

19495

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

ORIGINAL

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2006-CP-26-5391

Don D. Gause, ... Respondent,

v.

Nathan Dale Smithers and Edward W. Hunt, ... Defendants,

of Whom, Edward W. Hunt is the, ... Appellant.

RECORD ON APPEAL

VOLUME I

SC Court of Appeals
DEC 21 2011
Received

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

JUDGMENT IN A CIVIL CASE

CASE NO 2006- CP-26-05391

DON D GAUSE

NATHAN DALE SMITHERS, ETAL

VS.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:



JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.



DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other



ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☒ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: See Below



DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

- ☐ See Attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

WE THE JURY, FIND FOR THE PLAINTIFF AGAINST Nathan Dale Smithers and Edward W. Hunt in the amount of \$155,432.64 actual damages. We find for the Plaintiff against Nathan Dale Smithers in the amount of \$60,000.00 punitive damages. We find for the Plaintiff against Edward W. Hunt in the amount of \$40,000 punitive damages.

Dated: JANUARY 6, 2011

Conway, SC

RESIDENT JUDGE

FILED
HOBBS
2011 JAN - 7 AM 8:13
MELANIE HUGGINS
CLERK OF COURT

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

DAVID ELIOTT ROTHSTEIN

WILLIAM E. LAWSON

GENE M CONNELL JR

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Don D Gause,)
)
Plaintiff,)
)
vs.)
)
Nathan Dale Smithers, Edward Raymond)
Hunt, and Edward W. Hunt)
)
Defendants.)
)
)

C/A NO. 2006-CP-26-5391

Verdict

FILED
HORRY
2011 JAN -7 AM 8:13
ME-AMIE HUBBARD
CLERK OF COURT

VERDICT

Defendant Smithers has admitted negligence.

We the jury find in favor of: _____ Defendant Hunt OR X Plaintiff

If you selected "Defendant Hunt" above, the following actual damages only apply to Defendant Smithers.

If you selected "Plaintiff" above, the following actual damages apply to both Defendant Smithers and Defendant Hunt.

We, the Jury, find for the Plaintiff against the Defendant(s) in the amount of

\$ 155,432.64 actual damages.

We, the Jury, find for the Plaintiff against the Defendant Smithers in the amount of

\$ 60,000.00 punitive damages.

We, the Jury, find for the Plaintiff against the Defendant Hunt in the amount of

\$ 40,000.00 punitive damages.

Heather B. Cox

FOREPERSON
January 6, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Don D. Gause,	)	C.A. No. 2006-CP-26-5391
Plaintiff,	)	
v.	)	ORDER
Nathan Dale Smithers and Edward W. Hunt,	)	
Defendants.	)	

FILED
HORRY COUNTY
11 FEB 11 AM 9:58
CLERK OF COURT

This is an automobile wreck case. The matter was tried before a jury on January 4, 5, and 6, 2011. Appearing for the Plaintiff were David E. Rothstein, Esquire, of Greenville, South Carolina and John S. Nichols, Esquire, of Columbia, South Carolina. Appearing for the Defendant Edward W. Hunt was Gene M. Connell, Jr., Esquire, of Surfside Beach, South Carolina. Appearing for the Defendant Nathan Dale Smithers was William E. Lawson, Esquire, of Myrtle Beach, South Carolina.

Following two days of testimony the jury rendered a verdict against the Defendants for actual and punitive damages on January 6, 2011. Each Defendant orally made motions after the verdict, and the Court denied those motions.

On January 12, 2011, Defendant Hunt made a subsequent Motion for New Trial, alleging errors in the caption of the verdict form that confused the jury. Defendant Hunt also relied upon his affidavit in which he related purported conversations he had with jurors immediately following the trial. The Court requested memoranda on the Motion within ten days. Plaintiff Gause responded on January 14, 2011, contending the Motion was not timely pursuant to Rule 59, SCRPC. Plaintiff also objected to the court considering Mr. Hunt's affidavit pursuant to Rule

606, SCRE. Finally, Plaintiff contended that the Court's instructions to the jury adequately informed the jury as to the identity of the parties before the Court. Defendant Hunt did not file anything further on the Motion. Defendant Smithers also did not file any response to the Motion.

Having considered the Motion and related filings, I find that the Defendant Hunt's subsequent Motion for New Trial was timely made. Rule 59(b), SCRCP.¹ I also find the curative instructions I gave to the jury clarifying the identity of the defendant in the action were sufficient. In light of these rulings there is no need for me to reach any of the other arguments made in the Motion or the response.

Accordingly, the Defendant Hunt's Motion for New Trial filed on January 12, 2011, is

DENIED.



William H. Seals, Jr.
Circuit Court Judge

February
January 7, 2011.

¹ The Court did not consider Mr. Hunt's affidavit in making this decision. Rule 606, SCRE (juror testimony inappropriate to impeach verdict); *Shumpert v. State*, 378 S.C. 62, 661 S.E.2d 369 (2008) (Rule 606 prohibits evidence of comments of jurors occurring during deliberations).

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Don D. Gause,)

Plaintiff,)

vs.)

Nathan Dale Smithers and)

Edward W. Hunt,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2006 CP 26 5391

COMPLAINT

(Jury Trial Demanded)

FILED
HORRY COUNTY
CLERK OF COURT
05 NOV -2 PM 10:12

Plaintiff, Don D. Gause, complaining of the Defendants above named, would respectfully show unto this Honorable Court the following:

I. Parties, Jurisdiction, and Venue

1. Plaintiff is a citizen and resident of Newton County, Georgia.

2. Upon information and belief, Defendant Nathan Dale Smithers (hereinafter referred to as "Defendant Smithers") is a citizen and resident of Horry County, South Carolina.

3. Upon information and belief, Defendant Edward W. Hunt (hereinafter referred to as "Defendant Hunt") is a citizen and resident of Horry County, South Carolina.

4. This Court has jurisdiction over the subject matter of this action and has in personam jurisdiction over Defendants. Venue is proper in this Court, because Defendants are citizens or residents of Horry County, and the wrongful conduct at issue occurred within Horry County. The amount in controversy exceeds \$100,000.00.

II. Facts

5. On November 15, 2003, at approximately 5:30 a.m., Plaintiff was operating a motor vehicle during the course and scope of his employment and duties as a police officer for the City of

Conway Police Department. He responded to a request from an officer of the South Carolina Highway Patrol to assist with a motorist who had been stopped for suspicion of drunken driving, Defendant Hunt. Another City of Conway Police Officer also responded to the scene to assist in the arrest. The other Conway Police Officer took Defendant Hunt into custody and transported him to the detention center. Plaintiff remained at the scene to assist in having Defendant Hunt's vehicle towed.

6. Plaintiff's vehicle, a fully-marked police vehicle, was stopped in the left-hand lane of U.S. Highway 501 North, directly behind Defendant Hunt's vehicle. Plaintiff's vehicle had all emergency lights activated, including his hazard lights and the emergency light bar atop the vehicle.

7. Shortly thereafter, Defendant Smithers was operating a pickup truck traveling Northward on U.S. Highway 501, between Waccamaw Boulevard and Highway 701. The posted speed limit on the relevant portion of Highway 501 was 50 miles per hour.

8. Upon information and belief, Defendant Smithers was operating his vehicle under the ~~influence of alcohol and/or drugs and was traveling at an excessive rate of speed.~~ Defendant Smithers's vehicle collided with Plaintiff's vehicle with tremendous force, completely destroying Plaintiff's vehicle and causing serious personal, physical injury to Plaintiff.

FOR A FIRST CAUSE OF ACTION
(Against Defendant Smithers Only)
(Negligence, Gross Negligence, Reckless, Willful and Wanton Behavior)

9. Plaintiff repeats and realleges Paragraphs 1-8 as if restated verbatim.

10. Pursuant to the statutory and common law of South Carolina, Defendant Smithers owed various duties to Plaintiff as a fellow motorist upon the roads, highways, and interstates of the State of South Carolina.

11. Defendant Smithers breached his duties and was therefore negligent, negligent per se, and/or grossly negligent in the following particulars:

- a. Operating a vehicle at an excessive and dangerous rate of speed, in excess of the posted speed limit and beyond what was reasonable and prudent under the conditions and having due regard to the actual and potential hazards then existing, in violation of section 56-5-1520 of the South Carolina Code of Laws and the common law of South Carolina;
- b. Failing to operate a vehicle with due regard for the safety of all persons;
- c. Operating a vehicle in a reckless, willful, and/or wanton disregard for the safety of others, resulting in the serious bodily injury of others, in violation of section 56-5-2920 of the South Carolina Code of Laws and the common law of South Carolina;
- d. Failing to maintain a proper lookout while operating a motor vehicle;
- ~~e. Failing to maintain proper control of his vehicle;~~
- f. Failing to reduce speed, yield the right of way, and make a lane change upon approaching an emergency scene, as required by section 56-5-1538 of the South Carolina Code of Laws and the common law of South Carolina;
- g. Failing to yield the right of way to an emergency vehicle with its emergency lights and signals activated, in violation of section 56-5-2360 of the South Carolina Code of Laws and the common law of South Carolina; and
- h. Operating a vehicle under the influence of alcohol and/or drugs to such an extent that his faculties to drive were materially and appreciably impaired, in

violation of section 56-5-2930 of the South Carolina Code of Laws and the common law of South Carolina.

12. Defendant Smithers's actions as described above were committed in reckless, willful, and/or wanton disregard for the safety of others, because he knew or reasonably should have known that his conduct created an unreasonable risk of harm to others, yet he consciously disregarded such risk.

13. The above-described negligent, grossly negligent, reckless, willful, and/or wanton acts or omissions by Defendant Smithers directly and proximately caused Plaintiff to suffer economic and non-economic injuries, including medical bills, pain and suffering, permanent scarring and disfigurement, lost wages and employment opportunities, and loss of enjoyment of life. Upon information and belief, Plaintiff is entitled to an award of actual damages to compensate him for such injuries.

14. In addition, upon information and belief, Plaintiff is entitled to an award of punitive damages against Defendant Smithers, in an amount to be determined by the jury, sufficient to deter this Defendant and others from engaging in such conduct in the future.

FOR A SECOND CAUSE OF ACTION

(Against Defendant Hunt Only)

(Negligence, Gross Negligence, Reckless, Willful and Wanton Behavior)

15. Plaintiff repeats and realleges Paragraphs 1-14 as if restated verbatim.

16. Pursuant to the statutory and common law of South Carolina, Defendant Hunt owed various duties to Plaintiff as a fellow motorist upon the roads, highways, and interstates of the State of South Carolina.

17. Defendant Hunt breached his duties and was therefore negligent, negligent per se,

and/or grossly negligent in the following particulars:

- a. Failing to operate a vehicle with due regard for the safety of all persons;
- b. Operating a vehicle in a reckless, willful, and/or wanton disregard for the safety of others, resulting in the serious bodily injury of others, in violation of section 56-5-2920 of the South Carolina Code of Laws and the common law of South Carolina;
- c. Operating a vehicle under the influence of alcohol and/or drugs to such an extent that his faculties to drive were materially and appreciably impaired, in violation of section 56-5-2930 of the South Carolina Code of Laws and the common law of South Carolina; and
- d. Improperly and illegally stopping, parking, or leaving standing a vehicle upon the roadway when it was practicable to stop, park, or leave the vehicle off the roadway, in violation of section 56-5-2510(A) of the South Carolina Code of Laws and the common law of South Carolina.

18. Defendant Hunt's actions as described above were committed in reckless, willful, and/or wanton disregard for the safety of others, because he knew or reasonably should have known that his conduct created an unreasonable risk of harm to others, yet he consciously disregarded such risk.

19. The above-described negligent, grossly negligent, reckless, willful, and/or wanton acts or omissions by Defendant Hunt directly and proximately caused Plaintiff to suffer economic and non-economic injuries, including medical bills, pain and suffering, permanent scarring and disfigurement, lost wages and employment opportunities, and loss of enjoyment of life. Upon

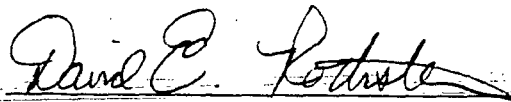
information and belief, Plaintiff is entitled to an award of actual damages to compensate him for such injuries.

20. In addition, upon information and belief, Plaintiff is entitled to an award of punitive damages against Defendant Hunt, in an amount to be determined by the jury, sufficient to deter this Defendant and others from engaging in such conduct in the future.

WHEREFORE, having fully set forth his allegations against Defendants, Plaintiff respectfully requests the following relief:

- a. Actual, compensatory damages for economic and non-economic injuries;
- b. Punitive damages;
- c. Attorney's fees and costs; and
- d. Such further relief as the Court deems just and appropriate.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.


David E. Rothstein
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Columbia, South Carolina 29205
(803) 251-0202
(803) 251-0222 (facsimile)
derothstein@mindspring.com

Attorneys for Plaintiff, Don D. Gause

November 1, 2006

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

Don D. Gause,
Plaintiff,

v.

Nathan Dale Smithers and
Edward W. Hunt,
Defendants.

ANSWER
(Jury Trial Demanded)

CLERK OF COURT
01 DEC - 7 - AM 10:08

The Defendant, Edward W. Hunt, complaining of the Plaintiff, would respectfully state as follows:

1. The Defendant denies each and every allegation not hereinafter specifically admitted and demands strict proof thereof.

FOR A FIRST DEFENSE
(General Denial)

2. The Defendant Hunt is without sufficient information to admit the allegations of Paragraphs 1 and 2 and therefore denies same and demands strict proof hereof.

3. The Defendant Hunt admits the allegations of Paragraph 3.

4. The Defendant Hunt admits so much of Paragraph 4 which states that the Court has jurisdiction and venue over this matter. However, to the remainder of that Paragraph same is denied and strict proof is demanded hereof.

5. The Defendant Hunt is without sufficient information to admit so much of the allegations of Paragraph 5 which states that the Plaintiff was operating a motor vehicle and that he responded to a request to an officer of the South Carolina Highway Patrol to assist with a motorist who had been stopped for suspicion of drunken driving and that another City of Conway Policy

Officer also responded to this scene to assist in the arrest. However, to the remainder of that Paragraph same is denied and strict proof is demanded hereof.

6. The Defendant Hunt is without sufficient information to admit the allegations as to Paragraph 6 which state the Plaintiff's vehicle, fully-marked police vehicle, was stopped in the left-hand lane of U. S. Highway 501 North, and that all its emergency lights were activated, including its hazard lights and the emergency light bar atop the vehicle. Moreover, while the Defendant Hunt's vehicle was on 501 the Defendant Hunt had not been operating that vehicle that evening, but it was being operated by his son, Edward Raymond Hunt.

7. Defendant Hunt is without sufficient information to admit the allegations of Paragraph 7 and 8 and therefore denies same and demands strict proof hereof.

8. The Defendant Hunt is informed and believes that the allegations of Paragraph 9 do not require a response, but to the extent they do, same is denied and strict proof is demanded hereof.

9. Defendant Hunt is informed and believes that the allegations of Paragraphs 10, 11 (and its subparts), 12, 13, and 14 do not apply to him, but to the extent they do same are denied and strict proof is demanded hereof.

10. The Defendant Hunt is informed and believes that the allegations of Paragraph 15 do not require a response, but to the extent they do, same is denied and strict proof is demanded hereof.

11. The Defendant Hunt denies the allegations of Paragraph 16, 17 (and its subparts), 18, 19 and 20 and demands strict proof hereof.

FOR A SECOND DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficiently)

12. The Defendant Hunt reiterates and realleges each and every allegation in Paragraphs 1 through 11 above as if fully repeated herein verbatim.

13. The Defendant Hunt pleads the defense of failure to state facts sufficient to constitute a cause of action as to the Defendant Hunt in that the Defendant Hunt was not the driver of the vehicle on the night in question.

14. Therefore, the Defendant Hunt pleads a defense of failure to state a cause of action as to him as a complete defense and barred to the claim of the Plaintiff

FOR A THIRD DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Comparative Negligence)

15. The Defendant Hunt reiterates and realleges each and every allegation in Paragraphs 1 through 14 above as if fully repeated herein verbatim.

16. The Defendant Hunt pleads the defense of comparative negligence in that the Plaintiff was negligent or more negligent than this Defendant and that the Court, if it should so find this Defendant liable, should also find the Plaintiff, liable under the comparative negligence doctrine such that the Plaintiff is not entitled to recover as to this Defendant, or should it be determined that the negligence of the Plaintiff is equal to or less than the negligence of this Defendant, the amount of Plaintiff's recovery shall be reduced in accordance with the South Carolina doctrine of comparative negligence.

FOR A FOURTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Negligence of Others)

17. The Defendant Hunt reiterates and realleges each and every allegation in Paragraphs 1 through 16 above as if fully repeated herein verbatim.

18. The Defendant Hunt alleges that any losses or damages sustained by the Plaintiff as alleged in the Complaint which are denied were due to and caused and occasioned by the intervening and superseding acts of the negligence, recklessness, carelessness, willfulness and wantonness on the part of the Plaintiff, and this Defendant pleads such intervening and superseding

negligence, carelessness, recklessness, willfulness and wantonness on the part of said driver as a direct and proximate cause of the losses and damages sustained by the Plaintiff as alleged in the Complaint.

