

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

Case No.: 2011-CP-40-6156

Joseph Williams,.....Appellant,

v.

Marie Wilson,.....Respondent.

RECORD ON APPEAL

RECEIVED

JUL 05 2013

SC Court of Appeals

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Columbia, SC 29210
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Index to Record on Appeal

Orders, Judgments and Decrees:

Order filed November 14, 2012	001
Order filed November 15, 2012	002
Judgment in a Civil Case filed November 6, 2012	003
Verdict Form Joseph Williams	004
Verdict Form Shawn Delaine	005

Pleadings:

Summons and Complaint filed September 16, 2011.....	006
Defendant's Answer filed December 8, 2011	010
Plaintiff Delaine's Motion in Limine	014
Defendant's Motion in Limine	019
Defendant's Rule 59 Motion	023
Plaintiff's Notice of Appeal	024

Trial Transcript:

Motions	027
Testimony of Shawn Delaine	
Direct Examination	036
Testimony of Joseph Williams	
Direct Examination	045
Testimony of Bratton Arnette	
Direct Examination	074
Cross Examination	079

Testimony of Marie Wilson	
Direct Examination	080
Cross Examination	088
Redirect Examination	102
Re-cross Examination	104
Motion	108
Closing Argument	111
Jury Charges	115
Jury Deliberations	131
Verdicts	133

Exhibits/Other documents:

Courts' Exhibit 1	138
Courts' Exhibit 2	139
Plaintiff's Exhibit 1	144
Plaintiff's Exhibit 2	145
Plaintiff's Exhibit 3	146
Plaintiff's Exhibit 4	147
Plaintiff's Exhibit 7	148
Plaintiff's Exhibit 12	149
Plaintiff's Exhibit 17	150
Plaintiff's Exhibit 18	151
Plaintiff's Exhibit 21	152
Defendant's Exhibit 1	153
Satisfaction of Judgment	154

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Joseph Williams,

Plaintiff,

vs.

Marie Wilson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

ORDER

2011-CP-40-06156

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 NOV 14 PM 3:59

FILED

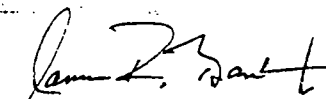
RICHLAND COUNTY

This action came before the court for a jury trial on Monday, November 5. The issues were tried and a verdict for actual damages rendered in favor of Plaintiff Joseph Williams in the amount of \$50,000.

Pursuant to Rule 59(d), the Court of its own initiative orders a new trial nisi remittitur to the amount of \$24,000 in the above referenced matter. This order is issued on the grounds that the jury's damages award of \$50,000 is unduly liberal. I find the amount of the verdict to be merely excessive.

IT IS HEREBY ORDERED that pursuant to Rule 59(d), the Court orders a new trial nisi remittitur to the amount of \$24,000 in this matter.

AND IT IS SO ORDERED.



James R. Barber III
Circuit Court Judge for Richland County

November 14, 2012.

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Joseph Williams,)

Plaintiff,)

vs.)

Marie Wilson,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

SUPPLEMENTAL ORDER

2011-CP-40-06156

JEANETTE W. McBRIDE
C.C.P. & G.S.

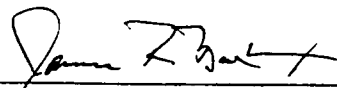
2012 NOV 15 AM 9:18

FILED

This Order is being issued to supplement the Order dated November 14, 2012 granting a new trial nisi remittitur to the amount of \$24,000 in the above referenced matter. Plaintiff has 10 days to elect either a new trial or the acceptance of the remittitur.

IT IS HEREBY ORDERED that Plaintiff has 10 days to elect either a new trial or the acceptance of the remittitur.

AND IT IS SO ORDERED.



James R. Barber III
Circuit Court Judge for Richland County

November 15, 2012.

Columbia, South Carolina

SCANNED

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

CASE NUMBER: 11-CP-40-6156

Joseph Williams
Shawn Delaine
PLAINTIFF(S)

Marie Wilson
DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

Verdict for Plaintiff Williams for \$10,000.00
Verdict for Plaintiff Delaine for \$10,000.00

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 6 day of Nov, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Deitrich Lake
Frank C. Swaggard
ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew L. Richardson
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Joseph Williams and Shawn Delaine,

Plaintiffs,

v.

Marie Wilson,

Defendant.

JOSEPH WILLIAMS

VERDICT

2011-CP-40-6156

1. WE THE JURY, UNANIMOUSLY FIND FOR THE PLAINTIFF:

Fifty thousand and $\frac{00}{100}$ (\$ 50,000.00) DOLLARS
ACTUAL DAMAGES

WE, THE JURY, UNANIMOUSLY FIND FOR THE PLAINTIFF:

~~1000~~ (\$ 10000) DOLLARS
PUNITIVE DAMAGES

2. WE, THE JURY, UNANIMOUSLY FIND FOR THE DEFENDANT.

Megan A. Druff
FOREPERSON'S SIGNATURE

DATED: November 6, 2012
Columbia, South Carolina

2012 NOV -6 PM 12:58
JEROME
C.O.P. & G.S.

RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Joseph Williams and Shawn Delaine,

Plaintiffs,

v.

Marie Wilson,

Defendant.

SHAWN DELAINE

VERDICT

2011-CP-40-6156

RICHLAND COUNTY
FILED
2012 NOV -6 PM 12:58
JEANETTE L. GRIFFIN
C.C.P. & G.S. CLERK

1. WE THE JURY, UNANIMOUSLY FIND FOR THE PLAINTIFF:

Ten thousand and — 00/100 (\$ 10,000.00) DOLLARS
ACTUAL DAMAGES

WE, THE JURY, UNANIMOUSLY FIND FOR THE PLAINTIFF:

~~10,000.00~~ (\$ ~~10,000.00~~) DOLLARS
PUNITIVE DAMAGES

2. WE, THE JURY, UNANIMOUSLY FIND FOR THE DEFENDANT.

Margaret Duff
FOREPERSON'S SIGNATURE

DATED: November 6, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Joseph Williams; and Shawn
Delaine)

Plaintiffs,)

vs.)

Marie Wilson)

Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No: 11-CP-40-

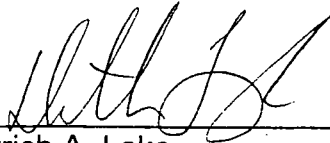
SUMMONS

RICHLAND COUNTY
FILED
2011 SEP 16 AM 11:51
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve upon Dietrich A. Lake, plaintiff's attorney, whose address is 1034 Briargate Circle, Suite 201, Columbia, SC 29210, an Answer to the Complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.



Dietrich A. Lake
Attorney for Plaintiff
The Lake Law Firm
1034 Briargate, Circle, Suite 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax

September 15, 2011
Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Joseph Williams; and Shawn)
Delaine)
)
Plaintiffs,)
)
vs.)
)
Marie Wilson)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No: 11-CP-40

COMPLAINT

(Jury Trial Requested)

RICHLAND COUNTY
FILED
2011 SEP 16 AM 11:51
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiffs; complaining of the Defendant, alleges:

1. The Plaintiff Joseph Williams is a citizen and resident of Richland County, South Carolina.
2. The Plaintiff Shawn Delaine is a citizen and resident of Richland County, South Carolina.
3. The Defendant Marie Wilson is a citizen and resident of Richland County, South Carolina.
4. The parties hereto, the subject matter hereof, and all things and matters hereinafter alleged are within the jurisdiction of the Honorable Court.
5. On or about the 28th day of January, 2011, the Plaintiffs were walking on Liberty Street in Richland County, Columbia, South Carolina.
6. The Defendant was driving a motor vehicle that approached the Plaintiffs from the rear.

7. The front of the Defendant's vehicle struck the Plaintiff Williams and caused him to strike the Plaintiff Delaine.

FOR A FIRST CAUSE OF ACTION

8. All the allegations in Paragraphs 1 through 7 are hereby incorporated herein as if they had been set forth fully hereunder.

9. The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of the Defendant in the following particulars:

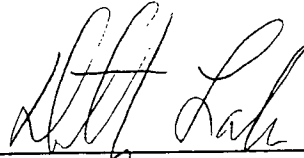
- a) In failing to maintain a proper lookout;
- b) In driving too fast for conditions;
- c) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
- d) In failing to maintain proper control of a motor vehicle.

10. As a direct and proximate result of the Defendant's negligence, Plaintiff Williams suffered injuries to his knee, head, neck, and body; furthermore, Plaintiff Williams' injuries were of such a nature as to require him to expend monies for hospitalization, doctor's care, other medical necessities. Plaintiff Williams has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

11. As a direct and proximate result of the Defendant's negligence, Plaintiff Delaine suffered injuries to his left ankle and body; furthermore, Plaintiff Delaine's injuries were of such a nature as to require him to expend monies for hospitalization, doctor's care, other medical necessities. Plaintiff Delaine has

suffered and will continue to suffer great pain and mental anguish as a result of this collision.

WHEREFORE, the Plaintiffs pray judgment against the Defendant for actual damages and punitive damages in an appropriate amount, and for the costs of this action.

A handwritten signature in black ink, appearing to read "Dietrich A. Lake", written over a horizontal line.

Dietrich A. Lake
Attorney for Plaintiff
The Lake Law Firm
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax

September 15, 2011
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JOSEPH WILLIAMS AND SHAWN
DELAINE,

Civil Action No. 2011-CP-40-6156

Plaintiffs,

vs.

MARIE WILSON,

Defendant.

ANSWER
(Jury Trial Demand)

RICHLAND COUNTY
FILED
2011 DEC -8 AM 9:30
JEANETTE W. MCBRIDE
C.C.P. G.S.

Defendant, Marie Wilson, answers the Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted herein is denied.
2. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 1 of Plaintiffs' Complaint and, therefore, denies the same and demands strict proof thereof.
3. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 2 of Plaintiffs' Complaint and, therefore, denies the same and demands strict proof thereof.
4. Defendant admits the allegations of Paragraph 3 of Plaintiffs' Complaint.
5. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 4 of Plaintiffs' Complaint and, therefore, denies the same and demands strict proof thereof.

SCANNED

6. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 5 of Plaintiffs' Complaint and, therefore, denies the same and demands strict proof thereof.

7. As to the allegations of Paragraph 6 of Plaintiffs' Complaint, Defendant admits inasmuch as the Defendant was driving a motor vehicle that approached the Plaintiffs.

8. Defendant denies the allegations of Paragraph 7 of Plaintiffs' Complaint.

9. In response to Paragraph 8 of Plaintiff's Complaint, Defendant realleges and reincorporates Paragraphs 1-8 as if repeated herein

10. Defendant denies the allegations of Paragraph 9 of Plaintiffs' Complaint, including, but not limited to, subparts (a) through (d).

11. Defendant denies the allegations of Paragraph 10 of Plaintiffs' Complaint.

12. Defendant denies the allegations of Paragraph 11 of Plaintiffs' Complaint.

13. Defendant denies the remaining allegations of the Complaint including Plaintiff's prayer request.

FOR A SECOND DEFENSE
(Failure to State a Claim)

14. Defendants would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE
(Comparative Negligence)

15. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action.

Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A FOURTH DEFENSE
(Sole Negligence)

16. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A FIFTH DEFENSE
((Sole) Negligence of Third Party)

17. Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused by sole and negligent acts or omissions of a third party, over whom Defendant neither had nor exercised any authority or control, and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE
(Sudden Emergency)

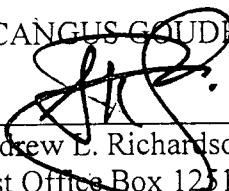
18. Defendant alleges that at the time and place alleged in the Complaint, while through no fault of his own, he was placed in an unexpected emergency, and because of the unexpected emergency and sudden and negligent or intentional acts of another over which he had no control, Defendant was required to act only as appeared to his best under the circumstances, considering the emergency in which he was placed. Defendant acted in all respects in a careful and prudent manner and as any reasonable and prudent person would have acted under similar circumstances, for which reason the Defendant is not liable to Plaintiff in any sum whatsoever.

FOR A SEVENTH DEFENSE
(Punitive Damages)

19. Plaintiffs are not entitled to an award of punitive damages on the grounds that such an award would be in violation of the Equal Protection and Due Process clauses of the United States and South Carolina Constitutions.

WHEREFORE, having fully answered, Defendants pray that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.



Andrew L. Richardson, Jr.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR DEFENDANTS, MARIE
WILSON

December 6, 2011

Argument

1.) Criminal Record

The Plaintiff moves for the exclusion of any evidence pertaining to criminal convictions pursuant to Rules 401, 403, and 609 of the South Carolina Rules of Evidence.

Pursuant to the rules of evidence, irrelevant evidence is inadmissible. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” S.C.R.E 401. The criminal convictions of the Plaintiff are not relevant to whether or not the Defendant was negligent and reckless in her conduct when she struck him with her vehicle as he walked down the side of the road. As such, the Court should hold that evidence of the Plaintiff’s prior criminal convictions is inadmissible at trial.

Assuming, but not conceding, that the Court rules that the Plaintiff’s prior criminal convictions are relevant as impeachment evidence offered under Rule 609(a)(2) of the South Carolina Rules of Evidence, the Court should still hold that the criminal convictions of the Plaintiff are inadmissible because their “probative value is outweighed by the danger of unfair prejudice, confusion of the issues,” or the likelihood of “misleading the jury” by their inclusion. S.C.R.E. 403.

“Under Rule [609(a)], evidence that a witness, to include a party in a civil trial, has been convicted of a crime shall be admitted subject to Rule 403.” Hunter v. Staples, 335 S.C. 93, 102 (Ct. App. 1999). “Rule 403 provides that, although relevant, evidence may be excluded if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless

presentation of cumulative evidence." Id. "Rule 609(a)(1) gives broad discretion to the trial judge" to balance the prejudicial and probative effects of criminal convictions. Id.

The Plaintiff's criminal history is not probative as to the issue of whether or not the Defendant was negligent and reckless. Introduction of the Plaintiff's criminal history will confuse the issues, mislead the jury, and substantially prejudice him. As such, any evidence of the Plaintiff's criminal history which is offered by the Defendant should be excluded.

2.) Police Officer Testimony

The Plaintiff moves for the exclusion of any evidence offered by officer K. R. Williamson that amounts to an opinion of fault or causation regarding the automobile accident and restricting his testimony to "personally observed facts", unless and until the officer is qualified as a witness pursuant to Rules 602 and 701 of the South Carolina Rules of Evidence. In further support of this motion, the opinion of Gulledge v. McLaughlin, 328 S.C. 504 (Ct. App. 1997) (internal citations omitted) outlined the law as follows; "a witness must have personal knowledge as a matter in order to testify about it. Rule 602, SCRE. However, opinion testimony from a lay witness is admissible if it is: (a) rationally based on the perception of the witness, (b) helpful to the determination of a fact in issue, and (c) does not require special knowledge, skill, experience, or training. Rule 701, SCRE. Some statements, however, are not mere opinions but are impressions drawn from collected, observed facts."

In any event, a long line of South Carolina decisions has excluded the opinions of investigating police officers in automobile accident cases. See Jackson v. Price, 288 S.C. 377, 342 S.E.2d 628 (Ct App. 1986) (error to permit highway patrolman to testify as to the point of impact, but his testimony was cumulative to other testimony that defendant's car was over the center line at impact). See also State v. Kelly, 285 S.C. 373, 374, 329 S.E.2d 442, 443 (1985) ("A police officer may not

give his opinions as to the cause of the accident. He may only testify regarding his direct observations unless he is qualified as an expert."); Gentry v. Watkins-Carolina trucking Co. 249 S.C. 316, 154 S.E. 2d 112 (1967) (holding it was error, although harmless, to allow patrolman to testify that van's wheel had been "knocked off"); Willard v. McCoy, 234 S.E. 317, 108 S.E.2d 113 (1959) (reversing judgment for plaintiff because patrolman who was not an eyewitness testified as to speed as well as how many times a car overturned); Thompson v. South Carolina State Highway Department, 224 S.C. 338, 79 S.E. 2d 160 (1953) (highway patrolman who did not see accident was not competent to testify about speed of car); Huggins v. Broom, 189 S.C. 15, 199 S.E. 903 (1938) (stating that a person who often photographs car wrecks is no more qualified to give an opinion than is a highway patrolman who often visits the scene of wrecks.) Cf. Johnston v. Bagger, 151 S.C 537, 149 S.E. 241 (1929) (holding that the trial court properly prevented witnesses from answering a question asking whether the defendant did everything he could to avoid hitting plaintiff). But cf. Doremus v. Atlantic Coast Line R.R. Co., 151 S.C. 537, 149 S.E.2d 370 (1963) (upholding decision to allow patrolman to testify as to speed based upon length of skid marks, as patrolman testified he had conducted tests on the relationship between skid marks and speed under similar conditions); Robinson v. Duke Power Co., 213 S.C. 185, 48 S.E.2d 808 (1948) (permitting non-eyewitness patrolman to testify regarding point of impact was not prejudicial where patrolman determined point of impact from the position of vehicles, broken glass, and skidmarks and photographs corroborated the testimony).

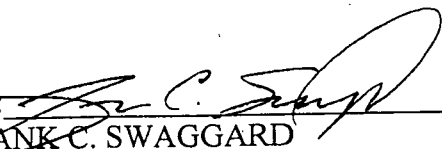
As such, Officer K. R. Williamson should be prohibited from testifying to an opinion of fault or causation regarding the automobile accident and his testimony should be restricted to facts which he personally observed, unless and until the officer is qualified as a witness.

Conclusion

Because the Rules of Evidence prohibit the introduction of irrelevant or unduly prejudicial evidence, the Court should grant the Plaintiff's Motion *in limine* as it pertains to his criminal record. Furthermore, because the Rules of Evidence and the well settled case law in South Carolina limit witness testimony to "personally observed facts," the Court should grant the Plaintiff's Motion *in limine* as it pertains to Officer K. R. Williamson's testimony.

Respectfully submitted,

WUKELA LAW FIRM

BY: 

FRANK C. SWAGGARD

ATTORNEY FOR PLAINTIFF

POST OFFICE BOX 13057

FLORENCE, SOUTH CAROLINA 29504

843-669-5634

Florence, South Carolina

November 1, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JOSEPH WILLIAMS AND SHAWN
DELAINE,

Plaintiffs,

vs.

MARIE WILSON,

Defendant.

Civil Action No. 2011-CP-40-6156

MOTION IN LIMINE

2012 NOV -2 PM 12:15
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

TO: DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFF JOSEPH WILLIAMS
and CLAY SWAGGARD, ESQUIRE, ATTORNEY FOR PLAINTIFF SHAWN
DELAINE

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Marie Wilson ("Defendant"), by and through her undersigned attorney, will move before the Presiding Judge of the Richland County Court of Common Pleas, Richland County, for an Order In Limine limiting the Court's consideration of any and all evidence which, in whole or in part, may refer to (1) Defendant's criminal record or (2) Defendant's consumption of alcohol, which is in no way related to the incident in question.

Specifically, Defendant asserts that the Court should limit its consideration of any and all evidence which, in whole or in part, may refer to any and all of Defendant's criminal record pursuant to Rule 609(b) and 609(c) of the South Carolina Rules of Evidence. Further, Defendant asserts that the Court should limit its consideration of any and all evidence which, in whole or in part, may refer to any and all of Defendant's consumption of alcohol, which in no way is related to the incident in question, on the grounds that the subject information is extremely irrelevant to this proceeding. However, in the alternative, if the Court determines such

information regarding Defendant's consumption of alcohol to be relevant, Defendant asserts it should be excluded on the grounds that its probative value is substantially outweighed by the danger of unfairly prejudicing Defendant, confusing the issues, misleading the jury, creating an undue delay, waste of time and is a needless presentation of cumulative evidence.

I. The Court Should Limit its Consideration of Defendant's Criminal Record Pursuant to SCRE Rule 609(b) and 609(c).

Defendant asserts that the Court should limit its consideration of any and all evidence which, in whole or in part, may refer to any and all of Defendant's criminal record pursuant to Rule 609(b) and 609(c) of the South Carolina Rules of Evidence. Rule 609(b) states:

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

The Defendant acknowledges that she was convicted of driving under the influence in 1989. However, the Defendant was pardoned for such conviction in 1999. (See Exhibit A: Defendant's SLED Report). Defendant respectfully asserts that any and all evidence which, in whole or in part, may refer to any and all of the Defendant's criminal record, dating older than 10 years from the 1989 conviction, should be barred pursuant to Rule 609(b) and 609(c). Rule 609(c) states:

Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on

a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

Here, as noted above, the Defendant's 1989 conviction was pardoned in 1999. Thus, pursuant to SCRE Rule 609(c), any and all evidence should related to the 1989 conviction, which was pardoned in 1999, should barred.

The Defendant further asserts that the probative value of the conviction, supported by specific facts and circumstances, does not substantially outweigh its prejudicial effect. There is no evidence that alcohol contributed to accident between the parties. Therefore, any evidence related to the Defendant's 1989 conviction would be extremely prejudicial to the Defendant – especially considering there is zero evidence alcohol contributed to the accident.

II. The Court Should Limit Any Evidence of Defendant's Consumption of Alcohol that is Unrelated to Causation.

Defendant asserts that the Court should limit its consideration of any and all evidence which, in whole or in part, may refer to any consumption of alcohol by Defendant that is unrelated to the causation of the accident on the grounds that such information is not relevant to this proceeding. However, in the alternative, if the Court determines such evidence to be relevant, the Defendant asserts such evidence should be excluded on the grounds that its probative value is substantially outweighed by the danger of unfairly prejudicing the Defendant, confusing the issues, misleading the jury, creating an undue delay, waste of time and is a needless presentation of cumulative evidence.

