

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
The Hon. Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2023-000718

DARLEEN RASH, Individually and as Personal Representative  
for the ESTATE OF BRONSON HARLEY RASH.....Appellant-Respondent,

v.

DOMINION ENERGY (formerly SOUTH CAROLINA  
ELECTRIC & GAS COMPANY); ANTHONY M. AKBAR;  
AND PAUL QUATTLEBAUM,.....Respondent-Appellants.

RECORD ON APPEAL  
VOLUME 4

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**INDEX**

**VOLUME 1**

Form 4 Order dated April 13, 2023 .....1

Order Denying Motion for Reconsideration dated December 5, 2023 .....4

Order Denying Motion as to Improper Stipulation of Dismissal dated April 7, 2023 ..... 11

Order Denying Dominion’s Motion for Summary Judgment dated March 15, 2023 ..... 14

Order Denying Akbar’s Motion for Summary Judgment dated March 15, 2023 ..... 17

Jury Verdict Form ..... 20

Summons and Complaint..... 24

Amended Summons and Complaint ..... 37

Answer of Defendant Quattlebaum ..... 51

Answer of Defendant Akbar to Amended Complaint..... 62

Answer of Defendant SCE&G to Amended Complaint ..... 69

Amended Answer of Defendant Akbar..... 84

Stipulation of Dismissal as to Certain Defendants ..... 91

Motion for Summary Judgment of Defendant Akbar ..... 93

Motion for Summary Judgment of Defendant Dominion Energy ..... 95

Memorandum in Support of Motion for Summary Judgment of Defendant Akbar ..... 98

Memorandum in Support of Motion for Summary Judgment of Defendant Dominion  
Energy ..... 120

Reply in Support of Motion for Summary Judgment of Defendant Akbar ..... 139

Motion in Limine of Defendant Akbar ..... 144

Memorandum in Support of Motion for Directed Verdict..... 149

Rule 59(e) Motion of Plaintiff .....	159
Notice of Appeal of Darleen Rash .....	161
Notice of Cross-Appeal of Dominion Energy .....	172
Transcript Title Page, Appearances and Index .....	180
Testimony	
Opening Statement of Mr. Willey.....	193
Daniel McJunkin	
Direct Examination by Mr. Thoensen.....	200
Paul McCullough	
Voir Dire Direct Examination by Mr. Willey .....	232
Voir Dire Cross Examination by Mr. Cox .....	271
Voir Dire Cross-Examination by Ms. Wesley .....	282
Voir Dire Redirect Examination by Mr. Willey .....	283
Direct Examination by Mr. Willey .....	312
Resumed Direct Examination by Mr. Willey .....	418
Cross-Examination by Mr. Cox .....	461
Cross Examination by Ms. Wesley .....	463
Redirect Examination by Mr. Willey.....	472
Marshall White	
Direct Examination by Mr. Thoensen.....	476

**VOLUME 2**

Colloquy as to Exhibits and Testimony .....	477
Ruston Hunt	
Direct Examination by Mr. Willey .....	515
Resumed Direct Examination by Mr. Willey .....	521
Cross-Examination by Mr. Johnson.....	559
Colloquy as to Exhibits.....	576
J. Mark Teague	
Direct Examination by Mr. Willey .....	577
Resumed Direct Examination by Mr. Willey .....	585
Resumed Cross-Examination by Mr. Ford .....	586
Redirect Examination by Mr. Willey.....	588
Kendrick Richardson	

Cross-Examination by Mr. Johnson.....	590
Colloquy as to Witnesses and Exhibits.....	593
Shirley Richardson	
Direct Examination by Mr. Willey .....	601
Cross-Examination by Mr. Cox .....	634
Colloquy as to Exhibits and Expert Witness.....	639
Anthony Akbar	
Direct Examination by Ms. James .....	647
Cross-Examination by Mr. Willey.....	661
Motions for Directed Verdict.....	687
Colloquy as to Witnesses and Exhibits.....	730
Michael Sutton	
Direction Examination by Mr. Ford.....	749
Voir Dire Examination by Mr. Willey.....	755
Proffer Voir Dire Direction Examination by Mr. Willey .....	762
Proffer Voir Dire Cross-Examination by Mr. Ford .....	767
Resumed Direct Examination by Mr. Ford.....	772
Proffer Examination by Mr. Ford .....	811
Resumed Direct Examination by Mr. Ford.....	823
Proffer Direct Examination by Mr. Ford .....	852
Proffer Cross-Examination by Mr. Willey.....	903
Proffer Redirect Examination by Mr. Ford.....	908
Resumed Direct Examination by Mr. Ford.....	936
Cross-Examination by Mr. Willey.....	951

**VOLUME 3**

Michael Sutton (Continued)	
Cross Examination by Mr. Willey (Continued).....	976
Redirect Examination by Mr. Ford .....	1041
Colloquy as to Witness .....	1043
Marie Wearing	
Direct Examination by Ms. Honeycutt.....	1070
Joel Knight	
Direct Examination by Mr. Cooke .....	1072

Paul Quattlebaum	
Direct Examination by Ms. Wesley .....	1080
Cross-Examination by Mr. Johnson.....	1104
Cross-Examination by Mr. Thoensen .....	1105
Redirect Examination by Ms. Wesley .....	1143
Motions for Directed Verdict.....	1150
Colloquy as to Jury Charges .....	1206
Closing Argument of Mr. Willey.....	1404
Charging the Jury .....	1407
Jury Verdict and Jury Polling .....	1465
<b><u>VOLUME 4</u></b>	
Post-Trial Motions by Mr. Willey .....	1470
Post-Trial Motions by Mr. Cooke.....	1476
Post-Trial Motions by Mr. Ford.....	1478
Post-Trial Motions by Ms. Wesley .....	1478
Ruling on Post-Trial Motions .....	1481
Plaintiff's Exhibit 1 .....	1486
Plaintiff's Exhibit 114.....	1487
Plaintiff's Exhibit 115.....	1489
Plaintiff's Exhibit 116.....	1490
Plaintiff's Exhibit 142.....	1491
Plaintiff's Exhibit 143.....	1492
Plaintiff's Exhibit 144.....	1495
Plaintiff's Exhibit 145.....	1496
Defendant Dominion's Exhibit 2 .....	1497

Defendant Dominion’s Exhibit 5 .....	1498
Defendant Dominion’s Exhibit 15 .....	1499
Defendant Dominion’s Exhibit 50 .....	1500
Defendant Dominion’s Exhibit 52 .....	1501
Defendant Akbar’s Exhibit 1 .....	1502
Defendant Akbar’s Exhibit 2 .....	1503
Defendant Akbar’s Exhibit 3 .....	1504
Defendant Akbar’s Exhibit 4 .....	1505
Defendant Akbar’s Exhibit 6 .....	1506
Defendant Akbar’s Exhibit 7 .....	1507
Defendant Akbar’s Exhibit 84 .....	1508
Defendant Akbar’s Exhibit 85 .....	1509
Joint Trial Exhibit 1 .....	1514
Court’s Exhibit 16.....	1516
Court’s Exhibit 17.....	1554
Court’s Exhibit 31.....	1559
Court’s Exhibit 32.....	1560
Court's Exhibit 33 .....	1561
Certificate of Counsel .....	1562

1 ride today, please let the bailiffs know as well so that we  
2 can make those arrangements.

3 (The jury was released from service and exited the  
4 courtroom at 12:01 p.m.)

5 (The following proceedings were outside the presence of  
6 the jury.)

7 THE COURT: All right. You may be seated.

8 Are there any posttrial motions from the plaintiff?

9 MR. WILLEY: Your Honor, may we have ten days to --

10 THE COURT: No, sir. I hear posttrial motions at the  
11 conclusion of trial. It's never going to be more fresh to me  
12 than it is now. And I'm moving on to something else next  
13 week, and you need to be able to move on to what you need to  
14 be able to move on to without any delay.

15 MR. WILLEY: Your Honor, the plaintiff would move at  
16 this time for a judgment notwithstanding the verdict under --  
17 and for the 13th Juror Doctrine to be invoked.

18 THE COURT: I'm sorry. "Thirteenth Juror," is that what  
19 you said? I couldn't hear you.

20 MR. WILLEY: Yes. And judgment notwithstanding the  
21 verdict.

22 THE COURT: And what would be the basis of those  
23 motions?

24 MR. WILLEY: The basis for those motions, for the  
25 judgment notwithstanding the verdict is that the evidence in

1 the case indicated that three defendants, particularly  
2 Mr. Quattlebaum and Dominion, did obstruct the visibility at  
3 this intersection, which is law that the judge -- that you,  
4 your Honor, charged the jury on. And all of the evidence  
5 presented in this case from the expert testimony was that the  
6 poles and the bushes at that intersection obstructed the  
7 visibility. There was no contrary expert testimony from any  
8 human factors or line-of-sight expert.

9 And so on that basis, we would move for that.

10 In addition, the Court did not permit the citations,  
11 which go to the element of foreseeability as to Mr. Akbar and  
12 Mr. Quattlebaum from coming into evidence. We believe that  
13 that was in error and the Court should correct it now.

14 Obviously, foreseeability is an important part of the  
15 Court's instructions, an important part of the elements that  
16 the plaintiff had to meet. And those citations established  
17 foreseeability --

18 THE COURT: I'm listening.

19 MR. WILLEY: --but they were not allowed to proceed to  
20 the jury. So on those bases -- and if I could just look at  
21 my notes here for a second.

22 Your Honor, we would also note that it was raised to the  
23 Court obviously that -- I believe Ms. Tillman raised this,  
24 that duty was a matter for the Court. And since the Court  
25 did find that there was a duty both at the summary judgment

1 and --

2 THE COURT: I did not make a finding of duty. I made a  
3 preliminary decision that it was for the jury to decide  
4 whether there was a duty and whether it was breached.

5 MR. WILLEY: That would be -- so that would be another  
6 basis for our motion.

7 With respect to the breach, again, we believe all the  
8 evidence and testimony that was presented established that,  
9 and that there was not any contrary evidence or testimony in  
10 that regard.

11 And as to proximate cause, there's obviously no doubt  
12 that there was damage that was proximately caused by this  
13 collision. And so the Court having found that there was a  
14 duty and that that duty was breached under our judgment  
15 notwithstanding the verdict --

16 THE COURT: I did not make a finding that the duty was  
17 breached. I found that the evidence was susceptible of more  
18 than one inference. That's a very different finding. If I  
19 had found that there was a breach, then I would have directed  
20 the verdict on liability, and I did not.

21 MR. WILLEY: Yeah. If the Court -- if the Court found  
22 that under the judgment notwithstanding or the 13th Juror  
23 Doctrine, we obviously believe that the evidence also shows  
24 that there were damages proximately caused as a result of  
25 that breach. We would also note that despite the Court's

1 admonition repeatedly that settling defendants and the fact  
2 that they have been resolved from the case was not to be  
3 brought in, it was brought before the jury in closing  
4 arguments. We believe that that was in error.

5 THE COURT: Did you mock a contemporaneous objection?

6 MR. WILLEY: Well, the Court had already instructed at  
7 that point on that.

8 THE COURT: No. You make a contemporaneous objection  
9 when people are arguing. Otherwise it's waived. We're a  
10 strict preservation state.

11 MR. WILLEY: It occurred throughout the course of the  
12 trial, and there were contemporaneous objections.

13 THE COURT: Then you should have made contemporaneous  
14 objections and I would have ruled on them.

15 MR. WILLEY: And so we believe on that basis that that  
16 should not have been considered by the jury.

17 We also believe that the industry guidelines in the jury  
18 charges, the NESC, potentially misled the jury and to what  
19 Dominion's actual duties under the law were. And we believe  
20 that it was error not to charge violation of an internal  
21 policy given that Dominion essentially admitted that they  
22 violated an internal policy. And we think now is the  
23 appropriate time to correct that, either with a judgment  
24 notwithstanding the verdict or pursuant to the 13th Juror  
25 Doctrine.

1           Your Honor, there also was additional expert testimony  
2 that we sought to introduce to the jury in the form of  
3 Mr. McCullough's testimony, which we believe was in error to  
4 exclude. And now would be the time to correct that.

5           In addition, there were several pieces of evidence which  
6 the Court excluded, finding that the prejudice outweighed the  
7 probative value, which of course is not the standard. The  
8 standard is substantially outweighs. And so we would on that  
9 basis --

10           THE COURT: You need to point specifically to what  
11 you're talking about. This was a two-week trial, and you  
12 can't make a blanket statement like that without pointing out  
13 something specific.

14           MR. WILLEY: Exhibits 125 through 129, and --

15           THE COURT: Which were?

16           MR. WILLEY: -- 132, 133, and 134.

17           THE COURT: Which were?

18           MR. WILLEY: I believe those were the scan data that we  
19 attempted to use with Mr. Teague to show the actual  
20 measurements as of February of 2017.

21           THE COURT: You used it demonstratively, did you not?  
22 And it's my understanding that all of Mr. McCullough's scan  
23 data came into evidence without objection.

24           MR. WILLEY: So those were not allowed. They were only  
25 allowed demonstratively. So that would be --

1 THE COURT: I don't think that's accurate. I think all  
2 of Mr. McCullough's scan data came in and it was used  
3 demonstratively be a witness. It would not need to come in  
4 twice.

5 MR. WILLEY: So those were specific -- again,  
6 Plaintiff's 125 through 129, 132, 133, and 134. And so on  
7 that basis, we would ask for a judgment notwithstanding the  
8 verdict or under the 13th Juror Doctrine.

9 And just to wrap, we believe that when we previously  
10 moved for a directed verdict on duty, the Court should have  
11 instructed on duty at that time and granted the verdict. We  
12 would move -- so move again. Same as on breach and also  
13 specifically on causation and damages under judgment  
14 notwithstanding the verdict and the 13th Juror Doctrine. We  
15 would ask the Court to sit as the 13th juror in this case and  
16 to render a verdict -- a reasonable verdict for the  
17 plaintiff.

18 THE COURT: Who would like to -- Mr. Cox or Mr. Johnson  
19 or Mr. Cooke, who would like to respond on behalf of  
20 Dominion?

21 MR. COOKE: Your Honor, Dawes Cooke for Dominion. We  
22 respectfully oppose both of the motions. We incorporate by  
23 reference the arguments we made in support of directed  
24 verdict.