19. The Defendant, therefore, pleads the defense of negligence of others as a complete defense and bar to the claim of the Plaintiff. Should it be determined that this Defendant and the Plaintiff are both negligent then this Defendant should only be assigned that percentage of responsibility for the Plaintiff's damages which are attributable to his percentage of negligence in accordance with the South Carolina Joint Tortfeasors Act.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays for a trial by jury, prays that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action, and prays for such other and further relief as this Honorable Court deems necessary, just and proper.

KELAHER, CONNELL & CONNOR, P.C.



Lisa Poe Davis
The Courtyard, Suite 209
1500 U.S. Highway 17 North
P.O. Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648

Surfside Beach, South Carolina
December 4, 2006

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

Don D. Gause,)
)
Plaintiff,)
)
v.)
)
Nathan Dale Smithers and)
Edward W. Hunt,)
)
Defendants.)
_____)

NOTICE OF MOTION AND MOTION
TO DISMISS WITH PREJUDICE
DEFENDANT EDWARD W. HUNT

TO: THE PLAINTIFF, DON D. GAUSE; AND HIS ATTORNEY, DAVID E. ROTHSTEIN,
ESQUIRE

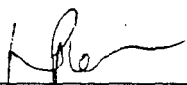
YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, Edward W. Hunt, will, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse, for the Court to issue an Order dismissing the above captioned action for failure to state a cause of action as to the Defendant Hunt.

The alleged incident which is the subject matter of this lawsuit occurred on November 15, 2003. The Plaintiff has alleged that the Defendant Edward W. Hunt was driving the vehicle on the night in question; however, while the Defendant Edward W. Hunt was the owner of the vehicle, his son, Edward Raymond Hunt, had been driving the vehicle on the night in question.

WHEREFORE, the Defendant Hunt requests that the Court issue an Order dismissing the Plaintiff's claim against him with prejudice. The Defendant further moves this court for such other and further Order or Orders as the Court deems just and fair under the circumstances.

This motion is brought pursuant to the Code of Laws of South Carolina, the South Carolina Rules of Civil Procedure and any and all pertinent case law.

KELAHER, CONNELL & CONNOR, P.C.



Lisa Poe Davis, Esq.
1500 Highway 17 North
The Courtyard, Suite 209
Post Office Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648

**ATTORNEY FOR DEFENDANT
EDWARD W. HUNT**

December 4, 2006
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Don D. Gause,)

Plaintiff,)

v.)

Nathan Dale Smithers and
Edward W. Hunt,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

AFFIDAVIT OF EDWARD W. HUNT

CLERK OF COURT
JES
90 JUN 06

PERSONALLY appeared before me, Edward W. Hunt, who, first being duly sworn,
deposes and states as follows:

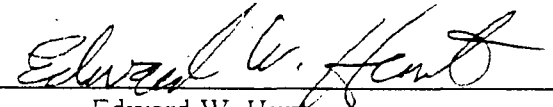
1. My name is Edward W. Hunt and I have been named as a Defendant in the
above-captioned action.

2. It has been alleged in this action that I was the driver of a vehicle which had been
stopped by the Plaintiff for suspicion of drunken driving; however, I was not driving the vehicle
on the night in question.

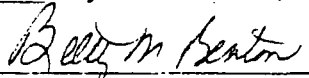
3. While the vehicle was owned by me it was being driven by my son, Edward
Raymond Hunt.

4. I was not involved in the incident which is the subject matter of this action.

FURTHER AFFIANT SAYETH NOT.


Edward W. Hunt

Sworn to and subscribed before me
6th day of December, 2006.


Notary Public of South Carolina
My Commission Expires: 2-1-2011

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Don D. Gause,)

Plaintiff,)

vs.)

Nathan Dale Smithers,)

Edward Raymond Hunt, and)

Edward W. Hunt,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2006-CP-26-5391

AMENDED COMPLAINT

(Jury Trial Demanded)

Horry County
Court Clerk
2006-10-26 PM 4:00

Plaintiff, Don D. Gause, complaining of the Defendants above named, would respectfully show unto this Honorable Court the following:

I. Parties, Jurisdiction, and Venue

1. Plaintiff is a citizen and resident of Newton County, Georgia.
2. Upon information and belief, Defendant Nathan Dale Smithers (hereinafter referred to as "Defendant Smithers") is a citizen and resident of Horry County, South Carolina.
3. Upon information and belief, Defendant Edward Raymond Hunt is a citizen and resident of Horry County, South Carolina.
4. Upon information and belief, Defendant Edward W. Hunt is a citizen and resident of Horry County, South Carolina.
5. This Court has jurisdiction over the subject matter of this action and has in personam jurisdiction over Defendants. Venue is proper in this Court, because Defendants are citizens or residents of Horry County, and the wrongful conduct at issue occurred within Horry County. The amount in controversy exceeds \$100,000.00.

II. Facts

6. On November 15, 2003, at approximately 5:30 a.m., Plaintiff was operating a motor vehicle during the course and scope of his employment and duties as a police officer for the City of Conway Police Department. He responded to a request from an officer of the South Carolina Highway Patrol to assist with a motorist who had been stopped for suspicion of drunken driving, Defendant Edward Raymond Hunt. Another City of Conway Police Officer also responded to the scene to assist in the arrest. The other Conway Police Officer took Defendant Edward Raymond Hunt into custody and transported him to the detention center. Plaintiff remained at the scene to assist in having the Hunt vehicle towed.

7. Plaintiff's vehicle, a fully-marked police vehicle, was stopped in the left-hand lane of U.S. Highway 501 North, directly behind the Hunt vehicle. Plaintiff's vehicle had all emergency lights activated, including his hazard lights and the emergency light bar atop the vehicle.

8. Shortly thereafter, Defendant Smithers was operating a pickup truck traveling Northward on U.S. Highway 501, between Waccamaw Boulevard and Highway 701. The posted speed limit on the relevant portion of Highway 501 was 50 miles per hour.

9. Upon information and belief, Defendant Smithers was operating his vehicle under the influence of alcohol and/or drugs and was traveling at an excessive rate of speed. Defendant Smithers's vehicle collided with Plaintiff's vehicle with tremendous force, completely destroying Plaintiff's vehicle and causing serious personal, physical injury to Plaintiff.

FOR A FIRST CAUSE OF ACTION

(Against Defendant Smithers)

(Negligence, Gross Negligence, Reckless, Willful and Wanton Behavior)

10. Plaintiff repeats and realleges Paragraphs 1-9 as if restated verbatim.

11. Pursuant to the statutory and common law of South Carolina, Defendant Smithers owed various duties to Plaintiff as a fellow motorist upon the roads, highways, and interstates of the State of South Carolina.

12. Defendant Smithers breached his duties and was therefore negligent, negligent per se, and/or grossly negligent in the following particulars:

- a. Operating a vehicle at an excessive and dangerous rate of speed, in excess of the posted speed limit and beyond what was reasonable and prudent under the conditions and having due regard to the actual and potential hazards then existing, in violation of section 56-5-1520 of the South Carolina Code of Laws and the common law of South Carolina;
- b. Failing to operate a vehicle with due regard for the safety of all persons;
- c. Operating a vehicle in a reckless, willful, and/or wanton disregard for the safety of others, resulting in the serious bodily injury of others, in violation of section 56-5-2920 of the South Carolina Code of Laws and the common law of South Carolina;
- d. Failing to maintain a proper lookout while operating a motor vehicle;
- e. Failing to maintain proper control of his vehicle;
- f. Failing to reduce speed, yield the right of way, and make a lane change upon approaching an emergency scene, as required by section 56-5-1538 of the South Carolina Code of Laws and the common law of South Carolina;
- g. Failing to yield the right of way to an emergency vehicle with its emergency lights and signals activated, in violation of section 56-5-2360 of the South

Carolina Code of Laws and the common law of South Carolina; and

- h. Operating a vehicle under the influence of alcohol and/or drugs to such an extent that his faculties to drive were materially and appreciably impaired, in violation of section 56-5-2930 of the South Carolina Code of Laws and the common law of South Carolina.

13. Defendant Smithers's actions as described above were committed in reckless, willful, and/or wanton disregard for the safety of others, because he knew or reasonably should have known that his conduct created an unreasonable risk of harm to others, yet he consciously disregarded such risk.

14. The above-described negligent, grossly negligent, reckless, willful, and/or wanton acts or omissions by Defendant Smithers directly and proximately caused Plaintiff to suffer economic and non-economic injuries, including medical bills, pain and suffering, permanent scarring and disfigurement, lost wages and employment opportunities, and loss of enjoyment of life. Upon information and belief, Plaintiff is entitled to an award of actual damages to compensate him for such injuries.

15. In addition, upon information and belief, Plaintiff is entitled to an award of punitive damages against Defendant Smithers, in an amount to be determined by the jury, sufficient to deter this Defendant and others from engaging in such conduct in the future.

FOR A SECOND CAUSE OF ACTION

(Against Defendant Edward Raymond Hunt)

(Negligence, Gross Negligence, Reckless, Willful and Wanton Behavior)

- 16. Plaintiff repeats and realleges Paragraphs 1-15 as if restated verbatim.
- 17. Pursuant to the statutory and common law of South Carolina, Defendant Edward

Raymond Hunt owed various duties to Plaintiff as a fellow motorist upon the roads, highways, and interstates of the State of South Carolina.

18. Defendant Edward Raymond Hunt breached his duties and was therefore negligent, negligent per se, and/or grossly negligent in the following particulars:

- a. Failing to operate a vehicle with due regard for the safety of all persons;
- b. Operating a vehicle in a reckless, willful, and/or wanton disregard for the safety of others, resulting in the serious bodily injury of others, in violation of section 56-5-2920 of the South Carolina Code of Laws and the common law of South Carolina;
- c. Operating a vehicle under the influence of alcohol and/or drugs to such an extent that his faculties to drive were materially and appreciably impaired, in violation of section 56-5-2930 of the South Carolina Code of Laws and the common law of South Carolina; and
- d. ~~Improperly and illegally stopping, parking, or leaving standing a vehicle upon the roadway when it was practicable to stop, park, or leave the vehicle off the roadway, in violation of section 56-5-2510(A) of the South Carolina Code of Laws and the common law of South Carolina.~~

19. Defendant Edward Raymond Hunt's actions as described above were committed in reckless, willful, and/or wanton disregard for the safety of others, because he knew or reasonably should have known that his conduct created an unreasonable risk of harm to others, yet he consciously disregarded such risk.

20. The above-described negligent, grossly negligent, reckless, willful, and/or wanton acts

negligent, grossly negligent, reckless, willful, and/or wanton acts or omissions of Defendant Edward Raymond Hunt as alleged above. Accordingly, upon information and belief, Plaintiff is entitled to an award of actual and punitive damages against Defendant Edward W. Hunt.

FOR A FOURTH CAUSE OF ACTION
(Against Defendant Edward W. Hunt)
(Negligent Entrustment)

27. Plaintiff repeats and realleges Paragraphs 1-26 as if restated verbatim.

28. Defendant Edward W. Hunt owned or controlled the vehicle that is the subject of this Complaint, and is therefore responsible for the use of the vehicle.

29. Defendant Edward W. Hunt knew or reasonably should have known that Defendant Edward Raymond Hunt had a habit of consuming alcohol and other illegal, intoxicating substances.

30. Defendant Edward W. Hunt knew or reasonably should have known that Defendant Edward Raymond Hunt was likely to drive while intoxicated or was likely to drive in an otherwise negligent, grossly negligent, reckless, willful and/or wanton manner.

31. Under the circumstances described above, Defendant Edward W. Hunt had a duty to other motorists, including Plaintiff, to ensure that the vehicle was operated in a reasonable and safe manner.

32. Defendant Edward W. Hunt breached that duty by negligently entrusting the subject vehicle to Defendant Edward Raymond Hunt.

33. The above-described negligent entrustment of the vehicle to Defendant Edward Raymond Hunt directly and proximately caused Plaintiff to suffer economic and non-economic injuries, including medical bills, pain and suffering, permanent scarring and disfigurement, lost wages and employment opportunities, and loss of enjoyment of life. Upon information and belief, Plaintiff

or omissions by Defendant Edward Raymond Hunt directly and proximately caused Plaintiff to suffer economic and non-economic injuries, including medical bills, pain and suffering, permanent scarring and disfigurement, lost wages and employment opportunities, and loss of enjoyment of life. Upon information and belief, Plaintiff is entitled to an award of actual damages to compensate him for such injuries.

21. In addition, upon information and belief, Plaintiff is entitled to an award of punitive damages against Defendant Edward Raymond Hunt, in an amount to be determined by the jury, sufficient to deter this Defendant and others from engaging in such conduct in the future.

FOR A THIRD CAUSE OF ACTION
(Against Defendant Edward W. Hunt Only)
(Family Purpose Doctrine)

22. Plaintiff repeats and realleges Paragraphs 1-21 as if restated verbatim.

23. Upon information and belief, Defendant Edward W. Hunt is the father of Defendant Edward Raymond Hunt and was the head of the household where Defendant Edward Raymond Hunt resided at the time of the incident described in this Complaint. Defendant Edward W. Hunt owned, furnished, and/or maintained the vehicle at issue in this Complaint for the general use and convenience of his family, specifically including Defendant Edward Raymond Hunt.

24. Upon information and belief, the vehicle at issue in this case was registered in the name of Defendant Edward W. Hunt.

25. At the time of the collision at issue in this Complaint, Defendant Edward Raymond Hunt was operating the vehicle pursuant to its intended purpose, that being the general use and convenience of the family members.

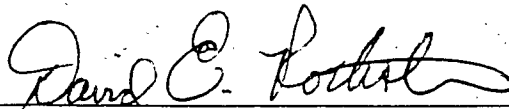
26. Defendant Edward W. Hunt is liable under the family purpose doctrine for the

is entitled to an award of actual damages to compensate him for such injuries.

WHEREFORE, having fully set forth his allegations against Defendants, Plaintiff respectfully requests the following relief:

- a. Actual, compensatory damages for economic and non-economic injuries;
- b. Punitive damages;
- c. Attorney's fees and costs; and
- d. Such further relief as the Court deems just and appropriate.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.



David E. Rothstein
BURNETTE & ROTHSTEIN, P.A.
2322 Devine Street
Columbia, South Carolina 29205
(803) 251-0202
(803) 251-0222 (facsimile)
derothstein@mindspring.com

Attorneys for Plaintiff, Don D. Gause

December 15, 2006

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

Don D. Gause,

Plaintiff,

v.

Nathan Dale Smithers and
Edward W. Hunt,

Defendants.

NOTICE OF MOTION AND MOTION
TO DISMISS WITH PREJUDICE
AMENDED SUMMONS
AND COMPLAINT

TO: THE PLAINTIFF, DON D. GAUSE; AND HIS ATTORNEY, DAVID E. ROTHSTEIN,
ESQUIRE

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, Edward W. Hunt, will, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, move before the Presiding Judge of the Fifteenth Judicial Circuit at the ~~Horry County Courthouse, for the Court to issue an Order striking the Amended Summons and Complaint for failure to file the proper Motion to Amend prior to filing the Amended Summons and Complaint.~~

In the alternative the Defendant Edward W. Hunt will move that the Amended Summons and Complaint be dismissed for failing to amend within the statute of limitations and by joining a party after the statute of limitations have run.

WHEREFORE, the Defendant Hunt requests that the Court issue an Order striking and/or dismissing the Amended Summons and Complaint with prejudice. The Defendant further moves this court for such other and further Order or Orders as the Court deems just and fair under the circumstances.

This motion is brought pursuant to the Code of Laws of South Carolina, the South Carolina Rules of Civil Procedure and any and all pertinent case law.

KELAHER, CONNELL & CONNOR, P.C.



Lisa Poe Davis, Esq.
1500 Highway 17 North
The Courtyard, Suite 209
Post Office Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648

**ATTORNEY FOR DEFENDANT
EDWARD W. HUNT**

December 20, 2006
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

Don D. Gause,)
)
Plaintiff,)
)
v.)
)
Nathan Dale Smithers,)
Edward W. Hunt, and)
Edward Raymond Hunt,)
)
Defendants.)
_____)

ANSWER
(Jury Trial Demanded)

FILED
HORRY COUNTY
07 FEB - 8 AM 10:31
CLERK OF COURT

The Defendants, Edward W. Hunt and Edward Raymond Hunt, answering the Amended Complaint of the Plaintiff, would respectfully state as follows:

1. These Defendants deny each and every allegation not hereinafter specifically admitted and demands strict proof thereof.

FOR A FIRST DEFENSE
(General Denial)

2. The Defendants, Edward W. Hunt and Edward Raymond Hunt, are without sufficient information to admit the allegations of Paragraphs 1 and 2 and therefore denies same and demands strict proof hereof.

3. The Defendants, Edward W. Hunt and Edward Raymond Hunt, admit the allegations of Paragraphs 3 and 4.

4. The Defendants, Edward W. Hunt and Edward Raymond Hunt, admit so much of Paragraph 5 which states that the Court has jurisdiction and venue over this matter. However, to the remainder of that Paragraph same is denied and strict proof is demanded hereof.

