

12 Q. Okay. So I'll bring you to February 27th, 2016 --

13 A. Uh-huh.

14 Q. -- what we're all here for as far as that particular
15 day.

16 A. Yes, sir.

17 Q. Tell me what, if anything, you remember about this one
18 shift this Saturday evening.

19 A. As a victim advocate, we do evening shifts and this was
20 my week to do evening shifts and, while we're on evening
21 shift, we are on call on the weekends. And if, if the -- a
22 situation happens, the victim advocate is called to come out
23 and assist for whatever, whatever may be necessary for
24 victims.

25 Q. Okay. And that was your role at this particular time?

1 A. Yes, sir.

2 Q. Okay. Do you receive -- do you recall receiving, you
3 know, an initial contact or initial call?

4 A. Yes, sir, I would -- I normally receive a phonecall
5 from the desk sergeant letting me know that -- of a
6 situation, that I can expect another call from whoever may
7 call. In this particular case, it would be from the
8 Coroner's Office.

9 Q. Okay. We're talking about an event six years ago and
10 we're all basically having a conversation.

11 Do you have fairly -- a decent recollection of these
12 events?

13 A. Yes, sir. Once we get the -- once I got -- excuse me.

14 Once I received the phonecall, I was notified to
15 respond to the, the home of Mr. Sellaro and meet with a
16 deputy coroner there so that we can evaluate the situation
17 and, if necessary, place him into protective custody.

18 Q. And I will ask you this.

19 What does that mean to you when someone says if
20 necessary?

21 A. The decision has not been made. We have to evaluate
22 the situation once we arrive.

23 Q. You could very easily make the decision not to place
24 someone in emergency protective custody?

25 A. That's, that's correct.

1 Q. Okay. What are some of the -- have, have you ever been
2 a part of the initiating EPC protocols in the past?

3 A. Yes, sir, I have. Yes, sir.

4 Q. All right. What all goes in, from a law enforcement's
5 prospective, when you get a phonecall to say that there's a
6 possible EPC situation?

7 A. We would respond to wherever the scene is, evaluate the
8 situation, see who the victim is in that situation, or the
9 person who made to -- may need to be placed into protective
10 custody, and once we evaluate the situation, evaluate the
11 situation, we make a decision based on what we have there.

12 Q. Okay. And so you get this phonecall.

13 Was it from a desk sergeant?

14 A. Yes, sir.

15 Q. Okay. Tell me what happened next.

16 A. Gather myself and get in my patrol car, which was an
17 unmarked car, and then we would proceed to the, to the
18 address.

19 Q. Had you been to this address before?

20 A. This was my first time. No, sir.

21 Q. Okay. Did you know anyone that lived at the house or
22 connected to that house?

23 A. No, sir.

24 Q. Okay.

25 A. I did not.

1 Q. And when you got there, what do you recall happening?

2 A. Well, we had to -- well, of course, I met with then
3 Sergeant Gilman. But we met with the highway patrol. The
4 deputy coroner, he responded, and also Ms. Outlaw, who
5 was identify -- who identified herself as a family friend.
6 Received more detailed information about what had happened
7 earlier with Mrs. Sellaro in, in her death and that we
8 needed to assess the situation based on Mrs. Sellaro being
9 the primary care for -- person for Mr. Sellaro.

10 Q. Okay. Take me from there.

11 what happened next?

12 Do you recall?

13 A. Highway patrol got -- once every -- everyone arrived,
14 Ms. Outlaw went in, made first contact with Mr. Sellaro, and
15 I think they had -- she had to -- he was able to put the
16 dogs away so that there won't be any -- wouldn't be any
17 issues with the dogs -- the animals. They made first
18 contact and then Ms., excuse me, Sergeant Gilman and I went
19 in and began to evaluate the situation further and the
20 decision was made, based on what we observed, what we heard
21 from Mr. Sellaro, Sellaro, that we needed to place him into
22 protective custody.

23 Q. Okay. Investigator Gaymon, can you please describe
24 what you observed that went into your evaluation?

25 A. The -- there were, I guess, two particular points of,

1 of interest that we were really concerned with, whether he
2 would be able to care, care for himself physically from the
3 standpoint of how would he eat. would he be able to provide
4 for, for himself. And the other aspect would be based on
5 his medical, medical condition, how would he be able to care
6 for himself in, in -- along those lines.

7 Q. And let's go over each one of those.

8 A. Okay.

9 Q. The first thing you said was like nutrition or food.

10 A. Right. Right.

11 Q. What, if anything, did you observe at that --.

12 A. Well, when---

13 Q. ---from that prospective.

14 A. When, when Mr. Sellaro was asked well, how would you
15 prepare your food, he -- his response was I, I put the TV
16 dinner in the microwave for 30 seconds and, and eat it.
17 And, of course, him having access to microwave, he can
18 always heat it up more or even defrost it. So that wasn't
19 a, a real big concern. But the fact that he didn't have
20 access to getting any, any more food, the car was in an
21 accident, he didn't have access to transportation, he had,
22 no, no family near to be able to care for him.

23 Q. And then you talked about medical---

24 A. Medical.

25 Q. ---concerns---

1 A. Yes.

2 Q. ---or concerns for his medical condition or stability?

3 A. Yes. When he was asked well, how would you -- what
4 would -- what steps would you take to administer Insulin to
5 yourself because he was, was a diabetic, and his response
6 was that he would -- he, he grabbed his -- the, the vile and
7 began to -- he began to proceed -- he proceeded to
8 withdraw -- act as if he was going to withdraw the Insulin
9 so that he can shoot himself up before even testing his
10 blood to see how much he may of needed. That was a really,
11 really -- a big concern and was the crux of what was, in my
12 opinion, the necessary -- necessitated us acting at that
13 point to place him into protective custody because that was
14 medical.

15 The other, the other aspect was, was, you know, meals.
16 The medical, you can actually harm yourself more if you do
17 the wrong thing medically.

18 Q. Okay. Was it your understanding that -- was there any
19 other family member or anybody willing or available to step
20 up in a caregiving role?

21 A. There was no one. In my notes I, I actually called one
22 of his -- a sister and she -- if I may refer to my, my, my
23 email?

24 Q. Yes, sir.

25 A. Okay.

1 Q. would it help refresh your recollection of the event?

2 A. Yes.

3 Q. Okay.

4 A. Yes, it would.

5 In my notes I have Mr., Mr. Sellaro's name is, is --
6 his sister's name is Karen Cochello and I also have her
7 phone number listed and she lives in Pennsylvania.

8 And after contacting her, she was not able to assist
9 with Mr., Mr. Sellaro's care. Efforts to contact the son
10 had been unsuccessful by the Coroner's Office and that was
11 in an email that I, I sent to our on call coordinator for
12 EPC. She would be the -- Ms. Amsie -- Amy Kinsey was a
13 person who, through the, the incidents over the weekend, we
14 would make contact with to let her know because, if there
15 was a hearing, she would be the one normally to be -- to
16 testify for an, an EPC hearing.

17 So, I forwarded that. That was part of the information
18 I forwarded to her so that -- in thinking that she was gonna
19 be the person to, to, to testify at the EPC hearing. She
20 was my first contact and who I emailed the information to.

21 Q. Okay. And we'll get to the hearing in a minute cause
22 I -- these are -- those are gonna be some important points.

23 Did you formulate just from -- based on your
24 observations and your investigation, did you formulate any
25 opinions, from a law enforcement prospective, that he was

1 able to care for himself?

2 A. We would not have been able to leave Mr., Mr. Sellaro
3 at that address and we needed to place him into protective
4 custody for his own health and safety.

5 Q. So, did you it -- let's say -- Sergeant Gilman made the
6 call to EPC.

7 Do you play a role in that call as well or is that --
8 do you work in tandem or---

9 A. We work in tandem---

10 Q. ---how does that work?

11 A. ---yes, sir. Once the decision's made, and I would be
12 able to share information with her based on what I saw, but
13 we saw the same thing. So, the decision was made to place
14 him into protective custody. And so that's what was done.

15 Q. So, understanding about the process, do you recall
16 anything after that decision was made -- cause we're talking
17 about that point. Now we're going forward.

18 A. Uh-huh.

19 Q. An EM -- did an EMS come to the scene?

20 A. Yes. Yes, they did.

21 Q. Okay. Tell me what, what, if anything, you recall
22 about those circumstances.

23 A. Once they got -- they -- once EMS arrived, they tested
24 the blood sugar level and it was -- well, it was pretty
25 high. So Sergeant Gilman actually, excuse me, Gilman

1 asked -- actually was very instrumental in encouraging him
2 to go ahead and go with E -- EMS rather they stay at the
3 home.

4 Q. Okay. It appeared he was gonna be taken into custody
5 one way or the other?

6 A. He was gonna, yes, sir. I mean we, we, we --.

7 Q. Protective custody---

8 A. It would of been a -- the dereliction of duty if we
9 left him there. Knowing what we knew and seeing what we
10 saw, his health and safety would of been in jeopardy and we
11 needed to, we needed to act.

12 Q. So this EPC process, this gentleman goes as a patient.
13 That's -- he's in the EMS unit and he's transported to what
14 hospital?

15 A. To Palmetto-Richland.

16 Q. Palmetto-Richland.

17 what, if anything, do you or Sergeant Gilman do at this
18 point?

19 A. At this point I guess he -- he's in my custody. I say
20 custody. He's in my care as I follow the ambulance to the
21 hospital cause, at that point, as a victim advocate, we
22 would actually be the persons who turned the person who's
23 been E -- EPC'd over to DSS. DSS had been contacted. There
24 was a person from DSS, a representative, who met me at the
25 hospital and the care was turned over to that person.

1 Q. At this point, when you say the care is turned over to
2 another person --

3 A. Uh-huh.

4 Q. -- that would be someone in the DSS realm?

5 A. That's correct.

6 Q. Okay.

7 A. Yes, sir.

8 Q. Other than someone appearing later on at the probable
9 cause hearing, other than that, does law enforcement's role
10 end at that point for the EP---

11 A. That's correct.

12 Q. For an---

13 A. Yes, sir.

14 Q. ---EPC?

15 A. That's correct. Yes, sir. Except for testimony at the
16 hearing, yes, sir.

17 Q. Except for testimony at the hearing, is there anything
18 else as far as requirements under the EPC at that point?

19 In other words, he's at the hospital now---

20 A. Uh-huh.

21 Q. ---under DSS care.

22 A. No, sir, we, we, we -- because, once he's at the
23 hospital, he's in -- under care, medical care, with the
24 doctors. DSS would, would, would be the agency who is in
25 care of him as his person basically to make sure that the

1 things were done properly as far as who would, who would
2 care for him -- how -- and go forward from there.

3 Q. Okay. Do, do you understand -- well, let me kind of
4 back up and lay a foundation. We talked about at your
5 probable cause hearing.

6 A. Uh-huh.

7 Q. Just generally what is that hearing and what is the
8 purpose of the hearing?

9 A. The purpose of the hearing is to see if there was
10 probable cause for the person to be placed into protective
11 custody.

12 Q. And the hearing is generally in what court?

13 A. Family Court.

14 Q. Have you ever attended any of these hearings in the
15 past---

16 A. Yes, sir, I have.

17 Q. ---Investigator?

18 A. Yes, sir.

19 Q. Have you ever testified at any of these hearings in the
20 past?

21 A. Yes, sir.

22 MR. GARFIELD: Just one moment, Your Honor. There was
23 one marked, an exhibit, I guess for identification purposes.
24 It would be the probable cause hearing.

25 THE COURT: It's got a number on it?

1 MR. BREHMER: No. 8.

2 MR. SUMMERS: It is No. 8, Your Honor.

3 MR. BREHMER: And it's in evidence.

4 THE COURT: I think it's in evidence.

5 MR. SUMMERS: It is.

6 THE COURT: Plaintiff's 8.

7 MR. GARFIELD: Oh, I got you. It -- that would be the
8 transcript of record. There's actually the order from the
9 Court --

10 THE COURT: Oh.

11 MR. GARFIELD: -- that I think was premarked.

12 (Pause.)

13 MR. GARFIELD: My apologies, Your Honor. I don't see
14 it.

15 Your Honor, what I have at issue is the 72 hour
16 hearing, our hearing order. It's bates numbered at the
17 bottom. It's been referred to throughout. I do not see it
18 up here marked as identification or an evidence. I didn't
19 want to duplicate it --

20 THE COURT: Okay.

21 MR. GARFIELD: -- cause one of the other counsel is
22 required to see if this has been --.

23 THE COURT: Sure.

24 MR. SUMMERS: May it please the Court, Your Honor. To
25 my knowledge it's not been---

1 THE COURT: Yeah, I don't think it---

2 MR. SUMMERS: ---admitted.

3 THE COURT: I don't think it's in evidence, is it?

4 MR. BREHMER: I thought it was.

5 THE COURT: I thought just the transcript was.

6 MR. SUMMERS: That, that is what I understand the case
7 to be too, sir.

8 THE COURT: I don't think the order's in.

9 MR. GARFIELD: Sir?

10 THE COURT: I don't think the order's in either.

11 MR. GARFIELD: No.

12 May I approach the witness?

13 THE COURT: Sure.

14 MR. GARFIELD: Okay.

15 Q. Take a minute, Investigator Gaymon, to look at this.

16 A. Yes, sir.

17 THE COURT: What -- what's the date of that order?
18 what's the date of that order---

19 MR. GARFIELD: Well---

20 THE COURT: ---Investigator Gaymon?

21 THE WITNESS: The date of the order is March 1st,
22 2016.

23 THE COURT: Yeah, I think the, I think the later -- the
24 March 7th order is in evidence.

25 MR. BREHMER: Okay.

1 THE COURT: I don't think the March 1st order is in
2 evidence.

3 MR. BREHMER: Okay.

4 THE COURT: The, the March 7th order is Plaintiff's
5 Exhibit No. 3 which was admitted without objection.

6 MR. BREHMER: Yes, sir.

7 MR. SUMMERS: Yes, sir, that's my understanding.

8 THE COURT: Okay. Sorry about that.

9 MR. GARFIELD: No, you're -- thank you, Your Honor, for
10 clarification.

11 Since I've not marked this for identification purpose,
12 I just want to put in the record you're holding what appears
13 to be a Family Court order from March 1st, 2016---

14 A. That's correct.

15 Q. ---labeled 72 hour hearing order.

16 A. Yes.

17 Q. Okay. Do you recognize the format of that order?

18 A. Looks like an official document.

19 Q. Okay. Do you know who Judge McGee is?

20 A. No, sir.

21 Q. Okay. Have you ever testified in a Family Court
22 hearing for an EPC hearing?

23 A. I have.

24 Q. Okay. And are you familiar that orders are issued by
25 Family Court judges as a result of those hearings?

1 A. Yes, sir, I am.

2 Q. Okay. Dose what you sees -- appear to contained (sic)
3 information related to the events giving rise to the EPC on
4 February 27th, 2016?

5 A. That is correct.

6 MR. GARFIELD: Your Honor, we would move to introduce
7 this as an exhibit.

8 MR. BREHMER: I would object because portions of what
9 he has provided is underlined and highlighted. It's not the
10 official order and it, it draws inferences, inferences to I
11 think --

12 THE COURT: Okay.

13 MR. BREHMER: -- it -- to, to portions that it should
14 not.

15 MR. SUMMERS: For the sake of clarity, should this make
16 a difference to the Court, Mr. Garfield's associate is
17 handing the Court a clean copy that's unmarked.

18 MR. BREHMER: Okay. Well, I, I haven't seen that.

19 THE COURT: Make sure that's a clean copy.
20 Show it -- we'll show it to him.

21 MR. BREHMER: May I see it?

22 (Pause.)

23 MR. BREHMER: Okay.

24 THE COURT: Any objection to that one?

25 MR. BREHMER: No, sir.

1 THE COURT: All right.

2 MR. BREHMER: Not to that one.

3 THE COURT: All right. So that's gonna be Defendant
4 Richland County sheriff No. 1 without objection.

5 Mr. Summers, did you have an objection?

6 MR. SUMMERS: No objection, sir.

7 THE COURT: Okay. All right.

8 (Whereupon, the order was marked as Richland County
9 Sheriff's Exhibit No. 1 and received into evidence at this
10 time.)

11 Q. Investigator Gaymon, you have Defendant's Exhibit No.
12 1.

13 A. Yes, sir.

14 Q. From what you see, does that generally reflect or is,
15 or is generally consistent with which you observed and
16 experienced in Mr. Sellaro's household?

17 MR. BREHMER: I'm gonna object to the leading nature of
18 the question.

19 THE COURT: I didn't hear it. But if it was leading,
20 it's sustained.

21 why don't you rephrase your question?

22 MR. GARFIELD: Sure. Probably was leading.

23 THE COURT: Okay. Just rephrase it.

24 MR. GARFIELD: Certainly.

25 From what you see in that order, does that appear to

1 accurately contain or, excuse me, accurately, accurately
2 reflect what you encountered on this night?

3 A. Yes, sir, it does.

4 Q. Now, why didn't you testify at this particular 72 hour
5 hearing if you were in the house---

6 A. I---

7 Q. ---or why didn't the, the deputy testify?

8 A. The process during that particular week was I would be
9 on evening shift. I would pass certain information onto the
10 person who would be able to testify, and, in this case, it
11 would of been Ms. Kinsey, Amy Kinsey. But, for whatever
12 reason, she was not able to, to testify and I -- and I'm,
13 and I'm unaware of a reason for that.

14 Q. Is it unusual, maybe it is, maybe it isn't, for the --
15 someone to be designated to testify at a hearing that had
16 never interacted with the individual?

17 A. No, sir, it's not un -- it's not unusual. No, it's
18 not. Because as long as it's a representative of the
19 Sheriff's Department, that person can, can---

20 MR. BREHMER: Objection, Your Honor. I -- he's
21 testifying about evidentiary rules now.

22 THE COURT: All right. So the question is is it not
23 unusual as to the answer being nonresponsive to the
24 question---

25 MR. BREHMER: Yes, sir.

1 THE COURT: ---the objection is sustained.

2 Q. Okay. Can you please ex -- thank you.

3 Can you please explain the process of designating
4 someone?

5 A. The Sheriff's Department, during that time, designated
6 Ms. Amy Kinsey as the person who would testify at the EPC
7 hearings because she, for whatever reason, was not able to,
8 Ben Bolding, another, another victim advocate, was advised
9 to represent the Sheriff's Department at the EPC hearing.

10 MR. GARFIELD: Just one moment, sir.

11 Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q. Do you believe that the things you, you and Sergeant
15 Gilman asked of Mr. Sellaro to do, do you believe he did
16 them or not do them generally?

17 A. He made an effort to do them. But the series of steps
18 needed to properly ensure his health and safety were not
19 followed.

20 Q. Thank you, sir.

21 A. Yes, sir.

22 THE COURT: Okay. All right. So what we're gonna do
23 is we're gonna take a little break right now. Your food's
24 set to be here at 1:00. But we've been going for almost two
25 hours without a break. So certainly somebody in the room

1 has to go to the restroom.

2 Okay. And so we're gonna take a little break. Don't
3 discuss the case. Keep an open mind. We'll take about a 10
4 minute break. Your food's set to be here at 1:00.

5 So, Investigator Gaymon, and I know you know this, but
6 you're not allowed to discuss testimony with anybody---

7 THE WITNESS: Yes, sir.

8 THE COURT: ---on the break in any way, shape, or form.
9 You just be seated right there in about 10 minutes.

10 Okay?

11 THE WITNESS: Yes, sir, that will work.

12 THE COURT: All right. Everyone else just stay where
13 you are while the jury's excused.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. Mr. Brehmer, anything?

17 MR. BREHMER: Nothing.

18 THE COURT: Mr. Garfield?

19 MR. GARFIELD: No, sir.

20 THE COURT: Mr. Summers?

21 MR. SUMMERS: No, sir.

22 THE COURT: All right. I figured someone in the room
23 besides Rod needs a restroom break. So let's take a --
24 okay.

25 (WHEREUPON, a short recess was taken at this time.)

1 THE COURT: Did you finish your direct?

2 MR. GARFIELD: I did.

3 THE COURT: Okay. Thank you.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE BAILIFF: The jury is seated, Your Honor.

7 THE COURT: All right. Welcome back, ladies and
8 gentlemen. Thank you very much.

9 We're on the cross-examination of Investigator Gaymon
10 and Mr. Summers is up first.

11 MR. SUMMERS: Thank you, sir.

12 May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. SUMMERS:

16 Q. Good morning, Investigator Gaymon.

17 A. Good morning, sir.

18 Q. You comfortable, sir?

19 A. Yes, sir.

20 Q. Or actually I should say good afternoon. Forgive me.

21 A. Yes.

22 Q. You understand my name is Lake Summers and I represent
23 the South Carolina Department of Social Services?

24 A. Yes, sir.

25 Q. Very good, sir.

Reginald Gaymon - Cross Examination
By Mr. Summers

1 A. I understand that.

2 Q. Appreciate you coming in today.

3 A. Yes, sir.

4 Q. I will try to be as expedient as possible.

5 A. Okay.

6 Q. Do you understand that?

7 A. Yes, sir.

8 Q. Very good.

9 During your questioning in your responses with Mr.
10 Garfield, you discussed efforts that you personally made, is
11 that correct, to make contact with anyone in Mr. Sellaro's
12 family?

13 A. Yes, sir, I have in my notes at least one relative who
14 was contacted.

15 Q. And who was---

16 A. Yes, sir.

17 Q. Just for the sake of clarity, who was that again?

18 A. Karen Cochello.

19 Q. She lived out of state?

20 A. In Pennsylvania, yes, sir.

21 Q. That would, for my money, be out of state, yes, sir.

22 A. Uh-huh.

23 Q. Do you recall how long a conversation that you may of
24 had or did have with and this, again, is Mr. Sellaro's
25 sister as you understand it?

1 A. Yes, sir, based on my notes, yes, sir.

2 Q. Yes, sir.

3 Any idea how long that conversation was?

4 A. It wasn't very long.

5 Q. Was this the evening of -- in other words, was this
6 either late at night on February -- Saturday, February the
7 27th, or very early Sunday morning, February the 28th?

8 A. It would of been during the time that we were at the
9 home.

10 Q. So this was---

11 A. Yes, sir.

12 Q. ---at the home?

13 A. Yes, sir.

14 Q. Any efforts by you -- did you have -- let me -- strike,
15 strike that.

16 Did you have any other contact information for any
17 other what I'll call immediate relative in Mr. Sellaro's
18 family, son, daughter, anyone?

19 A. If we had access to it, it would of either come from
20 Ms., Ms. Outlaw --

21 Q. Yes.

22 A. -- or from the card that was on, on the refrigerator
23 and we would rely on her to identify who, who those persons
24 on the, on the card were.

25 Q. And, very quickly, the card on the refrigerator, was it

Reginald Gaymon - Cross Examination
By Mr. Summers

1 a -- just describe it for the jury.

2 what -- did you actually see it?

3 Let me ask it that way.

4 Did you actually see the card---

5 A. Yes, sir.

6 Q. ---that we're talking about?

7 A. Yes, sir.

8 Q. And describe---

9 A. I mean it was---

10 Q. ---to the jury what you saw.

11 A. I mean it was a card with phone numbers, names, and
12 numbers on it, but it --.

13 Q. Just -- was it a piece of cardboard?

14 was it a notecard?

15 what type of material, if you can, if you can tell at
16 the time---

17 A. Oh gosh.

18 Q. ---if you recall now?

19 A. The material, I, I wouldn't even want to speculate on
20 that.

21 Q. Very good, sir.

22 A. No, sir.

23 Q. Now, you described your trip, your travel to
24 Palmetto-Richland. That's what I'll call it.

25 A. Okay.

1 Q. That's what I'm familiar with.

2 A. Yes, sir.

3 Q. And did you actually follow the ambulance or did you
4 just drive separately from the ambulance that transported
5 Mr. Sellaro---

6 A. I was behind---

7 Q. ---to the---

8 A. ---the ambulance.

9 Q. The whole time?

10 A. Yes, sir. We, we arrived at the hospital at --
11 together.

12 Q. Where did y'all arrive?
13 What part of the hospital?
14 Was it the ER?

15 A. There was a, a section where ambulances go that law
16 enforcement also parks in that area. We walk in with, with
17 the person at the same time. So it's, it's not where the
18 public would access. But it's, it's not far from, from
19 where the public entrance is.

20 Q. So, based upon that response, you physically walked
21 into the hospital at that point of entrance at the same time
22 as Mr. Sellaro was taken into the hospital?

23 A. That's correct, yes, sir.

24 Q. Did you have any more interactions with Mr. Sellaro
25 once you entered the hospital?

1 A. No, sir. No, sir.

2 Q. Did you interact with anyone from my agency at the
3 hospital?

4 A. We had to turn a physical custody over to a
5 representative of DSS. So, yes, sir.

6 Q. And do you recall who that was?

7 A. I do not recall. I don't have it in my notes. And so
8 forgive me.

9 Q. Is there a particular form that has to be filled out
10 when you make that custody change or transfer?

11 Is that the way to put it?

12 A. Information is shared with the person at DSS and they
13 write down the information. There's nothing that I actually
14 pass on to them other than verbal information.

15 Q. Very good.

16 Did you have -- whomever the representative was from
17 DSS, what, if anything, do you recall telling the
18 representative?

19 A. The information not that -- I'm sure would of been
20 along the lines of what, what health conditions that we were
21 advised of by Mr. Sellaro by, excuse me, by Ms. Outlaw of
22 Mr. Sellaro. We would provide our case number and the
23 specifics of, of additional information.

24 Q. Very good.

25 Do you still have the exhibit that Mr. Garfield

1 introduced---

2 A. This one?

3 Q. ---while he was talking to you?

4 Yes, sir.

5 A. Yes, sir, I do.

6 Q. And that is RSS, I'm sorry, RCSD 1---

7 A. RCSD 1.

8 Q. ---correct?

9 A. That's correct. Defendant's Exhibit.

10 Q. And that is the 72 hour hearing order, correct?

11 A. That's correct.

12 Q. And there's a caption at the top?

13 A. Uh-huh.

14 Q. And further down you'll see a series of lines that --
15 the first line of which reads presiding judge.

16 Do you see that?

17 A. Yes. Yes.

18 Q. And what's reflected there---

19 A. The, the right --?

20 Q. ---on the same -- say again, sir.

21 A. To the right of it it says the Honorable James McGee.

22 Q. And you talked about that with Mr. Garfield?

23 A. Yes.

24 Q. Next line reads what, sir?

25 A. Date of, date of hearing is March 1st, 2016.

1 Q. what's the next line, sir?

2 A. Attorney for plaintiff, Scott Spivey, Esquire.

3 Q. And just for the sake of the jury's edification, at the
4 caption at the top, what or who is listed as the plaintiff?

5 A. The plaintiff is the South Carolina Department of
6 Social Services.

7 Q. Very good.

8 The next line after that reads what, sir?

9 A. Richland County DSS.

10 Q. And is there a name there?

11 A. Valorie Lawton McDaniel.

12 Q. Had you worked with her before?

13 A. I have, yes.

14 Q. Very good.

15 with questioning from Mr. Garfield, you talked about --
16 I think there were medical concerns that you had with Mr.
17 Sellaro?

18 A. Yes.

19 Q. And you---

20 A. Yes.

21 Q. ---described social concerns, if that's the way---

22 A. He had---

23 Q. ---to put it?

24 A. Yes.

25 Q. The social concerns consisted of no transportation?

Reginald Gaymon - Cross Examination
By Mr. Summers

1 A. Uh-huh.

2 Q. With -- just --.

3 A. Right. The car had been in an accident. So --.

4 Q. Do you know whether or not Mr. Sellaro could drive?

5 A. I had no knowledge of that, no, sir. But based on the
6 information we received, Ms., Ms. -- from Ms. Outlaw,
7 Mrs. Sellaro did everything for him.

8 Q. Yes, sir.

9 So we talked about the driving. We -- social -- other
10 social factors would of been no family, no neighbors in
11 South Carolina that could of helped?

12 A. Right.

13 Q. And would you consider those what I'll call social
14 factors as important in many ways as the medical factors?

15 A. Yes, sir.

16 Q. Very good, sir.

17 No further questions for me. Mr. Brehmer will have
18 some questions for you undoubtedly.

19 A. Very good.

20 CROSS-EXAMINATION

21 BY MR. BREHMER:

22 Q. Okay. Investigator Gaymon --

23 A. Yes, sir.

24 Q. -- when you were there that night, Mr. Sellaro answered
25 questions, did he not?

1 A. Yes, sir, he did.

2 Q. Okay. And he would say -- y'all would ask him what you
3 gonna eat.

4 Got TV dinners in the fridge, correct?

5 A. Uh-huh.

6 Q. Is that a yes?

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

8 Q. Okay.

9 A. That's correct.

10 Q. That is a yes.

11 Okay. And says what are your medical problems. I got
12 diabetes.

13 He answered that, didn't he?

14 A. Yes.

15 Q. Okay. Do you have Insulin. Yeah, I got Insulin.

16 A. Yes.

17 Q. He answered that, didn't he?

18 A. That's correct.

19 Q. Okay. He told you about a dog begin in the other room,
20 okay, did he not?

21 A. Yes, sir, he did.

22 Q. He told you that that dog may, since the dog didn't
23 know you, might not be a good idea to agitate him?

24 A. That is correct, yes, sir.

25 Q. Okay. Okay. And the truth of the matter is, is the

1 reason y'all called the ambulance was you thought the man
2 was demented, wasn't he?

3 A. No, sir.

4 Q. Okay.

5 A. That is -- that -- that is a step---

6 Q. Okay.

7 A. ---in the process to make sure, based on the emergency
8 protective custody, that we---

9 Q. So---

10 A. ---care for him properly.

11 Q. So now you're saying that you didn't think he was
12 demented?

13 A. We had received that information. But the primary
14 reason for us placing him into protective custody was based
15 on his health and safety.

16 Q. Sir, are you aware -- you know he was taken to the
17 hospital, correct?

18 A. Oh yeah.

19 Q. Okay.

20 A. I followed him there.

21 Q. Yeah.

22 A. Yes, sir.

23 Q. Yeah.

24 And he was there 10 days, wasn't he?

25 A. I learned about that recently.

1 Q. And -- well, you and you also learned that the only,
2 only medical evaluation he had was whether he was demented
3 or not?

4 A. I have no knowledge of that.

5 Q. Okay. Okay. Now, were you aware that he received
6 absolutely no medical care or treatment for his diabetic
7 condition while he was in the hospital?

8 A. I have no knowledge of that.

9 Q. Are you aware that he received absolutely no medical
10 care for his asthmatic condition while he was at the
11 hospital?

12 A. I have no medical -- I have no knowledge of that, sir.

13 Q. Okay. Okay. And if, if the Sheriff's Department came
14 into Court, in the Family Court in the probable cause
15 hearing, and said that Mr. Sellaro couldn't do anything that
16 he was asked on February the 27th, 2016, that wouldn't be
17 true, would it?

18 A. That wouldn't be true.

19 Q. That would not be true?

20 A. Right.

21 Q. Okay. So, if the sheriff's representative that showed
22 up at that hearing testified that Mr. Sellaro was unable to
23 do anything that he was asked on February the 27th, 2016,
24 he lied?

25 MR. GARFIELD: Oh -- hold on.

1 Objection. That's classic pitting witnesses.

2 THE COURT: Objection as to pitting witnesses is
3 sustained. You may rephrase your question.

4 Q. That would be untrue, would it not?

5 MR. GARFIELD: Same, same objection.

6 THE COURT: Yeah, I think you got to rephrase the
7 question.

8 MR. BREHMER: Okay.

9 THE COURT: I, I, I understand the question but I think
10 you need to rephrase the way you're---

11 Q. It is---

12 THE COURT: ---asking the question.

13 Q. ---an untrue statement that Mr. Sellaro was not able to
14 do some of the things he was asked?

15 A. Based on the information that we -- he would have had
16 at that time, he may have come to that assumption.

17 Q. That's not my question. I'm not asking you to
18 interpret that.

19 I'm asking you, from you being there, it was true that
20 Mr. Sellaro was able to accomplish some of the things he was
21 asked, was he not?

22 A. Yes, he did.

23 Q. Okay. And if your office represented otherwise in
24 court, that would be false, would it not?

25 A. Otherwise in Court?

1 That may be a fair assessment.

2 Q. It's a yes or no question.

3 Yes, it would be false?

4 A. That's possible.

5 Q. Okay. Okay. Now -- and -- your office prepares
6 reports for everything, do they not?

7 A. That's a fair assessments, yes, sir.

8 Q. Okay. Y'all prepare a report sometimes to, to
9 repair -- to prepare a report, correct?

10 I mean y'all, y'all are -- y'all make reports about
11 everything. The time you get there, the time you leave,
12 what was said, who was---

13 A. Yes, sir.

14 Q. ---said, what was said.

15 A. Yes, sir.

16 Q. Okay. Okay. And all that information is done
17 contemporaneously or immediately thereafter the events
18 occurred?

19 A. Yes, sir.

20 Q. Okay. And it would be very logical that your office
21 would have a report for the February 27th, 2016, visit to
22 Mr. Sellaro's house, correct?

23 A. For the emergency protective---

24 Q. Yeah.

25 A. ---custody, yes, sir.

1 Q. Okay. Okay. And that information would be available
2 to anybody at the Sheriff's Department that was so
3 designated as the person to part -- to participate in the
4 probable cause hearing, would it not?

5 A. Yes, sir, it would be.

6 Q. Okay. As a matter of fact, you just hit a button and
7 you can print it off, correct?

8 A. Once you access it, that's correct.

9 Q. Yeah.

10 A. Yes, sir.

11 Q. Okay. And the person that you would send to this
12 hearing would have access to it, would they not?

13 A. Yes, sir.

14 Q. Okay. And if Mr. Bolding, the designated
15 representative, didn't take that report to the judge, he
16 wouldn't be doing his job, would he?

17 MR. GARFIELD: Objection. Calls for speculation.

18 THE COURT: Overruled. He -- I think the man has what,
19 35 years in law enforcement experience.

20 MR. BREHMER: Yeah.

21 THE COURT: He can answer that question.

22 MR. BREHMER: Yes, sir.

23 A. Could you say it -- state the question again, sir?

24 Q. My question's very simple.

25 Y'all got reports about everything?

1 A. Yes, sir.

2 Q. If your designated representative to go to the probable
3 cause hearing do not supply and give those reports to the
4 court, they haven't done their job, have they?

5 A. That's correct, yes, sir.

6 Q. Okay. And as far as how the orders are drafted and
7 submitted to the Court, you don't know how that's done, do
8 you?

9 A. No, sir.

10 Q. Okay. You don't know whether the judge drafts the
11 order, whether the judge's law clerk drafts the order, or
12 whether the lawyer for DSS drafts the order, do you?

13 A. No, sir, I'm not aware of that.

14 Q. Okay. And you don't really know what it means to draft
15 an order, do you?

16 A. I know an order is necessary for --

17 Q. Yeah. But---

18 A. -- court purposes.

19 Q. But the way it worked, did you know that the way it
20 works is you have all this stuff on a computer, you have
21 another case, you just cut and paste the wording?

22 Did you know that?

23 A. No, sir.

24 Q. Okay. And -- okay. So the truth of the matter is you
25 don't know how the order from the March 1 hearing came into

1 existence, do you?

2 A. No, sir.

3 Q. Where's Mr. Bolding today?

4 A. I have no idea. I'm no longer with the Sheriff's
5 Department, sir.

6 Q. Okay. So you were subpoenaed here?

7 A. I was requested to be -- to attend, yes, sir.

8 Q. Okay. That's not my question.

9 Were you subpoenaed to be here or not?

10 Did you -- were you subpoenaed to be here?

11 A. Did I receive a subpoena?

12 Q. Yes, sir. For your appearance.

13 A. No, sir.

14 Q. Okay. Now, we can agree that the fact that somebody
15 don't have a car is not, in and of itself, a reason to take
16 them into protective custody, isn't it?

17 A. That's correct.

18 Q. Okay. Cause some of us don't have cars, do we?

19 A. That is correct.

20 Q. Some of us have to call cabs?

21 A. Yes, sir.

22 Q. Some of us have to catch (indiscernible)?

23 A. Yes, sir, that's correct.

24 Q. So, the fact that you don't have a car doesn't mean
25 that you are nailed down to one place?

1 A. That's correct.

2 Q. Okay. Some people would actually still walk, don't
3 they?

4 A. Yes, sir, that is correct.

5 Q. Good.

6 Now, the fact that somebody has diabetes doesn't mean
7 that they need to be protected -- in protective custody,
8 does it?

9 A. That's correct.

10 Q. Okay. Because people like the -- Mr. Sellaro have
11 managed diabetes all their lives.

12 A. Uh-huh.

13 Q. Correct?

14 A. That is correct.

15 Q. Okay. Some people get it later in life. Some people
16 are born with it.

17 A. Uh-huh.

18 Q. Correct?

19 A. That is correct.

20 Q. But -- okay. And were you aware that while Mr. Sellaro
21 had his 10 days and three meals a day at the Richland
22 Hospital, courtesy of DSS, that he got no treatment for
23 diabetes?

24 A. I have no knowledge of that, no, sir.

25 Q. Were you aware that, while Mr. Sellaro was at the

1 hospital under the guise of the Sheriff's Department and
2 DSS, the government, he got no treatment for his asthma?

3 A. I heard that earlier. I --

4 Q. Okay.

5 A. -- have no knowledge of that, sir.

6 Q. Were you aware that, while Mr. Sellaro was at the
7 hospital for 10 days courtesy of the government, he got no
8 treatment for any depressive condition?

9 A. No, sir.

10 Q. Were you aware that the only treatment, and it wasn't
11 even treatment, a -- only consult he had was, was to see
12 whether he was demented?

13 A. No, sir.

14 Q. Were you aware that three separate doctors, one of
15 which being a psychiatrist, found he wasn't?

16 A. No, sir.

17 Q. Were you aware that DSS consented to his release?

18 A. No, sir.

19 Q. Thank you, sir.

20 THE COURT: All right. We're -- let's see.

21 Mr. Garfield.

22 REDIRECT EXAMINATION

23 BY MR. GARFIELD:

24 Q. Investigator Gaymon.

25 A. Yes, sir.

1 MR. GARFIELD: Your Honor, I'm gonna approach the
2 witness with Plaintiff's Exhibit No. 8.

3 A. All right. Thank you.

4 Q. I represent to you that that is a transcript or a copy
5 of the transcript of record from March 1st, 2016, for the
6 hearing.

7 A. Yes, sir.

8 Q. You were asked questions -- Mr. Brehmer asked you
9 questions with respect to Investigator Ben Bolding's
10 testimony.

11 A. Yes, sir.

12 Q. Okay. Let me ask -- let me show you Page 4.
13 okay?

14 A. Okay.

15 Q. And do you see where there's a question and answer
16 between Mr. Spivey and Investigator Bolding?

17 A. Yes, sir.

18 Q. Okay. It's a direct examination, is it not?

19 A. Yes, sir.

20 Q. Okay. I'm gonna ask the questions. This is -- we're
21 gonna publish this.

22 A. Yes, sir.

23 Q. Okay. For the jury.

24 A. Okay.

25 Q. This is an, an exhibit.

1 A. Uh-huh.

2 Q. Okay. It's questions and answer. Spivey's asking
3 Bolding the question.

4 A. Yes, sir.

5 Q. I would be Spivey. You would be Investigator Bolding.

6 A. Yes, sir.

7 Q. Question. Mr. Bolding, where do you work?

8 A. His answer was the Richland County Sheriff's
9 Department.

10 Q. Question. Can you tell me about the involvement you
11 had with Mr. Joseph Sellaro?

12 A. His answer was yes, one of my coworkers, Investigator
13 Reggie Gaymon, we have on call shifts. He was on call that
14 night and was requested to come out in reference to this
15 case.

16 Q. Okay. Keep going.

17 A. He actually went to the home and was able to make
18 contact with Mr. Joseph Sellaro as the coroner was notifying
19 him about the death of his wife. At that time they began to
20 ask him questions about his ability to take care of himself.
21 Everything that was asked of him he was unable to -- and it,
22 it says dot, dot. They determined at that time he was
23 unable to take care of him -- that is -- that the wife who
24 was deceased was the actual caregiver. At that time he was
25 placed into emergency protective custody as we could not get

1 a hold of any family member who was willing to come to care
2 for him, excuse me, to take care of him.

3 Q. Okay. Now, you did say something interesting just now
4 when publishing this, this document.

5 when you started off saying everything that was asked,
6 you remember you just---

7 A. Yes.

8 Q. ---read that in the record?

9 A. Yes.

10 Q. Okay. It was everything that was asked of him he was
11 unable to and then what did you say after there?

12 A. They were dot dot.

13 Q. To --.

14 A. Or hyphen, hyphen. So --.

15 Q. Like it didn't catch all that he said?

16 A. Right.

17 Q. Huh.

18 Okay. And let me also ask you where it says -- let me
19 show you Page Number 3. Start with Line 10 where the Court
20 --

21 A. Uh-huh.

22 Q. -- is questioning Mr. Spivey and it says here that the
23 Court, goes down to 15, the Court says -- excuse me. Mr.
24 Spivey says Your Honor, this is an adult protective services
25 case. Just very briefly, the caregiver of this adult was

1 killed and he was, and he has nobody to care for him. If
2 you want some brief testimony.

3 And what did the Court say?

4 A. The Court said no, I saw the pleadings. I read them.
5 The caregiver was killed, it appears, very recently,
6 February, February 27th, is that correct.

7 Q. Oh, so is it your experience that a judge that presides
8 over the 72 hour hearing that they could go outside the
9 testimony?

10 MR. BREHMER: Objection, Your Honor.

11 THE COURT: What's the question -- is the questions is
12 can the judge go outside the -- what happens in court?

13 MR. GARFIELD: To, to rely on his findings cause he
14 says he is participated in these hearings before.

15 THE COURT: To the extent that he's participated in the
16 hearings, he can answer the question. The objection is
17 overruled on that matter.

18 Q. Do they solely rely on the transcript of record or can
19 they go outside of the transcript such as look at pleadings
20 and other evidence?

21 MR. BREHMER: I renew my objection.

22 THE COURT: Overruled.

23 You can answer as to your knowledge of the hearings.
24 You can't speculate as to what judges do or don't do. But
25 you can answer as to your relation to participating in these

1 hearings.

2 A. The judge knows a lot more than I would know he would
3 know based on the documents that are a part of the case.

4 Q. And if I may, this is the actual order that the judge
5 has findings of facts and conclusions of law in Defendant's
6 Exhibit No. 1.

7 A. Yes.

8 Q. Can you see that bold findings of fact?

9 A. And conclusions of law---

10 Q. What---

11 A. Yeah.

12 Q. What is written just above that?

13 A. Based upon the testimony and evidence presented, I make
14 the following.

15 Q. Based on the testimony and evidence --

16 A. Yes.

17 Q. -- before the Court.

18 Just one moment.

19 THE COURT: Sure.

20 (Pause.)

21 Q. Thank you again, investigator.

22 A. Yes, sir.

23 MR. SUMMERS: Very quickly, sir, or at least I hope.

24 RECROSS EXAMINATION

25 BY MR. SUMMERS:

1 Q. Investigator Gaymon, I believe you still have in front
2 of you Plaintiff's Exhibit No. 8, which is the transcript
3 you and Mr. Garfield were working with a few moments ago.

4 A. Yes. Yes, sir.

5 Q. If you could on the Page 3, I think that was the last
6 page you and Mr. Garfield visited.

7 A. Yes, sir.

8 Q. Let's see. Starting with Line 7 --

9 A. Okay.

10 Q. -- would you please read Lines 7 through 9?

11 A. Sure. It says Your Honor, here with me is Valorie
12 McDaniel with the Department of Social Services. Also here
13 from the Richland County Sheriff's Department, excuse me,
14 Sheriff's Office is Mr. Ben Bolding.

15 Q. Very good, sir.

16 And, again, when you and I talked about the Sheriff's
17 Department Exhibit No. 1, the 72 hour order which I believe
18 is also in front of you --

19 A. Uh-huh.

20 Q. -- Ms. Lawton McDaniel's name appeared towards the top
21 of that document as well?

22 A. Yes, sir, representing DSS. Yes, sir.

23 Q. Thank you so much, sir.

24 MR. BREHMER: No further questions.

25 THE COURT: Any redirect -- no, no. Sorry. Got you.

1 Okay. Thank you, Investigator Gaymon.

2 THE WITNESS: Thank you. Yes, sir.

3 THE COURT: Nice to see you again.

4 THE WITNESS: Yes, sir, likewise.

5 THE COURT: Have a great day.

6 THE WITNESS: All right.

7 THE COURT: Thank you very much.

8 THE BAILIFF: Watch your step down, sir.

9 THE COURT: Mr. Brehmer, do you need him held for any
10 reason?

11 MR. BREHMER: No, sir.

12 THE COURT: Okay.

13 MR. BREHMER: No, sir. Oh watch out. Watch out.

14 THE WITNESS: He said watch your step.

15 THE COURT: You okay?

16 MR. GARFIELD: And you got to keep watching out.

17 MR. BREHMER: Yes, sir.

18 THE COURT: All right.

19 MR. BREHMER: We're not young as we used to be.

20 THE COURT: Mr. Bowen, is the food here yet?

21 THE BAILIFF: No.

22 THE COURT: Okay. All right. Let's go ahead and call
23 the next witness and then we'll keep going till the food
24 shows up.

25 MR. GARFIELD: Just one moment, Your Honor.

1 (Pause.)

2 MR. GARFIELD: Your Honor, that concludes the case on
3 behalf of the Richland County sheriff.

4 THE COURT: Okay. All right. Ladies and gentlemen, so
5 we have some legal issues that we have to take up. So,
6 we'll go ahead and take -- I'll take up those legal issues
7 and then y'all just hang tight until the food gets here.
8 Eat your lunch. Enjoy your lunch. We'll probably start
9 back about 45 minutes after you get your food.

10 Okay. So that gives you time to eat. But if you want
11 to go outside, you can't go outside event -- individually,
12 but if a group of you wants to go outside, the bailiffs can
13 take you outside. You can get some fresh air, you know.
14 It's nothing too exciting but it can get you out of that
15 room a little bit. If you want to do that, that's fine or
16 if you need to smoke or something like that, that's a good
17 time to do that.

18 So we'll plan on starting back 45 minutes once you get
19 your food and that way we can, we can keep driving through
20 and we'll -- I'll take care of these issues I need to take
21 care of here now while we're waiting on the food to show up.

22 Okay. So don't talk about the case. Keep an open mind
23 about the case and we'll see you back 45 minutes after you
24 get your food.

25 Thank you very much.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Okay. Mr. Brehmer, anything we need to
4 take up at this point?

5 MR. BREHMER: Yes, sir. I'd like to make one motion as
6 to the Sheriff's Department.

7 THE COURT: Okay.

8 MR. BREHMER: I would move for a directed verdict as to
9 the Sheriff's Department and here's the basis for it.

10 THE COURT: Okay.

11 MR. BREHMER: There's two basic occurrences by the
12 Sheriff's Department. The one occurred on July the --
13 February 27th, 2016. The second occurred on March 1st,
14 2016.

15 THE COURT: Right.

16 MR. BREHMER: There's a question of fact as to whether
17 there was a breach on February the 27th, 2016, as we
18 believe. There is no question of fact about the breach that
19 occurred on March 1, 2016, because the record is clear that
20 there were records, there were documents supporting and
21 documenting what happened and occurred. Mr. Gaymon, who was
22 the representative for the Sheriff's Department, readily
23 admitted that, if those documents are not submitted to the
24 Court, that the Sheriff's Department has not done its job in
25 the probable cause hearing and has basically misrepresented

1 the facts and circumstances of that hearing, which caused
2 and necessitated Mr. Sellaro to be incarcerated for an
3 additional seven days.