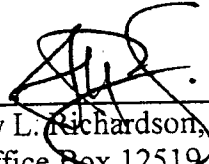
There is zero evidence that alcohol contributed to the accident. In fact, according to the accident report, the responding police officer determined that the Plaintiffs were the at fault

parties for causing the accident. (Exhibit B: Accident Report). Therefore, the Defendant would respectfully assert that any reference to the Defendant's consumption of alcohol is not relevant to causation in this case.

Nevertheless, in the event that this Court determines such information is relevant, the Defendant respectfully asserts that it should be excluded on the grounds that the probative value is substantially outweighed by the danger of unfairly prejudicing the Defendant, confusing the issues, misleading the jury, creating an undue delay, waste of time and is a needless presentation of cumulative evidence. As noted above, there is zero evidence that any consumption of alcohol by Defendant contributed to the causation of the accident. Therefore, any and all evidence illustrating the Defendant's casual consumption of alcohol, which is wholly unrelated to this accident, would only be admitted to unfairly prejudice the Defendant and confuse the issues.

For the reasons stated herein, the Defendant respectfully requests this Court to limit its consideration of any and all evidence which, in whole or in part, may refer to (1) Defendant's criminal record or (2) Defendant's consumption of alcohol, which is in no way related to the incident in question.

McANGUS GOUDELOCK & COURIE, LLC



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ATTORNEYS FOR DEFENDANT, MARIE
WILSON

November 1, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JOSEPH WILLIAMS AND SHAWN
DELAINE,

Plaintiffs,

vs.

MARIE WILSON,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-6156

**DEFENDANT'S NOTICE OF MOTION
AND RULE 59 MOTION**

JEANE L. McBRIDE
C.C. JUDGE

2012 NOV 06 PM 2:12

RICHLAND COUNTY
FILED

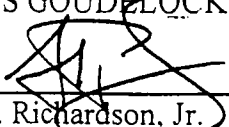
TO: CLAY SWAGGARD, ESQUIRE AND DEITRICH LAKE, ESQUIRE, ATTORNEYS
FOR PLAINTIFFS

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Defendant, Marie

Wilson, hereby moves this Court to:

1. Defendant demands a new trial in regards to the above-referenced matter;
2. Defendant demands a new trial nisi remittitur of the above-referenced matter;
or
3. In the alternative, Defendant further demands a remittitur to confirm to the
evidence;
4. Defendant requests the court set aside the verdict based on the 13th Juror
Doctrine;

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ATTORNEYS FOR DEFENDANT, MARIE
WILSON

Columbia, South Carolina
November 6, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

Case No.: 2011-CP-40-6156

Marie Wilson,..... Respondent

v.

Joseph Williams,..... Appellant.

NOTICE OF APPEAL

The Appellant hereby appeals the attached Orders of the Honorable James R. Barber, III, filed November 14, 2012, and November 15, 2012. The Appellant received written notice of both Orders on November 19, 2012.


Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8312
Attorney for Appellant

November 20, 2012

NOV 20, 2012

SC Court of Appeals

SCANNED

Other Counsel of Record

Andrew L. Richardson, Jr.
McAngus, Goudelock & Currie, LLC
PO Box 12519
Columbia, SC 29211

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2011-CP-40-6156

Joseph Williams and Shawn)
Delaine,)
)
Plaintiffs,)
)
vs.) TRANSCRIPT OF RECORD
)
Marie Wilson,)
)
Defendant.)

November 5 and 6, 2012
Columbia, South Carolina

B E F O R E:

HONORABLE JAMES R. BARBER, III, JUDGE AND JURY.

A P P E A R A N C E S:
DIETRICH A. LAKE, ESQUIRE
Attorney for Plaintiff Joseph Williams

FRANK C. SWAGGARD, ESQUIRE
Attorney for Plaintiff Shawn Delaine

ANDREW L. RICHARDSON, JR., ESQUIRE
Attorney for the Defendant

Crystal Holmes
Official Court Reporter

1 MONDAY, NOVEMBER 5, 2012:

2 (Exhibits were pre-marked for identification.)

3 THE COURT: All right. What have we got here?
4 The matter of Joseph Williams and Shawn Delaine, is that
5 right?

6 MR. LAKE: Yes, Your Honor.

7 MR. SWAGGARD: Yes, sir.

8 THE COURT: Versus Marie Wilson?

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: What is this, somebody filed a
11 Motion in Limine?

12 (Pause.)

13 THE COURT: Frank Swaggard, is that you?

14 MR. SWAGGARD: That is, Your Honor.

15 THE COURT: And you and Mr. Lake are
16 representing what, each have a different Plaintiff?

17 MR. SWAGGARD: We do, Your Honor. I have
18 Mr. Delaine and Mr. Lake has Mr. Williams.

19 THE COURT: All right. And what is the Motion
20 in Limine?

21 MR. SWAGGARD: Well, Your Honor, we filed this
22 Motion in Limine over two issues Your Honor, the
23 potential testimony of the police officer who arrived at
24 the scene after the incident and then the criminal record
25 of my client, Mr. Lake. The argument is based on Rule

1 403, it's more prejudicial than it is probative. I laid
2 out the argument in the motion.

3 THE COURT: All right. Well, tell me, I haven't
4 read the motion, I just got it here. What's the criminal
5 record?

6 MR. SWAGGARD: Well, Your Honor, to be frank,
7 it's honest, it's a little lengthy. I don't know what
8 Mr. Richardson intends to try and introduce but we'd like
9 to exclude any of his criminal history.

10 THE COURT: What do you want to say there, Mr.
11 Richardson?

12 MR. RICHARDSON: Well, Your Honor, I think
13 pursuant to Rule 609, that we may use the criminal record
14 for impeachment purposes. I will agree with Mr. Swaggard
15 that we are not able to use any of the criminal record
16 that's over 10 years old. But there ---

17 THE COURT: Well, I mean, what is the record
18 that y'all want to introduce?

19 MR. RICHARDSON: Your Honor, I have a copy of
20 the SLED report here if you'd like to look at it.

21 THE COURT: I don't want to look at it. Tell me
22 what criminal offenses you have.

23 MR. RICHARDSON: Your Honor, there's a criminal
24 offense in 2010 for receiving stolen goods, 2010 for
25 passing fraudulent checks, the same thing in 2009.

1 Receiving stolen goods in 2008, stealing credit card
2 information 2006, stealing more -- stealing -- fraudulent
3 credit card information again in 2006. Bad checks in
4 2005, obtaining signatures under false pretense in 2004,
5 some more credit card information in 2003, Your Honor.

6 So I would agree with -- with -- with my counsel
7 here that anything after 10 years is off the board.

8 THE COURT: All right.

9 MR. RICHARDSON: But everything within two
10 thousand -- anything within two thousand -- or 10 years
11 under Rule 609, I do believe that I'm eligible to use
12 that information for impeachment purposes.

13 THE COURT: Subject to 403?

14 MR. RICHARDSON: Subject to 403, Your Honor, but
15 I do not believe that this is more prejudicial than
16 probative because, Your Honor, here we are contesting
17 liability so -- so credibility is a huge issue and that
18 this is going to get down frankly to whose story the jury
19 believes.

20 And so that -- is that in the good light of Mr.
21 Delaine? No, it's not but it is -- there is a
22 credibility issue here that I do think the jury needs to
23 hear about.

24 THE COURT: I'm going to let it in.

25 MR. LAKE: Your Honor, I would just add -- I

1 apologize. I did want to, I guess, support Mr.
2 Swaggard's motion in the sense that I do believe that by
3 allowing that type of information in as to Mr. Delaine,
4 it negatively affects my client, it casts him in a bad
5 light. He has nothing that's impeachable that's on his
6 record. I don't think, but I'm not quite sure ---

7 THE COURT: Well, I've ruled, Mr. Lake, I'm
8 going to let them in.

9 What's -- all right, what is the other issue of
10 the police officer?

11 MR. SWAGGARD: Your Honor, the other issue of
12 the police officer is that we would ask that his
13 testimony be limited to only what he observed. I don't
14 know what ---

15 THE COURT: I don't know that means but...

16 MR. SWAGGARD: Well, he arrived at the scene of
17 the accident after the Plaintiff -- Plaintiffs, both had
18 left. He only had an opportunity to speak to the
19 Defendant. The scene had basically cleared by the time
20 he got there.

21 THE COURT: Well then what would he testify to?

22 MR. RICHARDSON: Your Honor, he's only going to
23 testify about his personal impressions when he arrived at
24 the scene.

25 THE COURT: I don't know what impressions mean.

1 MR. RICHARDSON: His personal observations.

2 THE COURT: All right. The skid marks, can he
3 say there were skid marks or what, you know, some
4 property damage there, he can say what that is, but we'll
5 allow him.

6 All right, what else?

7 MR. RICHARDSON: Your Honor, I -- I don't know
8 -- are you done?

9 MR. SWAGGARD: I'm done.

10 MR. RICHARDSON: Okay. Your Honor, I also have
11 an issue in limine. There is an issue here, from what I
12 understand, that Mr. Lake intends to include the criminal
13 record of my client. She was arrested in 2008 and just
14 recently found out she was -- she had her first DUI in
15 1982 in Augusta, Georgia. There was another arrest that
16 occurred in 1989 that -- the arrest in 1989, she was
17 pardoned for it in two thousand -- in 1989 was her arrest
18 and she was pardoned in 1999.

19 And I also believe that pursuant to Rule 609,
20 that that's outside of the 10 year rule. And that
21 pursuant to 609(c), since that DUI was pardoned, it is
22 not eligible to sue for impeachment purposes.

23 THE COURT: All right. Well she was -- what is
24 the -- the criminal incident that you're trying to keep
25 out?

1 MR. RICHARDSON: A DUI, Your Honor.

2 THE COURT: Well, it wouldn't be ---

3 MR. LAKE: Well, Your Honor ---

4 THE COURT: --- admissible anyway.

5 MR. LAKE: Well, Your Honor, the reason why it
6 would be admissible is because she was deposed and she
7 was asked in regard to whether she had been arrested,
8 convicted or had her license suspended for any reasons
9 and she denied all of the above. And she also ---

10 THE COURT: She had been pardoned?

11 THE DEFENDANT: Yes.

12 THE COURT: Ma'am.

13 MR. LAKE: Your Honor, I've never been given any
14 documentation as to the effect of any pardon. I do know
15 that they mentioned she was pardoned on the second
16 offense, Your Honor, but there's nothing that shows that
17 she was pardoned on the first DUI. I never got anything.
18 Initially they denied that she had ever been convicted of
19 anything.

20 So I do think ---

21 THE COURT: If she's -- any offense that has
22 been pardoned, she has a right to deny she has that.

23 MR. LAKE: Well, Your Honor, I think up under
24 608, that would still potentially be relevant because it
25 goes to her motive, bias, because she's indicated that

1 her license has never been suspended.

2 THE COURT: If she's been pardoned, we're not
3 going into it. It probably was suspended because of the
4 conviction and then when it was pardoned there is -- it
5 ends it.

6 MR. RICHARDSON: Your Honor, that deals with the
7 1988 conviction, just for clarification purposes and I
8 did let them know late about the 1982 conviction in
9 Augusta, Georgia, just because I just found out about it.
10 But I will say ---

11 THE COURT: Well, how old are these convictions?

12 MR. RICHARDSON: One happened in 1982, the other
13 one happened in 1988. The 1988 was pardoned and the 1982
14 ---

15 THE COURT: Your client -- the '88 was pardoned?

16 MR. RICHARDSON: Correct, Your Honor.

17 THE COURT: Well, we're not going into that.

18 MR. RICHARDSON: Right. The 1982 happened in
19 Augusta, Georgia. It's outside of the 10 year rule, Your
20 Honor, so we would also allege that it was -- it's not --
21 cannot be used for impeachment.

22 MR. LAKE: Your Honor, she was also convicted in
23 1986, according to the indictment, here in Richland
24 County.

25 THE COURT: Well, we're not going into it.

1 MR. LAKE: Your Honor ---

2 THE COURT: All too old.

3 All right, what else?

4 MR. RICHARDSON: Are both of those out, Your
5 Honor?

6 THE COURT: All of the -- all of hers.

7 MR. RICHARDSON: Thank you. That's it, Your
8 Honor, that's all I have for motion in limine.

9 THE COURT: All right.

10 MR. LAKE: Your Honor, I would have one motion
11 to bifurcate this case, based upon the Court's ruling
12 that they were going to allow Mr. Delaine's prior records
13 in, Mr. -- Mr. Delaine's record in, I do believe it
14 prejudices my client. I would ask at this time that my
15 case be separated from Mr. Delaine's case. We would be
16 happy to try this case after Mr. Delaine's case or we
17 would be happy to try this case first. But I do think
18 the overall -- the overall prejudice that my client's
19 going to sustain from this type of testimony in terms of
20 convictions and things of that sort, I think warrants the
21 separation of this particular case from Mr. Delaine's
22 case. I ---

23 THE COURT: Mr. Swaggard, anything you want to
24 say?

25 MR. RICHARDSON: I do, Your Honor. Actually a

1 little bit of history behind this case is that both of
2 these Plaintiffs were originally Mr. Lakes. He
3 originally filed this lawsuit together. These are
4 separate lawsuits, they're filed under the same caption.
5 They were only later on in the case -- I'm not getting
6 into why Mr. Delaine is no longer Mr. Lake's client, but
7 only halfway through the litigation did he stop being his
8 client and then Mr. Swaggard got involved.

9 So, up until this moment, Mr. Lake has not told
10 me any information about the idea that he wanted to
11 bifurcate this trial which I do think for preparation
12 purposes is a little bit different. But I also will say,
13 is that he captioned the case this way. It is brought to
14 this Court pursuant -- and Mr. Lake did it and now he
15 doesn't want it anymore.

16 THE COURT: All right. We're going to go
17 forward with this case.

18 MR. RICHARDSON: Thank you, Your Honor.

19 THE COURT: All right. Y'all have any voir
20 dire?

21 MR. RICHARDSON: I do.

22 THE COURT: Have a witness list?

23 (Pause.)

24 THE COURT: All right, Mr. Lake, who's your
25 client?

1 Q Now, that aside, I want to fast forward to the day of
2 the incident. Can you tell the jury what day that
3 was?

4 A January the 28th, 2011 at approximately 3:12 p.m.

5 Q What was it like outside that day?

6 A It was great, fantastic, a very nice day, clear,
7 sunny.

8 Q And what were you doing that day?

9 A Well, I just came from a friend's job, me and Mr.
10 Williams. We decided to get off at a location on
11 Farrow Road and Liberty Streets. Right there is a
12 store called E Spot (phonetic). As we got off the
13 public transportation, I looked at Mr. Williams and
14 said, I need a couple of cigarettes, you know, so
15 let's go in E Spot and grab a couple of cigarettes.

16 We goes inside and grab a couple of cigarettes
17 and then on the way out the door, Mr. Williams said,
18 well, Shawn, let me use your phone, I'm on prepaid
19 and, you know, you've got unlimited minutes. Let me
20 use your phone and call our friend up the street and
21 let him know we're on our way.

22 And I handed my phone to Mr. Williams, he in
23 return opened his phone to get the number out of
24 there, he's dialing the guy's house we're going to
25 and I can hear the guy pick up and I hear him say,

1 hello, and Mr. Williams addressed him. And within
2 that second is when the impact happened.

3 Q When you say the impact happened, what do you mean?

4 A I mean, your back turned, looking straight forward
5 and a vehicle, a Saturn, just came on the other side
6 and just came out of nowhere and just hit us.

7 Q And what side of the road were you on?

8 A We were on the left side, facing traffic.

9 Q You were facing traffic?

10 A Yes, sir.

11 Q Were you on the outside or the inside.

12 A I was the inside guy. I'm left-handed, I was walking
13 on the left side, Mr. Williams was on my right.

14 Q Mr. Williams was on your right and you were as far
15 over to the left as you could be?

16 A Yeah.

17 Q What was the ground like right there?

18 A Grass.

19 Q So you were in the grass?

20 A Yes, at least my left foot at least was in the grass,
21 maybe more.

22 Q As you're walking down incoming traffic, you're hit
23 from behind?

24 A Yes.

25 Q Do you remember seeing the vehicle?

1 A Not until I was on the ground and was looking up.

2 Q Can you describe to the jury what happened after the
3 impact?

4 A Well, when the impact -- I was shocked, you know.
5 You know, just laying there just unbelievable, you
6 know. 3:15 in the afternoon, you know, and I was
7 like, whoa, where did this come from, you know. So,
8 when I looked up, I seen Ms. Wilson exiting her
9 vehicle from the driver's side and also seen another
10 passenger getting out on the passenger side.

11 Ms. Wilson got out the vehicle with her hand
12 over her mouth like, oh, and she immediately
13 apologized saying, I'm sorry. And she immediately --
14 I remember one statement very very well. She said,
15 that I took my eyes off the road just for a moment,
16 you know. And, you know, I looked down at Mr.
17 Williams and -- I was able to stand up. I looked
18 down at Mr. Williams and he was in a lot of pain.

19 Q Were you struck by the vehicle directly?

20 A Yes. The -- I felt the vehicle, left -- I guess I'd
21 say the left headlight area, signal light area, hit
22 me in my hip right here (indicating). As I was -- as
23 it hit Mr. Williams, all I seen was his legs in the
24 air. And one of his legs just caught me under my arm
25 and I went like flying over in the grass and Mr.

1 Williams just stayed right there on the pavement on
2 the left side of the road.

3 Q Did E M S come?

4 A Yes, they had. They got there pretty fast.

5 Q Did you take a ride in the ambulance that day?

6 A No, sir.

7 Q Did Mr. Williams take a ride in the ambulance?

8 A Yes, sir.

9 Q Well, when he got into the ambulance, what did you
10 do?

11 A I seen a couple of people standing outside the store
12 that we had just came out of and they was wanting to
13 know what was going on. I asked the ambulance
14 driver, are he gonna stay here for the authorities
15 and he said, no, we gotta go. He said, are you
16 going? He looked at my leg, my foot. I was walking
17 pretty fair, you know. So I walked over to the
18 store, you know, after the ambulance pull off, I
19 walked to the store to let the guys know -- because I
20 know, you know, and letting them know what was going
21 on because they was standing outside. And I just
22 stood there for a moment and talking to them, waiting
23 on the authorities to come.

24 Q And after you were in the store for a little while,
25 what did you do next?

1 A Well, as I was out there, stood on the side of the
2 building and I seen -- I didn't see her get in -- Ms.
3 Wilson get in her vehicle but I did see her vehicle
4 leave. I seen it go up Liberty Street, make a left
5 wherever that is going toward the Hot Spot store.
6 And so when she left, I immediately walked over to
7 the Hot Spot, got me something to drink and walking
8 home.

9 Q When you went home, were you in pain?

10 A Yes, slightly, it was rough.

11 Q Did seek medical treatment?

12 A Yes, I have.

13 Q When did you seek medical treatment?

14 A The next day I got up -- well, actually I had a job
15 to do in Irmo, some carpet cleaning. And they came
16 over about 6 -- I want to say about 6:30 that evening
17 -- that morning. And when I got up out the bed, my
18 ankle was just as big around as -- probably big as a
19 softball. It was huge. I could not walk, could not
20 stand. When I got up -- when I got up that morning,
21 I could not move. I was very sore. My hip was
22 hurting, my ankle was probably the worst part of it.
23 And I talked to my fiancé at the time, we talked and
24 I said, I need to go to the hospital, I think I do.
25 And that's when I went.

1 Q Which hospital did you go to?

2 A Richland Memorial.

3 Q And what was your diagnoses at Richland Memorial?

4 A I actually really thought it was serious as what he
5 said it was but a fracture -- a severe sprain in my
6 left ankle and he didn't say too much about my back
7 but that started hurting immediately after that,
8 after the hospital visit.

9 Q Were you prescribed physical therapy?

10 A Yes.

11 Q Where did you receive physical therapy?

12 Q At C R C right here on Two Notch Road.

13 MR. SWAGGARD: Permission to approach, Your
14 Honor.

15 Q Can you tell the jury what this is, please?

16 A It looks like the expenses from my -- from Palmetto
17 Richland Memorial Emergency Room and the Columbia
18 Rehabilitation Clinic, the C R C.

19 Q What else is behind that first page?

20 A Emergency Room.

21 Q Are those your medical records?

22 A Yes, everything here, yeah.

23 MR. SWAGGARD: Your Honor, I would like to move
24 this into evidence as Plaintiff's Number 1.

25 MR. RICHARDSON: No objection, Your Honor.

1 THE COURT: So admitted.

2 COURT REPORTER: It's 20, it's pre-marked.

3 MR. RICHARDSON: 20, Your Honor.

4 THE COURT: All right.

5 MR. RICHARDSON: Thank you.

6 THE COURT: Thank you.

7 (Whereupon, Plaintiff's Exhibit Number 20,
8 Plaintiff Delaine's Medical Records, was
9 admitted into evidence.)

10 Q Mr. Delaine, you were just telling the jury that you
11 received some physical therapy and that you were
12 treated at Palmetto Health Emergency Room, can you
13 tell the jury what the total cost of your treatment
14 was?

15 A Combined or just...

16 Q Well, what was the cost for you treatment at Palmetto
17 Health Emergency Room?

18 A At Palmetto Health Emergency Room, medical record
19 bills, \$1,414.

20 Q And how much was your treatment at Columbia
21 Rehabilitation Clinic?

22 A \$2,828.

23 Q Did you pay for those bills out of your own pocket?

24 A No, I don't have it.

25 Q So you're responsible for those bills yourself?

1 A Yes.

2 Q And aside from the cost of your medical care, was the
3 quality of your life diminished in any way?

4 A Tremendously.

5 Q In what way?

6 A Well, I am a athlete but I just look like this. But
7 I am an athlete and I tend to play a lot of
8 basketball, I play football. I have a six year old
9 little girl and a 13 year old little boy who I am
10 continuing to go through sports with. He's playing
11 Pop Warner (phonetic) football. He's trying to play
12 some basketball and I'm out there with him trying to,
13 you know, teach him things that I've done when I was
14 in school, in elementary and middle schools, high
15 school. And back here just a couple of weeks ago, we
16 were at the park and I'm trying to handle the
17 basketball with him and, you know, just pain pops up
18 at my ankle again, you know. I'm not going to sit
19 here and say that it happens every day, once a week,
20 whatever, but I have trouble with this left ankle.