5. The Defendants, Edward W. Hunt and Edward Raymond Hunt, admit the allegations of Paragraph 6 and 7.

6. The Defendants, Edward W. Hunt and Edward Raymond Hunt, are without sufficient information to admit the allegations of Paragraph 8 and 9 and therefore deny same and strict proof is demanded hereof.

7. The Defendants, Edward W. Hunt and Edward Raymond Hunt, are informed and believe that the allegations of Paragraph 10 do not require a response, but to the extent they do, same are denied and strict proof is demanded hereof.

8. The Defendants, Edward W. Hunt and Edward Raymond Hunt, are informed and believe that the allegations in Paragraphs 11, 12 (and its subparts), 13, 14 and 15 do not apply to them, but to the extent they do, same are denied and strict proof is demanded hereof.

9. The Defendants, Edward W. Hunt and Edward Raymond Hunt, are informed and believe that the allegations of Paragraph 16 do not require a response, but to the extent they do, same are denied and strict proof is demanded hereof.

10. The Defendants, Edward W. Hunt and Edward Raymond Hunt, deny the allegations of Paragraphs 17, 18 (and its subparts), 19, 20, and 21 and demand strict proof hereof.

11. The Defendants, Edward W. Hunt and Edward Raymond Hunt, are informed and believe that the allegations of Paragraph 22 do not require a response, but to the extent they do, same are denied and strict proof is demanded hereof.

12. With regard to Paragraph 23, the Defendants, Edward W. Hunt and Edward Raymond Hunt, admit that Edward W. Hunt is the father of Defendant Edward Raymond Hunt. However, as to the remainder of that Paragraph, same is denied and strict proof is demanded hereof.

13. The Defendants, Edward W. Hunt and Edward Raymond Hunt, admit the allegations of Paragraph 24.

14. The Defendants, Edward W. Hunt and Edward Raymond Hunt, deny the allegations of Paragraphs 25 and 26 and demand strict proof hereof.

15. The Defendants, Edward W. Hunt and Edward Raymond Hunt, are informed and believe that the allegations of Paragraph 27 do not require a response, but to the extent they do, same are denied and strict proof is demanded hereof.

16. With regard to Paragraph 28, the Defendants, Edward W. Hunt and Edward Raymond Hunt, admit that Edward W. Hunt owned the vehicle that is the subject of this Amended Complaint. However, as to the remaining allegations of Paragraph 28, same are denied and strict proof is demanded hereof.

17. The Defendants, Edward W. Hunt and Edward Raymond Hunt, deny the allegations of Paragraphs 29, 30, 31, 32 and 33 and demand strict proof hereof.

FOR A SECOND DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Comparative Negligence)

18. The Defendants, Edward W. Hunt and Edward Raymond Hunt, reiterate and reallege each and every allegation in Paragraphs 1 through 17 above as if fully repeated herein verbatim.

19. The Defendants, Edward W. Hunt and Edward Raymond Hunt, plead the defense of comparative negligence in that the Plaintiff was negligent or more negligent than these Defendants and that the Court, if it should so find these Defendants liable, should also find the Plaintiff, liable under the comparative negligence doctrine such that the Plaintiff is not entitled to recover as to these Defendants, or should it be determined that the negligence of the Plaintiff is equal to or less than the negligence of these Defendants, the amount of Plaintiff's recovery shall be reduced in accordance with the South Carolina doctrine of comparative negligence.

FOR A THIRD DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Negligence of Others)

20. The Defendants, Edward W. Hunt and Edward Raymond Hunt, reiterate and reallege each and every allegation in Paragraphs 1 through 19 above as if fully repeated herein verbatim.

21. The Defendants, Edward W. Hunt and Edward Raymond Hunt, allege that any losses or damages sustained by the Plaintiff as alleged in the Complaint which are denied were due to and caused and occasioned by the intervening and superseding acts of the negligence, recklessness, carelessness, willfulness and wantonness on the part of the Plaintiff, and these Defendants plead such intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness on the part of said driver as a direct and proximate cause of the losses and damages sustained by the Plaintiff as alleged in the Complaint.

22. The Defendants, Edward W. Hunt and Edward Raymond Hunt, therefore, plead the defense of negligence of others as a complete defense and bar to the claim of the Plaintiff. Should it be determined that these Defendants and the Plaintiff are both negligent then these Defendants should only be assigned that percentage of responsibility for the Plaintiff's damages which are attributable to his percentage of negligence in accordance with the South Carolina Joint Tortfeasors Act.

FOR A FOURTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Statute of Limitations)

23. The Defendants, Edward W. Hunt and Edward Raymond Hunt, reiterate and realleges each and every allegation in Paragraphs 1 through 22 above as if fully repeated verbatim herein.

24. The Defendants, Edward W. Hunt and Edward Raymond Hunt, would show that the incident which is the subject of this action occurred on November 15, 2003. The Plaintiff failed to commence the action within the statute of limitations. Therefore, this action should be dismissed as it violates the applicable statute of limitations in accordance with Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

The Defendant, therefore, pleads the defense of statute of limitations as a complete defense and bar to the claim of the Plaintiff.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays for a trial by jury, prays that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action, and prays for such other and further relief as this Honorable Court deems necessary, just and proper.

KELAHHER, CONNELL & CONNOR, P.C.



Lisa Poe Davis
The Courtyard, Suite 209
1500 U.S. Highway 17 North
P.O. Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648

Surfside Beach, South Carolina
February 6, 2007

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Don D. Gause,

Plaintiff,

v.

Nathan Dale Smithers and
Edward W. Hunt,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

NOTICE OF MOTION AND MOTION
TO DISMISS WITH PREJUDICE
AMENDED SUMMONS
AND COMPLAINT

FILED
HORRY COUNTY
07 FEB '08 AM 11:32
CLERK OF COURT

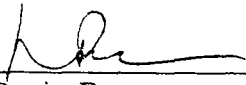
TO: THE PLAINTIFF, DON D. GAUSE; AND HIS ATTORNEY, DAVID E. ROTHSTEIN,
ESQUIRE

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, Edward W. Hunt, will, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse, for the Court to issue an Order striking the Amended Summons and Complaint for failure to file within the statute of limitations and by joining a party after the statute of limitations have run.

WHEREFORE, the Defendant Hunt requests that the Court issue an Order striking and/or dismissing the Amended Summons and Complaint with prejudice. The Defendant further moves this court for such other and further Order or Orders as the Court deems just and fair under the circumstances.

This motion is brought pursuant to the Code of Laws of South Carolina, the South Carolina Rules of Civil Procedure and any and all pertinent case law.

KELAHHER, CONNELL & CONNOR, P.C.



Lisa Poe Davis, Esq.
1500 Highway 17 North
The Courtyard, Suite 209
Post Office Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648

**ATTORNEY FOR DEFENDANTS
EDWARD RAYMOND HUNT AND
EDWARD W. HUNT**

February 6, 2007
Surfside Beach, South Carolina.

Don D. Gause

Plaintiff(s)

2006 CP-26- 5391

Vs

ORDER

Nathan Dale Smith

Defendant(s)

IT IS ORDERED that the MOTION BE STRUCK FROM THE ACTIVE motion calendar for the following reason(s):

Motion to Compel Withdrawn.

Motion to Dismiss Edward Raymond Hunt as a Defendant.
Motion under advisement.

Motion to Dismiss Edward W Hunt Denied.

Motion to Dismiss for failure to state cause of action
Withdrawn.

IT IS ORDERED that the within entitled MOTION(S) be:

1. Continued upon the request of the _____ until the _____

Reason: _____

2. Transferred to the Jury/Non-Jury Calendar.

3. Other: _____

Conway, South Carolina

October 24, 2007
2006

William H. Culberson
Presiding Circuit Judge

David E. Rothstein, Atty

Gene Conwell, Atty

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2006-CP-26-5391

Don D. Gause,

Plaintiff,

vs.

Nathan Dale Smithers,
Edward W. Hunt and
Edward Raymond Hunt,

Defendants.

Order Granting Motion to Dismiss
as to defendant Edward Raymond Hunt

HORRY COUNTY
CLERK OF COURT
07 OCT 29 PM 12:14
JUGINS

HEARING DATE.....October 24, 2007
PRESIDING JUDGE..... Benjamin H. Culbertson
PLAINTIFF'S ATTORNEY..... David E. Rothstein
ATTORNEY FOR DEFENDANTS:
NATHAN DALE SMITHERS..... (did not participate)
EDWARD W. HUNT AND EDWARD RAYMOND HUNT..... Gene M. Connell, Jr.
COURT REPORTER Grace Hurley

Before the court is a motion by the defendants, Edward W. Hunt and Edward Raymond Hunt, seeking dismissal of the plaintiff's amended complaint against them on the grounds that the plaintiff's action is barred by the statute of limitations.¹ Plaintiff argues that the action is permitted by Rule 15, SCRPC.

On November 15, 2003, the plaintiff was involved in an automobile accident which gave rise to this lawsuit. The plaintiff filed this lawsuit on November 2, 2006, against the defendants Nathan Dale Smithers and Edward W. Hunt. The defendant Edward W. Hunt answered the plaintiff's complaint on December 7, 2006. On December 19, 2006, the plaintiff amended his complaint to add Edward Raymond Hunt as a defendant.

¹ Also before the court were two other Motions to Dismiss and a Motion to Compel Discovery. The court's rulings on these motions are set forth on this court's Form 4 order dated October 24, 2007.

The defendants argue that the plaintiff's amended complaint is barred by the statute of limitations² since the defendant Edward Raymond Hunt was not made a party to this lawsuit until December 19, 2007, more than three years after the incident giving rise to this lawsuit. The plaintiff argues that his amended complaint relates back to the date of his original complaint pursuant to Rule 15(c), SCRCP, and therefore, is not barred by the statute of limitations.

Contrary to the plaintiff's argument, his amended complaint did not "change" the party against whom the claim was asserted in his original complaint as is contemplated under Rule 15(c), SCRCP. Rather, the plaintiff "added" a party to the lawsuit. "Relation back to original pleadings applies only when an existing party is changed, not when a new party is added to a complaint." *Cline v. J.E. Faulkner Homes, Inc., et al.*, 359 S.C. 367, 597 S.E.2d 27 (S.C.App.2004). See also *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (S.C.App.2000) holding that "[t]he language of Rule 15(c) clearly speaks to a change in party, not the addition of a defendant to an already existing defendant." Since the plaintiff's amended complaint in this lawsuit adds a party to the lawsuit rather than changing the party against whom the plaintiff's claim was asserted in the original complaint, the amended complaint does not relate back to the date of the original complaint. Therefore, the plaintiff's action against the defendant Edward Raymond Hunt is barred by the statute of limitations.

NOW, THEREFORE, it is hereby

ORDERED, that the motion by the defendants, Edward W. Hunt and Edward Raymond Hunt, seeking dismissal of the plaintiff's amended complaint against them is granted as to the defendant Edward Raymond Hunt only.

² S.C. Code Annotated §15-3-530, as amended.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Don D. Gause,)

Plaintiff,)

vs.)

Nathan Dale Smithers,)

Edward Raymond Hunt, and)

Edward W. Hunt,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2006-CP-26-5391

**PLAINTIFF'S MOTION FOR
RECONSIDERATION**

FILED
HORRY COUNTY
2007 NOV 15 PM 2:51
CLERK OF COURT

Plaintiff, Don D. Gause, by and through his undersigned counsel, hereby files this Motion for Reconsideration of the Court's Order Granting Motion to Dismiss as to Defendant Edward Raymond Hunt. With all due respect, the Court has misapplied the relation-back provision of Rule 15(c), SCRCP with regard to Defendant Edward Raymond Hunt. The original complaint clearly intended to name as a defendant the driver of the first vehicle that contributed to the collision, which Plaintiff mistakenly identified as "Edward W. Hunt." As soon as Plaintiff was informed that Edward W. Hunt was not the driver, but was merely the owner of the vehicle in question and the father of the actual driver (Edward Raymond Hunt), Plaintiff filed and served his amended complaint under Rule 15(a), SCRCP. Although the amended complaint was filed and served more than three years after the date of the collision, the amended complaint should relate back to the date of the original filing of the complaint under the provisions of Rule 15(c).

Rule 15(c) of the South Carolina Rules of Civil Procedure provides as follows:

Whenever the claim or defense asserted in the amended pleading arose out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Rule 15(c), SCRCP.

The essence of the amended complaint is to change a mistaken identification of the driver, Edward Raymond Hunt, who was incorrectly identified in the original complaint as "Edward W. Hunt." This was merely a scrivener's error on the part of Plaintiff's counsel, not a case of suing the wrong driver or not knowing who the driver of the vehicle was. Perhaps Plaintiff should have merely used the name "Edward Hunt" instead of the full name in the caption of the complaint. Plaintiff was not trying to add Edward Raymond Hunt as a new party by submitting the amended complaint, but was merely trying to cure the mistaken identification.

The only "new" claims in the amended complaint are against the father, Edward W. Hunt, for negligent entrustment and under the family purpose doctrine. Those claims relate back under the first paragraph of Rule 15(c) because they are against an existing defendant and they arise out of the same transaction or occurrence as the original complaint.

The two cases cited by the Court in support of its conclusion that the claims against Edward Raymond Hunt do not relate back are easily distinguishable. In Cline v. J.E. Faulkner Homes, Inc., 359 S.C.367, 597 S.E.2d 27 (Ct. App. 2004), the South Carolina Court of Appeals held that the statute of limitations barred a claim against an independent contractor that was involved in setting up a mobile home, because the home-owner first named the contractor as a defendant in a second

amended complaint more than four years after the accident. The court noted in a footnote that the relation-back provision of Rule 15(c) did not apply because the plaintiff was adding a new party with the amended complaint, not changing the identity of an existing party. Id. at 371 n.2, 597 S.E.2d at 29 n.2.

Here, by contrast, there was a mistake about the name of the driver, which is somewhat understandable given the similarity of the father and son's name. This is the exact situation envisioned by Rule 15(c). With regard to Plaintiff's allegations that the driver of the vehicle was negligent, the amended complaint does nothing more than change the name of the party in an attempt to correct the mistaken identity of the defendant. The only reason there are two defendants in the amended complaint is because Plaintiff has now included claims for negligent entrustment and family purpose doctrine against the father, who was the owner of the vehicle. In that sense, the "new" claims in the amended complaint are against the father—Edward W. Hunt—not the driver Edward Raymond Hunt.

Similarly, the case of Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000), is not particularly instructive. In the Doe case, the plaintiff brought a lawsuit against an unknown "John Doe" driver under the statutory scheme set forth in S.C. Code Ann. §§ 38-77-170 & -180. Four and a half years after the accident, the plaintiff amended the complaint to add an additional named defendant, but also retained John Doe as a unknown driver in the amended complaint. The new defendant denied that he was the unidentified driver, and also raised the statute of limitations as an affirmative defense. The court noted, "Here, [the plaintiff] did not simply correct the defendant's name or substitute one defendant for another. Rather, she added Milligan as a defendant because he may have been the driver. The language of Rule 15(c) clearly speaks to a change in party, not the

addition of a defendant to an already existing defendant. In our view, the addition of a party is not the same as a substitution or change of party." Jackson, 342 S.C. at 558, 537 S.E.2d at 570. In this case, the proposed amended complaint does, in fact, substitute Edward Raymond Hunt for Edward W. Hunt insofar as the negligence claims that were pleaded in the original complaint arising out of the operation of the vehicle in question.

With all due respect, the Court should have analyzed this case as a substitution of parties or a correction of a mistaken identification of a party under Rule 15(c), rather than an addition of a completely new party. Again, the only new allegations in the amended complaint are for negligent entrustment and family purpose doctrine against Defendant Edward W. Hunt, the original defendant. However, with respect to the negligence claims, the amended complaint merely substitutes the son for the father to correct the misnaming error.

Under Rule 15(c), the amended complaint should relate back if Edward Raymond Hunt received notice of the institution of the suit within the statutory limitations period for commencing the action such that he will not be prejudiced in defending the case and that he knew or should have known that but for the mistake about the identify of the defendant the suit would have been brought against him. Rule 15(c), SCRCP. Here, Edward Raymond Hunt certainly received notice of the suit within the statute of limitations period. Although Plaintiff has not yet taken the depositions of the Hunts, the father had to find out from the son who was driving the car when the father prepared his affidavit stating that he was not driving the car on the night in question, but his son was. Also, there is no prejudice to Edward Raymond Hunt in defending this case: his is being defended by the same attorneys and the same insurance company that is defending his father, who was served within the statute of limitations period. Tellingly, Defendant Edward Raymond Hunt was actually served with

the amended complaint before the original defendant, Nathan Dale Smithers, was served with the original complaint, since Defendant Smithers had to be served by publication. Mr. Smithers was served timely under of the new amendments to the South Carolina Rules of Civil Procedure that allow service within 120 days after the filing of the lawsuit.