4 So, we submit that there is no question of fact and
5 that the Court should enter directed verdict as to the
6 Sheriff's Department on those basis.

7 THE COURT: Okay.

8 MR. GARFIELD: Okay. As, as a housekeeping matter, if
9 I may before I make my argument --.

10 THE DIGITAL REPORTER: Let me move this thing over here
11 cause it's not picking up clear.

12 (Pause.)

13 MR. GARFIELD: Just for housekeeping -- are we good?

14 We would renew our, Your Honor, our motion to amend our
15 answer to include the affirmative defense of collateral
16 estoppel based on evidence that has been introduced in this
17 case. This would be Defendant's Exhibit No. 1.

18 The -- it conforms to the evidence in this case when I
19 moved to introduce Exhibit No. 1, which is the copy of the
20 72 hour order. After we got it -- the right copy
21 introduced, there was no objection from opposing counsel.
22 That order itself is now introduced and either under 15(b),
23 under express or implied consent, we would move to amend our
24 answer for -- to include that one affirmative defense cause
25 it just simply conforms to the, to the evidence in this

1 case.

2 THE COURT: Well, I mean my, my issue is, is that Mr.
3 Sellaro didn't have an opportunity to participate in the
4 March 1st, 2016, hearing. So, I don't know how he's
5 collaterally estopped from anything.

6 MR. GARFIELD: And, and he may not be. But I -- it was
7 just, just as a precaution. It was -- the order itself --.

8 THE COURT: I mean collateral estoppel, there -- I mean
9 I, I thought -- the case law on collateral estoppel is that
10 people need to be present and everybody needs an opportunity
11 to be heard. And then there needs to be a judgment on it
12 and then you're prevented from bringing up anything in
13 regards to it. I mean -- and that's a very 20,000-foot
14 view -- overview but --.

15 MR. GARFIELD: Well so, so that's what I---

16 THE COURT: I understand it's more intricate than that
17 but --.

18 MR. GARFIELD: And so I struggled a little bit with
19 collateral estoppel in trying to assess it because, as Your
20 Honor knows, there's a difference between obviously non
21 mutual offense of collateral estoppel and, and somebody just
22 purely using this offensively.

23 THE COURT: Right.

24 MR. GARFIELD: He, he was not at the hearing. There
25 was a probable cause hearing that would not be unlike -- to,

1 to give an analogy of a preliminary hearing in a criminal
2 case where a Richland County sheriff's deputy or a law
3 enforcement agency would have a designee that would have
4 nothing to do with the underlying arrest.

5 THE COURT: Right. But in a preliminary hearing more
6 than likely the defendant would have a lawyer.

7 MR. GARFIELD: They, they would -- more than likely
8 they would have a lawyer, yes.

9 THE COURT: Right. I mean he doesn't even have a
10 lawyer in this hearing. He's not even present. I mean
11 he -- I mean I don't even know that he even knew about it or
12 had the opportunity to have a lawyer at the hearing. So,
13 I'm gonna, I'm gonna deny your motion to amend the complaint
14 and your answer---

15 MR. GARFIELD: All right.

16 THE COURT: ---as to the offense of collateral
17 estoppel. I just don't think that, in the situation that
18 we're in now and the way the front -- the plaintiff has
19 framed their case, that it's a situation -- I mean clearly
20 Judge McGee had a hearing on March the 1st of 2016 and
21 issued an order. But Mr. Sellaro wasn't allowed to
22 participate in it. He didn't have a lawyer. There was no
23 cross-examination.

24 I mean Mr. Spivey showed up. Somebody from the
25 Sheriff's Department. I believe Mr. Bolding showed up and

1 testified. Now as to what they testified, we can come back
2 to that in just a second. But I think -- I don't know that
3 that fits into the, the arena of collateral estoppel.

4 So I will, I will bring that -- deny your motion to
5 amend and to add collateral estoppel as an affirmative
6 defense.

7 MR. GARFIELD: Thank you for that, Your Honor, and---

8 THE COURT: All right. So the plaintiff has moved for
9 directed verdict on -- I mean the, the way the plaintiff's
10 framing, and, Mr. Brehmer, if I'm saying it wrong, just tell
11 me I'm saying it wrong, but basically there's two
12 occurrences.

13 One occurrence would be whatever happened at Mr.
14 Sellaro's house on February the 27th of 2016 that led to
15 the decision to have him transported to the hospital, and
16 then the second occurrence would be whatever happened at the
17 March 1st, 2016, hearing in front of Judge McGee which is
18 Plaintiff's Exhibit No. 8 and the order that followed from
19 that hearing, which I believe is Defendant Sheriff's
20 Department Exhibit No. 1 and you're -- you -- your position
21 was you believe there's a question of fact as to what
22 happened on February the 27th for the jury to decide. But
23 as to March the 1st of 2016, Investigator Gaymon -- and you
24 don't believe that the testimony that was given at that
25 hearing was a fair and accurate representation of what had

1 occurred or what information that someone could of relayed
2 completely occurred on February the 27th to the judge.

3 MR. BREHMER: Yes, sir.

4 THE COURT: Okay. All right.

5 MR. GARFIELD: Well, I'm a little, I'm a little
6 confused by that in, in that -- well, let me, let me at
7 least approach it this way.

8 whether or not the sheriff's representative that was
9 called as a witness gave accurate information to the Court
10 or testified in accordance or consistent with what had
11 happened in his house, it's -- the, the proper remedy there
12 would be at the hearing for opposing counsel or someone to
13 have raised collateral evidence to have cross-examined them.
14 For them to come in here---

15 THE COURT: But you -- you know that's not -- that's
16 impossible.

17 MR. GARFIELD: That, that -- that's the point. That is
18 exactly what I'm, what I'm trying to say.

19 A normal -- for -- he is assailing what the officer did
20 in this case because he says what he says wasn't true. That
21 does not give rise to a negligence claim. That would give
22 rise to whether that officer gave truthful and accurate
23 testimony because, if that were the case, you could always
24 bring a lawsuit against any deponent, anybody sworn under
25 oath to claim later than what they said wasn't absolutely

1 accurate.

2 In this particular case, the information before the
3 Court was that Ben Bolding was an investigator with the
4 victim's services with the Richland County Sheriff's
5 Department. He was not at the scene. He relied on hearsay
6 like information to come to court and testify about A, B, C.

7 If what he is saying is that the information that he
8 gave was, was inaccurate, that would clearly be an
9 administrative part of this officer's job because this
10 officer was not an arresting officer. This officer was --
11 had not been at the scene. He was there purely in an
12 administrative capacity to represent the Sheriff's
13 Department to provide information similar to that of a
14 preliminary hearing or a probable cause hearing in criminal
15 court.

16 Because of that, that would constitute an immune
17 function for the Richland County sheriff with which we did,
18 we did raise in our answer, which is 15-78-60 Subsection 2,
19 which is the entity should not be liable for loss resulting
20 from an administrative action or an administrative inaction
21 either of a judicial or a quasi judicial nature. And if
22 this gentleman that was called as a designee, he didn't have
23 his t's crossed, he didn't dot his i's, he didn't provide
24 information, he didn't do his job, it would clearly be of an
25 administrative failure or an inaction if that's his theory

1 against him. It would constitute an immune function.

2 So you wouldn't -- Your Honor, our position is you --
3 we wouldn't even reach a negligence analysis as to whether
4 he owed the, the -- he owed a duty and he breached a duty to
5 the actual, to the actual plaintiff and then we would also
6 raise that on the public duty rule that we believe that
7 there could be a duty, and we'll address this in our
8 directed verdict motion, there could be a duty on the part
9 of the officers on February 27th, by either statute or
10 special relationship, because they interacted with this --
11 with the plaintiff.

12 But in this case, there's no evidence that Mr. Bolding
13 even knew who this person was. Where, where would he --
14 where has the duty -- where, where has Mr. Brehmer shown in
15 his client's behalf where there has ever -- he's shown that
16 there is even a basic legal duty owed by Ben Bolding or the
17 Sheriff's Department on March 1st.

18 So we've got, we've got the public duty rule, Arthurs
19 versus Aiken. Number two, even if we get past that, you
20 still have -- it constitutes an immune function. But I
21 really just -- I can not understand how someone could be
22 negligent when -- at an issue there would be an issue of
23 fact. He would have to call Ben Bolding to the stand. He
24 would -- I mean he would, he would have to find Ben Bolding
25 and, and ask him what all he provided to the Court because

1 all we have is a few sound bites and that goes back to my
2 original objection to having this one copy in without it
3 being authenticated.

4 Granted I put this in for summary judgment because what
5 that did was it, under Rule 56, it constituted an affidavit.
6 But it does not supplant or substitute what an actual live
7 witness that could actually authenticate it and for Bolding
8 to say well, no, I did this and I didn't do that. We're
9 solely relying on this one sound bite and, at worst, it
10 would constitute an, an administrative inaction. I don't
11 see how, how his argument is anything but. And we would ask
12 for, for his directed verdict to be denied on those points.

13 THE COURT: You want to be heard on it?

14 MR. BREHMER: Your Honor, it's not a sound bite. It's
15 the entire transcript. It's all the exhibits. It says
16 there---

17 THE COURT: well -- and, and, and -- but -- I mean --
18 and I, I let you do it on cross-examination. But what he
19 says -- what the transcript says is everything that was
20 asked of him he was unable to and then there's two dashes.
21 They determined at the time he was unable to take care of
22 him. The wife who was deceased was the actual caregiver at
23 the time when he was placed into emergency protective
24 custody as we can not get a hold of any family member who
25 was willing to come take care of him.

1 It doesn't, it doesn't say -- I mean you kind of
2 couched it in the cross-examination of the witnesses and I
3 understand why you did. But you -- but that he went in
4 there and said he couldn't do anything that we asked of him.
5 That's not what the transcript says before we get to the
6 immunity argument.

7 I mean I think you know -- all right. What's your
8 position on the immunity argument?

9 MR. BREHMER: I don't think that it's appropriate. I
10 do not think that this is an administrative function or
11 would fall under that exception or protection that they
12 receive under the Tort Claims Act. I think that they
13 have -- this is more than an administrative type function.
14 I mean this is a decision about the execution and
15 prosecution of the law that the Sheriff's Department made.

16 They testified that this was part and portion of their
17 duties and responsibilities. This is not an
18 administrative -- of administrative character.

19 THE COURT: I really don't understand why the Sheriff's
20 Department takes the position that Mr. Bolding didn't have a
21 duty to tell the judge the whole story.

22 MR. GARFIELD: No, I'm, I'm not saying that he -- they
23 didn't have a duty. I'm saying he hasn't shown, in this
24 case thus far, that the Sheriff's Department had a legal
25 duty to, to Mr. Sellaro.

1 THE COURT: Well, Mr. Sellaro's---

2 MR. GARFIELD: It was with---

3 THE COURT: ---the one in custody.

4 MR. GARFIELD: I understand that. But on
5 March 1st as opposed to February 27th---

6 THE COURT: Right.

7 MR. GARFIELD: ---because---

8 THE COURT: And my question is why does the Sheriff's
9 Department not have a duty when they're under oath and in
10 front of a judge to tell the judge the whole story based
11 upon the information that they have access to --

12 MR. GARFIELD: I, I---

13 THE COURT: -- when it involves someone losing their
14 freedom?

15 MR. GARFIELD: They, they have a duty to tell the
16 truth. They have a duty---

17 THE COURT: Right.

18 MR. GARFIELD: ---to provide accurate information known
19 to them at the time.

20 THE COURT: Right.

21 MR. GARFIELD: This---

22 THE COURT: Mr., Mr. Bolding didn't tell the whole
23 story. That's your point.

24 MR. BREHMER: Yes, sir.

25 THE COURT: I understand.

1 MR. GARFIELD: And this goes back to more of a witness
2 immunity argument, judge, because all he can do is respond
3 to the questions asked of him at this time. And as, as Your
4 Honor pointed out about the two dashes, we're dealing with a
5 copy. But he was asked certain questions. He was
6 answered -- he answered those questions.

7 THE COURT: Yeah. But I mean he, he, he really didn't
8 answer the question cause the question was can you tell me
9 about the involvement you had with Mr. Joseph Sellaro, and
10 the answer to that question is absolutely none. Nothing.
11 He wasn't even there.

12 MR. GARFIELD: And, and that's---

13 THE COURT: So -- but he didn't answer that. He didn't
14 say -- he didn't tell the judge I wasn't there.

15 MR. GARFIELD: Yeah. But this, this is -- this goes
16 back to -- we have similar circumstances -- you know, I'm
17 trying to, I'm trying to answer Your Honor's question that
18 you would have -- this would go back to a collateral
19 estoppel going back the other way where is -- the Richland
20 County Sheriff's Department was called as a witness.

21 THE COURT: Right.

22 MR. GARFIELD: Okay. A deputy was called as a witness
23 and presumably under subpoena or whatever it is during the,
24 the course of, of that hearing. The Sheriff's Department
25 would not have had standing to have appealed the order of

1 this Court. In other words, it wouldn't have been like---

2 THE COURT: I don't disagree with that.

3 MR. GARFIELD: Okay. So if, if they wouldn't have
4 standing to appeal, the order itself could not be used again
5 as a sword against us because it wouldn't have been a final
6 and unappealed judgment where the Sheriff's Department
7 waived everything and couldn't do anything. So it wouldn't
8 have standing. So we're, I think, together on that.

9 But that goes part and parcel with this witness
10 being -- he was being called as a witness from DSS in
11 answering the questions. The, the fact that they were
12 incomplete or he was not followed -- it, it did not -- that
13 there were not additional questions to allow him to expand
14 or clarify or whatever it was, the fact that it was shut
15 down the way it was, without any other evidence, Your Honor,
16 in other words we don't have Bolding here this week, we have
17 nothing else, we're just relying on that, I, I fail to see
18 how that gives rise to a negligence claim.

19 I do see Your Honor's concern by looking at it to, to
20 think well, you know, this -- he may not have been in a
21 position to have -- he may not have been in a position to,
22 to truthfully or accurately testify cause he wasn't in the
23 home that night.

24 THE COURT: well -- but and I understand. I mean this
25 is not a preliminary hearing. But I mean I understand that

1 it's a Family Court hearing. It's not jury.

2 So, I think somebody else can't go in there and
3 testify, right. But that person, you know, has to, you
4 know, if, if asked, which he was, tell the truth.

5 MR. GARFIELD: But the---

6 THE COURT: Can you tell me about the involvement you
7 had with -- if -- with Joseph Sellaro. Yes.

8 MR. GARFIELD: This, this was DSS's case. They had
9 jurisdiction. They called a Sheriff's Department designee
10 who, it's undisputed, was not there at the time and provided
11 testimony to the best of his knowledge. I am -- we're
12 sitting here today six years later --

13 THE COURT: Right.

14 MR. GARFIELD: -- an -- analyzing it. I don't know if
15 that alone gives rise to a negligence claim. I certainly
16 share the Court's, you know, concern that, that it may not
17 have been a full and complete representation of everything
18 that went on in that house or may be inaccurate. But,
19 again, he was DSS's witness at the time. I don't -- that
20 goes back to the duty argument. But I don't see how that,
21 how that rises to a negligence claim.

22 THE COURT: Okay. All right. Anything else, Mr.
23 Brehmer, on that issue?

24 MR. BREHMER: No, sir.

25 THE COURT: All right. Do you have motions for

1 directed verdict---

2 MR. GARFIELD: I do.

3 THE COURT: ---as well?

4 Okay. Let's hear those.

5 MR. GARFIELD: Okay. Thank you.

6 I think I'll be a little more comfortable at the
7 podium, judge, if you don't mind.

8 THE COURT: Sure. That's fine.

9 MR. GARFIELD: Thank you.

10 Just between.

11 THE CLERK: Uh-huh, the mic.

12 MR. GARFIELD: Oh. Oh, I thought it was here. I'm
13 sorry.

14 THE COURT: So -- and, and before you get started, in
15 my mind, the issue for the deputies on February the 27th,
16 2016, is is there probable cause to believe that he's a
17 vulnerability adult.

18 MR. GARFIELD: Yes, sir.

19 THE COURT: Not is there preponderance of the evidence,
20 not proof beyond a reasonable doubt, do we know
21 conclusively. But based upon what we know in this moment in
22 time at ten or eleven o'clock on Saturday night, is it safe
23 to leave him alone.

24 MR. GARFIELD: That's exactly right and that's the
25 point -- that's gonna be the focus of my argument.

1 THE COURT: And, and your, your argument, and you
2 change it if you want to, but if there was clearly probable
3 cause to establish that he shouldn't be left alone and,
4 therefore, the plaintiff's case fails against the Sheriff's
5 Department.

6 MR. GARFIELD: That is one aspect of my motion.

7 THE COURT: Okay.

8 MR. GARFIELD: Yes, Your Honor.

9 THE COURT: All right. Tell me what else you want to
10 tell me.

11 MR. GARFIELD: Okay. From a, a, a conventional --
12 okay. The defendant sheriff would move for directed verdict
13 on, on the following points.

14 It -- the first one is, is -- if you don't mind, judge,
15 I'd like to reframe what the Court just suggested in terms
16 of a -- of our argument, which is the plaintiff has issues
17 with failure of proof.

18 THE COURT: Okay.

19 MR. GARFIELD: And this is, how -- this is how I'm
20 approach this.

21 THE COURT: All right.

22 MR. GARFIELD: Okay. It's undisputed that -- and I'll,
23 and I'll try not to run back through those same points.
24 But, again, I'm trying to reframe it.

25 It's undisputed that Mr. Sellaro was taken into

1 emergency protective custody on this particular day. It --
2 the theory of the case here is that Mr. Sellaro contends
3 that the seizure of his person constituted either false
4 arrest or false imprisonment. There -- there's -- the
5 applicable statutes here -- and they're two right off the
6 bat and one would be -- and we've raised this in the
7 pretrial brief and we have this in our --.

8 THE COURT: What's the first one?

9 MR. GARFIELD: Oh, excuse me. It's -- and we have this
10 in our request to charge. It's 43-35-25 and, if I may just
11 approach on this. I have two copies each time.

12 THE COURT: Okay.

13 MR. GARFIELD: And I'm just gonna do a brief rundown of
14 these.

15 This is the mandatory reporting statute where it says,
16 and there's testimony to this effect, that a law enforcement
17 officer, having just pertinent portions of this statute, law
18 enforcement officer, having reason to believe that a
19 vulnerable adult has been or is likely to be neglected,
20 shall report the incident in the accordance with this
21 section. The next portion under Subsection C, a person
22 required to report pursuant to this section is personally
23 responsible for making the report.

24 So, we have, from a minimum responsibility standpoint,
25 there is testimony to the respect that they came in as both

1 mandatory reporters. So, they had a right, from both to be
2 there, not only from a welfare check standpoint, but to, to,
3 to be there in official capacity pursuant to the mandatory
4 reporting statute.

5 The second one is sort of the other obvious one is the
6 EPC statute and this is 43-35-55 and all of these---

7 THE COURT: I got that. I got that.

8 MR. GARFIELD: You have that.

9 Okay.

10 THE COURT: I got that.

11 MR. GARFIELD: Okay. And I'm not gonna belabor this
12 whole statute. But to go into the crux of this, that Your
13 Honor just mentioned, a law enforcement officer may take a
14 vulnerable adult in a life threatening situation into
15 protective custody if there is probable cause to believe
16 that, by reason of neglect in the case, there exists an
17 imminent danger to vulnerable adult's life or physical
18 safety.

19 The plaintiff in this case, because he is alleging
20 false arrest or false imprisonment, he has the burden of
21 demonstrating that the law enforcement officers acted
22 without lawful authority based on the -- I believe it's the
23 Supreme Court case, it's a Bushardt case, B-U-S-H-A-R-D-T,
24 and being a history major, I'm pretty sure we're -- it's a
25 hundred years old this year, 1922, in which it says that one

1 can not maintain an action for false arrest or false
2 imprisonment when one acts pursuant to lawful authority.

3 So, put differently, they have to make a requisite
4 showing that the, that the Sheriff's Department lacked
5 probable cause because they would have to show that it was
6 an unlawful arrest.

7 All right. So when it's framed---

8 THE COURT: Ah, he, he wasn't -- he wasn't arrested.

9 MR. GARFIELD: Oh, excuse me. Unlaw -- and I'm sorry.
10 I misspoke.

11 THE COURT: That's okay.

12 MR. GARFIELD: An unlawful seizure.

13 THE COURT: Right.

14 MR. GARFIELD: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. GARFIELD: You're---

17 THE COURT: There's no doubt at some point he was
18 seized.

19 MR. GARFIELD: He was seized.

20 THE COURT: Right.

21 MR. GARFIELD: And when I said arrested, I absolutely
22 meant seizure.

23 THE COURT: Yeah, that's okay. No, no.

24 MR. GARFIELD: Thank you.

25 So they've got to make a showing that they lacked

1 probable cause to believe that there existed an imminent
2 danger to his life or safety by reasons and neglect.

3 Taking the facts in a light most favorably to the
4 plaintiff in this case, and this is where the argument gets
5 a little intertwined, is that Doctor Brandenburg testified,
6 his treating psychiatrist who both treated him and he was
7 identified as an expert, testified that he had "multiple
8 medical issues" and both your law clerk and myself struggled
9 through the -- some of these medical terms is, you know, he
10 had cardiomyopathy. I'm -- he had an implantable
11 cardioverter defibrillator also known as an ICD.

12 He was hypotensive, P-O, fainting spells, Insulin
13 dependent Type II diabetic. He had COPD. He was an
14 asthmatic who still continued to, to smoke.

15 These serious medical conditions required several
16 things. We're not even talking about when -- before the
17 deputies got here. We're talking about just facts
18 undisputed taken in his -- in a light most favorably to him
19 is that it, it required, number one, a compliance with
20 regimens of -- different, different prescriptions, having
21 needed to be seen by physicians and specialists that -- I
22 think there was -- Doctor Brandenburg agreed that he had
23 to -- maybe a pulmonary, maybe endocrinologist,
24 cardiologist. Maybe some other specialists.

25 He also suffered from chronic depression in which he

1 was chronically being medicated for that that required
2 follow-ups, and there was also testimony from a -- Doctor
3 Brandenburg, Your Honor, that if he did not obtain the
4 proper treatment, those could result in life threatening
5 conditions or results -- or possibly death.

6 So, on this night, on this Saturday night, at the
7 moment Mrs. Sellaro died, several things are true and, and
8 these things are not disputed. The sole caregiver for over
9 40 years for the plaintiff has unexpectedly died. He was
10 all alone in the home.

11 THE COURT: Wait, wait, wait, wait, wait. You know,
12 that -- that's, that's not accurate. There's testimony in
13 the record that she was not this sole caregiver.

14 MR. GARFIELD: Oh, I'm sorry. She was the, she was the
15 caregiver---

16 THE COURT: She was a partner.

17 MR. GARFIELD: She was---

18 THE COURT: But---

19 MR. GARFIELD: Then I'll rephrase, phrase that.

20 THE COURT: Because -- and that, that -- but that's
21 important because the, the standard before the Court at this
22 point in time is any evidence. Not the weight of the
23 evidence. So there's clearly testimony from Ms. Outlaw that
24 she was the sole caregiver. But there's clearly testimony
25 from Mr. Sellaro that he's taking care of himself.

1 MR. GARFIELD: Okay. Then, then I -- then I will
2 rephrase that.

3 THE COURT: Okay.

4 MR. GARFIELD: And thank you, thank you for that,
5 judge.

6 His wife of over 40 years, who was his -- assisted him
7 with his care, to whatever degree, had unexpectedly died.

8 THE COURT: Yeah. Now -- and that -- and that's a fair
9 statement.

10 MR. GARFIELD: Yes, sir.

11 THE COURT: Okay.

12 MR. GARFIELD: He was all alone in his home at the
13 time, at the time she died. He had -- he didn't either --
14 could not or did not drive. And if he needed to go to the
15 grocery store, if he needed to go to a doctor's appointment
16 or a pharmacist or wherever, it's -- she was the one to
17 drive him and he, all of a sudden, couldn't drive.

18 So, for whatever reason, they say you could still walk
19 and take Uber and all that. But that -- all those things
20 are true. This was all true before law enforcement ever got
21 involved. But, when they did, they conducted basically a
22 welfare check, and when they noted -- you know, they came.
23 They found that he is alone in his residence and they were
24 in his house. It's undisputed it wasn't a rush job. Even
25 he said that he -- they were in his house for upwards of an

1 hour and a half and -- before they ever decided to place him
2 in the EPC.

3 So, it goes back to Your Honor's inquiry, which is
4 exactly right, did the deputies have probable cause to
5 believe that he was a vulnerable adult and he couldn't
6 provide for his protection and his care.

7 What's, what's interesting in this is that there are
8 definitions involved under 43-35-10, and Your Honor's aware
9 of this, and I have a copy if Your Honor needs it. But it
10 defines neglect and vulnerable adult and that sort of thing.
11 But this was addressed in a South Carolina Supreme Court
12 case. It's Doe versus South Carolina Department of Social
13 Services. It's 407 S.C. 623, Supreme Court of South
14 Carolina. It's a 2014 case. And this case addressed the
15 definition of a vulnerable adult.

16 And it was pretty interesting what the, what the Court
17 concluded here and I'm reading from the, the fifth printed
18 page, excuse me, the sixth printed page. So not to double
19 up, they define -- the Supreme Court defines what a
20 vulnerable adult is and they discuss, you know, an adult who
21 has a physical and mental condition which substantially
22 impairs the person from adequately providing for his or her
23 own care or protection. This includes a person who is
24 impaired in the ability to adequately provide and so forth.

25 And the Court did a deeper dive into the definition and

1 states here, by its clear terms, the infirmities of aging
2 must substantially impair the person's ability to adequately
3 provide for his own care or protection. Because the act
4 does not define impair, we've looked to the ordinary meaning
5 of the word. Impair means to make worse by or is if dim --
6 diminishing in some material respect. And the Court
7 concludes here in their definition thus, we hold for a
8 person to be deemed a vulnerable adult under the act, the
9 person's physical or mental condition, including advanced
10 age, must cause a diminished ability to adequately provide
11 for self-care or protection.

12 So, if the, the black letter law that the General
13 Assembly passed back in the day discussed a substantial
14 impairment, what the Supreme Court, in the last 10 years has
15 now said is well, that's more -- could also be said that
16 it's a diminished ability. So the question, therefore,
17 going back once again to Your Honor's opening inquiry, is
18 did the deputies have probable cause to believe that his
19 physical condition or his mental condition caused a
20 diminished ability to adequately provide for self-care or
21 his own protection.

22 The -- you know, you're absolutely right. The standard
23 for itself is not absolute certainty. It's not beyond a
24 reasonable doubt. It's not preponderance of the evidence or
25 clear and convincing. It is probable cause.

1 And as Your Honor's aware, there is a whole host of
2 definitions of probable cause out there. Goodness. From
3 the state to the federal to Fourth Circuit.

4 The ones that we have placed in our request to charge,
5 there's -- I think we've addressed this in Number 6, Number
6 8, and Number 9. We would argue that those definitions
7 control and they're authoritative and these were the ones
8 that have been defined by our appellate courts.

9 The proper standard for determining probable cause is
10 an objective standard. A lot of people have gotten it wrong
11 over the years and thought it was a subjective standard. It
12 was what a -- that officer would have believed and thought
13 at the time but that's not true. That really confuses
14 things. The Courts are very clear now it's objective.

15 That is whether the facts known to the officer, okay,
16 at the time of the seizure viewed from the standpoint of an
17 objectionably reasonable officer amounts to probable cause.
18 Again, different from subjective. But this is important.
19 This is key, facts known to the officer.

20 There is another request to charge based on another
21 Supreme Court and I could -- I don't have the case in front
22 of me but I'm referencing what we've turned in. It is
23 imperative that the facts be judged against an objective
24 standard with the facts available to the officer. That
25 means the historical facts at the moment of the seizure.

1 It's a snapshot analysis. At the moment, moment of the
2 seizure, warrant a person of reasonable caution in the
3 belief that the action was appropriate. They describe a
4 flexible common sense standard which does not demand any
5 showing that such a belief be correct or more likely true
6 than false.

7 The facts known to these officers, this is undisputed
8 because Carol Outlaw apparently gave information to Zem
9 Dozier, the deputy coroner, and/or gave information directly
10 to these officers. Through Carol Outlaw, they spoke with
11 this lady. She's not a passing acquaintance. She's not a
12 neighbor. She is -- was known to the deputy coroner, Zem
13 Dozier, he testified, as somebody who was a skilled veteran
14 nurse, who had worked for many years both in the hospitals
15 and an administrator on-duty. She -- they learned that this
16 lady was a very close friend of Eileen and who had been in
17 the house previously.

18 Now he says he doesn't remember seeing her in the
19 house. I would allege that doesn't give rise to a dispute.

20 THE COURT: He, he said he did.

21 MR. GARFIELD: Oh, he did?

22 THE COURT: Cause she stood in front of a TV, yeah.

23 MR. GARFIELD: Then I missed that.

24 THE COURT: Yeah.

25 MR. GARFIELD: Okay.

1 THE COURT: He, he said she'd been in the house before.

2 MR. GARFIELD: Oh, she'd been in the house.

3 THE COURT: Right.

4 MR. GARFIELD: Okay.

5 THE COURT: Yeah.

6 MR. GARFIELD: I thought he---

7 THE COURT: And he didn't say -- I don't remember him
8 saying how many times. But he remembers her being in the
9 house at least one time I believe was his testimony.

10 MR. GARFIELD: So, so Ms. Outlaw tells the first
11 responders that this man has dementia, a heart condition
12 with a pacemaker, asthma, and diabetes. She tells the
13 Sheriff's Department, she testified, which was consistent
14 with the Sheriff's Department officials testimony, that he
15 could not take care of himself alone, that Eileen took care
16 of him, and quote -- the quote I wrote was "did everything
17 for him." She did everything for him, even his dogs, and
18 that he couldn't drive.

19 The Insulin, it's undisputed, was over 500 at some
20 point. At some point in the evening it was, it was a high
21 reading.

22 THE COURT: The glucose. The blood sugar.

23 MR. GARFIELD: I'm sorry. The blood sugar reading was
24 over 500, yes, in, in which, not even getting into, you
25 know, who injected what and whatever it was, he had a high

1 blood sugar reading.

2 It was un -- it's undisputed that he didn't have --
3 there were, there were no neighbors. There were no family
4 members. There was no one, no friends, no one who was
5 available, qualified, and willing -- and -- or willing to
6 step up in the caregiving role. The time of the EPC, Your
7 Honor, was 11:17PM on a Saturday night.

8 A snapshot analysis of what the officers knew at that
9 time based on the historical facts. You've got late
10 Saturday night. It's approaching midnight. The plaintiff
11 is not consenting to go anywhere initially. There's no time
12 for a Court order. Once again, the plaintiff has to show,
13 has to show, by a preponderance of the evidence or greater
14 weight of the evidence, that the Richland County Sheriff's
15 Department employees acted unlawfully, did not act with
16 lawful authority.

17 Clearly this is a matter -- you -- that -- you know, as
18 a matter of law, they have not, can not show in this case
19 that an objectively reasonable officer in these officer's
20 shoes at this time would not believe that he was a person of
21 diminished ability to care for himself in his own
22 protection.

23 For this reason, and this is just really our first
24 ground of directed verdict, there is a failure of proof on
25 his part, and considering the evidence in a -- and, and all

1 the inferences drawn therefrom, and I appreciate Your Honor
2 correcting me on the record, taking those facts in a light
3 most favorably to the plaintiff, the evidence is not capable
4 of more than one reasonable inference. And if the -- I
5 could either go into my second ground or we could take them
6 piecemeal.

7 THE COURT: No, go ahead and go into your second
8 ground.

9 MR. GARFIELD: Okay. Thank you.

10 The second ground, Your Honor, is that we submit that
11 the Richland County sheriff is entitled to absolute
12 sovereign immunity for his plaintiff -- his -- excuse me,
13 his negligence claim of the events that took place on
14 February 27th, 2016, which arise out of actions by the law
15 enforcement because what the police did is that this was
16 part and parcel of providing police protection to the
17 public.

18 I would draw Your Honor's attention to 15-78-60. And
19 Your Honor has heard definitely we made this -- make this
20 argument, excuse me, in the past is that, based on, based on
21 the South Carolina Tort Claims Act, that obviously governs
22 all actions against governmental entities in South Carolina.
23 In 1986, when the General Assembly abolished sovereign
24 immunity, they carved out 37 exceptions to the waiver of, of
25 sovereign immunity, and if some act falls within any one of

1 those 37 exceptions, like I've raised Subsection 2 earlier,
2 then that constitutes an immune function for the sheriff.

3 I draw the Court's attention to Number 6 where it says
4 the governmental entity is not liable for a loss resulting
5 from and the pertinent portion here is failure to provide
6 the method of providing police protection.

7 In this particular case, this statute has been
8 clarified in a case called Wells versus City of Lynchburg
9 and almost every appellate court case that addresses
10 Subsection 6, they take note that, after looking at the
11 legislative history, the Court concluded that sovereign
12 immunity -- is -- it was a scrivener's error. It really
13 should have read the failure to provide or the method of
14 providing police or fire protection.

15 The Court of Appeals has addressed this many times over
16 the years. There, there are three cases of note, Your
17 Honor, all of which it was either myself that was lead
18 counsel on the trial level or my law partners at any given
19 time where the Court of Appeals has sort of taken a look at
20 Subsection 6 and I will go through these rather quickly.

21 One is the Court of Appeals case in 2007 Huggins versus
22 Metts. It's sort of a watershed case here and I'm trying to
23 distill this down.

24 In this case, I would just show the Court the third
25 printed page and where the Court -- the opinion states

1 governmental entity and they read off Subsection 6. This
2 case was a Lexington County Sheriff's Department -- an
3 incident concerning those deputies where they -- two
4 deputies, I believe, had surrounded a subject that
5 brandished knives and, after repeated, you know, efforts to
6 get the, the subject to drop his knives he wouldn't. He
7 ended up advancing on the officers and they shot and killed
8 him.

9 And, in this particular case, they brought a negligence
10 claim for wrongful death and what the Court stated here, the
11 Court of Appeals, this action concerns the manner in which
12 the police chose to provide police protection. Because the
13 act specifically exempts the police from liability
14 concerning the methods which they choose to utilize to
15 police -- to provide police protection, and they say we need
16 not address plaintiffs other claims. Even, even were we to
17 except all of Huggins assertions as true, it would not
18 remove the immunity which the Legislature has bestowed upon
19 the police in this statute -- in this situation. This
20 Huggins case has been relied upon in almost every time the
21 Courts have revisited and considered Subsection 6.

22 There was another case that was in this Court. It was
23 the Richland County Sheriff's Department. This was my case.
24 The Richland County Sheriff's Department obtained summary
25 judgment from Judge Griffith and this was taken up -- excuse

1 me. It was taken up to the Court of Appeals. Unfortunately
2 we have a, a -- more of a summary opinion but they do
3 address Subsection 6. This is the Catoe versus City of
4 Columbia, Richland County sheriff from 2015 and this is just
5 significant, judge, just to show that the Court, as late as
6 2015, is still relying upon Subsection 6 affirming Judge
7 Griffith's granting of summary judgment in this.

8 The third case is a very recent case that came out with
9 the Court of Appeals and this is Shelley versus South
10 Carolina Highway Patrol, 432 S.C. 335. This came out about
11 a year and a half ago, October of 2020. It's a published
12 opinion from the Court of Appeals and I promise I'm, I'm
13 kind of wrapping it up. But this case was also by my law
14 partners. But it, it -- what I just highlighted here is the
15 Court's rationale.

16 So they've taken the Huggins case in 2007, and they
17 have relied on that as adequate precedent going all the way
18 now -- we're now talking 15 years in. In this particular
19 case, this is one of those tragic cases where a highway
20 patrolman allegedly did not properly protect a subject on
21 the side of the road who ended up getting struck by a
22 vehicle, and, in every one of these cases, it really has the
23 same language. It -- they go through. They talk about
24 Huggins. They talk about other cases. All three of the
25 cases I've mentioned, judge, are death cases, wrongful death

1 cases with a negligence theory.

2 But it's -- the, the important words here is, in the
3 printed Page 5 in the bottom of the first column where I've
4 highlighted, this is the South Carolina Supreme Court that
5 says this Court determines Subsection 6 of the act
6 specifically exempts the police from liability concerning
7 the methods that they choose to utilize police protection in
8 this case.

9 THE COURT: What page are you on?

10 MR. GARFIELD: It's printed Page 5. It would be right
11 at the bottom right here.

12 THE COURT: Oh okay.

13 MR. GARFIELD: And I know it's a lot.

14 THE COURT: It's okay.

15 MR. GARFIELD: And I'm gonna do this quickly. But the
16 important part here is that the police are exempted from
17 liability concerning the methods that they choose to utilize
18 to provide police protection.

19 Taking all the facts in a light most favorably to the
20 plaintiff, at the time Mr. Sellaro was EPC'd at 11:17PM,
21 there is testimony from both Sergeant Gilman and
22 Investigator Gaymon that they said that they had -- they
23 were faced with, I don't know the words, if it's options or
24 choices or difficult choice or whatever it is, but I
25 specifically asked Deputy Gilman is this a method that you

1 chose to utilize police protection and she said yes.

2 That is consistent with all the evidence in this case.
3 Investigator Gaymon stated that he did have a choice. They
4 could have left. There was a mandatory reporting
5 requirement and they could have just cleared. But he
6 wouldn't have done that. In his mind, that would of been a
7 dereliction of duty.

8 Going back to these death cases, Your Honor, in which I
9 would submit not minimizing what Mr. Sellaro went through,
10 but the Court's have tackled some, some -- a -- you know,
11 some cases with real and substantial damages in this, and
12 even in those cases with a heightened damage allegations,
13 they still saw the method of providing police protection as,
14 as an immune function.

15 There was -- and that's, that's really at the basis of
16 what an EPC is. It's an emergency protective custody.
17 Along with that, I think it goes hand and hand quite
18 frankly. If Your Honor would just go back to 15-78-60, I'm
19 making a mess in here, it's Subsection 4 where it says the
20 governmental entity is not liable for a loss resulting from,
21 and the portion I would reference here is the enforcement or
22 compliance with any law.

23 As Your Honor's aware and there's testimony that the
24 EPC law is unique to law enforcement officers. Law
25 enforcement officers possess -- it is really -- they are the

1 only, you know, professional first responders in the State
2 of South Carolina that has the legal authority to act under
3 this one statute. No one else can do it. The Coroner's
4 Office can't do it. Teachers can't do it. Other people
5 under the reporting statute. But only law enforcement
6 officers can do it.

7 The law enforcement officer that made the call on this
8 particular night acted in accordance with the statute. She
9 was enforcing and she was complying with this statute under
10 the black letter laws of the statute and she was enforcing
11 the laws in this.

12 They could quibble whether that it was their actions --
13 that they shouldn't have done what they did or they could
14 say that their actions were perhaps imprudent. But prudence
15 and imprudence or things that they should or shouldn't do
16 on, on any other level or moral, this -- the South Carolina
17 Tort Claims Act, I would al -- I would contend transcends
18 all of that and that's why it's codified when it
19 specifically gives this information and what's really
20 interesting is all of these cases, these Subsection 6 cases,
21 they say the provisions, this is 15-78-20(f), so that's part
22 of the Tort Claims Act, the provisions of this charter
23 establishing limitations on and exemptions to the liability
24 of the state, its political subdivisions, and employees
25 while acting within the scope of official duty must be

1 liberally construed in favor of limiting the liability of
2 the state.

3 There is no allegations in this case, it's not been
4 pled, it's not been alleged, that other officers acted
5 outside the course and scope of their duties. This is not
6 been alleged in this case that they acted anything that
7 would give rise to that Subsection 17 with actual malice or
8 intent to harm. Therefore, the entity itself, Richland
9 County, in its official capacity, would be the governmental
10 entity. And if, if the, the trial courts are directed to
11 limit -- to construe this act to limit liability in favor of
12 the political subdivisions, based on all of that, we believe
13 that the sheriff is entitled to absolute sovereign immunity.

14 THE COURT: All right. Mr. Brehmer.

15 MR. BREHMER: Yes, sir.

16 First I'd like to point out the little things I think
17 that may not be correct in Mr. Garfield's representations.

18 One, the Court already pointed out that Mrs. Sellaro
19 was not Mr. Sellaro's caregiver, that there's a question of
20 fact that he says he's perfectly capable of taking care
21 of -- by -- of himself.

22 The other thing is, is it is not stipulated that Mr.
23 Sellaro was a vulnerable adult. We dispute every allegation
24 that he was a vulnerable adult and that the Sheriff's
25 Department had any probable cause to come and seize Mr.

1 sellaro. One rendition of the facts in this case is, is
2 that the police came to Mr. Sellaro's home shortly after
3 10:00PM, awoke him, okay, from a sleep, and then tell him
4 that his wife is deceased.

5 If you go and hear the EMS report and the EMS
6 representative, the EMS representative says that he was
7 clear and cogent. He was cooperative. He answered the
8 questions. He did everything. Mr. Sellaro, in his
9 testimony, says I did everything. So we submit that there
10 is no probable cause for them to even enter his home or to
11 even start this event going.

12 Additionally, Mr. Sellaro disputes that his blood sugar
13 was elevated. If you look in one of those records, and I,
14 I -- I'll have to pull out the one, there is a record that
15 was held and put into evidence and I believe it represents
16 that, at the time of arriving at the hospital, Mr. Sellaro's
17 blood sugar was 356 as opposed to 550, which would not be
18 elevated and consistent with Mr. Sellaro.

19 We believe that there was no probable cause and -- for
20 entry into Mr. Sellaro's home, that what should have
21 occurred is that the police should have come and advised him
22 of the demise of his spouse, and then left the man alone.

23 THE COURT: All right. What about the immunity stuff?

24 MR. BREHMER: Okay. I don't believe that they are
25 entitled to immunity.

1 THE COURT: How, how are they not just enforcing the
2 statute --

3 MR. BREHMER: Okay.

4 THE COURT: -- or are they not in compliance with the
5 statute?

6 MR. BREHMER: I don't think that they're in compliance
7 with the statute because I don't believe that Mr. Sellaro
8 would qualify or that there is evidence that would allow
9 them to qualify him as a vulnerable adult to take him into
10 American -- emergency protective custody.

11 THE COURT: Okay. What else?

12 MR. BREHMER: That's it.

13 THE COURT: All right.

14 MR. GARFIELD: The issue wouldn't be -- and very
15 briefly.

16 The issue wouldn't be that -- whether he's a vulnerable
17 adult for purposes of construing this statute or ap --
18 applying the statute. The question is whether the officers
19 chose to utilize police protection based on what they had at
20 the time and then that would -- well, his answer to Your
21 Honor's question really would go back to the probable cause
22 aspect. It wouldn't go to his responding to a Subsection 6
23 or Subsection 4 that they were acting in accordance or
24 compliance from (indiscernible) under the law.

25 THE COURT: Okay. Anything else?

1 MR. BREHMER: No, sir.

2 THE COURT: Okay. You need to say anything?

3 MR. SUMMERS: Not on their motion. I'll make on -- my
4 motion on my own as to -- but nothing on their particular --

5 THE COURT: Okay.

6 MR. SUMMERS: -- motion.

7 THE COURT: All right. Go ahead and make your motion.

8 MR. SUMMERS: Oh, very quickly, very quickly, sir.

9 Now that the order of the 72 hour probable cause
10 hearing order is in evidence, I would submit that SCDSS is
11 also entitled to immunity under 15 -- Tort Claims
12 Act 15-70-60 Subsection 3, first part of which states that
13 governmental entity is not liable for a loss resulting from
14 execution, enforcement, or implementation of the orders of
15 any Court. I would submit the 72 hour order is valid. It
16 was valid when they entered. There was no appeal. There
17 was no motion for reconsideration if you will.

18 Ultimately, there was a final hearing on March the
19 7th at which Mr. Sellaro's EPC status ended. So,
20 consequentially, the actions and whatever DSS officials did
21 and whatever DSS employees did between March the 1st,
22 and for that matter when they first encountered Mr. Sellaro,
23 between March the 1st and his release on March 7th, the
24 72 hour order they were executing, enforcing, and
25 implementing that order until the order of March the 7th.

1 In a nutshell, that's my argument, sir.

2 MR. BREHMER: Your Honor, DSS, and my position is, has
3 multiple occurrences in this particular thing.

4 They can't come to Court and not allow Mr. Sellaro to
5 participate, not put up a word, and then hide behind the
6 Court order when they know that Mr. Sellaro doesn't need to
7 be where he is. I mean that just makes no sense. None.
8 And I don't think that this tortured meaning of the Tort
9 Claims Act provides them with the protection that they claim
10 because, if it was, Department of Social Services would have
11 no responsibility to anyone. To none. I mean it just, it
12 just doesn't make sense.

13 THE COURT: And what's the evidence in the record that
14 DSS knew more than what they told the judge on March 1st?

15 MR. BREHMER: The evidence in the record that they had
16 is, is that Ms. Tate, the social worker, had the March 1
17 note at 11:00AM faxed this litany of records to the
18 Department of Social Services for the purpose of providing
19 those to the Court at the hearing. The March 1, 2016,
20 transcript of the Family Court hearing conducted at 1:30PM
21 says that no such records were there. It also says that
22 Mrs. Valorie McDaniel, who has been identified as a
23 representative of the Department of Social Services, was
24 there.

25 So, we know that those records that Doctor Brandenburg

1 and the other records were in the possession of the
2 Department of Social Services and were not supplied to the
3 Court.

4 THE COURT: All right.

5 MR. SUMMERS: Very briefly, sir.

6 First and foremost, the evidence shows the fax from Ms.
7 Tate was to Ms. Edgerton, not Ms. McDaniel. Number one.

8 Number two. If you look at the transcript, just from a
9 particular point, the word dementia never appears in the
10 hearing transcript. It's not there.

11 THE COURT: Right.

12 MR. SUMMERS: So, Mr., Mr. Brehmer has made, as I said
13 in my opening statement, dementia, dementia, dementia the
14 sole, if you will, determining factor. The records from Ms.
15 Tate ultimately have some meaning, if you will, as far as
16 what happened at the hospital prior to the hearing. But
17 it's not determinative.

18 The judge made the decision based upon the evidence
19 that was presented. The order is valid on its face. The
20 final components of the order for the record, and, again,
21 this is our Sheriff's Department Exhibit No. 1, plaintiffs
22 granted temporary legal custody of Joseph Sellaro. The
23 plaintiff being the Department of Social Services was
24 granted the right to provide for and to authorize such
25 routine and/or emergency medical care as may be required.

1 Plaintiff is granted access to any and all records
2 concerning the vulnerable, vulnerable adult as may be
3 necessary supplemental to those already authorized by
4 43-35-20.

5 The Richland County Clerk of Court shall appoint the
6 above named vulnerable adult a guardian ad litem. We heard
7 from her, judge, the first day of trial. And an attorney
8 within 10 days of the date of this order.

9 There was testimony from Mr. Sellaro Elizabeth Boozer
10 was his lawyer and did a good job for him. The merits
11 hearing in this matter, this is Item Number 5 on the third
12 page of the exhibit, merits hearing in this matter should be
13 held at the Richland County Courthouse on April 7th of
14 2016. Again, the hearing was held on March the 7th, 30 days
15 prior.

16 I would submit to the Court the order's valid on its
17 face that the appointment contemplated expressly declared by
18 the order, the part of which I just read into the record for
19 the Court, occurred. The guardian ad litem, Ms. Deas
20 Johnson, did her job. DSS responded. Scheduled a hearing
21 for March the 7th and acted in accordance with the March the
22 1st 72 hour probable cause hearing.