25 The plaintiff's offered no evidence or testimony as to

1 the duty of Dominion. We thought that should have given us a  
2 directed verdict. But it was submitted to the jury and the  
3 jury could well have easily found that the plaintiffs failed  
4 to establish any duty on the part of the public utility to  
5 maintain a sight line. And in fact, the evidence supported  
6 that that was not the responsibility of the utility. And the  
7 jury could easily have concluded that.

8       Additionally, the Court properly instructed the jury  
9 without any objection as to the but-for standard for proving  
10 causation in fact. And with the testimony only of  
11 Mr. McJunkin, leaving aside the expert testimony and the  
12 photographs that clearly showed that the sight lines were  
13 there, Mr. McJunkin's sworn testimony that nothing obstructed  
14 his view clearly supports the jury's conclusion that nothing  
15 obstructed his view, including the poles.

16       He complains that the closing argument and throughout  
17 that the defendant improperly brought up the fact that they  
18 have asserted claims against other parties. I'll remind the  
19 Court that Mr. -- that the plaintiff's counsel had actually  
20 misrepresented to the jury that they had chosen not to sue  
21 Mr. McJunkin because he was a victim himself, which is  
22 completely untrue, completely contrary to the pleadings.

23       The only reference that Mr. Johnson made was based on a  
24 plaintiff's exhibit that the plaintiffs introduced  
25 themselves. And so that's not prejudicial. And as your

1 Honor points out already, there's no objection made to that.

2 The internal policy, there was no evidence introduced of  
3 an internal policy. Mr. Knight testified that it's a  
4 preference of SCE&G -- or was the preference to put poles on  
5 private property if possible. But that's not a safety  
6 matter. That was because of the rights that they would  
7 maintain over a private easement as opposed to a public  
8 right-of-way. That does not rise to the level of an internal  
9 policy, and its violation had nothing to do with the -- it  
10 was not violated, and it had nothing to do with the case.

11 The National Electric Safety Code, one of the visuals  
12 that the plaintiff's counsel put up during closing actually  
13 referred to that as a regulation. And so clearly plaintiffs  
14 have no objection to the National Electric Safety Code being  
15 published to the jury. They had no objection to the witness  
16 being questioned about it. And it was certainly well before  
17 the jury.

18 As to Mr. McCullough's exclusion, I don't think the  
19 plaintiffs ever made an offer of proof as to what testimony  
20 he would have given had the Court qualified him as an expert.  
21 So there's no prejudice to that.

22 So for all those reasons, we would oppose the motion.

23 THE COURT: Mr. Ford or Ms. Tillman?

24 MR. FORD: Thank you, your Honor.

25 THE COURT: You're welcome.

1 MR. FORD: We adopt the points of Dominion. And we also  
2 incorporate our previous motions that we made and arguments  
3 that we made.

4 With regard to Mr. Akbar in addition to all those  
5 things, the plaintiff presented evidence but it did not rise  
6 to the burden of proof. The jury heard it. It's their  
7 domain. In fact, there was no factual evidence that  
8 Mr. Akbar violated any duty whatsoever or that caused or  
9 contributed to Mr. Rash's injuries. And therefore, we ask  
10 that your Honor deny the motion entirely.

11 THE COURT: And Ms. Wesley?

12 MS. WESLEY: Your Honor, as well, we adopt Dominion and  
13 Mr. Akbar's positions, as well as our previous motions and  
14 arguments.

15 Actually, every factual issue that plaintiff has  
16 mentioned, the jury decided. It's what the jury does. They  
17 didn't meet their burden of proof. The jury decided that.

18 The line of sight, Mike Sutton did speak to the line of  
19 sight. He's an expert with regard to accident  
20 reconstruction, and one of the things is line of sight. He  
21 spoke to that, and apparently the jury believed him.

22 I have to bring up, as Mr. Cooke did as well, that we  
23 were at a disadvantage during closing from plaintiff because  
24 they did make it seem as though -- and I come from a  
25 jurisdiction where you just do not object during closing or

1 openings, so it was very difficult for me to do and I did not  
2 do it.

3 But he came -- he mentioned that Mr. McJunkin was a  
4 victim as though they were united and they had not brought an  
5 action against him, which was a blatant misrepresentation.  
6 The jury apparently did not give that any weight, and we are  
7 grateful for that.

8 We had to address on open-ended ordinance for duty. We  
9 did not have any of the limitations that 4-13 or 4-7 could  
10 have afforded to defense. And we had to deal with an  
11 open-ended duty that we had to argue. And the jury  
12 apparently understood that, which we are also grateful for.

13 So for all those reasons, we would also ask that your  
14 Honor of course respect the verdict of the jury and leave it  
15 in place and deny the motions. Thank you.

16 THE COURT: You're welcome.

17 Anything further, Mr. Willey?

18 MR. WILLEY: No.

19 MS. WESLEY: Oh --

20 THE COURT: Yes ma'am.

21 MS. WESLEY: -- your Honor, I'm sorry. I have one  
22 last --

23 THE COURT: Go ahead.

24 MS. WESLEY: Do I need to bring up my motion or allow  
25 you to deal with this first?

1 THE COURT: For the offer of judgment?

2 MS. WESLEY: Yes.

3 THE COURT: That does need to be dealt with, Mr. Willey.  
4 They made an offer of judgment of \$100,000, which was filed  
5 11/1 of 2022.

6 MS. WESLEY: So from my understanding, it's all costs  
7 and potentially interest after that date.

8 THE COURT: Have you provided a statement of that to  
9 Mr. Willey?

10 MS. WESLEY: No, your Honor. We can put together all  
11 the expert costs and other costs that have been incurred for  
12 Mr. Quattlebaum.

13 THE COURT: Mr. Willey, would you like to respond  
14 regarding the offer of judgment?

15 MR. WILLEY: I would like the opportunity to review  
16 whatever they submit and respond at that time.

17 MS. WESLEY: If your Honor would like to give me a  
18 deadline, I'll get that done.

19 THE COURT: I think ten days is more than enough.

20 MS. WESLEY: Yes, your Honor.

21 THE COURT: As you know, offers of judgment only cover  
22 costs, interest. Our courts have defined what that is, and I  
23 think it's pretty clearcut.

24 MS. WESLEY: Yes, your Honor.

25 THE COURT: I don't believe anybody else filed an offer

1 of judgment, correct? Mr. Ford or Mr. Cooke?

2 MR. FORD: We did not.

3 MR. JOHNSON: No, your Honor.

4 THE COURT: In considering a motion for judgment  
5 notwithstanding the verdict, the evidence must be considered  
6 in the light most favorable to the nonmoving party. The  
7 evidence -- again, the Court is not at liberty to pass upon  
8 the veracity of the witnesses and determine the case  
9 according to its view of the weight of the evidence. If  
10 there is any evidence to sustain the factual findings  
11 implicit in the jury's verdict, this Court must deny the  
12 motion.

13 This case had many layers. And I'll start by denying  
14 the motion and applying the standard, which is any evidence  
15 which supports the verdict. And there is more than  
16 substantial evidence, there is more than any evidence  
17 supporting the verdict, which is implicit in the jury's  
18 findings.

19 This was the classic battle of the experts. The  
20 plaintiffs provided a group of experts and, contrary to  
21 Mr. Willey's representation that somehow he was disadvantaged  
22 by Mr. McCullough clearly not meeting the requirements of  
23 Rule 702 to testify as an expert witness on line of sight,  
24 both of his expert witnesses testified in depth to that  
25 issues. So the Court can discern no prejudice to him.

1           In addition, any evidence he's referring to, it is mu  
2 understanding that all of the scan data came in without  
3 objection. The fact that it was used demonstratively through  
4 a witness, it would serve no purpose to admit the evidence  
5 twice. So frankly, the Court is lost as to the basis of that  
6 motion.

7           Tort law is very clear. The plaintiff must establish by  
8 the greater weight of the preponderance of the evidence four  
9 things: first, a duty, a breach of duty, proximate cause,  
10 and damages. While this Court makes a preliminary decision,  
11 it is based in whether there is more than one version of  
12 facts to support a finding by a jury. It's not for the Court  
13 to weigh evidence to determine the credibility and  
14 believability of evidence. If it's susceptible of more than  
15 one inference, it's appropriately submitted to the jury.

16           So to the extent that there has been any misapprehension  
17 as to why -- or misunderstanding as to why the matter was  
18 submitted, that observation is provided for clarity. The  
19 issue is whether there was a duty, and there's more than  
20 ample evidence in the record that there was no duty owed to  
21 Mr. Rash in this case.

22           The fences at issue in this case were put on the  
23 property, according to the testimony, in 1969, which would  
24 have predated the ownership of Mr. Akbar and Mr. Quattlebaum.  
25 Those fences were not in any way in violation of any of the

1 ordinances subsequently passed by the City of North  
2 Charleston. Those ordinances were prospective and not  
3 retroactive in nature. They never received any notice that  
4 their fences were out of compliance. And even more  
5 importantly, they were chain-link fences, which without the  
6 necessity of expert testimony, it could be left to the common  
7 sense of a jury regarding visibility.

8         And there was much testimony presented regarding the  
9 visibility of Mr. McJunkin and Mr. Rash as they traveled Old  
10 Meeting Street Road. In addition, there was testimony  
11 regarding sight line regarding what could best be described  
12 as a bare tree that came at the intersection of the property.  
13 Preceding the property there was greater vegetation, probably  
14 had a greater opportunity to obscure the road, which the jury  
15 simply could have looked at as well.

16         But in terms of visibility, it was well within the ambit  
17 of their fact-finding to determine that that vegetation at  
18 the intersection of those fences did not prove any obscurity  
19 of vision or sight line of those using the highway, as well  
20 as the poles that were located on the highway. So there is  
21 more than substantial evidence which amply supports the  
22 jury's verdict.

23         It is not for this Court to substitute its judgment for  
24 the 12 who listened to the case, who deliberated over five  
25 hours, almost six hours. They deliberated three hours and 17

1 minutes last night and two hours and 41 minutes today. They  
2 were just two minutes shy of having deliberated six hours.  
3 And I think they very clearly, more than adequately  
4 considered the issue. They asked the Court to re-instruct  
5 them regarding the state laws as well as the ordinances as  
6 well as common-law duties.

7 And contrary to the plaintiff's assertion, the statute  
8 is very clear and allows the defense to argue the empty  
9 chair, pursuant to statute.

10 And there was no evidence of violation of an internal  
11 policy such that it required the Court to instruct -- to give  
12 the jury that instruction.

13 But the jury -- the instruction on a whole was an  
14 accurate reflection of the law -- the current and prevailing  
15 law in South Carolina. All the issues raised by the motion  
16 for judgment notwithstanding the verdict are factual. The  
17 Court will not disturb the fact-finding province of the jury.

18 Now, so the motion for direct -- for JNOV is denied.  
19 I'll do a written order, which I may make additional findings  
20 of fact and conclusions of law.

21 MR. WILLEY: Your Honor, I would like to add just one  
22 thing that I omitted when I was speaking. So the Golden Rule  
23 was also violated by the defendants in the closing. The  
24 Court did sustain an objection, but we believe that the  
25 proper cure for that at this time would be to grant the JNOV

1 or the 13th Juror Doctrine. So I just want to make sure that  
2 that is on the record in light of the Court's --

3 THE COURT: And I'm glad you raised that. There's  
4 absolutely no basis for the Court to act as the 13th juror.  
5 In addition to that, not only did the defendants violate the  
6 Golden Rule, you violated it multiple times, after which the  
7 Court gave a curative instruction, which it feels is more  
8 than appropriate to have cured the issue. And the Court  
9 advised the jury that they were to disabuse their minds of  
10 any such argument and they were to give it absolutely no  
11 consideration in their deliberations. That certainly would  
12 not form the basis of judgment notwithstanding the verdict.

13 In addition, the Court finds that the verdict is amply  
14 supported by the evidence, does not shock the conscience of  
15 the Court, and is not the result of caprice, passion,  
16 prejudice, partiality, corruption, or other improper motive.  
17 Again, I'll do a written order and maintain my ability to  
18 make any further findings of fact and conclusions of law that  
19 are supported by the record.

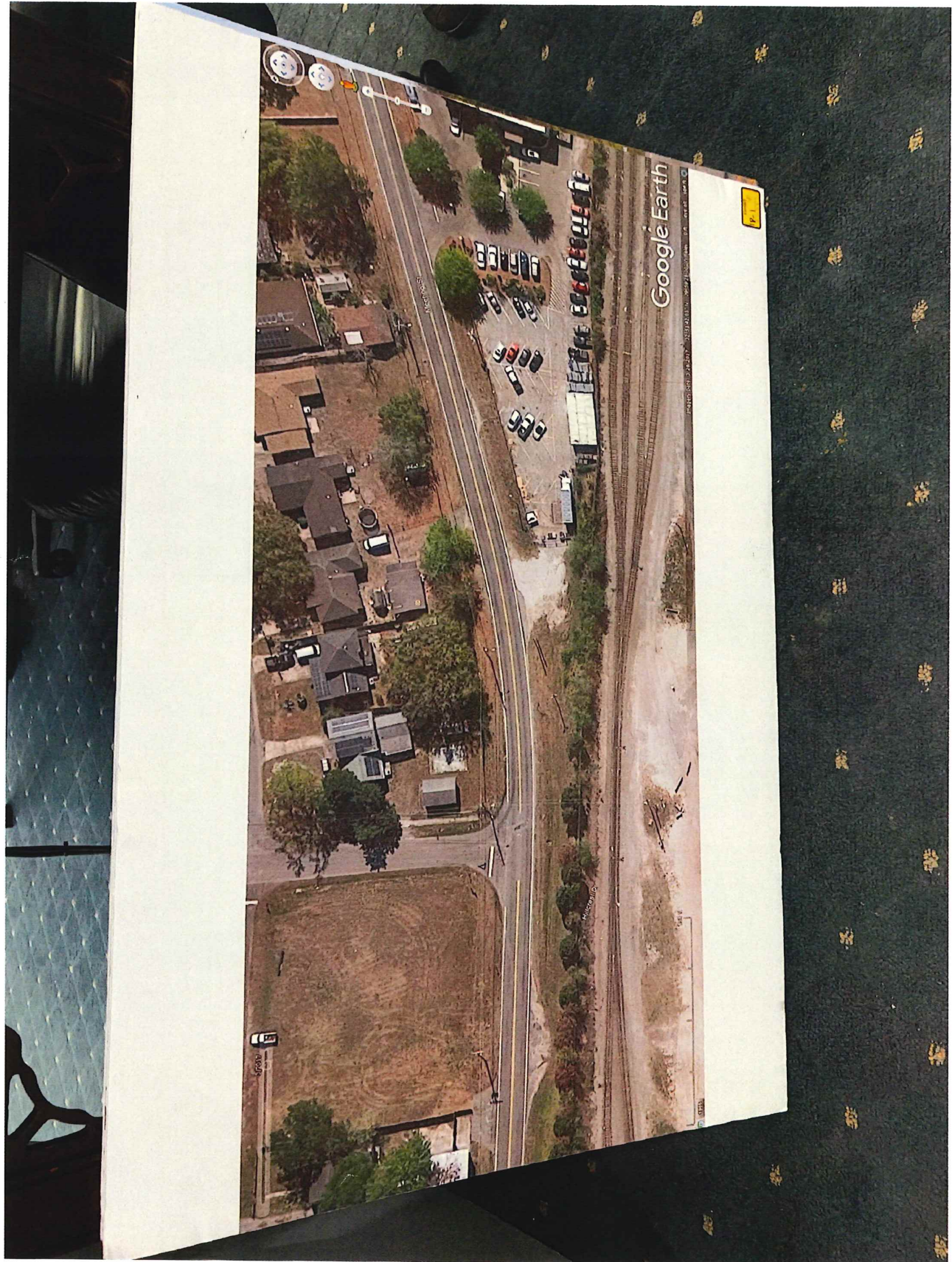
20 Ms. Wesley, if you could have that -- those --