With all due respect, the Court's ruling would allow Defendant Edward Raymond Hunt to avoid liability on a mere technicality, while unfairly punishing Plaintiff for a scrivener's error. This is contrary to the spirit and intent of Rule 15(c). As the South Carolina Supreme Court stated in Thomas v. Grayson, 318 S.C. 82, 89, 456 S.E.2d 377, 380 (1995), Rule 15(c) "does not defeat the legitimate use of the statute of limitations. It however, prevents the defendant from defeating the plaintiff's claim on a technicality in the pleading." Similarly, in DeLoach v. Griggs, 222 S.C. 326, 72 S.E.2d 647 (1952), the court stated, "Much latitude of amendment is properly allowed to save the cause of action, if possible, from the bar of limitations. And it has been many times suggested that courts should be inclined to disregard subtleties and technical objections to the sufficiency of a pleading in an effort to determine the real issues on their merits and to try to do substantial justice to the litigants before them." Id. at 650.

For all of the foregoing reasons, the Plaintiff respectfully request that the Court reconsider its prior ruling and issue an order denying Defendant's motion to dismiss.

* * *

Respectfully submitted,



David E. Rothstein
BURNETTE & ROTHSTEIN, P.A.
2322 Devine Street
Columbia, South Carolina 29205
(803) 251-0202
(803) 251-0222 (facsimile)
derothstein@mindspring.com

Attorneys for Plaintiff, Don D. Gause

November 13, 2007

Columbia, South Carolina.

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

JUDGMENT IN CIVIL CASE

CASE NO. 2006-CP-26-5391

Don D. Gause

PLAINTIFF(S)

Nathan Dale Smithers, Edward Raymond Hunt and
Edward W. Hunt
DEFENDANT(S)

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration is denied. (Motion decided on brief contained in plaintiff's motion without oral arguments as permitted by Rule 59(f), SCRPC).

NOTED
11/29/07 PM 1:37
CLERK OF COURT

Dated at Georgetown, South Carolina, this 28th day of November, 2007.

Benjamin H. Culbertson

Benjamin H. Culbertson
PRESIDING JUDGE

This judgment was entered on the 30th day of Nov., 2007, and a copy mailed first class this 5th day of Dec., 2007 to attorneys of record or to parties (when appearing pro se) as follows:

David E. Rothstein

ATTORNEY(S) FOR THE PLAINTIFF(S)

Gene M. Connell, Jr.

William E. Lawson

Douglas C. Baxter

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie F. Higgins
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas.

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2006-CP-26-5391

Don D. Gause, ... Appellant,

v.

Nathan Dale Smithers, Edward Raymond Hunt, and

Edward W. Hunt, ... Of Whom, Edward Raymond Hunt is
Respondent.

NOTICE OF APPEAL

Don D. Gause appeals the order of the Honorable Benjamin H. Culbertson dated November 28, 2007. Appellant has not received actual written notice of the entry of this order from the clerk, but discovered on January 2, 2008, via the court's website, that the judgment was entered by the clerk on November 30, 2007.

January 2, 2008



David E. Rothstein
Burnette & Rothstein, P.A.
2322 Devine Street
Columbia, SC 29205
(803) 251-0202
Attorney for Appellant

Other Counsel of Record:

Gene M. Connell, Jr.
KELAHAR, CONNELL & CONNER, P.C.
P.O. Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
Attorney for Respondent and for Defendant Edward W. Hunt

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Don D. Gause, Appellant,

v.

Nathan Dale Smithers, Edward
W. Hunt, and Edward
Raymond Hunt, Defendants,

Of Whom Edward Raymond
Hunt is Respondent.

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 4566
Heard April 23, 2009 – Filed June 16, 2009

AFFIRMED

David E. Rothstein, of Columbia, for Appellant.

Gene M. Connell, Jr., of Surfside Beach, for
Respondent.

KONDUROS, J.: Don Gause appeals the circuit court's dismissal of his negligence claims against Edward Raymond Hunt (Son) because the claims violated the statute of limitations. We affirm.

FACTS

On November 15, 2003, Gause, a Conway police officer, was involved in a DUI traffic stop of a car driven by Son, but owned by Edward W. Hunt (Father). During the stop, a second car driven by Nathan Smithers, hit and injured Gause. Almost three years later, on November 2, 2006, Gause filed a lawsuit against Father as the driver of the car, alleging negligence.¹ Father was served on November 20, 2006, after the statute of limitations had expired, but within the 120 days after filing provided for in Rule 3(a)(2), SCRCF. Father answered claiming he was not the driver of the car involved in the accident.

Realizing his error in identifying the driver, Gause filed an amended complaint on December 19, 2006, naming Son as another defendant based on his negligence in driving the car, and adding causes of action against Father for negligent entrustment and under the family purpose doctrine. Son was served with the amended complaint on January 25, 2007. Son moved to ~~dismiss the claims against him alleging he had been added as a party after the~~ statute of limitations had run. Gause contended he was merely substituting Son as the real driver pursuant to Rule 15(c), SCRCF, so the amended complaint should relate back to the filing of the original complaint. The circuit court determined Son was being added as a party instead of substituted, and thus, Rule 15(c) did not save the claims against Son. This appeal followed.

¹ The portion of the accident report identifying the driver was blank, because Son was taken to the hospital before the report was completed. After seeing Father's name as the owner of the vehicle, Gause proceeded in filing his suit believing Edward W. Hunt was both the owner and driver of the vehicle.

STANDARD OF REVIEW

"If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the [c]ourt, the motion shall be treated as one for summary judgment" Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 225, 659 S.E.2d 213, 217 (Ct. App. 2008). "When reviewing a grant of summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Id.

LAW/ANALYSIS

Gause contends the circuit court erred in analyzing the amended complaint as an attempted addition of a party rather than as the change of a party for purposes of Rule 15(c), SCRCP. We disagree.

Rule 15(c) provides:

Whenever the claim or defense asserted in the ~~amended pleading arose out of the conduct,~~ transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but

for a mistake concerning the identity of the proper party, the action would have been brought against him.

Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000), discussed the application of Rule 15(c) at length. In that case, Jackson amended her complaint after the statute of limitations had expired in a John Doe hit and run action. Id. at 554, 537 S.E.2d at 568. Jackson added a named party as the defendant but did not dismiss John Doe as a defendant. Id. The majority of the court concluded the second paragraph of Rule 15(c) only applied to a substitution or change in party, not the addition of a defendant. Id. at 558, 537 S.E.2d at 570. ("The language of Rule 15(c) clearly speaks to a change in party, not the addition of a defendant to an already existing defendant. In our view, the addition of a party is not the same as a substitution or change of the party.").² Cline v. J.E. Faulkner Holmes, Inc., more recently followed this view. 359 S.C. 367, 371 n.2, 597 S.E.2d 27, 29 n.2 (Ct. App. 2004) (finding Rule 15(c) did not allow plaintiff to add a party to a negligence action after termination of statute of limitations when plaintiff discovered additional party was an independent contractor and not employee of original defendant).

~~In this case, Gause named Son as a defendant with respect to the direct~~ negligence claims. However, he also kept Father in the case. We conclude this amounted to the addition of a defendant, the action Jackson sought to proscribe in keeping with the plain language of Rule 15(c). We are mindful this produces a harsh result, although Gause's claims against Father remain viable. Nevertheless, we are compelled to affirm the findings of the circuit court.

Because the addition of a party is not contemplated by Rule 15(c), we need not address whether Son's being made a defendant was otherwise proper

² Chief Judge Hearn dissented in Jackson, reasoning the named defendant was not an additional party because Jackson alleged John Doe and the named defendant were the same person. 342 S.C. at 558, 537 S.E.2d at 571 (Hearn, C.J., dissenting). That reasoning does not apply to the facts of this case.

under that Rule.³ See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("The appellate court may find it unnecessary to discuss respondent's additional sustaining grounds when its affirmance is grounded in an issue addressed by the lower court.").

Based on the foregoing, the decision of the circuit court is

AFFIRMED.

HUFF and WILLIAMS, JJ., concur.

³ At oral argument, Son contended he was not properly substituted for Father because he was not necessarily on notice of Gause's action within the statute of limitations. Gause argues Son had proper notice of the action because he was served with the amended complaint within the statute of limitations plus 120 days after filing of the original complaint. See Rule 3(a)(2), SCRCP (stating a civil action is commenced when the summons and complaint are filed and served with the statute of limitations, or if not served with the statute of limitations, the summons and complaint are actually served within 120 days after filing). The circuit court did not rule on this issue.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

Don D. Gause,

Plaintiff,

v.

Nathan Dale Smithers and
Edward W. Hunt,

Defendants.

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT AS TO
DEFENDANT EDWARD W. HUNT

HORRY COUNTY
10 APR 23 PM 12:15
CLERK OF COURT

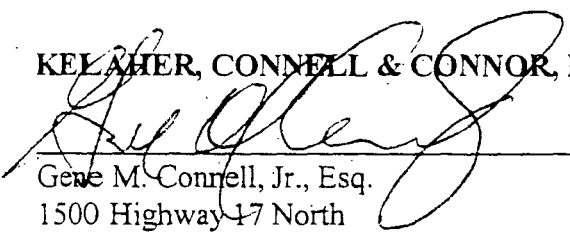
TO: THE PLAINTIFF, DON D. GAUSE; AND HIS ATTORNEY, DAVID E. ROTHSTEIN, ESQUIRE

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, Edward W. Hunt, will, ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as counsel may be heard, move before the Presiding Judge of the Fifteenth Judicial Circuit, in the Horry County Courthouse, for an Order granting the Defendant, Edward W. Hunt, summary judgment.

This motion is brought pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* in that there is no genuine issue as to any material fact with respect to Plaintiff's claim of negligence against the Defendant, Edward W. Hunt, and, therefore, as a matter of law, the Defendant, Edward W. Hunt, is entitled to summary judgment resulting in his dismissal from this

lawsuit. This motion is supported by depositions and affidavits and the case law of this state.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr., Esq.

1500 Highway 17 North

The Courtyard, Suite 209

Post Office Drawer 14547

Surfside Beach, SC 29587-4547

(843) 238-5648

ATTORNEY FOR DEFENDANT

EDWARD W. HUNT

April 22, 2010

Surfside Beach, South Carolina.

2006-CP-26- 5391

Don D Gause

Nathan Dale Smithers et al

VS.

Plaintiff(s)

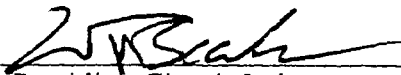
Defendant(s)

ORDER
DISPOSITION OF MOTIONS

FILED
IN COMMON PLEAS
2010 AUG 12 AM 9:35
MELANIE HUGGINS-WARD
CLERK OF COURT

Defendant Motion for Summary Judgment - Denied

AND IT IS SO ORDERED.


Presiding Circuit Judge

Dated at Conway, South Carolina this 10th day of August, 2010.

Atty David E Rothstein

Atty Gene M Connell

Plaintiff Attorney(s)

Defendant Attorney(s)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-26-5391

Defendants.

NOTICE OF MOTION AND MOTION FOR NEW TRIAL

TO: DAVID E. ROTHSTEIN, ATTORNEY FOR PLAINTIFF; and WILLIAM E. LAWSON, ATTORNEY FOR DEFENDANT NATHAN DALE SMITHERS

2011 JAN 11 PM 4:55
CLERK OF COURT
WILLIAM E. HUGGINS
COUNTY

- 61

6. That because the Court could not get all twelve jurors back, the Court recessed and refused to grant a new trial.

7. That Defendant Edward W. Hunt went down in the elevator with the jurors who had been returned to the jury room by the Sherriff's Department.

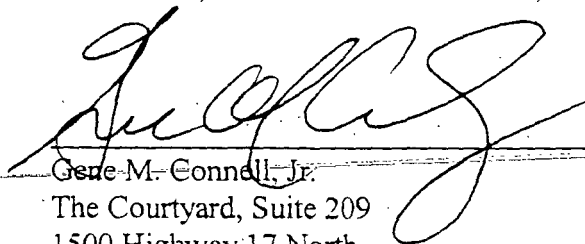
8. That several of those jurors informed Defendant Edward W. Hunt that they had voted to exonerate him 100% but felt that Edward Raymond Hunt was partially responsible.

9. That this was the exact issue that defense counsel raised to the Court after the verdict was read.

10. That attached is a copy of the Affidavit of Edward W. Hunt.

11. That based on the foregoing, the Defendant Hunt requests that the Court grant a new trial and for such other and further relief as the Court may deem just, necessary and proper.

KELAHHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 Highway 17 North
P.O. Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648
Attorney for Defendant Edward W. Hunt

January 11, 2011
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 06-CP-26-5391

Don D. Gause,

Plaintiff,

v.

Nathan Dale Smithers and
Edward W. Hunt,

Defendants.

AFFIDAVIT OF
EDWARD W. HUNT

2011 JAN 11 PM 4:45
JELANIE HUGGINS-WARD
CLERK OF COURT
LED
COUNTY

PERSONALLY appeared before me, Edward W. Hunt, who, first being duly sworn,
deposes and states as follows:

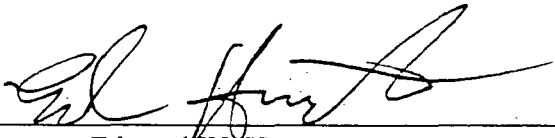
1. My name is Edward W. Hunt and I was a Defendant in the above-captioned action.
2. That on January 6, 2011, after the jury was called back a second time, I was riding in the elevator with several of the jurors.
3. That those jurors informed me that they voted 100% not to find me liable in this accident.
4. That the jurors further informed me that they thought that they had found my son, Raymond Hunt, liable.
5. That some of the jurors who were in the elevator with me were: (a) a tall, black juror with glasses; (b) a short, young, black Hispanic girl; and (c) a white juror.
6. That each of the jurors assured me that they had not voted against me, but had voted against my son who was not a defendant in this case.

7. That the jurors further stated that they thought I was blameless and that my son should be liable for any verdict.

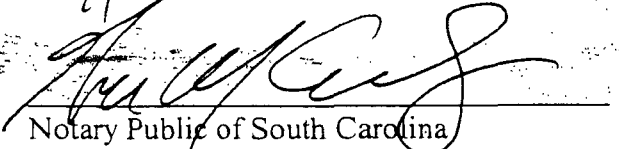
8. That this conversation took place after defense counsel requested the jury be held because of a discrepancy on the verdict form which had my son's name (Edward Raymond Hunt).

9. That I request a new trial based on the confusion over the verdict form.

FURTHER AFFIANT SAYETH NOT.


Edward W. Hunt

Sworn to and subscribed before me
this 11 day of January, 2011.


Notary Public of South Carolina
My Commission Expires: 2/14/14

1 MR. ROTHSTEIN: 2:30.

2 MR. CONNELL: 2:30, that's be great.

3 (Court in recess until 2:30 p.m.)

4 (Court in session at 2:30 p.m.)

5 THE COURT: All right. What have we got in this case?

6 MR. CONNELL: Your Honor, it seems like everything you
7 and I touch is almost the same thing. This case has been
8 going on for almost five years. Just to give you some
9 background to give you some understanding.

10 THE COURT: All right.

11 MR. CONNELL: The case was filed in 2006, and the
12 plaintiff's file against Edward Hunt. The plaintiffs then
13 tried to amend the pleadings to add Edward Raymond Hunt, who
14 was the driver. Unfortunately, the Court did not allow
15 that. That one went up on appeal. The Court issued a
16 published opinion that basically found Edward Raymond Hunt
17 could not be added because the statute of limitations had
18 passed.

19 THE COURT: Okay.

20 MR. CONNELL: So I represent Edward Hunt, the daddy, who
21 was the owner of the vehicle on the night of this calamity,
22 and Ed Lawson represents Nathan Smithers.

23 Here's just a little flavor of what happened. The
24 plaintiff was a Conway Police Officer at the time. He was
25 called out because the Highway Patrol had stopped Edward

1 Raymond Hunt in the city of Conway, out by the power plant.

2 THE COURT: Uh-huh.

3 MR. CONNELL: This is the man that the Court of Appeals
4 did not allow to be added. They had stopped him for
5 allegedly driving under the influence. Highway patrolman,
6 at that point, said that he could not handle the case, he
7 had to go somewhere, something was going on. So they called
8 the Conway Police Department. Conway Police Department came
9 out there, picked up Edward Raymond Hunt. They charged him
10 with public drunk, because they did not see him driving the
11 vehicle.

12 The plaintiff, meanwhile, was behind -- the car was in
13 the road where it had stopped. He did not pull off to the
14 side. He was in the lane of travel. Plaintiff, meanwhile
15 with his lights and flashers on, he was behind the car
16 driving by Edward Raymond Hunt, who was on his way -- had
17 been taken to jail.

18 THE COURT: All right.

19 MR. CONNELL: Mr. Smithers hit the police car from
20 behind, injuring the plaintiff.

21 THE COURT: All right.

22 MR. CONNELL: All right. You've kind of got the
23 background of the case.

24 THE COURT: Got it.

25 MR. CONNELL: Well, the discovery has shown that the

1 plaintiff not only claimed back injury from this case, but
2 he returned to work and about eight or 10 months later he
3 was pushing a car out of the road when he re-injured his
4 back, during which, as a result of he had surgery to his
5 back.