23 THE COURT: Okay. You didn't answer my question at
24 all.

25 MR. SUMMERS: Oh, I'm sorry, sir.

1 THE COURT: Go ahead.

2 You got anything else you want to say?

3 MR. BREHMER: No, sir.

4 THE COURT: All right. Everybody's motions for
5 directed verdict are denied.

6 All right. Here's why. Cause the standard before the
7 Court at this point in time is does any evidence in the
8 record exist. It's not the weight of the evidence. It's
9 not for me to judge at this point in time whether Mr.
10 Sellaro's telling the truth or the deputies are telling the
11 truth or the coroner's telling the truth or Ms. Outlaw's
12 telling the truth or whoever's telling the truth.

13 The issue is is there any evidence in the record at all
14 in the light most favorable to the non moving party that
15 should cause a directed verdict to be granted. The bottom
16 line is there's evidence all over the place in this case and
17 I'm not the judge of the weight of it at this point in time.
18 I'm merely to determine the existence of it.

19 And based upon that, everybody's motions, the
20 plaintiff's motion and both defendant's motion for directed
21 verdict, are denied. I think there's a genuine issue of a
22 material fact as to whether or not what occurred on
23 February the 27th of 2016, and what occurred on March the
24 1st of 2016 are -- that that's what's in dispute, that's
25 what's been in dispute, and I think that's the

1 quintessential jury question in this case.

2 Okay. Does the jury have lunch?

3 THE BAILIFF: Yes.

4 THE COURT: Okay. All right. SO how long do guys want
5 to eat or to do whatever you do at lunch?

6 MR. BREHMER: 2:45.

7 THE COURT: It's 10 minutes of 2:00.

8 MR. BREHMER: Can we come back at 2:45?

9 THE COURT: Do 2:45?

10 MR. GARFIELD: Sure. Anytime is good.

11 MR. SUMMERS: Yes, sir.

12 MR. BREHMER: Well, the -- it just takes me a little
13 time to get Mr. Sellaro across to my office.

14 THE COURT: Okay. Yeah, 2:45.

15 MR. BREHMER: Okay. Thank you.

16 THE COURT: All right.

17 MR. BREHMER: Thank you.

18 THE COURT: Thank you.

19 (WHEREUPON, Court was in recess for the lunch hour.)

20 THE COURT: All right. Anything before we bring them
21 in, Mr. Brehmer?

22 MR. BREHMER: No, sir.

23 THE COURT: Mr. Garfield. Mr. Summers.

24 MR. SUMMERS: Nothing from DSS, sir.

25 THE COURT: Okay.

1 THE BAILIFF: We're ready?

2 THE COURT: Yeah.

3 THE BAILIFF: Okay.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE BAILIFF: All jurors are present, judge.

7 THE COURT: All right. Welcome back, ladies and
8 gentlemen.

9 When we last left, the Sheriff's Department or the
10 Richland County sheriff, in his official capacity, rested
11 their case and now DSS has an opportunity to put on a case
12 if they would like to. They do not have to for reasons that
13 I have explained to you before.

14 But, Mr. Summers, would you like to call any witnesses?

15 MR. SUMMERS: Yes, sir.

16 At this time the South Carolina Department of Social
17 Services calls Valorie Lawton McDaniel to the stand.

18 THE COURT: All right. Come on up.

19 MR. SUMMERS: And watch your step, ma'am, because I've
20 been tripping over stuff and --.

21 THE CLERK: Please state your full name please.

22 THE WITNESS: Valorie, V-A-L-O-R-I-E, Lawton McDaniel.

23 THE CLERK: McDaniel, no S?

24 THE WITNESS: No S.

25 VALORIE MCDANIEL, being first

Valorie McDaniel- Direct examination
By Mr. Summers

1 duly sworn, testified as follows:

2 THE CLERK: Have a seat right there.

3 THE WITNESS: Thank you.

4 DIRECT EXAMINATION

5 BY MR. SUMMERS:

6 Q. You can go ahead and take it off, ma'am. All the way
7 off.

8 Good afternoon.

9 A. Good afternoon.

10 Q. Speak up as loud as you can.

11 A. Okay.

12 Q. The court reporter to your right will certainly let me
13 know and you know if you need to project your voice more.
14 Come -- your voice more.

15 would you do that for me, ma'am?

16 A. Yes.

17 Q. Very good.

18 You've already stated your name. But just please
19 introduce yourself to the jury.

20 A. My name is Valorie, V-A-L-O-R-I-E, Lawton McDaniel and
21 I was, at the time, a case manager for DSS.

22 Q. And do you prefer Ms. Lawton McDaniel, Ms. McDaniel?
23 You tell me what you prefer.

24 A. McDaniel.

25 Q. Yes, ma'am.

1 Ms. McDaniel, do you still currently work for the South
2 Carolina Department of Social Services?

3 A. I do not.

4 Q. Why is that?

5 A. I retired.

6 Q. How many years did you serve at DSS before your
7 retirement?

8 A. From 2012 till 2018.

9 Q. Prior to that, where did you work?

10 A. Prior to that I, I worked for the Department of Health
11 & Human Services, and prior to that, Richland County
12 Detention Center.

13 Q. So, all tolled, how much government service do you have
14 in your career?

15 A. Twenty-eight years.

16 Q. Yes, ma'am.

17 And now what do you do, I'll call it retirement, but
18 what do you do now?

19 A. I am a resident service coordinator for seniors at the
20 Finley House located in Five Points.

21 Q. How long have you done that, ma'am?

22 A. Four years.

23 Q. Yes, ma'am.

24 Did I send you a subpoena to cover your employment so
25 you could appear in this case, ma'am?

1 A. You did.

2 Q. Yes, ma'am.

3 Tell us about -- a little bit about yourself.

4 where were you born, ma'am?

5 A. I was born here in Columbia, South Carolina.

6 September 18th.

7 Q. You don't have to tell -- you don't have to give the

8 year, ma'am. I understand. I'm getting sensitive about

9 that myself.

10 what high school did you attend?

11 Let me ask you that.

12 A. C.A. Johnson High School.

13 Q. Yes, ma'am.

14 Did you pursue any education after high school?

15 A. I did.

16 Q. Tell the jury about that please.

17 A. I got my degree in business of science from the

18 University of Phoenix.

19 Q. Very good, ma'am.

20 Any other postgraduate, post undergraduate education?

21 A. My mind can't handle it, no.

22 Q. Yes, ma'am, I understand.

23 And you said you served as a -- is a case manager the

24 appropriate term or social worker?

25 what, what was your role at DSS?

1 Let's go back to 2016.

2 A. The title is Human Service Specialist --

3 Q. That's the actual job title?

4 A. -- 1.

5 Q. One.

6 A. Yes.

7 Q. Yes, ma'am.

8 Just tell the jury what your job duties were back
9 February of 2016 just the turn of the year from 2015 into
10 2016.

11 You were employed at DSS?

12 A. Yes.

13 Q. And you were the human --?

14 A. Service Specialist 1.

15 Q. One. What did you do?

16 What was your day-to-day activity?

17 A. Well, one thing about it, it was never the same. It---

18 Q. Yes, ma'am.

19 A. ---was just something different all the time. But we
20 had to assess the vulnerability of adults.

21 Q. You---

22 A. And that would mean whether or not they're capable of
23 staying in their homes, whether or not they are taken their
24 medication, whether they need in home care. We had -- we
25 were responsible for trying to find services for our

1 residents in their home once we received a report of an
2 alleged report.

3 Q. I'm gonna use -- I'm gonna say a term and want you to,
4 if you can, explain it to the jury.

5 what is a vulnerable adult as you understand it?

6 A. Someone who may be intermit -- in imminent danger who's
7 not able to provide self-care, is being neglected, or
8 abused, or exploited.

9 Q. Another term is EPC, emergency protective custody.

10 A. Yes.

11 Q. Please---

12 A. That---

13 Q. ---tell the jury your understanding of that term.

14 A. Emergency protective services, also known as EPC, is
15 when it has been determined by either a sheriff department,
16 law enforcement agency, or a judge that a person is no --
17 not able to take care of themselves at that time.

18 Q. And then I'm gonna throw another acronym at you or
19 series of letters, APS.

20 Are you familiar with APS?

21 A. Yes.

22 Q. Please tell the jury what APS is.

23 A. APS stands for adult protective services.

24 Q. What do folks in adult protective services do?

25 A. We assess the vulnerability of adults once we receive a

1 report. Anyone can call in an alleged report. It is the
2 responsibility of the adult protective services case manager
3 to go out and assess to see if those allegations are true or
4 not true.

5 Q. Are there occasions when law enforcement placed people
6 into emergency protective custody?

7 A. Yes.

8 Q. Let's turn our attention then to late February,
9 February the 27th and 28th of 2016.

10 Did you receive a call -- but, first of all, what were
11 you doing that weekend?

12 Do you work -- did you work odd hours?

13 we'll call it that?

14 A. Yes, we did. We -- I was on -- the on call case
15 manager for that, that, that evening -- that weekend.

16 Q. And when you're on the -- when you're the on call case
17 manager, what does that mean?

18 A. That means anytime a phone -- a report is made after
19 the time of five o'clock PM, between the hours of 5:00PM
20 and -- well, that weekend. It was the whole weekend. So,
21 5:00PM on Friday we're on call until eight o'clock Monday.

22 Q. And did you receive a call, either Saturday night, the
23 27th, or early Sunday morning, the 28th of February,
24 concerning an action taken by Richland County -- the
25 Richland County Sheriff's Department?

1 A. I did.

2 Q. Tell the jury what you remember, how'd you get this
3 call, what happened.

4 A. So on -- I think it was the 27th, February 27th of
5 2016, approximately 22:00 hours, which is 10:00PM, I
6 received a phonecall from Investigator Reggie Gaymon.

7 Q. And he testified earlier today?

8 A. Yes, he did.

9 Q. And had you worked with Investigator Gaymon before?

10 A. Plenty of times.

11 Q. Yes, ma'am.

12 what do you recall -- in, in response to his call, what
13 did you do?

14 A. In response to his call being that I was the on call
15 case manager at that time, I had to report to the hospital
16 to receive the person that was taken into custody.

17 Q. In the hospital to which you just referred, I call it
18 Palmetto-Richland, what term do you use and I'll use that
19 term?

20 A. At the time it was---

21 Q. Yes.

22 A. ---Palmetto-Richland.

23 Q. Very good, ma'am.

24 So you responded and how did you get to the hospital?

25 A. I drove.

1 Q. Yes, ma'am.

2 And, again, best you can recall, what time of day, what
3 time of evening was it?

4 A. I would say it was probably between the hour of 11:00
5 and 11:30.

6 Q. Tell the jury what you saw, what you did when you
7 pulled into the hospital parking space or parking lot.
8 where'd you go?

9 A. I went into the emergency room area and I addressed --
10 I in -- introduced myself to the person who was sitting
11 behind the emergency room desk and told them that I was the
12 adult protective services agent and I was here for an EPC.
13 They directed me to the area in which I needed to go.

14 Q. And did you see Investigator Gaymon?

15 A. I did.

16 Q. And that was in the area you were directed to go?

17 A. Yes.

18 Q. Did you see anyone else with Investigator Gaymon?

19 A. It was several people there. But he stood out because
20 that was the person that I was dealing with.

21 Q. Very good.

22 Did Investigator Gaymon give you information about what
23 had occurred?

24 A. He did.

25 Q. What do you recall him telling you?

1 A. The person who was in EP -- who was being EPC'd, his
2 wife had passed away in an automobile accident and it was
3 alleged that he was unable to provide self-care.

4 Q. What were your duties in response to that report?

5 You're at the hospital.

6 What did you do next?

7 A. I then went in to view my client who was Mr. Sellaro.

8 Q. And he's here in the courtroom?

9 A. And he is here in the, in the courtroom.

10 Q. And you call him a client.

11 Why is that?

12 A. Because, at the time, we always called our clients
13 clients.

14 Q. Yes, ma'am.

15 So describe for the jury -- did you introduce yourself?

16 How did you approach Mr. Sellaro?

17 A. It is always protocol that when you have a new client
18 you introduce yourself and the agency in which you
19 represent. So, I introduced myself to Mr. Sellaro, told him
20 the agency that I represented, and the purpose of my visit.

21 Q. And what did you tell him the purpose of your visit
22 was?

23 A. May I read from my notes?

24 Q. Well, just -- let's do it from your memory first.

25 A. Okay.

1 Q. what do you recall telling him?

2 A. That we had received a report that he was unable --
3 allegedly unable to provide self-care for himself and that
4 he was -- had been taken into emergency protective custody
5 by Richland County Sheriff Department.

6 Q. what, if anything, do you recall Mr. Sellaro saying in
7 response to that?

8 A. I don't recall his exact words at that time. He did
9 seem to be kind of confused at that point in time. So --
10 but he did tell me he understood why he was at the hospital.

11 Q. How long -- just best of your recollection -- well, let
12 me start it this way.

13 Given your job duties, are you suppose to make any kind
14 of assessment of your client when you first see them and
15 when you first interact with them?

16 A. We are to observe our clients at that time for our
17 personal, professional observation of the client.

18 Q. And is that what you did?

19 A. That's what I did.

20 Q. And when you say observed, do you just simply have
21 yourself near the person physically?

22 Do you engage the person in conversation?

23 what, if anything -- is there a protocol?

24 what do you do?

25 A. So what I do is I observe my client. I physically

1 watch -- you know, I visually put my eyes on him or her, see
2 what he's capable of doing if that time presents. I ask
3 them questions, get their feedback, and I, I just observe
4 them and see what they are able to do for themselves.

5 Q. And you said I believe that he appeared to be confused?

6 A. He was confused at some of the questions that we have.
7 We have a, a list of questions that we ask our residents --
8 our clients at the time.

9 Q. Yes, ma'am.

10 A. It's a list of questions that we ask, and during my
11 connection with him was very short because he was unable to
12 provide me with a lot of information at that time.

13 Q. Very good.

14 And in the course of your duties and in the course of
15 your duties on the 16th, I'm sorry, the 27th of
16 February, 2016, let me hand you what's been admitted as
17 Defendant's 1, the intake form.

18 MR. BREHMER: Okay.

19 Q. Take a look at that, ma'am. Just take your time and
20 just let me know when you're ready to chat about it and
21 we'll do so.

22 A. I'm ready to talk about it.

23 Q. Yes, ma'am. Let's just start with the basics. You go
24 to the last page of DSS Exhibit 1.

25 Do you see a signature there?

1 A. On the last page?

2 Q. Yes, ma'am. I'm sorry. The next to the last page.

3 Forgive me.

4 A. Okay. Yes, I do.

5 Q. And whose signature is that?

6 A. It is my signature along with Clay Williams who was the
7 supervisor for APS -- well, the on call supervisor for DSS.

8 Q. Yes, ma'am.

9 And if we go back to the first page, what does it say
10 at the top in capital bold type?

11 A. South Carolina Department of Social Services adult
12 services intake worksheet.

13 Q. What's the purpose of this form as you understand it,
14 ma'am?

15 A. Whenever a report is -- comes in, this -- when an
16 alleged report is come in, this is the report that we put
17 our information on that is received from the reporter.

18 Q. And we'll go down -- just talk about a few spaces here
19 in this document that -- DSS No. 1. You've got client
20 information.

21 Do you see Roman Numeral II?

22 A. I do.

23 Q. And you've put Mr. Sellaro's name there?

24 A. Correct.

25 Q. And the address -- what's the address that you wrote

1 there?

2 A. 1837 Crestview Avenue, Columbia, South Carolina 29223.

3 Q. Just for the sake of clarity, ma'am, did you go to Mr.
4 Sellaro's residence on the night of the 27th into the
5 morning of the 28th?

6 A. I did not.

7 Q. At any point when you were the case manager, you were
8 on call, did you ever go to his residence?

9 A. I did not.

10 Q. Yes, ma'am.

11 If you turn the page, we'll go down towards the bottom
12 third of the page here on the second page of the exhibit and
13 it says letter D. Other people or agencies assisting
14 client, and there's a parenthetical, include the name of the
15 client's doctor.

16 Did I read that accurately?

17 A. Yes.

18 Q. Okay. The -- there's a number 1.

19 what's the first entry there at Number 1?

20 A. George Chip Miller.

21 Q. And if you go all the way over to the right side of the
22 page, is there -- it says involvement with client family and
23 what's entered there?

24 A. Son.

25 Q. How did you get that information?

1 A. Got that information from the receiving law
2 enforcement.

3 Q. And specifically was that Investigator Gaymon?

4 A. Yes.

5 Q. Very good.

6 The next line -- there's a -- still under Number 1
7 there's another line.

8 what's placed there?

9 A. Z. Dozier.

10 Q. And, again, on the right-hand column, what's entered
11 there?

12 A. Coroner.

13 Q. Did you know or do you know Deputy Coroner Dozier?

14 A. I do not recall.

15 Q. Very, very good, ma'am.

16 Next line down, Number 2, what's the name that appears
17 there?

18 A. Karen.

19 Q. And, again, far right side, what's entered there?

20 A. Sister or sister-in-law.

21 Q. And there's a number there.

22 A. Yes.

23 Q. But no address?

24 A. No.

25 Q. The number is not a South Carolina area code, correct?

1 A. It is not.

2 Q. How did you get any information about Karen?

3 A. From the, the officer.

4 Q. Very good.

5 what's the next line?

6 A. Kathleen Miller.

7 Q. Is there any information entered for address and phone?

8 A. No.

9 Q. And what's the involvement with Mr. Sellaro?

10 A. It says sister-in-law.

11 Q. And, finally, there's one more.

12 what's the name that appears there?

13 A. Kevin.

14 Q. There's a phone number.

15 A. Yes.

16 Q. Is it a South Carolina area code?

17 A. No.

18 Q. And what's listed there?

19 A. Brother.

20 Q. Did you make any efforts, in your interactions with the
21 case, in contacting anyone on this list?

22 A. I don't recall.

23 Q. Very good, ma'am.

24 Now, if you go to the page where you found your
25 signature towards the top, there's a Roman Numeral IV.

1 Do you see that?

2 A. I do.

3 Q. And it says danger loaded influences.

4 Did I read that correctly?

5 A. Yes.

6 Q. What -- tell the jury what danger loaded inferences

7 is -- means.

8 A. Anything that could -- I'm sorry. I can't see.

9 Anything that could prohibit a person from living a, a safe
10 environment -- tongue getting tied. To prevent them, that may be
11 able to prevent them from living an everyday life safely.

12 Q. Very good, ma'am.

13 And are there two blocks checked?

14 A. Yes.

15 Q. Which blocks are checked, ma'am?

16 A. Medical care needed, poor mental/emotional health.

17 Q. Very good, ma'am.

18 So, after having -- when -- do you recall when you
19 completed this form?

20 Did you complete this form at the hospital or at
21 another location?

22 A. I did this when I, when I returned to work that Monday
23 morning --

24 Q. Yes, ma'am.

25 A. -- because when we're on call, we don't have all of the

1 equipment that we need. We basically just kind of write
2 down notes and then we actually enter everything in the
3 system when we get to the office.

4 Q. And the next business day would of been Monday, the
5 29th?

6 A. Correct.

7 Q. Yes, ma'am.

8 There's been testimony about a 72 hour probable cause
9 hearing.

10 Are you familiar with that term, number one?

11 A. I am.

12 Q. Tell the jury what your understanding is of the 72 hour
13 probable cause hearing.

14 A. So, at the 72 hour court hearing, that is when it is to
15 be determined whether or not the person is in imminent
16 danger.

17 Q. And did you, in this instance, attend that hearing?

18 A. I did.

19 Q. And Plaintiff's 8.

20 So that hearing occurred March the 1st --

21 A. Correct.

22 Q. -- which was a Tuesday, correct?

23 A. Correct.

24 Q. What, if anything -- you talked about going to the
25 office Monday, entering the notes so that you could generate

1 the intake form.

2 what happened internally in your office on Monday, the
3 29th, about Mr. Sellaro's case?

4 A. We have to staff with our supervisor and we also staff
5 the case with our legal department. We then -- well,
6 complete our paperwork, make sure that we have everything in
7 order, and then we -- my mind went blank.

8 Q. That's quite all right, ma'am. We'll pick it right up.
9 When you say staff, what does that mean?

10 Is it just that communication talking about various
11 factors in the case with colleagues and legal?

12 A. That is correct.

13 Q. And at the 72 hour hearing, that's Plaintiff's 8,
14 that's a transcript.

15 You understand that?

16 A. Yes.

17 Q. If you turn the page, and we go to Page 3, Line 7, do
18 you see your name there?

19 A. I do.

20 Q. Now, did -- the transcript will speak for itself. But
21 did you speak or were you otherwise called as a witness
22 during this 72 hour hearing?

23 A. I was not.

24 Q. Now, there's a -- do you know -- is it Naqua Edgerton?
25 Did I pronounce---

1 A. I do.

2 Q. Did I pronounce her name correctly?

3 A. You did.

4 Q. Very good, ma'am.

5 Describe for the jury who Ms. Edgerton was at that
6 time.

7 A. So, like I explained earlier, we all have to take turns
8 being on call. So, I was the case manager on call. Naqua
9 was the case manager in which the case was assigned to.

10 Q. And by virtue of you being the case manager on call,
11 and you had interacted and observed Mr. Sellaro, is that why
12 you attended the 72 hour probable cause hearing?

13 A. That is correct.

14 Q. Did Ms. Edgerton attend?

15 A. I don't recall. I don't think she was there.

16 Q. Very good. And, again, the transcript will speak for
17 itself as to whether or not she's noted as being there.

18 Did you receive any medical documents from anyone at
19 Palmetto-Richland before you attended, and these records
20 would of concerned Mr. Sellaro, before you attended the
21 March the 1st 72 hour probable cause hearing?

22 A. I did not.

23 Q. As a consequence and as a result of the 72 hour
24 probable cause hearing, what was the next step in the case
25 management of Mr. Sellaro's case?

1 A. The case is then transferred to Naqua Edgerton and what
2 we staff during the -- once the case -- once it has been
3 determined whether or not the individual would stay in adult
4 protective custody, we go back and we staff the case again
5 and then, at that point in time, the new case manager is
6 given directives of what he or she has to follow up on.

7 Q. Did you have -- have -- at the time you were the case
8 manager from I guess late on the 27th of February through
9 the 72 hour hearing on the 1st of March, how many other
10 cases did you have?

11 A. I don't recall. Many.

12 Q. When you say many---

13 A. Many.

14 Q. ---ma'am, just an estimate would be helpful.

15 A. Maybe about four or five calls.

16 Q. And when you say calls, what does that mean?

17 A. That means someone has called in and allegedly made a
18 report referencing someone else, a vulnerable -- a possible
19 vulnerable adult.

20 Q. Based upon your observation of Mr. Sellaro on the
21 27th into the 28th of February, what was your assessment
22 of him?

23 what did you think his status was?

24 A. He was confused. That's why my, my assessment, my time
25 with him was limited. But he, he did answer some questions

1 but he was kind of confused.

2 Q. How did---

3 A. So I---

4 Q. How did he look to you, his physical condition?

5 A. He looked frail.

6 Q. Ma'am?

7 A. He looked kind of frail.

8 Q. Yes, ma'am.

9 when you attended the 72 hour hearing, did you expect
10 to testify that day?

11 A. I did. It's, it's normal protocol at times, you know,
12 that we, because we are the ones who are accepting the EPC,
13 that we do testify.

14 Q. Do you recall the name, and it's on the transcript if
15 you need to refresh your memory, of the presiding judge at
16 the 72 hour hearing?

17 A. I do not.

18 Q. That's, that's fine.

19 Had you appeared at the -- to your recollection, had
20 you appeared in front of him before?

21 A. It's a possibility.

22 Q. Would you say it was a frequent occurrence to appear at
23 hearings, whether they were 72 hour hearings or other
24 hearings, before the Family Court judges?

25 A. Yes.

1 Q. Very good.

2 was Mr. Sellaro anticipated to appear, to your
3 knowledge, at the 72 hour hearing?

4 A. No.

5 Q. Tell the jury why.

6 A. Generally when a person is EPC'd, they remain in the
7 hospital because they're, they're technically not a patient
8 of the hospital. So they usually stay in the hospital until
9 it has been determined by a judge whether or not the person
10 is, is gonna remain in custody.

11 Q. Yes, ma'am. Let me hand you what has been admitted as
12 the Sheriff's Department Exhibit 1.

13 (Pause.)

14 Q. Sorry about that, ma'am. Here is Sheriff's Department
15 Exhibit 1. Take a look at this please and let's just start
16 with the basics, ma'am, on Page 1.

17 Do you see your name on Page 1?

18 A. I do.

19 Q. And it's listed as Richland County DSS?

20 A. It is.

21 Q. Very good.

22 And it says, if you go down like the second full
23 paragraph, based upon the testimony and evidence presented,
24 I make the following and that's what, that's the judge's
25 order, correct?

1 A. Okay. Are you on the first page?

2 Q. Yes, ma'am, first page. Forgive me. I jumped ahead a
3 little bit. First page almost towards the bottom right
4 above where it says findings of fact and conclusion of law.
5 There's a line just above it.

6 Do you see that, ma'am?

7 A. I do.

8 Q. It says based upon the testimony and evidence
9 presented?

10 A. Yes.

11 Q. Did I read that accurately, number one?

12 A. You did.

13 Q. And, again, this is the judge's order, correct?

14 A. Correct.

15 Q. And if you go to the third page, the next to last page
16 of Sheriff's Department No. 1, let's start with Paragraph 7.

17 Do you see Number 7 there?

18 A. I do.

19 Q. The plaintiff in this matter was DSS, correct?

20 A. Correct.

21 Q. And it reads should be granted access to any and all
22 records concerning the vulnerable adult as may be necessary
23 supplemental to those already authorized by South Carolina
24 Code 43-25-20.

25 Did I read that accurately?

1 A. Yes.

2 Q. When DSS is granted access to any and all records, how
3 does that work?

4 what do you-all typically do as case managers?

5 A. So generally we report -- we provide the hospital with
6 a copy of the Court order for that purpose of receiving any
7 medical records.

8 Q. Very good, ma'am.

9 The next line, Number 8, says the Richland County Clerk
10 of Court should appoint the above named vulnerable adult a
11 guardian ad litem and an attorney within 19 days of the date
12 of this order.

13 Did I read that accurately?

14 A. Correct.

15 Q. And in EPC cases for vulnerable adults, is that what
16 orders say?

17 A. That is the case.

18 Q. Next line. The merits hearing in this matter should be
19 held at the Richland County Courthouse on April the 7th of
20 2016 at 11:30AM.

21 Did I read that accurately?

22 A. Yes.

23 Q. What's, what's your understanding of the merits
24 hearing?

25 A. The merits system -- the merits hearing is, at that

1 point, we should have been able to gather whatever
2 information to determine whether or not the, the individual,
3 the client, is still in imminent danger or can be released
4 to go home.

5 Q. And that was set for April the 7th?

6 A. That's correct.

7 Q. When did your duties end when it came to Mr. Sellaro's
8 case?

9 Did it end at the 72 hour hearing?

10 A. Yes.

11 Q. And who was involved as case manager afterwards?

12 A. Naqua Edgerton.

13 Q. Yes, ma'am. I very much thank you for answering my
14 questions. I'm sure Mr. Brehmer will have some for you and
15 I'm sure Mr. Garfield will and I may see you again.

16 A. Okay.

17 MR. BREHMER: Mr. Garfield.

18 MR. SUMMERS: You want Mr. Garfield?

19 MR. BREHMER: Whichever goes --.

20 MR. GARFIELD: He can go.

21 MR. BREHMER: I can go.

22 THE COURT: Somebody go.

23 MR. BREHMER: We will. Thank you.

24 CROSS-EXAMINATION

25 BY MR. BREHMER:

Valorie McDaniel- Direct examination
By Mr. Summers

1 Q. Ms. McDaniel?

2 A. Yes.

3 Q. So Naqua Edgerton, if I understand it, worked under
4 you, correct?

5 A. No, we were coworkers.

6 Q. Coworkers?

7 A. We were coworkers.

8 Q. Both of y'all were employees of the South Carolina
9 Department of Social Services, correct?

10 A. Correct.

11 Q. Okay. And you got drafted to go to this hearing.
12 Is that right?

13 A. Well, I wasn't drafted. I was the on call person --
14 case manager.

15 Q. Sure.

16 A. So I had to go.

17 Q. Okay. And that was -- I mean you knew that you were
18 going before you went.

19 It's not like they caught you by the sleeve and said
20 here, come on, is it?

21 A. Correct.

22 Q. You knew a couple hours before you went, correct?

23 A. Correct.

24 Q. Okay. And you knew, from your prior experiences, what
25 went on at these hearings, correct?

1 A. Correct.

2 Q. And you knew that you were suppose to have the medical
3 records from Mr. Sellaro's evaluation for presentation to
4 the Court, correct?

5 A. No, sir, not at that time. Not at the merits -- not at
6 the 72 hour hearing, no, sir.

7 Q. Ma'am, what's -- a 72 hour hearing was was a probable
8 cause hearing, which means a Court evaluation as to whether
9 you should retain care, custody, and control of Mr. Sellaro,
10 doesn't it?

11 A. Correct.

12 Q. And, in that hearing, you're suppose to give the Court
13 the relevant information, aren't you?

14 A. Based on the information that we have at the current
15 time, yes, sir.

16 Q. And, at the current time, your office had been faxed
17 his history, his psychiatric evaluation, and other assorted
18 medical reports, had it not?

19 A. No, sir.

20 Q. Okay. Ma'am, isn't it true that Ms. Edgerton had
21 requested those records from Ms. Tate the last---

22 MR. SUMMERS: Objection as to the form of that
23 question, Your Honor. Calling for speculation.

24 THE COURT: Overruled.

25 Q. Isn't it true that Ms. Edgerton had requested those

1 records that morning from Ms. Tate, the licensed social
2 worker at Richland?

3 A. Naqua Edgerton requested those re -- those re -- that
4 history once we staffed the case and she was given a
5 directive to do so.

6 Q. That morning, March the 1st, didn't she?

7 A. Correct.

8 Q. And they were transmitted to her immediately, weren't
9 they?

10 A. No, they were not.

11 Q. And if they were transmitted to you immediately, you
12 had a responsibility to put them in the Court's hands,
13 didn't you?

14 A. If it was transmitted to me timely, then it would have
15 been done so, correct.

16 Q. Yes.

17 All right. And, ma'am, you didn't say a word at that
18 hearing, did you?

19 A. I did not.

20 Q. Okay. And you had only observed Mr. Sellaro for a
21 brief period of time was the adjective you used, was it not?

22 A. That's correct.

23 Q. Okay. And the reason that you observed him for the
24 brief period of time is you said he thought -- you thought
25 he was confused.

1 Is that right?

2 A. I didn't say I thought he was confused. I said I
3 observed him to be confused.

4 Q. Okay. This man had just been awoken by the police and
5 informed by a bunch of strangers that his wife of 41 years
6 had died.

7 A. Okay.

8 Q. Okay. Can we agree that that would be a traumatic---

9 A. Yes, sir.

10 Q. Dealing with people's lives as you do knows that that
11 is a trauma in and of itself to the recipient, isn't it?

12 A. Correct.

13 Q. And that gives the right to the person to be a little
14 agitated, a little -- okay. Correct?

15 A. Correct.

16 Q. Okay. Okay. Ma'am, from your experience with the
17 system, you knew, on March 1, that Mr. Sellaro should have
18 been evaluated by the doctors already?

19 A. That's not the case of the probable cause hearing --

20 Q. Okay.

21 A. -- the 72 hour hearing.

22 Q. That's not my question.

23 My question is you know that the doctors at Richland
24 are going to evaluate him as soon as he comes in, aren't
25 they?

1 A. I wouldn't say as soon as he comes in cause they have
2 to do an -- a physical assessment of him. But once we ask
3 for a history and physical of the, the person taken into
4 custody, then they do whatever they do on their end.

5 Q. And you asked for it on the wee hours of the morning on
6 February 28th, didn't you?

7 A. I asked for it the eve -- the night of the 27th.

8 Q. Well, actually he didn't get to the hospital until
9 11:58.

10 So, it was the morning hours of the 28th, wasn't it?

11 A. My documentations where I interviewed him, cause we
12 have to write down the time that we report to the hospital,
13 and it said 11:40. So --

14 Q. Okay.

15 A. -- that's the time that I put in the system.

16 Q. And so the hospital had -- your testimony is the
17 hospital, on February the 27th, at 11:40PM, had your request
18 for him to be evaluated?

19 A. That wasn't done at 11:40PM. That is when I arrived at
20 the hospital at 11:40PM. Once I have -- once he was
21 actually released from the sheriff department into the
22 custody of DSS, at that time, that's when I requested the
23 H&P.

24 Q. And the H&P was requested before you left.

25 Is that right?

1 A. It was.

2 Q. Okay. What time did you leave?

3 A. I think my -- and, again, I would say it probably was
4 about an hour later.

5 Q. Okay. So, before 1:00AM?

6 A. Correct.

7 Q. Okay. So, the hospital had a request by you on
8 February the 28th before 1:00AM to do a history and
9 evaluation of him --

10 A. Correct.

11 Q. -- right?

12 Okay. And you knew -- now that is -- let's, let's just
13 go through it. 28, 29, March 1.

14 Three days?

15 A. Okay.

16 Q. Okay.

17 A. Uh-huh.

18 Q. You knew that, in all probability, those evaluations
19 would of been done?

20 A. Not -- that's not necessarily the case. It's not
21 always the case. It should have been done but that was not
22 always the case.

23 Q. You didn't even check, did you?

24 A. Sir --.

25 Q. It's just a simple. Did you---

1 A. If the---

2 Q. ---or did you not check?

3 A. So the faxes don't come in in the area in which we were
4 located. Faxes come in a whole different area. So when the
5 fax is received by one of the receptionists, they will, in
6 turn, give it to us.

7 Q. Okay.

8 A. When -- the time I went to court we had no fax.

9 Q. You didn't even check, did you?

10 A. It's not -- we have policy.

11 Q. Just yes or no.

12 A. No, sir.

13 May I explain?

14 Q. Just answer the question and then you can explain it.

15 You didn't check---

16 A. No, sir, I did not check.

17 Q. ---did you?

18 You also didn't ask the presiding judge to maybe put
19 the hearing off to another day so you could get the
20 appropriate records, did you?

21 A. That wasn't my responsibility, no, sir.

22 Q. Okay. So the answer---

23 A. No, sir.

24 Q. ---to my question---

25 A. No, sir.

1 Q. ---is no---

2 A. No, sir.

3 Q. ---you didn't ask the judge for -- to put this off,
4 correct?

5 A. No, sir.

6 Q. Thank you, ma'am.

7 A. You're welcome.

8 MR. GARFIELD: Thank you.

9 CROSS-EXAMINATION

10 BY MR. GARFIELD:

11 Q. Hello. Good afternoon, ma'am.

12 A. Good afternoon.

13 Q. My name is Robert Garfield. I (sic) a lawyer for
14 Sheriff Lott in this case. I, I -- you and I have never met
15 before.

16 A. No, we have not.

17 Q. Never had a conversation?

18 A. Never.

19 Q. Well, it's nice to, it's nice to meet you.

20 A. Nice to meet you.

21 Q. I have a few questions for you.

22 A. Okay.

23 Q. Okay. You were asked several questions about this
24 probable cause hearing.

25 A. Sure.

1 Q. It's a 72 hour hearing?

2 A. Correct.

3 Q. Over the years in your capacity, are you generally
4 familiar with the format of these hearings?

5 A. I am.

6 Q. And are you familiar with generally who comes to these
7 hearings to testify?

8 A. Yes, sir.

9 Q. And are you -- would it be safe to say you're familiar
10 also with the evidence presented generally at these
11 hearings?

12 A. Generally, yes.

13 Q. Sure.

14 The Richland County Sheriff's Department often times or
15 maybe I can back up.

16 Any law enforcement agency that EPC's an individual,
17 you have come across those circumstances in these hearings?

18 A. Definitely.

19 Q. Okay. And this could be any law enforcement agency?

20 A. Correct.

21 Q. For instance, in Richland County, there's more than
22 just the Richland County Sheriff's Department. They're
23 other law enforcement agencies.

24 A. Correct.

25 Q. And for -- the format of this hearing, you'd agree with

1 me that often times a representative of that law enforcement
2 agency will come to testify at the hearing?

3 A. Correct.

4 Q. Is that representative or designee that comes to the 72
5 hour hearing to testify, is that necessarily the exact
6 person or law enforcement officer who came into contact with
7 the subject?

8 A. It is not.

9 Q. And can you just explain how that process generally
10 works?

11 A. Yes, each department, whether it be the City of
12 Columbia, Forest Acres police, Lexington, whatever, they
13 usually have a representative, which I think with the
14 sheriff department it was the EPC coordinator, once the
15 person has been EPC'd, then the coordinator is the one who
16 gets the information and comes to Court to testify on the
17 behalf of that department.

18 Q. Is that test -- that individual, often times like we've
19 established, is -- was not necessarily anyone that had come
20 into contact with the actual patient, right?

21 A. That is correct.

22 Q. Okay. Do you often times find that the individual who
23 had never met the patient, can, can, can sometimes their
24 testimony be imperfect?

25 A. Correct.

1 Q. Okay. Sometimes they read from a report?

2 A. Correct.

3 Q. Sometimes they testify based on either emails or
4 telephone calls or conversations with other officers?

5 A. Correct.

6 Q. Kind of like a collective knowledge situation?

7 A. Yes.

8 Q. So if I may approach, ma'am?

9 I know you have a couple of exhibits.

10 A. Yes.

11 Q. I just want to make sure I'm -- so I'm gonna just ask
12 you to open up Exhibit No. 8, which is the transcript of
13 this hearing, and I would just ask you to turn to Page 3.

14 A. (WHEREUPON, the witness complies.)

15 Q. Okay?

16 A. Okay.

17 Q. And just reading from Line 10, ma'am, the Court, this
18 is a conversation between the Court and Mr. Spivey, and the
19 Court states Mr. Bolding, good to see you, sir.

20 Did I read that correctly?

21 A. Yes.

22 Q. Okay. And Mr. Spivey says Your Honor, this is an adult
23 protective services case. Just very briefly, the caregiver
24 of this adult was killed and he has nobody to care for him
25 if you want some brief testimony. There was a question.

1 Did, did I read that correctly?

2 A. You did.

3 Q. Okay. And the Court stated no. I saw the pleadings.

4 I read them. Okay.

5 A. Correct.

6 Q. The Court says that?

7 A. Yes.

8 Q. To your knowledge, what are the pleadings in this
9 referred to here?

10 A. The pleadings that they are referring to are the, the
11 evidence that they already have, the information that he
12 already has, the collective information.

13 Q. And when you say he, you mean the Court, the judge?

14 A. I'm sorry. The Court, what the Courts already have,
15 yes.

16 Q. And I will ask you -- I think I know what everything
17 is. Maybe Mr. Summers had asked you -- we got several
18 exhibits.

19 A. It -- here's something here.

20 Q. Have something else. That's the order. Okay. And he
21 was asking you.

22 Your Honor, if I may approach a little closer here just
23 so I can show the witness?

24 This Court -- Mr. Summers asked about findings of fact
25 and con -- conclusions of law.

1 A. Okay.

2 Q. This judge came up with several findings of fact and
3 confusion -- conclusions of law, correct?

4 A. Correct.

5 Q. And when it says -- can you read that off, based upon
6 the --?

7 A. Based upon the testimony and evidence presented, I make
8 the following.

9 Q. And so the Court relies on, in order to make their
10 finding for probable cause --

11 A. Uh-huh.

12 Q. -- rely on testimony?

13 A. Uh-huh.

14 Q. Is that yes?

15 A. Yes.

16 Q. Yes, that---

17 A. Sorry.

18 Q. They rely -- they could rely on certain evidence?

19 A. Yes.

20 Q. They could rely on pleadings?

21 A. Yes.

22 Q. Okay. There's a -- they rely on everything?

23 A. Correct.

24 Q. Ma'am, thank you for being here. I appreciate it.

25 A. You welcome.

Valorie McDaniel - Cross-examination
By Mr. Garfield

1 Q. Nice to meet you.

2 A. Nice to meet you.

3 MR. SUMMERS: Very briefly, sir.

4 REDIRECT EXAMINATION

5 BY MR. SUMMERS:

6 Q. Ms. McDaniel --

7 A. Yes.

8 Q. -- just a few more questions and I wanted to go over
9 and give you an opportunity to respond fully to some
10 questions that Mr. Brehmer asked you.

11 A. Uh-huh.

12 Q. You were talking in terms of how the office I'll say is
13 structured and where faxes come in, and then I think you
14 mentioned something about policy or practice. I wasn't sure
15 it was -- there was some talking going on.

16 How -- when a fax is sent to DSS, to adult protective
17 services, was, was that your section?

18 A. Adult protective service---

19 Q. Yes.

20 A. ---where the faxes are sent?

21 Q. Yes, ma'am.

22 A. No, sir, the faxes don't come in in the area in which
23 we were located.

24 Q. And tell the jury where they come in and how that
25 works.

1 A. The faxes came in the director's office. It's not the
2 actual director's office but the area in which the
3 director's office was located, which is not where a -- our
4 section was at.

5 Q. Yes, ma'am.

6 And then, again with questions from Mr. Brehmer, I
7 believe he asked you you didn't ask the judge to do
8 something and your response was that's not my role. I
9 believe that was your response.

10 A. That is correct.

11 Q. What is your role when you attend these hearings?

12 A. So, my role is to consult with my attorney, the
13 attorney that is assigned to the case, at that time --

14 Q. Yes, ma'am.

15 A. -- and he speaks for us.

16 Q. For the agency?

17 A. For the agency, correct.

18 Q. Very good, ma'am. Thank you. I appreciate it.

19 A. You're welcome.

20 Q. Any -- more questions might, might be coming your way.

21 THE COURT: No?

22 MR. BREHMER: Nothing.

23 THE COURT: Thank you, ma'am. You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Who's next?

1 MR. SUMMERS: Yes, sir, at this time the Department of
2 Social Services calls Naqua Edgerton.

3 Mr. Brehmer, any problem in letting (indiscernible) go?

4 MR. BREHMER: Yes, sir. I'm fine. No, sir, that's
5 fine.

6 MR. SUMMERS: All right. (Indiscernible).

7 THE CLERK: Did you get all the exhibits back?

8 MR. SUMMERS: Thank you, ma'am.

9 THE WITNESS: Thank you.

10 THE BAILIFF: If you'll place your left-hand on the
11 Bible and raise your right facing the Madam Clerk?

12 THE CLERK: Would you state your full name please?

13 THE WITNESS: Yes, ma'am. My name is Naqua, N-A-Q-U-A.
14 My last name is Edgerton, E-D-G-E-R-T-O-N.

15 NAQUA EDGERTON, being first duly
16 sworn, testified as follows:

17 THE CLERK: Thank you. Have a seat.

18 DIRECT EXAMINATION

19 BY MR. SUMMERS:

20 Q. Comfortable, ma'am?

21 A. Yes, sir.

22 Q. And speak up as loud as you can.

23 A. Okay.

24 Q. The court reporter's to your right. If he says to
25 speak up, please speak up.

Naqua Edgerton - Direct examination
By Mr. Summers

1 A. Okay.

2 Q. And you see the presiding judge is over there. We'll
3 listen to him too obviously.

4 A. Yes, sir.

5 Q. Okay. But just as loud as you can, please state your
6 name for the record.

7 A. Naqua Edgerton.

8 Q. Please spell your first name for the court reporter.

9 A. N-A-Q-U-A.

10 Q. Are you from Columbia, ma'am?

11 A. I am not.

12 Q. Tell the jury where you're from.

13 A. I'm from Conway, South Carolina.

14 Q. May I ask where you went to high school?

15 A. Conway High School.

16 Q. After high school, did you pursue any education?

17 A. I did. I went to Voorhees College and got a degree in
18 biology and I also have a masters from Stayer in business
19 administration.

20 Q. Very good.

21 where are you currently employed?

22 A. I'm a franchise manager for JAN-PRO.

23 Q. How long have you done that?

24 A. Two years now.

25 Q. And what do the folks at JAN-PRO do?

1 A. They are a cleaning company.

2 Q. And before that, where'd you work?

3 A. I worked for DSS.

4 Q. What did you do for DSS?

5 A. I started out in food stamps originally and then, in
6 2013, I went to APS where I worked there until 2018. And
7 then I went to the state office and worked in the division
8 of employment services until 2021.

9 Q. And you said APS, correct?

10 A. Yes, sir.

11 Q. Tell the jury again what APS stands for.

12 A. Adult protective services.

13 Q. I think -- and you were a case manager?

14 A. Yes, sir.

15 Q. Just from your experience as a case manager in the
16 adult protective services, services division -- and this was
17 Richland County DSS, correct?

18 A. Yes, sir.

19 Q. Tell the jury what you do day-to-day.

20 A. Day-to-day, we'll get reports. We go out. We assess
21 the home of the clients, make sure that they can do their
22 AB -- ADL -- their ADL's which are activities of daily
23 living. We also -- if we have clients that were already
24 placed, we would also go to the nursing home and visit those
25 clients, or if we had to place clients, we will find proper

1 placement for them.

2 Q. And would you say that you kept a pretty active
3 schedule as a case manager?

4 A. Yes, sir.

5 Q. And let's go back to 2016, end of 2015, beginning of
6 2016.

7 Do you recall what your caseload was at that time?

8 A. At that time we may have gotten it to where we were
9 about 40 to 50 cases --

10 Q. Per---

11 A. -- a piece.

12 Q. ---a case manager?

13 A. Yes.

14 Q. Let's talk too about staffing.

15 You heard that term, correct?

16 A. Yes, sir.

17 Q. When a case is staffed, what happens?

18 A. Initially we will go to our supervisor. Staffings can
19 occur at anytime that something changes within the case, or
20 if we had any concerns about the client and their situation,
21 we will go and staff the case with our supervisor.

22 Q. At the time who was your supervisor, ma'am?

23 A. Joan Boston.

24 Q. And did -- do you know Ms. McDaniel?

25 A. I do.

1 Q. Did you work with her?

2 A. I do. I did.

3 Q. Very good.

4 Let's go ahead and turn our attention to late February,
5 early March --

6 A. Okay.

7 Q. -- 2016.

8 How did you get involved with Mr. Sellaro and his
9 situation?

10 A. After the case came in, and the probable cause hearing
11 was conducted, I was the caseworker that was assigned the
12 case.

13 Q. Did it -- did you attend the 72 hour probable cause
14 hearing?

15 A. I did not.

16 Q. Did you visit and observe Mr. Sellaro and at this point
17 he was at Palmetto-Richland?

18 A. Correct. Once I was informed that Mr. Sellaro was to
19 remain in DSS custody, I went to the hospital to visit him
20 on the 1st.

21 Q. How long do you think that first visit, first
22 interaction lasted?

23 A. Maybe 30 minutes at the most.

24 Q. And he was in the hospital?

25 A. Correct. Yes, sir.

1 Q. Did you see him in a room?

2 A. Yes, sir.

3 Q. Was there anyone -- any other patients in the room?

4 A. No, sir.

5 Q. Do you recall what floor of the hospital it was?

6 A. I do not recall what exact floor.

7 Q. Was he, to your recollection, to your knowledge, in the
8 mental or psych ward at the hospital?

9 A. No, sir, he was not.

10 Q. Very good.

11 So tell the jury what you began to do with Mr.
12 Sellaro's case manager?

13 What were you planning?

14 What kind of -- and you heard the term case plan.

15 A. Uh-huh.

16 Q. What's a case plan?

17 Tell the jury what that is first.

18 A. A case plan is what the caseworker determines is
19 suitable for the client. Being that he was in custody, our
20 next steps would of been to gather all the documentation,
21 whether that be from family members, the hospital. At that
22 time it was -- I believe Ms. Outlaw, I think she was the one
23 who was in constant communication and then we would
24 determine where he could be placed and that---

25 Q. And you mentioned Ms. Outlaw.

1 A. Yes, sir.

2 Q. Did you talk to her?

3 A. I did not talk to Ms. Outlaw originally in the
4 beginning.

5 Q. Very good.

6 How often did you go see Mr. Sellaro?

7 A. Well, within the timeframe that we had the case, I went
8 and I saw him twice prior to the day that I took him back to
9 court.