21 MS. WESLEY: Yes.

22 THE COURT: -- documents ready for Mr. Willey and  
23 Mr. Thoensen within ten days of today --

24 MS. WESLEY: We shall.

25 THE COURT: -- which would be -- today is the 4th of



P-1

1486

# City of North Charleston, SC

R. KEITH SUMMEY, MAYOR

CODE ENFORCEMENT DEPARTMENT • ANGELA MCJUNKIN, DIRECTOR

**Code Enforcement:** Official Inspection Notice

04/06/2015

Case: TE1505576

**AKBAR ANTHONY M**

**3891 WALNUT ST**

**NORTH CHARLESTON, SC 29405-7050**

**Property Address: 3891 WALNUT ST**

**TMS: 4690200119**

**Subdivision: WHIPPER BARDON**

**VIOLATION DESCRIPTION:**

The vehicles in your back yard appears to be not operational. This is a violation of the City of North Ordinances. Tires must be inflated and vehicles must be operational. Call me at the number listed below with in the 15 day when you can demonstrate it's ability to operate. (van and truck)

**GENERAL VIOLATIONS:**

(The ordinance can be found at [www.northcharleston.org](http://www.northcharleston.org))

9-67(4): Trucks, cars, trailers, boats, etc. are incapable of self-propulsion or are dismantled

**Notice to Property Owner or Tenant:**

This notice is being given so that you may have the opportunity to correct the above violations on the property. The violations must be corrected within 15 days of the above date. If the violations are not corrected further legal action will be taken. Please call Code Enforcement if you have any questions.

**Tammie Emanuel**

**Code Inspector**

**(843)740-2678**

**temanuel@northcharleston.org**

1 year 10 months 14 days  
including end date

PO Box 190016 • North Charl

harleston



**Property Owner/Tenant**

First Name/Business PAUL  
Middle Initial  
Last Name QUATTLEBAUM  
Street Address 3895 WALNUT ST  
Subdivision WHIPPER BARONY  
City/County City  
TMS 4690200118  
Case RO1421476

**Code Inspector**

Robin Ortiz  
(843)740-2673 (phone)  
(843)745-1022 (fax)  
rortiz@northcharleston.org  
Mail to: PO Box 190016  
North Charleston, SC 29419-9016  
Location: 2500 City Hall Ln  
North Charleston, SC 29406  
Hours: 7:30 AM - 4:30 PM (Mon-Fri)

**GENERAL VIOLATIONS:**

9: Ordinance Information

**Comments**

THANK YOU FOR CUTTING THE BUSHES

**Code Enforcement:** Official Inspection Notice

**03/10/2016**

**Case: SB1604392**

**PAUL QUATTLEBAUM  
3895 WALNUT ST  
NORTH CHARLESTON, SC 29405-7050**

**Property Address: 3895 WALNUT ST**

**TMS: 4690200118**

**Subdivision: WHIPPER BARN**

**VIOLATION DESCRIPTION:**

Please clean the debris/wash at the corner of HedgeWood/Meeting. Thank you!

**GENERAL VIOLATIONS:**

(The ordinance can be found at [www.northcharleston.org](http://www.northcharleston.org))

9-67: Nuisance

**Notice to Property Owner or Tenant:**

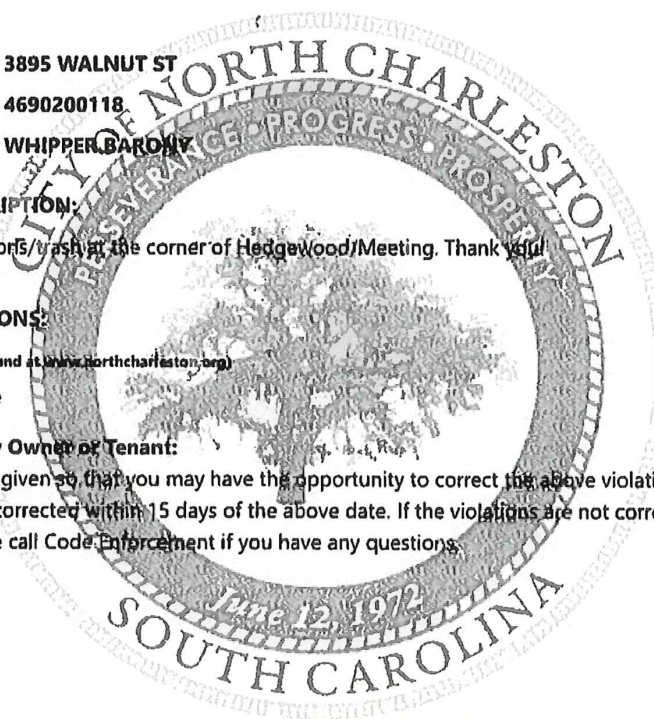
This notice is being given so that you may have the opportunity to correct the above violations on the property. The violations must be corrected within 15 days of the above date. If the violations are not corrected further legal action will be taken. Please call Code Enforcement if you have any questions.

**D. Scott Barfield**

**Code Inspector**

**(843)740-2674**

**dbarfield@northcharleston.org**



*11 months 10 days  
including end date*

PO Box 190016 • North Charleston, SC 29405

PENGAU 800-931-1000  
**PLAINTIFF'S  
EXHIBIT  
115**

# City of North Charleston, SC

R. KEITH SUMMEY, MAYOR

CODE ENFORCEMENT DEPARTMENT • ANGELA MCJUNKIN, DIRECTOR

**Code Enforcement:** Official Inspection Notice

**10/18/2016**

**Case: SB1619523**

**PAUL QUATTLEBAUM  
3895 WALNUT ST  
NORTH CHARLESTON, SC 29405-7050**

**Property Address: 3895 WALNUT ST**

**TMS: 4690200118**

**Subdivision: WHIPPER BARDON**

**VIOLATION DESCRIPTION:**

Please cut the grass, especially in the backyard.

**GENERAL VIOLATIONS:**

(The ordinance can be found at [www.northcharleston.org](http://www.northcharleston.org))

9-67(2): Grass, weeds, briars, brush, etc.

**Notice to Property Owner or Tenant:**

This notice is being given so that you may have the opportunity to correct the above violations on the property. The violations must be corrected within 15 days of the above date. If the violations are not corrected further legal action will be taken. Please call Code Enforcement if you have any questions.

**D. Scott Barfield**

**Code Inspector**

**(843)740-2674**

**[dbarfield@northcharleston.org](mailto:dbarfield@northcharleston.org)**



PO Box 190016 • North Charleston, SC 29419-9016 • 843-554-5700 • [northcharleston.org](http://northcharleston.org)

**Code Enforcement: Official Inspection Notice**

**05/09/2013**

**Case: RO1306993**

**AKBAR ANTHONY M  
3891 WALNUT ST  
N CHARLESTON , SC 29405-7050**

**Property Address: 3891 WALNUT ST**

**TMS: 4690200119**

**Subdivision: WHIPPER BARONY**

**VIOLATION DESCRIPTION:**

Owners/Renters are responsible all the way to the road. The grass at the back of the property needs to be cut and maintained all the way to Meeting Street Road. Correct this code violation.

**GENERAL VIOLATIONS:**

(The ordinance can be found at [www.northcharleston.org](http://www.northcharleston.org))

9-67(2): Grass, weeds, briars, brush, etc.

**Notice to Property Owner or Tenant:**

This notice is being given so that you may have the opportunity to correct the above violations on the property. The violations must be corrected within 15 days of the above date. If the violations are not corrected further legal action will be taken. Please call Code Enforcement if you have any questions.

**Robin Ortiz  
not current code employee  
(843)740-2673  
ortiz@northcharleston.org**

*3 years 9 months  
11 days including end date*

PO Box 190016 • North Charleston

PLAINTIFF'S  
EXHIBIT  
**P-142**

Code Enforcement: Official Inspection Notice

06/12/2013

Case: RO1309106

Akbar Anthony M  
3891 Walnut St  
N Charleston, SC 29405-7050

Property Address: 3891 WALNUT ST

TMS: 4690200119

Subdivision: WHIPPER BARDON

VIOLATION DESCRIPTION:

The junk piled on the back porch needs to be stored out of sight or removed and disposed of properly. The grass behind the fence at Meeting Street Road needs to be cut and maintained.

GENERAL VIOLATIONS:

(The ordinance can be found at [www.northcharleston.org](http://www.northcharleston.org))

- 9-67(1): Scrap, paper, junk, vehicle parts, trash, garbage, leaves, cans, vessels, broken bottles and glass, debris, etc.
- 9-67(2): Grass, weeds, briars, brush, etc.

Notice to Property Owner or Tenant:

This notice is being given so that you may have the opportunity to correct the above violations on the property. The violations must be corrected within 15 days of the above date. If the violations are not corrected further legal action will be taken. Please call Code Enforcement if you have any questions.

Robin Ortiz  
not current code employee  
(843)740-2673  
rortiz@northcharleston.org

3 years 8 months 8 days  
including end date

PLAINTIFF'S  
EXHIBIT  
P-143

**Property Owner/Tenant**

First Name/Business PAUL

Middle Initial

Last Name QUATTLEBAUM

Street Address 3895 WALNUT ST

Subdivision WHIPPER BARONY

City/County City

TMS 4690200118

Case RO1415843

**Code Inspector**

Robin Ortiz

(843)740-2673 (phone)

(843)745-1022 (fax)

rortiz@northcharleston.org

Mail to: PO Box 190016

North Charleston, SC 29419-9016

Location: 2500 City Hall Ln

North Charleston, SC 29406

Hours: 7:30 AM - 4:30 PM (Mon-Fri)

**GENERAL VIOLATIONS:**

9-67(2) Grass, weeds, briars, brush, etc.

**Comments**

GRASS IN BACK YARD NEEDS TO BE CUT, INCLUDING OUTSIDE FENCE AT STREET

**Property Owner/Tenant**

First Name/Business PETER

Middle Initial

Last Name MCNAUGHTON

Street Address 3895 WALNUT ST

Subdivision WHIPPER BARONY

City/County City

TMS 4690200118

Case RO1403588

**Code Inspector**

Robin Ortiz

(843)740-2673 (phone)

(843)745-1022 (fax)

rortiz@northcharleston.org

Mail to: PO Box 190016

North Charleston, SC 29419-9016

Location: 2500 City Hall Ln

North Charleston, SC 29406

Hours: 7:30 AM - 4 30 PM (Mon-Fri)

**GENERAL VIOLATIONS:**

9-67(1): Scrap, paper, junk, vehicle parts, trash, garbage, leaves, cans, vessels, broken bottles and glass, debris, etc.

**Comments**

PROPERTY MANAGEMENT CLEANING UP YARD  
FOR MONTAGUE AV

**Code Enforcement:** Official Inspection Notice

09/24/2014

Case: RO1416728

**Paul Quattlebaum**

**3895 WALNUT ST**

**NORTH CHARLESTON, SC 29405-7050**

**Property Address: 3895 WALNUT ST**

**TMS: 4690200118**

**Subdivision: WHIPPER BARDON**

**VIOLATION DESCRIPTION:**

The bushes at the back fence need to be trimmed back so vehicles entering Meeting St Rd do not have their vision blocked.

**GENERAL VIOLATIONS:**

(The ordinance can be found at [www.northcharleston.org](http://www.northcharleston.org))

9-46(e): Impeding traffic - limbs, brush, junk in right of way

**Notice to Property Owner or Tenant:**

This notice is being given so that you may have the opportunity to correct the above violations on the property. The violations must be corrected within 15 days of the above date. If the violations are not corrected further legal action will be taken. Please call Code Enforcement if you have any questions.

**Robin Ortiz**

not current code employee

(843)740-2673

[rortiz@northcharleston.org](mailto:rortiz@northcharleston.org)

2 years 4 months 27 days  
including end date

PO Box 190016 • North Charleston, SC 29405

North Charleston, SC



Code Enforcement: Official Inspection Notice

09/24/2014

Case: RO1416730

AKBAR ANTHONY M  
3891 WALNUT ST  
NORTH CHARLESTON, SC 29405-7050

Property Address: 3891 WALNUT ST

TMS: 4690200119

Subdivision: WHIPPER BARDON

VIOLATION DESCRIPTION:

The bushes at the back fence need to be trimmed back so vehicles entering Meeting St Rd do not have their vision blocked. Thank you

GENERAL VIOLATIONS:

(The ordinance can be found at [www.scdhsr.com](http://www.scdhsr.com))

9-46(e): Impeding traffic - limbs, brush, junk in right of way

Notice to Property Owner or Tenant:

This notice is being given so that you may have the opportunity to correct the above violations on the property. The violations must be corrected within 15 days of the above date. If the violations are not corrected further legal action will be taken. Please call Code Enforcement if you have any questions.