6 THE COURT: Uh-huh.

7 MR. CONNELL: The treating physician, Dr. Mills,
8 testified at his deposition that the automobile wreck of
9 2003, with Edward Raymond Hunt and Nathan Smithers was not
10 the cause of the surgery, but that the other incident
11 pushing the car was what eventually caused him to have the
12 surgery.

13 So our position to begin with is that the plaintiff's
14 treating physician has said, in a deposition, and they've
15 subpoenaed him to come to trial, when you talk about that,
16 and they've subpoenaed him to come to trial, but the
17 plaintiff's physician has said that the accident that we're
18 here about today did not cause the injury from which he had
19 the surgery, and the difference is this, the medical bills
20 are, I think, about \$13,000, \$14,000, based on Dr. Mills
21 surgery, I mean, based on Dr. Mills treatment, and if the
22 surgery is \$150,000. And we maintain that any medical that
23 they are going to attempt to present should not be allowed,
24 because Mr. Mills, in his deposition, clearly says that
25 accident number two, pushing the car, is what caused the

1 surgery.

2 So we would move, to begin with, Your Honor, to exclude
3 all testimony about that. All medical bills. They've given
4 us a list of about \$150,000 \$160,000.

5 MR. LAWSON: \$155,432.64.

6 THE COURT: All right. How does the plaintiff feel?

7 MR. ROTHSTEIN: Judge, I think there's a little bit of a
8 mis-characterization of what Dr. Mills testified to in his
9 deposition. What he did testify was that an MRI was done on
10 Mr. Gause about six or eight weeks after the initial wreck
11 and it showed a herniated disk. The records also show that
12 Dr. Mills discussed surgery as a surgical option with Mr.
13 Gause. Mr. Gause will testify that he was scared to death
14 about going under the knife, so he wanted to pursue a more

15 conservative course of treatment, which involved Percet (sp)
16 injections. They tried the Perce injections. After about
17 three or four months, the Perce injections wore off. Mr.
18 Gause had increased pain. He was doing worse. He was back
19 at work at this time, but he was -- his back had not
20 recovered. He had not fully recovered from the back injury.

21 While he was back at work over the summer, early fall,
22 a little less than a year after the accident, he was pushing
23 a vehicle out of the road. Mr. Gause, you saw him, he's
24 about six-three, six-four about 300 pounds. He was pushing
25 a relatively small car. I think it was a foreign -- I think

1 a four-door car on flat ground about 200 yards. This was
2 something that was a routine thing for him to do prior to
3 the accident. It's not something for him to expect for his
4 back to go out again.

5 So he pushes the car. He continues to have pain in his
6 back. He does file a second workers comp claim because Dr.
7 Mills had released him, maximum medical improvement and
8 released him back to full duty. So he had to file a
9 subsequent workers comp claim. He goes back to Dr. Mills,
10 and Dr. Mills, again, talked about surgery and he tried
11 Perce injections again. Same exact thing happened as
12 happened before. So he goes back to Dr. Mills and says I'm
13 ready to consider the surgical intervention now.

14 So Dr. Mills does another MRI. The MRI that was done
15 after pushing the car out of the road was identical to the
16 MRI that was done right after Mr. Gause had the accident.

17 So foreseeability is always a question of fact for the
18 jury and they're trying to get around that by excluding
19 evidence, they're trying to have the Court rule on
20 foreseeability as a matter of law here --

21 THE COURT: Sounds like a factual dispute to me. I'm
22 going to allow it. Let the jury figure it out.

23 MR. CONNELL: Your Honor, I think our position will be,
24 I understand your ruling, if the doctor is going to come in
25 and say in his opinion to a reasonable degree of medical

1 certainty, this is related, that's one thing. The
2 deposition testimony clearly indicates that's not the case.
3 So I -- we would request that the plaintiff not be allowed
4 to get up in the beginning and say this particular plaintiff
5 has \$150,000 in medical bills because the doctor's
6 deposition clearly shows that that's not the case.

7 So he's going to attempt to cross-examine Dr. Mills and
8 get him to change his opinion from the deposition, that may
9 be one thing, but at the beginning of the trial it may be
10 prejudicial to the defendants to allow him to get up and say
11 we have \$150,000 in medicals. There's no proof of that. In
12 fact, we have proof to the contrary, to begin with.

13 THE COURT: Of course, his opening statement is not
14 going to be evidence. That's just his introduction or his
15 side to the case. Still sounds like a factual dispute to
16 me. And you can get up and introduce the other side, like
17 you have done with me right now and cross-examine to the
18 fullest. That sounds like a factual.

19 MR. LAWSON: Your Honor, would it be your opinion that
20 in order to cause a link to surgery to the accident that
21 some medical expert is going to have to cause a linkage.

22 THE COURT: Not --

23 MR. LAWSON: I mean, Plaintiff is not going to be able
24 to get up here and say this is how it happened and I got
25 hurt and I'm entitled -- I mean, the law would clearly not

1 allow that, I don't think.

2 MR. ROTHSTEIN: Well, Your Honor, if I could be heard on
3 that.

4 This is not the kind of case where medical testimony,
5 expert testimony is required to establish causation. This
6 is not a medical malpractice case where you've got some --
7 this was a rear-end collision. I think the defendant
8 Smithers, bragged about going 65 miles an hour, hitting my
9 client without hitting the brakes. I've got the pictures of
10 the car that show how crumpled it was.

11 You know, they're trying to say that pushing this car
12 100 feet out of the road is what caused these damages. The
13 law is very clear that proximate cause rests on the issue of
14 foreseeability. I don't have to have an expert testimony
15 here. It -- you know, I deposed Dr. Mills. It was actually
16 going to be a De Bene Esse --

17 THE COURT: I'm going to allow it. Let the jury figure
18 it out.

19 MR. ROTHSTEIN: Thank you, Judge.

20 MR. Lawson: Your Honor, can I be heard on that?

21 THE COURT: Sure.

22 MR. LAWSON: Just so I can get it on the record.

23 I represent Nathan L. Smithers, and Your Honor, and I
24 understand your ruling, but Dr. Mills testimony is clear.
25 He states to a reasonable degree of medical certainty that

1 this surgery was necessitated by an accident that occurred
2 in September of 2004, in pushing this car out of the
3 roadway.

4 THE COURT: Right.

5 MR. LAWSON: He based that on the history. He based
6 that on the gaps in treatment. He based that upon
7 everything in the record, and we could hand up his
8 deposition for you to look at.

9 I agree with Mr. Connell. To allow the plaintiff,
10 then, to come and say, well, I was in this accident and I
11 now -- I have this injury, I went back to work. I had this
12 other injury, but oh, no, that is not what caused my
13 problem. In 2005, I had surgery, and it's all because of
14 what Mr. Smithers did.

15 I just don't think he -- wasn't qualified to do that,
16 as the plaintiff. I think this just does not fall in the
17 common knowledge of the exception. I -- and, Your Honor, I
18 could cite to the Court Carlyle verses Tuomey Hospital, 407
19 S.E.2d 630. That we'd be dealing with a case here where
20 there's no foundation for relevance in medical necessity,
21 based upon his own treating physician's testimony. There
22 was also affirmed -- well, not affirmed, but mentioned a
23 U.S. District Court case, Todd verses Schneider, S-c-h-n-e-
24 I-d-e-r. 2003 WL23514560, the District Court of South
25 Carolina, a 2003 case.

1 You've got to have a natural and obvious relationship
2 between the facts of the accident and subsequent injury. So
3 it not only needs to follow the accident, it needs to result
4 from the accident. And to allow the plaintiff just to get
5 on the stand and to say, yes, I believe that this surgery
6 was caused by this accident, I think just runs afoul of all
7 our rules of evidence.

8 So I would join in with the motion to exclude that
9 testimony and given that his own treating physician did not
10 relate the surgery to the accident.

11 MR. ROTHSTEIN: You know, Dr. Mills testimony actually
12 helps my case, Your Honor. When he said that the need for
13 surgery was prompted by pushing the car out of the road,
14 that actually helps me, and the reason it helps me is
15 because the question is that when Mr. Hunt and Mr. Smithers
16 set this series of sort of unfortunate events loose on the
17 world, the question is going to be what was the natural,
18 foreseeable consequence of that chain of events. This I
19 just like that Graham case where the woman went into the eye
20 doctor's office, the eye doctor put drops in her eyes. She
21 fell in the office. She went and had surgery. The surgery
22 was botched. There was an infection in the pin, and so she
23 had to have -- you know, she was in the hospital for over
24 100 days. The Court there said if it's a reasonable,
25 foreseeable, chain of events, that's proximate cause.

1 That's an issue for the jury to decide. The fact that Dr.
2 Mills can relate the need for surgery to something that
3 happened after the accident, this is not a superceding
4 cause, this is maybe an intervening case. They can
5 certainly argue that to the jury.

6 THE COURT: Well, Dr. Mills is going to get on the stand
7 and testify, anyway. And we can see what he says at that
8 time.

9 MR. LAWSON: My concern is that the plaintiff testifies
10 first. Where is the foundation that says he has \$155,000 in
11 medical expenses?

12 THE COURT: I guess he's going to have to back it up
13 with Dr. Mills.

14 MR. LAWSON: And if he doesn't?

15 THE COURT: Or, if he doesn't then all you've got is
16 him.

17 MR. LAWSON: But I don't think that's relevant testimony
18 from just the plaintiff. That's be like saying, you know, I
19 contracted cataracts from this accident.

20 THE COURT: And, of course, you could subpoena Dr.
21 Mills, yourself, to testify?

22 MR. LAWSON: So your ruling is that you would all any
23 plaintiff to testify as to any condition they may have
24 sustained --

25 THE COURT: Well, I think the plaintiff can get on the

1 stand and then testify that, I was hurt and that he thinks
2 he -- dah-dah-dah.

3 MR. LAWSON: Okay. All right.

4 THE COURT: It just seems to me right now, at this stage
5 of the ball game it's a factual dispute. Haven't heard what
6 he's going to say and so forth, and we can do that, at the
7 right time if necessary.

8 MR. CONNELL: Okay.

9 THE COURT: But it still seems like a factual dispute to
10 me, at this stage in the process?

11 All right. Anything further?

12 MR. CONNELL: Your Honor, the next issue is that Dr.
13 Mills has been subpoenaed by the plaintiff, from what I
14 understand. Dr. Mills, of course, wants to be paid to
15 testify. That's normally what happens when physician's are
16 subpoenaed. I understand plaintiff counsel has said he's
17 only going to pay him \$25.00 to come. And my experience
18 from being in here before, if there's a dispute about
19 whether he's going to be paid, the Court has to tell us
20 what's going to happen, because we want to know up front, is
21 Dr. Mills going to be paid by the plaintiff to testify or is
22 he not going to be paid and does he have to come if that's
23 the situation?

24 MR. ROTHSTEIN: I subpoenaed Dr. Mills for factual
25 testimony. For him to authenticate the medical records and,

1 you know, explain, you know, what is stated in the records.
2 I'm not going to ask him opinions about what causation.
3 Again, I don't think that this is the kind of case that
4 requires expert testimony on causation.

5 Now, if they want to cross-examine him, bring out
6 expert opinions on cross-examination. I can't pay a fact
7 witness to come in here and testify as to factual matters.
8 I'm not hiring Dr. Mills as an expert witness as an expert
9 witness at this trial. If they want to hire Dr. Mills to
10 testify as an expert and provide expert opinions. They need
11 to pay Dr. Mills as an expert.

12 I think ethical rules prohibit me from paying a fact
13 witness anything other than the \$25.00 appearance fee.

14 THE COURT: What is your response?

15 MR. LAWSON: Your Honor, Dr. Mills, of course, is not
16 just any fact witness. He's the treating physician. And if
17 Your Honor, if his deposition is going to be taken he'd have
18 to be paid his time and charges under Rule 26. I mean, he's
19 upset because Mr. Rothstein subpoenaed him to come. He's
20 got to shut down his medical practice tomorrow and come.
21 He's entitled to be paid a reasonable fee, if he's going to
22 shut down his medical practice and come over here and offer
23 testimony as a treating physician. And that's what we want
24 to make sure that he is --

25 THE COURT: That he is paid by the plaintiff?

1 MR. LAWSON: Well, he's paying for his testimony,
2 because it's clear he's entitled to do that.

3 THE COURT: Seems to me that if he's not paid by the
4 plaintiff he's not going to be very happy with the
5 plaintiff. It's going to work in your favor more than
6 likely, no matter what.

7 MR. CONNELL: Your Honor, if I may. That just goes back
8 to our previous argument. If he's only coming as a fact
9 witness, then the only opinions in the case are from his
10 deposition. If he's coming just to authenticate medical
11 records, then --

12 THE COURT: Well, I'm not going to stop y'all from
13 cross-examining him any way you see fit.

14 MR. CONNELL: Okay.

15 THE COURT: If he's going to come, he's going to answer
16 your questions.

17 MR. CONNELL: I had intended to publish his deposition.
18 So this will be his testimony. If he's coming we'll just
19 ask him when he gets here.

20 THE COURT: Okay.

21 MR. ROTHSTEIN: And Your Honor, I think there's a lot of
22 missing information from Dr. Mills -- he assumes an awfully
23 lot of stuff. He actually says that his opinion is based
24 the fact that my client, Mr. Gause appears to have had an
25 asymptomatic interval for several months. That's not at all

1 what Mr. Gause told him in the history.

2 THE COURT: We'll find out what he's going to say soon
3 enough, I expect.

4 MR. ROTHSTEIN: Thank you.

5 MR. LAWSON: Your Honor, are you going to make a ruling
6 when he comes about whether he's entitled to be paid to be
7 here?

8 THE COURT: What does the rule say?

9 MR. LAWSON: Well, the rule of deposition says that if
10 you're taking his deposition --

11 THE COURT: You have to pay him.

12 MR. LAWSON: -- costs -- My experience before when
13 there's been a dispute about this that the Court has set a
14 fee to do that, and it's just not -- he's upset, and I

15 understand why. He wants to be paid if he's going to be
16 here and have to shut down his medical practice tomorrow.
17 Apparently, his partner told Mr. Rothstein that he wanted to
18 be paid to come and he's trying to figure out if he should
19 have to come under this circumstances.

20 THE COURT: What does the rule say specifically?

21 MR. LAWSON: The rule doesn't say anything about trial
22 testimony. It says in deposition, Rule 26-c says that a
23 party taking a deposition shall be charged for reasonable
24 time and expenses. And if they're going to have Dr. Mills
25 come it seems only right that he would pay for being here.

1 MR. ROTHSTEIN: You know, Dr. Mills was on the roadway
2 and witnessed this accident, and I called him as a fact
3 witness. He has to shut down his medical practice to come
4 over here and testify and he gets a \$25.00 appearance fee
5 just like anybody else. I mean, you know, any witness who
6 comes in and takes a day of off work is losing money. You
7 know, I think the rule actually prohibits me from paying him
8 money in exchange for his -- this is interesting because --

9 THE COURT: Why is the defense worried about him getting
10 paid?

11 MR. CONNELL: Your Honor, we don't want to be in a
12 position where they expect -- he expects us to pay him for a
13 subpoena that he sent that he's upset about.

14 THE COURT: No. Y'all don't have to pay him.

15 MR. CONNELL: His deposition has already been taken by
16 them and that's what we're concerned about in that regard,
17 and Dr. Mills is concerned about it. He obviously, my
18 deposition was taken under Rule 43, you know, the medical --

19 THE COURT: Right.

20 MR. CONNELL: Why am I being subpoenaed to come testify
21 and not being paid and not being able to do what I'm
22 supposed to do. That was the purpose of the rule, so they
23 wouldn't have to come here and testify, if they had their
24 deposition taken.

25 THE COURT: Right.

1 MR. ROTHSTEIN: That rule, 43, specifically says that he
2 is still subject to subpoena to testify at trial.

3 And Your Honor, Dr. Mills completely pulled the rug out
4 from under me in this case. I subpoenaed him to testify at
5 a deposition initially. And I had a run in -- he actually
6 got a lawyer involved, and I said, look, I just want to take
7 his deposition. I said, I'll pay him as an expert if he's
8 going to help my case. And Mr. Byers said, yeah, you and
9 Dr. Mills are on the same page now. I agreed to pay Dr.
10 Mills sort of as an expert at the deposition, and then he
11 did a complete 180 on me once we got into the deposition.
12 He required me to pay \$1,000 up front before the deposition
13 started.

14 THE COURT: Either way, he's coming to Court and he's
15 going to testify pursuant to your subpoena, and if he gets
16 paid it will be through the plaintiff.

17 MR. LAWSON: Thank Your Honor.

18 THE COURT: Anything else?

19 MR. LAWSON: Your Honor, I learned yesterday that the
20 plaintiff intends to introduce the official 10 year driving
21 record of Nathan Dale Smithers.

22 THE COURT: That's not coming in.

23 MR. LAWSON: Okay. All right.

24 MR. ROTHSTEIN: Can I just be heard on that, Your Honor?

25 THE COURT: Okay.

1 action against us be dismissed, because there is no evidence
2 otherwise. They've taken both Hunts deposition and they
3 both indicate the same thing.

4 THE COURT: How does the plaintiff feel about that?

5 MR. ROTHSTEIN: Well, Your Honor, I thought I had
6 conceded that point at the summary judgment hearing. I'm
7 fine with negligent entrustment is out of this case. I
8 agree there's no evidence from deposition and discovery that
9 supports that claim, and we would abandon it.