10 Q. Okay. And when did you take him back to court?

11 A. I believe it was the following Monday we had went back
12 to court for his hearing.

13 Q. I'm gonna mention a name and see if you recognize it.
14 Victoria Deas Johnson?

15 A. Yes, sir, she was the individual that was assigned to
16 him as his guardian ad litem.

17 Q. Is that by court appointment?

18 A. Yes, sir.

19 Q. Did, did you communicate with her?

20 Did she communicate with you?

21 A. We did.

22 Q. What information did Ms. Deas Johnson ask you to
23 provide?

24 A. Ms. Johnson -- Ms. Deas Johnson concern was that she
25 felt as though Mr. Sellaro should not be in DSS custody. So

1 at that time we discussed a, a plan and I staffed it with my
2 attorney and my supervisor.

3 Q. And at that point you said you staffed it with your
4 attorney and your supervisor.

5 who was the assigned attorney at that point?

6 A. Mr. Tyler Burns.

7 Q. And your supervisor was still Ms. Boston?

8 A. Yes, sir.

9 Q. Very good.

10 I'm gonna hand you what's been admitted as Plaintiff's
11 Exhibit 1.

12 MR. BREHMER: I'm sorry. I can't see that one.

13 MR. SUMMERS: That's fine.

14 MR. BREHMER: Thank you.

15 MR. GARFIELD: You can see it up here.

16 And let the record reflect that Plaintiff's Exhibit 1
17 is the order of appointment for a guardian ad litem for a
18 vulnerable adult.

19 Do you see that, ma'am?

20 A. Yes, sir.

21 Q. Do you see a file stamp on the first page?

22 A. Yes, sir.

23 Q. What's the file stamp on that?

24 A. March the 3rd, 2016, at 3:25PM.

25 Q. How many times do you think you and Ms. Deas Johnson

1 communicated about Mr. Sellaro?

2 A. Initially, before going back to Court, maybe once.

3 Q. Were you aware of any efforts to have some kind of
4 hearing scheduled for Monday, the 7th?

5 Did you talk about that with your attorney, Mr. Burns?

6 A. Well, we talked about it once we -- once it was
7 determined that there was an issue or there was a concern
8 with both the guardian ad litem and also the attorney that
9 was assigned to Mr. Sellaro.

10 Q. And do you recall the attorney's name who was assigned
11 to Mr. Sellaro?

12 A. Ms. Boozer.

13 Q. Did you ever talk to her?

14 A. I did.

15 Q. Tell the jury what you-all discussed.

16 A. Ms. Boozer also felt as though, after she went and saw
17 Mr. Sellaro in the hospital, that he wasn't a vulnerable
18 adult and should not be in DSS custody.

19 Q. Was this information, to your knowledge, conveyed to
20 Mr. Burns?

21 A. It was. I, I don't know if he had a conversation with
22 Ms. Boozer. But once I went and staffed it with him, he was
23 aware.

24 Q. Very good. Give me just a moment.

25 Let me hand you what's been admitted as DSS Exhibit No.

1 3.

2 MR. BREHMER: Okay.

3 Q. Here you are, ma'am.

4 Just get familiar with that and we're gonna go to a
5 particular page.

6 A. Okay.

7 Q. If you look at the bottom you'll see, on the first
8 page, it will say Page 340 of 359.

9 Do you see that, ma'am?

10 Very first page of the exhibit.

11 A. Yes, sir.

12 Q. All right. Go ahead and turn to Page 343.

13 Are you there, ma'am?

14 A. Yes, sir.

15 Q. All right. Middle of the page do you see an entry and
16 the name Safiya Tate?

17 A. Yes, sir.

18 Q. Tell the -- did you know Ms. Tate?

19 A. I did.

20 Q. Tell the jury how you knew her.

21 A. Safiya Tate was one of the social workers at the
22 hospital that we worked with frequently. Usually if we had
23 a client that was in EPC, we worked closely with the social
24 worker on their floor.

25 Q. And on this note, if you read it, it says comment.

1 Call received from APS DSS, Naqua Edgerton.

2 That's you?

3 A. Yes, sir.

4 Q. And that was your cell number?

5 A. Yes, sir.

6 Q. And your desk number?

7 A. Yes, sir.

8 Q. And it says to discuss case, correct?

9 A. Yes, sir.

10 Q. I'll keep reading and just make sure that I'm doing it
11 correctly.

12 will you do that for me, ma'am?

13 A. Yes, sir.

14 Q. Very good.

15 Emergency protective custody (EPC hearing) scheduled to
16 take place today at 1:30PM. Medical records faxed. (H&P,
17 psych capacity consult note, meds, MD progress note) faxed
18 and there's a fax number there, correct?

19 A. Yes, sir.

20 Q. For presentation at hearing.

21 Did I read that accurately?

22 A. Yes, sir.

23 Q. What's H&P if you know?

24 A. I don't know --

25 Q. Very good.

1 A. -- for sure.

2 Q. well, let's talk about this.

3 A. Uh-huh.

4 Q. Did you ultimately or did you receive a fax sent by Ms.
5 Tate?

6 A. I did.

7 Q. Do you recall when you received it?

8 A. I received it on the 2nd I believe it was. The 2nd of
9 March.

10 Q. And when you say you received it, how did it get to
11 you?

12 A. It was on my desk.

13 Q. Do you know who put it on your desk?

14 A. I don't -- we don't have -- we have a staff that takes
15 them and they sort them and put them in our area. So, they
16 would have all of the faxes for APS and someone would bring
17 them around and put them on the case manager's desk.

18 Q. And it says next following hearing --

19 A. Uh-huh.

20 Q. -- Naqua, that's you---

21 A. Yes.

22 Q. ---will call back with ruling and there's a
23 parenthetical there. Remain in custody versus return home
24 alone.

25 Did I read that accurately?

1 A. Yes, sir.

2 Q. The next line is licensed medical social worker also
3 discussed fact that PT, patient, currently has a mortgage
4 and is concerned about missing payments since he is unable
5 to manage accounts while here at Palmetto-Health Richland.

6 Did I read that accurately?

7 A. Correct. Yes, sir.

8 Q. So part of y'all's role, as a case manager, will be to
9 assist in financial management as well?

10 A. No, we don't have any control over the client's
11 finances.

12 Q. Okay. Now, when you got the fax from Ms. Tate the next
13 day---

14 A. Yes, sir.

15 Q. ---as you recall, what did you do with that
16 information?

17 A. At that time I just put them in his case file. What,
18 what we initially do when we get medical documents, if
19 there's no concerns, we'll put them in a client's case file.
20 If there are concerns, then we'll staff them with our
21 supervisor. In this particular case, Mr. Sellaro's medical
22 records went in his case file.

23 Q. Yes, ma'am. Give me just a moment.

24 A. Okay.

25 Q. Now, did you feel the need -- did you have any role in

1 alerting folks that you got the records from Ms. Tate?

2 A. Yes.

3 Q. So what'd you do?

4 A. I would of let my supervisor know as well as the
5 guardian ad litem, and if the -- if I had spoken with
6 Elizabeth and she asked for that information, she would of
7 had to get it from our attorneys.

8 Q. And when you say Elizabeth, that was who?

9 A. That was the attorney assigned to Mr. Sellaro.

10 Q. Very good.

11 Ma'am, this may seem like a bad question, an ignorant
12 question, but can you just simply snap your fingers and go
13 ahead and let someone out of emergency protective custody?

14 A. We can not.

15 Q. What has to be done, to your knowledge, to have that
16 happen?

17 A. Well, generally how DSS does it, we have -- we're
18 assigned a date for the merits hearing and we have the
19 time -- that time to gather all the information that we need
20 in order to determine if the client should still be in
21 protective custody or not.

22 Q. What I'm gonna do, ma'am, is I'm gonna hand you an
23 affidavit. This is Defendant's Exhibit -- this is DSS
24 Exhibit No. 2. This is No. 2, DSS No. 2, and, again, we
25 talked about Victoria Deas Johnson, did we not?

1 A. We did.

2 Q. And you communicated---

3 A. Yes, sir.

4 Q. ---with her about Mr. Sellaro's staffs in Mr. Sellaro's
5 case?

6 A. Yes, sir.

7 Q. All right. Let's go -- be some pages back. I want you
8 to look at -- let's see. It's exhibits -- there's some
9 handwritten dividers.

10 Do you see these over here, Ms. Edgerton?

11 A. Yes, sir.

12 Q. Okay. Go to Exhibit B.

13 A. Okay.

14 Q. And the first page there, it's gonna say Page 1 of 3 in
15 the corner.

16 Do you see that?

17 A. Yes, sir.

18 Q. And it says printed by who at the bottom left corner?

19 A. Oh, Safiya Tate.

20 Q. That's Ms. Tate at the hospital?

21 A. Yes, sir.

22 Q. Okay. Very good.

23 And at the top, what does it say?

24 Let's start top left.

25 A. Consultation report?

1 Q. Yes, ma'am.

2 And then the result date?

3 A. It is February 29th, 2016.

4 Q. Do you see performed by?

5 A. Yes, sir.

6 Q. who's that?

7 A. Jeffrey H. Brandenburg, M.D.

8 Q. Very good.

9 Now, what I want you to do, there's kind of, almost
10 half way down, there's a line that says current medications.
11 Do you see that?

12 A. Yes, sir.

13 Q. what's written underneath that line?

14 A. It says medications 21. Active scheduled 14.

15 Q. Okay. Let's just do this as quickly as we can but
16 let's speak clearly for the jury.

17 well, what's the first entry there under scheduled 14?

18 A. Adult, non pregnant, hysoglemic (phonetic) management
19 guidelines. One each miscellaneous daily.

20 Q. what's the next one?

21 A. Adult, non pregnant, subcutaneous Insulin guidelines.
22 One each miscellaneous daily.

23 Q. Now you may be -- be able to me in -- pronouncing these
24 but do the best you can, ma'am.

25 what's the next line?

- 1 A. Amitriptyline.
- 2 Q. And what's the --?
- 3 A. 50 MG tablet, a hundred milligrams, two tablets, POHS.
- 4 Q. What's the next line, ma'am?
- 5 A. Budesonide (phonetic) 80 MCG.
- 6 Q. Very good.
- 7 Next line?
- 8 A. Docusate sodium, a hundred MG capsule.
- 9 Q. The next---
- 10 A. Two times daily.
- 11 Q. Yes, ma'am.
- 12 The next one?
- 13 A. Insulin, Guar, Guar -- Garlagine (phonetic), a hundred
- 14 units and that is SUBQHS.
- 15 Q. Very good.
- 16 The next one?
- 17 A. Insulin human regular, a hundred units per milliliter.
- 18 Injection three ML, five units.
- 19 Q. And the next one?
- 20 A. Insulin regular 300 units, three ML, miscellaneous, OT.
- 21 Q. We'll go to the next one.
- 22 A. Melatonin 5 MG, orally disintegrating tab, 5 G -- 5 MG,
- 23 one solatab (phonetic) POHS.
- 24 Q. And the next one.
- 25 A. Medaprolo (phonetic) sucunate (phonetic), 12.5 MG - 0.5

1 XL tab.

2 Q. And the next one?

3 A. Meta -- Metasopin, Metasopin (phonetic), 3 MG tab 3 --
4 30 MG, one tab POSH.

5 Q. Next one.

6 A. Nicotine 14 MG, 24 hour patch.

7 Q. The next one.

8 A. Proethaline (phonetic) glyco powder 17 gram.

9 Q. Next one.

10 A. Pregoblin (phonetic) gablin (phonetic) a hundred MG
11 capsule.

12 Q. All right. We'll go to the next page, ma'am.

13 A. Okay.

14 THE COURT: All right. We need a question.

15 MR. SUMMERS: Oh, very good, sir.

16 THE COURT: All right. We're not just reading these
17 documents --

18 MR. SUMMERS: I understand. They'll---

19 THE COURT: -- that are, that are in evidence --

20 MR. SUMMERS: I appreciate that.

21 THE COURT: -- through the witness.

22 Q. Is that your understanding of the medications pursuant
23 to this report that Mr. Sellaro was taking regularly?

24 A. Yes, sir.

25 Q. All right. Very good.

1 Let's go to the next page. I'm sorry. Very quickly,
2 same page. Forgive me. The next -- flip the page over.
3 You'll see a listing, again halfway down, active problems.

4 Do you see that one?

5 A. On the same page?

6 Q. Yes. Well, the -- when you flipped over the page, this
7 is Page 3 of 3.

8 A. Okay.

9 Q. Do you see active problems?

10 A. Yes, sir.

11 Q. Let's go down a little bit.

12 Do you see an entry for dementia?

13 A. Yes, sir.

14 Q. And this is on the report for Mr. -- for Doctor
15 Brandenburg, correct?

16 A. Yes, sir.

17 Q. If we go up a little bit, do you see the problem list
18 heading?

19 A. Yes, sir.

20 Q. Underneath that's the word medical?

21 A. Yes, sir.

22 Q. Do you see a line entry that says dementia, there's a
23 slash, 294.8 slash confirmed?

24 A. Yes, sir.

25 Q. Do you see that?

1 A. Yes, sir.

2 Q. And, again, that's in Doctor Brandenburg's medical
3 report from February the 29th?

4 A. Yes, sir.

5 Q. Very good. You can go ahead and set that aside.
6 what happened on March the 7th of 2016?

7 A. March 7th was the date that the emergency hearing
8 occurred. I went to the hospital to pick up Mr. Sellaro to
9 take -- to transport him to the court hearing.

10 Q. And what happened during the hearing?

11 A. We had a hearing and it was determined that he was not
12 in DSS custody. He was released from our custody and I took
13 him back to the hospital to gather his belongings and then
14 took him home.

15 Q. Did you have any follow-up visits with him?

16 A. I did not. Our case was closed once that hearing
17 occurred.

18 Q. Did you have another occasion to interact with Mr.
19 Sellaro?

20 A. I did several months later I had voice mails from Mr.
21 Sellaro asking about assistance from us.

22 MR. BREHMER: I'm gonna object, Your Honor, to
23 subsequent events. It's got nothing to do with this case.
24 No relevance.

25 MR. SUMMERS: Statement by party opponent, Your Honor.

1 MR. BREHMER: It's still got---

2 THE COURT: I don't think it's relevant.

3 MR. SUMMERS: Yeah. Very good, sir.

4 THE COURT: Sustained.

5 Q. Did -- was there another occasion when Mr. Sellaro was
6 placed into EPC?

7 MR. BREHMER: Objection on relevance, judge.

8 THE COURT: Sustained.

9 MR. SUMMERS: Very good. I'll move on then.

10 Ma'am, thank you very much for answering my questions.

11 Mr. Brehmer will have some questions---

12 A. Okay.

13 Q. ---or, I'm sorry, maybe Mr. Garfield would have
14 depending on the --.

15 MR. BREHMER: Okay.

16 CROSS-EXAMINATION

17 BY MR. BREHMER:

18 Q. Ma'am --

19 A. Yes, sir.

20 Q. -- I show you what's been marked as Plaintiff's Exhibit
21 No. 7, which is memorializations of the -- Ms. Tate. I
22 direct your attention to Page 2 of Exhibit 7.

23 Ma'am -- well, let's go to Page 1, okay, of Exhibit 7,
24 the very bottom, second line. It says patient found to have
25 capacity by psych team. Met with patient at bedside to

1 discuss APS case. Patient reports that he is not sure about
2 why he was EC -- EPC'd and denies history of dementia.
3 States that he was visited by Naqua Edgerton, APS worker,
4 today and was informed that he was having a hearing
5 tomorrow.

6 A. Yes, sir.

7 Q. Okay. So you actually visited Mr. Sellaro on February
8 the 29th, correct?

9 A. Yes, sir.

10 Q. Okay. So, you were in his room that Monday?

11 A. Yes, sir.

12 Q. Okay. And you talked to him?

13 A. Yes, sir.

14 Q. And you knew he'd had an evaluation by the psych team,
15 correct?

16 A. Yes, sir.

17 Q. And you knew he had an evaluation by the ER internal
18 medicine doctor, correct?

19 A. Yes, sir.

20 Q. And you knew that they were negative, correct?

21 A. I didn't have the medical records at that time.

22 Q. Yes, ma'am.

23 And you knew that, within 24 hours, you were having a
24 probable cause hearing to determine whether this man was
25 going to be able to go about his life or was going to be

1 a -- under your employer's care, custody, and control?

2 A. Yes, I wasn't aware that he had---

3 Q. Okay.

4 A. ---a probable cause hearing.

5 Q. Okay. Okay. And you did nothing to secure those
6 records. Nothing.

7 A. Generally --.

8 Q. That -- that's not my question, ma'am.

9 My question is you did nothing to secure those records.
10 Yes or no.

11 A. I requested the records.

12 Q. But you knew that the hearing -- you knew that the
13 records existed and you did nothing, as his caseworker, to
14 make sure that the Court had the relevant information?

15 A. The probable cause hearing is to determine why the
16 client was taken into custody and if there was probable
17 cause for him to be taken into custody. Not based on the
18 medical records. That's what we have the merits hearing
19 for.

20 Q. Ma'am, the probable cause hearing is, is to determine
21 if there is probable cause for him to be in the mental
22 hospital?

23 A. He wasn't in the mental hospital.

24 Q. Well, he was under y'all's care because you thought he
25 was demented.

1 A. Uh-huh.

2 Q. Is that---

3 A. Correct.

4 Q. ---right?

5 A. Yes, sir.

6 Q. Okay. And you had a psychiatrist that said he was not,
7 correct?

8 A. Correct.

9 Q. And you knew that?

10 A. I didn't know that until we got the medical records on
11 the 2nd.

12 Q. Okay. And but you knew that the medical records
13 existed?

14 A. It had been asked---

15 Q. Okay.

16 A. ---yeah.

17 Q. Ma'am, isn't it true that your inactions made this
18 probable cause hearing useless?

19 A. It's not true.

20 MR. SUMMERS: Object to the form, Your Honor.

21 Accusations by counsel.

22 THE COURT: Overruled.

23 Q. Okay. Your---

24 A. That's not true.

25 Q. Your lack of activity of doing your job put that man in

1 jail?

2 A. No, sir.

3 Q. Okay.

4 A. That's not correct.

5 Q. If you'd gotten those records, and when you got those
6 records and they were submitted, your department consented
7 to his release, did it not?

8 A. Yes, we did consent to his release once we got the
9 medical records and after we had talked with both the
10 guardian ad litem---

11 Q. Okay.

12 A. ---and the attorney.

13 Q. Okay. The truth of the matter is, ma'am, you just
14 didn't care.

15 A. No, that's not the truth of the matter.

16 Q. You were there to get your paycheck and you didn't care
17 about him at all?

18 A. That's not the truth of the matter. As a DSS APS case
19 worker, we have policy and procedures that we have to
20 follow. And, like I said, the merits hearing is where we
21 take all the information that we have found, the medical
22 records, and at that time that's when we determine whether
23 or not he still needs to be in our custody.

24 Q. You didn't care whether he stayed there or not?

25 A. I did care. That's why we had it rushed.

1 Q. Okay. And the records of two doctors, the emergency
2 room doctor and Doctor Brandenburg, were within your grasp
3 and you refused to get them off of a fax machine for a
4 hearing?

5 A. No.

6 Q. Thank you, ma'am.

7 A. Incorrect.

8 THE COURT: Mr. Garfield.

9 MR. GARFIELD: No, Your Honor.

10 THE COURT: Mr. Summers.

11 MR. SUMMERS: Very quickly.

12 REDIRECT EXAMINATION

13 BY MR. SUMMERS:

14 Q. In response to Mr. Brehmer's questions --

15 A. Yes.

16 Q. -- you cared about your job, didn't you?

17 A. Of course I did.

18 Q. And you did your job to the best of your abilities?

19 A. I did my job the best of my abilities as well as, as
20 much as I'm allowed to do it.

21 Q. And there is a pro -- protocol and they're laws to
22 follow---

23 A. Correct.

24 Q. ---once that order is entered and once someone's taken
25 into EPC custody?

Naqua Edgerton - Redirect examination
By Mr. Summers

1 A. Correct.

2 Q. I thank you for your time, ma'am.

3 A. Thank you.

4 MR. BREHMER: Nothing further.

5 THE COURT: You may step down, ma'am. Thank you.

6 How many more you got?

7 MR. SUMMERS: Just one, sir.

8 THE COURT: All right. Let's go ahead and do it.

9 MR. SUMMERS: At this time the Department of Social
10 Services calls Tyler Burns.

11 THE BAILIFF: Would you step around here and be sworn.
12 Raise your right-hand and put your left-hand on the Bible.

13 THE CLERK: State your full name please.

14 THE WITNESS: James Tyler Burns.

15 THE CLERK: T-Y-L-E-R?

16 THE WITNESS: Yes, ma'am.

17 TYLER BURNS, being first duly
18 sworn, testified as follows:

19 THE CLERK: Thank you. You can have a seat right
20 there.

21 DIRECT EXAMINATION

22 BY MR. SUMMERS:

23 Q. Make yourself comfortable, sir. I don't know if I'll
24 have any difficulty hearing you. But just in case, just
25 project your voice.

Tyler Burns - Direct examination
By Mr. Summers

1 A. That shouldn't be a problem.

2 Q. I figured not.

3 Just introduce yourself to the jury please?

4 A. My name's Tyler Burns.

5 Q. What do you do, sir?

6 A. I'm an attorney.

7 Q. And where do you practice?

8 A. Right now I practice here in Columbia and York County.

9 Q. And what do you do in your practice?

10 A. Right now I -- I'm what's called a 608 attorney where I
11 have---

12 Q. What does that?

13 A. Yeah, I have a contract with the State whereby I
14 provide defense services to people that are accused of abuse
15 or neglect or have a DSS case. So I kind of switched sides.

16 Q. Well, I was gonna ask you about that.

17 A. Yeah.

18 Q. Prior to becoming a 608 attorney -- and you have your
19 own practice now, correct?

20 A. That's right.

21 Q. And it's located here in Columbia?

22 A. Yes, sir.

23 Q. Very good.

24 Prior to becoming a 608 attorney, and having your own
25 practice, where'd you work?

1 A. I worked for the Department of Social Services in
2 Richland County.

3 Q. And how long did you do that?

4 A. About three years.

5 Q. Let me go through, through some biographical questions.
6 Are you from South Carolina originally?

7 A. I am.

8 Q. What town, sir?

9 A. Myrtle Beach.

10 Q. Where'd you go to high school?

11 A. Grew up here in Columbia. Went to Ben Lippen.

12 Q. After high school, where'd you go to undergrad?

13 A. USC.

14 Q. And after USC, where'd you go for law school?

15 A. I liked it so much I had to stay. I went to USC.

16 Q. I understand.

17 When were you licensed to practice, sir?

18 A. November 17th, 2008.

19 Q. Very good.

20 And after you were -- did you first work for DSS after
21 you became licensed or did you do some other work?

22 A. No, actually I started off, I was a solicitor,
23 assistant solicitor for the, for the Sixteenth Circuit of
24 South Carolina.

25 Q. And the Sixteenth Circuit's where, sir?

1 A. York and Union Counties.

2 Q. Very good.

3 Spend time as a prosecutor?

4 A. Yes, sir.

5 Q. And then from being a prosecutor up in the Sixteenth
6 Circuit, where'd you go next?

7 A. I went into private practice for a little while with a
8 plaintiff's firm. It was in Fort Mill, South Carolina, and
9 it -- was there about, I don't know, maybe four years and
10 then I went to work for DSS.

11 Q. Very good.

12 As a staff attorney for DSS, what were your duties?

13 A. Oh. It, it -- that was a lot. Essentially -- I hate
14 to use this term but we were to prosecute -- we were to
15 effectuate the legal cases that had to go to court for the
16 Department of Social Services. On top of that, we also
17 advised staff members, case managers, directors about law
18 and how that interacted with DSS policy and advised them
19 based on what we knew of the situation and the law.

20 Q. Very good, sir.

21 I'm gonna mention a phrase adult protective services.

22 Did you have some work and exposure in adult protective
23 services while serving as a staff attorney at DSS?

24 A. Yes, I did.

25 Q. Okay. Let's just go ahead and get to March of 2016.

1 A. Okay.

2 Q. You were working as a staff attorney, correct?

3 A. Yes, sir.

4 Q. And do you recall having any kind of communication with
5 Reynolds Elliott, Elizabeth Boozer, Boozer, or Victoria Deas
6 Johnson?

7 Start with the beginning.

8 A. Yeah, this was -- it was a while back but I do recall
9 having con -- email conversations with Elizabeth Boozer
10 about this.

11 Q. And Ms. Boozer was who?

12 A. I believe she -- I'm not sure if she was appointed to
13 represent the guardian or she was appointed to represent Mr.
14 Sellaro. But she was one of the, what, what I mentioned,
15 the 608 attorneys that was appointed to represent somebody.

16 Q. If you could, just tell the jury, when someone is in
17 emergency protective custody, and the Court appoints various
18 officials, there's a guardian ad litem, correct?

19 A. Yes.

20 Q. What does a guardian ad litem do?

21 A. The guardian ad litem is a person who's supposedly
22 neutral that's suppose to advocate for the best interest of
23 a -- it could be a child or an adult in either case. But
24 they advocate for the best interest of whoever they're
25 appointed to be a guardian for.

1 Q. Does the guardian -- does the Court appoint a guardian
2 ad litem an attorney?

3 A. Yes.

4 Q. Why is that?

5 A. It's required by law that if, if the guardian
6 themselves is not an attorney, that they be appointed an
7 attorney basically by the State to represent them.

8 Q. And then is there another attorney appointed in the
9 process?

10 A. Yes.

11 Q. Who's that?

12 A. That is an attorney to actually represent the
13 individual and if I can expand on that?

14 That's---

15 Q. Please. Go right ahead.

16 A. All right. The -- sounds like a lot of attorneys. But
17 the attorney that's appointed to represent the individual
18 themselves, their job's to basically advocate for what the
19 party wants. Say they want to go do something, their job is
20 to advocate and fight for them to do that. The attorney for
21 the guardian ad litem is to advocate for the guardian who's
22 to do what's in the best interest even if it's not what the
23 party wants. So, those are the two main distinctions.

24 Q. Very good.

25 And then you're all a staff attorney, you would

1 interact with these attorneys and the guardian ad litem?

2 A. Oh, yes, sir.

3 Q. Let's talk about Mr. Sellaro's case.

4 You're aware of it?

5 A. Yes, sir.

6 Q. Did -- you receive some communications, you mentioned a
7 moment ago, from Ms. Boozer.

8 Was there ultimately, to your recollection, some kind
9 of motion filed on Mr. Sellaro's behalf?

10 A. Yes.

11 Q. Tell the Court how that came to be.

12 A. Essentially the guardian believed that Mr. Sellaro
13 wasn't a vulnerable adult and shouldn't remain in care and
14 they brought that to my -- I think it was Liz Boozer brought
15 that to my attention and I essentially said I would get with
16 my people and talk about it and --.

17 Q. Is that what you did?

18 A. That's what we did.

19 Q. When you say your people --

20 A. DSS.

21 Q. -- who are you---

22 A. Sorry.

23 Q. Very good.

24 Ultimately was there a hearing scheduled for Monday?

25 A. Yes.

1 Q. That would be March the 7th?

2 A. That's right.

3 Q. Why was it scheduled on a Monday?

4 A. Cause that's when I put it.

5 Q. How did that work?

6 A. All right. DSS, it controls it -- their own docket
7 through the court system. Basically they're so many DSS
8 cases -- ordinarily when a, a case goes through court, the
9 clerk would schedule it for a hearing. There's so many DSS
10 cases that DSS is able to manage their own caseload and
11 schedule cases when, when time is available and, and kind of
12 when they want to. And if I remember correctly, I got that
13 motion and put it on for that Monday cause that was the
14 first time I could get it on the docket.

15 Q. Very good.

16 Let me hand you what's been admitted Plaintiff's
17 Exhibit No. 3.

18 MR. BREHMER: Okay.

19 Q. Take a look at this, sir.

20 A. Yes, sir.

21 Q. Do you recognize that, sir?

22 A. I do.

23 Q. And tell the jury what that is.

24 A. This is a bench order from Judge -- looks like Judge
25 Rucker basically -- give, give me one second.

1 Q. Go right ahead. Take your time, sir.

2 A. Yeah, this is a bench order dismissing the case by
3 consent of the parties.

4 Q. Do you know when the original merits hearing was
5 scheduled?

6 A. I don't remember when it was scheduled. However, it
7 follows a particular timeframe. State law requires that a
8 merits hearing be scheduled within 45 days of the date of
9 filing. So, generally, when we do those pleadings, we would
10 have that -- put in the pleadings when it would of been
11 scheduled and it would of been no more than 30 to 45 days
12 out. I don't -- but I can't tell you the exact day.

13 Q. Just a moment.

14 This will be Sheriff Department No. 1.

15 Take a look at this, sir. See if you recognize it or
16 are you familiar with it.

17 A. Yes, sir.

18 Q. Tell the jury what that is.

19 A. This is the order from the 72 hour probable cause
20 hearing.

21 Q. Did you serve as the DSS counsel during that hearing?

22 A. I did not.

23 Q. Tell the jury why.

24 A. Okay. Again, there's so many DSS cases -- I think, at
25 this point, there was five DSS attorneys in Richland County

1 to basically manage the caseload. We would run a DSS docket
2 day three to four days a week where we were actually doing
3 merits hearing and others types of hearings for cases, and
4 we would take turns where one of us would basically go do
5 all the probable cause hearings for that day regardless of
6 when -- or regardless of who the case was assigned to.

7 So, this one was assigned to me from the beginning.
8 But I, I was probably in the other courtroom doing other
9 hearings.

10 Q. And then who stood in your shoes if you would?

11 A. Scott Spivey.

12 Q. Very good.

13 And on the third page of that exhibit, do you see in
14 reference, about halfway down, as to when the hearing --
15 merits hearing was scheduled?

16 A. Yes, sir, April 7th, 2016, at 11:30AM.

17 Q. So by virtue of getting Mr. Sellaro a hearing on March
18 the 7th, you advanced the timeline by a full month?

19 A. Yes, sir.

20 Q. Very good.

21 Thank you for answering my questions and explaining
22 for -- the information. I believe Mr. Brehmer will have
23 some questions for you.

24 THE COURT: Hold, hold on one second.

25 Okay. Give me one second.

1 MR. BREHMER: Sure.

2 THE COURT: Just hang tight. Y'all stand up and
3 stretch, stretch your legs.

4 (Pause.)

5 MR. SUMMERS: Mr. Brehmer, as far as these -- any need
6 to have the ladies remain?

7 MR. BREHMER: No.

8 MR. SUMMERS: No?

9 MR. BREHMER: No, thank you. That's fine.

10 MR. SUMMERS: Seeking the excusal of the two prior
11 witnesses. Thank you, sir. Thank you.

12 (Pause.)

13 THE COURT: Go ahead.

14 MR. BREHMER: Thank you.

15 CROSS-EXAMINATION

16 BY MR. BREHMER:

17 Q. Let's see if I understand the timeline, Mr. Burns.

18 March the 3rd the Family Court issues an order
19 appointing Ms. Victoria Deas Johnson as the guardian ad
20 litem for Mr. Sellaro.

21 Is that your understanding?

22 A. If I could see the order?

23 I don't, I don't know the exact date but --.

24 Q. Hold on. I'm finding it.

25 A. Do I have it?

Tyler Burns - Cross-examination
By Mr. Brehmer

1 Q. I don't know.

2 A. This, this wasn't my stuff.

3 Is this it?

4 Q. Sure is. Look a there.

5 A. Yes, sir, March 3rd.

6 Q. March 3rd, the Court issues an order.

7 MR. SUMMERS: Just to interrupt.

8 Just for the sake of the record, which exhibit was that
9 that you were showing to the witness?

10 A. Oh, this is -- you want me to answer that, judge?

11 THE COURT: What was the question?

12 MR. SUMMERS: Yes, sir, I'm clarifying---

13 THE COURT: Mr. Brehmer, you were asking him as an
14 exhibit that was already in evidence?

15 MR. BREHMER: Yes, it's already an exhibit.

16 THE WITNESS: It's Plaintiff's 1.

17 MR. SUMMERS: Thank you very much, sir.

18 MR. BREHMER: Yeah.

19 MR. SUMMERS: Just (indiscernible).

20 THE COURT: Okay.

21 MR. SUMMERS: Thank you.

22 Q. well, let's just, let's just go through the sequence
23 here.

24 A. All right.

25 Q. Okay. So that we got it all -- the picture.

1 Okay. March the 3rd the Court issues an order, okay,
2 appointing Victor Deas Johnson as Mr. Sellaro's guardian ad
3 litem, correct?

4 A. Yes.

5 Q. You know, from your experience in this case, that she
6 did exactly what she's suppose to do. She got on the ball.
7 She comes and talks to Naqua. She gets his medical records
8 and goes and sees him, and by March the 4th, you're
9 receiving a call from either Reynolds Elliott or Elizabeth
10 Boozer, correct?

11 A. Oh, it was emails but yeah.

12 Q. Emails?

13 A. Yeah.

14 Q. With -- your contacts.

15 A. Uh-huh. (Affirmative).

16 Q. Okay.

17 A. Yes, sir.

18 Q. And so March the 4th, was what, a Friday?

19 The 7th was a Monday. The 6th would of been a Sunday.
20 The 5th would of been a Saturday. The 4th would of been a
21 Friday.

22 A. Yeah, that math checks out. That's right.

23 Q. Okay. So, and enough time on Friday, March the
24 4th, that we got a hearing again on Monday, March the 7th,
25 correct?

Tyler Burns - Cross-examination
By Mr. Brehmer

1 A. I'm, I'm sorry. I didn't understand what you said.

2 Q. Victoria Deas Johnson---

3 A. Yeah.

4 Q. ---gets appointed.

5 A. Uh-huh.

6 Q. She reviews the records. She interviews Naqua. She
7 interviews Mr. Sellaro.

8 A. Uh-huh.

9 Q. Contacts you or gets, gets---

10 A. Yeah.

11 Q. ---a lawyer to contact you?

12 A. Yes.

13 Q. Okay. And you get a hearing for Monday?

14 A. Uh-huh.

15 Yes, sir.

16 Q. And low and behold, the case goes away, correct?

17 A. That's, that's about it, yes, sir.

18 Q. Nothing in that case changed from February the
19 28th till March the 7th, did it?

20 A. Yes, it did. What changed was that Ms. Deas -- was her
21 name Deas?

22 Q. Victoria Deas Johnson?

23 A. Deas Johnson. Was able to get the medical records from
24 DSS.

25 Q. Able to get the medical records from DSS.

1 Now, you were aware that DSS was well aware of those
2 records on the 28th of February, were you not?

3 A. No.

4 Q. You weren't aware of that?

5 A. No.

6 Q. Okay. And you were aware that Ms. Naqua Edgerton knew
7 that they existed on February the 28th?

8 A. Well, I'm sure she knew they existed. Everybody's got
9 medical records but I don't think she had them at that
10 point.

11 Q. You were aware that she had requested them from Ms.
12 Tate prior to hearing, did you not?

13 A. I mean that would of been procedure that---

14 Q. Now, is it---

15 A. ---she requested it.

16 Q. As counsel for the Department of Social Services, do
17 you advise them that it is a good idea to try to have the
18 relevant documents together before you go to a hearing?

19 A. For a probable cause hearing?

20 Q. Yes, sir.

21 A. No.

22 Q. So, it's okay with your department not to have the
23 relevant documents together when you are determining whether
24 there is a -- probable cause to take someone's liberties
25 away?

1 Is that acceptable by the department?

2 A. No. But you're confusing two separate things.

3 Q. No, sir. Just answer my question.

4 Is that acceptable protocol by the Department of Social
5 Services not to have the relevant information at a probable
6 cause hearing?

7 A. Sir, I can't answer that question. You're confusing
8 two separate things.

9 Q. Okay. Sir, isn't it your duty and responsibility to
10 give the Court the relevant information to determine whether
11 there is probable cause to take someone's liberties away?

12 A. Relevant information to determine probable cause, yes.
13 But, again, not to have a ruling on the merits, which is the
14 ultimate question. So --.

15 Q. I understand.

16 But probable cause is not the same thing as a rubber
17 stamp, is it, sir?

18 A. It's real, real low but, no, it's not the rubber stamp.

19 Q. Okay. But the way you run your department or did run
20 it is it's a rubber stamp, isn't it?

21 A. No.

22 Q. Okay. If -- you said that -- didn't you just testify
23 that DSS has so many cases that they can just basically do
24 it the way that they want to do it?

25 A. No, sir, what I said was that it wouldn't be feasible

Tyler Burns - Cross-examination
By Mr. Brehmer

1 for somebody else to control the docket. So they're allowed
2 to schedule the cases when they need to.

3 Q. So, in an essence, if you didn't see the necessity to
4 schedule Mr. Sellaro's hearing, he could still be sitting
5 over there at the hospital?

6 A. Still now?

7 Q. Yes, sir.

8 A. No.

9 Q. Thank you, sir.

10 A. Yes, sir.

11 MR. GARFIELD: No questions from the sheriff. Thank
12 you.

13 MR. SUMMERS: And nothing further from DSS for
14 Mr. Burns. Request to excuse him.

15 THE COURT: All right. Have a nice day, Mr. Burns.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: All right. And let's see.

18 Any further witnesses?

19 MR. SUMMERS: No, sir.

20 THE COURT: Okay. Do you intend to call any reply
21 witnesses?

22 MR. BREHMER: No, sir.

23 THE COURT: Okay. All right. Ladies and gentlemen,
24 we're gonna go ahead and stop there at the end of the day.
25 As I kind of told you the other day, starting closing

1 arguments and jury charges at 4:22 is a bad idea cause it
2 will probably take us at least an hour to an hour and a half
3 to get ready.

4 So, we're -- I'm gonna go ahead and send you home for
5 the evening. Do not discuss the case. Keep an open mind
6 about the case. When you come back in the morning, we'll --
7 first thing we'll do will be closing arguments. Then I'll
8 give you my instructions on the law. We'll order you lunch
9 in again tomorrow. Then you'll begin allow -- allowed to
10 begin deliberating and discussing the case without any kind
11 of real fear of, you know, how late in the night it is or
12 whatnot. And so we'll get that to you tomorrow.

13 We do probably have at least an hours worth of work to
14 do to create that jury charge and I do have some attorneys
15 that have some personal issues they need tend to tonight.

16 So, tomorrow morning, we're gonna start at 10:30 as
17 opposed to 9:30 and that way we can come in and get all of
18 our work done in the morning and I can -- the attorneys have
19 some personal issues tonight that they have -- they told me
20 about this morning that I know they need to attend to and
21 they do need to attend to there. Very personal matters.
22 And so I want to give them the opportunity to do that.

23 So we'll get here in the morning, get everything
24 knocked out so, at 10:30, we're ready to bring you in and
25 get going. So 10:30 tomorrow morning.

1 Thank you very much for your hard work today and we'll
2 see you tomorrow morning at 10:30.

3 okay?

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Okay. And let's see. Everybody want to
7 renew their motions?

8 MR. BREHMER: Yes, sir.

9 MR. GARFIELD: Yes, sir.

10 MR. SUMMERS: Yes, sir.

11 THE COURT: Okay. All right. Anybody want to add
12 anything new?

13 MR. GARFIELD: I will need to.

14 Do you have anything?

15 MR. BREHMER: No, sir.

16 MR. GARFIELD: Okay. Your Honor, yes. On behalf of
17 defendant sheriff, we would respectfully renew our motions,
18 previous motions, for directed verdict. We would like to
19 add, at this point, for Your Honor's consideration, South
20 Carolina Code 15-78-60 Subsection 5. There has been --
21 there was testimony from the deputies. There's been
22 testimony I believe from maybe one or two DSS witnesses that
23 the actions of the deputies with respect to EPC, the choices
24 made, the alternatives, the options that was presented to
25 them on February 27th, 2016, were of discretionary nature,

1 that this was not something compulsory on their part.

2 clearly, under the statute where it says that based on
3 these factors, the EPC statute, where it says that if
4 probable cause existed, I'm paraphrasing, I don't have it in
5 front of me, where it says law enforcement may instead of
6 shall --

7 THE COURT: Right.

8 MR. GARFIELD: -- that that would constitute a
9 discretionary act on the part of a law enforcement officer.

10 THE COURT: Okay.

11 MR. GARFIELD: And acting on that discretion, we
12 believe that would be constitute -- that would constitute an
13 immunity function as well.

14 THE COURT: All right. Mr. Brehmer.

15 MR. BREHMER: We don't believe that -- we believe that
16 there's evidence that there was not any basis for the
17 exercise of any type of discretion because there was no
18 merit in any of the positions and renew the same arguments
19 that we've made previously.

20 THE COURT: Okay. And my ruling upon that will be the
21 same as it was on the other issues. I think there's
22 evidence in the record, considering the existence of it, and
23 not the weight of it, for the case to go forward.

24 All right. Mr. Summers.

25 MR. GARFIELD: Thank you, Your Honor.

1 MR. SUMMERS: No, nothing further, sir.

2 THE COURT: Okay. All right. I'm gonna let you get
3 out of here.

4 MR. BREHMER: Sure.

5 THE COURT: But just one, one thing.

6 So, we -- in, in kind of process of this jury charges,
7 I'm gonna tell you some questions that I have in my mind.
8 So some part of the jury charges are standard, right.

9 Obviously the definition of negligence is the
10 definition of negligence and the definition of false
11 imprisonment is the definition of false imprisonment.

12 The question is kind where do I -- how, how do we enter
13 this vulnerable adult, the 45, whatever they are, statutes
14 into it. I think I've got to define vulnerable adult, which
15 I think I'm gonna use that case that you gave me that, that
16 Justice Beatty decided where it really goes into the
17 definition of what impaired and what that really means a
18 little bit and then we have to define probable cause.

19 That's one thing I think y'all submitted is some of
20 that. So I'll go through those and are y'all gonna request
21 that I charge on the immunities?

22 So I never heard it before but I had it a couple weeks
23 ago.

24 MR. GARFIELD: There's two schools of thought on that.
25 It's an---

1 THE COURT: Okay. All right. Let's take a break.

2 MR. SUMMERS: Very good.

3 THE COURT: Thank you for your hard work and being
4 ready to go this morning and having all this stuff submitted
5 to me. I really do appreciate it.

6 MR. SUMMERS: Yes, sir.

7 THE COURT: Thank you.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: All right. We got everybody?
10 Everybody good to go?

11 MR. GARFIELD: Yes, Your Honor. Thank you.

12 THE COURT: Okay. All right.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE BAILIFF: The jury's present, judge.

16 THE COURT: All right. Welcome back, ladies and
17 gentlemen. Thank you very much for being on time. We have
18 been diligently working since about 9:30 this morning to
19 make sure we got everything ready for you when you came in
20 this afternoon -- this morning. So, thank you very much for
21 being here and being ready to go.

22 So we have now reached the point of trial known as
23 closing arguments. This is the attorney's opportunity to
24 come before you and summarize the case from their respective
25 points of view.

1 Now, you guys have done a great job this week of paying
2 attention, staying awake, paying attention to the witnesses,
3 to me, to the lawyers, and I know that they all and I truly,
4 sincerely appreciate that. So thank you very much and I ask
5 now that you give your attention to the attorneys, your
6 undivided attention.

7 Now, I do not put time limits on closing arguments.

8 Okay. Sometimes I wish I did.

9 All right. Okay. But the reason I don't is this.
10 This is their case, right. They created it. They lived it.
11 They've been a part of it for all these years. And so I
12 never liked, when I was a lawyer, feeling like I had to
13 crunch everything and I -- maybe I didn't get to say what I
14 wanted to say. So -- and so I don't put any time limits.

15 So we may or may not take a break. We may just stand
16 up and stretch kind of depending on how long things are.

17 Okay. But won't know until that kinds of plays itself
18 out. But, whatever we do, just continue to pay attention
19 and stay with me.

20 As everything that we do in this courtroom, there is an
21 order to which things go. So it's not just random which
22 order people speak in.

23 Okay. So the first thing that will happen is the
24 plaintiff will be allowed to make an -- a close -- closing
25 argument. Then the sheriff will be allowed to make a

1 closing argument and then DSS will be allowed to make a
2 closing argument. Then the plaintiff will again be allowed
3 to come up and make what's called a reply argument.

4 Okay. And once all of those have happened, I will then
5 instruct you on the law and then we'll -- you'll be allowed
6 to begin -- start deliberating on the case after I give you
7 some instructions on that.

8 Okay. So, thank you very much, and, Mr. Brehmer,
9 whenever you're ready, the floor is yours, sir.

10 MR. BREHMER: May it please the Court.

11 THE COURT: Yes, sir.

12 MR. BREHMER: Can -- as y'all can tell, I don't like
13 the podium.

14 Ladies and gentlemen, this comes to the point in the
15 case where we get to basically summarize and argue our case
16 to you and tell you our points as (indiscernible) and I've
17 never been a juror. But if I were a juror, I'd want to know
18 what I was to do and here's, here's the question in this
19 case.

20 Under South Carolina law, if the police have probable
21 cause, or more than a mere suspicion, they can take a person
22 that they deemed vulnerable into custody. Okay. Now,
23 ladies -- that's the first question.

24 The second thing that you're gonna have to deal with is
25 were they negligent, okay, and that basically boils down to

1 March 1 at the probable cause hearing. Were they negligent
2 then, didn't do what they were suppose to do.

3 well, let's go through the facts, and, you know, I put
4 in a lot of exhibits that are gonna be in the courtroom --
5 in the jury room with you and that was done with a purpose
6 so that I could document to you why I'm taking the position
7 I'm taking, okay, because I want you to have the records and
8 the documentation to show you that all they had, they
9 suspected Mr. Sellaro may be demented.

10 Okay. They suspected he may be demented.

11 But, ladies and gentlemen, we believe we have proven to
12 you that that was nothing but a suspicion, okay, and a
13 suspicion is not good enough.

14 They came -- the police came to Mr. Sellaro's house and
15 you heard the testimony that it was after 10:00PM on
16 Saturday night. They knocked on the door and couldn't get
17 him to come to the door and the coroner went around and
18 peeped in his window and what did he see?

19 He saw a man in his recliner sleeping with his pets
20 around him.

21 Okay. I submit to you that is not unusual.

22 Okay. That is nothing unusual. They arose him. They
23 beat on the door till they got him awake and he comes to the
24 door and opens the door, okay, and there's a bunch of
25 strangers. He didn't know any of these folks and, listen,

1 we're here to tell you that your wife of 41 years is dead,
2 is dead.

3 I asked some questions yesterday of Officer Gaymon
4 because I wanted to point out to you what the circumstances
5 were at that point in time. And, ladies and gentlemen, the
6 judge and the gauge that you use to evaluate this case is
7 you got 467 tools to do that and that is from your life
8 experiences. If you add up the 12 jurors' ages, it comes to
9 467 and those are the tools.

10 Now, what he was told was your wife is dead.

11 I asked Officer Gaymon, sir, sir, that's like hitting
12 somebody with a load of brick, isn't it?

13 It's devastating. It's devastating. Think about it.
14 Think about that. They said he cried. He cried. Yeah, he
15 said he cried. I would of too.

16 But then they said well, you know, tell me your name.
17 My name's Joseph Sellaro. Tell me your address. He told
18 them his address. He was able to ambulate around the house.
19 He told them his date of birth and he told them his social
20 security number.

21 Ladies and gentlemen, I ask you are those the types and
22 pieces of information that a demented person would have or
23 be able to just rattle off?