21 I tried doing some over the counter stuff to
22 make it well, you know, just to ease the pain
23 sometimes. But it's there, I really honestly think
24 it's not going anywhere no time soon. It's limited,
25 you know, just the small things I want to do with my

1 children.

2 You know, other than that, you know, just every
3 day activities, you know, it just pops up. And it
4 really has been a burden on me and my family.

5 MR. SWAGGARD: Mr. Delaine, I don't have any
6 more questions for you. I believe Mr. Richardson's going
7 to ask you some questions.

8 THE COURT: All right. Mr. Lake, do you have
9 any questions?

10 MR. SWAGGARD: Excuse me, I'm sorry, Your Honor.

11 MR. LAKE: No, Your Honor.

12 THE COURT: All right. All right, Mr.
13 Richardson.

14 MR. RICHARDSON: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. RICHARDSON:

17 Q Mr. Delaine, how are you?

18 A Fine. Yourself, sir?

19 Q I'm doing well.

20 A Great.

21 Q I'm going to ask you a couple of questions. I don't
22 intend to ask a whole lot. How do you know Mr.
23 Williams?

24 A We -- we have mutual friends at my friend girl's
25 house, he's a friend of her sons.

- 1 Q And what's your wife's name?
- 2 A Ashley Kirven (phonetic).
- 3 Q And do you have any kids?
- 4 A Yes, sir.
- 5 Q How many kids do you have?
- 6 A One son.
- 7 Q And what is his name and age?
- 8 A Jashir (phonetic) Williams and he's three years old.
- 9 Q And how long have you been doing this landscaping?
- 10 A I say off and on since I say February of this year.
- 11 Q And did you also work at Columbia Farms back in 2010?
- 12 A Yes, sir.
- 13 Q And you also did some work at Kneece's Cleaning for
- 14 about two and half years, correct?
- 15 A I would say more like three.
- 16 Q Okay and could you tell the jury what you did for
- 17 Kneece's Cleaning?
- 18 A Well, Kneece's Carolina Cleaning, I worked for the
- 19 State Budget and Control Board in the Horticulture
- 20 Department cleaning all the State grounds,
- 21 facilities, and stuff like that.
- 22 Q Okay. And I don't know if I want to ask you this,
- 23 but how long have you been going to Virginia College?
- 24 A Off and on since I say 2009, off and on.
- 25 Q And let me take you to the date of this particular

1 incident. Do you recall this incident?

2 A Yes, sir.

3 Q Do you recall when this incident happened?

4 A Yes, sir.

5 Q When did it happen?

6 A It happened January 28th, 2011.

7 Q And which county did it happen in?

8 A Richland County.

9 Q And where exactly in Richland County did the accident
10 happen?

11 A It happened on -- it happened on Liberty Street off
12 of Farrow Road.

13 Q Okay. Are you familiar with this particular area?

14 A Correct.

15 Q How are you familiar with it?

16 A I grew up on Farrow Road so I know almost every inch
17 of Farrow Road to the tee.

18 Q And this particular -- could you just kind of
19 describe for the jury what this area looked like?

20 A Well, the area -- the street that I was on, it has no
21 sidewalks -- excuse me, it has no sidewalks. It has
22 like little side humps but it has a speed bump that
23 you come to in the middle of the street before you
24 like go -- begin to go up a hill there. The street
25 has a hill at the end of the street, if you're coming

1 off Farrow Road.

2 Q Okay. And prior to this particular accident, could
3 you describe your -- I guess your -- how were you --
4 how did you make it to that particular area?

5 A I just came from off Farrow Road. I had got off at
6 the E Spot right there on the corner of Farrow, I
7 think, and that's Sunset, if I'm not mistaken.

8 Q Okay.

9 A I got off at the E Spot, walked through -- I went
10 into the E Spot for a second. I walked down a little
11 side -- it's like a little sidewalk on the side of
12 the store. I walked down the little sidewalk that
13 leads you to the grass to go up the hill.

14 So, I was walking down the left side of the
15 road.

16 Q Okay. And for the jury, could you explain what the E
17 Spot is?

18 A The E Spot is a convenience store basically.

19 Q And you said you got off, where did you get off?

20 A I got off the bus at the corner in front of the E
21 Spot on Farrow Road.

22 Q Okay. Do you have a driver's license?

23 A No, sir.

24 Q And who was with you at the time?

25 A Mr. Shawn Delaine.

1 Q And I'm going to show you a series of photos.

2 MR. LAKE: Your Honor, it's my understanding
3 these photos will be admitted without objection from
4 either Plaintiff or Defendant. That will be 1 through --
5 1 through 19.

6 MR. RICHARDSON: No objection, Your Honor.

7 THE COURT: All right, so admitted.

8 (Whereupon, Plaintiff's Exhibit Number 1, Photo
9 of Car, was admitted into evidence.)

10 (Whereupon, Plaintiff's Exhibit Number 2, Photo
11 of Windshield, was admitted into evidence.).

12 (Whereupon, Plaintiff's Exhibit Number 3, Close
13 Up Photo of Windshield, was admitted into
14 evidence.)

15 (Whereupon, Plaintiff's Exhibit Number 4, Photo
16 of Car-Right Side, was admitted into evidence.)

17 (Whereupon, Plaintiff's Exhibit Number 5, Photo
18 of Car Back, was admitted into evidence.)

19 (Whereupon, Plaintiff's Exhibit Number 6, Photo
20 of Street, was admitted into evidence.)

21 (Whereupon, Plaintiff's Exhibit Number 7, Photo
22 of Street/Path to Store, was admitted into
23 evidence.)

24 (Whereupon, Plaintiff's Exhibit Number 8, Photo
25 of Path to Store, was admitted into evidence.)

1 (Whereupon, Plaintiff's Exhibit Number 9, Photo
2 of Taxi, was admitted into evidence.)

3 (Whereupon, Plaintiff's Exhibit Number 10, Close
4 Up Photo of Taxi, was admitted into evidence.)

5 (Whereupon, Plaintiff's Exhibit Number 11, Photo
6 of Street with Speed Bump Sign, was admitted
7 into evidence.)

8 (Whereupon, Plaintiff's Exhibit Number 12, Photo
9 of Street with Speed Bump Sign, was admitted
10 into evidence.)

11 (Whereupon, Plaintiff's Exhibit Number 13, Photo
12 of Street with Speed Bump Sign, was admitted
13 into evidence.)

14 (Whereupon, Plaintiff's Exhibit Number 14, Photo
15 of House and Colonial Heights Sign, was admitted
16 into evidence.)

17 (Whereupon, Plaintiff's Exhibit Number 15, Photo
18 of Water and Liberty Street Sign, was admitted
19 into evidence.)

20 (Whereupon, Plaintiff's Exhibit Number 16, Photo
21 of Street, was admitted into evidence.)

22 (Whereupon, Plaintiff's Exhibit Number 17, Photo
23 of Street, was admitted into evidence.)

24 (Whereupon, Plaintiff's Exhibit Number 18, Photo
25 of Speed Bump 15 Miles Per Hour sign, was

1 admitted into evidence.)

2 (Whereupon, Plaintiff's Exhibit Number 19, Photo
3 of Street, was admitted into evidence.)

4 Q And let me just get you to take a look at these
5 particular photographs and ask you, do you recognize
6 that particular area?

7 A Yes, sir.

8 Q Where do you recognize that to be?

9 A This is Liberty Street.

10 Q Okay. And you indicate that as you are going from
11 the E Spot -- why did you go into the E Spot?

12 A Get a couple of cigarettes.

13 Q And did Mr. Delaine go into the E Spot with you?

14 A Correct.

15 Q And after y'all left out of the E Spot -- how long
16 were you in the E Spot?

17 A No longer than two minutes.

18 Q And after you left the E Spot, where were you heading
19 at that particular time?

20 A I was going to my friend J.D.'s house, he stays on
21 the top of Liberty Street. It's some apartments,
22 some duplexes on the left hand side.

23 Q Okay. And so you were describing to the jury your --
24 the way you went. Which way was that to get to
25 Liberty Street from the E Spot?

- 1 A To get to Liberty Street from the E Spot?
- 2 Q Yeah, I mean -- tell -- after you left the store, how
- 3 did you go?
- 4 A Oh, I walked down the little sidewalk path that leads
- 5 to, you know, Liberty Street.
- 6 Q And then how long -- after you got -- hit Liberty
- 7 Street itself, what happened next?
- 8 A It's a straight shot, the left side of the road.
- 9 Q And what's the distance between where the E Spot is
- 10 located and where your friend is -- where he resides?
- 11 A Probably like 10 houses on top of the hill from the E
- 12 Spot, about 10 houses.
- 13 Q And did you have any reason at all to have to cross
- 14 over to the other side of the road?
- 15 A None whatsoever.
- 16 Q And was there any traffic coming on the road that you
- 17 were traveling on?
- 18 A None at all.
- 19 Q I mean in terms of coming towards you?
- 20 A No traffic was coming towards me at all, no.
- 21 Q And are you facing traffic at this particular time?
- 22 A Correct.
- 23 Q And how long after you left the E Spot did this
- 24 accident occur?
- 25 A Well, it was like a matter of, I would say, between

1 three minutes. I was about to make a phone call and

2 I was ---

3 Q Tell the jury what happened.

4 A Okay. I got off the bus at the E Spot. I went in
5 the store for a second. I went down the little path
6 on the side of the E Spot that leaves you on the left
7 side of the road, there's a little path, a little
8 walkway. So I walked down that. Me and Mr. Delaine
9 was going to my friend J.D. house on top of the hill
10 so we was walking on the left side of the phone
11 (sic). I was calling him to let him know I was on my
12 way to his house and I was struck.

13 Q And you said you were struck. Where were you struck?

14 A In my back.

15 Q And as a result of being struck on your back, what
16 happened next? What do you recall happening to you
17 physically?

18 A I was thrown.

19 Q Okay. Thrown where?

20 A I was thrown forward.

21 Q Okay. What -- did parts of your vehicle (sic) strike
22 -- any parts of your body strike the vehicle?

23 A Yeah, all I could remember is my back, I just got hit
24 directly in the back. I didn't know what it was.

25 Q Okay. Did you ever at any point see the vehicle that

1 struck you?

2 A No, sir.

3 Q Did you ever hear any horns or any warning signs ---

4 A No sir.

5 Q --- that there was a vehicle behind you?

6 A Not at all.

7 Q Did you ever even know that vehicle was behind you?

8 A No, sir.

9 Q Okay.

10 MR. LAKE: Your Honor, I'm going to get the
11 witness to step down for just a second.

12 THE COURT: All right.

13 (The witness steps down from the witness
14 stand.)

15 Q Mr. Williams, I'm going to kind of get you to use
16 these photographs to kind of walk the jury through
17 exactly -- I want you to identify each particular
18 picture.

19 And let me show you what's been marked as --
20 into evidence as Plaintiff's Exhibit Number 6. What
21 is that?

22 A This is showing you the ---

23 THE COURT: Mr. Williams.

24 THE WITNESS: Sir?

25 THE COURT: I need you to kind of -- if you'll

1 move back this way. Your voice has got to carry to the
2 court reporter. She's got to hear you as well as the
3 jury, so.

4 THE WITNESS: Yes, sir.

5 Q Talk a little louder, okay. And what is this right
6 here, number 6?

7 A All right. This picture exhibits right here, when
8 you turn off Farrow Road onto Liberty Street.

9 Q Okay. And this would have been -- is that where the
10 E Spot is located?

11 A The E Spot, on that picture, was located on the
12 outside of like the picture, you can't see it.

13 Q Okay. Let me show you Plaintiff's Exhibit Number 7
14 and Plaintiff's Exhibit Number 8 and get you to take
15 a look at these particular photographs. Is that --
16 what does that illustrate in those particular
17 photographs? And speak loud enough so she can hear
18 you.

19 A Okay.

20 Q What is Exhibit Number 7, what is illustrated?

21 A Exhibit Number 7 illustrates the path that I walked
22 down when I left the E Spot. You can see it's on the
23 left side of the road.

24 Q And what is -- can you see the E Spot in that
25 particular picture?

1 A Correct, it's the green building.

2 Q Okay. And so that is the path that you actually
3 walked down?

4 A Correct.

5 Q And Number 8 actually illustrates the same thing?

6 A Correct.

7 Q Okay. And what type of items are actually sold at
8 the E Spot, do you know?

9 A He sells like, you know, like ladies dresses, he
10 sells convenience store items too. He doesn't sell
11 no alcohol though.

12 Q Okay. And what were the -- what were the conditions
13 like that particular day?

14 A I remember it being sunny.

15 Q And let me show you what's been marked as Plaintiff's
16 Exhibit Number 9 and get you to take a look at that.
17 What does that illustrate?

18 A That's the driveway of the E Spot at the beginning of
19 Liberty Street.

20 Q Okay. That would have been the direction in which
21 you would have been traveling going down?

22 A Yeah, correct.

23 Q You were going down that -- this particular road?

24 A Correct.

25 Q And again, you would have been on the left side?

- 1 A Correct.
- 2 Q And Number 10 just illustrates a closer ---
- 3 A Yeah.
- 4 Q --- version of that particular -- and you also
- 5 indicated -- do you recall what the speed limit is on
- 6 that particular road?
- 7 A Not exactly, sir, but I'm pretty sure it's pretty
- 8 slow, there's a speed bump.
- 9 Q Okay. And let me show you what's been marked as
- 10 Plaintiff's Exhibit Number 17 and ask you if you
- 11 recognize this particular photograph?
- 12 A Yeah, that's the speed bump.
- 13 Q And how far is that speed bump actually down from
- 14 where the E Spot is located?
- 15 A Oh, it's really right there. It's like -- it's the
- 16 intersection of Water and Liberty. It's probably
- 17 about like a quarter up the street.
- 18 Q And where at in relation of this particular road do
- 19 you recall being struck? The jury's got to see, can
- 20 you kind of step to the side. Can you see the area
- 21 where you were actually struck at?
- 22 A I had to be like in here (indicating).
- 23 Q So it would have been right ---
- 24 A Just before the speed bump.
- 25 Q Do you know that for a fact, it was right before the

1 speed bump in terms of where you were struck?

2 A Where I was hit? Yeah, I was hit before the speed
3 bump. I landed by the speed bump.

4 Q Okay. And could you illustrate to the jury on this
5 particular photograph, are there any sidewalks in
6 this particular area where you were at?

7 A No, sir, just little side humps (indicating).

8 Q Okay. And are you -- are you completely in the
9 roadway, are you partially in the roadway or -- tell
10 the jury exactly how you were actually traveling down
11 this particular road?

12 A I was traveling down this road -- I'm on the side
13 hump because my friend was -- he was like, he was in
14 the grass from what I remember. So I was like I'd
15 say partially but not fully in the road.

16 Q And so you are -- and is in the path we seen in terms
17 of ---

18 A Yeah, correct. This is the path I came down. I came
19 out the store and we were just walking right here
20 (indicating), that's where it happened.

21 Q And you said you landed -- where did you land? Where
22 do you recall landing at?

23 A I recall landing like somewhere right before the
24 speed bump.

25 Q Okay. And where in the road -- was this the same

1 location where you landed in the roadway?

2 A Yes, sir, to me, from what I recall, that's where I
3 remember being at (indicating). I looked up and saw
4 the speed bump.

5 Q Okay. And let me show you what's already been marked
6 into evidence as Plaintiff's Exhibit Number 18. What
7 does that say the speed limit is in this particular
8 area?

9 A 15 miles per hour.

10 Q And what is illustrated in this particular
11 photograph, Number 19, Plaintiff's Exhibit Number 19?

12 A The speed bump and the hill that goes up to Liberty
13 Street.

14 Q Okay. Is this the direction that you were going?

15 A Correct.

16 Q And could you illustrate to the jury exactly where
17 the apartment complex is where you were headed?

18 A The apartment complex is on top of this hill
19 (indicating). It's a duplex right on the left side
20 at the top of the hill.

21 Q And that's where your friend was located?

22 A Correct.

23 Q Did you have any reason to go over here to this side
24 and go up the road or...

25 A No, sir. I didn't have no reason to cross over at

1 all.

2 Q Okay. And at that intersection -- let me show you
3 what's been marked as Plaintiff's Exhibit Number 15.
4 Is that the name of the street close to where the
5 speed bump is? What's the name of that particular
6 street?

7 A Water and Liberty.

8 Q Okay. After this particular accident, the impact,
9 what part of -- did you actually land on top of her
10 vehicle? Do you recall striking her windshield?

11 A All I recall is being hit.

12 Q Okay. Do you -- did you get a chance to see the
13 vehicle after the impact?

14 A While I was on the ground, yeah.

15 Q What kind of vehicle was she driving?

16 A A little four door Saturn.

17 Q Okay. Let me show you what's been marked into
18 evidence already as State's (sic) Exhibits Number 1,
19 2, 3, 4 and 5 and ask you do you recognize these
20 particular photographs or this particular vehicle
21 contained in the photographs?

22 A This is the vehicle that struck me.

23 Q Okay. And what do you observe in terms of front end
24 damage? What do you see in terms of what stands out
25 in this particular photograph?

1 A I see a windshield cracked, I see dents.

2 Q Okay. And what's marked as Plaintiff's Exhibit 3, is
3 that the windshield that you actually struck?

4 A This is the car.

5 Q Okay. And after striking the windshield, do you
6 recall striking any other parts of the car?

7 A I just recall the car hitting me.

8 Q And this would be the car that you saw in terms of
9 the damages and things of that sort.

10 A Correct.

11 Q Okay. And so you're not exactly sure, not testifying
12 exactly what all different parts you hit you just
13 know that you ---

14 A I was struck from behind.

15 Q And it was with the front of her car, from your
16 understanding?

17 A Yes, sir. Yes, sir.

18 Q Let me ask you a question -- you can have a seat.

19 (The witness returned to witness stand.)

20 MR. LAKE: Your Honor, permission to publish
21 this to the jury.

22 THE COURT: Sure. Ladies and gentlemen, Mr.
23 Lake has asked to publish them and let you look at them.
24 I have no objection to your passing them around, I just
25 caution you, don't get so involved in the pictures that

1 you lose the testimony because you will have those
2 pictures, you won't have the testimony.

3 Q Just for clarification, you never saw the vehicle
4 prior to the impact?

5 A Correct.

6 Q Only saw it after the impact?

7 A Correct.

8 Q Okay. And so after you were struck, are you able to
9 contact the police or contact the E M S or something
10 like that?

11 A No, my friend, Mr. Delaine, had to go pick up the
12 phones off the ground and put them back together and
13 call E M S.

14 Q And what happened to the phone that you had after you
15 were struck?

16 A I do not know.

17 Q Okay. And after you were struck, describe your
18 injuries at the time of the impact or after this
19 happened, just after the impact?

20 A Well, all I know is I felt like bad pains in my back
21 because that's what was struck, my back, my hip, you
22 know.

23 Q Could -- do you know -- have any idea ---

24 A And ---

25 Q --- whether it was any particular side of her vehicle

1 that struck you or anything along those lines?

2 A Sir, all I know is I was struck from behind.

3 Q Okay. And how soon after the accident do recall
4 E M S responding?

5 A Immediately.

6 Q When you say immediately, how long would that be?

7 A I would say within five minutes.

8 Q They were there. And at the time that you -- at the
9 time of this particular accident, did you have an
10 opportunity to tell them what -- you know, what
11 happened, what your injuries were?

12 A To E M S?

13 Q To E M S, correct.

14 A Yeah, the guy who was -- the guy who, you know, put
15 me in, he was talking to me in the back and I was
16 explaining what happened.

17 Q And what -- what all did he do to you while you were,
18 I guess, in the ambulance and things of that sort, do
19 you recall?

20 A From what I can recall, you know, it was so fast and
21 stuff was going on, I recall him, I guess, taking my
22 vitals and stuff like that. I don't really remember
23 him doing too much else inside the ambulance.

24 Q Do you recall how you may have injured your left
25 middle finger or your knee or anything along those

1 lines?

2 A Yeah, all I know is when I was struck by the car,
3 while I was in the air, I put my hands up over my
4 face and when I landed, I landed directly on my hand.
5 So it kind of like scraped it up bad.

6 Q Okay. And where were you transported after the
7 accident?

8 A To Richland Memorial, Palmetto Health Richland.

9 Q Okay. And at the scene, did you ever -- did you
10 actually ever come in contact with any law
11 enforcement at the scene?

12 A I never saw any law enforcement at all.

13 Q Were they there at -- while you were there?

14 A No.

15 Q So if they responded, they didn't respond while you
16 were there?

17 A No, not at all.

18 Q Okay. And when you did see law enforcement, they
19 actually responded to you at the hospital, correct?

20 A Yeah, they came to the hospital, correct.

21 Q And do you recall what the -- your medical expenses
22 was from the ambulance ride?

23 A I say like 502, 504 -- \$504 or something like that.

24 Q Okay. And that was something that you were
25 personally responsible for?

1 A Correct.

2 Q And after you got to the hospital, what did they do
3 to you at the hospital?

4 A I know I was seen by a doctor. I had to go get
5 stitches in my hand.

6 Q And why did you have to have stitches in your hand?

7 A Because he said the gash was too deep for it to heal
8 on its own.

9 Q And is there any particular finger that was actually
10 injured?

11 A My left middle finger.

12 Q And how many stitches do you recall having?

13 A I can't recall exactly how many it was.

14 Q Okay. And were you diagnosed with any strains or
15 sprains?

16 A Like from that, like my finger it was ---

17 Q From any of the injuries that you sustained. What
18 injuries did you sustain when you were diagnosed at
19 the hospital?