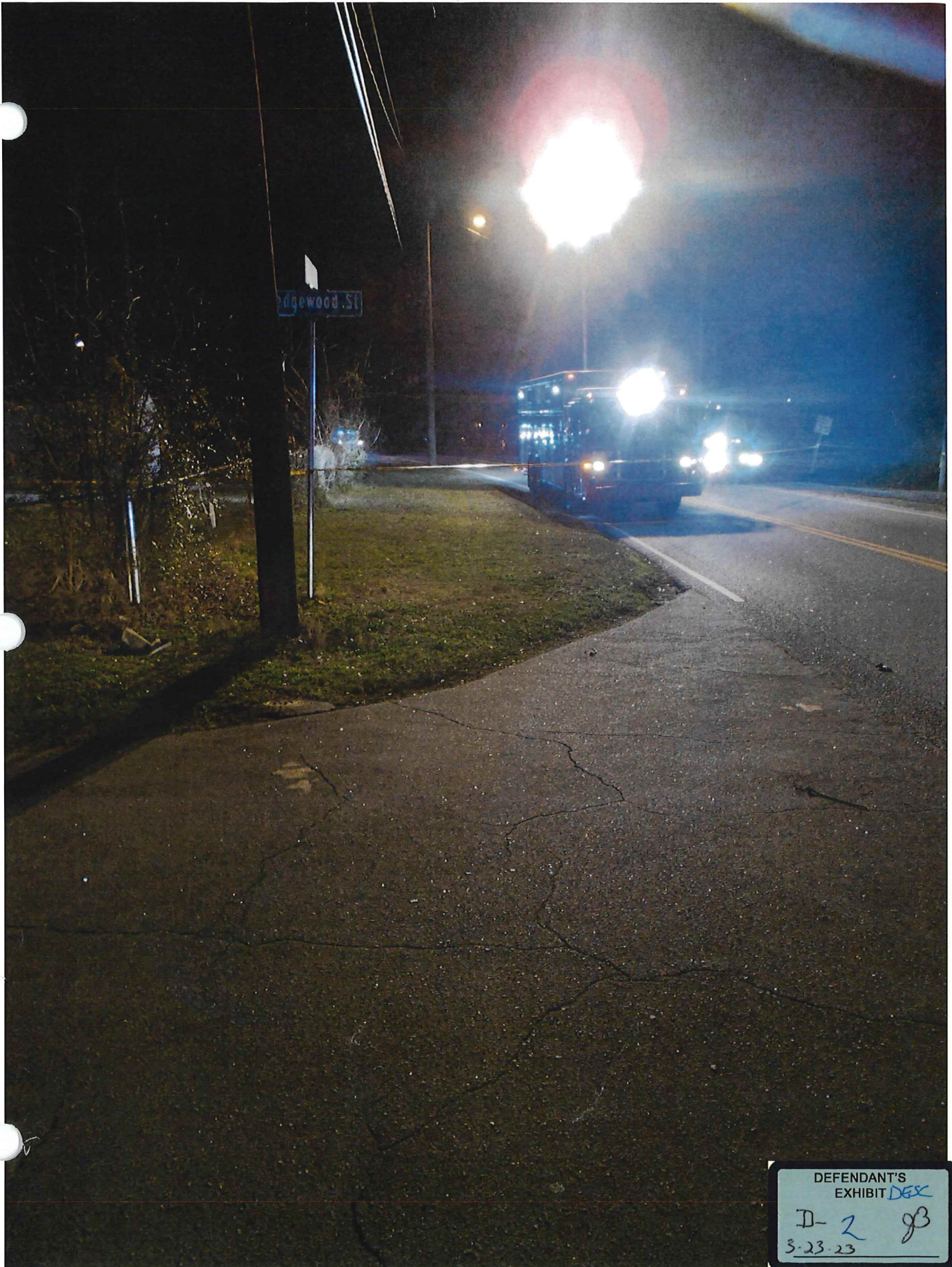
Robin Ortiz  
not current code employee  
(843)740-2673  
rortiz@northcharleston.org

2 years 4 months 27 days  
including end date

PO Box 190016 • North Charleston

North Charleston





DEFENDANT'S  
EXHIBIT *DEX*  
D-2 *JB*  
3-23-23



D-5

1498

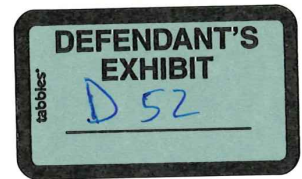
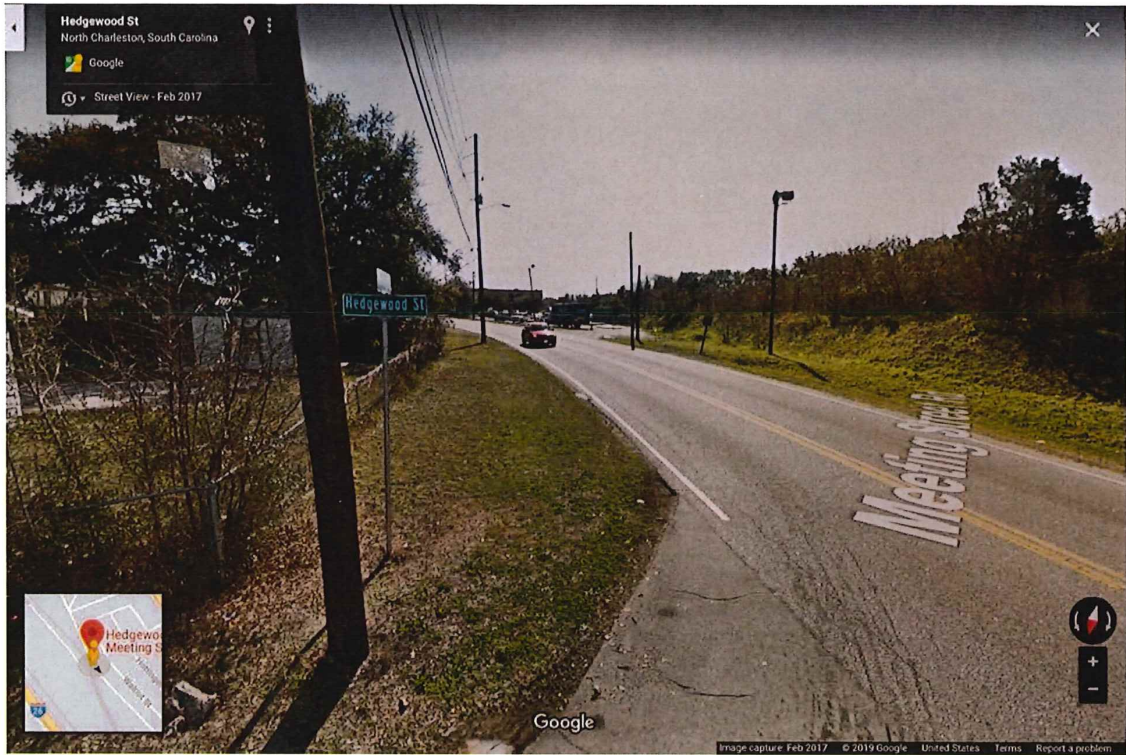


1499



DEFENDANT'S  
EXHIBIT  
D 50

**1500**









1504

DEFENDANT'S EXHIBIT  
AKbar 4  
3-29-23  
PENGAD 800-631-6989

3898 Meeting Street Rd  
North Charleston, South Carolina  
Google  
Street View - Feb 2017



Image capture: Feb 2017 © 2019 Google United States Terms Report a problem

1505

DEFENDANT'S EXHIBIT  
*AK bar G*  
3-29-23  
PENGAD 800-631-6989

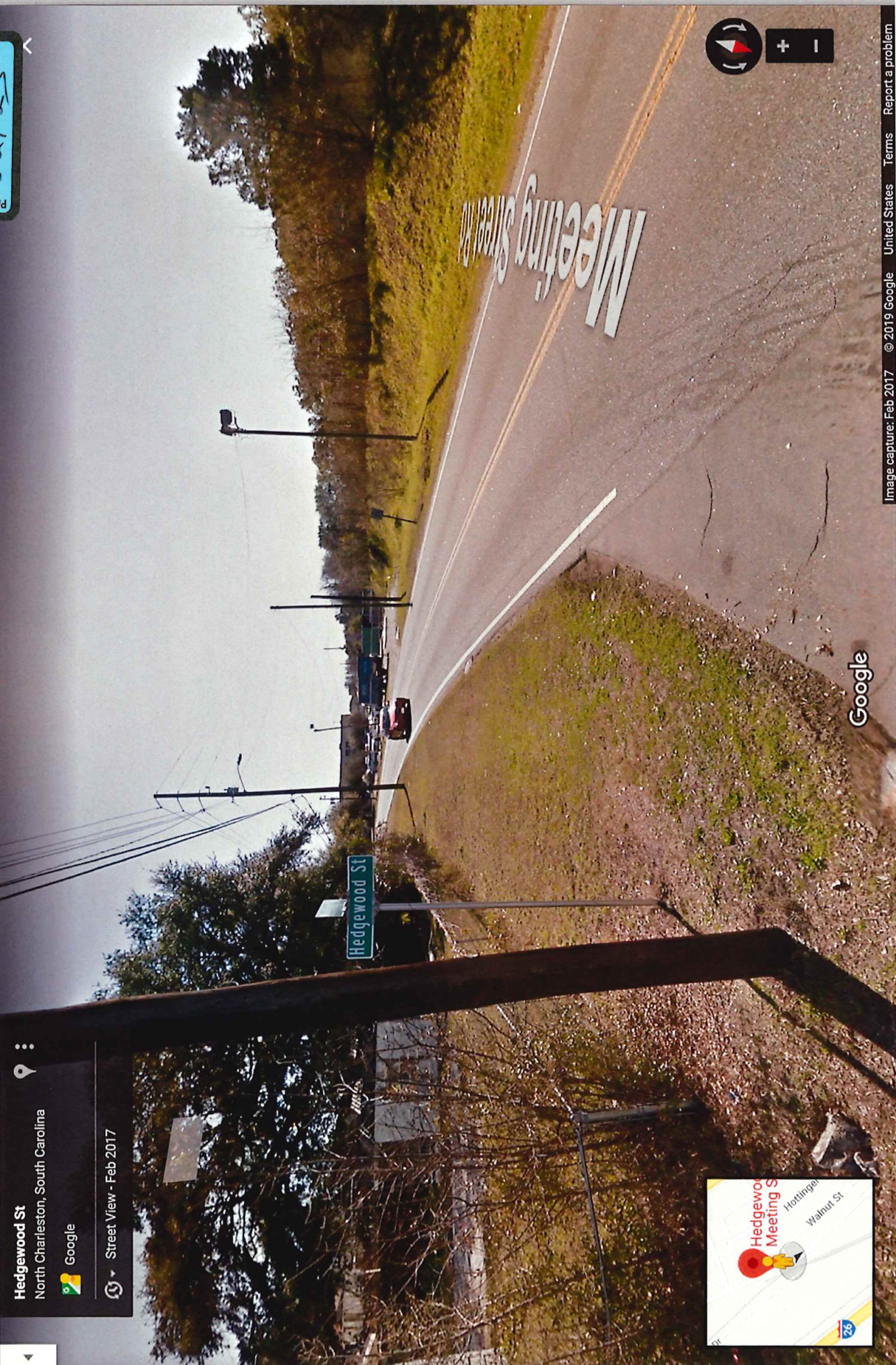


Image capture: Feb 2017 © 2019 Google United States Terms Report a problem

1506

Exhibit 1



720819 Site\_transparent\_mosaic\_group1

FILE  
DRAWN BY  
FOLDER #  
DRAWING #

Public Service Company of  
Charleston, S.C.  
Approved by City of Charleston  
April 10, 1948  
Submitted to S.C. State  
for 200 B.M.

MAP  
OF

WHIPPER BARONY  
CHARLESTON COUNTY S.C.

SCALE 1" = 100' APRIL 10, 1948 BY *Joseph B. Powell, C.E.*



DEFENDANT'S  
EXHIBIT  
AK-84  
3-27-23  
PENGAD 800-631-6989

STATE OF SOUTH CAROLINA )  
 ) TITLE TO REAL ESTATE  
COUNTY OF CHARLESTON )

KNOW ALL MEN BY THESE PRESENTS, that I/We, **KENNETH P. LARSON** (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of **SEVENTY-TWO THOUSAND AND NO/100 DOLLARS (\$72,000.00)** and subject to the Restrictions, Exceptions, and Limitations as set forth hereinafter, to the Grantor paid by **ANTHONY M. AKBAR** (hereinafter whether singular or plural the "Grantee") have granted, bargained, sold and released, and, by these presents, do grant, bargain, sell and release unto the said **ANTHONY M. AKBAR**, his/her/their Heirs and Assigns, in and to the following described real property, to-wit:

ALL that certain piece, parcel or lot of land, together with all buildings and improvements thereon, situate, lying and being in Charleston County, State of South Carolina, known and designated as **LOT 179, WHIPPER BARONY SUBDIVISION**, on that certin plat thereof made by Joseph Needle, CE, dated April 10, 1948, and recorded in the RMC Office for Charleston County in Plat book G, at Page 48, and having such size, shape, and dimensions, butting and bounding as shown on said plat. Said lot **BUTTING AND BOUNDING** as follows, to-wit: On the Northwest by Lot 178 Whipper Barony Subdivison; on the Northeast by the right-of-way of Walnut Avenue; on the Southeast by Lot 180 Whipper Baron Subdivison; on the Southwest by the right-of-way of Meeting Street Road.

BEING the same property conveyed to the Grantor herein by deed of Mildred R. Larson dated July 28, 1995, and recorded on August 2, 1995, in the RMC Office for Charleston County in Book C258, at Page 022.