24 He told them his medical conditions. He told them that
25 he had diabetes, that he had a pacemaker. He had asthma and

1 he'd had depression. And he told them the three medications
2 that he was taking. Three.

3 Ladies and gentlemen, I can't even pronounce the names
4 and he rattled them off for them.

5 Are those the type things -- and the reason -- I -- I'm
6 gonna be honest with you. I put that ambulance run report
7 into evidence so that you would have documentation as to
8 what he said, and what he gave, and look at the type and
9 kind of information that it is. A lot of times I got to
10 look at my social security card to remember my number, and I
11 couldn't tell you the names of the medication. So, my high
12 blood pressure or my high cholesterol medication. I know
13 where they are but I couldn't tell you what the names of
14 them are without going and looking.

15 Ladies and gentlemen, then think about what you don't
16 have because it's as important as to what you do have as to
17 what you don't have.

18 Do you have a report from them that says he was
19 confused?

20 Not the first one of them in evidence.

21 Do you have a report saying specifically what he could
22 or could not do?

23 Not in evidence.

24 Why is that?

25 Because they don't exist. They do not exist. They

1 told him you're going with us. No, I'm not. Yes, you are.

2 Now, ladies and gentlemen, I also want to point out to
3 you something. There was a mistake made on the ambulance
4 run report. It was not a mistake made by Joseph Sellaro.
5 It was a mistake made by Jennifer Fox Perry and you heard it
6 and I pointed it out. They designated him as a black man.

7 Ladies and gentlemen, everybody in this courtroom and
8 this world can see that Joseph Sellaro is not and has never
9 been a black man.

10 Now, if you take their theory to the -- of the case,
11 then they should of probably taken Ms. Perry in too cause
12 how could she get that wrong?

13 Ladies and gentlemen, there is no suspicion -- there,
14 there, there should not even have been a suspicion of
15 dementia by Mr. Sellaro that evening.

16 Then let's look at what happened. They take him to the
17 hospital. They arrive at two minutes to 12:00, Saturday
18 night. It's almost Sunday morning.

19 Okay. They take him into the hospital and the -- on
20 Sunday, the internist comes around and sees Mr. Sellaro. He
21 says he's okay. He is not demented. He's fine. But
22 because there's a demented allegation, let's wait till
23 tomorrow and get the psychiatrist to look at him.

24 Okay. The psychiatrist comes by on Monday, Doctor
25 Brandenburg. You heard he said multiple times in the

1 deposition that was read here this man is not demented.

2 He's able to make his own decisions about his medical care
3 and treatment. He doesn't need you.

4 Now, then you heard that the officer came by his house
5 after he finally got out and apologized.

6 why is that?

7 why would she even know that or how would she even know
8 that?

9 You know why she knows that?

10 It's because they know that they did wrong. They know
11 that they did wrong and are trying to cover it up just like
12 they're doing in this litigation cause they are trying to
13 pull the wool over your eyes and let me tell you how.

14 They say he has asthma. He's had asthma since he was
15 three years old. He is now 73. He's had asthma for the
16 last 70 years.

17 Did you hear anything about treatment for asthma while
18 he was in his 10 day stay with them?

19 He has depression. He told you I did it one time but I
20 hadn't -- did you hear anything about being treated for
21 depression in the 10 day stay?

22 He has a pacemaker. He's had it for the last 10 years.

23 Did you hear anything about treatment for the pacemaker
24 while he was in this 10 day stay with the government?

25 Okay. He has diabetes. He's had diabetes for most of

1 his adult life.

2 Did you hear anything about treatment during his 10 day
3 stay with the government?

4 No.

5 You know why?

6 But you've heard a lot about it in this case and you
7 know why?

8 Because they know they messed up and they are trying to
9 cover their back sides. That's why they throwing all this
10 stuff out at you and you know what?

11 We had a medical diagnosis on his records that he was
12 demented.

13 Well, ladies and gentlemen, you saw him sitting right
14 here. That man is not demented. He's never been demented.
15 I don't know that he ever will but he's not now and that's
16 not something you get over. That's not a recoverable
17 disease. I wish it was but it's not.

18 Then, ladies and gentlemen, after, after they have him
19 in the hospital, after the internist sees him on Sunday,
20 gives him a clean bill of health, after the psychiatrist
21 sees him on Monday, gives him a clean bill of health, we're
22 up to February the 29th.

23 What happens that day?

24 What happens that day after the psychiatrist has been
25 there?

1 Naqua Edgerton comes by and she goes and she talks to
2 Mr. Sellaro.

3 Okay. She tells him there's a probable cause hearing
4 tomorrow and she knows that he has seen the internist. She
5 knows that she's seen the psychiatrist. She knows that he
6 is talking as lucid and normal as anybody and what happens?

7 Okay. She has a conversation with Ms. Tate, the social
8 worker.

9 Okay. That day ends and what happens the next day?

10 Ms. Tate, per her request, faxes her the medical
11 records and it's in Ms. Tate's records on this exhibit and
12 it's -- it will be in evidence. You can see all the medical
13 records that's on the second page. It's on February --
14 March 1 at 11:11. She gives all the medical records that
15 she faxes to the government, okay, at 11:11.

16 She was asked and, Ms. Tate -- you can look at how she
17 answered her questions. Just as honest and as forthright as
18 the day is long. Yep, I did it. Those are the things I
19 sent. They need it because the hearing was at 1:30 that
20 day.

21 what happens?

22 what happens?

23 Okay. We get the Sheriff's Department and DSS going to
24 the hearing and they said hum, I put the transcript of that
25 into evidence so that you can read every word of what

1 happened, every word of what happened. And in that
2 transcript, in that transcript, Ms. McDaniel from DSS says
3 nothing. Not a word. Not a word.

4 Okay. And Mr. Bolding from the Sheriff's Department,
5 the only thing of content is, is he says over here
6 everything that was asked of him he was unable to dot dot.

7 Okay. I take that as he was unable to do. I asked
8 Reggie Gaymon was Mr. -- was Mr. Sellaro able to communicate
9 with you that night. Yes. Was he able to give you his date
10 of birth. Yes. Was he able to give you his social security
11 number. Yes. Was he able to tell you his medical
12 conditions. Yes. So, he was able to do things. Yes.

13 But I asked the arresting officer. No. No. I was
14 wondering were they at the same place. She wouldn't admit
15 it.

16 You know why?

17 Cause she knows she's wrong. Knows she is wrong.

18 Now then, at the DS -- at the hearing in Family Court,
19 in that transcript it says that the government put forth no
20 medical records. They didn't put forth the history. They
21 didn't put forth Doctor Brandenburg's report. They didn't
22 put forth his progress notes and then we get to the reason
23 why.

24 Ms. Edgerton says well, you know, they were suppose to
25 be faxed to me. They didn't come. So we didn't worry about

1 it. Okay. We didn't worry about it.

2 She ain't look for them. She didn't call about them.
3 She didn't ask for a continuance. Not a word.

4 So, at the hearing on March 1 we got a deputy -- and I
5 submit to you he out and out lied and DSS, the other
6 governmental agency, failed to use even slight care toward
7 my client.

8 Now, I got a little excited with Ms. Edgerton cause I
9 got hot about what she did to my client. Because she
10 wouldn't get off her behind and get a fax, my client gets to
11 sit in the mental ward. Not a place anybody wants to be,
12 folks. Not a place anybody wants to be.

13 Then let's look at what should have happened, okay,
14 what should have happened. That was brought through with my
15 first witness, Ms. Victoria Deas Johnson. That woman is an
16 angel. No short about it. There is a warm place in heaven
17 for her.

18 She was assigned a case on the 3rd of March. She
19 immediately, which was a Thursday, she immediately got the
20 medical records. She immediately read the medical records.
21 She immediately contacted DSS. She immediately got a lawyer
22 appointed for her and she had that lawyer get in touch with
23 DSS. Hey, we got to get this guy out on Friday and they got
24 him a hearing on Monday and what happened?

25 After Ms. Victoria Deas Johnson made them do their job,

1 oh, yeah, he can go. He can go.

2 It's hard for me to comprehend how one human can treat
3 another one like dirt and he was released and he's been
4 taking care of himself.

5 Ladies and gentlemen, I submit to you that, in this
6 case, you're gonna be asked to bring back a verdict and the
7 judge has got a form. Here it is. It's called a jury form.
8 He's gone over this as part of our work this morning to make
9 sure it was -- met all the legal requirements and everybody
10 had their appropriate input and they're gonna be a number of
11 questions that you're gonna be required to answer.

12 The first one was do you unanimously find, by the
13 preponderance of the evidence, that the defendant sheriff
14 was negligent.

15 Yeah, I do. We submit to you the answer to that would
16 be yes.

17 How were they negligent?

18 Let me tell you. When that officer came and
19 represented this man couldn't do anything that he was asked,
20 that was negligent because there ain't a first record to
21 support such. Nothing. Nothing. Look in the record of
22 this case. Nothing.

23 Okay. Do you find that unanimously, by the
24 preponderance of the evidence, that the sheriff's negligence
25 was the proximate cause or reason or one of the reasons for

1 the plaintiff's confinement?

2 Yeah. Yeah. And because, had they spoken up and had
3 they read their records and done their job, we submit that
4 he would of never been there. Never. Look at it by their
5 own admission. They admitted he shouldn't be there. They
6 let him go without a hearing.

7 All right. Do you unanimously find, by the
8 preponderance of the evidence, that the defendant sheriff
9 falsely imprisoned the plaintiff.

10 Ladies and gentlemen, the answer to that question we
11 submit to you is yes. The judge is gonna read you on the
12 law, okay, and he's going to read you what is the legal
13 standard and requirement for this and basically it boils
14 down to a fairly simple concept. And that simple concept
15 is, is did the sheriff's office have an objective, not a
16 subjective, an objective belief that Mr. Sellaro being left
17 alone was gonna result in imminent harm to him.

18 Ladies and gentlemen, what -- we submit to you what
19 objective means is is there some type of documentable,
20 documentable, documentable evidence that Mr. Sellaro was
21 gonna be injured, harmed in any way. Nope. Nope.

22 Only thing in the record is, is that he could do
23 everything that was asked of him and had an appreciation of
24 his surroundings. Why they had a suspicion that he had
25 Alzheimer's I don't know. Maybe Ms. Outlaw -- I don't know.

1 But that's all it was was a suspicion. That's all it was.

2 Now, then the questions are gonna go on on the jury's
3 verdict form to the Department of Social Services. Do you
4 unanimously find, by the preponderance of the evidence, that
5 DSS was negligent.

6 Ladies and gentlemen, if they weren't, nobody ever has
7 been. Nobody ever has been. We submit to you that, when
8 you got knowledge that the physicians -- two physicians say
9 that this man is fine, when you got access to those records,
10 and you know that a hearing is going to be there, that
11 sitting at your desk waiting on somebody else to bring you a
12 fax when you know that that fax defines whether another
13 human being's liberty, and you just sit there, that's
14 inexcusable, folks. That's inexcusable.

15 Okay. The next question is do you unanimously find, by
16 the preponderance of the evidence, that the -- DSS
17 negligence was the proximate cause of the plaintiff's
18 damages. Yeah. Because had they done what Victoria Deas
19 Johnson did two days later or three days later, Mr. Sellaro
20 would of been out of there.

21 Okay. He would of been out of there.

22 Okay. Now, this brings us to the last question. You
23 got to decide what the damages are in this case, okay, and
24 we submitted a bill. It's 9,000 some odd dollars from the
25 hospital. They billed him for his stay.

1 Okay. He didn't want to go. He didn't want to be
2 there. They billed him close to \$10,000 for it. That's one
3 of his damages.

4 But, ladies and gentlemen, I submit to you that that's
5 like pee peeing in the ocean. It's not.

6 Okay. Think about it and this is where that toolbox of
7 467 tools comes into play and y'all will learn from me that
8 I like to talk in examples.

9 Okay. I like to talk in pictures, okay, and I want to
10 paint a picture for you and I'm gonna relay a personal
11 picture for you.

12 Mr. Sellaro, married to a woman, his sweetheart, for 41
13 years, okay, continuously is told that the woman he kissed
14 good-bye that morning at 10:00, never coming back, okay, and
15 then he's dragged out of his house on a gurney and put in a
16 mental ward for 10 days.

17 First think about it and you -- this is something that
18 you can use your own practical experience with and I submit
19 to you that the fact that it was a traumatic, sudden death
20 has a lot more bearing than had Mrs. Sellaro passed away
21 after a long extended illness. I'm gonna give you an
22 example. It's a personal example. You don't have to use it
23 but hopefully you got somebody you relate with.

24 The date was July 6th, 2009. I was across the hall,
25 across the street, my office.

1 Okay. Same place I've been practicing law for the last
2 34 years. My mother called. My daddy'd been to the doctor,
3 and while daddy was sitting down at the table talking to the
4 doctor, and the doctor told me, my daddy looked at him and
5 he said doc, I don't feel so good and daddy slumped over and
6 he was dead.

7 Okay. That's hard to deal with. That's hard to deal
8 with. That's what he was dealing with and, you know, could
9 I have told you my social security number at that point?

10 No.

11 Could I told you my home address?

12 No.

13 He did. He did it.

14 And then what happened to him?

15 He was dragged out of his house and confined by these
16 people, the government. This is our government, folks, for
17 10 days. He kept telling them I want to leave. You leave,
18 we'll strap you down. We'll strap you down, boy.

19 Can you think of anything more horrible?

20 Can you think of what was going through this man's
21 mind?

22 I can't. My heart goes -- if y'all can't tell, I
23 believe him, okay, and I want the best for him cause he has
24 been treated wrong and then, after they did that, what
25 happened?

1 The pets that were sleeping around them, two of them
2 are gone. One was euthanized. One was put in a kennel. He
3 never got them back. Never. Nobody deserves that, folks.

4 Under the law, the judge, the judge is telling you
5 basically there's a couple ways to decide. His duration at
6 the hand of our government was 10 days. You could do it on
7 a per day basis and you can say it's worth so much everyday,
8 okay, because, you know what, what would I pay not to go to
9 prison for 10 days?

10 A lot. I'd pay a lot not to go prison for a day. It's
11 worth a lot. Think about what went through his mind sitting
12 there. Nothing to do. At the hands of these folks. Just
13 running through his mind.

14 what would be going through my mind?

15 we know what was going through his.

16 who's gonna make my house payment?

17 Okay. what's happening to my pets?

18 who's gonna take care of my bills?

19 How is my wife gonna get buried, and, during that
20 timeframe, they cremated his wife or his wife was cremated.
21 He never got to sit with her body, put his hand on hers or
22 kiss her on the forehead one last time and you know what?

23 There's nothing this Court can do to change that.
24 There's nothing. Nobody in the world. God himself can't
25 change that.

1 But, ladies and gentlemen, it's your charge to make it
2 right. Your charge to make it right and that's what we're
3 asking, for y'all to do what you think is right to make this
4 man whole for what he's been through.

5 I'm gonna tell you one story and then I'm gonna sit
6 down. I'll talk with another story again and this is just
7 what a verdict means to me. It may mean a different thing
8 to you. It may be a judge.

9 I and my wife have been very fortunate. We have two
10 wonderful sons. One of which is sitting in the courtroom.
11 The oldest one's 30. The youngest one's 25. And we have
12 led our lives by trying to teach them by doing the right
13 thing because I'm a firm believer that a person's actions
14 are a lot stronger than their words. A person's actions
15 mean so much more and we've also -- I want to tell you a
16 story about what a verdict means and how you should judge
17 it.

18 It's the story of Pinocchio.

19 Okay. There's a Walt Disney movie by the name of
20 Pinocchio and I know everybody's seen it or somebody's seen
21 it. Pinocchio was a creation of Geppetto in his wood shop
22 and he was a wooden boy and he came to life at the hands of
23 a blue fairy.

24 Well, there's a scene in that movie that kind of
25 resonates with me as to what a verdict should be or how a

1 verdict should be done. That -- Pinocchio had to go to
2 school, and the night before he went to school, it -- which
3 was the first time he'd ever ventured out into the world, he
4 sat on Geppetto's workbench. He was sitting on a paint can
5 and Jiminy Cricket was to his immediate left and the blue
6 fairy was right across from him and Pinocchio was just like
7 every one of us. He did not know what to expect of those
8 other people, okay, that he was gonna meet the next day in
9 the world.

10 He did not know how he should conduct himself and the
11 blue fairy made a statement that resonates with what a jury
12 verdict should be. The statement that she made was just let
13 your conscience be your guide.

14 Ladies and gentlemen, that's all Joe Sellaro and I ask.
15 Let your conscience be your guide and we also ask don't be
16 fooled by the facade that the government's trying to put up
17 now claiming that he couldn't control his diabetes. He had
18 a heart problem. He had asthma. They didn't treat him for
19 a thing except they had him evaluated for whether he was
20 demented and it was unanimously no and they still kept him
21 there.

22 Regardless of what your verdict is, I want you to know,
23 regardless, Joe Sellaro's darkest hour has passed. He lived
24 through that. How I don't know but he did. And we thank
25 y'all for listening to us and for letting your conscience be

1 your guide.

2 Thank you.

3 THE COURT: Thank you, Mr. Brehmer.

4 All right. Whenever you're ready, sir.

5 MR. GARFIELD: How fortunate we are when good people
6 come into our lives at the right place at the right time.

7 Ladies and gentlemen, we live in a world where we have
8 lots of images about police officers. We see it on TV, in
9 the news, social media. We hear it from our friends.
10 There's some terrible examples out there and we all shake
11 our heads sometimes when we see the evening news. It's
12 painful and it's disturbing and it's the heart --
13 disheartening. And one of the reasons is, is that, quite
14 frankly, living in the world that we live in sometimes, that
15 when we see some police officers, it just frankly makes some
16 of us feel unsafe and not protected.

17 The 12 of you have been selected as jurors in this
18 case, in this courthouse to consider a matter concerning
19 police conduct. With everything going on in the world, the
20 12 of you are considering police conduct and what it means.

21 His Honor's gonna charge you, after the lawyers sit
22 down, he's gonna tell you about the law. Tell you about
23 things to think about in his instructions and one of his
24 charges really resonates with me and it will go something
25 like this. The genius of our jury system is that it allows

1 He wants you to believe that the deputies were
2 unconscionable, and I'm taking his words, were unforgivable,
3 and because of this, he wants you to pay his client. They
4 were far from unconscionable.

5 These deputies, these deputies were the guardians of
6 the night and they were this gentleman's guardian. That's
7 why he's here alive today and that's why we're here this
8 week. In fact, in some ways we're here as a celebration of
9 life.

10 what a blessing it is when good people come into our
11 lives just at the right moment?

12 Isn't it?

13 And you know what?

14 while we usually don't expect it, that's exactly what
15 we need.

16 I really thank you all.

17 THE COURT: Okay. Thank you, Mr. Garfield.

18 All right. Let's stand, kind of stretch, twist, turn.

19 (Pause.)

20 THE COURT: All right. Let's get settled back down
21 and, Mr. Summers, whenever you're ready.

22 MR. SUMMERS: Yes, sir.

23 May it please the Court?

24 THE COURT: Yes, sir.

25 MR. SUMMERS: Mr. Garfield. Mr. Brehmer.

1 I think Mr. Brehmer, the younger, is departing the
2 courtroom.

3 Good morning. I'm sorry. Good afternoon, ladies and
4 gentlemen. Again, my is Lake Summers. I have the pleasure
5 of representing the Department of Social Services in this
6 case.

7 Given the reality that I am the third attorney to come
8 before you this morning and argue on behalf of their client,
9 I thought I'd try a little something different. I also
10 thought it would be important, since we started this trial
11 Monday afternoon, the attorneys and the witnesses have been
12 passing the exhibits back and forth. We've been up on this
13 step here, reaching around the partition, going back and
14 forth.

15 You okay, sir?

16 THE JUROR: Yes, sir.

17 MR. SUMMERS: And, ultimately, I don't know if any of
18 y'all have even held any of the exhibits, seen any of the
19 exhibits. We tried to show them or I did on a couple of
20 occasions.

21 So, my purpose today, my purpose this afternoon, number
22 one, is to convey to you how important DSS's job is and how
23 its employees stood in the breach for a relative -- for a
24 thankless job, if you will, at least as Mr. Sellaro sees it.

25 So let's start with the big picture if you will.

1 It's Thursday afternoon. This week seems like a blur
2 in many ways. We started the first witness, Ms. Deas
3 Johnson, Monday afternoon. I won't read them all out for
4 you. But there's the witnesses that Mr. Brehmer called.
5 They're three witnesses that Mr. Garfield called yesterday
6 morning and then I called three witnesses, all of whom, by
7 the way, no longer work for DSS.

8 Yet, they came back. They came back to tell you what
9 they did. They came back to tell you how they stepped into
10 the breach for Mr. Sellaro.

11 Now, Mr. Garfield, I think, may have mistaking called
12 Ms. McDaniel Veronica. Her name is Valorie.

13 MR. GARFIELD: My apologies.

14 MR. SUMMERS: Quite all right.

15 You've also heard about and heard from Naqua Edgerton.

16 Now Mr. Brehmer's a good man. He's a good lawyer and
17 this morning he said he got a little hot yesterday. He said
18 to Ms. Edgerton, you were just there to collect a paycheck.

19 That's more than a little hot, isn't it?

20 It's a little over the top. But as Mr. Garfield said,
21 here's what Mr. Brehmer's gonna do. Don't look at this
22 stuff. Don't listen to these people. Don't look at the
23 exhibits despite having said at the outset I want you to see
24 all the evidence.

25 well, let's look at the evidence, shall we?

1 Let's do that. Here's the run sheet from the night of.
2 That was Ms. Fox Perry, the paramedic, who came in, right?

3 Now, may be a little hard to see, but what did,
4 emphasized with some highlighting, what I think are some
5 interesting points and the points that are most operative
6 for your analysis.

7 Law enforcement states, this is the second or third
8 sentence, that per the neighbor who happens to be best
9 friends with the patient's deceased wife, she stated the
10 patient has a history of dementia. Now, the neighbor, Ms.
11 Carol Outlaw. The neighbor came to the hospital. The
12 neighbor, Ms. Outlaw, said that Eileen was my best friend.

13 Now, a lot of evidence has been introduced. A lot of
14 the statements that have been made, but the forgotten person
15 in my humble opinion, in many ways, is the late
16 Mrs. Sellaro. Her passing, her tragic, sudden, abrupt death
17 on the night of Saturday, February the 27th, created a
18 vacuum, and Mr. Garfield's clients and my folks stepped into
19 that. They stepped into help Mr. Sellaro because, look, the
20 glucometer read 550 milligrams. That's bad.

21 Let's be candid. There's nothing good about that and
22 also let's figure this out. Mr. Brehmer talked about the
23 timeline of that morning. Mrs. Sellaro kissed Mr. Sellaro
24 good-bye around the -- ten o'clock.

25 So, by ten o'clock, 10:30 that night, his blood sugar's

1 up at 550 and then you heard Ms. Outlaw talk about what she
2 had learned, and then you heard Sergeant Gilman, who eye
3 witnessed Mr. Sellaro trying to shoot himself up I believe
4 she said with heroin (sic) before he had taken his blood
5 sugar reading, and Ms. Outlaw stopped him.

6 All that's going on in front of Sergeant Gilman and we
7 also have the reality I said a moment ago that with
8 Mrs. Sellaro's sad, tragic, abrupt death, he doesn't have a
9 caretaker at home any longer. Investigator Gaymon talked
10 about the social component to this. You got a medical
11 component and a social component. Mr. Sellaro doesn't even
12 have a driver's license.

13 How's he gonna get food?

14 How he's gonna refill his prescriptions?

15 Has there been any evidence introduced as to how that
16 was gonna happen?

17 None. Cause there wasn't a plan. The good folks at
18 DSS, Ms. McDaniel, Ms. Edgerton, and the attorney,
19 Mr. Burns, that agency's responsible for coming up with a
20 plan and getting Mr. Sellaro stabilized and improved, and I
21 submit to you that's what happened.

22 What else is on the run sheet?

23 Well, here we have dementia. That was gathered, a
24 medical history gathered, at the scene the night of. And
25 then we have, here again on the run sheet -- you'll see the

1 exhibits. They're two exhibit, five and six. They're the
2 same thing. What has been redacted I believe is social
3 security number, date of birth.

4 Now, ultimately, what was observed by Ms. Fox Perry and
5 noted in the run sheet is that there was a card -- piece of
6 cardboard with a number written on it.

7 Now, if you recall, I asked Mr. Sellaro about that and
8 his response was rather telling. He said it made me look,
9 and I'm gonna quote, made me look like I was retarded.
10 Maybe it made him look like he was vulnerable. Maybe it
11 made him look like he needed that number or someone else
12 perhaps needed to see that number in the event that Eileen
13 wasn't around.

14 Again, Eileen's death creates a big vacuum, a huge
15 vacuum, and it impacts Mr. Sellaro dramatically and now we
16 get to the intake form.

17 This is Valorie. Valorie comes in, Valorie McDaniel,
18 and she's doing her job and she's one of those people too,
19 like Sergeant Gilman, she's called out late Saturday night,
20 early Sunday morning.

21 Is she cashing a paycheck?

22 She goes to the hospital. After doing so, she gathers
23 the information. And, again, you see letter C here. Mr.
24 Sellaro believed to be vulnerable adult because of age,
25 dementia, heart issues. By the way, Mr. Sellaro concedes

1 he's got heart issues. He's got a pacemaker, which is right
2 here. Depression, he acknowledged that, and diabetes.

3 So what's really wrong with this?

4 what's inaccurate besides it says believed to be?

5 That's the purpose of getting Mr. Sellaro the help he
6 needs. Mr. Sellaro's in distress. That's why this process
7 exists, the emergency protective custody for a vulnerable
8 adult.

9 On the same form, here's what Mr. McDaniel writes. You
10 see Mr. Sellaro's name. Has been reported to have dementia.
11 No one's asserting at this point that he has dementia. He's
12 been reported to have dementia and you see the primary
13 caregiver, Eileen Sellaro, passed away in an automobile
14 accident.

15 Now, Mr. Sellaro wants you to believe he could take
16 care of himself but he's really a co-caregiver. Use your
17 common sense. Listen and think back on all the testimony
18 and some of the exhibits I'm gonna cover.

19 what was Eileen's role?

20 To look after Joe. Eileen's gone.

21 who's gonna do that?

22 It was my clients that did that and then, again, on Ms.
23 McDaniel's form, you've got a number of folks listed. Chip
24 Miller who was a son.

25 where's he?

1 You got Z. Dozier, the coroner. Notice how Mr.
2 Garfield had to, had to call him. It wasn't Mr. Brehmer.

3 Again, he's a good man and a good lawyer. But the last
4 person he wanted you to hear from was Mr. Dozier.

5 why?

6 I don't know. Maybe cause he's telling the truth.
7 Maybe because he's an honest broker. Maybe because he's not
8 involved really as a party in this suit nor is his agency.

9 You've got Karen, another name, sister or
10 sister-in-law, Kathleen Miller, unknown, and you've got
11 Kevin, a brother. And you heard me ask Ms. McDaniel, do you
12 see any 803 area codes. Mr. Garfield touched on it. No
13 one's coming. No one is gonna come to help Mr. Sellaro.

14 who's gonna do it?

15 The Sheriff's Department's gonna do it and DSS is gonna
16 do it.

17 Now, Mr. Garfield talked a bit about the transcript of
18 record and Mr. Brehmer made a great -- oh, I got the
19 transcript in there. Good. When you see it, it's about
20 what, four or five pages long. See if the word dementia
21 appears. This is the 72 hour hearing transcript. When you
22 read it, you will not see anyone that uttered the word
23 dementia. It does not appear. So, no one said in that
24 hearing that Joe Sellaro had dementia.

25 Now we get to the 72 hour hearing order and, again, you

1 see Ms. McDaniel's name here, Lawton McDaniel. You see, by
2 the way, an interesting date stamp of March the 32nd.
3 Pretty sure that's March the 2nd but we'll take that.

4 And what does it actually say?

5 In Paragraph 3, I've highlighted again. I'll read the
6 whole part up to the highlight and including it. On
7 February the 27th, 2016, Richland County Department of
8 Social Services received an allegation, an allegation that
9 the adult, Joseph Sellaro, had been reported to have
10 dementia. Reported to have dementia. We got to check this
11 out. That's our job.

12 Now, the one part that's important is, of course, the
13 order itself. It is a valid order from a Family Court judge
14 here in Richland County. The one thing I wanted to bring
15 your attention first was look at the date for the merits
16 hearing. The merits hearing in this matter shall be held at
17 the Richland County Courthouse on April the 7th.

18 Tyler Burns came in and testified. He was the
19 attorney. He got that hearing scheduled for March the 7th,
20 30 days in advance of the deadline this order sets right
21 there.

22 Now, another part that Mr. Garfield touched on, and
23 we'll call this an out of television monitor or computer
24 monitor experience, is what it says about probable cause and
25 I'll read it and this will be in the deliberations room that

1 you-all can look at. This is the Family Court judge.
2 Paragraph 4 and, again, this is the Sheriff's Department
3 Exhibit No. 1.

4 The above facts clearly establish that there was ample
5 probable cause for taking the adult, Joseph Sellaro, into
6 emergency protective custody. Ample probable cause. And
7 probable cause remains for the plaintiff, that being DSS,
8 being ordered to have custody of a pending merits hearing.

9 Probable cause, ladies and gentlemen, is the standard
10 under we're operating here and the judge will instruct you
11 on that. But, again, we're talking April the 7th versus
12 March the 7th.

13 And who got the hearing bumped from April the 7th up to
14 March the 7th?

15 Mr. Burns and DSS.

16 And oh, by the way, Mr. Brehmer said in his closing
17 that it was Ms. Deas Johnson who got an attorney for Mr.
18 Sellaro. That's not accurate cause look at Paragraph Number
19 2. The Richland Clowney (phonetic) -- Richland County Clerk
20 of Court shall appoint the above named vulnerable adult a
21 guardian ad litem and an attorney. It's black and white.

22 That's what Mr. Brehmer promised you at the beginning
23 of the case. It's all there in black and white he said.
24 Yes, it is. But notice how hard he was banging on the table
25 literally and figuratively.

1 Now, you've got an entry here. This is from another
2 exhibit. This is one of the exhibits I introduced on behalf
3 of DSS. DSS Exhibit 3.

4 Okay. First of all, look at the date. Performed on
5 February the 28th, 2016, by Keri Shepherd, a colleague of
6 Safiya Tate. They work together at Palmetto-Richland.

7 Now you see at the top I have a heading.

8 Is Keri Shepherd lying?

9 Cause, if you recall, Mr. Sellaro's sworn testimony was
10 that, when he was taken from his home, having purportedly
11 being strapped into a gurney, having purportedly being at
12 one point shoved by Sergeant Gilman, he was taken in and no
13 one saw him.

14 He was taken what, downstairs, in the hospital in a
15 glass encased room held incommunicado for 36 hours?

16 I asked him you didn't see anybody. Nope. Doctor.
17 No. Nurse. No. Orderly. No. Social worker. No.

18 Then how is it that this occurred on February the
19 28th, the Sunday, after he gets admitted when he's
20 incommunicado?

21 Moreover, Mr. Brehmer says he believes his client. I
22 understand that but he certainly contradicts him. He did so
23 this morning because remember he talked about the internist
24 meeting him, consult with Mr. Sellaro on the 28th.

25 How could that have happened when Mr. Sellaro says I'm

1 incommunicado?

2 How can that be?

3 The reality is Mr. Sellaro was not credible and you --
4 in order to believe he could take care of himself, you have
5 to believe Mr. Sellaro and I respectfully submit you can't.
6 Again, his own lawyer contradicted him today.

7 So what does this say?

8 You've got the patient asked the social worker for his
9 wife's phone. You've got the patient being concerned
10 because his wife was in a rental car and their car -- car is
11 at JT's Kia being repaired.

12 And what does the social worker do?

13 She consoles him.

14 Further down here she observes patient is very anxious
15 and appears we -- to be somewhat in shock. Well, you
16 understand and acknowledge that Mrs. Sellaro's death, again,
17 is a huge impact. That's why the Sheriff's Department's
18 there. That's why DSS is there and that's why they did its
19 job.

20 So, the next one, again, this is the 28th. You see
21 up here.

22 Is Patricia Dixon lying?

23 She's a nurse who, according to her own note on
24 February the 28th, somehow while Mr. Sellaro is still
25 incommunicado, sees him.

1 what does she note here?

2 Employee on the 11th floor, Carol Outlaw. I asked
3 Mr. Sellaro did you tell Nurse Dixon. No, I never said
4 that. It had to come from someone. And, again, we have an
5 instance where Mr. Sellaro says he's out of touch, can't be
6 reached, won't be reached, yet this happens.

7 Again, this is Ms. Dixon's continuing note. This will
8 be my Exhibit 3. Look at the devices. Assistive devices,
9 wheelchair. States he uses a wheelchair, I'm sorry,
10 periodically. And, again, the reference to the employee on
11 the 11th floor. It's got to be Ms. Outlaw.

12 We also have Ms. Dixon, again, on the 28th, part I
13 highlighted for you was is he's got three children who live
14 in different states and says that he's been unable to inform
15 them of their mother's death as all of their numbers is or
16 are in his phone.

17 Mr. Garfield touched on it, talked about it. Mr.
18 Sellaro admitted none of his kids came. They didn't. No
19 one is there to fill the void left by Eileen and look at all
20 she did for him.

21 And then we go to Ms. Tate. Ms. Tate testified.
22 Again, she's a colleague of Ms. Shepherd, and, again, she
23 touches on the same thing. Mr. Sellaro has three children
24 none of which will be able to come to South Carolina to
25 either pay their respects to their mother or assist their

1 father.

2 who's gonna do it?

3 Moreover, if you recall, whether it was this morning
4 during cross-examination or direct examination and certainly
5 on Monday, Mr. Brehmer said that he -- Mr. Sellaro was
6 thrown in this mental ward, the psych ward. I asked Ms.
7 Tate do you recall where Mr. Sellaro was being -- had been
8 admitted, where his room was. Seventh floor, nephrology.

9 well, that's the renal, the kidnoid (phonetic) --
10 kidney floor.

11 Is that a mental ward?

12 No, she said, as if it was ridiculous on its face and I
13 submit to you that it is. Their own witness comes in and
14 contradicts Mr. Sellaro.

15 Now, another thing that may have escaped your notice,
16 again, it's Eileen. It's her untimely tragic death.

17 So while Mr. Sellaro is admitted, he's not in any kind
18 of confinement. There's no jail. There's no prison.
19 That's, again, Mr. Brehmer banging the table. He's admitted
20 to the hospital and he's being cared for. I'll get into
21 that in a moment. But this is the document that Mr. Sellaro
22 signed. Authorization for cremation processing and
23 disposition of the remains of his late wife.

24 Now, if you recall, Mr. Sellaro testified that his
25 sister-in-law snuck into town and did whatever. Well,

1 here's a form that he signs because the funeral director,
2 Dave Turner, comes to Palmetto-Health at 4:25PM on Monday,
3 the 29th, and gets Mr. Sellaro's release. Gets his
4 authorization and what did it say?

5 He's gonna release the ashes of Eileen to Eileen's
6 sister. Certainly seems like he knew what was going on
7 because he did because that's what the evidence shows. No
8 banging on the table. No stomping around. No distractions.
9 Look at the exhibits. Read them.

10 Now, I label this one Mr. Sellaro's reality.
11 Mr. Garfield touched on the first one. A deputy muscled his
12 way into Mr. Sellaro's home. That's what Mr. Brehmer said
13 on Monday.

14 Any evidence of that?

15 None.

16 Again, Sergeant Gilman pushed Mr. Sellaro. But during
17 cross-examination by Mr. Garfield, Mr. Sellaro softened that
18 a might, didn't he?

19 And Sergeant Gilman, I will defer to your collective
20 and individual recollections, but it was Segreant Gilman who
21 said the only time I touched the man was to help him move
22 about.

23 Mr. Sellaro was forcibly strapped onto a gurney. No,
24 they seat belted him in.

25 Mr., Mr. Sellaro has no problems thinking. Well, he

1 was incommunicado for 36 hours.

2 Again, Mr. Sellaro was thrown into the mental ward.
3 It's not what Ms. Tate says because it's never happened.

4 Again, you heard me use the term incommunicado. I
5 didn't make that up. That's what Mr. Sellaro said.

6 Oh, by the way, Ms. Edgerton, a conscientious social
7 worker, conscientious case manager, only wanted to get a
8 paycheck.

9 DSS says Mr. Brehmer took Mr. Sellaro to jail. No, he
10 went to the hospital where he was admitted, where he got
11 care, and, again, I'll touch on that in a minute.

12 Yesterday afternoon with Mr. Burns, Mr. Brehmer said
13 he -- Mr. Sellaro would still be in the hospital to this
14 day, wouldn't he, and Mr. Brehmer (sic) sat back and thank
15 for a moment, said to this day?

16 No.

17 Again, that's Mr. Brehmer doing his job. That's Mr.
18 Brehmer banging on the table. That's Mr. Brehmer throwing
19 things up in the air hoping you'll follow whatever he throws
20 in the air.

21 Now, here's some intervention. Some other notes by Ms.
22 Tate. This is Exhibit 3. You see another reference to Ms.
23 Outlaw. The first name is not correct.

24 Oh, by the way, here's Mr. Sellaro placing a call
25 himself to the Sheriff's Department, which he denies ever

1 doing. I never called him. Well, it certainly says here
2 that you did.

3 Further down you have Ms. Tate reflecting a
4 conversation with Ms. Deas Johnson who was also looking
5 forward to meeting with the patient's son, Joey, planning to
6 come from Kansas City in or around March the 9th. Never
7 came. Mr. Sellaro again testified none of his kids,
8 including Joey, ever came.

9 So now we go back to Ms. Deas Johnson. That was the
10 first witness. The angel, if I remember correctly. And
11 she's a very nice well meaning person. So she has an
12 affidavit, Ms. Deas Johnson, that gets filed with the Court
13 on Friday, March the 4th.

14 Now, just take a moment. You're gonna have both Mr.
15 Brehmer's Exhibit 4 and my Exhibit 2. Mr. Brehmer's Exhibit
16 4 is the affidavit and none of the supporting documents.
17 None. There were three exhibits.

18 Did he want you to see them?

19 If he would of, they would of been there.

20 Again, look at what we submitted. It's 15 pages, all
21 three exhibits, one of -- the first of which is a report
22 from Doctor Grinton on the 28th. Yet another occasion
23 which couldn't have happened according to Mr. Sellaro cause
24 he was incommunicado.

25 You got the consultation report by Doctor Brandenburg.

1 That was Exhibit B. And you've got the physician progress
2 notes. That's Exhibit C. So let's take a look at which Mr.
3 Brehmer didn't want you to see.

4 This is from Doctor Brandenburg and I was going through
5 these yesterday with Ms. Edgerton. Look at the listing of
6 medications. It's in the evidence, folks. That's what Mr.
7 Brehmer wants. That's what I want too. That's what SCDSS
8 wants. Look at the evidence. Look at these medications.
9 It goes on to the next page.

10 Then same -- this is Doctor Brandenburg mind you.
11 Problem list. Medical.

12 What does this say?

13 Has Mr. Brehmer, Brehmer ever confronted this,
14 indirectly, directly, otherwise?

15 Dementia. There's a four digit code.

16 What's that say?

17 Confirmed.

18 This is in Doctor Brandenburg's report. No wonder
19 there's some confusion. No wonder it was appropriate to
20 perhaps, oh, I don't know, look after Mr. Sellaro.

21 Because of this confusion and his medical history,
22 doesn't it seem like the right thing to do?

23 Not just the legal thing.

24 Doesn't it seem like the right thing to do to get Mr.
25 Sellaro stable, to get him to a place where he can improve,

1 which is what happened, which is why he's released after
2 Mr. Burns makes it happen on March the 7th.

3 But look at all the other ones by the way. You'll have
4 this exhibit. Just look -- looks like -- I'm not sure what
5 that is. I can't pronounce it. You have depression, PVD,
6 asthma, anxiety, diabetes, hepatitis, that particular
7 syndrome or issue, POEMS syndrome, cirrhosis of the liver.
8 All of that is what Eileen had to contend with.

9 Look at the active problems. Again, this is Doctor
10 Brandenburg's report. You see dementia again. Think of
11 what Eileen did for Joe. All of that. All the time.
12 Forty-one years of marriage.

13 So you have the emotional trauma of the loss. Then you
14 have the practical side of it.

15 Who's gonna make sure that Joe's gonna do what he needs
16 to do, and does Mr. Sellaro strike you as someone who's
17 always compliant?

18 Does Mr. Sellaro strike you as someone who always does
19 what he's told?

20 Now, here's the chronology of his EPC. You got
21 Saturday, the 27th. That's when Eileen passes away.
22 That's when he's EPC'd. Valorie McDaniel sees him very
23 early in the morning of Sunday, the 28th. Again, she's
24 working weekends. She's on call. She described Mr. Sellaro
25 as confused and frail.

1 Then you got Doctor Brandenburg seeing him on Monday.
2 Then you've got, on Tuesday, the probable cause hearing.
3 Read that order. Ample probable cause existed.

4 Wednesday is Family Court activity. On Thursday, the
5 3rd, is when Ms. Deas Johnson is appointed. Friday, the
6 emergency motion is filed. That's when Mr. Burns talked
7 about because he got it scheduled for the next available day
8 of Court and you see I got blue, in blue, Saturday and
9 Sunday. No business can be done that day. So, that's why
10 Mr. Sellaro goes to court on Monday.

11 Ms. Edgerton takes him and he has his final hearing
12 cause there's not another hearing. He's released because
13 he's stabilized and improved. That is the goal, ladies and
14 gentlemen. He had three meals a day.

15 Now, Mr. Brehmer may scoff at that and Mr. Sellaro
16 probably scoffs at that.

17 What happened the night of?

18 He had a TV dinner.

19 Was he really looking out -- capable of looking out for
20 himself?

21 His diabetes was managed in the hospital. Remember the
22 diabetes being managed too. 550 the night of. You got his
23 medicines, the list you just saw, and the list is in the
24 exhibit of Ms. Deas Johnson's affidavit, that supporting
25 exhibit. He's free to move about the facility. I asked Ms.

1 Tate was he somehow confined or locked in his room. Again,
2 no. Free to make phonecalls, and if you remember what Ms.
3 Outlaw testified to, while he's admitted, Mr. Sellaro calls
4 several times during which Mr. Sellaro threatened to kill
5 Ms. Outlaw.

6 She's doing him a favor. She goes there out of genuine
7 interest. She was Eileen's best friend and she's trying to
8 help Joe.

9 while he's in -- admitted, he's got law enforcement
10 coming to see him. You got a funeral home director coming
11 to see him. So, he has at least a not -- an awareness of
12 what's going on with his late, late wife's remains. He's
13 receiving care by staff, nurses, social workers, and what's
14 the goal?

15 The goal, ladies and gentlemen, was to get him back on
16 his feet. That's what happened.

17 Now, the judge is gonna charge you on a variety of
18 different topics. One of which is a vulnerable adult. A
19 vulnerable adult, under our statute, is defined as a person
20 18 years of age or older who has a physical or mental
21 condition which substantially impairs him, in this case Mr.
22 Sellaro, from adequately providing for his or her own care
23 or protection.

24 Mr. Sellaro, whether he likes it or not, whether Mr.
25 Brehmer likes it or not, was indeed a vulnerable adult when

1 he was found, when they went to tell him about his late
2 wife's sad death on the 27th and he remained vulnerable
3 until he could stabilize and improve, and once he did so, he
4 was released.

5 Now, you'll also hear that a resident of a facility is
6 a vulnerable adult. Let's talk about that.

7 where did Mr. Sellaro turn when the house was
8 foreclosed upon?

9 where did he turn when the power was cut off?

10 He turned to my folks. Mr. Brehmer would tell you what
11 did DSS did was so unforgivable and so unconscionable it
12 just shocks. Mr. Sellaro went back to DSS for help when he
13 needed it. That is telling. That's the reality. That's
14 the truth.

15 Now, finally, let's think about for a moment more
16 something Mr. Garfield addressed and what he touched on.
17 Again, this is Doctor Brandenburg and his deposition talks
18 about Mr. Sellaro being hypotensive. The man had fainting
19 spells.

20 If Eileen's not there, and no one else is there, who's
21 gonna find him?

22 what's gonna happen when he faints?

23 what if he hits his head?

24 The goal of DSS is, once Mr. Sellaro is brought into
25 EPC, he stabilize and improve and that is what happened,

1 ladies and gentlemen. You've talked about -- we've talked
2 about his Insulin, his diabetes. We've talked about his
3 asthma. And, finally, let me tell you about the folks at
4 DSS, all three of whom again, don't work for the agency any
5 more. They've moved on to different things.

6 They came back. They're good folks. They don't need
7 to be yelled at. They don't need to be told purportedly
8 that they were not looking out for anyone's best interest.
9 Don't need to be told or accused of working for a paycheck.

10 Instead, what they need is for you folk to pay
11 attention and I know you have. What they need for you folks
12 is for you to go back, look at all the evidence, deliberate
13 thoughtfully, listen to the judge's instructions, which I
14 know you will, and apply those instructions, that law to
15 these facts. And, when you do, I'm confident that you'll
16 return the appropriate verdict.

17 And very quickly before I go. During his closing this
18 morning Mr. Brehmer said that the hospital sent Mr. Sellaro
19 a bill for \$9,000. Well, this is Plaintiff's 9. When you
20 get a chance, look at the total amount due. It's \$1,973. A
21 distinction with a difference I submit to you because,
22 again, Mr. Sellaro needed this help and SCDSS, Ms.
23 McDaniel -- this is not some faceless agency with a bunch of
24 aubutowns (phonetic) running around.

25 Valorie McDaniel, Naqua Edgerton, Tyler Burns, they're

1 real people. They're good people. They did their job well.
2 They were conscientious and they looked after Mr. Sellaro.
3 And because they did that, because they took that charge,
4 he's here today. That's the bottom line, ladies and
5 gentlemen.

6 I thank you for putting up with me and Mr. Brehmer will
7 now have the floor after I'm done. I'll get the monitor out
8 of the way.

9 Alex, may I borrow you for a second?

10 MR. ZURAFF: Yeah, of course.

11 MR. SUMMERS: Thank you for picking up the cord.

12 (Pause.)

13 MR. BREHMER: Ready for me?

14 Thank you.

15 Ladies and gentlemen, I'm not gonna be long because
16 both of these gentlemen have, have, have proven what I said.
17 Actions speak louder than words, folks. Actions speak
18 louder than words. It tells you about the genuineness.

19 Also let's go to the easiest one. Let's go to the
20 easiest one.

21 Did either one of these two gentlemen come up here and
22 give you an explanation as to why, as to why the Sheriff's
23 Department said one sentence in this whole probable cause
24 hearing?

25 No.

1 what did they do?

2 They came up here and tried to make you believe that
3 the order that the judge signed doesn't contain everything
4 in the record.

5 well, ladies and gentlemen, that is not true. This is
6 the record of the hearing just like this gentleman right
7 here is making. It is a court of record. Every word that
8 is said in the courtroom, every exhibit is listed is in the
9 record. This is the official record.

10 Okay. It designates every word that is said and it
11 also designates every exhibit that is listed. None.

12 Now, they had the audacity to come up here and say
13 well, you got to look to the judge's order.

14 Ladies and gentlemen, I submit to you that both of
15 these parties are as genuine as used car salesmens (sic).
16 Case in point, Exhibit No. 9.

17 Just stood right here and said oh, it's not a --
18 \$9,000. It's \$1,000. well, you gonna have Exhibit No. 9.
19 The exact number is \$9,291. You got this and they did
20 exactly. They offered no explanation as to why it was
21 acceptable for them to have notice of the hearing, knowledge
22 that it was gonna go forward, knowledge that two doctors had
23 seen my client and not take the first record to the hearing
24 when it was their job to do so and then---

25 MR. GARFIELD: Objection, Your Honor. Shift -- burden

1 shifting.