20 A The injuries, I told them my hip, my back and I think
21 it was my left knee.

22 Q Okay.

23 A If I wasn't mistaken.

24 Q Okay. And were you given any prescriptions at the
25 hospital?

- 1 A Correct.
- 2 Q And what were those prescriptions for?
- 3 A Pain.
- 4 Q Okay. And where all were you having pain at at the
5 time?
- 6 A Mainly like my back and my hip, that was like the
7 main problem.
- 8 Q And how long would you estimate you were in the
9 hospital?
- 10 A Oh, I was in there overnight, I was in there
11 overnight.
- 12 Q Okay. And how long did you continue to have pain
13 after the accident?
- 14 A I'm still going through pain.
- 15 Q Okay. Did you have an opportunity to follow back up
16 at the hospital after this accident?
- 17 A Yeah, to get the stitches removed.
- 18 Q And what else did you have to have done?
- 19 A I had a couple of x-rays.
- 20 Q Did you have an opportunity to get additional
21 prescriptions, refills or something like that?
- 22 A Yeah, if I'm not mistaken I think I did.
- 23 Q Okay. Do you recall -- so the first time you went to
24 the hospital would have been January 28th, 2011?
- 25 A Correct.

1 Q Do you remember what your medical expenses for that
2 was?

3 A For the hospital by itself?

4 Q The initial hospital visit on January ---

5 A I think it's a little bit over 2400.

6 Q Okay. Would \$2,652 be an accurate amount?

7 A Correct.

8 Q Okay. And what all did they x-ray for you at that
9 initial visit on January 28th?

10 A Well, I remember like my back got x-rayed. My back,
11 I think it was my knee. I'm not exactly -- exactly
12 sure every spot that they took an x-ray of but it was
13 more than two.

14 Q And were you in a lot of pain at that time?

15 A Correct.

16 Q And did you report your pain to them at that
17 particular time?

18 A Correct.

19 Q And when did you have an opportunity to come back to
20 the hospital?

21 A I mean, I followed up with what I was supposed to do,
22 you know. It was the only thing for me to do.

23 Q So they asked you to follow back up February the 1st,
24 2011, would that be about accurate?

25 A Correct.

1 Q And at the time that you followed back up on February
2 the 1st, 2011, what all did they do to you then?

3 A On my follow back up?

4 Q Yes, sir.

5 A You talking about at the hospital?

6 Q Yes, sir.

7 A That's when -- that's what I was telling you when he
8 took the -- put the stitches or was taking them out
9 one. My follow back up, I remember him taking the
10 stitches out.

11 Q Okay. And do you remember what the medical expenses
12 for that particular doctor visit was?

13 A I think three hundred and something.

14 Q Would \$329 be an accurate amount?

15 A Correct.

16 Q Okay. And after you had that -- did you continue to
17 have problems after that?

18 A Yes, sir.

19 Q And as a result of that, did you go do some follow-up
20 treatment with someone else?

21 A Yeah, I had to go to Healing Touch, the chiropractor.

22 Q And what all did they do for you there?

23 A They gave me like some kind of like shock treatment.
24 I had to lay on beds, rolling beds, massage chairs,
25 and stuff like that.

1 Q And how long would you estimate that you underwent
2 therapy?

3 A It was from February to like -- probably say like the
4 middle of March, the next month.

5 Q Okay. And you indicated that they put you on some
6 type of traction bed?

7 A Correct.

8 Q And how often did you have to, I guess, do the
9 therapy and treatment and that sort of thing?

10 A I want to say the therapies, I'd say at least -- at
11 first, I was going every day but I ended up starting
12 to go like two days a week or three days a week.

13 Q And did the -- I guess the treatment, did it assist
14 you or help you out?

15 A Oh, yeah.

16 Q And it helped you out in what way?

17 A It took a lot of -- a lot of frustration off my back
18 and made me, you know, controlled it a little better
19 and pain wasn't as much as it was when the accident
20 first happened.

21 Q And were you still taking prescription medication at
22 that time?

23 A Yeah, correct, yeah.

24 Q What all pain medications were you prescribed, do you
25 recall, during this timeframe?

1 A If I'm not mistaken, I think it was something like
2 Percocet, something real powerful.

3 Q And how long would you say you were on Percocet or
4 whatever the pain medication was?

5 A I just did -- I just did the bottle and that was it.
6 Probably went to get one refill and that was it.

7 Q And do you recall how much your expenses from Healing
8 Touch?

9 A 24 -- I think it's like 2400.

10 Q Would \$2,465 be an accurate amount?

11 A Correct.

12 Q Okay. You also had, I guess, Pitts Radiology bill of
13 \$113?

14 A Yeah, correct.

15 Q Actually for the x-rays that were done on January
16 28th?

17 A Yes, sir.

18 Q Could you describe to the jury what type of, I guess,
19 impact that this accident had on you in terms of your
20 quality of life and everyday living?

21 A Well, I had to -- first off, I had to withdraw from
22 school and if anybody here been in college before,
23 you know the expenses of withdrawing and having all
24 these loans taken out, I'm going to have to pay them
25 back eventually. So I had to withdraw. I wasn't

1 working, you know, it caused other tension. It made
2 stuff hard on me taking care of my son, especially --
3 just everyday living, you know.

4 Q And did it affect your marital life and things of
5 that sort?

6 A Oh, yeah, went downhill

7 Q And when were you actually married?

8 A The morning of the accident.

9 Q And where were you married at?

10 A I came up here to get my license. You know, we was
11 going to get married at the church but we came to get
12 our license and stuff first.

13 Q And would it be fair to say this accident had a major
14 impact on your life?

15 A Yes, sir.

16 Q Are you continuing to still have problems related to
17 this accident or how are you feeling now?

18 A Well, not to sound like a complainer, but like from
19 to time, I can be tying my shoes or I can be reaching
20 down to pick up my son and I get a sharp pain. It's
21 not an everyday pain, you know, it happens on its own
22 time, you know. But I still feel some type of pain
23 from that and I know that's the only way it came from
24 because hadn't had no other accident.

25 Q Did -- have you had any -- so you haven't had any

1 other accidents or anything like that, correct?

2 A Not to where my back was hurting, no, sir.

3 Q And had you had any -- had you had any problems with
4 your hip or anything like that prior to this
5 accident?

6 A No, sir.

7 Q What about with your knee, had you had any problems
8 with your knee at the time of the accident?

9 A Not that knee, no, sir, not my left knee.

10 (Pause)

11 MR. LAKE: Your Honor, Plaintiffs would move
12 Plaintiff's Exhibit Number 21, summary of medical
13 records, into evidence without objection from either the
14 Plaintiff or Defense counsel.

15 THE COURT: Any objection? Y'all stipulate as
16 to what that is? He didn't get it identified that I'm
17 aware of. Do y'all stipulate that that's a summary of
18 the medical records?

19 MR. RICHARDSON: I'll stipulate that that's what
20 he says is a summary of medical records, Your Honor.

21 Q Mr. Williams, let me get you to take a look at this
22 particular item and ask you to review that to
23 determine whether that's a summary of your medical
24 expenses.

25 A Yes, sir.

1 THE COURT: All right, so admitted without
2 objection.

3 MR. RICHARDSON: Thank you, Your Honor.

4 (Whereupon, Plaintiff's Exhibit Number 21,
5 Summary of Plaintiff Williams' Medical Records,
6 was admitted into evidence.)

7 Q Mr. Williams, did you know Ms. Wilson or anything
8 like that, prior to this accident?

9 A No, sir.

10 Q Do you recall having any conversations with her at
11 the scene?

12 A No, sir.

13 Q She never said anything to you or anything along
14 those lines?

15 A No, sir.

16 Q Were there any passengers in her car?

17 A Yes, sir.

18 Q Who was in her car?

19 A I don't want to sound racist when I say this, I think
20 she was Asian or something of that distinct (sic).

21 Q Did you know her, had you ever seen her before?

22 A No, sir.

23 Q And where was she seated at?

24 A She -- I guess she was her passenger.

25 Q Okay. At what point did you see the passenger or Ms.

1 Wilson?

2 A When I was on the ground, I seen both of them get out
3 of the car.

4 Q Did the passenger say anything to you?

5 A No, sir.

6 MR. RICHARDSON: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q How long would you say you were at the scene?

9 A Excuse me?

10 Q Before you were transported back to the hospital, how
11 long were you at the scene before you were
12 transported?

13 A I would say roughly five minutes at the longest, it
14 was pretty quick.

15 MR. LAKE: Beg the Court's indulgence.

16 (Pause.)

17 MR. LAKE: No further questions.

18 THE COURT: All right. Ladies and gentlemen,
19 we're going to take a break before we go into the
20 cross-examination. So I'm going to let you step back to
21 the jury room. We'll take about a 15 minute break, let
22 you relax, have some refreshments.

23 Please don't discuss the case while you're
24 there.

25 (The jury retires from the courtroom at

1 determine, what did y'all find?

2 A I didn't remember the scene very well and I still
3 kind of don't. Like I said, it was my partner
4 Steven's call so he actually did more patient care
5 than anything that I did. I did like -- he got out,
6 he went to the scene or to the patient. I got out, I
7 got equipment because I knew we had a patient hit by
8 a vehicle and I knew I was going to need backboard,
9 C-collar, the stretcher, nothing on the stretcher but
10 the backboard so we can get the patient loaded and
11 get him into the ambulance.

12 Q Okay. And according to the report, where did y'all
13 find him at?

14 A He was laying on the ground.

15 Q Okay. And in terms of the physical condition, what
16 do your records reflect?

17 A That he was complaining of basically hip pain was
18 most the thing that was on -- in Mr. LeBlanc's
19 paperwork was mainly the hip pain.

20 Q And in terms of his vital signs and his other
21 physical condition, what else did you determine?

22 A Everything else was stable. The two score that we
23 use, the Glasgow coma scale and the revised trauma
24 scores were both in normal limits, they were 15 for
25 the Glasgow and 12 for the R T S.

1 Q And according to your records, I guess on the second
2 page he reported, with lower extremities and upper
3 extremities injuries?

4 A Yes, sir, that would be the hand for the upper
5 extremity, the hip and the leg for the lower
6 extremity.

7 Q Okay. And how did y'all immobilize him?

8 A We used a long backboard, two nine foot straps. We
9 put a cervical collar around his neck and secured him
10 to the backboard with the nine foot straps.

11 Q And did your records reflect whether he was in pain
12 or not at the time?

13 A Yes, sir. It actually rates the pain as a seven on
14 the activity log the whole time throughout the
15 transport.

16 Q And is he still in the condition, I guess, when he
17 explained to you all what happened to him and
18 everything like that?

19 A Sir?

20 Q I guess, did this pain -- I guess this is when he's
21 also telling you all, in terms of what happened to
22 him ---

23 A Throughout this whole transport it has it as a seven.

24 Q And according to your records, what do y'all indicate
25 happened?

1 A The first part of the run report states that the
2 patient advises he was walking down the street when
3 he was hit from behind by a vehicle.

4 Q That's what he told y'all at the time?

5 A Yes, sir.

6 Q And does the report indicate there was any damages to
7 the vehicle or reflects it?

8 A It talks about the spidering of the windshield from
9 more than likely -- I mean, I can't -- from possibly
10 the head hitting the windshield. Usually that's what
11 shards the windshield or spiders the windshield is
12 the head.

13 Q And when you say, spidering the windshield, what does
14 that mean, spidering the windshield?

15 A It -- windshields are designed not to shatter and
16 break. They're designed to shatter and stay in one
17 spot. When it says spider, he's talking about a
18 spider web. You hit the windshield and it spider
19 webs out. It looks more like a spider web. It
20 doesn't crack and you have shards of glass
21 everywhere. You have itty bitty pieces that will go
22 out individually but it's nothing sharp that would
23 actually cut anything.

24 Q Okay. And in terms of his transport, how did y'all
25 transport him?

1 A Per the paperwork, we transported him emergent which
2 would be lights and siren.

3 Q And how was he placed into -- into the ambulance?

4 A We put him on a backboard, strapped him down, put him
5 to the stretcher, moved the stretcher to the
6 ambulance, put the stretcher with him on the
7 backboard into the ambulance.

8 Q Okay. Did he have any type of cervical collar on him
9 at the time?

10 A Yes, sir.

11 Q Okay. And he never indicated to you that he lost
12 consciousness or anything along those lines, correct?

13 A No, sir. Actually it said that he denied decreased
14 L O C or denied loss of consciousness.

15 Q Now, I think at the time that you talked to him, what
16 did he tell you in terms of, you know, kind of all he
17 could remember at the time?

18 A It says here that the patient advised all he can
19 remember is being on the hood of the car and then on
20 to the ground.

21 Q This is still while he's still in pain?

22 A Yes, sir.

23 Q And with this information that y'all had gotten from
24 him, would this have been some of the first
25 information that you would have gotten upon arriving

1 at the scene?

2 A Well, first my partner would have asked him what he
3 was -- where he was hurting and while he was doing a
4 trauma assessment, he would have ask him if he
5 remembered everything and, you know, what he
6 remembered.

7 Q Okay. How long did it take y'all to respond or where
8 did y'all take him after the accident?

9 A We took him to Richland Memorial after the accident.

10 Q And how long did -- how long were y'all actually at
11 the scene?

12 A We were on the scene for approximately eight minutes.

13 Q Did you or Mr. LeBlanc, did y'all talk to any of the
14 other individuals that were out there?

15 A I didn't because I figured he probably did while I
16 was going to grab the equipment.

17 Q I don't know if you specifically remember this
18 accident but do you recall whether you talked to the
19 police officer or whether the officer was there when
20 you were present?

21 A I don't remember, sir.

22 Q Would y'all have waited for a police officer to be
23 there ---

24 A No, sir.

25 Q --- to be transported?

1 A No, sir, patients come first.

2 Q Okay. And so once y'all got him secure, you would
3 have immediately done what?

4 A Take off to the hospital.

5 Q And your records don't reflect that y'all had any
6 contact with law enforcement ---

7 A No, sir.

8 Q --- at the scene, does it?

9 A Huh-uh.

10 Q And the person that y'all transported, who was that?

11 A That would have been Mr. Williams.

12 Q And again, I guess he told you at time, he was
13 walking down the street when he was hit from behind
14 by a vehicle?

15 A Yes, sir, that's what the paperwork states.

16 MR. LAKE: No further questions.

17 CROSS-EXAMINATION

18 BY MR. RICHARDSON:

19 Q To follow-up of your timing of when the accident
20 happened, how long you were there and then what time
21 you left, what time were you dispatched?

22 A We were dispatched at 3:25.

23 Q So that means that's the time you left for the scene?

24 A That is what time dispatch contacted us, said prepare
25 to copy M V C versus pedestrian, Liberty and Waters.

1 THE COURT: All right. Anything?

2 MR. LAKE: Nothing.

3 THE COURT: All right. Thank you sir, you may
4 step down.

5 (The witness leaves the witness stand.)

6 THE COURT: Do you have any objection to him
7 being excused?

8 MR. LAKE: We ask that he be excused.

9 THE COURT: All right. Thank you, sir, you're
10 free to leave.

11 MR. LAKE: Your Honor, Mr. Williams will rest at
12 this particular time.

13 THE COURT: All right, you ready to proceed?

14 MR. RICHARDSON: I am, Your Honor.

15 THE COURT: All right, call your first witness.

16 MR. RICHARDSON: We call Ms. Wilson to the
17 stand, please.

18 THE COURT: All right.

19 (MARIE WILSON, having first been duly sworn,
20 testified as follows:)

21 CLERK: All right, thank you, ma'am. Have a
22 seat and tell us your full name.

23 THE WITNESS: My name is Marie Wilson.

24 DIRECT EXAMINATION

25 BY MR. RICHARDSON:

1 Q Ms. Wilson, how are you doing?

2 A Blessed, I'm here.

3 Q Good. If you could please tell the jury your full
4 name and age?

5 A Marie Wilson, I'm 62 years old.

6 Q And where are you from?

7 A I'm originally from Bishopville, South Carolina but
8 my husband's military so I traveled with him for the
9 past 20 years. So now we're separated and I reside
10 now in Columbia at 304 Hanover Avenue.

11 Q And what do you do for a living?

12 A I'm a cashier at Eau Claire High School off of
13 Monticello Road.

14 Q Let's go ahead and cut to the chase. Where were you
15 going on January 28th, 2011?

16 A I had just gotten off from work and I picked up this
17 girlfriend and she wanted me to take her over to a
18 friend house. So I said, Sue, I had a handicap at
19 the time at home, I don't have but a few minutes but
20 I will take you but, you know, you're going to have
21 to give me a few minutes.

22 So -- that means they live in Belvedere. So I
23 was leaving Belvedere and I said, well, I'm going to
24 take the shortcut to go down Liberty Street. And I
25 made the left at Z (phonetic) -- whatever the name of

1 the store that is, I just noticed the name. But
2 anyway, I made a left on Liberty Street. Sue and I
3 was talking. She said, Marie, they must don't have
4 nothing to do. I said, no, they probably walking the
5 street all day. I said, I'm going home so I can fix
6 dinner and relax.

7 And we went on talking and so finally as soon as
8 I entered over the bump, I forgot about them because
9 my focus was straight in front. I noticed that they
10 had been walking before I got to the bump.

11 And so once I got to the bump, I went over and
12 at that time my focus was to my right and straight in
13 front. Bang, and that's when it happened.

14 Q So you allege that the accident happened on the other
15 side of the bump, right?

16 A Yes.

17 Q Okay. So you said you had a passenger in the car
18 with you?

19 A Sue, yes.

20 Q How do you know Sue?

21 A We used to work together at Alcorn (phonetic), maybe
22 10 years ago.

23 Q Where is Sue now, do you know?

24 A She supposed to had moved back to Atlanta.

25 Q You said ---

1 A From the last place where she was residing, I called
2 there and they told me that she had moved back to
3 Atlanta.

4 Q Okay. And have you spoken with her?

5 A Once since the accident when I found out when the
6 court was going to be. She had gave me a number but
7 apparently that number didn't work, her phone
8 apparently was off.

9 Q Okay. So she doesn't live here anymore, does she?

10 A No.

11 Q Okay. So you say you were traveling down the road?

12 A Yes.

13 Q You got over the speed bump and then what happened?

14 A The -- it's only one guy that jumped on the car and
15 his head like hit the mirror like there in the
16 center.

17 Q Hit the mirror?

18 A I mean, hit the windshield and it scared us so we
19 were frightened, all of sudden incident happened.

20 Q Okay. So, did you ever cross over the center line?

21 A No.

22 Q You stayed in your lane the whole time?

23 A Yes, sir.

24 Q I want to ask you about a recorded statement that you
25 gave. If I could show this to you.

1 A Sure.

2 Q Do you recognize that document?

3 A Yes, sir.

4 Q Okay.

5 MR. RICHARDSON: Your Honor, this is a
6 stipulation agreement. We want to go ahead and enter it
7 as evidence.

8 THE COURT: This is a what?

9 MR. RICHARDSON: A stipulated -- stipulation, a
10 recorded statement that was provided by the Plaintiff --
11 provided by the Defendant.

12 THE COURT: You and the Plaintiffs' attorneys
13 have stipulated what?

14 MR. RICHARDSON: To a previously record
15 statement of Ms. Williams.

16 THE COURT: Is that correct?

17 MR. LAKE: Correct, Your Honor.

18 THE COURT: It's being admitted into evidence?

19 MR. RICHARDSON: It is.

20 MR. LAKE: Yes, Your Honor.

21 THE COURT: All right, so admitted. Ladies and
22 gentlemen, apparently a statement has been made by the
23 Defendant, the parties have agreed -- stipulated that she
24 made it and it will be admitted into evidence.

25 (Whereupon, Defendant's Exhibit Number 1,

1 Stipulation of Statement, was admitted into
2 evidence.)

3 Q There's a recorded statement. Could you read that
4 recorded statement for me?

5 THE COURT: This is a transcription of ---

6 MR. RICHARDSON: This is a transcription of the
7 recorded statement. Just the all caps that are in there,
8 could you read that to me?

9 A Where do I start, number 1?

10 Q It says under ---

11 A Number 3?

12 Q If you start right here (indicating) under where it
13 says, Q, which stands for question.

14 A Defendant Marie Wilson recorded statement was -- the
15 question was:

16 Okay. Do you think there was anything you could
17 have done to avoid the accident?

18 Yeah, I looked to my left to see, you know, make
19 a motion, I could have stopped. Huh?

20 Okay -- oh, but I was looking in the front. You
21 know there she was going on the bump and you heard --
22 inaudible -- because you got another bump -- you got
23 hit.

24 Q Okay. This recorded statement says, the first
25 question is:

1 Is there anything you could have done to avoid
2 the accident?

3 And your first response to that is, yeah.

4 A So how can I clarify myself is, if I was looking to
5 my left, I would have seen them. After I had lost
6 concentration, as far as I was concerned, they was
7 just walking. So I forgot about them and was paying
8 attention, focusing in the front of me after the bump
9 to see where I'm going. That's why I couldn't avoid
10 -- if I had turned my head away, then I don't know
11 what's going on in the front of me.

12 Q So in other words, what you're saying is, if I'm
13 understanding you, you were never looking to the
14 left, you were only looking forward?

15 A Right, looking forward.

16 Q Okay. So you're saying if you're looking to the
17 left, you could have seen them but you were only
18 looking forward.

19 A Looking forward seeing where I'm going because it's a
20 busy street for children to be running out so I had
21 to stay focused because the third house on there, on
22 the right, which is Tony Belton, I used to date him
23 years ago and the kids used to play in the street.
24 So I didn't know how the neighborhood had changed
25 because it's been a minute since I been up that

1 street.

2 Q Okay. So, you stated earlier that you saw them
3 whenever you first turned on Liberty Street over to
4 the left?

5 A Right.

6 Q Right?

7 A They were coming from the store.

8 Q And then what happened?

9 A I saw them walking and as they were walking on the
10 grass on the left hand side, Sue made the statement,
11 Marie, I bet they don't have nothing to do. I says,
12 no, they probably been walking all day.