TMS Number: 469-02-00-119

Grantees' Address: 3891 Walnut Street, Charleston, SC 29405



*Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.*

*TO HAVE AND TO HOLD all and singular in and to the aforesaid premises unto the said Grantees, ANTHONY M. AKBAR, his/her/their Heirs and Assigns forever.*

*And the Grantor does hereby bind the Grantor and the Grantor's Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantees hereinabove named and the Grantee's Heirs and Assigns against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.*

*WITNESS our hands and seals this 11th day of December in the year of our Lord one thousand nine hundred ninety-eight (1998) and in the two hundred and twenty-third (223) year of the Sovereignty and Independence of the United States of America.*

*SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:*

*Aun R Lofton*  
\_\_\_\_\_  
Witness #1

*Kristina Carrier*  
\_\_\_\_\_  
Witness #2

*Kenneth P. Larson*  
\_\_\_\_\_  
KENNETH P. LARSON

BK V316PG267

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

*The foregoing instrument was acknowledged before me by Kenneth P. Larson on this 11th day of December, 1998.*

*Ann R. Winton*  
\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires: 7-6-2004


AKBAR798-2537

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

AFFIDAVIT


PERSONALLY appeared before me the undersigned, who being duly sworn,  
deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by Kenneth P. Larson to Anthony M. Akbar on December 11, 1998.
3. Check one of the following: The DEED is
  - (a) xx subject to the deed recording fees as a transfer for consideration paid or to be paid in money or money's worth.
  - (b) \_\_\_\_\_ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
  - (c) \_\_\_\_\_ EXEMPT from the deed recording fee because (exemption # \_\_\_\_\_)  
(If exempt, please skip items 4-6, and go to item 7 of this affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
  - (a) xx The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$72,000.00
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ \_\_\_\_\_
5. Check YES \_\_\_\_\_ or NO xx \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is \$ \_\_\_\_\_
6. The DEED Recording Fee is computed as follows:
  - (a) 72,000.00 the amount listed in item 4 above
  - (b) \_\_\_\_\_ the amount listed in item 5 above (no amount place zero)
  - (c) 72,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as : Closing Attorney.
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imposed not more than one year, or both.

  
\_\_\_\_\_  
Grantor, Grantee or Legal Representative connected with this transaction

L. Russell Bennett

SWORN to before me this 11th  
day of December, 1998.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 7-6-2004

**Davidson & Bennett**  
ATTORNEYS AT LAW  
125 WAPPOO CREEK DRIVE  
CHARLESTON, SC 29412

BK V316PG269

FILED

V316-265  
98 DEC 18 PM 3:42

CHARLIE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

Recording Fee	<u>10.00</u>
State Fee	<u>187.20</u>
County Fee	<u>79.20</u>
Postage	<u>          </u>
TOTAL	<u>276.40</u>

A

TMS VERIFIED  
BAC MLW  
DTD 12/23/98

Recorded this 18 day of Dec Year 98  
On Property Record Card  
*Reggie A. Mosley*  
Auditor Charleston County

*Abbr 98-2537 ML*



EXHIBIT  
JOINT  
1  
3-31-23

FILE 1  
 DRAWER 1  
 FOLDER 34  
 DRAWING NO. 27

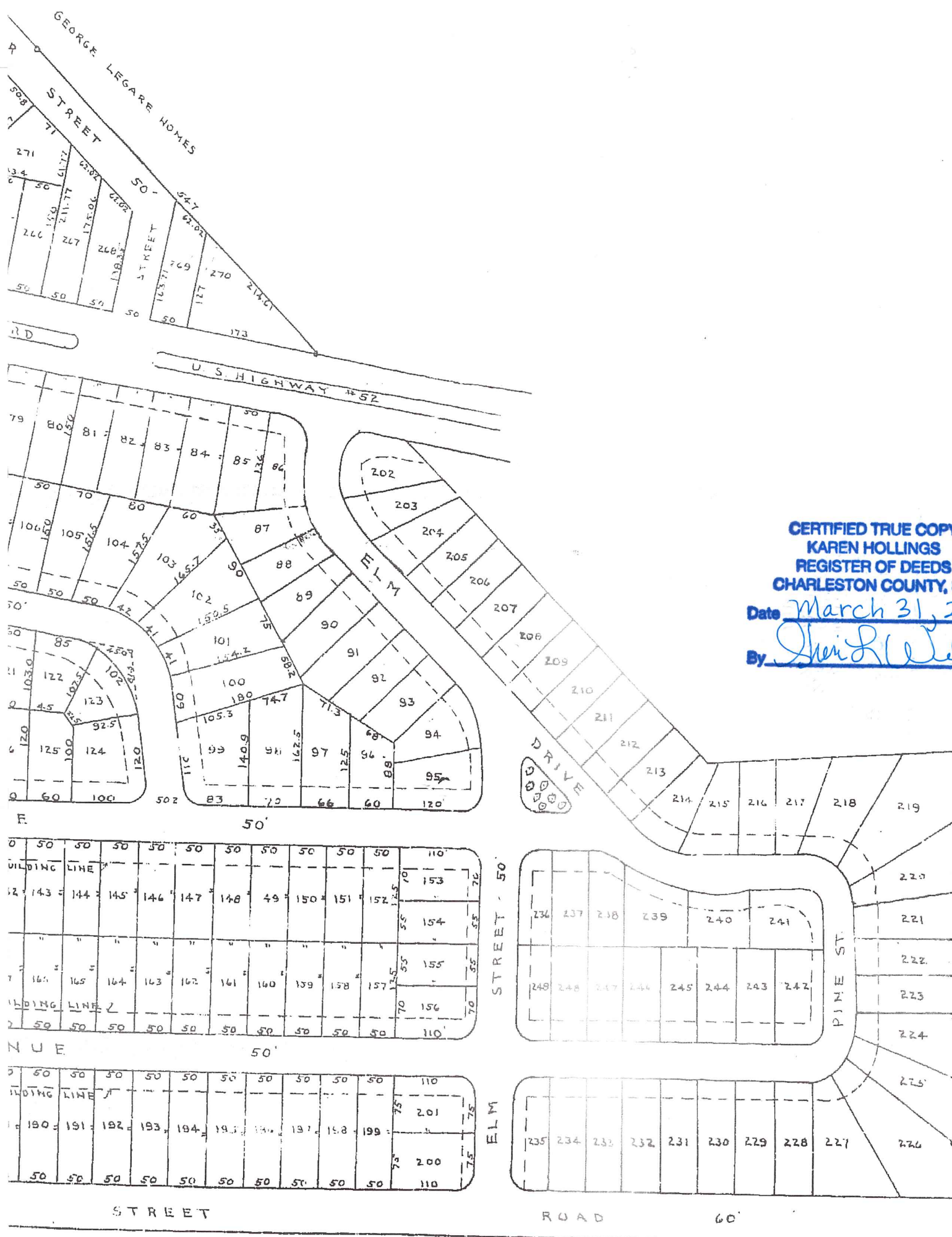
Register Merce Conveyance Office  
 Charleston County, S.C.  
 Recorded by filing in Plat Book 8, Page 15  
 April 15, 1948 at 4:15 o'clock. This tracing  
 furnished by and original (a white print)  
 delivered to E. G. Substantell.  
 Julia E. Cogswell, R.M.E.,  
 per clk. D.M.

MAP  
 OF  
 WHIPPER BARONY  
 CHARLESTON COUNTY S.C.

SCALE 1"=100'

APRIL 10 1948

BY Joseph J. Weddle C.E.



CERTIFIED TRUE COPY  
 KAREN HOLLINGS  
 REGISTER OF DEEDS  
 CHARLESTON COUNTY, SC  
 Date March 31, 2023  
 By Shirley J. Weddle

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Darlene Rash, Individually and as )  
Personal Representative for the Estate )  
of Bronson Harley Rash, )

Civil Action No. 2019-CP-10-1000061

Plaintiff, )

**JOINT DEFENDANTS PRELIMINARY  
REQUESTED JURY INSTRUCTIONS AND  
SPECIAL INTERROGATORIES**

v. )

Daniel McJunkin, South Carolina )  
Department of Transportation, South )  
Carolina Electric and Gas, Snyder )  
Party Rental, Inc., Anthony M. Akbar, )  
and Paul Quattlebaum, )

Defendants.

Pursuant to Rules 49 and 51 of the South Carolina Rules of Civil Procedure, Defendants Dominion Energy South Carolina, Inc. f/k/a South Carolina Electric & Gas Company ("Defendant" or "DESC"), Anthony Akbar, and Paul Quattlebaum jointly request that the Court submit to the Jury, individually and collectively, the attached instructions and special interrogatories.

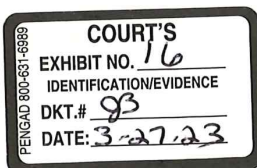
Respectfully Submitted,

s/ George C. Johnson

I.S. Leevy Johnson, Esquire (SC Bar # 3020)  
George C. Johnson, Esquire (SC Bar # 9308)  
Chelsea A. Glover, Esquire (SC Bar #103896)  
JOHNSON TOAL & BATTISTE, P.A.  
Post Office Box 1431  
Columbia, South Carolina 29202  
(803) 252-9700  
islj@jtbpa.com  
george@jtbpa.com

and

M. Dawes Cook, Jr., Esquire (SC Bar # 1376)  
David S. Cox, Esquire (SC Bar # 66195)  
Barnwell Whaley Patterson & Helms, LLC



211 King Street, Suite 300 Charleston SC 29401  
843.329.5301  
dcox@barnwell-whaley.com

**ATTORNEYS FOR DEFENDANT DOMINION  
ENERGY SOUTH CAROLINA, INC. f/k/a SOUTH  
CAROLINA ELECTRIC & GAS COMPANY**

By: s/ Ian S. Ford  
Ian S. Ford  
[Ian.Ford@FordWallace.com](mailto:Ian.Ford@FordWallace.com)  
Hunter H. James  
[Hunter.James@FordWallace.com](mailto:Hunter.James@FordWallace.com)  
715 King Street | Charleston, SC 29403  
(843)277-2011  
[www.FordWallace.com](http://www.FordWallace.com)  
*Attorneys for Defendant Anthony M. Akbar*

s/ Jenny C. Honeycutt  
Jenny C. Honeycutt (SC Bar #72657)  
Costa Honeycutt, LLC  
102 Wappoo Creek Drive, Suite 8  
P.O. Box 13823 (29422)  
Charleston, South Carolina 29412  
(843) 259-1245  
[Jenny@costahoneycutt.com](mailto:Jenny@costahoneycutt.com)

and

Nanette L. Wesley (GA Bar # 748388)  
*(admitted Pro Hac Vice)*  
8990 Main Street  
Woodstock, Georgia 30188  
(678)242-8115  
[nwesley@wesleyfirm.com](mailto:nwesley@wesleyfirm.com)

***Attorneys for Defendant Paul Quattlebaum***

March 27, 2023

## DEFENDANTS REQUEST TO CHARGE NO. 1

### (Corporation as Defendant)

This case should be considered and decided by you as an action between persons of equal standing in the community. A corporation, such as the Defendant, is entitled to the same fair trial at your hands as a private individual, such as the Plaintiff. All persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

Source:

Kerr v. City of Chicago, 424 F.2d 1134, 1138 (7th Cir. 1970), cert denied, 400 U.S. 833 (1970); Hon. William C. Mathes, Jury Instructions & Forms for Federal Civil Cases, 28 F.R.D. 401, 414 (1962).

## DEFENDANTS REQUEST TO CHARGE NO. 2

### (Preponderance of the Evidence)

The burden of proof in this case is by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence. It is evidence which, as a whole, shows that the fact sought to be proved is more likely true than not true.

This can be illustrated by imagining a set of scales. When the case begins, the scales are even. After all of the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the Defendant, then the Plaintiff has failed to meet the burden of proof and would not be entitled to recover in this case. If, on the other hand, the scales tip even slightly in favor of the Plaintiff, the Plaintiff will have met the burden of proof and you should return a verdict for the Plaintiff.

The Plaintiff in this action has alleged that he suffered damages as a result of the negligence of the Defendant. The Plaintiff, by making this claim, shoulders the burden of proof. This burden is a positive duty which may not be met by showing injury only. That is, the Plaintiff may not rely on the theory that the mere fact of injury warrants recovery.

No inference of negligence arises from the mere fact of injury. The Plaintiff's burden of proof cannot be met by relying on the theory that the thing speaks for itself or that the very fact of injury indicates a failure to exercise reasonable care. Plaintiff must produce credible evidence showing some breach of duty owed to him which proximately caused injury or damage.

The Plaintiff must also demonstrate, by the preponderance of the evidence, the causal relationship between the alleged negligence of the Defendant and the Plaintiff's injuries. If he fails to demonstrate this causal relationship, he fails to prove his case.

Source:

Metro. Stevedore Co. v. Rambo, 521 U.S. 121, 137 n.9 (1997); Kemmerlin v. Wingate, 274 S.C. 62, 65, 261 S.E.2d 50,51 (1979); Armstrong v. Weiland, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976); Gilland v. Peter's Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857, 858-59 (1941); Covington v. Atl. Coast Line R.R. Co., 158 S.C. 194, 155 S.E. 438, 442 (1930); Reiland v. Southland Equip. Serv., Inc., 330 S.C. 617, 634-35, 500 S.E.2d 145, 154 (Ct. App. 1998); Snow v. City of Columbia, 305 S.C. 544, 555, 409 S.E.2d 797, 803 (Ct. App. 1991).

## DEFENDANTS REQUEST TO CHARGE NO. 3

### (Credibility of Witnesses)

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to evaluate the evidence and determine what evidence convinces you it is true.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced toward either the Plaintiff or the Defendant, the opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand.

In determining the credibility of the witness, you may consider any matter that has a reasonable tendency to prove or disprove the truthfulness of his testimony, including, but not limited to, the following:

- Their demeanor while testifying and the manner in which they testified; the extent of their capacity to perceive, to recollect, or to communicate any matter about which they testify; and the extent of their opportunity to perceive any matter about which they testify;
- Their reputation for honesty or veracity or the lack thereof;
- The existence or non-existence of a bias, interest, or other motive;
- A statement previously made by the witness that is inconsistent with their testimony; and

- The existence or non-existence of any fact testified to by the witness, their attitude toward the action in which they testify or toward the giving of testimony, and their admission of untruthfulness.

Source:

M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc'y, Inc., 681 F.2d 930, 932-33 (4th Cir. 1982); State v. Lynn, 277 S.C. 222, 227-28, 284 S.E.2d 786, 789-90 (1981); State v. Brewington, 267 S.C. 97, 100-01, 226 S.E.2d 249, 250-51 (1976); Mays v. Mays, 267 S.C. 490, 493-94, 229 S.E.2d 725, 726-27 (1976); State v. Bottoms, 260 S.C. 187, 196, 195 S.E.2d 116, 119 (1973); Taylor v. State, 258 S.C. 369, 375-76, 188 S.E.2d 850, 853 (1972); McMillan v. Ridges, 229 S.C. 76, 79-81, 91 S.E.2d 883, 884-85 (1956); Small v. Pioneer Mach., Inc., 329 S.C. 448, 464-65, 494 S.E.2d 835, 843-44 (Ct. App. 1997).