2 THE COURT: Yeah, I -- what was the statement he made?

3 MR. GARFIELD: That we didn't put up certain witnesses,
4 we didn't---

5 MR. BREHMER: And that's, that's---

6 MR. GARFIELD: ---have any explanation.

7 MR. BREHMER: That's not what I said, Your Honor. What
8 I'm saying is, is I'm explaining the credibility of the
9 parties and the strategies that are being employed.

10 THE COURT: Okay. You can't shift the burden. You
11 understand that.

12 MR. BREHMER: I'm not shifting.

13 THE COURT: But you're allowed to---

14 MR. BREHMER: Yes, sir, I --.

15 THE COURT: ---to challenge the credibility of their
16 witnesses.

17 MR. BREHMER: Okay.

18 Think about it, ladies and gentlemen. Think about it.

19 Okay. Nothing. Nothing offered at this -- the same
20 hearing that my client wasn't allowed to go to. And, and
21 then, then, then says well, you know, the Court found --
22 well, the actual order that released my client is this
23 Plaintiff's Exhibit No. 3.

24 It's a bench order that was signed by Judge John M.
25 Rucker and it said, in this action in regard to a vulnerable

1 adult, a motion was made by the attorney for the guardian ad
2 litem for Mr. Joseph Sellaro in which he sought the
3 dismissal of the action brought by the DSS. Upon call of
4 the case, all parties agree the case should be dismissed and
5 as all physicians reports that he is not suffering from
6 dementia and is quite capable of managing his affairs.

7 Okay. This is what actually happened. They agreed.
8 He's quite capable, but if you listen to Mr. Summers, got to
9 be under the guise of this protective service.

10 Ladies and gentlemen, as far as Joe's condition, he
11 didn't change from February the 27th until March the 7th.
12 They did nothing for this man except confine him, confine
13 him, and then they say what do we want of our police?

14 Here's what we want. Here's what we want of our
15 Sheriff's Department. We want you to do the same job at the
16 same level that Victoria Deas Johnson. That is our
17 expectation. That is our expectation.

18 Ms. Deas Johnson, I put the order in where she was
19 appointed on the 3rd of March. She gets to it right then.
20 She gets the medical records. She talks to the people she
21 needs to talk to. She interviews everybody. This man's not
22 demented. He doesn't need to be here. She gets a hearing.
23 She -- this happens on Thursday. She gets -- everybody set
24 up on Friday for a hearing on Monday. He's out.

25 what do we expect?

1 That is our expectation. That is the standard.

2 Is that what these people did?

3 No, they did not. They did not.

4 Thank you very much for listening to us and I ask
5 sincerely, and I'm, I'm very -- in this case, you look at
6 all of the facts and what the facts are going to show you
7 is, the documentation, Joseph Sellaro was not impaired,
8 infirmed, or demented. There was no basis for him ever
9 having been taken in custody.

10 Okay. None. Shouldn't have been taken in custody.
11 And, once he was in custody, he should have been released on
12 the 1st of -- day of March because the Sheriff's Department
13 and DSS didn't do their job. Did not have any probable
14 cause. You heard their lawyers sit up here and basically
15 say we can do whatever we want.

16 Ladies and gentlemen, it's time to say no, you can't.
17 Thank you.

18 THE COURT: All right. Ladies and gentlemen, we've
19 been going for about two hours at this point. So I'm sure
20 that somebody needs to use the restroom. So, we're gonna
21 take a quick 10 minute break. Do not discuss the case and
22 keep an open mind about the case. And when you come back in
23 10 minutes, we'll be right here. I'll give you the charge
24 on the law.

25 If you are not in the courtroom in 10 minutes, the

1 back-door will be locked and you will not be allowed in the
2 courtroom. So, make sure you're back within the next 10
3 minutes.

4 All right. We're gonna take a bathroom break. When we
5 come back, your lunch will be here, and after the charge,
6 and all that good stuff.

7 So all right.

8 (WHEREUPON, a short recess was taken at this time.)

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE BAILIFF: All the jurors are present, Your Honor.

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

13 All right. Ladies and gentlemen, it is now the point
14 in the trial where it is my duty to charge you on the law
15 that is applicable to this case. Jury charges are never
16 exciting.

17 Okay. It's virtually impossible for me to make this
18 exciting. It's basically just me reading it. So, as I go
19 through it, I do need you to give me your undivided
20 attention because this is the law that you have to apply in
21 this case and these are gonna be the definitions and the
22 standards that you're required to follow.

23 So it is now my duty, as the trial judge, to instruct
24 you on the law applicable to this case and, in that duty --
25 in that regard, it is your duty to accept it and apply it as

1 I now give it to you.

2 It is your exclusive duty to decide all the issues of
3 fact in this case and to determine the effect, and the
4 value, and the weight of the evidence. All the parties have
5 the right to expect that you will carefully consider and
6 evaluate the evidence and apply the law of the case to it so
7 that, in the end, everyone will have received a fair and
8 impartial trial.

9 Now, you and I have separate duties to perform. It has
10 been my responsibility to preside over the trial and to rule
11 upon the admissibility of the evidence. In that regard, you
12 are to consider only the evidence before you. Thus, you are
13 to consider only the testimony which has been presented from
14 the witness stand together with any exhibits which have been
15 admitted into the record of the case.

16 I have the additional duty of charging you on the law,
17 and, in that regard, it is your duty to accept it and apply
18 it as I now give it to you. If you have an idea as to what
19 you think the law is or what you think the law ought to be,
20 and it doesn't agree with what I now tell you the law is,
21 you are obligated, under your oath, to abandon your own
22 preconception because you are sworn to accept the law as I
23 now give it to you.

24 You are the sole and exclusive judge of the facts. Do
25 not infer that I have any opinion about the facts in this

1 case. Do not infer from anything that I have said or done
2 during the course of this trial that I have any opinion
3 about the facts. In this regard, the law does not allow me
4 to have an opinion about the facts. It is your duty to
5 determine the effect, the value, and the weight of the
6 evidence presented.

7 It is also your duty to determine the credibility or
8 the believability of the witnesses. In determining
9 believability, believability, you may believe one witness
10 over many or many over one. You may believe a part of the
11 testimony of a witness and reject the remaining part. You
12 may believe that the testimony of a witness -- you may
13 believe the testimony of a witness entirely or reject it
14 entirely.

15 You may consider whether the witness has any interest
16 in the result of the trial, whether they're prejudiced
17 towards either party, what was the witnesses opportunity to
18 see, hear, and know what he or she testified to, and how did
19 the witness act or what was their demeanor like on the
20 witness stand.

21 I probably told y'all on Monday just use your common
22 sense. You judge peoples' credibility all day long, right,
23 and so just use your common sense.

24 So, there's two kinds of evidence, direct and
25 circumstantial. Direct is what someone saw, heard, did,

1 touched, sensed by smell, something of that nature.

2 Circumstantial evidence is indirect evidence. That is
3 it is proof of one or more facts from which you can then
4 find another fact. The law allows you to give equal weight
5 to both direct evidence and circumstantial evidence.

6 Some things that you have heard may sound like evidence
7 but they're not. And so, when you go through the evidence,
8 you can not consider these things.

9 Number 1. The statements and the arguments of the
10 attorneys are not evidence.

11 Number 2. The questions and the objections of the
12 attorneys are not evidence.

13 Number 3. Anything that I've told you to disregard.

14 Now, as I told you in the beginning, the burden of
15 proof in this case lies with the plaintiff. He's the party
16 that brought the action.

17 So what is the burden of proof, right.

18 The burden of proof is by a preponderance of the
19 evidence. A preponderance of the evidence simply means the
20 greater weight of the evidence. It is evidence, which as a
21 whole, shows that the facts sought to be proved is more
22 likely true than not true.

23 This can be illustrated by imaging a set of scales.
24 When the case begins, the scales are even. If, after you've
25 heard all the testimony, if the scales remain even or tip

1 even slightly in favor of the defendants, then the plaintiff
2 has failed to meet his burden of proof and he would not be
3 entitled to recover. If, on the other hand, those scales
4 tip even slightly in favor of the plaintiff, then he would
5 be entitled to recover and he has met his burden of proof.

6 Preponderance of the evidence isn't determined by the
7 number of witnesses, right. We're not counting witnesses.
8 But it's determined by the greater weight of all the
9 evidence that has been presented.

10 Now, we heard at least one witness through deposition
11 testimony.

12 Okay. So, during the trial of the case, we've had
13 testimony by way of depositions of witnesses taken outside
14 of the courtroom. That witness may or may have not appeared
15 before you. The deposition was taken in the manner
16 prescribed by law and you will consider the testimony from
17 that deposition just as if the actual witness were here upon
18 the stand testifying.

19 You take the deposition in connection with all the
20 other testimony and you assess the credibility of that
21 witness from anything that is in the record that will aid
22 you in doing so. You consider that deposition evidence
23 along with the testimony of the witnesses who have appeared
24 in person and you determine, from all the evidence in the
25 case, whether by witnesses present or by depositions or

1 whether by exhibits in the case, what the truth of the
2 controversy is according to the facts as you find them and
3 then you apply them to the law that I give you.

4 Now, we also had an expert witness in this case. So,
5 normally -- under normal circumstances, the rule does --
6 rules do not allow witnesses to give their opinions or their
7 conclusions. There's an exception to this rule for
8 witnesses that we call experts.

9 This is a witness, who by education and experience, has
10 become an expert in some art, science, or professions. It's
11 a -- they're allowed to give their opinion as to the subject
12 matters that they claim to be an expert in and may also give
13 the reasons for their opinion. So you should consider any
14 expert opinion given by a witness, and like any other piece
15 of evidence, you give it the weight that you believe it
16 deserves.

17 If you decide that an expert witnesses' opinion is not
18 based upon sufficient education and experience or if you
19 decide that the reasons given in support of the opinion are
20 not sound or that the opinion is outweighed by other
21 evidence, you may disregard the opinion entirely. Now, an
22 expert witnesses' testimony is to be given no greater weight
23 than that of other witnesses simply because we call them
24 experts, and you do not have to accept an expert's opinion
25 even though it is uncontradicted.

1 Now, the first cause of action in this case is called
2 negligence.

3 Okay. And so I'm gonna kind of go through what the
4 plaintiff has to prove for negligence. So, the plaintiff
5 claims that the defendant -- and you-all understand they're
6 two defendants, right, so I use these terms in their
7 singular form because sometimes I say these words every week
8 of my life, right. So, they're two defendants.

9 You understand that, right?

10 So the plaintiff claims that the defendant was
11 negligent and to compensate the plaintiff for the injuries
12 that the plaintiff suffered as a result of the defendant's
13 negligence. A plaintiff's right of recovery may not rest on
14 the mere fact that an accident or injury occurred. Instead,
15 in order to prove that the defendant was negligent, the
16 plaintiff must prove, by a preponderance or greater weight
17 of the evidence, the following things.

18 First, the plaintiff must prove, by a preponderance or
19 greater weight of the evidence, that the defendant owed a
20 duty to the plaintiff. This is a question of law which I
21 will decide. So, if I find there was a duty, you must then
22 decide the remaining questions.

23 The first of these is whether the plaintiff has proven,
24 by a preponderance or greater weight of the evidence, that
25 the defendant breached the duty of care by a negligent act

1 or omission. So, negligence means that a person has done
2 something that a reasonable person would not have done or
3 has failed to do something that a reasonable person would
4 have done in the same situation.

5 The plaintiff must also prove, by a preponderance or
6 greater weight of the evidence, that they suffered damages
7 as a result of the breach of the duty. I'm gonna come back
8 to damages in just a couple minutes.

9 Finally, the plaintiff must prove, by a preponderance
10 or greater weight of the evidence, that those damages were
11 proximately caused by the defendant's breach of the duty.
12 There is no countervailing burden on the defendant to prove
13 that his negligence did not cause the plaintiff's injuries.

14 So, what is proximate cause?

15 So proximate cause is something that produces a natural
16 chain of events which, in the end, brings about the injury.
17 It is the direct cause of the injury.

18 To prove that the defendant's negligence proximately
19 caused the plaintiff's injury, the plaintiff must first
20 prove causation in fact. This is proven by showing that the
21 injury would not have occurred but for the defendant's
22 negligence.

23 The plaintiff must also prove legal cause. Legal cause
24 is proven by showing that the injury was foreseeable. This
25 means that the injury occurred as a natural and probable

1 consequence of the defendant's negligence.

2 The plaintiff must prove that some injury from the
3 defendant's negligence was foreseeable. But they do not or
4 he does not have to prove that the particular injury that
5 occurred was foreseeable. However, the defendant can not be
6 held for -- responsible for things which can not be expected
7 to happen.

8 Now, proximate cause does not mean the only cause. The
9 defendant's acts can be a proximate cause of the plaintiff's
10 injury if it was at least one of the direct, concurring
11 causes of the injury. However, if the real cause of the
12 claimed injury or damage's left in doubt by the testimony,
13 the plaintiff has not met their burden of proof. I charge
14 you that where the cause of the plaintiff's injuries may be
15 reasonably attributed to an act for which the defendant is
16 not liable, as to one for which he is, the plaintiff has
17 failed to carry the burden of proof -- the burden of
18 establishing that his or her injuries were the proximate
19 result of the defendant's negligence and the verdict must be
20 for the defendant.

21 And we're -- again, I told you we're gonna come back to
22 damages in a second.

23 But the second thing we need to discuss is the second
24 cause of action which is false imprisonment.

25 Okay. So, the plaintiff claims that the defendant

1 falsely imprisoned the plaintiff.

2 False imprisonment is the deprivation of a person's
3 liberty without lawful justification. In order to recover
4 for false imprisonment, the plaintiff must prove, by a
5 preponderance or a greater weight of the evidence, again
6 that's the standard, that the defendant restrained the
7 plaintiff, that the restraint was intentional, and that the
8 restraint was unlawful. A false imprisonment is a seizure
9 made without probable cause.

10 So that begs the question what is probable cause. So
11 now I'm gonna define probable cause for you.

12 So, probable cause is something more than mere
13 suspicion. Probable cause can be -- may be found somewhere
14 between mere suspicion and preponderance of the evidence.

15 So I've defined preponderance of the evidence for you
16 and you understand mere suspicion -- what -- so probable
17 cause is somewhere in-between mere suspicion and
18 preponderance of the evidence.

19 So, this is a two step process for determining probable
20 cause. The first step is for you to determine the events
21 which occurred leading up to the seizure. The second step
22 is for you to decide whether these historical facts, viewed
23 from the standpoint of an objective -- objectively
24 reasonable police officer or person, amount to probable
25 cause. The facts are to be judged against an objective

1 standard. That is would the facts available to the officer
2 or person at the moment of the seizure warrant a person of
3 reasonable caution in the belief that the action taken was
4 appropriate. If the defendant was legally justified in
5 restraining the plaintiff or if the plaintiff consented to
6 the restraint, there is no false imprisonment.

7 Now, the next thing we're gonna talk about are some
8 statutes, okay, some statutes that are at play.

9 So the first statute is, and you don't need to remember
10 the numbers, okay, but the first statute is what we call the
11 mandatory reporting statute and what it says is a law
12 enforcement officer, having reason to believe that a
13 vulnerable adult has been or is likely to be neglected,
14 shall report the incident. A person required to report the
15 incident is personally responsible for making the report.

16 Okay. So we used some terms in there. I'm gonna
17 define those terms for you.

18 Okay. The first one I'm gonna define is the word
19 neglect.

20 Okay. So what does neglect mean?

21 Neglect means the failure or omission of a caregiver to
22 provide the care, goods, or services necessary to maintain
23 the health or safety of a vulnerable adult including but not
24 limited to food, clothing, medicine, shelter, supervision,
25 and medical services and the failure or omission has caused

1 or presents a substantial risk of causing physical or mental
2 injury to the vulnerable adult. Stated differently, neglect
3 includes the inability of the vulnerable adult, in the
4 absence of a caretaker, to provide for his or her own health
5 or safety which produces or could reasonably be expected to
6 produce serious physical or psychological harm or
7 substantial risk of death.

8 Okay. And I'm gonna, gonna define the word vulnerable
9 adult in just a second. But the next statute we're gonna go
10 over is so what is this protective custody or what we call
11 emergency protective custody.

12 So that statute states that a law enforcement officer
13 may take a vulnerable adult, in a life threatening
14 situation, into protective custody if, number one, there is
15 probable cause, which I just defined for you a second ago,
16 to believe that, by reason of neglect, which I just defined
17 for you a second ago, there exists an imminent danger to the
18 vulnerable adult's life or physical safety.

19 Number 2. The vulnerable adult or caregiver does not
20 consent to the protective custody.

21 Number 3. There is no time to apply for a Court order.

22 Okay. So the next thing I'm gonna do is define
23 vulnerable adult.

24 So what is a vulnerable adult?

25 vulnerable adult means a person 18 years of age or

1 older who has a physical or mental condition which
2 substantially impairs the person from adequately providing
3 for his or her, her own care or the protect -- or
4 protection. This includes a person who is impaired in the
5 ability to adequately provide for the person's own care or
6 protection because of the infirmities of aging, including
7 but not limited to, organic brain damage, advanced age, and
8 physical, mental, or emotional dysfunction. A resident of a
9 facility would be a vulnerable adult.

10 Impaired means to make worse by or as if by
11 diminishing, in some material respect, a person's physical
12 or mental condition including advanced age must cause a, a
13 diminished ability to adequately provide for self-care or
14 protection.

15 Okay. So we're gonna skip out of those statutes right
16 now and talk about damages.

17 Okay. Now, in -- and on the verdict form there's one
18 line for damages. So, all -- everything I'm gonna say in
19 damages are just different kinds of damages that you are
20 allowed to consider if you get that far. But we, we define
21 them all a little bit differently but they really fall under
22 one big group.

23 Okay. So when one person is injured by the negligent
24 acts of another, the injured person is entitled to be fully
25 compensated for all injuries that directly or proximately

1 resulted from any negligent act or omission by the
2 defendants. In determining the amount of compensation for
3 the injuries suffered by the plaintiff as a result of the
4 defendant's negligence, it is proper for you to consider any
5 award -- consider an award of past and present damages for
6 out-of-pocket expenses, medical expenses including
7 physicians, hospital, medicine, physical therapy expenses,
8 rehabilitation, transportation, alteration of life-style,
9 psychological trauma, mental anguish, mental distress,
10 apprehension, anxiety, emotional injury, psychological
11 injury. The burden -- the plaintiff bears the burden of
12 proving these elements by a preponderance of the evidence.

13 So, again, if you determine that, from the evidence and
14 under the law, that the plaintiff is entitled to recover
15 damages, which would include medical, hospital, or
16 healthcare costs, the plaintiff can only recover such sums
17 as you determine from the evidence that are both reasonable
18 and necessary. And while the amount actually charged and
19 paid out may be considered by you, you are not bound by that
20 amount. You must find only such a sum that is both
21 reasonable and necessary.

22 Now, the plaintiff must prove these damages with a
23 reasonable degree of certainty by a preponderance of the
24 evidence. Proof of the amount of damages does not require
25 absolute certainty or mathematical certainty, okay, but it

1 can't be based upon a guess. The existence, the cause, and
2 the amount of the damages can not be based upon a guess,
3 conjecture, or speculation.

4 Lastly, if you deemed damages are appropriate, I charge
5 you that the law needs to compensate for damage to the
6 person, reputation, or property of an individual. But it
7 does not undertake to compensate for mere hurt or
8 embarrassment alone.

9 Now, in this same big group of damages, one of them is
10 called loss of the enjoyment of life.

11 Okay. Loss of the capacity to enjoy life that results
12 from a personal injury is a proper element of damages. So,
13 if you find evidence of loss of the enjoyment of life, you
14 are allowed to award damages for that.

15 So damages for loss of enjoyment of life compensate for
16 the limitations resulting from the defendant's negligence on
17 the injured person's ability to participate in and deprive
18 pleasure from the normal activity of daily -- normal
19 activities of daily life or for the individual's inability
20 to pursue his talents, interests, hobbies, or advocations.

21 Now, loss of the enjoyment of life damages compensate
22 the plaintiff not only for the subjective knowledge that one
23 can no longer enjoy all of life's pursuits, but also for the
24 objective loss of the ability to engage in these activities.

25 Another category under the damages is called pain and

1 suffering. So, pain and suffering compensate the plaintiff
2 for the physical discomfort and emotional response to the
3 sensation of pain caused by the injury itself. There's no
4 definite standard by which to compensate the plaintiff for
5 pain and suffering.

6 In considering the extent to which the plaintiff has
7 been damaged, you may consider his pain and suffering,
8 mental anguish, emotional distress, any permanent
9 disability -- excuse me. Let me -- strike that.

10 His emotional distress -- sorry. I just got a typo.
11 And necessary and reasonable expenses for such things as
12 medicines, hospital expenses, and the expenses charged by
13 physicians. You have the authority to determine the amount,
14 if any, to be allowed for pain and suffering using calm and
15 reasonable judgment to ensure that the damages are just and
16 reasonable in light of the testimony and the evidence
17 presented in the case.

18 Now, the defendants in this case are governmental
19 entities, and, in South Carolina, governmental entities have
20 immunity for any of the following:

21 The administrative action or inaction of a judicial or
22 quasi judicial nature, the execution, enforcement of, or
23 implementation of the orders of any Court, the enforcement
24 or compliance with any law, the exercise or -- of discretion
25 or judgment by the governmental entity or employee, and the

1 methods that the police choose to utilize to provide police
2 protection.

3 So, we're almost done. A verdict in this case can not
4 be based upon sympathy, passion, prejudice, or something
5 else not found in the evidence. It is your duty to decide
6 the issues in this case based solely upon the evidence which
7 you hear during the course of the trial. Your verdict must
8 be without bias and without prejudice to either of -- any of
9 the parties. You can not allow yourselves to be governed by
10 sympathy, prejudice, passion, public opinion, or something
11 else not found in the evidence.

12 So, let's talk about deliberating. Most of you have
13 probably never deliberated before.

14 So what does that look like?

15 Let me say this to you. The word deliberation is
16 defined as a careful consideration weighing up with a view
17 to a decision. The genius of this system is that it allows
18 12 good men and women from 12 totally different backgrounds,
19 life experiences, and perspectives to consider the evidence,
20 talk about it, and reach a verdict. We call them
21 deliberations for a reason.

22 You are to consider the evidence in this case carefully
23 and deliberately and you should be discussing it in a calm,
24 thorough, and courteous manner. You are not a partisan or
25 an advocate for either side. You are a judge. You're a

1 judge of the facts. Listen to each other's views and points
2 of view and talk through and discuss the evidence. And
3 remember, if you're doing something deliberately, you're not
4 in a big hurry and you should not be in a hurry here.

5 This case is very important to all the sides. This is
6 their only day in court to resolve this matter.

7 When you should retire -- when you retire to the jury
8 room, you should discuss the case to reach agreement if you
9 can. Your verdict must be unanimous. That means you all 12
10 must agree.

11 Each of you have to decide the case for yourself. But
12 only after you have impartially considered all the evidence,
13 discussed it fully with each other, and listened to the
14 views of your fellow jurors. Don't be afraid to change your
15 opinion when discussing your pros -- that you should. But
16 don't come to a decision well, every -- because everyone
17 else thinks it's right. It's important that you reach a
18 unanimous verdict but only if each of you can do so after
19 having made your own decision.

20 Do not change an honest belief about the weight and the
21 effect of the evidence simply to reach a verdict. In other
22 words, don't change your opinions solely for the sake of
23 reaching a unanimous verdict.

24 Okay. So, here's what we're gonna do. I'm gonna go
25 over this verdict form with you and then I'm gonna send you

1 back to your jury room.

2 Okay. A couple of rules before we do that.

3 Number 1. All 12 of you must be in the room to
4 deliberate.

5 Okay. So if someone needs to go to the restroom,
6 someone needs to take a smoke break, someone needs to go
7 call home, deliberations stop unless all 12 of you are in
8 the room.

9 Okay. I'm about to send you back to your room. You
10 can still not deliberate.

11 Okay. The sign that you can start is when all of these
12 exhibits come in. So, when the exhibits come in the room,
13 you can start talking then.

14 Okay. There's a hiccup with your lunch. They gave
15 away your food. So, I told them they have 15 minutes to
16 resolve it or they're going to buy a whole bunch of pizzas.

17 Okay. So you'll have food. We're not gonna starve
18 you. Not yet. And -- but literally the restaurant gave
19 away your food. So I've told them they got 15 minutes to
20 fix it or they need to go buy a whole bunch of pizzas. So
21 we'll have food one way or the other.

22 If you want to deliberate when your food gets here
23 while you're eating, sure. That's your decision. If you
24 want to stop and eat, that's your decision. You don't even
25 need to tell me what you're doing.

1 Okay. So, again, you can't start until all the
2 exhibits come in the room, okay, and your verdict must be
3 unanimous.

4 Okay. Now, I've tried to make this verdict form as
5 simple as possible, okay, but there are two defendants.
6 Okay. So it's a little bit more complicated than, you know,
7 is the defendant guilty or not guilty of murder, check yes
8 or no.

9 Okay. Okay. So bear with me.

10 All right. So we're -- we broke it down by defendant.

11 Okay. And you-all -- y'all be able -- you-all -- you
12 will all be able to see this. So we started -- and these
13 are in no order. I had to put one first and one second.

14 So we started with the sheriff. So, Question Number 1,
15 do you find, by preponderance of the evidence, this is the
16 standard, right, that the sheriff was negligent. Yes or no.
17 If you check yes, go to Question 2. If you check no, go to
18 three.

19 Okay. Question Number 2. Do you find unanimously, by
20 a preponderance of the evidence, that the, the proximate
21 cause -- the sheriff's negligence was the proximate cause.
22 Yes or no. Either one you check, go to Question 3. And
23 Question Number 3 is the second cause of action, false
24 imprisonment. Do you find, by preponderance -- unanimously
25 by preponderance of the evidence, these are all the words I

1 just kind of used with you, that there was false
2 imprisonment. Yes or no. Either one go to Question 4.

3 Okay. And then Question Number 4 is going to be as to
4 DSS and it's gonna be the same exact questions.

5 Okay. We're just gonna go through them one more time.

6 Okay. Then damages.

7 Okay. So once you make it through Number 6, we're
8 gonna go to Number 7.

9 Okay. So if you answer yes to two, three, five, or
10 six, okay, that's why all these are numbered, okay, you're
11 allowed to put the amount of damages, if any.

12 Okay. If you find -- if you answered yes to two or
13 three, and that's why I put these in bold, and five or six,
14 then you have to assign percentages.

15 Okay. So if you find either the Sheriff's De -- the
16 sheriff or DSS was either negligent or committed a false
17 imprisonment, if you find both of them did, okay, then you
18 got to assign the percentages.

19 Okay. Now, you shouldn't be doing anything with this
20 number in seven based upon this. That's not your job.

21 Okay. But if you find that either -- that both of them
22 are responsible either as to negligence or false
23 imprisonment or one or the other, okay, then you've got to
24 assign the percentages and that -- those percentages have to
25 equal a hundred, okay, and then you sign it.

1 All right. You with me?

2 If you read it slow it will make sense.

3 Okay. All right. So I'm gonna send you back to your
4 jury room. Don't discuss the case. I'm working on your
5 food. I'm hungry too. So -- and that's usually a big
6 factor. As you can tell, I don't miss a lot of meals.

7 So -- and when the exhibits come in, you can start.

8 Okay. All right. Thank you.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Any exceptions to the jury
12 charge other than those previously stated?

13 MR. BREHMER: None from the plaintiff.

14 MR. GARFIELD: None from the sheriff, Your Honor.
15 Thank you.

16 MR. SUMMERS: Nor from DSS, sir.

17 THE COURT: Okay. All right. Good job.

18 Number -- so next thing is make sure Kate has your
19 phone numbers. Yeah, your cellphone numbers. Go and then
20 --.

21 (WHEREUPON, the jury began deliberating at about 1:29PM
22 and sent out a question at 3:30PM.)

23 THE COURT: All right. We have -- we've received two
24 notes from the jury. We've marked them as Court's Exhibit
25 No. 1 and No. 2. All the lawyers are present and I've shown

1 them to them and they're in no order and they came in at the
2 exact same time.

3 The first one says did we receive all evidence
4 submitted for Richland County. I think the answer to that
5 question is yes.

6 MR. GARFIELD: Yes.

7 THE COURT: Any objection to me putting yes?

8 MR. BREHMER: No, sir.

9 MR. GARFIELD: No, sir.

10 MR. SUMMERS: None, sir.

11 THE COURT: Mr. Brehmer.

12 MR. BREHMER: None.

13 THE COURT: Mr. Garfield?

14 MR. GARFIELD: I -- right. The answer's yes.

15 THE COURT: Yeah.

16 And Mr. Summers.

17 MR. SUMMERS: No objection for the answer being yes.

18 MR. GARFIELD: It's odd that they did say Richland
19 County instead of the sheriff. I don't know if that's
20 significant or not.

21 THE COURT: Well, I --.

22 MR. GARFIELD: Okay.

23 THE COURT: The second question is it customary for
24 someone other than law enforcement to arrive on the scene
25 and be utilized as the spokesperson for the deceased and/or

1 (indiscernible). I don't know that I can answer that
2 question. I think that's factual.

3 MR. SUMMERS: I don't quite understand it.

4 UNIDENTIFIED SPEAKER: I think it depends.

5 MR. GARFIELD: Well, give me an example of --.

6 THE COURT: I think it could be the coroner.

7 MR. GARFIELD: That would be used as a spokesman.

8 THE COURT: Yeah.

9 MR. SUMMERS: Is the coroner---

10 MR. GARFIELD: Who's called as a witness or trial.

11 UNIDENTIFIED SPEAKER: I'm sorry. I think what they're
12 asking here is they're talking about Outlaw. Is it normal
13 for Outlaw to come to the house and---

14 THE COURT: Oh, yeah.

15 UNIDENTIFIED SPEAKER: -- and then represent to them.

16 THE COURT: Well, and here's the thing. I don't know
17 that we need to decipher what it means. It's a question as
18 to a fact. I can't answer a factual question for them. So,
19 I'm just gonna put on there that I can not answer factual
20 questions.

21 MR. GARFIELD: Okay.

22 MR. SUMMERS: Yes, sir, that's, that's appropriate.

23 THE COURT: And, and you have all the evidence.

24 MR. SUMMERS: Evidence, yes, sir.

25 THE COURT: Is that okay?

1 MR. BREHMER: That's -- yes, sir.

2 MR. GARFIELD: That's appropriate.

3 MR. SUMMERS: From DSS, appropriate, yes, sir.

4 (WHEREUPON, the jury began deliberating again and
5 returned with a verdict at 5:00PM.)

6 THE COURT: All right. One, two, three. One, two.

7 Are we waiting on Mr. Sellaro?

8 MR. BREHMER: No, he had to go home. His ride had come
9 to pick him up.

10 THE COURT: All right. Let's go ahead and bring them
11 in.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE BAILIFF: All the jurors are seated, Your Honor.

15 THE COURT: All right. Welcome back.

16 Madam Forelady, it's my understanding there is verdict.

17 Is that correct?

18 THE FORELADY: Yes, Your Honor.

19 THE COURT: All right. Please hand it to Ms. Joyner.

20 (WHEREUPON, the forelady complies.)

21 THE COURT: Thank you.

22 Okay. And is Number 7 left blank intentionally, the
23 amount of damages?

24 THE FORELADY: I -- we understood that you had asked us
25 not to put a figure in there.

1 THE COURT: Okay. All right. So, you need to go back
2 and, because of the way that you answered Question Number 4,
3 5, and 6, you have to put some number. It doesn't -- I
4 can't tell you what the number is but it has to be a number
5 in the Number 7 blank.

6 THE FORELADY: Okay.

7 THE COURT: Okay.

8 THE FORELADY: Yes, Your Honor.

9 THE COURT: All right.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Anything from the plaintiff
13 before we --?

14 MR. BREHMER: No.

15 THE COURT: From the sheriff?

16 MR. GARFIELD: No, Your Honor.

17 THE COURT: From DSS?

18 MR. SUMMERS: No, sir.

19 THE COURT: Okay. All right.

20 (WHEREUPON, the jury began deliberating again at 5:01PM
21 and returned with a verdict at 5:13PM.)

22 THE COURT: Okay. Bring them in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE BAILIFF: All the jurors are seated, Your Honor.

1 THE COURT: All right. Now let's hand the verdict form
2 to Ms. Joyner.

3 (WHEREUPON, the forelady complies.)

4 THE COURT: Okay. All right. And I think we're okay
5 without Mr. Garfield.

6 Okay. I'm gonna go ahead and publish cause it will
7 make it go a little bit quicker.

8 All right. So, as to the defendant sheriff of Richland
9 County, Leon Lott, in his official capacity---

10 MR. GARFIELD: I'm sorry. I just stepped---

11 THE COURT: Come on in. It's okay.

12 Do you -- Question Number 1, do you find that the
13 sheriff was negligent. Answer no.

14 To -- and Question Number 3, do you find that the
15 sheriff falsely imprisoned the plaintiff. No.

16 As to the Department of Social Services, do you find,
17 by preponderance of the evidence, that DSS was negligent.
18 Yes.

19 Do you find that the proximate -- the negligence
20 proximately caused the damages. Yes.

21 Do you find that DSS falsely imprisoned the plaintiff.
22 Yes.

23 So because you answered yes to Questions 4, 5, and 6,
24 you had to answer Question Number 7. I promise I wasn't
25 trying to make that confusing but I understand how it could

1 be.

2 And so, if you answered yes to 2, 3, 5, or 6, which
3 there was an answer to yes on five and an answer to yes on
4 six, then please state the total amount of damages, if any,
5 sustained by the plaintiff. \$300,000.

6 And then they did go -- you didn't have to answer
7 Question 8. But, anyway, you found that the Department of
8 Social Services was a hundred percent responsible.

9 And, Madam Forelady, is this your verdict and the
10 verdict of the jury?

11 THE FORELADY: Yes, Your Honor. It is.

12 THE COURT: Okay. And does the plaintiff request
13 polling?

14 MR. BREHMER: No, sir.

15 THE COURT: Does the Sheriff's Department?

16 MR. SUMMERS: Yes, sir, it does.

17 THE COURT: Does the sheriff?

18 MR. SUMMERS: Oh, forgive me. I'm sorry.

19 MR. GARFIELD: No, Your Honor.

20 MR. SUMMERS: I jumped ahead.

21 THE COURT: Okay. Does DSS?

22 MR. SUMMERS: It does, sir.

23 THE COURT: Okay. So, ladies and gentlemen, what --
24 we're gonna ask you a question. It will be is this your
25 verdict and is this still your verdict. And when your name

1 is called, if you will, please answer out loud.

2 THE CLERK: Lila Cogdill, was this your verdict?

3 THE JUROR: Yes, it was.

4 THE CLERK: Is this still your verdict?

5 THE JUROR: Yes, it is.

6 THE CLERK: Tremayne Ansani, was this your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Lametrius Canady, was this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Brian Suber, was this your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Bradley Harris, was this your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Nicholas Ausborne, was this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Hannah Bunge, was this your verdict?
2 THE JUROR: Yes.
3 THE CLERK: Is it still your verdict?
4 THE JUROR: Yes, ma'am.
5 THE CLERK: Whitney Johnson, was this your verdict?
6 THE JUROR: Yes.
7 THE CLERK: Is it still your verdict?
8 THE JUROR: Yes.
9 THE CLERK: Marixsa Hernandez, was this your verdict?
10 THE JUROR: Yes.
11 THE CLERK: Is it still your verdict?
12 THE JUROR: Yes.
13 THE CLERK: Porter Curry, was this your verdict?
14 THE JUROR: Yes.
15 THE CLERK: Is it still your verdict?
16 THE JUROR: Yes.
17 THE CLERK: Teal Moore, was this your verdict?
18 THE JUROR: Yes.
19 THE CLERK: Is it still your verdict?
20 THE JUROR: Yes.
21 THE CLERK: Lauren Smalls, was this your verdict?
22 THE JUROR: Yes.
23 THE CLERK: Is it still your verdict?
24 THE JUROR: Yes.
25 THE CLERK: Jurors have been polled, Your Honor.

1 THE COURT: All right. And anything further from the
2 jury from the plaintiff?

3 MR. BREHMER: No, sir, Your Honor.

4 THE COURT: From the sheriff?

5 MR. GARFIELD: Not from the sheriff, Your Honor.

6 THE COURT: And from DSS?

7 MR. SUMMERS: Yes, sir. would have some motions.

8 We---

9 THE COURT: I mean for the jury?

10 MR. SUMMERS: None for the jury, sir.

11 THE COURT: Okay. All right.

12 (WHEREUPON, the jury was dismissed at this time.)

13 THE COURT: And let's see.

14 Did the plaintiff want 10 days for post-trial motions?

15 MR. BREHMER: Yes, sir, and---

16 THE COURT: Okay.

17 MR. BREHMER: ---be, be -- because of the

18 circumstances---

19 THE COURT: Right. I understand.

20 MR. BREHMER: ---in the complaint, if, if that would

21 be---

22 THE COURT: Yeah. Sure.

23 Does the sheriff need 10 days for post-trial motions?

24 MR. GARFIELD: We, we would -- just in an abundance of
25 precaution, yes, sir, Your Honor.

1 THE COURT: Okay. And DSS, the same?

2 MR. SUMMERS: Yes, sir.

3 THE COURT: Okay. And that will be granted. And if
4 y'all need more time, just let me know. Just---

5 MR. BREHMER: Sure.

6 THE COURT: Don't leave me hanging. Just let -- just,
7 just let me know.

8 The other thing with those is, in the days of E-Filing,
9 the chance that you E-Filing something and it making it to
10 me is very slim. So, please E-File it. But just send, send
11 Kate a copy of it and copy everybody else on it. And that
12 way I make sure I have it and I can start tracking it and
13 handling it.

14 Okay.

15 MR. SUMMERS: Very good, sir.

16 MR. BREHMER: Thank you.

17 THE COURT: Y'all did a very good job.

18 MR. BREHMER: Thank you.

19 THE COURT: And thank you for your hard work this week.
20 Thank you for being prepared and ready to go and having the
21 issues and, and knowing where you were going and how you
22 were getting there. It was much appreciated and, Mr.
23 Brehmer, again, I'm sorry for your loss.

24 MR. BREHMER: Okay. Thank you, Your Honor.

25 THE COURT: And I hope, I hope we've been -- I did my

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Department of
Social Services,

Plaintiff,

vs.

In the interests of:

Joseph Sellaro DOB: [REDACTED] 1948

A vulnerable adult.

IN THE FAMILY COURT
FIFTH JUDICIAL CIRCUIT
Docket Number 2016-DR-40-0869

ORDER OF APPOINTMENT
OF A GUARDIAN AD LITEM
FOR A VULNERABLE ADULT

RICHLAND COUNTY
FILED
2016 MAR -3 PM 3:25
FAMILY COURT

This matter comes before the Court pursuant to the filing of a Petition for Appointment of a Guardian ad Litem for a Vulnerable Adult by the South Carolina Department of Social Services. Based upon the information before the court, I find that the best interests of the above-referenced vulnerable adult require the appointment of a guardian ad litem.

I find that Victoria Deas-Johnson - (803) 319-0403 has volunteered to serve as a guardian ad litem with the South Carolina Vulnerable Adult Guardian ad Litem Program and is a proper person to serve as Guardian ad Litem in this case. Therefore, pursuant to S.C. Code Ann. § 43-35-45(C), the said individual is appointed as Guardian ad Litem for the vulnerable adult. I further find the said Guardian ad Litem's responsibilities and duties shall include but are not limited to:

(1) representing the best interest of the vulnerable adult;
(2) conducting an independent, balanced, and impartial assessment to determine the facts relevant to the situation of the vulnerable adult. An assessment must include, but is not limited to:

(a) obtaining and reviewing relevant documents. The Guardian ad Litem shall have access to all records, including medical records of the vulnerable adult in order to evaluate the adult's condition and make a recommendation to the court concerning future care. Further, pursuant to 45 CFR 164.512(e)(1), this order permits a covered entity to disclose to the Guardian ad Litem the vulnerable adult's protected health information in response to a discovery request for the purpose of a judicial proceeding;

1 of 3



Sellaro (DSS) - RFP Resp 47

- (b) meeting with and observing the vulnerable adult on at least one occasion;
 - (c) visiting the home settings or the facility of residence;
 - (d) interviewing family members, caregivers, law enforcement and others with knowledge relevant to the case;
 - (e) considering the wishes of the vulnerable adult;
- (3) advocating for the vulnerable adult's best interest by making specific and clear suggestions when necessary for evaluation, services, and treatment for the vulnerable adult;
- (4) attending all Family Court hearings related to the vulnerable adult, except when attendance is excused by the Court or the absence is stipulated by both parties. The Guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court;
- (5) maintaining a complete file, including notes. A Guardian's notes are his work product and are not subject to subpoena; and
- (6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the vulnerable adult's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the assessment.

Additionally, a Guardian ad Litem may submit briefs, memoranda, affidavits, or other documents on behalf of the vulnerable adult through counsel. A Guardian ad Litem may also submit affidavits at any temporary hearing. Any report or recommendation of a Guardian ad Litem must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

I find that pursuant to S.C. Code Anno. §43-35-75, any Guardian ad Litem appointed for a vulnerable adult pursuant to Section 43-35-45(C), acting in good faith and who participates in a judicial proceeding resulting from a report under the Omnibus Adult Protection Act is immune from civil and criminal liability.

I further find that the appointed Guardian ad Litem is a lay person and it is necessary to appoint counsel for the said Guardian ad Litem. Accordingly, this Court appoints

B. Reynolds Elliott - (803) 254-7980, Esquire, as attorney for the guardian ad litem.

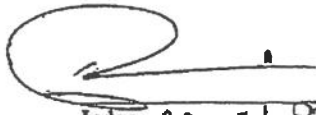
2 of 3

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that
Victoria Deas-Johnson is appointed as guardian ad litem for the above-
referenced vulnerable adult having the duties and responsibilities as outlined above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
B. Reynolds Elliott Esquire, is appointed to serve as counsel for the
guardian ad litem.

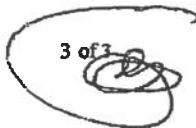
MOREOVER, IT IS ORDER, ADJUDGED AND DECREED that this/these
appointment(s) shall continue to be in effect until formal discharge by the court.

IT IS SO ORDERED.


Judge Monet Pincus
Family Court
FIFTH Judicial Circuit

Columbia, South Carolina

3-3, 2016

3 of 3


Sellaro (DSS) - RFP Resp 49



South Carolina Vulnerable Adult Guardian ad Litem Volunteer Program

Guardian ad Litem Report to the Family Court

Docket Number 16DR400869

This report was prepared for the benefit of the Court and is of confidential nature. It may be distributed to parties to the proceedings only. This report is subject to change based on testimony.

In Re: Joseph Sellaro

Guardian ad Litem: Victoria Deas-Johnson, BSW

Attorney for Guardian ad Litem: B. Reynolds Elliott, Esq.

Attorney for Vulnerable Adult: Elizabeth Boozer, Esq.

DSS Caseworker: Naqua Edgerton

DSS Attorney: Scott Spivey, Esq.

Allegations:

February 27, 2016 it was reported that Mr. Joseph Sellaro may be in need of protection due to self-neglect. Upon investigation, it was reported to Richland County DSS that Mr. Sellaro had health conditions such as; heart issues, asthma, diabetes, depression and dementia. At the time of questioning, it was reported that Mr. Sellaro appeared combative. Mr. Sellaro was questioned concerning his medications and his medical physician but was not able to give a clear response. However, it was also reported that Mr. Sellaro was just informed of his wife's death due to an automobile accident on that same night during prior the questioning. It was reported to DSS that Mr. Sellaro's wife was his caregiver and he could not care for himself.

History:

a). Personal History:

Mr. Joseph Sellaro is a 68-year-old white male born on [REDACTED] 1948. He has a sister, Karen Chichllia, who lives in Minnesota and a brother, Kevin, who lives in New Jersey. Mr. Sellaro keeps in touch with both of his siblings by phone. Mr. Sellaro and his wife, Eileen, have been married for forty years and have two sons. Mr. Sellaro keeps in touch with his son, Joey, and he keeps in touch with his niece, Katherine Ann. Mr. Sellaro has a past medical history of heart issues which are now controlled with a pacemaker and medication. He also has other medical conditions such as diabetes, depression, and asthma that are all well managed by





medication. Mr. Sellaro enjoys sports and had four dogs, which he loves dearly. Mr. Sellaro did contract work with a major hospital waxing and stripping floors until he was injured on the job. His wife, Eileen, worked as a nurse for the same hospital until she retired. Mr. Sellaro's wife passed away on February 27, 2016 in an automobile accident. Mr. Sellaro was taken into protective custody on the same night, due to an allegation that he was unable to care for himself due to his health conditions and the passing of his wife, his caregiver. Mr. Sellaro is now placed at Palmetto Richland Memorial Hospital until his emergency hearing Monday, 3/7/2016.

b). Procedural History:

Probable Cause Hearing 3/1/2016 at 1:30pm
Emergency Hearing 3/7/2016 at 2pm
Merits Hearing 4/7/2016 at 11:30 am

Interviews and Documents Reviewed:

Documentations reviewed and received on 3/3/2016- 3/4/2016:
Physician ER entry exam note 2/28/2016
Psych evaluation note 2/29/2016
Physician follow up note 3/2/2016

Guardian ad Litem Observations:

On 3/3/2016, GAL interviewed Joseph Sellaro, who appeared alert and oriented. GAL explained her role as a Guardian ad Litem and provided contact information. GAL asked him if he could explain what happened the evening of February 27, 2016. He explained that he was hurt and upset about his treatment and not being able to see his wife for the last time. When asked how he and his wife handled affairs of daily living, he explained that she took care of grocery shopping, paying the bills, and cooking. He did other things to help out. Mr. Sellaro paused a few times to catch his composure as he tried to tell about his wife and how much he loves her and is going to miss her. Mr. Sellaro explained that he trusted his wife's friend to only feed the four dogs and care for them while he was away, but instead she had one of his dogs put to sleep, sent another one to the pound, and informed him she was not going to give him back his other two dogs. Mr. Sellaro stated repeatedly that he was upset about his treatment.

On 3/3/2016, GAL interviewed Safiya Tate, LMSW, Social Worker at Palmetto Health Richland Hospital. Ms. Tate was very helpful in gathering information concerning Mr. Sellaro's mental status and physical limitations. She informed GAL that Mr. Tate had no physical limitations, and he does all his activities of daily living on his own. She stated that Mr. Sellaro was given an evaluation by the physician upon entry of the hospital and was considered mentally stable and competent. DSS wanted a psychological evaluation done after the physician cleared Mr. Sellaro. The psychological evaluation was done on February 29, 2016, which concluded that Mr. Sellaro's mental status was stable, and it was noted that he had no dementia. Mr. Sellaro was seen by another physician, Dr. Ramahi on March 2, 2016, who stated that Mr. Sellaro should be released because he has no mental or physical impairments, and therefore does not understand why he is in protective custody.



After reading the case file, GAL interviewed the vulnerable adult, Mr. Joseph Sellaro. Based on visual observations, GAL did not see that Mr. Sellaro had any physical impairments. He could walk, dress, bathe, and feed himself without any assistance. Also, based on the interview with Mr. Sellaro, GAL did not encounter any mental impairments. He was able to answer all questions asked, recall the events prior to him being placed in protective custody, and call and contact family about his situation.

Guardian ad Litem Recommendations:

As Mr. Sellaro's appointed Guardian ad Litem, I do not believe Mr. Joseph Sellaro to be a vulnerable adult based on my own observations and the reports from psychiatrists and medical physicians. I recommend that Mr. Sellaro be released from DSS custody based on these findings.