10 THE COURT: All right.

11 MR. CONNELL: And, Your Honor, based on that, that --
12 the next question becomes this. What liability does the
13 owner of a vehicle have when his son is stopped by the
14 police and is on his way to the jail and his eventually
15 charged with public drunkenness. What liability does he
16 have and foreseeability, for another car coming along behind
17 that police car and striking it. The independent
18 intervening causation issue, because as Your Honor knows --

19 THE COURT: It appears that way to me, too.

20 MR. ROTHSTEIN: But, Your Honor, again, this gets into
21 the factual -- but for that car being in the --

22 THE COURT: Right. I'm just saying it appears that way
23 to me. I haven't heard the facts yet. I haven't heard the
24 testimony at this point in time.

25 MR. ROTHSTEIN: And, Your Honor, there's a specific

1 statute about parking your car on the roadway. So I think
2 it's clearly foreseeable that the reason you don't park your
3 car in the highway is because somebody may come along and
4 hit you. Whether that person is drunk or has all his
5 faculties, I don't think it matters. I think the question
6 is going to be but for him parking that car in the middle of
7 the road and him not pulling off like he should have, this
8 accident never would have happened. But he clearly started
9 the causal chain. He started --

10 THE COURT: The son did.

11 MR. CONNELL: The son did.

12 THE COURT: Right.

13 MR. CONNELL: But not the father. But under the family
14 purpose doctrine, they -- they acknowledged all of this in
15 the deposition, that the father owned the car. The son was
16 living in the household at the time. That the father
17 provided the car for the general use and convenience of the
18 family members. The son was using the car that was so
19 provided to him and under the family purpose doctrine it was
20 sort of form of respondeat superior, because the father
21 is in a better position to answer the damages, that head of
22 household is in a better position to answer the damages, the
23 law imposes liability --

24 THE COURT: I understand. Of course, I haven't heard
25 any testimony.

1 MR. ROTHSTEIN: Your Honor, there was a case in South
2 Carolina. I'm going to give you a copy of it. It falls
3 directly on point to this situation. It's called Gibson
4 verses Gross. It's a situation where a wreck happens, and
5 there's some cars -- I've got a copy for Your Honor --

6 THE COURT: Go ahead.

7 MR. ROTHSTEIN: -- there's some cars in the highway, and
8 there's an altercation between the drivers. So a third
9 driver stops to try to help, and while he's getting these
10 people disentangled from their fight another car comes along
11 and strikes him. So he sues the first guy who's in the road
12 because of the wreck, and the Supreme Court affirms the
13 trial court's denial of allowing that case to proceed.

14 THE COURT: If you'll give me that case, I'll read
15 carefully for tomorrow and we'll cross that bridge when we
16 get there.

17 MR. ROTHSTEIN: They talk about intervening causation
18 issue.

19 THE COURT: Right. Thank you, very much.

20 All right. Anything else?

21 MR. CONNELL: The other issue, Your Honor, I would like
22 you to consider is the issue of whether or not the family
23 purpose doctrine, when the driver is not a party can the
24 father be held liable for the acts of the son. And, Your
25 Honor, we believe that the case law is clear that under

1 these circumstances you can't hold the owner liable?

2 THE COURT: Do you have any case law you want me to look
3 at?

4 MR. CONNELL: Your Honor, there is some case law in this
5 file that you looked at. This was a summary judgment issue
6 that was brought to your attention. You heard this case way
7 back several years ago. There is not a South Carolina case
8 law on this issue. There is a Georgia case that indicates
9 that if the owner and the driver are not sued together then
10 you cannot bring a claim against the owner himself. Your
11 Honor, not summary judgment, we think that's an issue at
12 trial. Just want to bring that to your attention.

13 THE COURT: I'll take a look at it.

14 MR. CONNELL: And then, of course, Your Honor, we also
15 think that the family purpose doctrine, punitive damages do
16 not apply to that family purpose doctrine claim anyway, so
17 we wouldn't be liable for punitive damages as a matter of
18 law.

19 THE COURT: All right.

20 MR. CONNELL: If Your Honor thinks it should go forward.
21 We don't think it should go forward.

22 THE COURT: Anything else?

23 MR. ROTHSTEIN: No, Your Honor. I think you already
24 ruled on that issue and it wasn't years ago. I think it was
25 over the summer, this past summer as we were up for trial in

1 August. I think it was right before that trial.

2 THE COURT: It looks like -- do you remember it --

3 MR. ROTHSTEIN: I think you just did a Form 4 order, but
4 I would suggest that, you know, if that becomes an issue on
5 a directed verdict or something like that, we let the case
6 go to verdict -- then that way -- if I lose on that issue,
7 I'm certainly going to appeal it. You know, it would be
8 nice to have something -- if I win that Court of Appeals
9 could reinstate a verdict rather than having to retry the
10 whole case all over again.

11 THE COURT: We'll cross that bridge when we get there.
12 Anything else?

13 MR. LAWSON: Your Honor, we were provided this morning
14 with photographs. I still -- we still don't have copies of
15 them. For the record, I need to object to those. I mean, I
16 understand that plaintiff's counsel just got them yesterday
17 from the Conway City Police Department, but just so I have a
18 record that I objected to them.

19 THE COURT: Sure.

20 MR. LAWSON: So we object to them.

21 THE COURT: All right.

22 MR. ROTHSTEIN: I actually got them this morning. I've
23 shown them to both counsel. I have not had a chance to make
24 color copies.

25 THE COURT: If you would go ahead and make them color

1 copies.

2 MR. LAWSON: Thank Your Honor.

3 THE COURT: All right. Anything else?

4 MR. CONNELL: Your Honor, just that issue, you be
5 thinking about what plaintiff's counsel if going to be able
6 to say about the driver, Edward Hunt, Edward Raymond Hunt,
7 whether or not he's going to be able to argue that he's
8 under the influence. He wasn't convicted of that at the
9 time he was taken to jail. We -- it's our position that it
10 would be prejudicial for him to tell the jury, you know,
11 punish Edward Hunt for whatever Edward Raymond Hunt might
12 have done on the night of this wreck.

13 THE COURT: We can say he got pulled and he was stopped
14 in the left-hand lane and he was hauled off. Why don't we
15 just leave it at that. That lays the groundwork.

16 MR. CONNELL: He conceded that he knew he was drunk when
17 he saw the blue light.

18 THE COURT: I understand all that. We aren't going to
19 try that case. We're going to try this case.

20 All right. Anything else?

21 MR. LAWSON: No, Your Honor.

22 MR. ROTHSTEIN: I can't think of anything at the moment,
23 Your Honor. I'm sure something will come to me.

24 THE COURT: Okay. We'll be ready at 9:30 in the
25 morning.

1 REPORTER'S NOTE: HILDA M. JORDAN, CIRCUIT COURT REPORTER,
2 TOOK THE PROCEEDINGS HELD JANUARY 4, 2011 IN THIS CASE.)

3 (WHEREUPON, PLAINTIFF'S EXHIBITS NUMBERS 1, 2, 3,
4 AND 4 MARKED FOR IDENTIFICATION.)

5 MR. LAWSON: YOUR HONOR, I'D LIKE TO JUST TO GO
6 AHEAD AND RENEW OUR MOTION, OUR MOTION IN LIMINE ON THE
7 ISSUE ON THE MEDICAL TESTIMONY AND WOULD LIKE TO HAND UP A
8 MEMORANDUM JUST FOR THE FILE.

9 THE COURT: SURE, ALL RIGHT.

10 MR. LAWSON: AGAIN RENEW OUR OBJECTIONS TO THE
11 TESTIMONY FROM THE PLAINTIFF CONCERNING ANY TREATMENT PAST
12 JANUARY OF 2004.

13 THE COURT: IF YOU'D GO AHEAD AND BRING OUT THE
14 JURY.

15 MR. CONNELL: YOUR HONOR, WE ALSO JOIN IN THAT.

16 THE COURT: GOT YOU.

17 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
18 9:36 A.M.)

19 THE COURT: ALL RIGHT, GOOD MORNING, ALL RIGHT,
20 MS. CLERK, IF YOU'LL GO AHEAD AND SWEAR THE JURY.

21 (WHEREUPON, THE JURY WAS SWORN.)

22 THE COURT: THANK YOU VERY MUCH.

23 THE COURT: ALL RIGHT, MEMBERS OF THE JURY, I
24 JUST WANT TO GO OVER A FEW THINGS WITH YOU BEFORE WE
25 ACTUALLY START THIS TRIAL, JUST TO GIVE YOU A LITTLE

1 ME, JUST NOT THIS CASE UNTIL I TELL YOU TO. IT'S VERY VERY
2 SIMPLE, RIGHT NOW I JUST WANT YOU TO SIT BACK. I WANT YOU
3 RELAX, I WANT YOU JUST TO TAKE IT IN AS IT COMES TO YOU.
4 ALL RIGHT, PLAINTIFF, YOU'RE RECOGNIZED FOR YOUR OPENING
5 STATEMENT.

6 MR. ROTHSTEIN: MAY IT PLEASE THE COURT.

7 **OPENING STATEMENT**

8 **BY MR. ROTHSTEIN:**

9 WHEN A POLICE OFFICER FIRST BECOMES A POLICE
10 OFFICER, WHEN THEY GET, BEFORE THEY GET THE BADGE, BEFORE
11 THEY GET THE GUN, BEFORE THEY PUT ON THAT UNIFORM THEY'RE
12 REQUIRED TO TAKE AN OATH AND PART OF THAT OATH IS THE DUTY
13 TO SERVE AND PROTECT. I'M SURE YA'LL HAVE HEARD THAT
14 PHRASE BEFORE TO SERVE AND PROTECT, KIND OF BECOME A MOTTO
15 OF POLICE AGENCIES ACROSS THE COUNTRY FROM THE SMALLEST
16 DEPARTMENTS, THE ONE HORSE TOWNS TO THE, YOU KNOW, BIG
17 CITIES LIKE LOS ANGELES, SERVE AND PROTECT. THAT WAS DON
18 GAUSE'S CALLING AND THAT WAS WHAT HE WAS DOING ON THE NIGHT
19 OF FRIDAY NOVEMBER 14TH, 2003, AND INTO THE EARLY MORNING
20 OF SATURDAY NOVEMBER 15TH, 2003.

21 MR. GAUSE WAS ON DUTY, PROTECTING AND SERVING THE
22 CITIZENS OF CONWAY AND HE HIMSELF BECAME A VICTIM OF, A
23 VICTIM OF NOT ONE BUT TWO DRUNK DRIVERS THAT MORNING. HIS
24 LIFE WAS FOREVER CHANGED IN A BLINK OF AN EYE.

25 I INTRODUCED MYSELF YESTERDAY DURING JURY

1 SELECTION, AGAIN MY NAME IS DAVID ROTHSTEIN. I'M A LAWYER
2 FROM GREENVILLE, RECENTLY MOVED TO GREENVILLE, I GREW UP IN
3 COLUMBIA. I INTRODUCED YOU TO MR. GAUSE YESTERDAY AS WELL.
4 HE WAS BORN AND RAISED IN HORRY COUNTY, WENT TO SCHOOL
5 HERE, AND THIS IS MR. NICHOLS, JOHN NICHOLS. MR. NICHOLS
6 WAS NOT HERE YESTERDAY, HE HAD A HEARING IN MARION,
7 UNFORTUNATELY HAD TO BE OUT SO HE COULDN'T MAKE THE JURY
8 SELECTION. HE'S ALSO FROM COLUMBIA AND HE AND I HAVE THE
9 PLEASURE OF REPRESENTING MR. GAUSE IN THIS MATTER.

10 WE'RE HERE THIS WEEK SEEKING JUSTICE FOR MR.
11 GAUSE AND MR. GAUSE YOU'LL HEAR SOMETIMES IS REFERRED TO AS
12 THE PLAINTIFF IN THE CASE. HE'S THE ONE THAT ACTUALLY
13 INITIATED THIS LAWSUIT. OVER THE NEXT DAY OR DAY AND A
14 HALF OR SO YOU'RE GOING TO HEAR EVIDENCE OF WHAT HAPPENED
15 ON THAT FATEFUL MORNING. I'M JUST GOING TO SUMMARIZE WHAT
16 I BELIEVE THE EVIDENCE WILL SHOW YOU.

17 MR. GAUSE WAS ON DUTY ON PATROL THAT MORNING. HE
18 ACTUALLY WAS WORKING SORT OF A LATE SHIFT OR THE MIDNIGHT
19 SHIFT. I THINK HE CAME IN SOMETIME AROUND 7:45 OR 8:00
20 THAT NIGHT AND WAS SCHEDULED TO WORK TILL ABOUT 6:00 IN THE
21 MORNING, SO HE WAS VERY CLOSE TO THE END OF HIS SHIFT. HE
22 HAD JUST FILLED UP HIS CAR, IT'S ONE OF THE LAST THINGS THE
23 OFFICERS DO BEFORE THEY SWITCH THE SHIFTS IS MAKE SURE THE
24 CAR IS READY TO GO FOR THE NEXT DAY, THE NEXT SHIFT. HE
25 HAD FILLED UP THE CAR WITH GAS AND AROUND 5:00 IN THE

1 MORNING, MAYBE A LITTLE AFTER FIVE, HE RECEIVED A CALL FROM
2 DISPATCH AND THE DISPATCH SAID THAT A TROOPER, STATE
3 HIGHWAY PATROL OFFICER, HAD PULLED A PERSON WHO HE BELIEVED
4 WAS SUSPECTED OF DRUNK DRIVING, WAS WEAVING IN AND OUT OF
5 THE ROAD, AND THEY WANTED MR. GAUSE OR SOME OTHER OFFICER
6 FROM CONWAY TO COME ASSIST THE TROOPER ---

7 MR. CONNELL: OBJECTION, YOUR HONOR.

8 THE COURT: GROUNDS?

9 MR. CONNELL: YOUR HONOR, COULD WE APPROACH?

10 THE COURT: SURE.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
12 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
13 OF THE JURY AND THE COURT REPORTER.)

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY, AT
15 THIS POINT IN TIME I WANT TO EXPLAIN SOMETHING TO YOU,
16 THERE WAS A COMMENT MADE ABOUT AN INDIVIDUAL DRINKING AND
17 DRIVING, THAT IS NOT EVIDENCE, THAT IS NOT PROPER, THAT IS
18 NOT FOR YOU TO CONSIDER. PLEASE WIPE THAT FROM YOUR MIND
19 AT THIS POINT IN TIME. ALL RIGHT, IF YOU'D CONTINUE.

20 MR. ROTHSTEIN: (CONTINUING) GETTING BACK TO THE
21 DISPATCH, THE HIGHWAY PATROLMAN COULDN'T PROCESS THE SCENE
22 SO HE HAD ASKED FOR BACK UP FROM THE CITY OF CONWAY, THIS
23 WAS INSIDE THE CITY LIMITS, SO TWO CONWAY POLICE OFFICERS
24 RESPONDED, MR. GAUSE AND NOW DETECTIVE CHRIS WILLIAMSON,
25 WHO YOU'LL HEAR FROM IN A LITTLE WHILE. THE TROOPER

1 THE BURDEN OF PROOF IS ON THE PLAINTIFF AND WHEN YOU THINK
2 OF THE BURDEN OF PROOF YOU THINK OF THOSE SCALES THAT
3 YOU'VE HEARD ABOUT WHEN YOU WERE IN HIGH SCHOOL, YOU KNOW
4 THE LITTLE SCALES THAT YOU PUT IN FRONT OF YOU AND THE
5 BLIND LADY AND YOU DO ALL THAT, THE BURDEN OF PROOF IS ON
6 THE PLAINTIFF TO SHOW THAT MR. HUNT DID SOMETHING WRONG. I
7 CHALLENGE THEM NOW AND THROUGH THIS TRIAL TO SHOW ONE
8 REASON WHY MR. HUNT SHOULD BE HELD LIABLE FOR SOMETHING
9 HAPPENED WHEN HE WAS HOME IN HIS BED ON THAT NIGHT AND I
10 THINK THAT YOU WILL FIND AT THE END OF THIS TRIAL THAT
11 EDWARD HUNT DID NOTHING WRONG AND THAT HE'S A VICTIM JUST
12 LIKE MR. GAUSE, THANK YOU.

13 THE COURT: THANK YOU. MR. NICHOLS (SIC), IF
14 YOU'D CALL YOUR FIRST WITNESS.

15 MR. ROTHSTEIN: CALL DON D. GAUSE TO THE STAND.

16 DON D. GAUSE

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 MADAM CLERK: STATE YOUR NAME FOR THE COURT,
19 PLEASE, SIR?