## **DEFENDANTS REQUEST TO CHARGE NO. 4**

### **(Expert Witness Testimony – General Charge)**

Although lay witnesses are limited to testifying about facts within their knowledge and are not allowed to give opinions, certain witnesses—who, by training, education, or experience are considered as experts in a particular field—may give opinions in that field based upon the facts of a matter. Their conclusions and opinions constitute evidence to be considered by you in connection with all of the other testimony and evidence in the case. That is to say, you may consider the expert's opinion just as you do all other evidence in the case, and it is for you, the jury, to give it such weight as you, in your experience and discretion, may determine. By this, I mean that you must weigh such evidence and accept or reject it in the same manner that you treat all other evidence in the case. In determining the weight to be given the expert's opinion, you should consider the qualifications and credibility of the expert and the reasons given for his or her opinions.

The testimony of experts is to aid and assist you as jurors, not to dominate or control you in the decision of questions of facts. Their opinions and deductions, from the evidence before you, do not preclude yours. You are required to decide disputed questions after comparison and consideration of all the evidence in this case.

Where expert testimony is not relied on to establish proximate cause, the Plaintiff must offer evidence that rises above a mere speculation or conjecture.

I charge you that: You, as the jurors, are to apply the same standards of evaluation of expert witness testimony as are applied to other witnesses. It is for the jury to judge the credibility of the expert witnesses as well as any other witnesses, and to decide what weight, if any, is attached to the expert testimony, as well as the testimony of any other witnesses.

The amount of the expert witness' fee is a matter that you may consider as possibly affecting the believability of an expert. However, there is nothing improper in the expert witnesses being paid a reasonable fee for their work.

Source:

Rules 701–705, SCRE; Tiller v. Nat'l Health Care Ctr., 334 S.C. 333, 338–43, 513 S.E.2d 843, 845–48 (1999); Smoak v. Liebherr-America, Inc., 281 S.C. 420, 422, 315 S.E.2d 116, 118 (1984); Young v. Tide Craft, Inc., 270 S.C. 453, 468–69, 242 S.E.2d 671, 678 (1978); O'Kelley v. Mut. Life Ins. Co., 197 S.C. 109, 14 S.E.2d 582, 585 (1941); Means v. Gates, 348 S.C. 161, 165–66, 558 S.E.2d 921, 923–24 (Ct. App. 2001); Small v. Pioneer Mach., Inc., 329 S.C. 448, 467–70, 494 S.E.2d 835, 845–46 (Ct. App. 1997); Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 599, 493 S.E.2d 875, 882–83 (Ct. App. 1997); Doe v. Greenville Hosp. Sys., 323 S.C. 33, 36–37, 448 S.E.2d 564, 566 (Ct. App. 1994); Small v. Pioneer Mach. Inc., 316 S.C. 479, 486–89, 450 S.E.2d 609, 614–15 (Ct. App. 1994); Madden v. Cox, 284 S.C. 574, 582–83, 328 S.E.2d 108, 114 (Ct. App. 1985); Welch v. Whitaker, 282 S.C. 251, 258–59, 317 S.E.2d 758, 763 (Ct. App. 1984).

**DEFENDANTS REQUEST TO CHARGE NO. 5**

**(Mere Fact Accident Occurred)**

I charge you that the mere fact that an accident has happened, standing alone, cannot permit you to draw any inference that such an accident has been caused by anyone's negligence, fault, or breach. Further, the fact that a person receives an injury or is damaged or the fact that an accident occurs is insufficient to prove negligence.

Source:

Snow v. City of Columbia, 305 S.C. 544, 409 S.E.2d 797 (S.C. App. 1991)

## DEFENDANTS REQUEST TO CHARGE NO. 6

### City of North Charleston Ordinance

That the City of North Charleston's Zoning Ordinance Section 4-13, titled "Visibility at Intersections," was enacted on September 24, 1998.

In the City of North Charleston, poles and support structures less than twelve (12) inches in diameter may be permitted within the triangular area bounded on two sides by the street right-of-way lines.

The City of North Charleston's Zoning Ordinance, Section 3-2, includes the following:

definition:

*Nonconformity.* A nonconformity is any lot of record, use, building, structure, or vegetation in existence prior to the effective date of this ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the ordinance.

The City of North Charleston's Zoning Ordinance, Section 4-5, titled "Nonconforming uses, buildings, structures, conditions, and lots," states "to avoid undue hardship, the lawful use of any such use, building or structure at the time of the enactment, amendment, or revision of this section may be continued even though such structure does not conform with the provisions of this section..."

Source:

(City of North Charleston Ord. No. 1998-85, 9-24-98; Ord. No. 1986-61, 12-11-86; Ord. No. 1987-20, 4-9-87; Ord. No. 1990-36, 7-12-90; Ord. No. 1992-37, § 1, 10-8-92; Ord. No. 1992-47, 11-5-92; Ord. No. 1993-7, 3-11-93; Ord. No. 1993-8, 3-25-93; Ord. No. 1995-52, 10-24-95; Ord. No. 1996-35, 7-25-96; Ord. No. 1996-47, 8-22-96; Ord. No. 1998-62, 7-23-98; Ord. No. 2002-068, 9-26-02; Ord. No. 2002-088, 11-26-02; Ord. No. 2006-62, 9-28-06; Ord. No. 2007-19, § (5), 4-26-07; Ord. No. 2009-13, 3-26-09; Ord. No. 2010-071, 10-28-2010; Ord.

No. 2014-017, 3-27-2014; Ord. No. 2015-032, 8-27-2015; Ord. No. 2018-069, 12-20-2018; Ord. No. 2020-016, 2-27-2020; Ord. No. 2020-037, Exh. A, 8-27-2020; 2021-009, Exh. A, 2-25-2021; Ord. No. 2021-024, Exh. A, 3-25-2021; Ord. No. 2022-021, Exh. A, 3-24-2022; (Ord. No. 1985-17, § 3-28-85; Ord. No. 1990-36, 7-12-90; Ord. No. 1996-20, 5-9-96; Ord. No. 1996-38, 7-25-96; Ord. No. 1998-90, 11-12-98; Ord. No. 2003-013, 2-27-03; Ord. No. 2006-28, § 1, 5-25-06; Ord. No. 2010-25, 4-22-2010; Ord. No. 2020-044, Exh. A, 9-24-2020; Ord. No. 2021-057, Exh. A, 8-28-2021; Ord. No. 2021-076, Exh. A, 11-23-2021).

## DEFENDANTS REQUEST TO CHARGE NO. 7

### (The National Electrical Safety Code)

1. Where there are curbs: supporting structures, support arms, anchor guys, or equipment attached thereto, up to 4.6 m (15ft) above the road surface shall be located a sufficient distance from the street side of the curbs to avoid contact by ordinary vehicles using and located on the traveled way. For a redirection curb, such distance shall be not less than 150mm (6 in) for paved or concrete swale-type curbs, such facilities shall be located behind the curb.
2. Where there are no curbs, supporting structures should be located a sufficient distance from the roadway to avoid contact by ordinary vehicles using and located on the traveled way. [emphasis added]
3. Location on overhead utility installations are special cases that must be resolved in a manner consistent with the prevailing limitations and conditions.
4. Where a governmental authority exercising jurisdiction over structure location has issued a permit for, or otherwise approved, specific locations for supporting structures that permit or approval shall govern.

**Source:**

(National Electrical Safety Code 231(B), 6-16-2006)

## DEFENDANTS REQUEST TO CHARGE NO. 8

### (Negligence)

The Plaintiff claims that the Defendant was negligent and should compensate the Plaintiff for the injuries the Plaintiff suffered as a result of the Defendant's alleged negligence. In order to prove that the Defendant was negligent, the Plaintiff must prove by a preponderance, or greater weight, of the evidence the following things:

1. That the Defendant was negligent or careless, in one or more of the particulars of conduct alleged by the Plaintiff; and
2. That the Plaintiff was injured or damaged in his person or property or both; and
3. That the Defendant's negligence or carelessness, in one or more of the particulars as alleged by the Plaintiff, was the proximate cause of the Plaintiff's injuries.

The first of these is whether the Plaintiff has proven by a preponderance, or greater weight, of the evidence that the Defendant breached the duty of care by a negligent act or omission. Negligence means that a person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done in the same situation. A suspicion or conjecture that the Defendant was negligent is not evidence of negligence. The bare fact that the Plaintiff sustained injury or damage does not place any responsibility on the Defendant. The Plaintiff must prove by a preponderance of the evidence that there was some act of negligence on the part of Defendant which caused the injury or damage.

The Plaintiff must also prove by a preponderance, or greater weight, of the evidence that he sustained injury or damage as a result of the Defendant's breach of duty.

Finally, if you find that the Plaintiff has proved the Defendant was negligent, then your next inquiry would be whether the Plaintiff has proved by a preponderance, or greater weight, that such negligence was the proximate cause of the injury or damage.

A finding of negligence, alone, is not actionable unless it proximately caused the Plaintiff's injuries. Negligence is not actionable unless it is a proximate cause of the injury complained of, and it may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided.

Source:

Thomasko v. Poole, 349 S.C. 7, 11–14, 561 S.E.2d 597, 599–600 (2002); Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 88–91, 502 S.E.2d 78, 82–84 (1998); Bramlette v. Charter-Medical-Columbia, 302 S.C. 68, 72–73, 393 S.E.2d 914, 916–17 (1990); Kemmerlin v. Wingate, 274 S.C. 62, 65, 261 S.E.2d 50, 51 (1979); Hughes v. Children's Clinic, P.A., 269 S.C. 389, 398–99, 237 S.E.2d 753, 757 (1977); Armstrong v. Weiland, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976); Messier v. Adicks, 251 S.C. 268, 270–71, 161 S.E.2d 845, 845–46 (1968); Gunnels v. Roach, 243 S.C. 248, 251–53, 133 S.E.2d 757, 759–60 (1963); Thomas v. Atl. Greyhound Corp., 204 S.C. 247, 29 S.E.2d 196, 198–99 (1944); Driggers v. City of Florence, 190 S.C. 309, 2 S.E.2d 790, 791 (1939); Hubbard v. Taylor, 339 S.C. 582, 588–89, 529 S.E.2d 549, 552 (Ct. App. 2000); Small v. Pioneer Mach., Inc., 329 S.C. 448, 462–67, 494 S.E.2d 835, 842–45 (Ct. App. 1997); Alston v. Blue Ridge Transfer Co., 308 S.C. 292, 295–98, 417 S.E.2d 631, 633–34 (Ct. App. 1992); Crolley v. Hutchins, 300 S.C. 355, 356–58, 387 S.E.2d 716, 717–18 (Ct. App. 1989); Cash v. Kim, 288 S.C. 292, 295–96, 342 S.E.2d 61, 63 (Ct. App. 1986); Carver v. Med. Soc'y of S.C., 286 S.C. 347, 350–51, 334 S.E.2d 125, 127 (Ct. App. 1985).

## DEFENDANTS REQUEST TO CHARGE NO. 9

### (Inverse Negligence Per Se)

The violation of a statute or ordinance is negligence per se. That is, a violation of a statute or ordinance is negligence in and of itself. The violation of a statute or ordinance is not, however, necessarily willful or wantonness, but such a violation may be considered by you, the jury along with all of the other facts and circumstances surrounding the event, as evidence of reckless or willful conduct.

I charge you that under South Carolina law, a motorcycle permittee may only operate a motorcycle after six o'clock a.m. and not later than six o'clock p.m. any permittee who does so without being accompanied by a licensed driver does so unlawfully, and such conduct is negligence per se. If an injury is sustained as a proximate result of such unlawful driving, the permittee is liable.

Source:

SC CODE ANN 56-1-50(B)(2) as amended, Act 267 (2016); see, Cirosky v. Smathers, 128 S.C. 358 (1924).

## DEFENDANTS REQUEST TO CHARGE NO. 10

### (Duty)

Generally, duty is defined as the obligation to conform to a particular standard of conduct toward another. Duty arises from the relationship between the alleged tortfeasor and the injured party. In order for negligence liability to attach, the parties must have a relationship recognized by law as the foundation of a duty of care.

The common law duty of due care includes the duty to avoid damage or injury to foreseeable plaintiff. However, where the injury complained of is not reasonably foreseeable in the exercise of due care, there is no liability.

#### Source:

Huggins v. Citibank, N.A., 355 S.C. 329, 332, 585 S.E.2d 275, 277 (2003) (quoting Hubbard v. Taylor, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (2000)); Huggins, 355 S.C. at 333, 585 S.E.2d at 277; Spence v. Wingate, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011); Hurst v. E. Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006); Dorrell v. S.C. Dep't of Transp., 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004); Foreman v. Atl. Land Corp., 271 S.C. 130, 132–33, 245 S.E.2d 609, 610–11 (1978).

## DEFENDANTS REQUEST TO CHARGE NO. 11

### (Proximate Cause)

A Plaintiff may only recover for injuries proximately caused by a Defendant's negligence. Proximate cause is the direct cause of injury. It is something that produces a natural chain of events which, in the end, brings about the injury. In order for the Plaintiff to recover, it is necessary for him to prove that the injury was the proximate result of negligence on the part of the Defendant. This is basic to recovery and cannot be left to surmise, speculation, or conjecture. If he fails to demonstrate this causal relationship, he fails to prove his case.

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the Plaintiff's injury would not have occurred "but for" the Defendant's negligence. Legal cause is proved by establishing foreseeability.

To prove that the Defendant's negligence proximately caused the Plaintiff's injury, the Plaintiff must first prove causation in fact. This is proven by showing that the injury would not have occurred "but for" the Defendant's negligence.

The Plaintiff must also prove legal cause, or that the injury was foreseeable. This means that the injury occurred as a natural and probable consequence of the Defendant's negligence. The Plaintiff must prove that some injury from the Defendant's negligence was foreseeable, but does not have to prove that the particular injury that occurred was foreseeable. However, the Defendant cannot be held responsible for things which could not be expected to happen. Foreseeability is not determined from hindsight, but rather from a Defendant's perspective at the time of the complained act.

Where the cause of the Plaintiff's injury may be as reasonably attributed to an act for which Defendant is not liable as to one for which Defendant is liable, Plaintiff has failed to carry the burden of establishing that his injuries were the proximate result of Defendant's

negligence. If the accident would have happened as a natural and probable consequence, even in the absence of the alleged breach, then the Plaintiff has failed to demonstrate proximate cause.