Date

Guardian ad Litem

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Richland County DSS

Plaintiff,

Vs.

IN RE: Joseph Sellano

Defendant.)

IN THE FAMILY COURT

CASE NO. 2016-DN-40-0889

BENCH
ORDER

CLERK OF
COURT

2016 MAR -7 PM 2:23

This is an action in regard to A Vulnerable Adult. A motion was made by the Attorney for the Guardian Ad Litem for MR. Joseph Sellano in which he sought the dismissal of the Action brought by DSS. Upon the call of the case all parties agreed that the case should be dismissed as all physicians report that he is not suffering from dementia and is quite capable of managing his Affairs.

Accordingly, it is ORDERED that the case is hereby dismissed.

Attorney for DSS: Tyler Beck

Attorney for Defendant: Elizabeth Ruzer

Attorney for GAL: Reynolds Elliott

Columbia, S.C.

317, 20 16

John M. Rucker
Judge of the Family Court

5

Judicial Circuit

PLAINTIFF'S
EXHIBIT

3

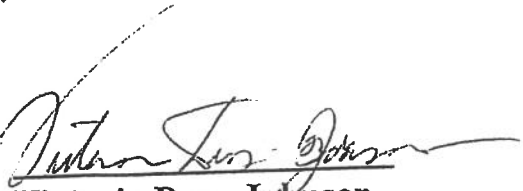
5.16.2016

5. Law enforcement along with DSS removed Mr. Sellaro from his home on February 28th, and placed him at Palmetto Health Richland, where he currently resides.
6. The attending physician states in the record of February 28th (Exhibit A attached) that he has no physical impairments, was very alert, coherent, and had good short term memory. But just to be sure, Mr. Sellaro was referred to a Psychiatrist.
7. The Psychiatrist, Dr. Brandenburg, saw Mr. Sellaro on Monday, February 29th, and stated that Mr. Sellaro has no signs of dementia and is capable of making his own health care decisions. (Report attached, Exhibit B, see Page 3)
8. DSS went to court the following day, March 1st, for the Probable Cause hearing. Despite knowledge of the Doctors' reports, DSS represented to the court that Mr. Sellaro had dementia and was unable to care for himself and asked to court that he remain in care. This was done without Mr. Sellaro being present at the hearing. The judge, acting based upon the information DSS provided at the hearing, found probable cause to keep him in DSS custody.

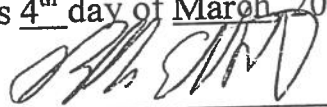
9. On March 2nd, again, reiterates that he is not demented and there is no medical reason for him to be in the hospital. (Report attached, Exhibit C)

10. I am asking that Mr. Sellaro be released from the hospital and be allowed to return home. He is not a vulnerable adult. He has already been disrupted from his home and a neighbor has disposed of his 4 dogs. He was unable to participate in the funeral arrangements for his wife. He did not get to see her for the last time as the sister-in-law has already had her body cremated. A visitation was held this week at Dunbar Funeral Home which he was unable to attend. Further he is likely to miss the funeral altogether, as the sister-in-law has taken his wife's remains to New Jersey. This is a tragic event that could have been avoided and should not have happened.

FURTHER AFFIANT SAYETH NOT.


Victoria Deas-Johnson

Sworn to and subscribed before me
this 4th day of March 2016.


Notary Public for South Carolina
My Commission Expires: 1-27-2019



PRID: 39512558	Call #: 001179358	
Service: Richland County EMS	Date: February 27, 2016	
Base: HQ	Team: ALS	
Unit: S224	Crew 1: Primary Caregiver	
Shift: D	*Fox, Jennifer	
Vehc. Grid: Jackson Creek	EMT-P	
Type of Svc: Scene Unscheduled	Crew 2: Driver	
Response Code: Lights and Siren	Adams, Michael	
Mode to Ref: Lights / Sirens	EMT-B	
Moved Via: Stretcher	* designates an ALS Provider	
Position: Sitting	Mode to Rec: Lights / Sirens	
Outcome: Treated COUNTY RESIDENT,	Moved From: Stretcher	
Transported by EMS	Pt. Condition: Unchanged	
Location: 1837 Crestview Ave	Receiving: Hospital	
1837 Crestview Ave	Palmetto Richland Memorial	
COLUMBIA, SC 29223	Emergency Department	
United States	5 Richland Medical Park	
	Columbia, SC 29203-6863	
	803-434-1662	
	Dest. Grid: HQ	

Feb 27

Last Name: Sellaro First: Joseph
 Address: 1837 Crestview Ave
 City: Columbia ST: SC Zip: 29223
 County: Richland
 Country: United States
 Citizenship: United States
 DOB: SSN:
 Age: 68y Sex: M Weight:
 Height:
 Subscriber: No
 Race: Black, non-Hispanic
 Billing Information:
 None Given

Odometer	Times
Ld Miles: 10.1	Received: 23:17 02/27
	Dispatch: 23:18
	EnRoute: 23:19
	At Ref: 23:26
	Leave Ref: 23:43
	At Rec: 23:58
	Available: 00:26 02/28

Consent Signed: No
 PCS / Medical Necessity Signed: No

Scene Information		
Description: male pt found ambulatory on scene		
Patient Belongings: jacket, and cardboard with number written on it-both left with pt in ER		
Other Agencies: Law		
Contact w/ Fluids: No		
Protective Equip: Eye Protection, Gloves		
Chief Complaint (Category: Diabetic Problem)		
Transport for Exam		
Duration: 20 Minutes		
Anatomic Location: General/Global		
ALS Assessment: Completed for Suspected Illness		
History of Present Illness		
see narrative.		
Medical History	Current Medications	Allergies
Asthma	Albuterol	None
Dementia	Humalog	
Diabetes	Novolog	
Pacemaker		
Neurological Exam		
Level of Consciousness: Alert	Loss of Consciousness: No	Glasgow Coma Scale
Chemically Paralyzed: No		



Neurological Exam					
Neurological Present: Normal					E V M Tot Int: 4 5 6 = 15
Mental Present: Normal					
Pupils		Motor		Sensory	
	Left	Right	LA:	Normal	Normal
Size:	Normal	Normal	RA:	Normal	Normal
React:	Reactive	Reactive	LL:	Normal	Normal
			RL:	Normal	Normal
Airway			Respiratory		
Status: Patent			Effort: Normal		
Performed By: Patient			Sounds: L: Clear R: Clear		
Outcome: Unchanged					
Cardiovascular					
				Pulses	
				Left	Right
				Carotid: Not Checked	Not Checked
				Radial: Normal	Normal
				Femoral: Not Checked	Not Checked
				Dorsalis: Not Checked	Not Checked
Injury Details					
Reason for Encounter: Non-Injury					
Drugs/Alcohol?: None					

Initial Physical Findings
<u>Assessment</u>
Skin: Normal
Skin Findings:

Impression / Diagnosis
System: Not Available
Symptoms: Not Available
Impression: Not Available

Activity										
Time	H.R.	B.P.	MAP	RA SaO2	Resp	Rhythm	GCS	ECG Method	Glu	CRW*
	H.R. Method	Method			Resp Effort					
23:39	91	100 / 71	80	94	16	(REG)	4/5/6		460	#1
arrived on scene and was approached by law enforcement. law enforcement states that the pts wife died earlier today and law enforcement was called out for a welfare check by the coroner. law enforcement states that per the neighbor who happens to be best friends with the pts deceased wife stated that the pt has a hx of dementia. pt able to answer all questions appropriately. per law enforcement states that the pt stated to them he was unsure if he checked his blood sugar or took his insulin. law enforcement states that the pt checked his blood sugar and the glucometer read 550 mg/dl. law enforcement states that pt then took insulin to correct his blood sugar. the pt told crew that he took 60 units of insulin a few hours ago. sheriffs department placed the pt under emergency protective custody due to pt not having a caretaker at home any longer. pt denies any chest pain, SOB, abdominal pain, weakness, dizziness, or any nausea/vomiting. no trauma noted.										
23:39	91					Normal Sinus Rhythm (REG)				#1
Learning rhythm										
23:44	89	98 / 70	79	97	16	(REG)	4/5/6			#1
Auto. Cuff										
Richland ER notified en route.										
23:55	89	111 / 66	81	95	16	(REG)	4/5/6			#1

Activity										
Time	H.R.	B.P.	MAP	RA SaO2	Resp	Rhythm	GCS	ECG Method	Glu	CRW*
	H.R. Method	Method			Resp Effort					
Action	Comment									
	Auto, Cuff					Normal				
care transferred over to staff.										

* Assessment made by

Response Factors Affecting Care: None

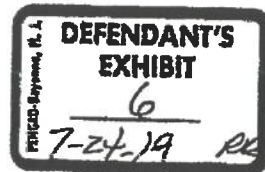
Scene Factors Affecting Care: None

Transportation Factors Affecting Care: None

Fox, Jennifer: Electronically Signed on 02/28/2016 06:39:01 EST

Adams, Michael: _____

ELECTRONICALLY FILED - 2020 May 20 4:20 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4004835



Patient Record 39512558

Page 1 of 3



PRID:39512558 Call #:001179358

Service:Richland County EMS
Base:NQ
Unit:S214
Shift:D
Vehc. Grid:Jackson Creek
Type of Svc:Scene Unscheduled
Response Code:lights and siren
Mode to Ref:lights / siren
Moved Via:Stretcher
Position:Sitting
Outcome:Treated COUNTY RESIDENT,
Transported by EMS

Date:February 27, 2016
Team:ALS
Crew 1:Primary Caregiver
*Fox, Jennifer
DNT-P
Crew 2:Driver
Adams, Michael
DNT-N
* designates as ALS Provider
Mode to Ref:lights / siren
Moved From:Stretcher
Pt. Condition:Unchanged

Location:1837 Crestview Ave
1837 Crestview Ave
COLUMBIA, SC 29223
United States

Receiving:Hospital
Palmetto Richland Memorial
Emergency Department
5 Richland Medical Park
Columbia, SC 29203-6863
803-436-1662
Dest. Grid:NQ

Last Name: Sellaro First: Joseph
Address: 1837 Crestview Ave
City: Columbia ST:SC Zip:29223
County: Richland
Country: United States
Citizenship: United States
DOB: [REDACTED] 948 SSN: [REDACTED]
Age: 69y Sex: M Height:
Height:
Subscriber: No
Race: Black, non-Hispanic
Billing Information:
None Given

Odometer	Time
Id Miles: 10.1	Received: 23:17 02/27
	Dispatch: 23:18
	EnRoute: 23:19
	At Ref: 23:26
	Leave Ref: 23:43
	At Rec: 23:58
	Available: 00:26 03/28

Consent Signed: No
PCB / Medical Necessity Signed: No

Scene Information

Description: male pt found ambulatory on scene
Patient Belongings: jacket, and cardboard with number written on it-both left with pt in ER
Other Agencies: Law

Contact w/ Fluids: No
Protective Equip: Eye Protection, Gloves

Chief Complaint (Category: Diabetic Problem)

Transport for Exam

Duration: 20 Minutes
Anatomic Location: General/Global
ALS Assessment: Completed for Suspected Illness

History of Present Illness

See Narrative.

Medical History	Current Medications	Allergies
Asthma Dementia Diabetes Pacemaker	Albuterol Humalog Novolog	None

Neurological Exam

Level of Consciousness: Alert Loss of Consciousness: No
Chemically Paralyzed: No

Glasgow Coma Scale

<https://www.emscharts.com/pr/print.cfm?prid=39512558>

8/8/2017



Sellaro (DSS) - P's Resp to DSS RFP 3

Neurological Exam																																	
Neurological Present: Normal					2 VM Tot																												
Mental Present: Normal					Int: 4 5 6 = 15																												
<table border="1"> <thead> <tr> <th colspan="2">Pupils</th> <th>Motor</th> <th>Sensory</th> </tr> <tr> <th>Left</th> <th>Right</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>Size: Normal</td> <td>Normal</td> <td>LA: Normal</td> <td>Normal</td> </tr> <tr> <td>React: Reactive</td> <td>Reactive</td> <td>RA: Normal</td> <td>Normal</td> </tr> <tr> <td></td> <td></td> <td>LL: Normal</td> <td>Normal</td> </tr> <tr> <td></td> <td></td> <td>RL: Normal</td> <td>Normal</td> </tr> </tbody> </table>					Pupils		Motor	Sensory	Left	Right			Size: Normal	Normal	LA: Normal	Normal	React: Reactive	Reactive	RA: Normal	Normal			LL: Normal	Normal			RL: Normal	Normal					
Pupils		Motor	Sensory																														
Left	Right																																
Size: Normal	Normal	LA: Normal	Normal																														
React: Reactive	Reactive	RA: Normal	Normal																														
		LL: Normal	Normal																														
		RL: Normal	Normal																														
Airway					Respiratory																												
Status: Patent					Effort: Normal																												
Performed By: Patient					Sounds: L: Clear R: Clear																												
Outcome: Unchanged																																	
Cardiovascular																																	
<table border="1"> <thead> <tr> <th colspan="2">Pulses</th> </tr> <tr> <th>Left</th> <th>Right</th> </tr> </thead> <tbody> <tr> <td>Carotid: Not Checked</td> <td>Not Checked</td> </tr> <tr> <td>Radial: Normal</td> <td>Normal</td> </tr> <tr> <td>Femoral: Not Checked</td> <td>Not Checked</td> </tr> <tr> <td>Dorsalis: Not Checked</td> <td>Not Checked</td> </tr> </tbody> </table>										Pulses		Left	Right	Carotid: Not Checked	Not Checked	Radial: Normal	Normal	Femoral: Not Checked	Not Checked	Dorsalis: Not Checked	Not Checked												
Pulses																																	
Left	Right																																
Carotid: Not Checked	Not Checked																																
Radial: Normal	Normal																																
Femoral: Not Checked	Not Checked																																
Dorsalis: Not Checked	Not Checked																																
Injury Details																																	
Reason for Encounter: Non-Injury																																	
Drugs/Alcohol?: None																																	
Initial Physical Findings																																	
Assessment																																	
Skin: Normal																																	
Skin Findings:																																	
Impression / Diagnosis																																	
System: Not Available																																	
Symptoms: Not Available																																	
Impression: Not Available																																	
Activity																																	
Time	E.R.	S.P.	HR	KA SpO2	Resp	Rhythm	ECG	ECG Method	GLU	CRW																							
Action	E.R. Method	S.P. Method			Resp Effort																												
21:53	91	188 / 71	80	94	16	Normal	(RUC)	4/5/6	460	91																							
arrived on scene and was approached by law enforcement. law enforcement states that the pts wife died earlier today and law enforcement was called out for a welfare check by the coroner. law enforcement states that per the neighbor who happens to be best friends with the pts deceased wife stated that the pt has a hx of dementia. pt is able to answer all questions appropriately. per law enforcement states that the pt stated to them he was unsure and the glucose was 350 mg/dl. law enforcement states that the pt checked his blood sugar. the pt told crew that he took 80 units of insulin a few hours ago. sheriffs department placed the pt under emergency protective custody due to pt not having a caretaker at home any longer. pt denies any chest pain, SOB, abdominal pain, weakness, dizziness, or any nausea/vomiting. no trauma noted.																																	
21:53	91					Normal Sinus Rhythm (RUC)				91																							
Learning rhythm																																	
22:44	89	88 / 70	70	97	16	Normal	(RUC)	4/5/6		91																							
Subo. Cuff																																	
Richland EA notified en route.																																	
21:57	89	111 / 86	81	95	16		(RUC)	4/5/6		92																							

<https://www.emscharts.com/pr/print.cfm?prid=39512558>

8/8/2017

Sellaro (DSS) - P's Resp to DSS RFP 4

Activity										
Time	H.R.	S.P.	MAP	RA SatO2	Resp	Rhythm	OC0	ECG Method	CIU	CRV
	H.R. Method	S.P. Method			Resp Effort					
Activity Comment:										
Note: Off										
care transferred over to staff.										
Normal										

* Assessment made by

Response Factors Affecting Care: None

Scene Factors Affecting Care: None

Transportation Factors Affecting Care: None

Fox, Jennifer: Electronically Signed on 02/28/2016 06:39:01 EST

Adams, Michael: _____

<https://www.emscharts.com/pr/print.cfm?prid=39512558>

8/8/2017

Sellaro (DSS) - P's Resp to DSS RFP 5

Facility Info: Palmetto Health Richland
5 Richland Medical Park
Columbia, SC 29203-

Patient Info: SELLARO, JOSEPH P
1837 CRESTVIEW AVE
COLUMBIA, SC 29223-

MRN: R010231047; B000589425
FIN: R1605900005

Attending Physician: Kyle DO, Tyrone Alexander
Admitting Physician: Kyle DO, Tyrone Alexander

Pt. Age: 68 years
Date of Birth: [REDACTED] 948
CMRN: 000459484

Case Management

Dixon RN, Patricia - 02/28/2016 15:17

DOCUMENT NAME: MCM Interventions
SERVICE DATE/TIME: 2/28/2016 15:47 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: Dixon RN, Patricia (2/28/2016 15:47 EST)
ELECTRONICALLY SIGNED BY: Dixon RN, Patricia (2/28/2016 15:47 EST)

MCM Interventions Entered On: 02/28/2016 16:14
Performed On: 02/28/2016 15:47 by Dixon RN, Patricia



Interventions

MCM Interventions-Patient : Continue to Follow for D/C Needs, Met with Patient/Family
(Comment: Met with patient regarding discharge plans: Pt's states his wife (Irene) died here last night while being treated for "Broken blood vessels in her neck". She states that Richland County Sheriff's department showed up at his home to inform him of his wife's death and brought her here against his will. He says that someone told them (RCSD) that he is unable to care for himself, "which is not true". He states that a doctor came in today and told him that he is being admitted for his safety. Has requested that someone explain this to him; because he has never heard of this. LMSW explained that he is EPC'd, what that means and what happens next. Pt states that he has 3 children who live in different states, and says that he has been unable to inform them of their mother's death as all of their numbers is in her phone. He has called the coroners office to try and retrieve that phone and is awaiting a return call. [Dixon RN, Patricia - 02/28/2016 15:47])

Response To Interventions : Accepting

Behavior Response-Patient : Appropriate, Grieving

MCM Barriers -Particip-Care Decisions : Other: states he has issues with his memory

Dixon RN, Patricia - 02/28/2016 15:47

Discharge Plans

Primary Care Physician : Izard MD, Stephen R

Discharge To, Anticipated : Other: To be determined. Currently EPC

Transportation Home Name : DeRhonda

Discharge Transportation : Friend

Patient Preferred Pharmacies Identified : Yes

Dixon RN, Patricia - 02/28/2016 15:47

DOCUMENT NAME: MCM Interventions
SERVICE DATE/TIME: 2/29/2016 19:31 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: Tate LMSW, Safiya A (2/29/2016 19:31 EST)
ELECTRONICALLY SIGNED BY: Tate LMSW, Safiya A (2/29/2016 19:31 EST)

MCM Interventions Entered On: 02/29/2016 19:41
Performed On: 02/29/2016 19:31 by Tate LMSW, Safiya A



Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: Pt found to have capacity by PSYCH team. Met with pt at bedside to discuss APS case. Pt reports that he is not sure about why he was EPCD and denies DX of dementia. States that he was visited by Naqua Egerton/APS worker

Facility Info: Palmetto Health Richland
5 Richland Medical Park
Columbia, SC 29203-

Attending Physician: Kyle DO, Tyrone Alexander
Admitting Physician: Kyle DO, Tyrone Alexander

Patient Info: SELLARO, JOSEPH P
1837 CRESTVIEW AVE
COLUMBIA, SC 29223-

PL Age: 68 years
Date of Birth: [REDACTED] 948
CMRN: 000469484

MRN: R010231047; S0000689425
FIN: R1605800005

Case Management

today and was informed that they have a hearing on tomorrow. Pt upset because he cannot attend. LMSW attempted to speak with Naqua/528-5345 desk 714-7399 to discuss case, voicemail left--awaiting returned call. Pt explained that he has a home, 4 dogs and was able to care for himself. He does not drive. He has 3 children, none of which will be able to come to SC to pay their respects to mother and or assist father. Joey lives in Kansas, Stevie lives in California/1200 ticket one way and Virginia lives in West Virginia (in a group that does not communicate with outside world--difficult to contact). As a result pt's sister in law Katherine Crawford has come down from New Jersey and covered all of the cremation expenses for pt's wife. Sister will take remains back to NJ and bury wife with family as pt's wished. Dunbar Funeral home managing cremation and arrived to get pt to endorse release of wife's remains to sister. Pt denies vulnerability and feels safe to return home. He is concerned about missing house payments--will reach out to bank/Nationwide to discuss pt's situation. MCM following. [Tate LMSW, Safiya A - 02/29/2016 19:31]

Tate LMSW, Safiya A - 02/29/2016 19:31

DOCUMENT NAME:
SERVICE DATE/TIME:
RESULT STATUS:
PERFORM INFORMATION:
ELECTRONICALLY SIGNED BY:

MCM Interventions
3/1/2016 11:11 EST
Auth (Verified)
Tate LMSW, Safiya A (3/1/2016 11:11 EST)
Tate LMSW, Safiya A (3/1/2016 11:11 EST)

MCM Interventions Entered On: 03/01/2016 11:24
Performed On: 03/01/2016 11:11 by Tate LMSW, Safiya A

Interventions

MCM Interventions-Patient: Continued Assessment

(Comment: Call received from APS/DSS/NaquaEdgerton/cell 528-5345 desk 714-7399 to discuss case. Emergency Protection Custody (EPC) hearing scheduled to take place today at 1:30PM. Medical records faxed (H&P, Psych capacity consult note, med/s, MD progress notes) faxed 714-7301 for presentation at hearing. Following hearing Naqua will call back with ruling (remain in custody vs return home alone). LMSW also discussed fact that pt currently has a mortgage and is concerned about missing payments since he is unable to manage accounts while here at PHR. MCM following. [Tate LMSW, Safiya A - 03/01/2016 11:11]

Tate LMSW, Safiya A - 03/01/2016 11:11

Facility Info: Palmetto Health Richland

5 Richland Medical Park
Columbia, SC 29203-

Attending Physician: Kyle DO, Tyrone Alexander

Admitting Physician: Kyle DO, Tyrone Alexander

Patient Info: SELLARO, JOSEPH P

1837 CRESTVIEW AVE
COLUMBIA, SC 29223-

Pl. Age: 68 years

Date of Birth: 1948

CMRN: 000459484

MRN: R010231047; B000589425

FIN: R1605900005

Case Management

DOCUMENT NAME: MCM Interventions
SERVICE DATE/TIME: 3/2/2016 10:44 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: Tate LMSW, Safiya A (3/2/2016 10:44 EST)
ELECTRONICALLY SIGNED BY: Tate LMSW, Safiya A (3/2/2016 10:44 EST)

MCM Interventions Entered On: 03/02/2016 10:44
Performed On: 03/02/2016 10:44 by Tate LMSW, Safiya A

Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: Voicemail left for APS/DSS/NaquaEdgerton/cell528-5345 desk714-7399 to request an update on status of hearing held on 3.1.16 [Tate LMSW, Safiya A - 03/02/2016 10:44])

Tate LMSW, Safiya A - 03/02/2016 10:44

DOCUMENT NAME: MCM Interventions
SERVICE DATE/TIME: 3/2/2016 18:16 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: Tate LMSW, Safiya A (3/2/2016 18:16 EST)
ELECTRONICALLY SIGNED BY: Tate LMSW, Safiya A (3/2/2016 18:16 EST)

MCM Interventions Entered On: 03/02/2016 18:31
Performed On: 03/02/2016 18:16 by Tate LMSW, Safiya A

Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: Returned call received from APS/Richland County DSS/NaquaEdgerton/cell528-5345 desk714-7399. Judge has ruled that pt remain in custody and found that he is incapable of caring for himself. Ruling was made through reports from police officers who placed pt into Emergency Protective Custody (EPC). Officer stated that pt is unable to administer his own insulin. LMSW inquired about what DSS's discharge plan. Naqua plans to get pt admitted to a Residential Care Facility--HE WILL NEED A 2-STEP PPD. LMSW voiced concern for pt's home (8years left on mortgage, 4 dogs not being tended to and needing to finalize paperwork and affairs following loss of his wife). LMSW inquired about whether or not family coming down with influence courts decision to release pt. Naqua states she needs to discuss this case with her supervisor. Discussed situation with pt. Pt reports that he just wants to leave and stated that one of his sons is trying to get situated to drive down from Kansas. Pt also has family brother/201-437-5741 and sister Karen 570-280-5387 not sure if they will be able to travel down from the north (?NJ). Pt reports that the coroner will deliver his wifes belongings to include cards-food stamp, insurance if to him at hospital. Pt upset has been speaking with AOD and feels like he is being held against his will. Pt encouraged to be pt since APS will have to be notified if pt leaves AMA. Pt voiced understanding. MCM following. [Tate LMSW, Safiya A - 03/02/2016 18:16])

Tate LMSW, Safiya A - 03/02/2016 18:16

DOCUMENT NAME: MCM Interventions
SERVICE DATE/TIME: 3/3/2016 16:16 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: Tate LMSW, Safiya A (3/3/2016 16:16 EST)
ELECTRONICALLY SIGNED BY: Tate LMSW, Safiya A (3/3/2016 16:16 EST)

Patient Name: SELLARO, JOSEPH P

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Print Date/Time: 4/6/2016 13:02 EDT

Facility Info: Palmetto Health Richland
5 Richland Medical Park
Columbia, SC 29203-

Attending Physician: Kyle DO, Tyrone Alexander
Admitting Physician: Kyle DO, Tyrone Alexander

Patient Info: SELLARO, JOSEPH P
1837 CRESTVIEW AVE
COLUMBIA, SC 29223-

Pt. Age: 68 years
Date of Birth: [REDACTED] 1948
CMRN: 000459484

MRN: R010231047; B000589425

FIN: R1605900005

Case Management

MCM Interventions Entered On: 03/03/2016 16:33
Performed On: 03/03/2016 16:16 by Tate LMSW, Safiya A

Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: Pt came to nurses station and explained that when police officers came to his home and removed him--he gave his keys to his neighbor/Karen Outlaw/803-730-2018. The agreement between he and Karen was that Karen look out for the house and let the (4) dogs in and out. Pt stated that he spoke with Karen today and she informed him that she euthanized one of his dogs, sent one to the pound and kept two--"You'll never get them back". Pt very upset and reports he is now concerned about his home. He placed call to Sheriff's dept, they plan to come to hospital and meet with pt. Later his Guardian Ad Litem Victoria Deas-Johnson 803-319-0403 (vdjohnson40@outlook.com) arrived to discuss her role in case. Victoria provided with medical records (H&P, Psych Consult, meds, diabetic education consult note, MD progress note). Victoria explained that she is reviewing case and will meet with DSS staff to discuss pt's best interest. Also is looking forward to meeting with pt's son Joey (planning to come from Kansas City, Minnesota in around 3-9-16). Victoria provided recent court order, copy placed on chart, copy given to AOD Michael and a copy given to pt. MCM following. [Tate LMSW, Safiya A - 03/03/2016 16:16])

Tate LMSW, Safiya A - 03/03/2016 16:16

DOCUMENT NAME:
SERVICE DATE/TIME:
RESULT STATUS:
PERFORM INFORMATION:
ELECTRONICALLY SIGNED BY:

MCM Interventions
3/3/2016 18:32 EST
Auth (Verified)
Tate LMSW,Safiya A (3/3/2016 18:32 EST)
Tate LMSW,Safiya A (3/3/2016 18:32 EST)

MCM Interventions Entered On: 03/03/2016 18:37
Performed On: 03/03/2016 18:32 by Tate LMSW, Safiya A

Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: Richland County Officer MacAdams/803-576-3000 arrived to floor to advise pt on his rights. Officer explained that since pt gave Ms. Outlaw his keys they cannot go and get them back. He also explains that dogs will remain in her car until pt is released. Since pt gave her permission and the keys he has to go back to her to get keys and animals--officers will escort him. Pt advised to have his Guardian ad litem or family go to house to look around to see if any damage has been done to home or if any one has taken any belongings (regardless of whether or not home has been disturbed) pt will need to call Richland County again and they will then take a formal complaint. PT advised to write all of these events down in a chronological order to refer back to. MCM following. [Tate LMSW, Safiya A - 03/03/2016 18:32])

Tate LMSW, Safiya A - 03/03/2016 18:32

DOCUMENT NAME:
SERVICE DATE/TIME:
RESULT STATUS:
PERFORM INFORMATION:
ELECTRONICALLY SIGNED BY:

MCM Interventions
3/4/2016 17:42 EST
Auth (Verified)
Tate LMSW,Safiya A (3/4/2016 17:42 EST)
Tate LMSW,Safiya A (3/4/2016 17:42 EST)

MCM Interventions Entered On: 03/04/2016 17:44
Performed On: 03/04/2016 17:42 by Tate LMSW, Safiya A

Facility Info: Palmetto Health Richland
5 Richland Medical Park
Columbia, SC 29203-

Attending Physician: Kyle DO, Tyrone Alexander
Admitting Physician: Kyle DO, Tyrone Alexander

Patient Info: SELLARO, JOSEPH P
1837 CRESTVIEW AVE
COLUMBIA, SC 29223-

Pl Age: 68 years
Date of Birth: [REDACTED] 948
CMRN: 000459484

MRN: R010231047; B000589425

FIN: R1605900005

Case Management

Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: Call received from is Guardian Ad Litem (GAL) Victoria Deas-Johnson 803-319-0403 to report that pt has been assigned to Attorney ELizabeth Boozer/803-803-0104. GAL office is working to get pt's case dismissed and or get the hearing date moved up. Victoria requested additional documentation to include with Motion being filed today. Information faxed 777-0246, await returned call. [Tate LMSW, Safiya A - 03/04/2016 17:42])

Tate LMSW, Safiya A - 03/04/2016 17:42

DOCUMENT NAME: MCM Interventions
SERVICE DATE/TIME: 3/4/2016 19:52 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: Tate LMSW, Safiya A (3/4/2016 19:52 EST)
ELECTRONICALLY SIGNED BY: Tate LMSW, Safiya A (3/4/2016 19:52 EST)

MCM Interventions Entered On: 03/04/2016 19:54
Performed On: 03/04/2016 19:52 by Tate LMSW, Safiya A

Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: Hearing rescheduled for Monday at 2PM @ Richland County Family court per Victoria/Guardina Ad Litem. Message sent to DSS Case Manager Naqua to share info and see if she plans to escort pt to court. Will consult with AOD to see if this is possible. MCM following. [Tate LMSW, Safiya A - 03/04/2016 19:52])

Tate LMSW, Safiya A - 03/04/2016 19:52

DOCUMENT NAME: MCM Interventions
SERVICE DATE/TIME: 3/7/2016 17:48 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: Tate LMSW, Safiya A (3/7/2016 17:48 EST)
ELECTRONICALLY SIGNED BY: Tate LMSW, Safiya A (3/7/2016 17:48 EST)

MCM Interventions Entered On: 03/07/2016 17:53
Performed On: 03/07/2016 17:48 by Tate LMSW, Safiya A

Interventions

MCM Interventions-Patient : Continued Assessment

(Comment: APS/Richland County DSS/NaquaEdgerton/cell528-5345 desk714-7399 arrived to transport pt home for 1PM court hearing to determine whether or not pt would released from DSS's custody. AMA-Absence Permit endorsed by pt prior to him leaving campus. Hearing held, court ruled in pt's favor and he was released from dss, able to go home independently. Pt and Naqua returned to campus. Pt discharged by Dr. Oladipo. NO additional needs. [Tate LMSW, Safiya A - 03/07/2016 17:48])

Tate LMSW, Safiya A - 03/07/2016 17:48

Discharge Plans

Anticipated Discharge Date : 3/7/2016

Primary Care Physician : IZARD MD, Stephen R

Discharge To, Anticipated : Home independently, Other:

1. STATE OF SOUTH CAROLINA
2. COUNTY OF RICHLAND

IN THE FAMILY COURT

4. SOUTH CAROLINA
5. DEPARTMENT OF SOCIAL
6. SERVICES,

Plaintiff,

-vs-

TRANSCRIPT OF RECORD

16-DR-40-869

Defendants.

9. IN THE INTEREST OF:
10. Joseph Sellarro (

11. A Vulnerable Adult.

12.
13. March 1, 2016
14. Columbia, South Carolina

15.
16. B E F O R E:

17. HONORABLE JAMES G. MCGEE III, Judge.

18.
19. A P P E A R A N C E S:

20. SCOTT D. SPIVEY, Esquire
21. Attorney for the Plaintiff

22.
23.
24. L. COCONUT PANTSARI, RPR
25. Family Court Reporter

PLAINTIFF'S
EXHIBIT

8

5-17-2022

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INDEX OF WITNESSES

<u>WITNESSES:</u>	<u>PAGE</u>
BEN BOLDING	
Direct By Mr. Spivey	4

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 March 1, 2016.)

3 THE COURT: Call your case, Mr. Spivey.

4 MR. SPIVEY: Thank you, Your Honor. Your
5 Honor, this is the Department of Social Services versus
6 Joseph Sellaro. It's 2016-DR-40-869.

7 Your Honor, here with me is Valerie McDaniel
8 with the Department of Social Services. Also here from
9 the Richland County Sheriff's Office is Mr. Ben Bolding.

10 THE COURT: Mr. Bolding, good to see you, sir.

11 MR. SPIVEY: Your Honor, this is an adult
12 protective services case. Just very briefly, the
13 caregiver of this adult was killed; and he has nobody to
14 care for him. If you want some brief testimony?

15 THE COURT: No, I saw the pleadings. I read
16 them. The caregiver was killed, it appears, very
17 recently, February 27th; is that correct?

18 MR. SPIVEY: Yes, Your Honor. I believe it
19 was Saturday.

20 THE COURT: Yes, I guess we better have some
21 testimony since I don't see a veteran case. Just
22 briefly, she can testify or Mr. Bolding can testify from
23 right there.

24 Who do you want to testify?

25 MR. SPIVEY: Mr. Bolding, please, Your Honor.

1 THE COURT: Mr. Bolding, would you stand,
2 please, sir, and raise your right hand.

3 BEN BOLDING, being
4 first duly sworn, testifies as follows:

5 THE COURT: Yes, sir, Mr. Spivey.

6 DIRECT EXAMINATION

7 BY MR. SPIVEY:

8 Q Mr. Bolding, where do you work?

9 A The Richland County Sheriff's Department.

10 Q Can you tell me about the involvement you had with
11 Mr. Joseph Sellaro?

12 A Yes. One of my coworkers, Investigator Reggie
13 Gamon, we have on-call shifts. He was on call that
14 night and was requested to come out in reference to
15 this case.

16 He actually went to the home and was able to
17 make contact with Mr. Joseph Sellaro as the coroner
18 was notifying him about the death of his wife. At
19 that time they began to ask him questions about his
20 ability to take care of himself.

21 Everything that was asked of him he was unable
22 to -- they determined at that time he was unable to
23 take care of himself, that the wife who was
24 deceased was the actual caregiver.

25 At that time he was placed into emergency

1 protective custody, as we could not get a hold of
2 any family member who was willing to come take care
3 of him.

4 THE COURT: I read in the complaint that, I
5 believe, he has a son, Mr. George Chip Miller, in
6 California; is that correct?

7 THE WITNESS: Yes, sir.

8 THE COURT: And y'all still have not been able
9 to contact him since the filing of these pleadings?

10 THE WITNESS: No, sir.

11 THE COURT: Thank you so much.

12 THE COURT: I will find that Mr. Joseph
13 Sellaro is a vulnerable adult and that protective
14 custody shall be placed with the South Carolina
15 Department of Social Services. It was filed that such
16 protection and assistance and placement is required;
17 shall have access to all his necessary records, with the
18 hearing on the merits to be held within 40 days. Thank
19 you so much.

20 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Family Court for Richland County, South Carolina, on the 1st day of March, 2016.

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

March 14, 2016

s/L.Coconut Pantsari

Court Reporter

**ITEMIZED STATEMENT
OF CHARGES**

TYPE OF BILL	DATE OF BILL	PAGE NO.

PATIENT NAME	PATIENT NUMBER	SEX	AGE	ADMISSION DATE	DISCHARGE DATE	DAY
JOSEPH P SELLARO	1605900005	M	68Y	02/28/16	03/07/16	

PLEASE RETAIN
FOR YOUR
RECORDS

NAME AND ADDRESS	JOSEPH P SELLARO 1837 CRESTVIEW AVE COLUMBIA SC 29223

DATE	ITEM NO.	DESCRIPTION	ORDER NO.	QTY.	UNIT PRICE	TOTAL CHARGE
	0270	MED/SUR SUPPLIES				0.00
	0301	LAB/CHEMISTRY				164.00
	0305	LAB/HEMATOLOGY				170.00
	0307	LAB/UROLOGY				130.00
	0410	RESPIRATORY SVC				252.00
	0450	EMERGENCY ROOM				1862.00
	0637	SELF ADMINISTERED DRUGS				6713.00
	0762	OBSERVATION ROOM				0.00
	0999	UNIDENTIFIED				0.00
		TOTAL CHARGES				9291.00

PATIENT NUMBER
1605900005

PLEASE REFER TO PATIENT
NUMBER ON ALL INQUIRIES
AND CORRESPONDENCE.

PLEASE RETAIN FOR YOUR RECORDS



IN THE FAMILY COURT OF THE
FIFTH JUDICIAL CIRCUIT
DOCKET: 2016-DR-40-0369

**SEVENTY-TWO HOUR HEARING
ORDER
(§43-35-55(F))
(Adult Protective Services)**

PRESIDING JUDGE:
DATE OF HEARING:
ATTORNEY FOR PLAINTIFF:
RICHLAND COUNTY DSS:
COURT REPORTER:
ALSO PRESENT:
INVESTICATOR

The Honorable *JAMES MCGEE*
March 1, 2016
Scott Spivey, Esquire
Valerie Lawton-McDaniel
COCONUT PARTSARI
RICHLAND COUNTY
SHERIFF'S OFFICE

This matter came before the Court for a Probable Cause Hearing pursuant to S.C.Code Ann. §43-35-55 (F) (Supp.2012).

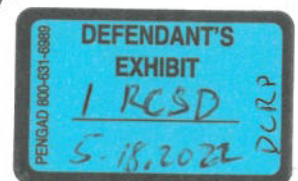
The Court has jurisdiction over this matter pursuant to S.C.Code Ann. §43-35-10 *et seq.* (Supp.2012). Appearances were as listed above.

Based upon the testimony and evidence presented, I make the following.

FINDINGS OF FACT AND CONCLUSION OF LAW

1. Plaintiff is the agency charged with the duty of providing for the protection of vulnerable adults, as defined in S.C. Code Ann. § 43-35-10, et seq.

331-0980 DE



2. The adult is a resident and citizen of Richland County living at 1837 Crestview Avenue, Columbia, SC 29223.

3. On February 27, 2016, Richland County Department of Social Services received an allegation stating that the adult, Joseph Sellaro, had been reported to have dementia, heart issues, a pacemaker, asthma, diabetes, depression and could be combative. It was stated that the primary caregiver, Eileen Sellaro, passed away in an automobile accident on February 27, 2016. It was further stated that Joseph Sellaro was unable to demonstrate his ability to take medications, provide medical provider's name, or prepare meals. The nearest relative resides in North Carolina, who is the sister of the deceased. The son, George "Chip" Miller, allegedly resides in California, and efforts to reach him have been unsuccessful. Mr. Sellaro was taken into Emergency Protective Custody, on February 27, 2016, due to his inability to care for himself.

Mr. Sellaro is currently at Palmetto Richland Memorial Hospital having evaluations completed. He is alert and responsive, but shows signs of confusion. He is able to ambulate without the use of a cane, walker or wheelchair. Mr. Sellaro requires assistance with some of his Activities of Daily Living and Instrumental Activities of Daily Living, such as taking medications, meal preparation, shopping, medical appointments and transportation.

4. The above facts clearly establish that there was ample probable cause for taking the adult, Joseph Sellaro, into Emergency Protective Custody, and probable cause remains for Plaintiff being ordered to have custody of a pending Merits Hearing. Based on the above information, Joseph Sellaro, is a vulnerable adult, as defined by S.C. Code Ann. § 43-35-10 (11) (Supp. 2012), as he is a person eighteen (18) years of age or older who is impaired in his ability to adequately provide for his own care and protection, and Joseph Sellaro is not being adequately cared for by others.

5. By reason of the foregoing, there exists a substantial risk to Joseph Sellaro's comfort, and his life may be in danger if protective services are not provided.

6. Plaintiff should be granted temporary legal custody of Joseph Sellaro and should

Handwritten signature and initials, possibly "JH" and "2", in the bottom right corner of the page.

be granted the right to provide for and to authorize such routine and/or emergency medical care as may be required.

7. Plaintiff should be granted access to any and all records concerning the vulnerable adult as may be necessary, supplemental to those already authorized by S.C.Code Ann. § 43-35-20 (Supp.2012).

8. The Richland County Clerk of Court should appoint the above named vulnerable adult a Guardian *ad Litem* and an attorney within ten (10) days of the date of this Order.

9. The Merits Hearing in this matter should be held at the Richland County Courthouse on April 7, 2016 11:30 A.M.

10. Any and all governmental benefits payable for the benefit of Joseph Sellaro should be redirected to Plaintiff.

Therefore, based upon the Court's findings of law and fact,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows, to wit:

1. Plaintiff is granted temporary legal custody of Joseph Sellaro and is granted the right to provide for and to authorize such routine and/or emergency medical care as may be required.

2. Plaintiff is granted access to any and all records concerning the vulnerable adult as may be necessary, supplemental to those already authorized by S.C.Code Ann. § 43-35-20.

3. The Richland County Clerk of Court shall appoint the above named vulnerable adult a Guardian *ad Litem* and an attorney within ten (10) days of the date of this Order.

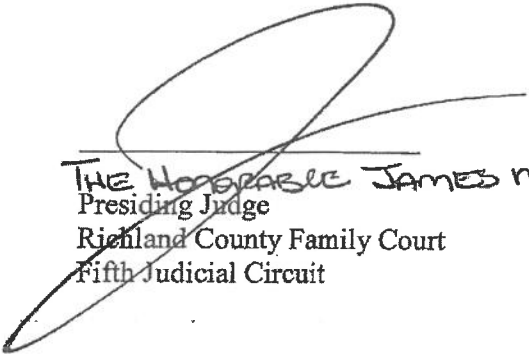
4. The Merits Hearing in this matter shall be held at the Richland County Courthouse on April 7, 2016 11:30 A.M.

5. Any and all governmental benefits payable for the benefit of Joseph Sellaro should be redirected to Plaintiff.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'J. S. Sellar', is located in the lower right corner of the page.

Columbia, South Carolina
March 1, 2016



THE HONORABLE JAMES MCGEE
Presiding Judge
Richland County Family Court
Fifth Judicial Circuit



71 WEST Nephrology

3 Richland Medical Park Street Columbia, South Carolina 29203

PalmettoHealth.org

F A X T R A N S M I T T A L

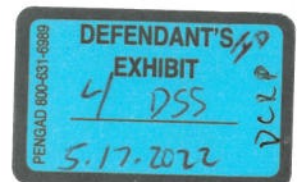
Confidential Health Information

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TO: <u>Naqua</u>	MESSAGE: _____
DEPARTMENT: <u>APS</u>	Patient: _____
COMPANY: <u>DSS - Richland</u>	☐ Face Sheet
FAX: <u>803-714-7301</u>	☐ H&P
TELEPHONE: _____	☐ Medications
	☐ MD Progress Notes
	☐ Consultation Notes
PAGES INCLUDING	☐ Rehab
COVER SHEET	o PT
	o OT
	o SLP
FROM: <u>Sallya Tate, LMSW 803-530-9769</u>	☐ PPD Results
FAX: <u>803-434-6060</u>	☐ Passer
TELEPHONE: <u>UNIT-803-434-7700 or CELL 803-530-9769</u>	☐ Transfer Summary
	☐ Other _____

Note:

If you are not the intended recipient and you have received this communication in error, please immediately notify us by telephone and destroy the related message.



Sellaro (DSS) - RFP Resp 29

History & Physical

SELLARO, JOSEPH P - R010231047

* Final Report *

Result type: History & Physical
 Result date: 28 February 2016 11:55
 Result status: Auth (Verified)
 Result title: HIM History & Physical
 Performed by: Grinton PA, Katherine D on 28 February 2016 12:47
 Verified by: Kyle DO, Tyrone Alexander on 28 February 2016 13:04
 Encounter info: R1605900005, Richland, OIR- Outpatient in Bed, 02/28/16 -

* Final Report *

HIM History & Physical

Patient: SELLARO, JOSEPH P MRN: R010231047 FIN: R1605900005
 Age: 68 years Sex: Male DOB: [REDACTED]
 Associated Diagnoses: None
 Author: Grinton PA, Katherine D

Basic Information

Mr. Sellaro was seen and evaluated in the yellow zone today at 1030 and staffed by Dr. Kyle, Attending
 Mr. Sellaro & chart review are sources of history

Chief Complaint

My wife died last night and these men brought me to the hospital

History of Present Illness

Mr. Sellaro is a 68 yo male with PMHx notable for CHF with EF of 30%, s/p ICD placement, PVD, HCV, orthostatic hypotension, POEMS, and DM type 2 who presented to PHR ED under DSS emergency protective custody order. Per report, patient's wife died in a MVC yesterday and she was his primary caregiver. Concerns were reportedly expressed that the patient would be unable to care for himself following her death as he carries a diagnosis of dementia. A DSS case was opened and an emergency protective order was issued and the patient was brought in for evaluation and monitoring.

During interview and exam today, patient is appreciated to be alert, oriented, and conversationally appropriate. He is able to discuss events of last night—aware that wife has died—and how he got to the hospital. He is oriented to self, birthdate, location (hospital/city/state), date (month, day of week, year, just had a birthday), and much of his medical history. He denies that he has dementia. Wants to go home but willing to stay if recommended. His blood glucose was elevated at 381 when he arrived. Per chart review, appears he has had issues medical therapy non-adherence in the past and problems with syncope and falls related to orthostatic hypotension. HIM consulted for social admission.

Histories

Past Surgical History

Aortic/bic bypass, cholecystectomy.

Past Medical History

Reviewed in chart.

Follows with Dr. Marom at Midlands Internal Medicine. Dr. Postis for GI/HCV on Harvon.

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 Printed on: 03/01/16 09:36

Page 1 of 5
 (Continued)

History & Physical

SELLARO, JOSEPH P - R010231047

* Final Report *

Social History

Retired and living at home with his wife until her sudden death yesterday. Adult children reportedly live out of state. Smoking 10 cigs/day. No EtOH per patient. No illicit.

Family History

Colon cancer.