20 THE WITNESS: DON DIEGO GAUSE.

21 DIRECT EXAMINATION

22 BY MR. ROTHSTEIN:

23 Q DON, WILL YOU TELL THE JURY WHERE YOU GREW
24 UP?

25 A I GREW UP IN THE LONGS PART OR THE

1 BROOKSVILLE AREA OF HORRY COUNTY.

2 Q WHERE WERE YOU ACTUALLY BORN?

3 A LORIS, SOUTH CAROLINA.

4 Q AND WHERE DID YOU GO TO HIGH SCHOOL?

5 A MYRTLE BEACH HIGH SCHOOL.

6 Q DID YOU GRADUATE FROM HIGH SCHOOL?

7 A YES, SIR.

8 Q WHAT YEAR?

9 A 1998.

10 Q WHEN DID YOU FIRST BECOME INVOLVED IN LAW
11 ENFORCEMENT?

12 A DECEMBER 1994.

13 Q AND CAN YOU TELL THE LADIES AND GENTLEMEN
14 OF THE JURY WHY YOU DECIDED TO BECOME A POLICE OFFICER?

15 A AFTER FINISHING COLLEGE I WANTED TO COME
16 BACK HOME. I WANTED TO BE ABLE TO SERVE MY COMMUNITY THE
17 BEST I COULD.

18 Q AND WHAT DIFFERENT POLICE DEPARTMENTS HAVE
19 YOU ACTUALLY WORKED FOR AS A POLICE OFFICER?

20 A I STARTED OFF AT MYRTLE BEACH BACK IN 1994
21 AND THEN IN 2003 I CAME TO CONWAY.

22 Q DO YOU RECALL WHAT TIME OF THE YEAR IN 2003
23 IT WAS THAT YOU STARTED AT THE CONWAY POLICE DEPARTMENT?

24 A AUGUST 2003.

25 Q NOW I'D LIKE TO TURN YOUR ATTENTION TO THE

1 EVENING OF FRIDAY NOVEMBER 14TH, 2003, AND INTO THE EARLY
2 MORNING HOURS OF SATURDAY NOVEMBER 15TH, 2003? I KNOW YOU
3 RECALL THAT DATE VIVIDLY, WHAT, WHAT SHIFT, OR WERE YOU
4 WORKING THAT NIGHT?

5 A YES.

6 Q AND WHAT SHIFT WERE YOU WORKING?

7 A THE MIDNIGHT SHIFT.

8 Q OKAY, AND WHEN YOU REFER TO THE MIDNIGHT
9 SHIFT WHAT HOURS DOES THAT GENERALLY ENCOMPASS?

10 A THEY, THEY CALL IT FROM 8 TO PROBABLY
11 ABOUT 6 IN THE MORNING BUT WE, WE NORMALLY START OUR SHIFT
12 AROUND 7:45 FOR BRIEFING, SO IT'S FROM 7:45 TO 6 A.M.

13 Q SO YOU WERE SCHEDULED TO GET OFF AT 6 A.M.

14 ---

15 A YES.

16 Q --- ON SATURDAY?

17 A YES.

18 Q AND WHAT HAPPENED TOWARD THE END OF THAT
19 SHIFT?

20 A NORMALLY, YOU KNOW, 45 MINUTES TO AN HOUR
21 BEFORE THE END OF SHIFT THE SUPERVISOR REQUESTS THAT, YOU
22 KNOW, WE FUEL OUR VEHICLES UP ON OUR ON, POLICE OUR
23 VEHICLES, CHECK MAKE SURE THERE'S NO DAMAGES, AND FUEL OUR
24 VEHICLES.

25 Q HAD YOU DONE THAT AT THE TIME YOU RECEIVED

1 THE DISPATCH CALL?

2 A YES.

3 Q AND, AND TELL ME ABOUT THE DISPATCH CALL,
4 WHAT WAS IT?

5 A OUR DISPATCHER REQUESTED THE UNITS IN THE
6 AREA OF HIGHWAY 501 TO RESPOND TO THE AREA OF HIGHWAY 501
7 AND THE STEAM PLANT.

8 Q AND WITHOUT GETTING INTO THE, THE NATURE
9 OF, OF THE SUSPICIONS DID YOU RESPOND TO THAT CALL?

10 A YES.

11 Q OKAY, DID ANYONE ELSE FROM THE CONWAY
12 POLICE DEPARTMENT RESPOND?

13 A YES, MY SENIOR OFFICER CHRISTOPHER
14 WILLIAMSON HE ALSO RESPONDED.

15 Q DO YOU RECALL WHO, WHO ARRIVED FIRST
16 BETWEEN YOU AND WILLIAMSON?

17 A I WAS, I THINK I WAS CLOSER THAN HE WAS SO
18 I, I GOT THERE FIRST BECAUSE I PULLED IN BEHIND THE
19 TROOPER'S VEHICLE.

20 Q NOW WHICH PART OR WHERE WERE YOU COMING
21 FROM TO ARRIVE ON THE SCENE?

22 A I WAS COMING FROM MY GAS UP AREA AND I WAS
23 COMING FROM THE SCOTCHMAN SO I WAS RIGHT NEAR THE CENTER OF
24 TOWN AREA.

25 Q IS THAT NEAR THE INTERSECTION OF 378?

1 A THERE ABOUT, YES, SIR.

2 Q NOW WHEN YOU ARRIVED ON THE SCENE DESCRIBE
3 WHAT YOU OBSERVED?

4 A WHEN I ARRIVED THAT WAS BEFORE THE CENTER
5 DIVIDE WAS PUT IN I, I SAW THE BLUE IN COLOR FIREBIRD
6 TRANS-AM TYPE VEHICLE AND THE SOUTH CAROLINA HIGHWAY PATROL
7 VEHICLE PARKED BEHIND IT WITH THE BLUE LIGHTS ACTIVATED.

8 Q OKAY, WHICH LANE OF TRAFFIC WERE THEY
9 ACTUALLY PARKED IN?

10 A THE INSIDE LANE CLOSER TO THE CENTER THE
11 DOUBLE YELLOW LINES HE WAS PARKED THERE.

12 Q OKAY, AND THAT PART OF 501 IS THERE AN
13 EMERGENCY LANE OFF TO THE RIGHT?

14 A YES, SIR.

15 Q IS THERE ALSO A GUARD RAIL OR IT KIND OF
16 DROPS OFF AT SOME POINT?

17 A YES, SIR.

18 Q OKAY, IS THERE ENOUGH ROOM OR HOW MUCH ROOM
19 IS THERE WOULD YOU SAY BETWEEN THE EDGE OF THE ROAD AND THE
20 GUARD RAIL?

21 A PROBABLY ENOUGH FOR MAYBE, YOU KNOW, A CAR
22 COULD PARK THERE, MAYBE 8 FEET, 9 FEET I GUESS.

23 Q OKAY, NOW WHEN YOU FIRST CAME ON 501 TOWARD
24 THE SCENE DID YOU HAVE ANY TROUBLE SEEING THE TROOPER'S
25 CAR?

1 A NO, NO, HE WAS, HE WAS ALL LIT UP OUT
2 THERE.

3 Q AND WHAT WAS THE WEATHER LIKE THAT MORNING?

4 A IT WAS CLEAR BUT, YOU KNOW, WITH THE STEAM
5 PLANT THAT, THAT ROLL OFF FROM THE STACKS SO YOU GOT A
6 LITTLE PRESENCE OF A LITTLE FOG BUT IT WAS NOT LOW.

7 Q AND IF I UNDERSTAND YOUR TESTIMONY YOU, YOU
8 CAME FROM CONWAY PASSED THE SCENE YOU TURNED AND CAME RIGHT
9 BEHIND THE TROOPER?

10 A THAT'S CORRECT.

11 Q OKAY, AND WHERE WAS THE TROOPER WHEN YOU,
12 WHEN YOU GOT THERE?

13 A HE WAS OUTSIDE OF, WELL HE WAS STANDING
14 OUTSIDE WITH, WITH THE GENTLEMAN THAT WAS DRIVING I GUESS
15 THE BLUE IN COLOR FIREBIRD.

16 Q AND AT SOME POINT DID YOU LEARN THE NAME OF
17 THE DRIVER OF THE FIREBIRD?

18 A YES, MR. HUNT.

19 Q AND DO YOU REMEMBER WHAT HIS FIRST NAME
20 WAS?

21 A I THINK NATHAN.

22 Q I'M SORRY?

23 A EDWARD NATHAN, NO, NATHAN IS THE ---

24 Q DO YOU SEE EDWARD HUNT THE DRIVER OF THAT
25 CAR IN THE COURTROOM?

1 A YES, SIR, THE GENTLEMAN BACK THERE IN THE
2 BACK.

3 Q OKAY, AND HE'S THE ONE WEARING A MAROON ---

4 A YES.

5 Q --- SWEATER?

6 A YES, SIR.

7 Q NOW AFTER YOU, HOW, HOW SOON AFTER YOU GOT
8 THERE DID, DID MR. OR DID OFFICER WILLIAMSON COME?

9 A SOON AFTERWARDS CAUSE I THINK HE WAS
10 HELPING COLLECT PAPERWORK OR WHATEVER BUT IT WAS, IT WAS
11 VERY SHORTLY AFTER I GOT THERE HE SHOWED UP.

12 Q OKAY, DID YOU AND, AND WILLIAMSON TALK TO
13 THE TROOPER?

14 A YES, BOTH OF US COLLECTIVELY WE WERE AROUND
15 AND TRYING TO FIND OUT WHAT HE HAD HERE, WHAT HE NEEDED
16 BACK UP FOR. AT THAT TIME HE EXPLAINED TO US THAT, YOU
17 KNOW, HE WAS IN ROUTE TO COLUMBIA FOR A SPECIAL DUTY
18 ASSIGNMENT AND HE BELIEVED THERE WERE ISSUES WITH, WITH
19 THIS GENTLEMAN'S ABILITY TO DRIVE THE VEHICLE THIS EVENING,
20 SO, THEREFORE, HE REQUESTED OUR ASSISTANCE TAKING HIM OFF
21 THE ROAD FOR THE EVENING.

22 Q OKAY, AND DID YOU AND, AND MR. WILLIAMSON
23 HELP THE TROOPER?

24 A YES, WE DID.

25 Q OKAY, AND WHAT DID YOU, WHAT DID YOU GUYS,

1 YOU AND WILLIAMSON DO AT THAT POINT?

2 A MR., MR. HUNT WAS ALREADY OUT OF HIS
3 VEHICLE, YOU KNOW, WE WENT TO HIM AND WE TALKED TO HIM AND
4 I GUESS THE STRONG ODOR OF ALCOHOL IS, YOU KNOW, IT WAS
5 OBVIOUS ON HIM. WE DIDN'T OBSERVE HIM DRIVING.

6 MR. CONNELL: OBJECTION, YOUR HONOR.

7 THE COURT: SUSTAINED, ANY REFERENCE TO ALCOHOL
8 JUST DISREGARD COMPLETELY. IT IS NOT EVIDENCE; IT IS NOT
9 SOMETHING FOR YOU TO CONSIDER IN THIS TRIAL, IF YOU WILL
10 CONTINUE. YES?

11 MR. CONNELL: WE WOULD OBJECT IF HE ASKS THE
12 QUESTION AGAIN WE WOULD MOVE FOR MISTRIAL BASED ON YOUR
13 HONOR'S CONTINUED ADMONISHMENTS THAT THEY NOT DO THAT.

14 THE COURT: I UNDERSTAND THAT.

15 MR. ROTHSTEIN: (CONTINUING)

16 Q MR. GAUSE, IF YOU'LL TRY AND REFRAIN FROM
17 TALKING ABOUT THE NATURE OF, OF THE STOP OF MR. HUNT, I'M
18 SORRY I DIDN'T EXPLAIN THAT TO YOU; SO WHAT DID OFFICER
19 WILLIAMSON DO AT THAT POINT?

20 A HE AGREED, HE WAS SENIOR OFFICER, HE AGREED
21 THAT HE WOULD GO AHEAD AND TRANSPORT MR. HUNT TO J. REUBEN
22 LONG AND THAT IF I WOULD STAND BY FOR THE TOW TRUCK AND DO
23 THE PAPERWORK ON THE TOW TRUCK BECAUSE IT WAS TIME FOR US
24 TO GET OFF AND WE WORKED AS A TEAM SO THAT'S WHAT WE DID.

25 Q AND DID, DID MR. WILLIAMSON ACTUALLY TAKE

1 MR. HUNT FROM THE SCENE?

2 A YES, HE DID.

3 Q OKAY, AND AT SOME POINT DID THE TROOPER
4 TAKE OFF TOWARD COLUMBIA LIKE HE SAID HE WAS GOING TO?

5 A YES, SIR.

6 Q AND WHAT DID YOU DO AFTER WILLIAMSON AND
7 THE TROOPER LEFT THE SCENE?

8 A AFTER BOTH OF THEM, WELL ACTUALLY WHILE
9 THEY WERE LEAVING I THEN POSITIONED MY VEHICLE UP CLOSER
10 BEHIND THE BLUE IN COLOR FIREBIRD, ABOUT MAYBE 10 FEET
11 BEHIND IT, AND THEN I PROCEEDED TO INVENTORY THE VEHICLE
12 AND CHECK FOR DAMAGES AND GET A FILE NUMBER FROM DISPATCH,
13 INDICATE THE MILEAGE, CHECK THE VIN MAKE SURE IT MATCHED
14 THE DMV INDICATION ON WHAT TYPE OF VEHICLE IT SHOULD BE,

15 AND THEN I CAME BACK TO MY PATROL CAR TO INDICATE THAT ON
16 THE TOW SHEET.

17 Q OKAY, WHERE, WHERE DID YOU FILL OUT THAT
18 PAPERWORK?

19 A BECAUSE OF WHERE I WAS POSITIONED I, I, I
20 GOT AS MUCH INFORMATION AS I COULD WHILE OUTSIDE THE
21 VEHICLE AND THEN I RETURNED TO MY PATROL VEHICLE.

22 Q WHEN YOU GOT BACK INSIDE THE CAR DID YOU
23 SECURE YOUR SEAT BELT?

24 A NO, BECAUSE, BECAUSE I, I MAY HAVE MISSED
25 SOMETHING SO I NEED TO GET BACK OUT AND, YOU KNOW, CHECK

1 THE CAR AGAIN OR CHECK FOR SOME STUFF THAT I DIDN'T WRITE
2 DOWN AS FAR AS WHAT'S ACTUALLY PROPERTY INSIDE THE VEHICLE
3 SO I WAS BACK AND FORTH, BACK AND FORTH BUT I DIDN'T GET A
4 CHANCE TO GO BACK AGAIN.

5 Q NOW AT THE TIME IN NOVEMBER OF 2003 WHAT
6 WAS THE CONWAY POLICE DEPARTMENT'S POLICY ABOUT REMOVING A
7 CAR FROM A SCENE WHERE THE DRIVER WAS TAKEN INTO CUSTODY?

8 A THE POLICY DUE TO POSSIBLE DAMAGE TO THE
9 VEHICLE WHETHER IT'S A STANDARD OR AUTOMATIC OR WHATEVER
10 THE POLICY IS NOT TO MOVE ANY VEHICLE AFTER A PERSON HAS
11 BEEN REMOVED FOR A VEHICLE IT'S NOT OUR POSITION TO DRIVE
12 IT THAT, THAT KIND OF KEEPS DOWN COMPLAINTS OF DAMAGE TO
13 VEHICLES OR CLUTCHES GONE OUT AND STUFF LIKE THAT.

14 Q NOW DID YOU SECURE THE SCENE IN ANY WAY TO
15 WARN MOTORISTS EITHER COMING OR FROM EITHER DIRECTION ABOUT
16 THE DANGER WITH, WITH THE STOPPED VEHICLE?

17 A AS BEST I COULD MY PATROL VEHICLE, WHICH
18 WAS AN OLDER ONE, WAS EQUIPPED WITH THE LIGHT BAR THAT IT
19 NOT ONLY HAD BLUE LIGHTS IN THE BACK AND FRONT IT ALSO HAD
20 THE DIRECTIONAL TYPE YELLOW CAUTION LIGHT FIXED IN THE BACK
21 OF IT SO I ACTUALLY I TURNED THAT ON. I TURNED MY HAZARD
22 LIGHTS ON AND I HAD MY BLUE LIGHTS RUNNING, BECAUSE OF
23 WHERE I WAS AT I, I LIT THE ROAD UP.

24 Q HOW LONG WERE YOU AT THE SCENE THERE BY
25 YOURSELF WAITING FOR THE TOW TRUCK UNTIL SOMETHING ELSE

1 HAPPENED?

2 A I PROBABLY WAS THERE MAYBE 5, BETWEEN 5 AND
3 10 MINUTES.

4 Q NOW WAS TRAFFIC PASSING YOU ON THE RIGHT
5 SIDE OF THE ROAD ON HIGHWAY 501?

6 A YES, WELL NOT MUCH TRAFFIC THAT TIME OF
7 MORNING WAS COMING INTO CONWAY BUT SOME WAS GOING OUT
8 TOWARDS MYRTLE BEACH.