Source:

Baggerly v. CSX Transp., Inc., 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006); Oliver v. S.C. Dep't of Highways & Pub. Transp., 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992); Hanselmann v. McCardle, 275 S.C. 46, 48, 267 S.E.2d 531, 533 (1980); Young v. Tide Craft, Inc., 270 S.C. 453, 462, 242 S.E.2d 671, 675 (1978); Locklear v. Se. Stages, Inc., 193 S.C. 309, 8 S.E.2d 321, 325 (1940); Bailey v. Segars, 346 S.C. 359, 366, 550 S.E.2d 910, 914 (Ct. App. 2001); Trivelas v. S.C. Dept. of Transp., 348 S.C. 125, 136-37, 558 S.E.2d 271, 276-77 (Ct. App. 2001); Vinson v. Hartley, 234 S.C. 389, 400, 477 S.E.2d 715, 721 (Ct. App. 1996).

## DEFENDANTS REQUEST TO CHARGE NO. 12

### (Intervening Cause)

A prior and remote cause cannot be made the basis of an action, if such remote cause did nothing more than furnish a condition or give rise to an occasion by which an injury was made possible, if there intervened between such prior cause and injury an independent and efficient cause of injury, even though such injury would not have happened but for such condition or occasion.

Remoteness in time or space may be an important consideration in whether negligent conduct is a substantial factor in producing harm and may give rise to the likelihood that other intervening causes have taken over the responsibility. But when causation is found, and other factors are eliminated, remoteness cannot bar recovery on its own.

When negligence appears merely to have brought about a condition of affairs, or a situation in which another and entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause. For an intervening act to break the causal link and insulate the tortfeasor from further liability, the intervening act must be unforeseeable.

#### Source:

Stone v. Bethea, 251 S.C. 157, 161–62, 161 S.E.2d 171, 173–74 (1968); McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 388, 684 S.E.2d 566, 569–70 (Ct. App. 2009).

## DEFENDANTS REQUEST TO CHARGE NO. 13

### (Intervening Negligence Of Third Party)

The chain of causation between the defendant's negligence and the injury may be broken by the independent intervening acts or omissions of another person over whom the defendant has no control. In order to decide whether an intervening act breaks the chain of causation, you must determine whether the intervening act or omission was reasonably foreseeable by the defendant. If you find that the intervening act or omission was not foreseeable, the defendant is not liable unless his actions alone would have caused the plaintiff's injury even without the intervening act or omission.

Source:

Young v. Tide Craft, Inc., 270 S.C. 453, 242 S.E.2d 671 (1978).

## DEFENDANTS REQUEST TO CHARGE NO. 14

### (Foreseeability)

The law requires only reasonable foresight on the part of a Defendant. When the damages complained of are not reasonably foreseeable in the exercise of due care, there is no liability, and one is not charged with foreseeing that which is unpredictable or could not be expected to happen. Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the complained of act.

Source:

Young v. Tide Craft, Inc., 270 S.C. 453, 462–66, 242 S.E.2d 671, 675–77 (1978); Key Sales Co. v. S.C. Elec. & Gas Co., 290 F. Supp. 8, 24–25, 28 (D.S.C. 1968), aff'd 422 F.2d 389 (4th Cir. 1970).

## **DEFENDANTS REQUEST TO CHARGE NO. 15**

### **(Motor Vehicles - General Charge)**

#### **A. Common Law**

Members of the jury, the State of South Carolina recognizes what is called common law. The common law of this State governs and controls the operation of motor vehicles and motorcycles. The common law rules of the road require the operator of a motor vehicle to use the streets and highways with due care, with a due regard for the like use of such streets and highways by others; that is to say, the common law of this State requires the exercise of due care, that degree of care which would have been exercised by a person of ordinary reason and prudence, operating the same vehicle at the same time and place, under the same circumstances. This common law duty includes that of maintaining a proper lookout for other vehicles or pedestrians which may be upon the highway. It includes the duty to keep the vehicle under proper control. In fact, the common law duty to exercise due care runs through the entire spectrum and gamut of the operation of the vehicle.

It is the duty of every person using a public street or highway, whether as a pedestrian or as a driver of a vehicle, to exercise ordinary care at all times to avoid placing himself or others in danger and to use like care to avoid an accident from which an injury might result.

#### **B. Statutory Law**

In addition to this common law duty to exercise due care, the General Assembly of this State has passed certain statutes which govern and control operators and drivers of motor vehicles. These statutes are the law of the State, and I present some of them to you for your consideration.

### **Maximum Speed Limits; Lower Speeds May Be Required**

A person shall not drive a vehicle on a roadway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use due care.

### **Vehicle turning left.**

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

### **Right-Of-Way**

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

Source:

SC Code Ann. §56-5-1520 as amended; SC Code Ann. §56-5-2320 as amended; SC Code Ann. §56-5-2330(B) as amended.

## DEFENDANTS REQUEST TO CHARGE NO. 16

### (Intersections)

Travelers on both the favored and unfavored highway must use ordinary care in keeping a proper lookout for vehicles approaching an intersection. The driver on the unfavored highway has a duty to stop and yield the right of way to any vehicle approaching the intersection on the favored highway so closely as to constitute an immediate hazard. However, if there is no traffic approaching so near as to constitute an immediate hazard, the driver on the unfavored highway has a right to enter the intersection. It then becomes the duty of those approaching the intersection on the favored highway to yield the right of way to him.

#### Source:

See Carter v. Beals, 248 S.C. 526, 151 S.E.2d 671 (1966); Warren v. Watkins Motor Lines, 242 S.C. 331, 130 S.E.2d 896 (1963); Brown v. Howell, 284 S.C. 605, 327 S.E.2d 659 (Ct. App. 1985); Cope v. Eckert, 284 S.C. 516, 327 S.E.2d 367 (Ct. App. 1985); S.C. Code Ann. § 56-5-2330 (2006).

## DEFENDANTS REQUEST TO CHARGE NO. 17

### (Duty to Keep Lookout and to Keep Vehicle Under Control)

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.

Source:

See Thomasko v. Poole, 349 S.C. 7, 561 S.E.2d 597 (2002); Burgess Brogdon, Inc. v. Lake, 288 S.C. 16, 339 S.E.2d 507 (1986); Lufkin v. Kyle, 275 S.C. 90, 267 S.E.2d 533 (1980); Goss v. Mitchell, 265 S.C. 431, 219 S.E.2d 666 (1975); Easler v. Pappas, 252 S.C. 398, 166 S.E.2d 808 (1969); Gause v. Livingston, 251 S.C. 8, 159 S.E.2d 604 (1968); Edwards v. Bloom, 246 S.C. 346, 143 S.E.2d 614 (1965); Yaun v. Baldrige, 243 S.C. 414, 134 S.E.2d 248 (1964); Warren v. Watkins Motor Lines, 242 S.C. 331, 130 S.E.2d 896 (1963); Brown v. Smalls, 325 S.C. 547, 481 S.E.2d 444 (Ct. App. 1997); Campbell v. Paschal, 290 S.C. 1, 14, 347 S.E.2d 892, 900 (Ct. App. 1986).

## DEFENDANTS REQUEST TO CHARGE NO. 18

### (Speed of Vehicle)

Section 56-5-1520 of the South Carolina Code reads in relevant part:

(A) A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

(F) The driver of a vehicle shall drive, consistent with the requirements of subsection (A), at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, approaching a hillcrest, when traveling upon any narrow bridge, narrow or winding roadway, and when [a] special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

A driver has a duty to adjust his speed to conditions and hazards. The driver of every vehicle is required to drive at an appropriately reduced speed when hazards exist with respect to weather or highway conditions. A motorist whose vision is obscured by unfavorable weather conditions must exercise care commensurate with the conditions of travel.

Source:

Thomasko v. Poole, 349 S.C. 7, 561 S.E.2d 597 (2002); Burgess Brogdon, Inc. v. Lake, 288 S.C. 16, 339 S.E.2d 507 (1986); Cornwell v. Plummer, 265 S.C. 587, 220 S.E.2d 879 (1975); Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct. App. 1998); Husted v. Bostick, 295 S.C. 248, 368 S.E.2d 67 (Ct. App. 1988); S.C. Code Ann. § 56-5-1520 (A) and (F) (2006).

## DEFENDANTS REQUEST TO CHARGE NO. 19

### (Stop Signs)

South Carolina Code section 56-5-2330 provides in pertinent part:

- (a) Preferential right-of-way may be indicated by stop signs or yield signs as authorized by the Department of Transportation or local authorities.
- (b) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

A motorist approaching a stop sign must bring the vehicle to a stop and yield the right-of-way to vehicles on the intersecting roadway that constitute an immediate hazard. The driver must not only stop but must look for traffic approaching on the through highway. The driver's duty is not merely to look but to observe. He must look in such an intelligent and careful manner as to enable him to see what a person exercising ordinary care and caution could see under the circumstances.

Source:

See Crosby v. Sawyer, 291 S.C. 474, 354 S.E.2d 387 (1987)(negligence is established as a matter of law if only inference is that either driver did not look or did so in such a careless fashion as not to see what was in plain view); Blanding v. Hammell, 267 S.C. 352, 228 S.E.2d 271 (1976); Carter v. Beals, 248 S.C. 526, 151 S.E.2d 671 (1966)(motorist approaching through highway, which is protected by stop signs, must yield right-of-way to vehicles approaching so closely as to constitute an immediate hazard; question whether particular vehicle constitutes such hazard is ordinarily one for the jury); Warren v. Watkins Motor Lines, 242 S.C. 331, 130 S.E.2d 896 (1963); Brown v. Howell, 284 S.C. 605, 327 S.E.2d 659 (Ct. App. 1985); Cope v. Eckert, 284 S.C. 516, 327 S.E.2d 367 (Ct. App. 1985); S.C. Code Ann. § 56-5-2330(a) & (b) (2006).

## DEFENDANTS REQUEST TO CHARGE NO. 20

### (Damages)

Damages recoverable for wrongful death are the damages sustained by the statutory beneficiaries (here the father and mother) resulting from the death of the deceased, including pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship. The intrinsic value of the deceased to society is not an element of damages to be compensated and any grief, sorrow and loss of companionship of non-beneficiaries of the estate, such as co-workers, friends, fellow churchgoers or extended family, are not within the damages to be compensated in this case.

Source:

*Ballard v. Ballard*, 314 S.C. 40, 42, 443 S.E.2d 802, 803 (1994); *Zorn v. Crawford* 252 S.C. 127, 136, 165 S.E.2d 640 (1969).

**DEFENDANTS REQUEST TO CHARGE NO. 21**

**(Damages Caveat)**

The fact that I have instructed you concerning damages should not be considered as intimating any view of mine as to which party is entitled to prevail in this case. Instructions as to the measure of damages are given only for your guidance in the event you should find in favor of the Plaintiff from a preponderance of the evidence and in accordance with the other instructions.

Source:

Devitt & Blackmar, Federal Jury Practice and Instruction § 74.02 (3d ed. 1977).

**DEFENDANTS REQUEST TO CHARGE NO. 22**

**(Conscious Pain and Suffering)**

Pain and suffering and mental distress the deceased consciously suffered as a result of the injury before he or she died are also compensable in a suit brought on behalf of the deceased. To recover for the decedent's "conscious pain and suffering," there must be "sufficient proof that the decedent was conscious and simultaneously suffering prior to death."

Source:

Rutland v. SCDOT, 400 S.C. 209, 734 S.E.2d 142 (2012); Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000); Smalls v. S.C. Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000); Singletary v. Shuler, 433 S.C. 600, 861 S.E.2d 591 (Ct. App. 2021); Croft v. Hall, 208 S.C. 187, 193, 37 S.E.2d 537, 539 (1946)

**DEFENDANTS REQUEST TO CHARGE NO. 23**

**(Verdict Not Based on Sympathy, Etc.)**

A verdict in this case cannot be based upon sympathy, passion, prejudice, bias, emotion, or some other consideration not found in the evidence, including any personal feelings you may have for or against the parties to this case or their counsel. It is your duty to follow the instructions given to you by me, the Judge, concerning the applicable law and apply that law to the facts and evidence before you completely devoid of any sympathy, passion, prejudice, bias, or emotion you may have or considerations of matters not found in the evidence.

Source:

Young v. Warr, 252 S.C. 179, 187, 165 S.E.2d 797, 801 (1969).

## DEFENDANTS REQUEST TO CHARGE NO. 24

### (Fault of Others)

Under South Carolina law, a Defendant is entitled to assert that other persons or entities contributed to the Plaintiff's injuries or damages. A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party. The matter of the alleged fault of others in causing the injury has been raised by the Defendant, and it is proper for you to consider the actions of others in determining whether the Plaintiff has met their burden of proof as to the Defendant.

Source:

Machin v. Carus Corp., 419 S.C. 527, 542–47, 799 S.E.2d 468, 476–78 (2017); S.C. Code Ann. § 15-38-15

**DEFENDANTS REQUEST TO CHARGE NO. 25**

**(Unanimity of Verdict)**

Under the Constitution of this State, the jury verdict must be unanimous. Unanimity is mandated. Every single juror must agree on the jury verdict. There cannot be any split or divided vote in any form or fashion, such as eleven to one, ten to two, nine to three. Every single juror must agree on the jury verdict. When the foreperson writes the verdict and signs the name as the foreperson that assures the court that the jury verdict is unanimous.

Source:

Ralph King Anderson, Jr., South Carolina Requests to Charge – Civil, 2002, § 1-3(A)2

**DEFENDANTS REQUEST TO CHARGE NO. 26**

**(Messir v. Adicks)**

"[W]here the cause of plaintiff's injury may be as reasonably attributed to an act for which defendant is not liable as to one for which he is liable, plaintiff has failed to carry the burden of establishing that his injuries were the proximate result of defendant's negligence."

Source:

Fowler v. Coastal Coca-Cola Bottling Co., 252 S.C. 579, 167 S.E.2d 572 (1969), citing Messier v. Adicks, 251 S.C. 268, 271, 161 S.E.2d 845, 846 (1968).

**DEFENDANTS REQUEST TO CHARGE NO. 27**

**(Potential Tortfeasor)**

A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

Source:

SC Code § 15-38-15, (South Carolina Code of Laws (2022 Edition))

#1

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
Case No.: 2019-CP-10-0061

Darleen Rash, Individually and as  
Personal Representatives for the Estate of  
Bronson Harley Rash,

Plaintiff,

v.