13 Q So, you see them and then -- then what happened, you
14 keep on going forward?

15 A Right.

16 Q Okay. So you never ---

17 A After they bump, I couldn't go no more because when
18 he scared us, I stopped.

19 Q So he jumped on the hood after you got ---

20 A He jumped on the windshield.

21 Q Okay. Is there a crosswalk right there ---

22 A No, it's just grass.

23 Q There's no crosswalk in the middle of the road after
24 the speed bump?

25 A No.

1 Q Okay. So you get over the speed bump and you never
2 crossed left of center ---

3 A No.

4 Q --- and someone ---

5 A No.

6 Q --- on your hood?

7 A No.

8 Q Is that what happened?

9 A That's what happened.

10 Q Okay.

11 MR. RICHARDSON: That's all I have, Your Honor.

12 THE COURT: I'm going to let you go first, Mr.
13 Swaggard.

14 MR. SWAGGARD: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SWAGGARD:

17 Q Ms. Wilson, just a few questions for you. You
18 described this as a busy street, is that right?

19 A For children, small children.

20 Q Did you see any children on the street that day?

21 A That particular day, no.

22 Q Were there any cars ---

23 A No.

24 Q --- on the street that day? So then the street
25 wasn't very busy at all, was it?

- 1 A No, not as far as traffic is concerned, no children.
- 2 Q No children or traffic that day?
- 3 A Right.
- 4 Q Okay. And is it your testimony that you weren't
- 5 actually looking to the left at any point?
- 6 A Before I got over the bump, we saw them walking.
- 7 Q Okay, but after ---
- 8 A No, because it was a sudden incident after I cross
- 9 over the bump.
- 10 Q So then is it your testimony that you weren't
- 11 actually paying attention?
- 12 A To whom?
- 13 Q To these pedestrians?
- 14 A Not after I observed them before I went over the
- 15 bump.
- 16 Q So you weren't paying attention to the pedestrians
- 17 that you knew were there?
- 18 A I saw them before I entered the bump. They were
- 19 walking. So my focus wasn't on them anymore. I was
- 20 concentrating, focusing on where I'm going.
- 21 Q One last question, Ms. Wilson, is it your testimony,
- 22 that through your admission, you could have avoided
- 23 this accident?
- 24 A If I was looking to my left, all possibilities,
- 25 because I would have hit my brakes even entering the

1 bump. But I was focusing in front.

2 MR. SWAGGARD: I have no more questions, thank
3 you.

4 CROSS-EXAMINATION

5 BY MR. LAKE:

6 Q If I can get this straight, Ms. Wilson, what you're
7 saying is that Mr. Williams jumped on your car with
8 his head so he could hit the windshield?

9 A No. I couldn't -- well, when it hit, his head -- the
10 print is in the center of the mirror -- in the center
11 of the windshield. And when he hit his head like
12 this (indicating), he came down on it like he had
13 jump over like that and came back like that and then
14 he took his hand and went down on it and got down on
15 the ground, on the pavement.

16 Q And causes it to spider ---

17 A Yes.

18 Q Do you know Mr. ---

19 A No, I don't -- never seen him in my life.

20 Q And when you saw him -- because you actually saw him,
21 if I'm correct, is when you actually first turned on
22 to ---

23 A Saw them walking from the store which is a distant
24 between the highway and the path.

25 Q So there's no doubt there was actually two guys out

1 there, correct?

2 A Right, I saw that.

3 Q And there was actually no doubt that you hit them,
4 correct?

5 A I did not hit them.

6 Q Oh, you did not hit them?

7 A No, I did not.

8 Q So when your head -- when your glass -- did you have
9 this damage -- in terms of Plaintiff's Exhibit Number
10 3, did you have that damage to your vehicle prior to
11 this incident?

12 A Yes.

13 Q So you had a shattered windshield?

14 A Oh, no. After he hit -- jumped on it, it happened.

15 Q Okay.

16 A But after I went over the bump.

17 Q Okay. And in terms of the hood damage, did he -- did
18 you have hood damage prior to this right here?

19 A Not prior but like I told you, he put his hand -- his
20 hand was on the hood after he bumped his head and
21 then he rolled over some kind of way on the pavement.

22 Q Did he ever -- did he ever look back at you at any
23 point, at any time ---

24 A No ---

25 Q Do you ---

1 A He just kept on going, rolling all over.

2 Q I guess, prior to the impact, did he ---

3 A I don't know whether he seen me or not because I only
4 saw him after this incident happened and I got out
5 the car and I said, wow, he scared us.

6 Q And how fast is this particular -- what's the speed
7 limit on this road?

8 A You can't go over 10 or 15 but I was almost like a
9 sudden stop because I had just went over the bump.

10 Q Okay. And is it possible that you weren't focusing
11 on him because you was focusing on talking to Sue?

12 A No, I was focusing on where I was going. Normally
13 when I'm driving, I watch where I'm going.

14 Q Wasn't it your testimony earlier that you were
15 talking to Sue ---

16 A I was talking to her but not with my eyes.

17 Q And in fact, they actually -- Mr. -- neither Mr.
18 Williams or Mr. Delaine crossed the road, you never
19 saw them cross the road, did you?

20 A They didn't cross the road.

21 Q They never crossed the road at any point, did they?

22 A Not that I see. I didn't pay no attention. You mean
23 in the front of me?

24 Q Yes, ma'am.

25 A No, they only came -- when they came -- when I passed

1 on my right hand side, he was on my left. They
2 apparently, by that time, had walked and we were
3 about the same side which I had forgot about him
4 anymore because I'm focusing -- I'm talking and
5 looking where I'm going over this bump. And all of a
6 sudden, it happened.

7 Q And all of a sudden, he just jumped up ---

8 A Yes, that's what happened.

9 Q Do you have any reason why Mr. ---

10 A No, I don't.

11 Q Just let me finish asking the question.

12 A Oh.

13 Q Do you have any reason why Mr. Williams, a complete
14 stranger to you, would jump into your windshield with
15 his head first?

16 A His girlfriend, his fiancé Ashley, I knew her because
17 she was living next door with a girlfriend, her aunt.
18 And she told me -- I told her what happened was they
19 had discussed it and I told her -- and I said, that
20 guy, I said, you know him? And she said, yeah, that
21 used to be my fiancé.

22 Q Okay.

23 A And so, I said, oh, wow. I said, this is a small
24 world. And then she said, well, they always scamming
25 on people, doing things like that to make money.

1 Q Okay. And, Ms. Wilson, you -- you gave a deposition
2 in this case, correct?

3 A Correct.

4 Q Do you recall when you gave this deposition?

5 A Pardon me?

6 Q Was it May 8th of 2012?

7 A Yes, I think so, I'm not sure. I don't have the
8 papers right now?

9 Q Let me show you your deposition.

10 A Okay.

11 Q I want you to look through this thing and take as
12 much time as you want to. Tell me in here anywhere
13 where you sat there and said that Mr. Williams or Mr.
14 Delaine was trying to scam you ---

15 A No, I said this was hearsay, the girlfriend told me
16 this.

17 Q Well, where did you ---

18 A I did not identify that in this report because at the
19 time I was not aware of that.

20 Q Have you ever even said that to even your attorney?

21 MR. RICHARDSON: Objection, Your Honor.

22 Q Let me ask you then -- strike that. Is this the
23 first time we're ever hearing such an allegation,
24 that you're trying to scam -- that he was trying to
25 scam something?

- 1 A Who?
- 2 Q Mr. Williams?
- 3 A No -- say that question again?
- 4 Q Is this the first time you've ever aired that -- made
- 5 that determination of making that statement?
- 6 A To you?
- 7 Q To anyone.
- 8 A I can't recall. I'm just saying the two guys because
- 9 I don't know neither one.
- 10 Q The person that ---
- 11 A But it was kind of weird for them to -- having to
- 12 just -- it's only one guy that jump on the car. I
- 13 don't know the other guy disappeared. There was two
- 14 people walking.
- 15 Q The statement that you gave on February the 10th,
- 16 2011, where we stipulated the facts and everything
- 17 like that, did you ---
- 18 A I don't remember.
- 19 Q Did you tell that person that Mr. Williams or Mr.
- 20 Delaine was trying to scam and jump on there with
- 21 their head first?
- 22 A I don't remember.
- 23 Q You don't recall that?
- 24 A No, I can't recall it right now.
- 25 Q And your response, I guess to this question, do you

1 think there was anything that you could have done to
2 avoid this accident and your first words was, yeah?

3 A It -- I was -- look, I didn't finish this. I didn't
4 -- okay, I didn't clarify this statement because if I
5 had been looking to my left, if I had seen them, I
6 would have just stopped before I went over the bump.

7 Q And that person ---

8 A If I seen them but see it happened so fast. We were
9 like side by side almost. And like, I'm getting
10 ready to pass them, I wasn't focusing on them
11 anymore.

12 Q And that person's response was, oh. Is that their
13 response to your ---

14 A I don't know, what are you referring to now?

15 Q In terms of what you stipulated to in terms of what
16 you said was your statement that you gave to ---

17 A The deposition?

18 Q No, ma'am, the statement that you gave on February
19 the 10th, 2011. Did you see this statement right
20 here that you just read from earlier?

21 A If I could avoid the accident?

22 Q Yes, ma'am.

23 A If I had been looking to the left.

24 Q Well, that's what I'm asking you. In this particular
25 ---

- 1 A I said, if I had been looking to the left, I could
2 avoid it because I would have stopped. Who could see
3 somebody -- who knowed that they were going to -- he
4 was going to jump. I thought I was just passing
5 going on about my business.
- 6 Q Did you ever see him actually jump on your car?
- 7 A When the windshield cracked, that's when I realized
8 what had happened.
- 9 Q You didn't actually see him until he actually hit the
10 windshield, correct?
- 11 A He scared me.
- 12 Q But ---
- 13 A It was a sudden thing.
- 14 Q But prior to that, you never saw him at all until ---
- 15 A I saw him walking before I approached the bump.
- 16 Q But let me ask you a question. Did you see him in
17 the air ---
- 18 A No, no, no, no, no, no.
- 19 Q You never saw him in the air to come and jump on your
20 thing?
- 21 A No, because when he jumped it was like on the side
22 and the way he had his hand on the -- on the hood, as
23 if though when he bumped his head in the glass, it
24 just crashed.
- 25 Q Okay. But it's your testimony that the back of his

1 head ---

2 A Hit the windshield.

3 Q Hit the windshield first, correct?

4 A Right.

5 Q And then his back ---

6 A No, his hand hit the hood. He had two hand on the
7 hood and then rolled on off of it.

8 Q Do you recall giving testimony previously that it was
9 his back butt area that actually hit ---

10 A Hit the hood?

11 Q Yes, ma'am.

12 A Yes. Yeah, because his hand and his butt -- I can't
13 recall which one because I was out there looking.

14 Q Yes, ma'am.

15 A The only thing I know, the impact from the mirror
16 (sic), it was shattered, I couldn't see. But then
17 when he got off he was saying his hand and his back.
18 So the position that he land on on the car cause the
19 problem that he had. That's what I presume.

20 Q Okay. And so when he actually hit the car, it's
21 actually, you're saying, kind of almost like his head
22 hit the glass first and his butt kind of comes down
23 and hits your ---

24 A His hand on the hood, his butt print on the hood.

25 Q Okay. So if you're looking forward but you're not

- 1 able to see him jump on top of your car then?
- 2 A Because when he crashed -- when he jumped on the
3 mirror (sic), it scared me. And then when I saw he
4 rolled off, I'm saying, wow, I didn't understand
5 that.
- 6 Q Well, where did he jump from? I guess ---
- 7 A On my left.
- 8 Q So he jumped from your left to -- explain that to me,
9 I'm sorry.
- 10 A To your right, I'm on the right hand passing down
11 going on my -- on the side where I'm supposed to be.
12 Where did he come from? I knew he was on the
13 sidewalk but I had no idea he was going to jump on my
14 car. I was not in the left lane. I was not center.
15 I was just going straight.
- 16 Q Okay. And how far down that left lane from the E
17 Spot, which is right there on Farrow Road, did this
18 particular accident occur?
- 19 A Where the store is?
- 20 Q Yes, ma'am, from -- from where I guess Farrow to
21 where the accident occurred ---
- 22 A About a ---
- 23 Q --- to ---
- 24 A I wouldn't say a half a mile, maybe a fourth of a
25 mile.

1 Q Okay. And so you're going about five to 10 miles --
2 I guess what I'm trying to get you to explain to the
3 jury is how he's able to jump ---

4 A Ain't no they, only one person.

5 Q Okay. But where -- did he jump from the front of
6 your car or did he jump from the side of your car?

7 A From the side.

8 Q So he jumped ---

9 A My left blind eye side.

10 Q And then he jumped -- how did he -- did he jump
11 across?

12 A No, he jumped on it, bumped his head like this
13 (indicating), took his head and leaned down and then
14 roll off the hood. And the other passenger (sic),
15 what he said I hit him but how could I hit him and
16 where was he at after the incident. Why didn't he go
17 to the hospital also?

18 (Pause.)

19 Q And as you were -- I guess you were testifying is
20 that you basically I guess said, I'd forgotten about
21 them as they were kind of walking to your left,
22 correct?

23 A I wasn't focused on them anymore. I wasn't
24 concentrating on them. I'm trying to stay focused
25 where I'm going thinking about what I'm going to do

- 1 when I get home to relax.
- 2 Q Okay. And were there any other vehicles ---
- 3 A No.
- 4 Q --- coming your way ---
- 5 A No.
- 6 Q Or behind you?
- 7 A No.
- 8 Q Okay. And were they -- are there are lanes or
- 9 dividers in this particular road?
- 10 A A yellow line.
- 11 Q A yellow line?
- 12 A I would of said a yellow line, you know, that tell
- 13 you where the center is and tell you where the right
- 14 and tell you where the left is. Normally it's on the
- 15 road.
- 16 Q Okay. Let me just show you some pictures of this
- 17 particular area.
- 18 A I didn't observe that but the only thing I know.
- 19 Q Using this particular -- kind of using this
- 20 particular photograph which is Plaintiff's Exhibit
- 21 Number 11.
- 22 A Uh-huh.
- 23 Q Just take a look at that. What do you see in that
- 24 particular picture?
- 25 A I'm lost with this picture?

REDIRECT EXAMINATION

2 BY MR. RICHARDSON:

3 Q You stated a couple of times that the Plaintiffs did
4 not cross the road. That -- it is your position you
5 stated earlier, that you never left your lane of
6 traffic, right?

7 A Right.

8 Q The Plaintiffs were walking on the left hand side of
9 the road?

10 A Correct.

11 Q Okay. So in order to get over to your lane of
12 traffic, they would have had to cross the road, is
13 that correct.

14 A Correct.

15 Q Okay. And then they jumped on your hood, is that ---

16 A I didn't -- the only thing I see on my left hand side
17 when I got right beside them, all of a sudden, bam, I
18 just went over the bump, this happened. Only Mr.
19 Williams, I didn't see the other guy.

20 Q It happened quick, right?

21 A Quick.

22 Q It wasn't in slow motion, right?

23 A No.

24 Q Okay. And you're not saying that Mr. Delaine jumped
25 on your hood, just Mr. Williams?

1 Q Tell us -- tell the jury again where you observed the
2 location of Ms. Wilson's car whenever you arrived at
3 the scene?

4 A It was in the westbound lane of travel on Liberty at
5 the intersection of Water Street. There is no
6 divider between the eastbound and the westbound lane.
7 It's -- there's no double yellow line, it's just one
8 street road.

9 Q Just to be secure, was that her lane of traffic?

10 A Yes, sir.

11 Q So she had never -- whenever you arrived, her car had
12 never crossed the center line -- whenever it was
13 parked after the accident, it was still in her lane
14 of traffic, is that right?

15 A When I arrived, yes, sir.

16 Q Did you interview any people when you arrived?

17 A I interviewed Ms. Wilson and her passenger.

18 Q What did she tell you?

19 A Ms. Wilson said she was traveling westbound on
20 Liberty Street in her lane and the Defendant --
21 correction, Mr. Williams was traveling on foot
22 walking westbound also on the left hand side. He
23 darted across the road and struck her vehicle.

24 Q That's what she told you?

25 A Yes, sir.

1 Mr. Delaine.

2 Q So you never spoke to Mr. Delaine at all?

3 A No, sir.

4 Q So you prepared you report without having spoken to
5 one of the pedestrians involved in this accident?

6 A I was unaware, I was never notified. I was only
7 notified one pedestrian was all that was in the
8 collision.

9 Q Is it fair to say then, knowing now that he was
10 involved, that it's an incomplete report?

11 A I am still unaware, he never contacted me in regards
12 to it.

13 MR. SWAGGARD: Thank you.

14 CROSS-EXAMINATION

15 BY MR. LAKE:

16 Q So no one notified you that there was a second
17 pedestrian?

18 A No, sir.

19 Q Ms. Wilson didn't tell you at the time that Mr.
20 Williams jumped up on her hood?

21 A All Ms. Wilson said was that Mr. Williams darted out
22 of nowhere. She didn't say he jumped or whether he
23 just was crossing.

24 Q You never heard that before about her -- him jumping
25 on to her windshield or anything like that with his

1 Q And you never interviewed Mr. Williams at the scene
2 either, correct?

3 A That's correct, sir.

4 Q And her -- just for clarification, she said she saw
5 him dart off to the -- from her left in front of her?

6 A Yes, in front -- if she's traveling left bound, he
7 was on her left hand side and he darted across the
8 roadway.

9 Q He darted and she said she saw him from the left
10 darting across ---

11 A Yes, she didn't know exactly where he came from but
12 darted from that side.

13 Q And from what you observed of the vehicle, was this
14 impact consistent with a pedestrian vehicle impact in
15 terms of the damages to her vehicle? Is that how you
16 observed the vehicle in that particular condition?

17 A Yes, sir.

18 Q And at the time, did she tell you that Mr. Williams'
19 head had struck the -- the -- basically that
20 windshield?

21 A Can you repeat the question?

22 Q Did she -- Ms. Wilson, did she state to you that his
23 head had hit the back of that windshield that day?

24 A She didn't specifically state which body part hit the
25 windshield. She just said he landed on top of the

1 hood.

2 Q Did she say what parts of his body landed on top of
3 the hood?

4 A No, sir.

5 Q Did she say anything to you about she thought he
6 intentionally did something like that?

7 A I don't remember her saying anything along those
8 lines.

9 Q Because if she would have said something like she
10 thought he intentionally tried to do something like
11 that, it would be in your report, wouldn't it?

12 A That's correct, sir.

13 Q It's not in your report, is it?

14 A No, sir.

15 Q Just for clarification, is it your understanding that
16 she indicated she had saw him coming from the left, I
17 guess at the last minute or something along those
18 lines are what was your understanding?

19 A Yeah, she saw him from the left corner of her vision,
20 not exactly sure where on the left but from the left
21 hand side.

22 Q And what's the speed limit on that particular road?

23 A According to my report it's 30 in that area. But it
24 also has a warning sign for the speed bumps that
25 reduces the speed.

1 Q And what's the purpose of that?

2 A To slow down for traffic, for foot traffic, since
3 it's more of a residential neighborhood.

4 Q Are you familiar with this particular road?

5 A Yes, sir.

6 Q Is there a lot of foot traffic on this particular
7 road?

8 A Depending on the time -- the time of day and what
9 not. There is two stores in the vicinity that people
10 walk to and come from.

11 Q Are there any sidewalks or anything like that?

12 A No, sir.

13 Q So if someone is walking down the left, where would
14 they have to be at?

15 A You -- there's grass -- along that area where the
16 collision supposedly occurred there is grass or
17 there's the side of the road.

18 Q Okay. And if Mr. Williams is actually walking down
19 straight down the left lane facing ongoing traffic,
20 is he actually going in the right direction?

21 A Yes, sir.

22 Q And you never tried to engage any accident
23 reconstruction or anything like that, correct?

24 A No, sir, I'm not certified.

25 MR. LAKE: No further questions.

1 intentionally did something. If in fact, she did
2 something, she failed to keep a proper lookout, failed to
3 keep the car under proper control.

4 All right ---

5 MR. RICHARDSON: I have my proposed as well,
6 Your Honor.

7 THE COURT: What we got there?

8 MR. RICHARDSON: Jury charges, proposed jury
9 charges.

10 THE COURT: All right. Well, y'all have a nice
11 evening and Officer, you don't have to come back
12 tomorrow.

13 (The Court was in recess.)

14 TUESDAY, NOVEMBER 6, 2012:

15 THE COURT: Okay. You want to bring the jury
16 in?

17 MR. RICHARDSON: Your Honor, before the ---

18 THE COURT: Hold on.

19 MR. RICHARDSON: Before the jury comes in, I
20 just wanted to go ahead and put my motion for a directed
21 verdict on the record.

22 It's our position that the Plaintiffs have
23 failed to provide sufficient evidence on the necessary
24 elements to establish negligence in the causes of action
25 that are related with that.

1 THE COURT: All right. What does the Plaintiff
2 say happened?

3 MR. RICHARDSON: The Plaintiffs have said --
4 it's our ---

5 THE COURT: My recollection is the Plaintiffs
6 got up and said they were walking on the left side of the
7 road, against the traffic, heading up the street when
8 your client crossed the center line and came over and hit
9 them while they were walking and that that was negligent
10 on her part. And as a result of their being hit, they
11 suffered injuries.

12 MR. RICHARDSON: Okay. I just wanted to put
13 that motion for a directed verdict on the record, Your
14 Honor.

15 THE COURT: You know, the question is not
16 whether there's sufficient evidence. I don't know what
17 sufficient evidence is -- sufficient evidence they're
18 going to prevail, I don't know. But is there any
19 evidence?