Health Status

Allergies:

Allergies (4) Active

amoxicillin

Chantix

Lithium Carbonate

Peanuts

Reaction

None Documented

None Documented

None Documented

asthma

Review of Systems

10 point ROS conducted and recorded in the chart; negative unless otherwise mentioned in HPI

Physical Examination

VS/Measurements

Vitals Signs (last 24 hrs)		Last Charted		Minimum		Maximum	
Temp	98.1	(FEB 28 08:00)		98.1	(FEB 28 08:00)	98.4	(FEB 28 00:12)
Heart Rate	82	(FEB 28 08:00)		82	(FEB 28 08:00)	88	(FEB 28 04:00)
Resp Rate	20	(FEB 28 08:00)		18	(FEB 28 00:12)	20	(FEB 28 00:12)
SBP	125	(FEB 28 08:00)		112	(FEB 28 04:00)	126	(FEB 28 00:12)
DBP	66	(FEB 28 08:00)		62	(FEB 28 04:00)	67	(FEB 28 00:12)

On exam, Mr. Sellaro is awake, alert, and sitting up in bed in no distress

Head is NC/AT

Sclera are clear/non-icteric

Oropharynx is pink/moist

Neck is supple w/o lymphadenopathy

Heart is RRR

Lungs are grossly CTAB

Abd soft, ntp, +BS

LE are w/o pitting edema; chronic venous stasis changes. Dressings over toes; not removed per patient preference

Review / Management

Results review:

Labs (Last four charted values)

WBC 8.7 (FEB 28)

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Page 2 of 5
(Continued)

History & Physical

SELLARO, JOSEPH P - R010231047

* Final Report *

Hgb	14.0	(FEB 28)
Hct	40.3	(FEB 28)
Plt	L 160	(FEB 28)
Na	L 134	(FEB 28)
K	4.4	(FEB 28)
CO2	30	(FEB 28)
Cl	L 98	(FEB 28)
Cr	0.9	(FEB 28)
BUN	17	(FEB 28)
Glucose	H 381	(FEB 28)
Ca	L 8.1	(FEB 28)

Impression and Plan

1. Social admission:

-Patient brought to hospital under emergency protective custody for concern that he is unable to care for himself at home following his wife's sudden death day prior

-EPC paperwork on the chart

-Will need psychiatry consultation to assess his capacity for decision making given reported diagnosis of dementia. Also need to discuss patient w/ PCP to follow-up on his dementia diagnosis/severity/management, etc.

-CM/SW involved

2. DM type 2:

-Per notes from HIE, patient on Lantus 80 units daily

-Continue Lantus at 45 units plus add SS1 coverage and titrate up accordingly

3. HCV:

-Reportedly on Harvoni outpatient. Follows w/ Dr. Pestic

4. Orthostatic hypotension

5. Cardiomyopathy with EF 30%

6. PVD s/p bypass grafting

7. Putative dementia

8. Tobacco use

-Nicotine patch

9. Chronic constipation:

-Miralax daily

10. Recent infection of great toe

11. Peripheral neuropathy

-Gabapentin & Elavil reportedly outpatient

12. POEM Syndrome

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Printed on: 03/01/16 09:38

Page 3 of 5
(Continued)

History & Physical**SELLARO, JOSEPH P - R010231047**

* Final Report *

FEN: ADA diet

11. PPX: Ambulatory

Full Code presumptive.

Admit to HIM in outpatient in a bed status given ongoing SW issues

Rest per Dr. Kyle's addendum

Teaching Attestation

Patient evaluated and chart reviewed in conjunction with PA. Agree with the above findings. Please see my note for any additions.

68 yo WM presenting as a social admit with a DSS case pending. Mr. Sellaro recently lost his wife in a car accident. Apparently his wife is his primary caregiver per ED report. DSS was concerned that he would be unable to care for himself, so they requested admission. Per the patient's report; he finds it more convenient to have all his care and daily needs met through his wife (ie driving, shopping, etc), but that he is perfectly capable of taking care of himself. He is concerned about making funeral arrangements. He is able to tell me his medical history and some medicines that he is on. He is A&O x 3. He has agreed to be admitted ON for obs. We will contact his PCP in the AM. We are trying to contact family and will continue. We will get a psych consult for competency. Resume home meds as appropriate. Remainder as above.

Physical Exam:

General: 68 yo WM resting in bed in NAD
HEENT: NC/AT, PERRLA, nares patent w/o discharge, oropharynx clear, neck supple
CV: RRR, +S1, S2, no m/r/t
Pulm: some minor expiratory wheeze
GI: BS+, NDNT
MSK: No e/c/c, multiple tattoos noted
Neuro: A&O x 3, no focal deficits

60 minutes spent on the coordination of this admission.

Tyrone Alexander Kyle, D.O.
Richland Hospital Internal Medicine

Signature Line

Electronically Signed & Verified on 02/28/2016 12:47
by Grinton PA, Katherine D

Electronically Signed & Verified on 02/28/16 13:04
by Kyle DO, Tyrone Alexander

Completed Action List:

- * Perform by Grinton PA, Katherine D on 28 February 2016 12:47
- * Sign by Grinton PA, Katherine D on 28 February 2016 12:47
- * Modify by Kyle DO, Tyrone Alexander on 28 February 2016 13:04
- * Sign by Kyle DO, Tyrone Alexander on 28 February 2016 13:04 Requested by Grinton

Printed by: Tate LMSW, Safiya A
Printed on: 03/01/16 09:36

Page 4 of 5
(Continued)

History & Physical

SELLARO, JOSEPH P - R010231047

*** Final Report ***

PA, Katherine D on 28 February 2016 12:47

*** VERIFY by Kyle DO, Tyrone Alexander on 28 February 2016 13:04**

Printed by: Tate LMSW, Safiya A
Printed on: 03/01/16 09:38

Page 5 of 5
(End of Report)

Consultation Report

SELLARO, JOSEPH P - R010231047

* Final Report *

Result type: Consultation Report
 Result date: 29 February 2016 12:17
 Result status: Auth (Verified)
 Result title: Psychiatry C/L f/u
 Performed by: Brandenburg MD, Jeffery H on 29 February 2016 12:19
 Verified by: Brandenburg MD, Jeffery H on 29 February 2016 12:19
 Encounter info: R1605800005, Richland, CIR- Outpatient in Bed, 02/28/16 -

* Final Report *

Psychiatry C/L f/u

Patient: SELLARO, JOSEPH P MRN: R010231047 FIN: R1605800005
 Age: 68 years Sex: Male DOB: [REDACTED]
 Associated Diagnoses: None
 Author: Brandenburg MD, Jeffery H

Subjective

Patient was seen this morning on rounds and case discussed with staff. He is pleasant and cooperative and see no short term memory deficits.
 See student note for details.

Health Status

Allergies:

Allergies (4) Active	Reaction
amoxicillin	None Documented
Chantix	None Documented
Lithium Carbonate	None Documented
Peanuts	asthma

Current medications:

Medications (21) Active

Scheduled: (14)

adult non-pregnant hypoglycemic management guidelines 1 ea, MISC, daily
 adult non-pregnant subcutaneous insulin guidelines 1 ea, MISC, daily
 amitriptyline 50mg tab 100 mg 2 tab, PO, HS
 budesonide 50mcg-formoterol 4.5mcg/inh 8.9gram 2 puff(s), INH, 2xdaily
 docosate sodium 100mg cap 100 mg 1 cap, PO, 2xdaily
 insulin glargine 100 units/mL 3mL Solostar Pen 45 units 0.45 mL, SUBQ, HS
 insulin human regular 100units/mL, Inj 3mL 5 units 0.05 mL, IV, OT
 insulin regular 300 units 3 mL, MISC, OT
 melatonin 5mg orally disintegrating tab 5 mg 1 soltab, PO, HS
 metoprolol succinate 12.5mg/0.5 XL tab *POB 12.5 mg 0.5 XLtab, PO, daily
 mirtazapine 30mg tab 30 mg 1 tab, PO, HS
 nicotine 14mg / 24hr patch 14 mg 1 patch, TOP, OT
 polyethylene glycol powder 17 gram 17 g 1 pckt, PO, daily
 pregabalin 100 mg cap 100 mg 1 cap, PO, 3xdaily

Printed by: Tale LMSW, Safiya A
 Printed on: 03/01/16 09:37

Page 1 of 3
 (Continued)

Consultation Report**SELLARO, JOSEPH P - R010231047***** Final Report *****Continuous: (0)****PRN: (7)**

acetaminophen 325mg tab 650 mg 2 tab, PO, q4hr(s)
albuterol HFA 90 mcg/inh 8gram (Ventolin HFA) 180 mcg 2 puff(s), INH, q4hr(s)
dextrose 50% inj 50mL prefilled syringe 12.5 g 25 mL, IV, On call
dextrose 50% inj 50mL prefilled syringe 25 g 50 mL, IV, On call
glucagon recombinant 1mg inj 1 mg, IM, On call
insulin aspart 100 units/mL FlexPen 3mL Medium Dose Algorithm, SUBQ, As Directed
ondansetron 2mg/mL inj 2mL 4 mg 2 mL, IV, q6hr(s)

Problem list:Medical

cirrhosis / Confirmed

Polyarthropathy / 716.50 / Confirmed

Obesity / 278.00 / Confirmed

BENIGN ESSENTIAL HYPERTENSION / 401.1 / Confirmed

Depression / 311 / Confirmed

PVD (peripheral vascular disease) / 443.9 / Confirmed

Consultation Report

SELLARO, JOSEPH P - R010231047

* Final Report *

Continuous: (0)

PRN: (7)

acetaminophen 325mg tab 650 mg 2 tab. PO, q4hr(s)
 albuterol HFA 90 mcg/inh 8gram (Ventolin HFA) 180 mcg 2 puff(s), INH, q4hr(s)
 dextrose 50% inj 50mL prefilled syringe 12.5 g 25 mL, IV, On call
 dextrose 50% inj 50mL prefilled syringe 25 g 50 mL, IV, On call
 glucagon recombinant 1mg inj 1 mg, IM, On call
 Insulin aspart 100 units/mL FlexPen 3mL Medium Dose Algorithm, SUBQ, As Directed
 ondansetron 2mg/mL inj 2mL 4 mg 2 mL, IV, q4hr(s)

Problem list:

Medical

cirrhosis / Confirmed
 Polyarthropathy / 716.50 / Confirmed
 Obesity / 278.00 / Confirmed
 BENIGN ESSENTIAL HYPERTENSION / 401.1 / Confirmed
 Depression / 311 / Confirmed
 PVD (peripheral vascular disease) / 443.8 / Confirmed
 Asthma / 493 / Confirmed
 Anxiety / 300.00 / Confirmed
 Diabetes / 250.00 / Confirmed
 Hepatitis C / 070.70 / Confirmed
 MGUS (monoclonal gammopathy of unknown significance) / 273.1 / Confirmed
 POEMS syndrome / 131522014 / Confirmed
 Dementia / 294.8 / Confirmed
 Cholelithiasis without obstruction / 574.20 / Confirmed
 Cirrhosis of liver / 571.5 / Confirmed,

Active Problems (18)

Anxiety
 Asthma
 At risk for falls
 At risk of pressure sore
 At risk of venous thromboembolus
 BENIGN ESSENTIAL HYPERTENSION
 Cholelithiasis without obstruction
 cirrhosis
 Cirrhosis of liver
 Dementia
 Depression
 Diabetes
 Hepatitis C
 MGUS (monoclonal gammopathy of unknown significance)
 Obesity
 POEMS syndrome
 Polyarthropathy
 PVD (peripheral vascular disease)

Printed by: Tate LMSW, Safiya A
 Printed on: 03/01/16 09:37

Page 2 of 3
 (Continued)

Consultation Report

SELLARO, JOSEPH P - R010231047

" Final Report "

Objective

Psychiatric: Cooperative. Appropriate mood & affect. Patient alert and oriented grossly.

Abnormal / Psychotic thoughts: No auditory or visual hallucinations noted. Patient does not appear to be responding to internal stimuli. No delusions. No homicidal ideation. No suicidal ideation.

Thought process: Appropriate.

Review / Management

Results review

Impression and Plan

Diagnosis:

Axis I:Hx depression

Axis II:df

Problem List/Plan:

1. I feel he has capacity to make own healthcare decisions.
2. Continue Remeron/Elavil
3. I see no evidence of dementia

Professional Services

1 hour

Signature Line

Electronically Signed & Verified on 02/29/2016 12:19
by Brandenburg MD, Jeffery H

Completed Action List:

- * Perform by Brandenburg MD, Jeffery H on 29 February 2016 12:19
- * Sign by Brandenburg MD, Jeffery H on 29 February 2016 12:19
- * VERIFY by Brandenburg MD, Jeffery H on 29 February 2016 12:19

Printed by: Tate LMSW, Safiya A
Printed on: 03/01/16 09:37

Page 3 of 3
(End of Report)

Physician Progress Notes

SELLARO, JOSEPH P - R010231047

* Final Report *

Result type: Physician Progress Notes
Result date: 29 February 2016 15:19
Result status: Auth (Verified)
Result title: Progress/SOAP Note
Performed by: Henderson DO, Nathan A on 29 February 2016 15:20
Verified by: Henderson DO, Nathan A on 29 February 2016 15:20
Encounter info: R1605900005, Richland, OIR- Outpatient In Bed, 02/28/16 -

*** Final Report ***Subjective

no complaints
trying to find his wife's body. (legit)
admitted d/t EPC/DSS case

ObjectiveVitals & Measurements

T: 97.1 °F (Oral) TMIN: 97.1 °F (Oral) TMAX: 98.9 °F (Oral) RR: 16 BP: 156/104 SpO2: 94% WT: 102 kg

Physical Exam

NAD
CV reg
CTAB
abd soft
oriented

Lab ResultsDiagnostic ResultsAssessment/Plan

1. Hospital admission due to social situation
2. Depression
3. Diabetes
4. MGUS (monoclonal gammopathy of unknown significance)
5. POEMS syndrome
6. PVD (peripheral vascular disease)

Orders:

Consult Occupational Therapy
Consult Physical Therapy
Wound Care
await EPC/DSS situation.

no medical necessity for inpt care.
wife passed away in MVC thursday.

Signature Line (Verified)

Electronically Signed & Verified on 02/29/2016 15:20
by Henderson DO, Nathan A

Completed Action List: (Verified)

* Sign by Henderson DO, Nathan A on 29 February 2016 15:20

Printed by: Tate LMSW, Saffiya A
Printed on: 03/01/2016 09:37

Page 1 of 2
(Continued)

803 434 6060

22:51:17 03-01-2016 11/12

Physician Progress Notes

*** Final Report ***

SELLARO, JOSEPH P - R010231047

- * VERIFY by Henderson DO, Nathan A on 29 February 2016 15:20
- * Perform by Henderson DO, Nathan A on 29 February 2016 15:20

Printed by: Tate LMSW, Safiya A
Printed on: 03/01/2016 09:37

Page 2 of 2
(End of Report)

Sellaro (DSS) - RFP Resp 40

Medication List

Patient : SELLARO, JOSEPH P
Address : 1837 CRESTVIEW AVE
COLUMBIA, SC 29223
Phone :

Med Rec # : R010231047
DOB : [REDACTED]
Sex : Male
Physician : Izard MD, Stephen R

All Active Medications

Medications

nicotine (nicotine patch)

7 mg, = 1 patch, Patch, TOP, daily, Routine, Start Date: 03/01/16 6:00:00

1 Rx Adult Non-Preg Hypoglycemia Management Guidelines (Adult Non-Preg Hypoglycemia Management Guidelines)

See Reference Text., daily, Start Date: 02/29/16 6:00:00

1 Rx Adult Non-Preg Insulin Guidelines (Adult Non-Preg Insulin Guidelines)

See Reference Text, daily, Start Date: 02/29/16 6:00:00

polyethylene glycol 3350 (Miralax)

17 g, = 1 pkt, Pbd, PO, daily, Routine, Start Date: 02/29/16 6:00:00

amitriptyline

100 mg, = 2 tab, Tab, PO, HS, Routine, Start Date: 02/28/16 21:00:00

insulin glargine (Lantus)

45 units, = 0.45 mL, Inj, SUBQ, HS, Routine, Start Date: 02/28/16 21:00:00

solatol

5 mg, = 1 soltab, Soltab, PO, HS, Routine, Start Date: 02/28/16 21:00:00

mirtazapine (Remeron)

30 mg, = 1 tab, Tab, PO, HS, Routine, Start Date: 02/28/16 21:00:00

docusate (Colace)

100 mg, = 1 cap, Cap, PO, 2xdaily, Routine, Start Date: 02/28/16 18:00:00

pregabalin (Lyrica)

100 mg, = 1 cap, Cap, PO, 3xdaily, Routine, Start Date: 02/28/16 14:00:00

glucagon

1 mg, Inj, IM, On call, PRN, Blood Glucose, Recheck blood glucose in 15 mins, if < 70 mg/dL, repeat treatment. As directed per Hypoglycemia Guidelines, Routine, Start Date: 02/28/16 13:01:00

glucose (Dextrose 50% Abboject)

12.5 g, = 25 mL, Inj, IV, On call, PRN, Blood Glucose, Administer for blood glucose 50 to 69 mg/dL. Recheck blood glucose in 15 mins. If < 70 mg/dL, repeat treatment. As directed per Hypoglycemia Guidelines., Routine, Start Date: 02/28/16 13:01:00

glucose (Dextrose 50% Abboject)

25 g, = 50 mL, Inj, IV, On call, PRN, Blood Glucose, Administer for blood glucose below 50 mg/dL. Recheck blood glucose in 15 mins. If < 70 mg/dL, repeat treatment. As directed per Hypoglycemia Guidelines, Routine, Start Date: 02/28/16 13:01:00

insulin aspart (Novolog - Correction Algorithm)

Medium Dose Algorithm, Inj, SUBQ, As Directed, PRN, Blood Glucose, PHYSICIAN ONLY TO ADJUST Medium Dose Algorithm: DO NOT HOLD UNLESS ORDERED BY PHYSICIAN, Routine, Start Date: 02/28/16 13:01:00

albuterol (albuterol HFA MDI)

180 mcg, = 2 puff(s), Inh, INH, q4hr(s), PRN, Wheezing, NURSING TO ADMINISTER AND DOCUMENT, Routine, Start Date: 02/28/16 13:00:00

budesonide-formoterol (Symbicort 80mcg/4.5mcg MDI)

2 puff(s), Inh, INH, 2xdaily, NURSING TO ADMINISTER AND DOCUMENT, Routine, Start Date: 02/28/16 13:00:00

acetaminophen (Tylenol)

650 mg, = 2 tab, Tab, PO, q4hr(s), PRN, Other (see Instructions), mild pain or temp greater than 101.5 F, Routine, Start Date: 02/28/16 12:46:00

ondansetron (Zofran)

4 mg, = 2 mL, Inj, IV, q6hr(s), PRN, Nausea and Vomiting, Routine, Start Date: 02/28/16 12:46:00

metoprolol (Toprol-XL)

12.5 mg, = 0.5 XLtab, XL Tablet, PO, daily, Routine, Start Date: 02/28/16 6:00:00

Print by : Tate LMSW, Safiya A

Printed : 03/01/16 09:37

(end of report)

Page 1 of 1

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2018-CP-40-04835
)
)
)
)
)
)
Joseph P. Sellaro) TRANSCRIPT OF RECORD
vs.)
The South Carllina Department)
of Social Services and Richland)
County Sheriff's Department) Via WebEx
DEFENDANT) July 28, 2022

B E F O R E:

THE HONORABLE ROBERT E. HOOD.

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

KARL S. BREHMER, ESQ
PAIGE B. GEORGE, ESQ.
Attorneys for the Plaintiff

ANDREW F. LINDEMAN, ESQ.
LAKE SUMMERS, ESQ.
ROBERT GARFIELD, ESQ.
Attorneys for the Defendants

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

1 THE COURT: So we are on the record of Joseph
2 Sellaro vs. DSS civil action 2018-CP-40-4835. Let's see I
3 have Mr. Brehmer and Ms. George who are here for the
4 plaintiff's. And Mr. Summers and Mr. Lindemann who are
5 here for DSS. Mr. Sellaro had a trial before the Court.
6 I'm not sure maybe back in May has it been that long, May
7 of 2022 here in Richland County. He had sued DSS and
8 Richland County Sheriff's Department or the sheriff or
9 however it is you say the official term for whatever the
10 legal entity is. At the end of the trial, the sheriff was
11 found not liable and DSS was found liable, and the jury
12 returned a verdict for \$300,000 against DSS in favor of
13 Mr. Sellaro. And at which point in time DSS filed a
14 motion notwithstanding the verdict or a new trial absolute
15 or a new trial nisi remittitur and requested a hearing on
16 those posttrial motions. So we are here today on those
17 posttrial motions and let's see who's talking for DSS.

18 MR. LINDEMANN: I will be, your Honor.

19 THE COURT: Okay. Mr. Lindemann. Welcome, hope
20 you're doing well.

21 MR. LINDEMANN: Thank you, your Honor. Hope you
22 are doing well too.

23 THE COURT: Doing good. Doing good. All right,
24 whenever you're ready.

25 MR. LINDEMANN: All right. Thank you, Your

1 Honor. May it please the Court, your Honor. Along with
2 Lake Summers, I represent the South Carolina Department of
3 Social Services. As your Honor introduced the motions,
4 there are a number of posttrial motions that had been
5 filed in this case, and we definitely appreciate the Court
6 scheduling a hearing on those. I would start with the
7 motion for judgment notwithstanding the verdict.

8 As your Honor's aware, there were two causes of
9 action that went to the jury a negligence cause of action
10 as well as a false imprisonment cause of action. I mean,
11 our position is those causes of action are essentially
12 duplicative, and I'll explain that further shortly. But
13 the first and probably foremost issue for the JNOV is the
14 absence of evidence to show lack of probable cause. As
15 your Honor is well aware Mr. Sellaro was taken into
16 custody by the Richland County sheriff's office pursuant
17 to the emergency protective custody process. Ultimately,
18 as is required by statute, DSS was notified Mr. Sellaro
19 was placed into emergency protective custody and was
20 placed at, I believe, it was Baptist hospital if I
21 remember Baptist Richland, but anyway he was placed in the
22 hospital.

23 DSS followed their statutory requirements and
24 filed a petition with the family court and a 72-hour
25 hearing was held before a family court judge. I'll --

1 absolutely in compliance with the statutory scheme, your
2 Honor. Ultimately, on March 1 family court Judge James
3 McGee issued his order which was captioned the 72-hour
4 hearing order as required by 43-35-55 Subsection F. And
5 in that particular order, he made findings in fact and
6 conclusions of law to conclude Mr. Sellaro who had just
7 lost his wife and caregiver in an automobile accident,
8 that's what triggered the EPC your Honor.

9 Judge McGee made findings regarding
10 Mr. Sellaro's condition at that particular time, and most
11 importantly after setting forth facts in his order in
12 paragraph four of that order he wrote the above facts
13 clearly establish there was ample probable cause for
14 taking the adult Joseph Sellaro into emergency protective
15 custody and probable cause remains for the plaintiff being
16 ordered to have custody -- ordered to have custody of a
17 pending merits hearing. So ultimately -- and he made the
18 additional ruling that he was a vulnerable adult who is
19 impaired in his ability to adequately provide for his own
20 care and protection, and Joseph Sellaro is not being
21 adequately cared for by others. That is the order that
22 was issued by Judge McGee.

23 What is critical to this case I would submit
24 your Honor is that order was never appealed, and certainly
25 was never reversed. And that is an order that made a

1 finding that probable cause existed for not only the
2 removal of Mr. Sellaro from his home, but the continued
3 custody of Mr. Sellaro until his merits hearing could be
4 held. A merits hearing was held some days later. And
5 ultimately he was released from the hospital as a result
6 of that. But this case deals with a period of time
7 between being taken into custody and him being released
8 from EPC. And as I indicated your Honor, there is an
9 order issued by the family court that has not been
10 reversed, no appeal was filed, no challenge to that order
11 was made and that order cannot be collaterally attacked as
12 part of a civil action such as this.

13 We have cited the Court to South Carolina
14 Supreme Court decision in Argoe vs. Three Rivers
15 Behavioral Health, a 2011 case from the Supreme Court.
16 And I would point out that you might have noticed in their
17 response memorandum, the plaintiffs never addressed this
18 particular issue, never tried to distinguish Argoe, never
19 even mentioned the Argoe case. But Argoe is significant
20 for several reasons. Number one, it dealt with an
21 involuntary commitment of an adult. The South Carolina
22 Supreme Court made it very clear that this is language
23 from that decision. We find appellate was precluded from
24 collaterally attacking the underlying commitment orders,
25 that they then favorably cited the case from North

1 Carolina with the following proposition, the failure to
2 timely appeal an involuntary civil commitment order
3 precluded collateral attack on alleged erroneous
4 underlying order. And I don't know that there's
5 necessarily an allegation that Judge McGee's order was
6 erroneous, but the bottom line is even if it was, even if
7 that's their position, they didn't appeal it, and they
8 can't collaterally attack it.

9 And why that's significant your Honor is in the
10 Argoe case just as in this case, there were causes of
11 action for negligence and false imprisonment. And the
12 South Carolina Supreme Court on the false imprisonment
13 claim found that the appellate because of that -- a
14 commitment order which had not been collaterally attacked
15 finding the probable cause existed for the commitment,
16 that the appellate could not maintain a claim for false
17 imprisonment in that particular case. And they favorably
18 cited a couple of sections from Amger (sic) Second, and if
19 I can read the first paragraph of that. It's -- I think
20 depositive of the issue before your Honor. It says a
21 person confine pursuant to an authorize mental health
22 commitment proceeding or process may not recover damages
23 in a false imprisonment action, in accordance with the
24 general rule dealing with confinement under process even
25 where the order of commitment is erroneously made but is

1 valid on its face, an issue by a court of competent
2 jurisdiction the detention is not false imprisonment.

3 And your Honor here we have an order finding
4 probable cause even if they contend it's erroneous. They
5 didn't pursue and get the Court to rule it erroneous. It
6 is certainly valid on its face and its certainly issued by
7 a court of competent jurisdiction, and it's issued
8 pursuant to the statutory scheme that was set up by the
9 general assembly for dealing with EPCs. So I believe the
10 false imprisonment claims fails for the same reasons that
11 the Supreme Court found in Argoe. And the Supreme Court
12 also entertained a claim for -- in this case intentional
13 infliction of emotional distress and ultimately found that
14 that claim was also barred because of the order that was
15 in place. I would point out too, and so I point that out
16 because we don't have that cause of action here, but we
17 have a negligence claim, but the existence of the probable
18 cause defeats the negligence claim just as it would defeat
19 the false imprisonment claim, and I'll elaborate on that
20 in a minute. But the Argoe case also cites a case called
21 Manly vs. Manly, which also is a South Carolina Court of
22 Appeals from 1987 that also supports that conclusion.

23 Now, our position is the 72-hour order also
24 precludes any type of negligence claim your Honor for
25 several reasons. Number one, the negligence claim is

1 essentially the same as the false imprisonment claim. A
2 South Carolina law recognizes that you can't take an
3 intentional tort such as false imprisonment and replete it
4 as a negligence claim. And case in point on that your
5 Honor, I've cited this numerous times.

6 Your Honor, is probably aware of it the Ericson
7 vs. Jones Street Publishers case from 2006 where there was
8 a -- it was pled as a defamation claim, but because -- as
9 I recall because the statute of limitations was shorter
10 for the defamation, it was repled as a negligence claim,
11 and the Supreme Court on a 12(b)(6) motion indicated that
12 you cannot bring an intentional tort such as defamation as
13 a negligence claim. And the same would apply in this
14 particular instance your Honor. You can't re-couch a
15 false imprisonment claim as negligence. There's no such
16 thing as negligence false arrest or negligent false
17 imprisonment in South Carolina. So the existence of
18 probable cause your Honor which we believe was established
19 conclusively by the family court's order which cannot be
20 collaterally attacked should result we would submit your
21 Honor in a judgment notwithstanding the verdict on both
22 causes of actions.

23 In addition to that on the JNOV motion, we also
24 relied on several tort claims immunities your Honor
25 specifically 15-78-60 subsection three and subsection

1 four. Subsection three precludes liability for a
2 governmental entity that is executing, enforcing or
3 implementing a court order, that's exactly what DSS did.
4 They had a court order to hold Mr. Sellaro within the
5 emergency protective custody until there could be a merits
6 hearing, and they did that and that's what they have been
7 sued for.

8 There is also a -- under subsection 4 which
9 provides absolute immunity for any liability arising out
10 of the adoption enforcement or compliance with the law,
11 that also has application here we submit to your Honor due
12 to the fact that this entire process it's spelled out in
13 great detail by the South Carolina General Assembly under
14 this Adult Protection Act. There's no allegations, and
15 certainly no proof that the department failed to comply
16 with the provisions of that act. And so ultimately your
17 Honor, the compliance enforcement of that particular
18 statutory scheme isn't immune function, and on that
19 additional basis, we believe that a JNOV your Honor should
20 be entered.

21 Real quickly if the Court -- well, one other
22 additional argument on JNOV and I apologize. The argument
23 was also made your Honor that the plaintiff did not
24 present any type of expert testimony in order to establish
25 the standard of care that was owed by DSS and a breach of

1 the standard of care. The only expert testimony that was
2 presented was by a resident psychiatrist at Palmetto
3 Health Richland hospital Jeffrey Brandenburg, and
4 Mr. Brandenburg indicated that he was only very
5 intentionally familiar with even the EPC process. And he
6 was never asked in order to even provide any opinions as
7 to the standard of care owed by DSS or a breach of the
8 standard of care in this particular case. And in order
9 for the plaintiff to be able to proceed, they would need
10 the jury to hear from an expert. It's not something
11 within the common knowledge from an expert that DSS failed
12 to comply with any requirements under the statute to a
13 scheme, and that breach of a standard care approximately
14 caused the harm to Mr. Sellaro. So that is an additional
15 ground your Honor for JNOV.

16 Finally, turning to the new trial absolute
17 motion touch on that briefly. First of all, the first
18 argument sort of dovetails with the JNOV argument that
19 whether or not the department was entitled to immunities
20 under the Tort Claims Act, that's an issue of law for the
21 Court rather than an issue to be presented to the jury.

22 Second of all, your Honor we have challenge that
23 the \$300,000 by the jury was not supported by the damages
24 of evidence that was presented. The only economic lost
25 that was presented was a medical bill of approximately

1 \$9,291, which were the charges from Palmetto Health
2 Richland hospital. There were no other specials that were
3 presented. The plaintiff at least in their responsive --
4 the response memorandum indicated that they were seeking
5 damages other than the specials or emotional harm. Yet as
6 your Honor is well aware in South Carolina and in order to
7 make a claim for emotional harm, there must be physical
8 manifestations of that harm. There must be a physical
9 injury. This particular case your Honor no evidence was
10 presented of any physical injury of Mr. Sellaro. No
11 evidence was presented of any type of medical treatment
12 that he received while he was in the hospital for any type
13 of emotional harm. And in fact even though this is not
14 binding on the Court -- give me one second. I did notice
15 yesterday in looking at the decisions that came out from
16 the South Carolina Court of Appeals. There is an
17 unpublished decision in a case K.S. vs. Richland School
18 District Two, which is pretty interesting because the --
19 it is unpublished.

20 The Court of Appeals discussed the three
21 different ways that you can recover for emotional distress
22 in South Carolina, and they made it clear that its either
23 got to be by-standard liability which you don't have here.
24 You've got to either have as they say South Carolina
25 recognizes actions for negligent infliction of emotional

1 distress when the plaintiff suffers emotional distress in
2 addition to physical injuries. There are no allegations
3 of physical injuries, and they cite the 2001 case of Bone
4 v. Blackwell, which is a South Carolina Supreme Court case
5 that says the plaintiff may recover from mental anguish
6 that accompanies a physical injury.

7 And then the third type of claim for negligent
8 infliction of emotional distress occurs where there is an
9 absolute nervous breakdown as the language that is used by
10 the Court, and you certainly don't have those allegations
11 in this particular case. So the damages that have been
12 presented certainly don't warrant or support the verdict
13 of \$300,000.

14 As a corollary to that argument, we contend that
15 the verdict was grossly excessive and should be thrown out
16 and a new trial absolute be granted. In addition to not
17 being supported by the evidence, we made the point in our
18 motion that a similar claims were asserted against the
19 sheriff. Nobody's arguing that the sheriff's verdict was
20 incorrectly decided, but clearly the jury found for the
21 sheriff on the same facts, on the same claims and found
22 against DSS on those particular claims, and that would
23 suggest strongly that the jury was most probably motivated
24 by some inappropriate motive in returning a verdict where
25 there's passion and prejudice against the department, but

1 certainly that would warrant a finding that the verdict
2 was grossly excessive, and therefore can't stand.

3 In the alternative to that, if the Court finds
4 that the verdict was not grossly excessive, we would
5 alternative present to the Court that the verdict was
6 certainly in light of the lack of evidence of damages,
7 that it was unduly liberal and should be subject to a
8 remittitur. And we have proposed that an appropriate
9 amount for the remittitur should the Court reach that
10 issue would be \$50,000. And lastly, we raised the 13th
11 juror doctrine which incorporates all of these points and
12 ask the Court to act as a 13th juror and grant a new trial
13 absolute in this particular case. Unless your Honor has
14 any questions, I think that summarizes our various issues
15 that we raised in posttrial motions.

16 THE COURT: All right. Thank you,
17 Mr. Lindemann.

18 MR. LINDEMANN: Thank you.

19 THE COURT: And, Mr. Brehmer, whenever you're
20 ready.

21 MR. BREHMER: Thank you, your Honor. Your
22 Honor, fortunately for me, I've had time to reflect and go
23 back and Monday morning quarterback and try to analyze
24 this. And I've read Mr. Lindemann and Ms. Summers' briefs
25 in detail as well as the brief that we prepared to the

1 Court. And I wanted to point out and basically while
2 Mr. Lindemann I don't think is correct and why he's
3 improperly analyze this.

4 To narrow down to the real issue in this case,
5 the whole issue in this case can be confined to a 109
6 minute window, okay. And let me tell you when that window
7 starts. That window started on March the 1st 2016 at
8 11:11 a.m., okay. That window ends on March the 1st, 2016
9 at 1 p.m. the time that Judge McGee had the hearing. And
10 let's talk about what occurred in that window, and the
11 duties and responsibilities that give rise to the
12 negligence claim and the false imprisonment claim and why
13 Mr. Lindemann's analysis is not correct. South Carolina
14 code section 43-35-55 requires that my client be given a
15 72-hour hearing from the time that he is brought into the
16 system under the EPC, okay. Now, that 72-hour hearing is
17 for the purpose for the Court to determine probable cause.

18 In 43-35-55, the plaintiff's position is that it
19 is implicit upon the South Carolina Department of Social
20 Services to secure the information to affect my client the
21 protected person under that statute with a proper probable
22 cause hearing, okay. That creates the duty upon the South
23 Carolina Department of Social Services, okay, to secure
24 the information to provide the Court that my client has a
25 proper probable cause hearing. Here's what occurred in

1 this case, in this case on February the 28th of 2016, my
2 client was taken into the Richland Memorial hospital
3 system at approximately midnight on Saturday night. On
4 Sunday, the 28th of February, he was evaluated by an
5 internist Dr. Tyrone. I think his last name Kyle, Dr.
6 Tyrone Kyle. Dr. Kyle wrote it up in his report that he
7 didn't find anything wrong with Mr. Sellaro, but since
8 there was an allegation of dementia, he was going to defer
9 for a psychiatric evaluation.

10 On February the 29th of 2016, Dr. Jeffrey
11 Brandenburg, the assign psychiatrist, came and visited and
12 evaluated Mr. Sellaro. Dr. Brandenburg opined that Mr.
13 Sellaro was not incapable of managing his own affairs and
14 was able to live independently and was not met the
15 classification of a protected person. Mr. Sellaro was
16 assigned a social worker a Ms. Sophia Tate who evaluated
17 and got his information and had conversations with Ms.
18 Edgerton, the department of social services worker.
19 Ms. Tate testified in this case that she had told Ms.
20 Edgerton that the doctors had determined that Mr. Sellaro
21 was not incompetent and was capable of handling her
22 information.

23 On March the 1st at 2016 at 11:11 a.m., Ms.
24 Tate fax to fax number 803-714-7301, which is the fax
25 number of the department of social services, the physical

1 and history report on Mr. Sellaro. She faxed the
2 psychological capacity consult notation from Dr.
3 Brandenburg, okay. She faxed a list of medications and
4 regiments he was on. She faxed his progress notes. All
5 of which were placed into the record and all of which
6 verified that Mr. Sellaro was competent to handle his own
7 affairs at that point and did not meet the definition of
8 an incapacitated person that needed to be under emergency
9 protective custody.

10 Now, Ms. Edgerton it was established through Ms.
11 Tate and through Ms. Edgerton's cross-examination that Ms.
12 Edgerton knew that those records were being transmitted by
13 Ms. Tate to Ms. Edgerton to the department of social
14 services, okay. She knew that they were coming. She knew
15 that the hearing was at one o'clock on the March, okay.
16 And she either intentionally didn't get them or got them
17 and failed to provide them to the person that attended the
18 hearing or for whatever reason, okay, it was undisputed
19 that they were sent to the department of social services
20 and did not transmit that information to the Court for the
21 hearing on March the one at one p.m. through Judge McGee.
22 So in effect what the department of social services and
23 the duties that they breached were was they by their acts
24 or omissions failed to meet their obligation to
25 Mr. Sellaro by providing him the opportunity to have an

1 effective probable cause hearing.

2 What they did was they went to the probable
3 cause hearing and provided no information. The transcript
4 of record was provided and the department of social
5 services representative that attended and participated in
6 the hearing on March the one did not say a word, not a
7 word. There were no documents. The record was very clear
8 that there was no such information in there. So what in
9 essence -- what in essence the department of social
10 services and the duties that they breached and was that
11 they did not allow Mr. Sellaro to have a probable cause
12 hearing. They had a hearing that they called a probable
13 cause hearing, but it wasn't, okay. And that ---

14 THE COURT: Hold on, hold on, hold on. I
15 figured that's what you were going to say because that's
16 the way as I analyze it, that's the difference in my mind
17 and I think in the jury's mind between the sheriff's
18 department and DSS, right.

19 MR. BREHMER: Yes, sir.

20 THE COURT: But according to Mr. Lindemann, it
21 doesn't matter if every single thing the family court
22 judge was told was completely and totally untrue, it could
23 all be completely and totally wrong, completely false, all
24 full of nothing but lies, and it wouldn't matter because
25 Mr. Sellaro didn't appeal that family court order, that

1 family court order is bullet proof and DSS is protected
2 forever.

3 MR. BREHMER: That's the law because the order
4 wasn't in place at the time that they committed these
5 actions, okay. These were all prior. So the DSS wasn't
6 acting under an order prior to one p.m. on March the 1st
7 of 2016. Now, there was no order in place. All their
8 actions occurred prior to that order which would be prior
9 to any of the immunities that they are claiming that they
10 are acting under the court order. What they did was if
11 you have -- what you really need to analyze is their
12 actions between 11:11 a.m. on March the 1st to one p.m. on
13 March the 1st. And in that 140 minute window, they in
14 essence denied Mr. Sellaro his statutory right to a
15 probable cause hearing.

16 South Carolina code section 43-35-55 entitles
17 Mr. Sellaro to a probable cause hearing. And I think
18 implicitly in our law that that can't just be rubber
19 stamped. And if you get because that is a right that he
20 has, that only the department of social services which
21 according my reading of that statute has a -- creates the
22 duty to Mr. Sellaro, okay. We have a duty this quote
23 believe or allege protective person this private right
24 him to exercise good faith, fair dealing to secure the
25 information. And in this particular matter, they had the

1 information, okay. They knew that the information was
2 coming. The information was sent to them. And according
3 to Ms. Edgerton, her testimony on the record was that the
4 fax delivery person didn't bring it to her, and she didn't
5 bother to look at it, okay, or she didn't bother to look
6 for it in any way whatsoever. So their acts and omissions
7 during that 104 minute window give rise to the negligence
8 claim and rise to the false imprisonment claim because
9 those actions during that window is what basically
10 determine Mr. Sellaro's fate for the next seven days.

11 Now, how do we know -- and just thinking about
12 this, okay, Mr. Lindemann says, well, you know, you didn't
13 have an expert. Your Honor, it doesn't take a person with
14 special education, training, skill and knowledge to
15 acknowledge whether a person has done their job, okay, in
16 this particular scenario. Ms. Edgerton knew that this
17 information was needed, okay. She knew that it was
18 coming. She knew when the hearing was. Basically, this
19 lady simply didn't do her job, okay. So I don't know how,
20 why or what benefit any person was training regarding the
21 processes and procedures of DSS could have enlightened the
22 jury in any way in this case that they were not already
23 enlightened. We do not believe that DSS is availed of any
24 the immunities we say have alleged because they weren't
25 acting under the order of the Court at the time they

1 committed their maleficence or negligence or false
2 imprisonment. They were acting under the guise of the
3 statutory code that required them to do this action. So
4 we don't believe that that is the case either.

5 As far as the damage's award, your Honor, I was
6 appalled at the low value of the damages award. I thought
7 it was entirely too low because what they did was take
8 this man's liberties, which is, you know, fundamental to
9 all of our daily lives. They basically took his liberties
10 for a period of seven days, okay, kept him confined during
11 one of the most traumatic times of any human's life. His
12 wife has just been killed, and he had been taken out of
13 his home in the middle of the night by a bunch of people
14 he didn't know for no reason that he or for any reason
15 that he did not understand and could not get an
16 explanation for, okay. So the damages award in this
17 particular matter were in my humble opinion they were
18 extraordinarily low, okay. That I would think that
19 defense should be happy with how they kept the verdict
20 down, you know, and remind the Court that at one point I
21 ask the jury -- I ask the Court how we were going to
22 address the issue if the damages came back above the Tort
23 Claim Act because I wanted to know how the Court was going
24 to go charge on the separate occurrences that could have
25 had or issue special interrogatories to the Court as to

1 the separate occurrences, so I'm not blowing smoke here,
2 Judge. I thought that the damages should have a lot
3 higher than what they were in this particular matter for
4 what DSS did to this man.

5 We have stated all our replies to Mister -- to
6 DSS's briefs in this particular case. We think, and we
7 believe that our position and our analysis in that the
8 Court's charge in everything to the jury was correct in
9 this particular matter and that the jury made a proper
10 decision to this matter. And we would ask that the
11 verdict be allowed to stand and that the DSS's posttrial
12 motions be denied.

13 THE COURT: Okay. Thank you, Mr. Brehmer. And,
14 Mr. Lindemann, any brief reply. I think I understand the
15 issues.

16 MR. LINDEMANN: Yes, your Honor, real briefly.
17 Well, number one just to follow up on your Honor's
18 question, I don't believe Mr. Brehmer ever explain why the
19 Argoe decision doesn't bar his client. His argument gives
20 -- at the time the acts or omissions were made by DSS
21 there was no order in place, that maybe argument as to the
22 subsection three immunity, but not to the absence of
23 probable cause determination.

24 Our first and foremost argument is that there is
25 probable cause for the entire duration of the custody as a

1 matter of law based upon the family court's order. And
2 that order cannot be collaterally attacked. He has not
3 readdress that, he has not refuted that, and I don't
4 understand why because he can't refute that that's what
5 Argoe says.

6 And there's good reason for that. You know,
7 it's a principle that the United States Supreme Court
8 recognizes in false arrest cases all the time. I cited it
9 yesterday. It's a case called Heck v. Humphry, that you
10 can't challenge a conviction or even a finding of probable
11 cause unless you are -- a conviction I should say, unless
12 you absolutely get it reversed. Well, in this particular
13 case, you can't challenge a court order unless you get it
14 reversed, that's what the Argoe case said.

15 They made the point that -- and in Argoe there
16 was actually an appeal from probate court to the circuit
17 court. Judge Goodstein affirmed the commitment. And
18 ultimately there was not an appeal from that point on, but
19 the point the Supreme Court made was there was a
20 commitment order. No one ever got it reversed, and
21 therefore you cannot collaterally attack it. So I think
22 that's the short of this case that regardless of whether
23 they think errors were made by the judge, errors were made
24 by DSS, there is a probable cause order in place that was
25 not overturned.

1 Second of all your Honor, I would point out to
2 the Court that the 72-hour order is govern by 43-35-55 as
3 Mr. Brehmer argued. There's noting in there that requires
4 any type of evaluation to be done, any type of specific
5 proceedings to be done by DSS prior to their 72-hour
6 hearing. What he appears to be conflating is the
7 requirements that are in -- got them here somewhere. In
8 section 43-35-45 which governs the process that needs to
9 be followed through with prior to a merit's hearing, and
10 it's a merits hearing where there's a requirement that
11 quote if needed a medical psychological social vocational
12 or educational evaluation be done.

13 There's no requirement by statute that it be
14 done prior to the 72-hour hearing where that be provided
15 to the Court as part of 72-hour hearing. That doves tails
16 into our argument as to why the necessity of expert
17 testimony. They need to be able to present testimony from
18 an expert saying DSS breached the standard of care in
19 these particulars. It's not subject to common knowledge,
20 and in fact their argument is contrary to the statute's
21 themselves. So this whole argument that DSS committed
22 some negligence prior to the problem cause hearing is
23 definitely not supported by the statutory law. And
24 there's certainly there's no expert testimony to establish
25 a duty of care or a breach of the duty of care.

1 The last point that I would quickly make on
2 damages your Honor. You never heard anything from Mr.
3 Brehmer about any type of physical injury to Mr. Sellaro.
4 There's no physical injury that would support any type of
5 claim for emotional harm in this case, and certainly not
6 emotional harm to the of tune 290 thousand plus dollars.
7 That right there shows that that verdict was grossly
8 excessive.

9 Second of all your Honor, he himself was talking
10 about the damages from take Mr. Sellaro from his home,
11 putting him in the hospital. Well, we know that those
12 damages are not recoverable on this particular case
13 because DSS didn't remove him from his home. It was the
14 sheriff's department that removed him from his home, and
15 the just didn't find any harm was caused to him by the
16 sheriff's department.

17 Mr. Brehmer himself said that the quote conduct
18 that's being challenged here by DSS started on March 1st
19 of 2016. So then the Court should be focused then on the
20 damages that have been shown from March 1st of 2016
21 forward. And again, there's nothing in the record support
22 a \$300,000 verdict for that window of quote unquote harm
23 or damages particularly given the fact that they can't
24 claim emotional harm without showing any type of physical
25 injury for which there was no evidence presented and

1 certainly known offered to your Honor here during this
2 hearing. So on all of those basis your Honor we would ask
3 the Court to first to grant an JNOV, and if an JNOV is not
4 available or the Court is not willing to the grant JNOV,
5 that the Court grant a new trial absolute or in the
6 alternative new trial remittitur nisi. Thank you, your
7 Honor.

8 THE COURT: All right. Mr. Brehmer, final word.
9 Anything? I think he's saying no. Okay.

10 MR. BREHMER: No, sir. No, sir, I'm sorry.

11 THE COURT: Okay. All right. I'll let you all
12 know my decision by early next week. Thank you very much,
13 and I hope you all have a great day.

14 MR. LINDEMANN: Thank you, your Honor.

15 MR. BREHMER: Thank you, your Honor.

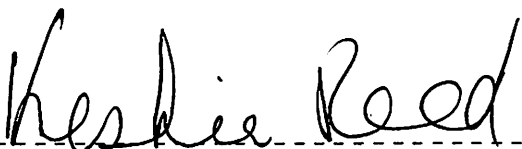
16 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 27, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Richland County, South Carolina, on the 28th day of July, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 5th day of November 2022.


Keshia Reed, Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Robert E. Hood, Circuit Court Judge

Case No. 2018-CP-40-4835

Joseph P. Sellaro, ... Respondent,

v.

The South Carolina Department of Social Services
and the Richland County Sheriff's Department, ... Defendants,

Of which, The South Carolina Department of
Social Services is the..... Appellant.

NOTICE OF APPEAL

The Appellant South Carolina Department of Social Services appeals the judgment entered May 23, 2022, and the following Orders issued by Circuit Court Judge Robert E. Hood:

- (1) Form 4 Order Denying Post-Trial Motions, filed August 3, 2022;
- (2) Jury Verdict Form, filed May 23, 2022 (no written judgment filed by Clerk of Court although there is a judgment electronically entered).

The Appellant also appeals from all pre-trial rulings, trial rulings and post-trial rulings issued by the Circuit Court Judge Robert E. Hood.

The Appellant's counsel received written notice of entry of the Form 4 Order filed August 3, 2022, on that same date.

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Aug 11 2023

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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Counsel for Appellant

July 24, 2023

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant South Carolina Department of Social Services certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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July 24, 2023