Daniel McJunkin, South Carolina  
Department of Transportation, Dominion  
Energy South Carolina, Inc., f/k/a South  
Carolina Electric and Gas, Snyder Party  
Rental, Inc., Anthony M. Akbar and Paul  
Quattlebaum,

Defendants.

**DEFENDANT ANTHONY AKBAR'S  
REQUEST TO CHARGE  
SECTIONS OF  
THE CITY OF NORTH  
CHARLESTON'S  
ZONING ORDINANCE**

Pursuant to Rule 51 of the South Carolina Rules of Civil Procedure, Defendant Anthony Akbar ("Akbar") respectfully requests that this Court would submit to the jury the following instructions and applicable excerpts from the City of North Charleston's Code of Ordinances:

**Defendant Akbar's Request to Charge No. 1:**

That the City of North Charleston's Zoning Ordinance Section 4-13, titled "Visibility at Intersections," was enacted on September 24, 1998. (Ord. No. 1998-85, 9-24-98).

**Defendant Akbar's Request to Charge No. 2:**

That the City of North Charleston's Zoning Ordinance, Section 3-2, includes the following definition:

*Nonconformity.* A nonconformity is any lot of record, use, building, structure, or vegetation in existence prior to the effective date of this ordinance, but which fails, by



reason of such adoption, revision or amendment, to conform to the present requirements of the ordinance.

(Ord. No. 1986-61, 12-11-86; Ord. No. 1987-20, 4-9-87; Ord. No. 1990-36, 7-12-90; Ord. No. 1992-37, § 1, 10-8-92; Ord. No. 1992-47, 11-5-92; Ord. No. 1993-7, 3-11-93; Ord. No. 1993-8, 3-25-93; Ord. No. 1995-52, 10-24-95; Ord. No. 1996-35, 7-25-96; Ord. No. 1996-47, 8-22-96; Ord. No. 1998-62, 7-23-98; Ord. No. 2002-068, 9-26-02; Ord. No. 2002-088, 11-26-02; Ord. No. 2006-62, 9-28-06; Ord. No. 2007-19, § (5), 4-26-07; Ord. No. 2009-13, 3-26-09; Ord. No. 2010-071, 10-28-2010; Ord. No. 2014-017, 3-27-2014; Ord. No. 2015-032, 8-27-2015; Ord. No. 2018-069, 12-20-2018; Ord. No. 2020-016, 2-27-2020; Ord. No. 2020-037, Exh. A, 8-27-2020; 2021-009, Exh. A, 2-25-2021; Ord. No. 2021-024, Exh. A, 3-25-2021; Ord. No. 2022-021, Exh. A, 3-24-2022)

**Defendant Akbar’s Request to Charge No. 3:**

That the City of North Charleston’s Zoning Ordinance, Section 4-5, titled “Nonconforming uses, buildings, structures, conditions, and lots,” states “to avoid undue hardship, the lawful use of any such use, building or structure at the time of the enactment, amendment, or revision of this section may be continued even though such structure does not conform with the provisions of this section . . . [listing certain exceptions]”

(Ord. No. 1985-17, § 3-28-85; Ord. No. 1990-36, 7-12-90; Ord. No. 1996-20, 5-9-96; Ord. No. 1996-38, 7-25-96; Ord. No. 1998-90, 11-12-98; Ord. No. 2003-013, 2-27-03; Ord. No. 2006-28, § 1, 5-25-06; Ord. No. 2010-25, 4-22-2010; Ord. No. 2020-044, Exh. A, 9-24-2020; Ord. No. 2021-057, Exh. A, 8-28-2021; Ord. No. 2021-076, Exh. A, 11-23-2021).

**Defendant Akbar’s Request to Charge No. 4:**

That the City of North Charleston’s Zoning Ordinance, Section 3-2, includes the following definitions:

*Lot, corner.* A lot located at the intersection of two or more streets.

*Yard, rear.* A yard, which is not intended as a public front, extending the full width of the lot in the areas between the rear lot line and the rear building line and or areas that abut back alleys.

(Ord. No. 1986-61, 12-11-86; Ord. No. 1987-20, 4-9-87; Ord. No. 1990-36, 7-12-90; Ord. No. 1992-37, § 1, 10-8-92; Ord. No. 1992-47, 11-5-92; Ord. No. 1993-7, 3-11-93; Ord. No. 1993-8, 3-25-93; Ord. No. 1995-52, 10-24-95; Ord. No. 1996-35, 7-25-96; Ord. No. 1996-47, 8-22-96; Ord. No. 1998-62, 7-23-98; Ord. No. 2002-068, 9-26-02; Ord. No. 2002-088, 11-26-02; Ord. No. 2006-62, 9-28-06; Ord. No. 2007-19, § (5), 4-26-07; Ord. No. 2009-13, 3-26-09; Ord. No. 2010-071, 10-28-2010; Ord. No. 2014-017, 3-27-2014; Ord. No. 2015-032, 8-27-2015; Ord. No. 2018-069, 12-20-2018; Ord. No. 2020-016, 2-27-2020; Ord. No. 2020-037, Exh. A, 8-27-2020; 2021-009, Exh. A, 2-25-2021; Ord. No. 2021-024, Exh. A, 3-25-2021; Ord. No. 2022-021, Exh. A, 3-24-2022)

**Defendant Akbar’s Request to Charge No. 5:**

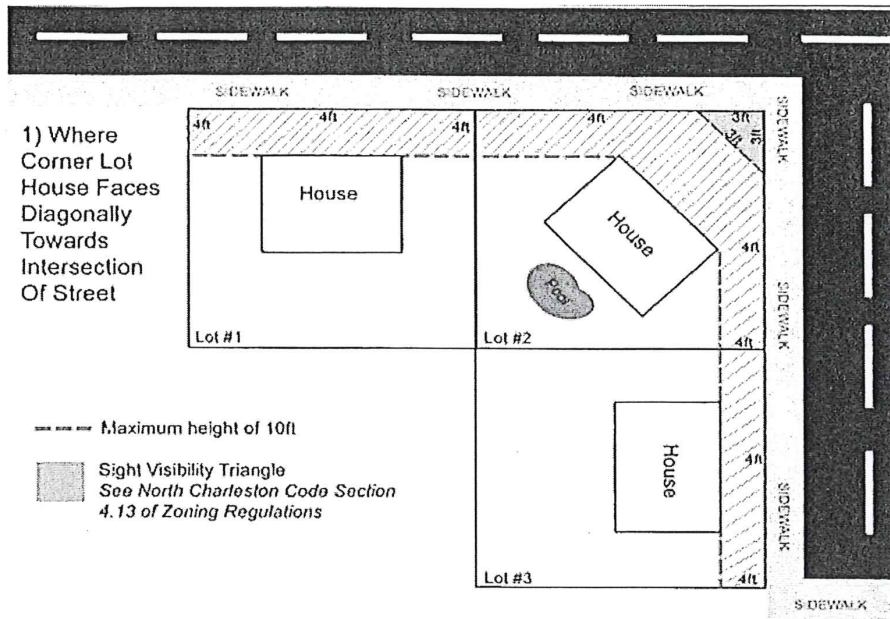
That the City of North Charleston’s Zoning Ordinance, Section 4-7, titled “Structures and projections into required yards and setback areas,” references Section 4-13, titled “Visibility at Intersections,” and contains illustrations of that section’s “Sight Visibility Triangle” {i.e., “the triangular area bounded on two (2) sides by the street or railway right-of-way lines”}<sup>1</sup> which illustrations depict the visibility triangle as measuring 3 feet x 3 feet x 3 feet at the corner lot:

“j. *Corner lots.*

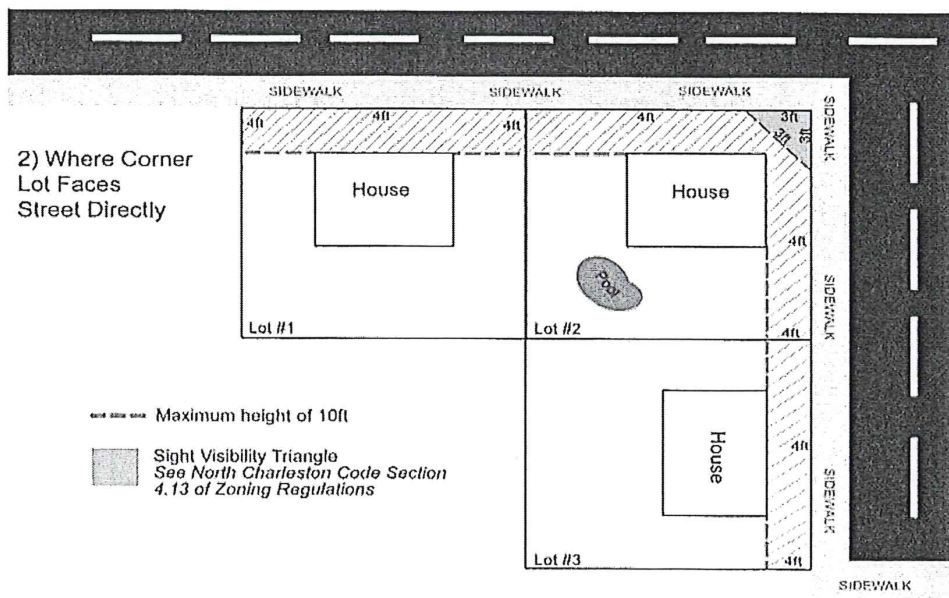
- i. Where house faces diagonally towards intersection of streets, see diagram below.

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<sup>1</sup> See City of North Charleston Zoning Ordinance, Section 4-13.



ii. Where house faces one (1) street front directly, see diagram below.



(Ord. No. 1998-85, 9-24-98; Ord. No. 2000-034, 7-13-00; Ord. No. 2015-005, 1-22-2015)

Anthony Akbar

JURY CHARGE NO. 2

(Duty)

Members of the jury, the plaintiff has the burden of establishing each individual defendant owed the plaintiff a duty. Generally, duty is defined as the obligation to conform to a particular standard of conduct toward another. Duty arises from the relationship between the alleged tortfeasor and the injured party. In order for negligence liability to attach, the parties must have a relationship recognized by law as the foundation of a duty of care.

The common law duty of due care includes the duty to avoid damage or injury to foreseeable plaintiff. However, where the injury complained of is not reasonably foreseeable in the exercise of due care, there is no liability.

Repko v. Cnty. of Georgetown, 424 S.C. 494, 500 (2018): "In a negligence action, '[t]he court must determine, as a matter of law, whether the law recognizes a particular duty.'" Cole v. Boy Scouts of Am., 397 S.C. 247, 251, 725 S.E.2d 476, 478 (2011): "Absent a legally recognized duty, the defendant in a negligence action is entitled to a judgment as matter of law." Skinner v. S.C. Dep't of Transp., 383 S.C. 520, 523-4, 681 S.E.2d 871, 873 (2009): "Examples of artificial conditions created by an abutting property owner might include materials spilled on a highway or smoke emissions that obstruct visibility." Wright v. S.C. Dept. of Trans., 437 S.C. 184, 196 (S.C. Ct. App. 2022): dismissing claim "that the private entities failed to take remedial action to keep this area of Highway 17A in a safe condition or to warn travelers of the alleged dangerous condition," because Court has "been unable to locate any South Carolina authority establishing a private property or business owner owes such a duty to warn or make safe a public highway" Underwood v. Coponen, 367 S.C. 214, 217 (S.C. Ct. App. 2006): is instructive. In Underwood, a driver ran through a stop sign, colliding with plaintiff's vehicle. The driver testified that she did not see the stop sign because it was partially obstructed by limbs from a tree on defendant's property. The court granted summary judgment dismissing plaintiff's claim against the landowner, and the Court of Appeals affirmed, finding that the landowner had no duty to trim the tree to prevent the limbs from obscuring the stop sign. Oblachinski v. Reynolds, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (Sup. Ct. 2011): affirming grant of summary judgment based on court's determination that no duty of care existed as a matter of law. Shelton v. Ls & K, Inc., 648 S.E.2d 307, 374 S.C. 294 (Ct. App. 2007): No duty by Burger King as to its Bradford pear tree that allegedly blocked view of driver who hit pedestrian; BUT abrogated w/r/t evidence necessary to overcome SJ in Hancock v. Mid-South Mgmt. Co., 381 S.C. 326 (Sup. Ct. 2009).

Your Honor,

It was asked if we could get  
the ruler.

Thank You,  
Kyle MacQuesten  
Juror 169

4/3/2023 KSPM

PENGAD 800-631-6869	<b>COURT'S</b>
	EXHIBIT NO. <u>31</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>8</u>
DATE: <u>4-3-23</u>	

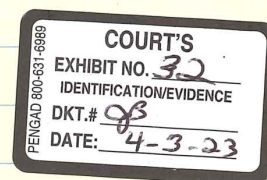
Your Honor,

Can we get a copy of the Statutes from SCDOT + North Charleston that were read to us?

Also, I started taking notes where we were going to consider whether negligence was 1) inadvertent 2) Magnitude of Misconduct .... 3) Ability to Reduce Risk, etc. Can we also get a copy of this instruction?

Thank You,  
Kyle MacQuestan  
Juror 169

4/3/2023 KPM

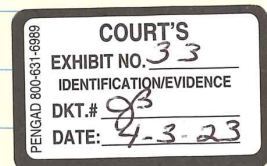


Your Honor,

We'd like to end deliberations tonight and resume in the morning if that's acceptable.

Thank You,  
Kyle MacGowan  
Juror 169

4/3/2023



**RECEIVED**

**Oct 11 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
The Hon. Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2023-000718

DARLEEN RASH, Individually and as Personal Representative  
for the ESTATE OF BRONSON HARLEY RASH.....Appellant-Respondent,

v.

DOMINION ENERGY (formerly SOUTH CAROLINA  
ELECTRIC & GAS COMPANY); ANTHONY M. AKBAR;  
AND PAUL QUATTLEBAUM, ..... Respondent-Appellants.

**CERTIFICATE OF COUNSEL**

I certify that this Record on Appeal contains all material proposed to be included by all  
of the parties and not any other material.

**POULIN | WILLEY | ANASTOPOULO, LLC**

*s/Roy T. Willey, IV*

Roy T. Willey, IV

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*Attorney for Appellant-Respondent*

October 10, 2024