20 MR. RICHARDSON: I do believe that there is ---

21 THE COURT: A scintilla of evidence.

22 MR. RICHARDSON: But I at least wanted to put it
23 on the record, Your Honor.

24 THE COURT: All right. Well, you did.

25 MR. RICHARDSON: Thank you.

1 THE COURT: All right. Anything y'all want to
2 say about that motion?

3 MR. SWAGGARD: No, Your Honor.

4 THE COURT: All right.

5 MR. LAKE: No ---

6 MR. SWAGGARD: We oppose that motion but ---

7 THE COURT: You think I'm wrong, don't you?

8 MR. SWAGGARD: I think you're right to deny the
9 motion.

10 THE COURT: All right. Let's bring the jury in.
11 Let me ask y'all something. The damages in this
12 case. We've got some medical damages by both Plaintiffs,
13 pain and suffering by both Plaintiffs. There's not loss
14 of income, right?

15 MR. LAKE: Correct, Your Honor.

16 THE COURT: And those are the damages, right?

17 MR. LAKE: That's right.

18 THE COURT: All right. Thank you.

19 (The jury returned to the courtroom at
20 approximately 9:36 a.m.)

21 THE BAILIFF: The jury's seated, Your Honor.

22 THE COURT: All right. Good morning, ladies and
23 gentlemen, nice to see you this morning. Hope y'all had
24 a nice evening and before we get started I need to ask
25 y'all a question. Anybody have any conversations about

1 I determine damages. You know, the easiest part of the
2 damages thing is, you know, look at the medicals. I
3 think there's been testimony, and you'll get this back
4 here, that my client's medicals are roughly about \$6,063.
5 And those were all reasonable and those were all
6 necessary because you think about this right here.

7 The first one, two of them, three actually, the
8 E M S bill, \$504. Well, he just got struck by a car. I
9 know there was some testimony from Mr. Richardson that,
10 oh, he didn't have any frontend damage to that car. This
11 is not a car on car collision. This is a car on
12 pedestrian. We know what's going to give, that body.
13 There aren't any other damages in that hood except for
14 what a butt print would make. That's what you're going
15 to see. There are no damages across that hood or
16 anything like that, other than what that back butt area
17 made in that particular case. So that's a reasonable
18 bill in terms of this case.

19 Palmetto Health Richland as \$2,652 for the first
20 day, January 28th. That's reasonable and necessary
21 because they wanted to find out what was wrong with him,
22 to make sure that he didn't have any fractures, to treat
23 him for his injuries. To put on a splint for his middle
24 finger, while they're trying to determine, okay, is his
25 tendon damaged, is there a fracture, and thankfully there

1 wasn't a fracture. He's happy that it wasn't a fracture.
2 But they put stitches in it and told him to come back.

3 He came back several days later and he gets an
4 additional prescription because his prescription had ran
5 out and they charged him \$329. That's reasonable and
6 necessary in this particular case.

7 He also had a radiology bill from that first
8 visit in the amount of \$113. That's reasonable and
9 necessary.

10 And the one last thing that he had was from
11 February 1st to March 17th, 2011. He had that because,
12 what did he tell you, ladies and gentlemen of the jury,
13 he was in pain. And you can imagine yourself, when you
14 get hit by a car, that's going to be pain because our
15 bodies are not designed to take that -- understand that
16 type of impact. It's bad enough when it's car on car but
17 when you try to put a car on a pedestrian, it's even
18 worse because you have no protection at all. That's his
19 head that caused this right here (indicating). That's
20 how violent that impact was and it shattered and it
21 created a spider that stretched ways out. That lets you
22 know how strong of an impact that was. No one's going to
23 take that risk with their life.

24 So how do you determine, okay, exactly what's
25 pain and suffering worth? If you start right there in

1 terms of medical expenses and these are reasonable and
2 necessary expenses, that would be your starting point
3 The question is then, how do we calculate what pain and
4 suffering is because there's really no scientific formula
5 to do that.

6 And some of the things that you can kind of
7 consider and what our courts allow you to consider, he
8 didn't have any lost wages. We're not trying to make the
9 claim he lost wages. He's not trying to make this claim
10 any better than what it is. He's only coming in here to
11 ask you to compensate him for his medical expenses and
12 for his pain and suffering.

13 But how do you look at pain and suffering? You
14 look at pain such as fear, nervousness, grief, emotional
15 and physical trauma and anxiety. Those are some of the
16 factors that you kind of consider in terms of what kind
17 of impact that it had on him in terms of quality of life,
18 in terms of waking up every day for a period of time in
19 pain, in pain because of someone else's negligent
20 conduct, where you're having problems with your knee,
21 you're having to wear a splint on your hand or you're
22 having to take prescription medication, where you're
23 unable to kind of play with your child, where you're
24 having problems that affect your relationship with your
25 girlfriend and your wife and your fiancé.

1 Those are the kind of things that you weigh in
2 terms of coming up with that pain and suffering. And for
3 example, you just sit there and say, well, you know, just
4 -- I can sit there and say I'm going to take the medicals
5 and for example, I may multiply it by five to come up
6 with -- and whatever that difference is can be pain and
7 suffering.

8 There are ways that you can do as jurors to come
9 up with what you think is a fair and reasonable
10 settlement as it relates to Mr. Williams in this
11 particular case. And that's a -- it's a difficult task
12 but it's one again that I know that each one of you are
13 able to do. And that is again one of the reasons why you
14 were selected, because it's a tough task but we've got
15 the people that are capable of making a decision. And
16 the decision that you make, no one will question.

17 So I ask that you take that information, take
18 all of it back into the jury room along with the
19 photographs and all the other evidence that you're going
20 to consider, and as it relates to Mr. Williams decide,
21 was Mr. Williams' testimony consistent, was it
22 believable, did it match the evidence. And, ladies and
23 gentlemen of the jury, I submit that it did.

24 You ask yourself whether Ms. Wilson's, whether
25 her statement was consistent. But you're going to have

1 distracted and that was willful and wanton and reckless,
2 then you're free to decide whether you want to award
3 punitive damages are not. That is your choice.

4 Again, on behalf of Mr. Williams, I thank you
5 again. I hope y'all take this process seriously, I now
6 y'all will, and return a verdict for my client.

7 Thanks again.

8 THE COURT: All right, thank you. Can you move
9 these, please?

10 (Complied.)

11 CHARGE BY THE COURT:

12 Madam forelady and members of the jury, you've
13 heard the evidence and the arguments of all the parties
14 and I will now explain to you the law as it applies to
15 this action.

16 Shawn Delaine and Joseph Williams, who are the
17 Plaintiffs in this action, claim that they have been
18 injured by the actions of Marie Wilson. In bringing this
19 lawsuit, Plaintiffs claim the Defendant should compensate
20 them for their injuries.

21 And under our constitution and code of laws,
22 only you, the jury can make the findings of facts in this
23 case. I am not permitted to indicate to you how I may
24 think about the testimony and the evidence which has been
25 presented and throughout this trial I have attempted to

1 be fair and impartial to all the parties.

2 Now, to determine the facts in this case you
3 will have to evaluate the credibility, and by that I mean
4 the believability, of each of the witnesses. Some of the
5 things that you may consider as you decide whether or not
6 to believe a witness's testimony include: What was the
7 manner and the appearance of the witness who testified?
8 Was he or she straightforward or was he or she hesitant
9 in answering? Was the testimony of the witness
10 consistent or was it inconsistent? How did the witness
11 come to know the facts about which he or she testified?
12 What was his or her ability to know those facts?

13 You can consider is there some reason the
14 witness would want to give testimony which would help or
15 hurt one side or the other. In other words, was the
16 witness biased or prejudiced. You can consider was the
17 testimony of a witness strengthened or was it weakened by
18 other testimony or other evidence. You can believe as
19 much or as little of a witness's testimony as you think
20 proper. You may believe the witness -- the testimony of
21 a single witness against many witnesses or just the
22 opposite. You do not determine the truth merely by
23 counting the number of witnesses who may have testified
24 for one side or the other.

25 Now, ladies and gentlemen, a person who has a

1 past criminal record is competent to testify during a
2 trial. The past record does not affect the ability of
3 that witness to testify. The past record may only be
4 considered by you, if at all, in determining the
5 witness's believability. Remember, you are the sole
6 judges of the facts of this case and of the believability
7 of any and all of the witnesses.

8 Throughout this process, ladies and gentlemen,
9 you have but one objective and that is to seek the truth
10 regardless of its source.

11 Now there are two types of evidence which are
12 generally presented during a trial, direct evidence and
13 circumstantial evidence.

14 Direct evidence is the testimony of a person who
15 claims to have actual knowledge of the facts such as an
16 eyewitness. It is evidence which immediately establishes
17 the main fact to be proved.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a
20 fact. It is evidence which immediately establishes a
21 collateral fact from which the main fact may be inferred.
22 Circumstantial evidence is based on inference and not on
23 personal knowledge or observation.

24 The law makes absolutely no distinction between
25 the weight or value to be given either direct or

1 circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence.

4 Now, ladies and gentlemen, the same constitution
5 and code of laws which make you the finders of fact make
6 me the instructor of the law. You must accept the law as
7 I give it to you and this means that you should not be
8 concerned about what you think the law ought to be or
9 what you wish the law were. You should only be concerned
10 about what I instruct that the law is.

11 Now, ladies and gentlemen, the questions of fact
12 which you are to determine are contained in these papers
13 right here (indicating) which are called the pleadings.
14 The lawsuit is commenced when the Plaintiff files a
15 complaint against the Defendant. The Defendant then
16 files an Answer.

17 Now, to state a cause of action against the
18 Defendant the law requires the Plaintiff to set out in
19 the Complaint three essential claims. These claims are,
20 first, that the Defendant was negligent in one or more
21 ways stated in the Complaint. In a moment, I'll explain
22 to you what is negligent.

23 Second, the complaint must state that the
24 Plaintiff was personally injured. And third, the
25 complaint must state that the negligence of the Defendant

1 was the proximate cause of the injury. Again, in a
2 moment, I will explain to you what is meant by proximate
3 cause.

4 In their complaint, the Plaintiffs in this
5 action have set forth the essential elements each of
6 which is denied by the Defendant. In the complaint,
7 ladies and gentlemen, the Plaintiffs' state that on June
8 -- January 28th, 2011, they were walking on Liberty
9 Street in Richland County and that they were then struck
10 from behind by a vehicle driven by the Defendant and that
11 the Defendant was negligent in failing to keep a proper
12 lookout and in failing to keep her car under proper
13 control. That as a result of this negligence, each of
14 the Defendants -- the Plaintiffs suffered injuries and
15 damages.

16 Now, ladies and gentlemen, the Plaintiffs have
17 the burden of proving their claims in this case. They
18 must meet this burden by proving their claims for actual
19 damages by the greater weight or the preponderance of the
20 evidence. What we mean by the greater weight of the
21 evidence can be illustrated by imaging a traditional set
22 of scales which in years past were used by a merchant.
23 When the case begins, these scales are even. After all
24 the evidence has been presented, if the scales should
25 remain even or if they should tip even slightly in favor

1 of the Defendant, then the Plaintiffs would have failed
2 to meet their burden of proof and your verdict would be
3 for the Defendant.

4 If, on the other hand, the scales should tip
5 even slightly in favor of the Plaintiff, then they will
6 have met their burden of proof and your verdict would be
7 for the Plaintiff.

8 Now, there's no way to weigh evidence except
9 through the exercise of your good commonsense and
10 judgment. It is entirely a mental process and the
11 evidence which you should give the most weight to is that
12 which convinces you of its truth regardless of from whom
13 or from what source that evidence comes. However, you
14 should not consider sympathy or passions or prejudice for
15 or against any party in weighing the evidence.

16 Now let me tell you what the word negligence
17 means. Negligence means the person did not use the same
18 amount of care that a person of ordinary reason and
19 prudence would exercise in the same circumstances. The
20 word careless means the same things. It can be said that
21 a negligent person has done something a reasonable person
22 would not have done when faced with the same situation or
23 that the negligent person failed to do something that a
24 reasonable person would have done, or maybe a combination
25 of both.

1 To determine whether a particular act is
2 negligent, you should compare that act in the manner in
3 which a person of ordinary reason and prudence would act
4 in similar circumstances.

5 To recover in the Plain -- in this case, the
6 Plaintiff must prove the Defendant was negligent in at
7 least one of the ways in the complaint. ' Even if find the
8 Plaintiff proves the Defendant was negligent, the
9 Plaintiff would not be entitled to recover unless you
10 further find that the Defendant's negligence was the
11 proximate cause of the Plaintiff's injury. The law
12 defines proximate cause as something that produces a
13 natural chain of events which in the end brings about the
14 injury. In other words, the proximate cause is a direct
15 cause without which the injury would not have occurred.

16 Now, ladies and gentlemen, the person using the
17 public roads of this state and pedestrians thereon, have
18 a duty to exercise ordinary care at all times to avoid
19 placing himself or herself or others in danger and to use
20 like care to avoid an accident. The driver of the public
21 roads owes an urgent duty to keep a proper lookout for
22 other persons or objects upon the highway. This duty is
23 not merely one of looking but one of seeing. The driver
24 must look in such an intelligent and careful manner as to
25 enable him or her to see a person or object upon the

1 highway which may be reasonably expected. The person
2 operating a motor vehicle is under an urgent duty to keep
3 it under proper control so as to be able to slow down and
4 stop or turn such a vehicle in order to avoid colliding
5 with other vehicles, pedestrians or obstructions lawfully
6 on the roadway. If a person fails to keep a proper
7 lookout or fails to keep a vehicle under proper control
8 or fails to see what a person's ordinary care would have
9 seen is negligent.

10 In this case, ladies and gentlemen, the
11 Plaintiff is also claiming that the Defendant was
12 reckless, willful or wanton. These words are used to
13 describe a conscious failure on the part of the Defendant
14 to use reasonable care. In other words, while a
15 negligent person is one who acts carefully -- carelessly,
16 a person whose behavior is reckless or willful or wanton
17 is not only careless but is also aware that that person
18 is being careless.

19 Now, ladies and gentlemen, I told you that the
20 Defendant filed an answer in this case. In the answer
21 the Defendant set up what's called a general denial. By
22 doing this, the Defendant admits the truthfulness of
23 certain things such as an incident occurred on January
24 28th and it occurred in Richland County but denies each
25 and every claim that would make the Defendant responsible

1 for the Plaintiff's injuries. The Defendant is saying
2 she did not do anything wrong and that the incident
3 occurred as a result of the actions of the Plaintiffs.
4 By doing this, the Defendant is placing upon the
5 Plaintiff the burden of proving the necessary elements
6 which I have previously explained to you.

7 Now, Madam Forelady and members of the jury, if
8 you should conclude when you apply the evidence as you
9 find it to the laws I have charged that the Plaintiff is
10 entitled to a verdict, then your next consideration would
11 be that of damages; that is, how much in money damage
12 should you award the Plaintiff. In this case, the
13 Plaintiffs are asking you to award both actual damages
14 and punitive damages.

15 Actual damages are damages in satisfaction of
16 and in recompense for loss or injury sustained.
17 Basically, actual damages are meant to compensate, to
18 make the injured party whole, to put the injured party in
19 the same position that he was in prior to the damages
20 received insofar as this is possible. In other words,
21 actual damages include compensation for all injuries
22 which are naturally the proximate result of the alleged
23 wrongful conduct of the Defendant. It may include, if
24 established by a preponderance of the evidence, physical
25 pain and suffering, mental anguish, reasonable and

1 necessary medical and hospital expenses.

2 As to pain and suffering, mental anguish, a
3 witness cannot testify as to a specific amount of damages
4 with mathematical certainty, then you must consider all
5 the evidence presented in assessing what amount, if any,
6 is the appropriate to award damages for such injuries.
7 With all the facts in this case, the Plaintiff must prove
8 the damages with the greater weight of the evidence.
9 Damages for loss of enjoyment of life compensate for the
10 limitations resulting from the Defendant's negligence on
11 the injured person's ability to participate in and
12 provide pleasure in the normal activities of daily life,
13 pain and suffering compensates the Plaintiff for physical
14 discomfort and emotional response to the sensation of
15 pain caused by the injury itself.

16 As I said, there's no definite standard to which
17 to compensate the Plaintiff for pain and suffering. You
18 have the authority to determine the amount, if any, to be
19 allowed for pain and suffering using calm and reasonable
20 judgment to ensure that the damages are just and
21 reasonable in light of the testimony and the evidence
22 presented.

23 I charge you that in reference to the
24 Plaintiff's medical treatment, the burden is on the
25 Plaintiff to show the treatment he received was

1 reasonably necessary for proper treatment of his injuries
2 and that the charges made for such treatment were
3 reasonable.

4 As I told you, the Plaintiff is also seeking
5 punitive damages. And if you determine that the
6 Plaintiff is entitled to actual damages, then you may
7 consider an award of punitive damages. You cannot award
8 actual -- punitive damages unless you determine the
9 Plaintiff is entitled to actual damages. You do not have
10 to award punitive damages even if you determine the
11 Plaintiff is entitled to actual damages.

12 Punitive damages are intended to punish the
13 Defendant for extraordinary and outrageous misconduct and
14 to prevent the Defendant and others from committing
15 similar acts in the future. Punitive damages can only be
16 awarded when conduct of the Defendant has been something
17 more than mere negligence. The evidence must establish
18 the Defendant's acts were reckless, willful and wanton,
19 meaning there was a conscious failure to exercise due
20 care or a conscious indifference to the rights and safety
21 of others or a reckless disregard of others.

22 If you find that the Defendant's conduct was
23 willful, wanton or reckless, you may award the Plaintiff
24 punitive damages. To support an award of punitive
25 damages, the Plaintiff must first prove by clear and

1 convincing evidence that the conduct complained of
2 included a consciousness of wrong doing at the same time
3 of the conduct.

4 Now, clear and convincing is more than just a
5 preponderance or greater weight of the evidence.
6 Preponderance of the evidence is truth which persuades
7 you that the party's claim is more likely true than not
8 true. On the other hand, clear and convincing evidence
9 proof is not as high a standard as the burden in a
10 criminal case which is beyond a reasonable doubt. Clear
11 and convincing proof leaves no substantial doubt in your
12 mind, it means that the evidence is not ambiguous,
13 doubtful, equivocal or contradictory.

14 So, actual damages, the burden of proof is
15 preponderance of the evidence, for punitive damages the
16 burden of proof is clear and convincing proof which is a
17 higher standard but it is less than the standards for
18 conviction in a criminal case which is beyond a
19 reasonable doubt. Clear and convincing proof establishes
20 in your mind not only that the fact is probable but that
21 it is highly probable.

22 Before awarding punitive damages, you must
23 consider and weigh four elements which may be pertinent
24 to the facts of the case. You must first consider the
25 relationship between any punitive damage award and the

1 harm caused.

2 Secondly, any penalty imposed should take into
3 account as a mitigating factor any other penalty that may
4 have been imposed or which may be imposed from the
5 conduct involved.

6 Next you should consider whether the award and
7 the amount of any punitive damages may deprive the
8 Defendant of any profits derived from improper conduct.

9 Finally, any award of punitive damages must be
10 limited to punishment and thus may not affect economic
11 bankruptcy. To this end, the ability to pay any punitive
12 damages should be considered.

13 Madam Forelady and ladies and gentlemen of the
14 jury, you have been selected as fair and impartial
15 jurors, sworn to impartially try and determine the facts
16 of this case, and when you comply with your oath to do
17 so, then no one will have a right to criticize your
18 verdict and you will have fully discharged your duty as
19 jurors. You should not be influenced by opinions or
20 expressions of opinions which -- if any, which you may
21 have heard on the outside but you are to decide this case
22 according to the testimony that you've heard from the
23 lips of the witnesses along with other evidence
24 introduced.

25 Nothing that I have said or done during the

1 course of this trial has been in any way intended to
2 express or suggest a view of the case or an opinion as to
3 the facts, the weight of the evidence or the credibility
4 of the witnesses. If any of my actions or words have
5 seemed to so indicate, you will disregard such and form
6 your own opinion as to those matters.

7 I'm required to declare the law as I have done
8 through these instructions so as to help you, guide you
9 to a just and lawful verdict. Whether some of these
10 instructions will apply will depend on what you find to
11 be the facts. The fact that I have instructed you on
12 various subjects and to the damages must not be taken as
13 indicating an opinion of this Court as to what you should
14 find to be the facts or as to which party is entitled to
15 your verdict.

16 Madam Forelady, I have prepared two verdict
17 forms here, one's for each Plaintiff. And these two
18 verdict forms are similar and they set out the verdict
19 that you can possibly reach. And the first verdict says:
20 We, the jury, unanimously find for the Plaintiff blank
21 actual damages. If you find that the Plaintiff is
22 entitled to damages because the Defendant was negligent
23 and her negligence proximately caused actual damages to
24 the Plaintiff, then you're going to have to determine
25 what those actual damages are and you do that in terms of

1 dollars. I would ask you to write in what that amount
2 is, both in long hand and in numbers.

3 You will then, if you determine that the
4 Plaintiff is entitled to recover actual damages, you
5 consider whether the Plaintiff is entitled to recover
6 punitive damages. Again, if the jury determines the
7 Plaintiff is entitled to recover punitive damages, then
8 you would need to write that out.

9 Or, if you determine that the Plaintiff (sic)
10 was not negligent -- negligent or that the negligence, if
11 there was any, didn't proximately cause any injuries, you
12 would find for the Defendant.

13 Now, I'm going to ask you to not only write out,
14 if you find for the Plaintiff, but to circle. If you
15 find for the Defendant, circle that verdict.

16 Now, this verdict has to be a unanimous verdict
17 of all 12 jurors. It can't be 11-1 or 9-3 or 7-5, it has
18 to be the unanimous verdict as to each and every verdict
19 that you reach.

20 After you have reached a verdict with respect to
21 both Plaintiffs, I ask you to sign the verdict form as
22 foreperson, date the verdict form and then have someone
23 knock on the door or you can knock on the door, there
24 will be a Bailiff seated outside the jury room, advise
25 the Bailiff you have reached a verdict and we will bring

1 you back in so that your verdict can be published.

2 Now, in just a moment I'm going to ask you to
3 step back to the jury room, all but the alternate. Madam
4 alternate, if you'll stay here with us. Do not begin
5 your deliberations when you get back to the jury room. I
6 must review with the jury the - I mean, the Plaintiff's
7 lawyer and the Defense lawyer the charge that I have
8 given here today. If they believe that further
9 instructions are necessary or that I failed to instruct
10 you in some way or that I incorrectly instructed you and
11 I agree with them, then I'll bring you back and give you
12 the additional instructions.

13 If not, I will have these verdict forms along
14 with all exhibits introduced brought back to the jury
15 room and you can begin your deliberations at that point.

16 All right, if y'all would step back to the jury
17 room. Do not begin your deliberations. We will be with
18 you momentarily.

19 (The jury retires from the courtroom at
20 approximately 11:02 a.m.)

21 THE COURT: All right. Madam Failla, is that
22 it?

23 ALTERNATE JUROR: Yes, sir.

24 THE COURT: Apparently they all survived the
25 process. We often pick an alternate if we go overnight

WILLIAMS AND DELAINE VERSUS WILSON

1 that way but you didn't specifically come out and say,
2 you know, they could do one -- on one particular person,
3 something else on a different person or the same or that
4 they had that alternative.

5 THE COURT: Well, I think they understand that.

6 MR. LAKE: Yes, sir.

7 THE COURT: Anything?

8 MR. RICHARDSON: I don't have anything, Your
9 Honor.

10 THE COURT: All right. If y'all will get with
11 the court reporter and make sure we've got all the
12 exhibits and then here is the verdict forms for the
13 Bailiff.

14 (The Exhibits and Verdict Forms were delivered
15 to the jury to begin deliberations at
16 approximately 11:06 a.m.)

17 (The Court was in recess awaiting a verdict.)

18 THE BAILIFF: The jury's seated, Your Honor.

19 THE COURT: All right. Madam Forelady, I have
20 received your note and reviewed it with the attorneys and
21 they gave me permission to come back and speak with you
22 and I asked you about what it is you wanted to hear and
23 y'all indicated you wanted to hear the whole charge on
24 actual damages and punitive damages. It took a second
25 for the court reporter to find that on the machine but

1 we've got it and we're going to go ahead and play it for
2 you.

3 So, Madam Court Reporter.

4 (Whereupon, the requested portion of the jury
5 charge was played in open court for the jury.)

6 THE COURT: Hope that answered your questions
7 and if y'all will step back to the jury room to begin
8 your deliberations -- resume your deliberations, I would
9 appreciate it.

10 Thank y'all.

11 (The jury retires from the courtroom at
12 approximately 11:56 a.m.)

13 THE COURT: All right, anything from the
14 Plaintiff with respect to the response to the note?

15 MR. LAKE: Nothing from the Plaintiff.

16 MR. SWAGGARD: None, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. RICHARDSON: No, Your Honor.

19 THE COURT: All right. I asked Crystal to mark
20 it as Court Exhibit -- is this Number 1?

21 COURT REPORTER: Yes, sir.

22 THE COURT: Number 1 and we'll wait on the jury
23 a little bit.

24 MR. RICHARDSON: Thank you Your Honor.

25 MR. LAKE: All right.

1 have to correct your verdict form to reflect -- you can't
2 have a zero verdict. It's either something or nothing.

3 Does the Plaintiff have a problem with
4 correcting the verdict form?

5 MR. SWAGGARD: No, Your Honor.

6 MR. LAKE: No, Your Honor.

7 THE COURT: All right. The rest of the jury
8 concurs with the correction made by the Forelady?

9 JURORS: (Affirmative responses.)

10 THE CLERK: Would you like it initialed?

11 THE COURT: Well, I think if you would just poll
12 them on that if you would, please, sir, there was no
13 punitive damages found, not entitled to punitive damages.

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Want me to do it?

16 THE CLERK: All right. Ladies and gentlemen, I
17 have two questions for you and when I call out your name,
18 please answer, yes or no.

19 Megan Duffy, on the punitive damage, is this
20 your verdict of nothing -- is that correct, Your Honor?

21 THE COURT: You did not find anything for the --
22 the Plaintiff is not entitled -- either Plaintiff is not
23 entitled to receive punitive damages, is that your
24 verdict?

25 JUROR: Yes, sir.

1 THE COURT: All right.

2 THE CLERK: Kiann Mosley, on the verdict of the
3 punitive damage, do you find ---

4 THE COURT: Neither Plaintiff is entitled to
5 recover punitive damages?

6 JUROR: Yes.

7 THE CLERK: Loretta Anderson, on the matter of
8 punitive damages, do you find that neither Plaintiff
9 finds ---

10 THE COURT: Is entitled to recover punitive
11 damages?

12 JUROR: Yes.

13 THE CLERK: David Carr?

14 JUROR: Yes.

15 THE CLERK: On the matter of punitive damages
16 ---

17 THE COURT: Neither verdict (sic) is entitled to
18 recover punitive damages -- just read the names out.

19 THE CLERK: Jordan Pinson.

20 THE COURT: Is that your verdict, Mr. Pinson?

21 JUROR: Yes.

22 THE COURT: All right, next one.

23 THE CLERK: Lynne Jumper.

24 THE COURT: Ms. Jumper, is that your verdict?

25 JUROR: Yes.

1 THE CLERK: Marc Middleton.

2 JUROR: Yes, sir.

3 THE CLERK: Andre Walker.

4 JUROR: Yes, sir.

5 THE CLERK: Joan Bell.

6 JUROR: Yes, sir.

7 THE CLERK: Curtis Miller.

8 JUROR: Yes.

9 THE CLERK: Patricia Mincer.

10 JUROR: Yes.

11 THE CLERK: Cassandra Bosworth.

12 JUROR: Yes.

13 THE CLERK: The jury has been polled, Your
14 Honor.

15 THE COURT: All right. Now, you want to -- with
16 respect to the other verdict -- all right, anything from
17 the Plaintiffs with respect to the verdict and the jury?

18 MR. LAKE: Nothing, Your Honor.

19 MR. SWAGGARD: Nothing, Your Honor.

20 THE COURT: Anything from the Defendant with
21 respect to the verdict and the jury?

22 MR. RICHARDSON: Nothing, Your Honor.

23 THE COURT: Ladies and gentlemen -- Mr. Truett,
24 you want them to call back tonight?

25 THE CLERK: We have enough to call back.

WILLIAMS AND DELAINE VERSUS WILSON

1 THE COURT: All right. They need to go back
2 downstairs?

3 (Pause.)

4 THE COURT: All right. Madam Forelady, Mr.
5 Truett, our trusty court administrator for Richland
6 County has advised me that your services will conclude as
7 a result of your having served this case. They've got
8 other jurors that are available to come back in for other
9 trials.

10 So I just want to thank you for your service and
11 I hope you realize how important you are to the process
12 because we can't do these cases without you and so I
13 thank you for your service.

14 If you will go back to the jury room, Ms. Toal,
15 who is the young lady here in the Clerk's office, will
16 bring your excuses back there, if you need an excuse for
17 work, and y'all have a nice remaining week and go vote if
18 you haven't voted.

19 Thank you.

20 (The jury retires from the courtroom at
21 approximately 12:33 p.m.)

22 THE COURT: All right. Anything from the
23 Plaintiffs, either one, Mr. Williams or Mr. Delaine?

24 MR. LAKE: Nothing from the Plaintiff, Your
25 Honor.

1 MR. SWAGGARD: Nothing, Your Honor.

2 THE COURT: Anything from the Defendant?

3 MR. RICHARDSON: Nothing, Your Honor.

4 MR. SWAGGARD: Your Honor, could Mr. Delaine and
5 I approach on an unrelated matter, the cell phone?

6 MR. SWAGGARD: You told me yesterday you may
7 consider as to what you ---

8 THE COURT: Go get it.

9 (Pause.)

10 THE COURT: Y'all can leave.

11 MR. RICHARDSON: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 MR. RICHADSON: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 THE COURT: All right, Mr. Delaine, don't bring
17 these things into the courtroom again.

18 MR. DELAINE: Yes, Your Honor, I apologize, Your
19 Honor. It won't happen again.

20 MR. SWAGGARD: Thank you, Your Honor.

21 THE COURT: All right.

22 (Whereupon, Court's Exhibit Number 2, Jury
23 Charges, were marked for identification.)

24 ----- END OF TRANSCRIPT OF RECORD -----

25

Can we please have a legal definition of actual
vs. punitive damages.

COURT'S
EXHIBIT NO. _____
IDENTIFICATION/EVIDENCE
DKT. # _____
DATE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Joseph Williams; and Shawn)
Delaine)
)
Plaintiffs,)
)
vs.)
)
Marie Wilson)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No: 11-CP-40-6156

PLAINTIFF JOSEPH WILLIAMS
JURY CHARGES



REQUEST TO CHARGE No. 1

A person using the public roads of this State owes an urgent duty to keep a proper lookout for other persons or objects upon the highway. The duty is not merely one of looking but one of observation. In the exercise of due care or caution for the safety of himself and others, a person must look in such an intelligent and careful manner as to enable him to see a person or object upon the highway. A person who fails to keep a proper lookout or fails to see what a person of ordinary care and prudence would have seen is guilty of negligence.

When the vision of a motorist is obscured by unfavorable conditions, whether by reason of weather conditions, atmospheric conditions or other obstructions to vision, such motorist must exercise due care consistent with the conditions of travel encountered. Likewise, a motorist should exercise reasonable care in keeping a lookout commensurate with the increased danger occasioned by the conditions that obscure his vision.

A person operating a motor vehicle on a public highway owes an urgent duty to keep the vehicle under proper control so as to be able to slow down, stop or turn such vehicle in order to avoid colliding with other vehicles, pedestrians, and obstructions lawfully on the roadway.

Ralph King Anderson, Jr. South Carolina Requests to Charge – Civil, 2002, §28-2.

REQUEST TO CHARGE No. 2

This is an action in which the plaintiff claims that he has suffered injuries to his person for which the defendant is responsible in damages.

There are three essential elements of the plaintiff's cause of action. They are denied by the defendant's answer. Since the plaintiff has initiated and brought this lawsuit against the defendant, the burden of proof is upon him to establish all three by the greater weight or preponderance of the evidence:

- (1) that the defendant was negligent or careless and/or reckless, willful or wanton, in one or more of the particulars of wrongful conduct alleged in the complaint;
- (2) that the plaintiff was injured or damaged in his person or property or both;
- (3) that the defendant's negligence or carelessness and/or recklessness, willfulness, and wantonness, in one or more of the particulars as alleged in the complaint, was the proximate cause of the plaintiff's injuries.

What is negligence? Negligence is defined in the law as the absence of due care. The want or lack of due care or ordinary care. The word carelessness conveys the same ideas as negligence. Those two terms are synonymous.

Negligence is the breach of a duty of care owed to the plaintiff by the defendant. Negligence is the failure, by omission or commission, to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances.

In determining whether a particular act is negligent, the test you apply is what would a person of ordinary reason and prudence do under the circumstances at that time and place.

It is incumbent upon the Plaintiff to prove the defendant was negligent in or more of the particulars as alleged in the complaint. It is not required that the plaintiff prove them all, but it is absolutely essential that the plaintiff prove at least one. Otherwise, you would be required to find a verdict for the defendant.

Negligence is a fact which, like any other fact in the case, must be proved. The mere happening of an accident, or the filing of a complaint, or the fact that damages have been sustained, raises no presumption of negligence. A surmise or conjecture that the defendant was negligent is not evidence thereof. The bare fact that an innocent party sustained injury or damage does not place any responsibility on another party unless you find that there was some act of negligence on the part of that party which caused the injury or damage.

If you find that the plaintiff has proved the defendant was negligent [and/or reckless, willful, and wanton], then your next inquiry would be whether the plaintiff has proved that such negligence was the proximate cause of the injury or

damage. Negligence is not actionable unless it proximately causes the plaintiff's injuries. A plaintiff may only recover for injuries proximately caused by the defendant's negligence.

Even if you should find the plaintiff has proved the defendant was negligent [or reckless, willful, and wanton], but has failed to prove that such negligence [or reckless, willfulness, and wantonness], was a proximate cause of the injury, the plaintiff would have failed to make out his case and you would be required to find for the defendant. However, if the plaintiff has proved these two propositions, then it would be necessary for him to prove his damages.

Ralph King Anderson, Jr. South Carolina Requests to Charge – Civil, 2002, §20-1.

REQUEST TO CHARGE No. 3

Pain and suffering is a material element of damages on which a recovery may be based. The plaintiff is entitled to compensation for his pain and suffering directly resulting from the wrongful acts of the defendant.

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. In making an estimate of damages to be awarded for pain and suffering, you may consider:

- (1) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration.
- (2) the age, health, habits, and condition of the injured party before the injury as compared with his condition afterwards.
- (3) the plaintiff's use of sedatives and other drugs to relieve pain and their effect; and

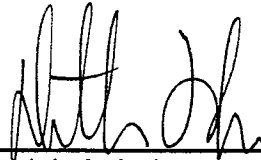
(4) any aggravation of pre-existing disorders by the incident in question.

Pain and suffering have no market price. They are not capable of exact measurement, and there is no fixed rule or standard whereby damages for them can be measured.

The amount of damages to be awarded for pain and suffering must be left to the judgment of you, the jury. Additionally, you may include such damage for pain and suffering as it is reasonable certain will of necessity result in the future from the injury. Future pain and suffering on the part of the plaintiff in consequence of the injury constitute a proper element of the damages which may be allowed, provided there is the requisite certainty that such pain and suffering will result.

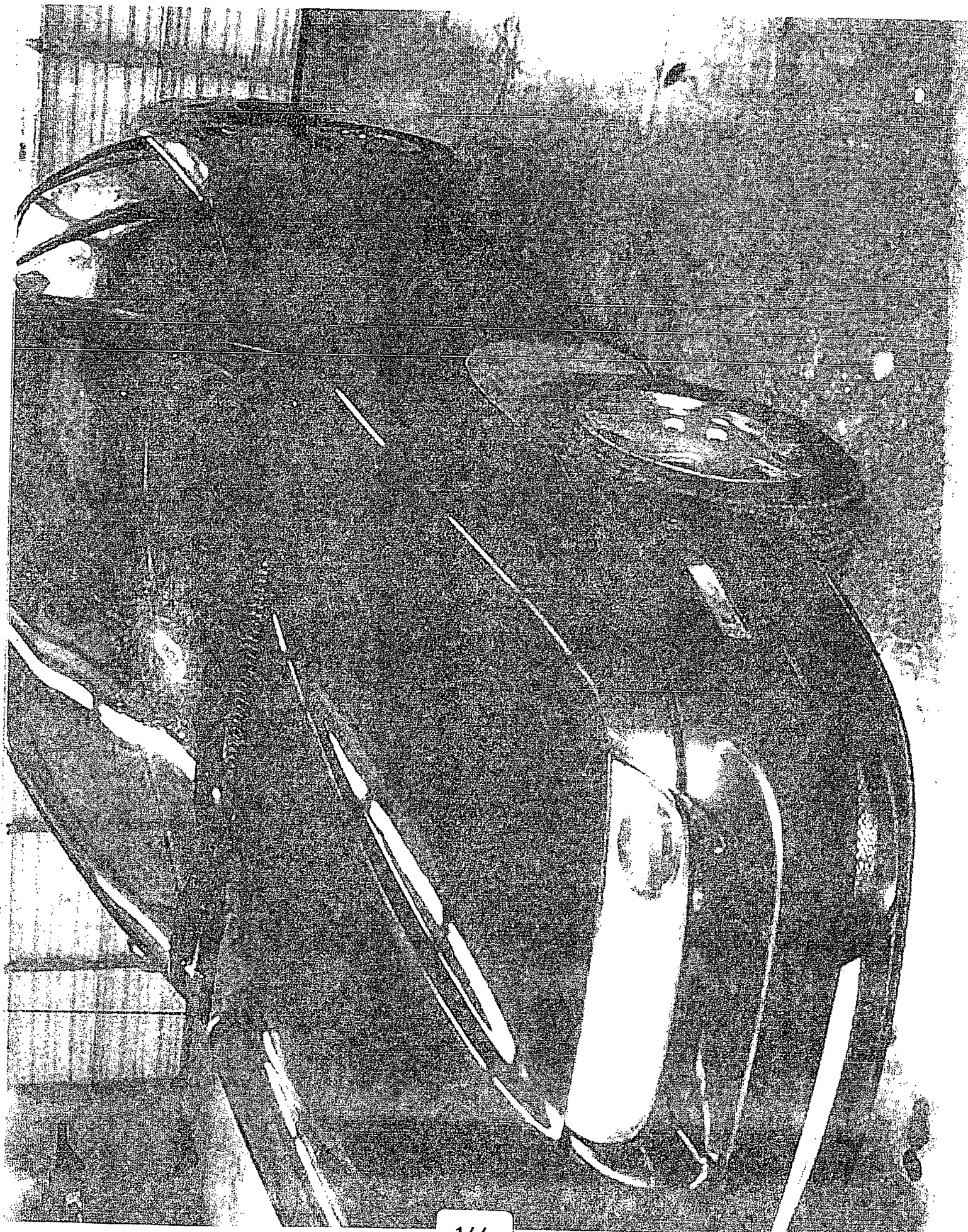
Ralph King Anderson, Jr. South Carolina Requests to Charge – Civil, 2002, §13-8.

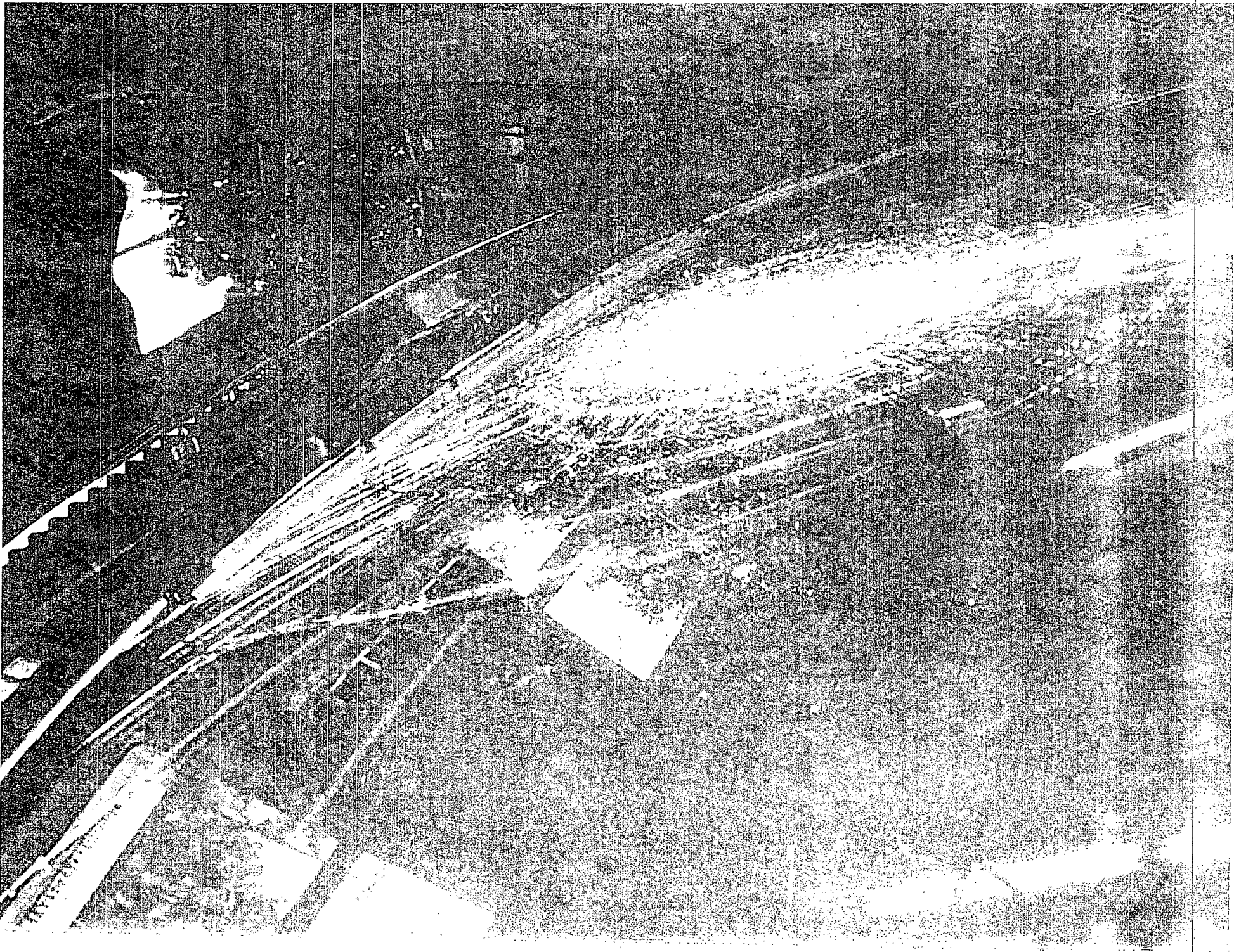
Respectfully submitted,

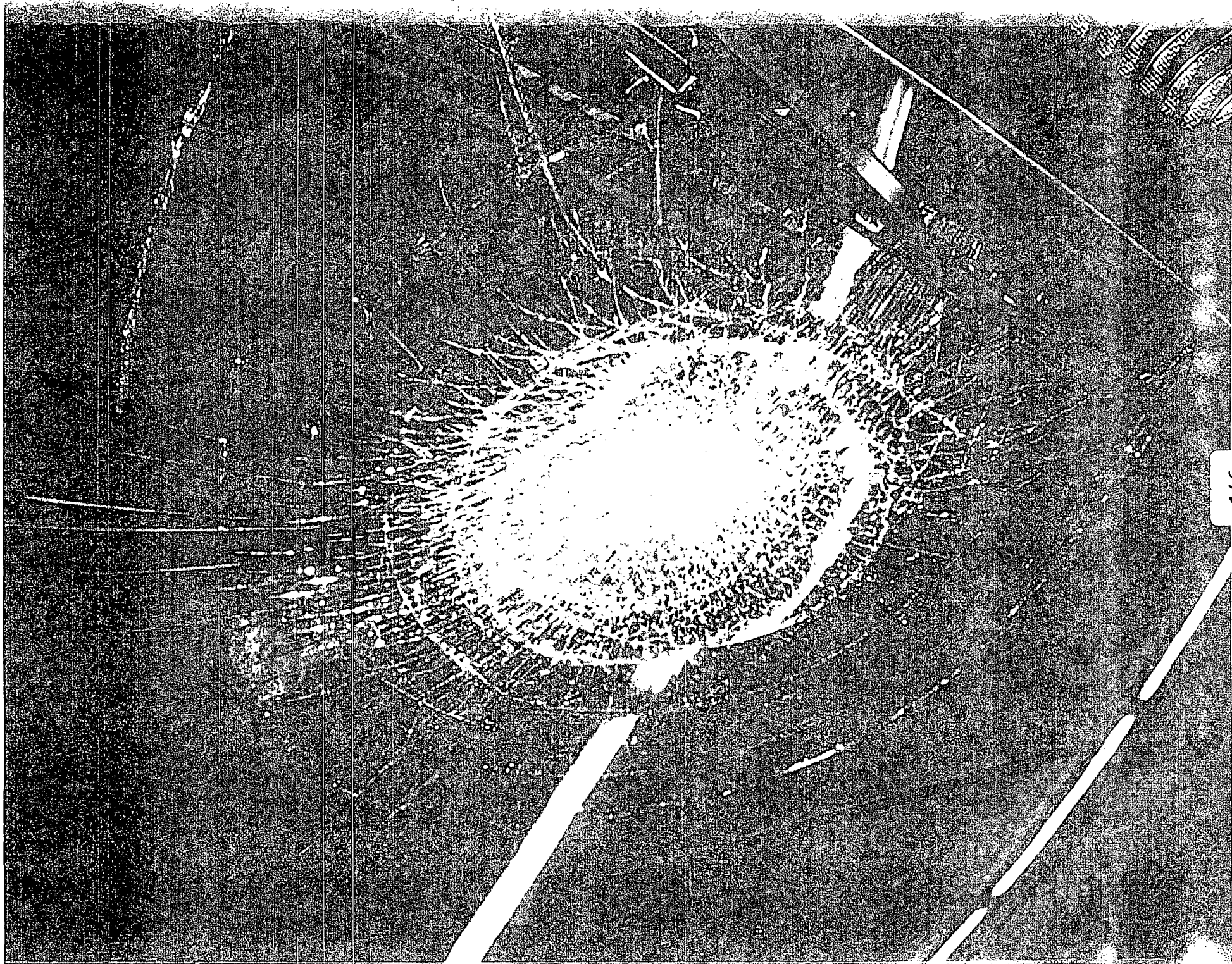


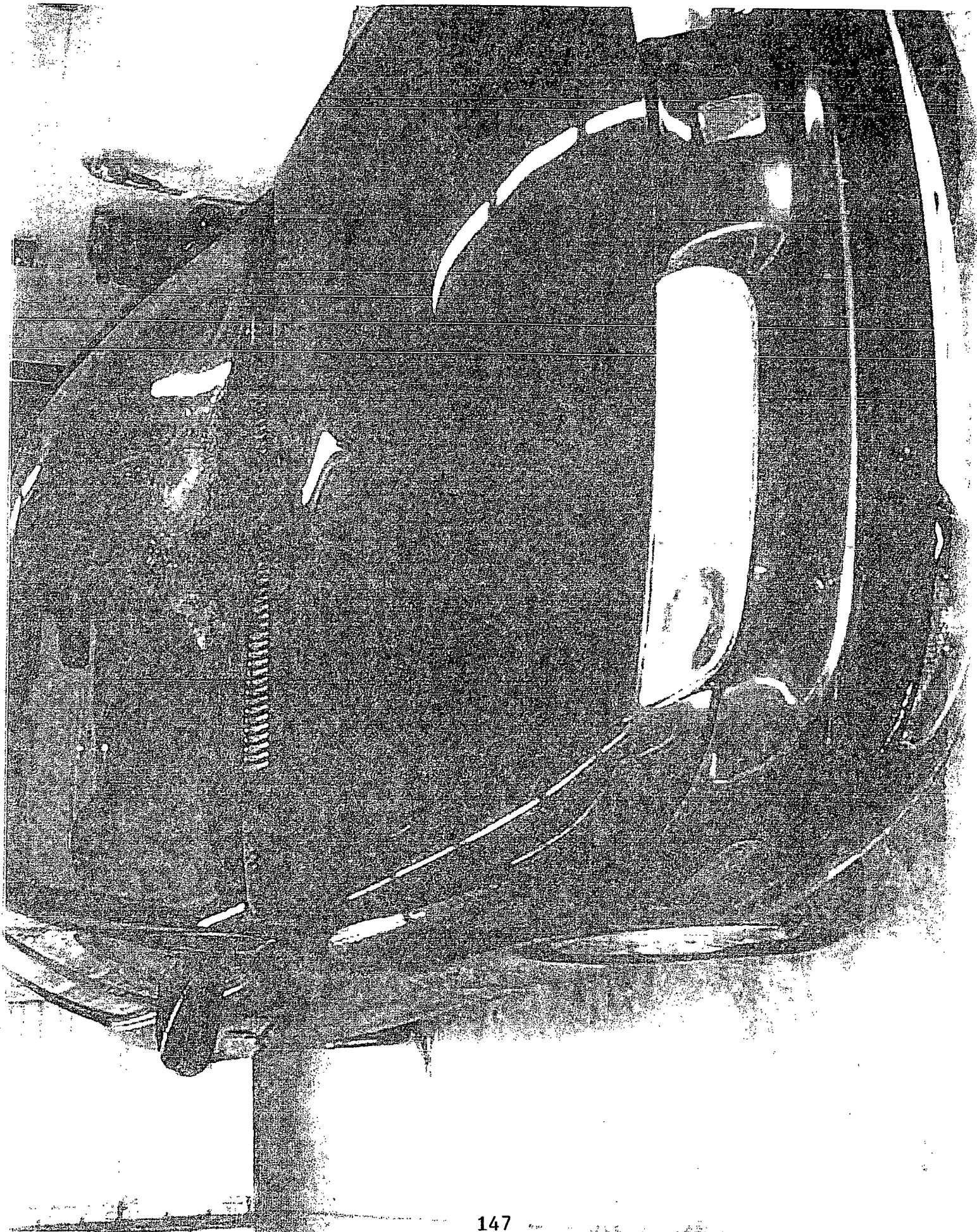
Dietrich A. Lake
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR PLAINTIFF

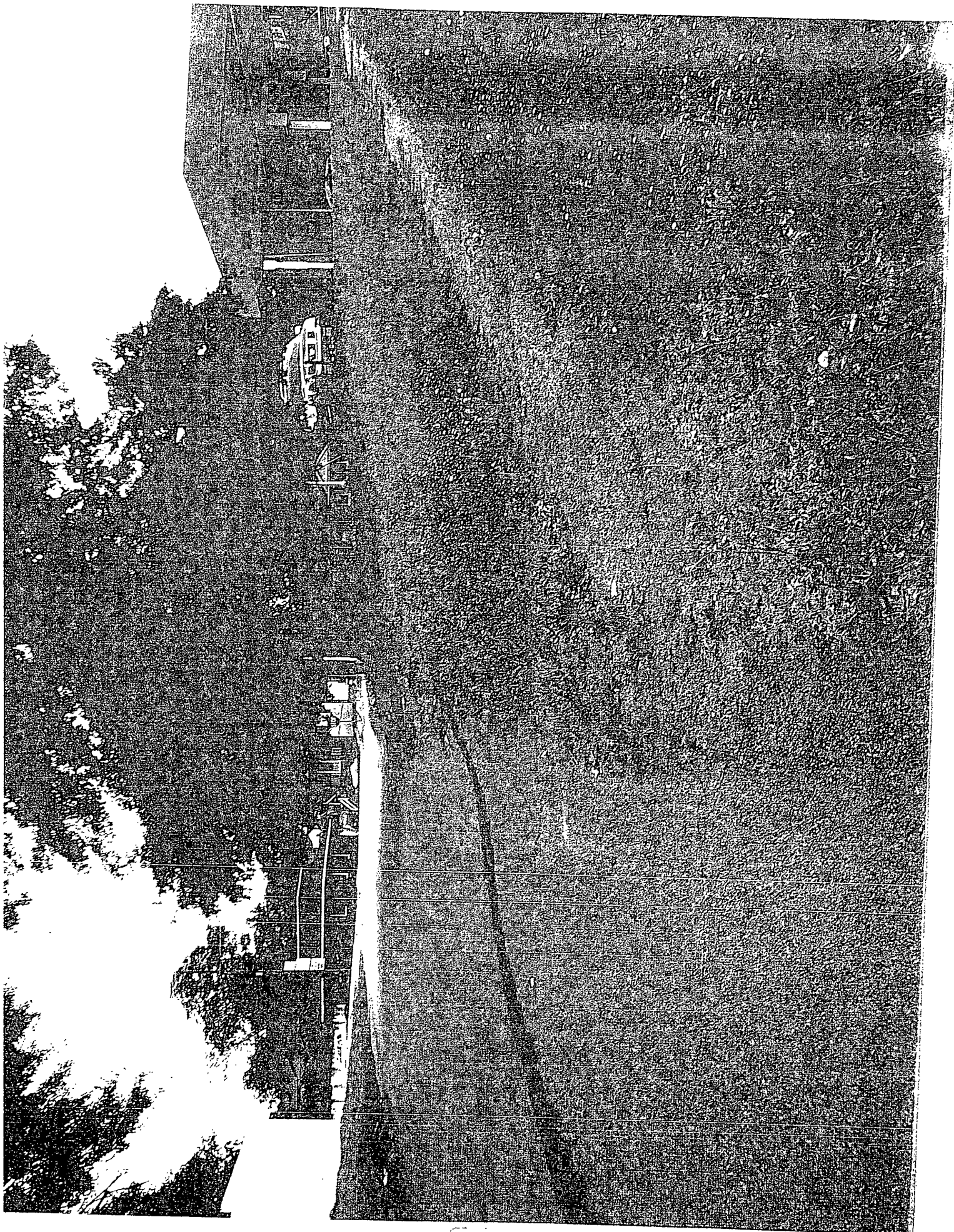
November ____, 2012
Columbia, South Carolina



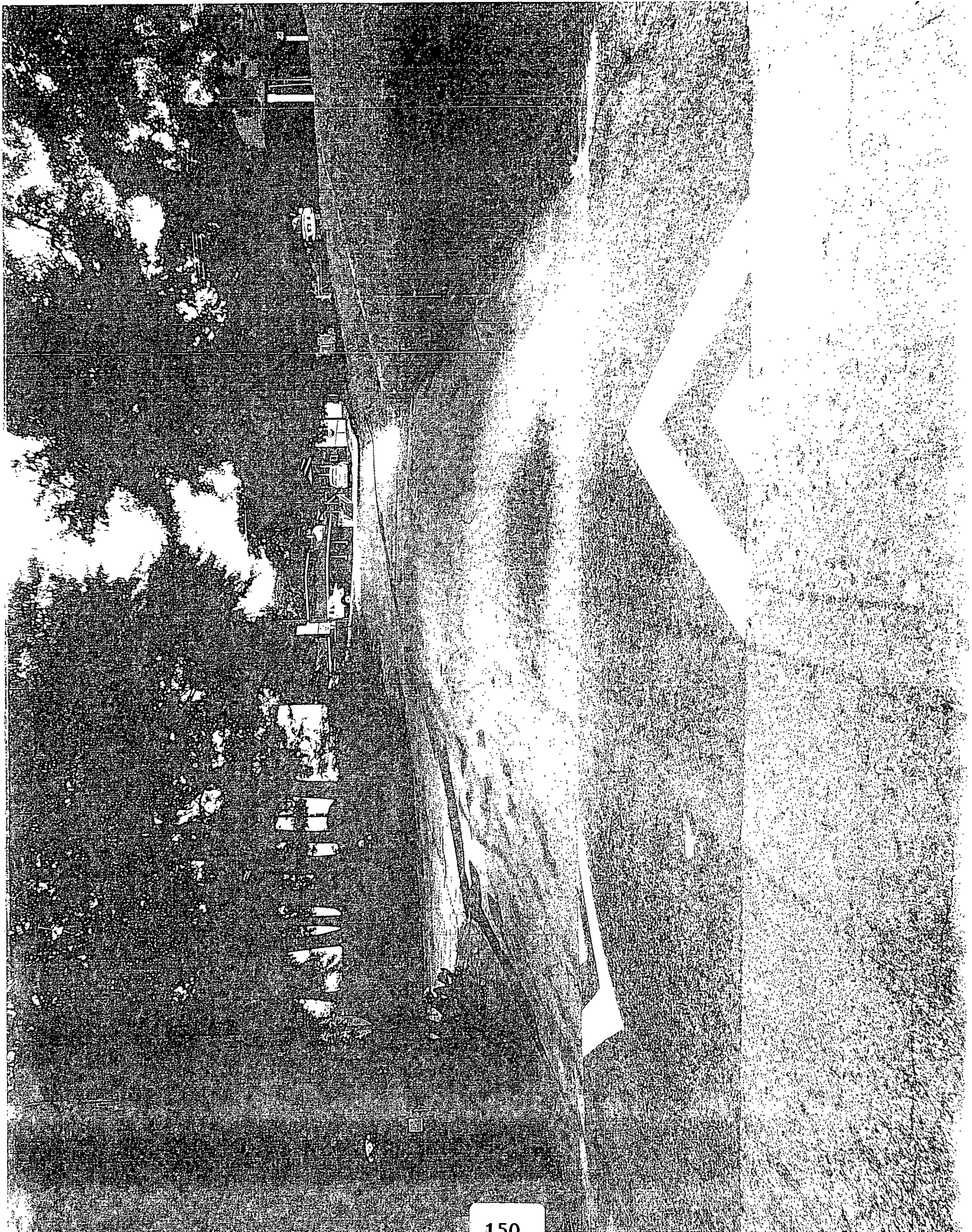




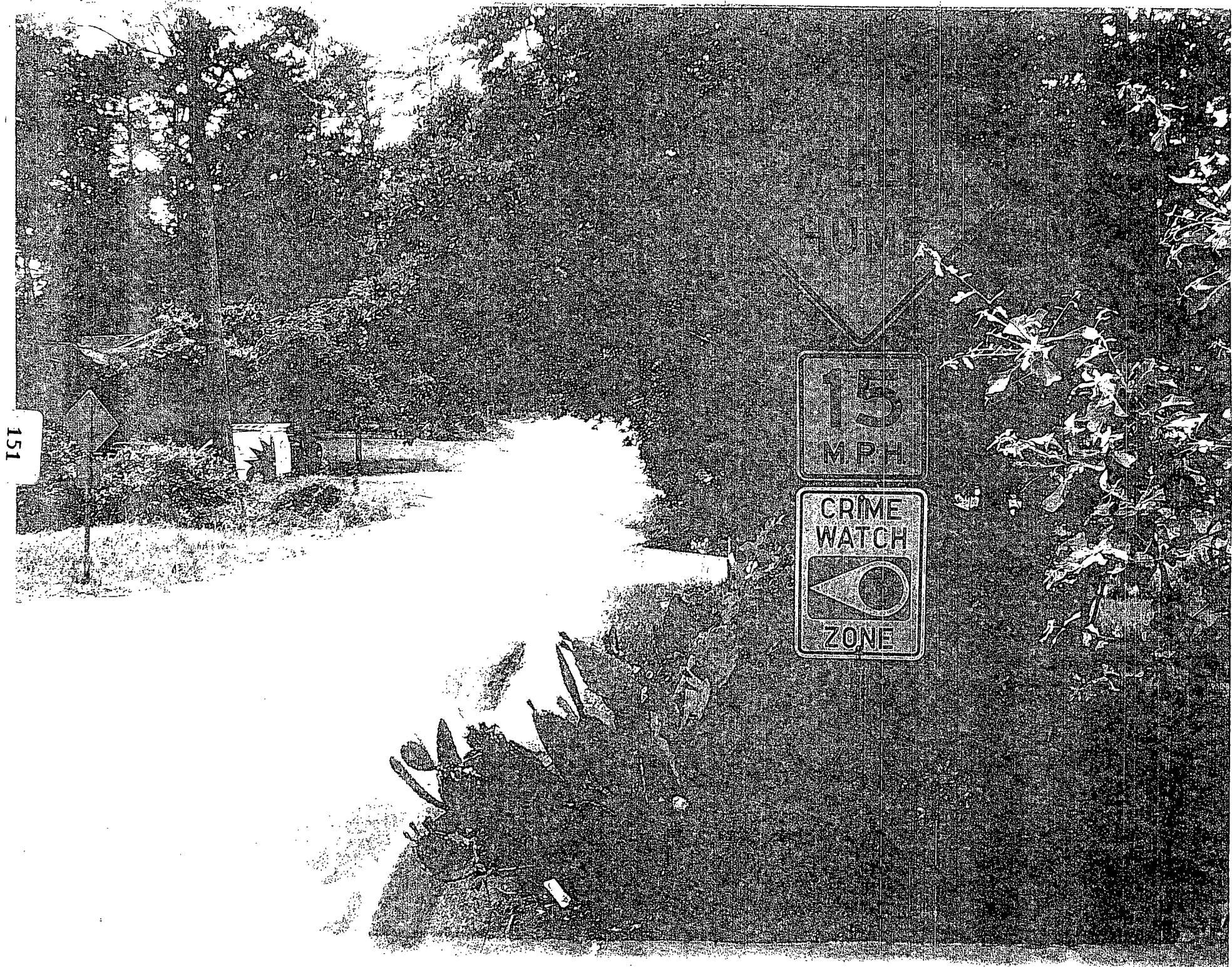
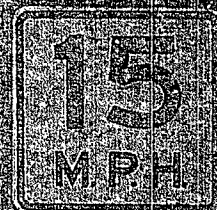








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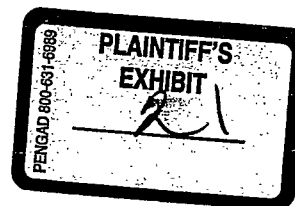


MEDICAL EXPENSES

Joseph Williams:

DOS

1. Richland County EMS	(1/28/11)	\$ 504.00
2. Palmetto Health Richland	(1/28/11)	\$2652.00
3. Palmetto Health Richland	(2/1/11)	\$ 329.00
4. A Healing Touch	(2/1/11 - 3/17/11)	\$2465.00
3. Pitts Radiology	(1/28/11)	<u>\$ 113.00</u>
TOTAL MEDICALS:		\$6063.00



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JOSEPH WILLIAMS AND SHAWN
DELAINE,

Plaintiffs,

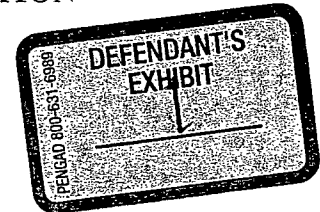
vs.

MARIE WILSON,

Defendant.

Civil Action No. 2011-CP-40-6156

STIPULATION



The parties do hereby stipulate to the following statement of facts:

1. The Defendant Marie Wilson provided a recorded statement to Antwoine Land, an investigator not associated with the Plaintiffs, on or about February 10, 2011.
2. The following statement was made by Marie Wilson in response to a question by Antwoine Land:
3. Defendant Marie Wilson's recorded statement was:

Q. OKAY. UM, DO YOU THINK THERE WAS ANYTHING YOU COULD HAVE DONE TO AVOID THE ACCIDENT?

A. YEAH, I LOOKED TO MY LEFT TO SEE, YOU KNOW, MAKING A MOTION I COULD HAVE STOP --

Q. OH.

A. -- BUT I WAS LOOKING IN THE FRONT, YOU KNOW, THERE SHE WAS GOING ON THE BUMP, AND YOU HEAR (INAUDIBLE-L) BECAUSE YOU GOT ANOTHER BUMP YOU GOT HIT."

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JOSEPH WILLIAMS AND SHAWN
DELAINE,

Plaintiffs,

vs.

MARIE WILSON,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2011-CP-40-6156

) SATISFACTION OF JUDGMENT

CLERK OF COURT
& FAMILY COURT

2012 DEC 19 PM 12:19

Now Comes the Plaintiff, Shawn DeLaine, who would show:

That judgment rendered in the above matter, in the Richland County Court of Common Pleas, has been satisfied with regard to Shawn DeLaine only.

Dated: 12/14/12

Shawn DeLaine
PLAINTIFF

SCANNED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

Case No.: 2011-CP-40-6156

Joseph Williams,.....Appellant,

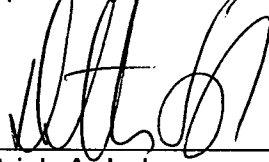
v.

Marie Wilson,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

Case No.: 2011-CP-40-6156

Marie Wilson,.....Respondent,

v.

Joseph Williams,.....Appellant.

PROOF OF SERVICE

The undersigned counsel for the Appellant hereby certifies that the Record on Appeal was served and delivered upon counsel for the Respondent by U.S. mail to: Curtis L. Ott and Laura W. Jordan, Gallivan White & Boyd, PO Box 7368, Columbia, SC 29202.

July 5, 2013



Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
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Attorney for Appellant

RECEIVED

JUL 05 2013

SC Court of Appeals