9 Q DID YOU NOTICE ANY CARS PASS YOU ON THE
10 RIGHT HEADING INTO CONWAY?

11 A YES, A FEW.

12 Q DESCRIBE WHAT HAPPENED NEXT TO THE, TO THE
13 JURY?

14 A WHILE PUTTING ALL MY INFORMATION ABOUT THE
15 TOW, PROPERTY THAT I OBSERVED IN THE VEHICLE, MILEAGE AND
16 ALL THAT, NEXT THING I KNOW I HEAR THIS LOUD CRASH, BOOM
17 BOOM, AND THEN ALL OF A SUDDEN SMOKE WHICH IT'S ACTUALLY
18 NOT SMOKE, IT'S DUST, IT WAS MY AIR BAG DEPLOYMENT IN MY
19 PATROL VEHICLE, THEN I LOOK UP AND I'M GOING INTO THIS
20 FIREBIRD AND THAT'S, AND THAT'S WHERE IT STOPS AT FOR A FEW
21 SECONDS.

22 Q AND WAS THERE ANY WARNING PRIOR TO THE
23 IMPACT?

24 A NO, SIR.

25 Q DID YOU HEAR ANY SCREECHING TIRES?

1 A NO, SIR.

2 Q DID YOU HEAR ANY, ANY HONKING HORNS?

3 A NO, SIR.

4 Q DID YOU SEE ANYTHING LIKE LIGHTS COMING AT
5 YOU IN THE REAR VIEW MIRROR?

6 A NO, SIR.

7 Q OKAY, HOW HARD WOULD YOU, I MEAN CAN YOU
8 DESCRIBE HOW HARD THE IMPACT WAS?

9 A HE HIT ME SO HARD I WAS PROBABLY ABOUT 10
10 FEET BEHIND THE BLUE FIREBIRD ---

11 Q WAS YOUR TRANSMISSION IN, IN ---

12 A IT WAS IN PARK.

13 Q OKAY, WAS IT KIND OF LIKE AN EMERGENCY
14 BRAKE OR ANYTHING?

15 A NO, WELL I HAD ONE BUT IT WASN'T ENGAGED.

16 Q OKAY?

17 A HE ACTUALLY SLAMMED ME. ACTUALLY I WAS
18 SANDWICHED BETWEEN THE FIREBIRD AND JUST A LITTLE LATER I
19 LEARNED IT WAS A RED IN COLOR CHEVY S10. HE ACTUALLY
20 KNOCKED ME INTO IT CAUSING DAMAGE TO THAT FIREBIRD AS WELL
21 AS OBVIOUS OTHER DAMAGE.

22 Q WHAT WAS THE NATURE OF THE DAMAGE TO YOUR
23 PATROL CAR?

24 A FRONT END DAMAGE, EXTENSIVE REAR END
25 DAMAGE.

1 Q WAS THAT CAR EVER DRIVABLE AGAIN?

2 A I THINK, NO, IT WAS TOTALED.

3 Q NOW WHAT'S THE FIRST THING YOU RECALL AFTER
4 HEARING THAT LOUD CRASH AND BEING THROWN INSIDE THE
5 COMPARTMENT OF THE CAR?

6 A THE NEXT THING I'M A BIG GUY BUT I LOOK UP
7 AND THERE'S THIS BIGGER GUY STANDING OUTSIDE MY PATROL CAR
8 AND ASKING ME AM I ALL RIGHT, AM ALL RIGHT, AND THAT'S WHAT
9 I REMEMBER.

10 Q DID YOU LATER LEARN THAT GENTLEMAN'S NAME?

11 A YES, IT WAS MR. JOHN BAYNE.

12 Q OKAY, AND WHAT DID MR. BAYNE SAY TO YOU OR
13 DO AT THAT POINT?

14 A REAL, REAL FRIENDLY GUY, HE, HE, HE PULLED
15 MY DOOR OPEN AND, AND HELPED GET ME OUT AND, AND PULLED ME
16 TO, PULLED ME OUT OF THE CAR AND TOOK ME TO THE REAR
17 PASSENGER SIDE OF THE CAR WHICH IS, YOU KNOW, ACTUALLY TRY
18 AND KEEP ME OUT OF THE ROAD CAUSE I WAS DISORIENTED; AND
19 THEN HE, HE MADE SURE I WAS ALL RIGHT AND THEN HE WENT TO
20 THE RED PICKUP TRUCK AND GOT THAT GUY AND MADE SURE HE WAS
21 ALL RIGHT.

22 Q AND DID HE ACTUALLY PHYSICALLY HELP YOU GET
23 OUT OF THE VEHICLE?

24 A YES, YES, HE DID.

25 Q ALL RIGHT, WHAT HAPPENED AFTER THAT?

1 A AFTER, AFTER THAT, YOU KNOW, LIKE I SAID HE
2 CHECKED ON THE OTHER GUY AND THE OTHER GUY MR. SMITHERS HE
3 GOT OUT OF THE VEHICLE, THEN HE CAME BACK TO ME MAKING SURE
4 I'M ALL RIGHT, AND THEN BY THAT TIME I GATHERED MY BEARINGS
5 AND WAS ABLE TO CONTACT STATION THAT I NEEDED ASSISTANCE
6 REFERENCE AN AUTO ACCIDENT.

7 Q DID YOU HAVE A RADIO ON YOUR PERSON OR DID
8 YOU HAVE TO GO BACK INTO THE CAR?

9 A NO, I HAD, I HAD A PERSONAL WALKIE TALKIE.

10 Q DID THE DRIVER OF THE CAR THAT, THAT
11 SLAMMED INTO YOUR PATROL CAR, THE PICKUP TRUCK, THE S-10,
12 DID HE GET OUT OF THE VEHICLE?

13 A YES.

14 Q CAN YOU DESCRIBE, I GUESS AT SOME POINT YOU
15 LEARNED HIS NAME AS WELL?

16 A YES.

17 Q AND WHAT WAS HIS NAME?

18 A MR. SMITHERS.

19 Q NOW DESCRIBE MR. SMITHERS ACTIONS AFTER HE
20 GOT OUT OF HIS TRUCK?

21 A HE PUT ME IN THE MIND OF A KIND OF SURFER
22 TYPE CHARACTERISTIC. HE WAS LIKE, LO, MAN, WHAT, WHAT
23 HAPPENED, YOU KNOW IT WAS, IT WAS ALMOST LIKE HE WAS
24 WANTING, WANTING TO KNOW WHAT HAPPENED AND WHAT'S GOING ON
25 AND IT WAS, TO THINK ABOUT IT NOW IT'S KIND OF COMICAL BUT

1 THAT'S, THAT'S, THAT'S THE FRAME OF MIND HE PUT ME IN WHEN
2 HE WAS ASKING WHAT WAS GOING ON.

3 Q DID YOU, DID YOU, HOW CLOSE WERE YOU TO, TO
4 MR. SMITHERS?

5 A A COUPLE OF FEET.

6 Q DID YOU ---

7 A HE HAD US, MR. BAYNE HAD US TOGETHER, HE
8 PUT US RIGHT BESIDE EACH OTHER AND AT THE SAME TIME TRYING
9 TO KEEP US OUT OF THE ROADWAY ONCOMING TRAFFIC.

10 Q AND YOU WERE KIND OF LIKE RIGHT IN THE
11 MIDDLE OF THE, LIKE THE DOUBLE YELLOW LINE?

12 A YES, SIR.

13 Q DID YOU NOTICE ANY, TELL ME WHAT YOU
14 OBSERVED ABOUT MR. SMITHERS AT THAT POINT?

15 A HE WAS JUST UNSTEADY AND JUST, HE KEPT
16 SAYING THE SAME THING OVER AND OVER AND HE HAD AN ODOR
17 ABOUT HIM BUT HE JUST KEPT ON SAYING THE SAME THING OVER
18 AND OVER AND OVER AGAIN AND AT THAT POINT I WAS WAITING FOR
19 MY SUPERVISOR TO ARRIVE.

20 Q DID MR. SMITHERS APPEAR TO BE INJURED IN
21 ANY WAY?

22 A NO, HE, HE DIDN'T COMPLAIN OF ANY, ANY
23 INJURY, ANY HAND INJURY. IT WASN'T OBVIOUS OF ANY BLOOD OR
24 ANYTHING ON HIM.

25 Q OKAY, WHAT HAPPENED NEXT?

1 A MY, MY SUPERVISOR AND BOTH, I GUESS BOTH
2 SUPERVISORS RESPONDED AND THEY REQUESTED EMS ALSO RESPOND.

3 Q HOW QUICKLY DID THE EMS TECHNICIANS ARRIVE
4 ON THE SCENE?

5 A FAIRLY QUICK CAUSE THEY WERE RIGHT, RIGHT
6 CLOSE TO THE AREA WHERE WE WERE AT, THEY GOT THEIR PRETTY
7 QUICK.

8 Q AFTER YOU GOT OUT OF THE CAR DESCRIBE FOR
9 THE JURY, YOU KNOW, WHAT YOUR SORT OF PHYSICAL STATE WAS OR
10 YOUR MENTAL, I MEAN WHAT WAS IT LIKE HAVING GONE THROUGH
11 THAT IMPACT?

12 A I'M KIND OF STILL IN SHOCK BUT IT WAS, IT
13 WAS MORE OR LESS JUST, ACTUALLY I WAS AT A POINT DIDN'T
14 REALLY KNOW WHAT TO DO, STANDING RIGHT THERE AND THAT'S
15 REALLY ALL I DID WAS CAUSE MR. BAYNE KEPT US, KEPT US BOTH
16 RIGHT THERE.

17 Q WAS YOUR ADRENALIN KIND OF RUSH, I MEAN
18 WERE YOU, TELL ME WHAT WAS YOUR HEART --

19 A YEAH, MY HEART WAS STILL PUMPING CAUSE I
20 JUST, IT WAS AN AUTO ACCIDENT, BUT, BUT OTHER THAN THAT I
21 WAS, YOU KNOW, RIGHT THERE.

22 Q NOW DID THE EMS TECHNICIANS ASSESS YOU AND
23 MR. SMITHERS ONCE THEY ARRIVED?

24 A ONCE THEY RESPONDED THEY, THEY ASSESSED US
25 BOTH AT THE SAME, ONLY ONE UNIT RESPONDED, AND THEY MADE A

1 DETERMINATION TO TRANSPORT BOTH OF US TO GRAND STRAND FOR
2 FURTHER OBSERVATION.

3 Q AND HOW WERE YOU TAKEN TO THE HOSPITAL?

4 A WE RODE BOTH IN THE SAME AMBULANCE.

5 Q ALL RIGHT, DID YOU TALK TO MR. SMITHERS OR
6 DID HE SAY ANYTHING TO YOU ON THE WAY TO THE HOSPITAL?

7 A THE SAME THING THAT HE HAD BEEN SAYING
8 WANTING TO KNOW WHAT HAPPENED, WHAT WAS GOING ON.

9 Q NOW WHAT HAPPENED WHEN YOU, WHEN THE
10 AMBULANCE ARRIVED AT THE EMERGENCY ROOM?

11 A THEY TOOK BOTH OF US OUT AND THEY TOOK ME
12 TO A ROOM AND THEN THEY TOOK HIM TO A ROOM.

13 Q AT THAT POINT DID YOU HAVE ALL YOUR, YOUR
14 GEAR ON, YOUR PATROL GEAR ON?

15 A I, NO, I THINK IF I RECALL CORRECTLY, I'M
16 NOT SURE IF MY, IF MY SUPERVISOR TOOK MY GUN BELT AT THE
17 SCENE, I REALLY DON'T RECALL THAT PART. I DON'T RECALL AT
18 WHAT POINT MY GUN BELT WAS TAKEN FOR SAFETY ISSUES BUT I
19 KNOW I STILL HAD MY VEST ON. MY VEST WAS STILL ON AT THE
20 HOSPITAL.

21 Q OKAY, AT SOME POINT DID YOU TAKE OFF THE,
22 YOU'RE TALKING ABOUT A BULLETPROOF VEST?

23 A YES.

24 Q AT SOME, NOW HOW HEAVY WOULD YOU SAY THAT
25 BULLETPROOF VEST IS?

1 A MAYBE FIVE, SIX POUNDS MAYBE.

2 Q HOW DOES IT FASTENED UNDER YOUR CLOTHING?

3 A IT'S A VELCRO APPARATUS; IT'S ADJUSTABLE
4 HERE. IT'S ADJUSTABLE WITH TWO STRAPS IN THE FRONT.

5 Q IS IT A FAIRLY TIGHT FIT?

6 A IF YOU WANT IT TIGHT, YES.

7 Q OKAY, NOW AFTER YOU TOOK THE AND GOT TO THE
8 HOSPITAL AND TOOK OFF YOUR, YOUR BULLETPROOF VEST, DID YOU
9 NOTICE ANY DISCOMFORT OR PAIN?

10 A INITIALLY NOT REALLY BUT AFTER I LAID THERE
11 FOR A WHILE AND I GUESS KIND OF CALMED DOWN A LITTLE BIT MY
12 BACK IT JUST STARTED BOTHERING ME AND I GUESS THAT'S WHEN
13 THE SWELLING WAS STARTING TO SET IN.

14 Q OKAY, AND WHEN YOU SAY SWELLING WHAT PART
15 OF YOUR BODY DID YOU NOTICE WAS SWELLING?

16 A MY BACK.

17 Q HOW LONG WOULD YOU SAY YOU STAYED AT THE
18 HOSPITAL OR THE E.R. THAT MORNING?

19 A MAYBE, MAYBE THREE OR FOUR HOURS MAYBE.

20 Q AND DO YOU RECALL WHAT YOUR CHIEF
21 COMPLAINTS WERE WHEN THE NURSES AND DOCTORS ATTENDED TO YOU
22 AT THE, AT THE E.R.?

23 A I THINK MY, MY KNEE WAS BOTHERING ME CAUSE
24 OF THE IMPACT THREW ME, THREW MY KNEE UP AGAINST THE
25 DASHBOARD AND MY LOWER BACK.

1 Q HOW DID YOU ACTUALLY GET HOME FROM THE
2 HOSPITAL THAT DAY?

3 A A FRIEND OF MINE THAT LIVED IN CONWAY WAS
4 ABLE TO COME PICK ME UP AND TAKE ME, I LIVE IN MYRTLE
5 BEACH, THEY WERE ABLE TO COME PICK ME UP AND TAKE ME HOME.
6 I LEFT MY CAR HERE IN CONWAY.

7 Q WERE YOU SCHEDULED TO WORK ANY MORE THAT,
8 THE REST OF THAT WEEKEND, SATURDAY OR SUNDAY?

9 A ACTUALLY I THINK I WAS SCHEDULED TO WORK,
10 YES, YES, I WAS.

11 Q OKAY, NOW IN THE DAYS, DID YOU ACTUALLY GO
12 INTO WORK?

13 A NO.

14 Q OKAY, IN THE DAYS FOLLOWING THE COLLISION
15 DESCRIBE TO THE JURY HOW YOU WERE FEELING?

16 A DAYS AFTER WHICH THE DOCTOR PRETTY MUCH
17 WARNED ME THAT WOULD NEED TO TAKE IT EASY BUT THEY TOLD ME
18 THAT I MAY EXPERIENCE SOME DISCOMFORT WHICH I DID AND THE
19 SWELLING SEEMED TO PROGRESSIVELY GOTTEN WORSE.

20 Q AND WHAT EFFECT DID THE SWELLING HAVE ON
21 YOUR BODY?

22 A JUST IN THE, IN THE LOWER BACK REGION AND
23 THEN I STARTED EXPERIENCING TINGLING IN MY LEGS AND PAIN
24 SHOOTING DOWN MY LEGS.

25 Q IN YOUR ENTIRE LIFE HAD YOU EVER

1 EXPERIENCED THAT TYPE OF SHOOTING PAIN IN YOUR LEGS OR THE
2 NUMBNESS?

3 A NO.

4 Q CAN YOU DESCRIBE WHAT THE NUMBNESS WAS
5 LIKE?

6 A IT'S EQUIVALENT TO IF YOU, YOU KNOW, IF YOU
7 SIT FOR A LONG TIME AND YOUR LEGS FALL ASLEEP BUT IT'S,
8 IT'S IN BOTH LEGS AT THE SAME TIME. YOUR LEGS ARE ASLEEP
9 AND THEN YOU, IT'S NOT LIKE YOU CAN STAND UP AND SHAKE IT
10 OFF. IT'S JUST LIKE THEY'RE STILL RADIATING, RADIATING AND
11 THEN IT JUST GOES AWAY.

12 Q DID YOU SEEK FURTHER MEDICAL ATTENTION
13 AFTER COMING HOME FROM THE EMERGENCY ROOM?

14 A YES, PER POLICY THE CITY OF CONWAY HAS A
15 HOUSE DOCTOR THAT WE ATTEND SO HE CAN MAKE ANY FURTHER
16 ASSESSMENT TO THE VALUE OF ANY INJURY SO WHICH THE NEXT
17 BUSINESS DAY WOULD HAVE BEEN MONDAY. I WAS SCHEDULED TO GO
18 IN AND JUST VISIT WITH HIM TO SEE EXACTLY WHAT'S GOING ON.

19 Q AND DO YOU RECALL WHAT YOU TOLD THE DOCTOR
20 AT THAT POINT?

21 A YES, I EXPLAINED TO HIM THE ACCIDENT CAUSE
22 HE WASN'T AWARE OF ANYTHING OTHER THAN WHAT I WOULD TELL
23 HIM. I EXPLAINED TO HIM THE, THE EVENTS OF THE NIGHT OF OR
24 THE MORNING OF THE 15TH AND WHAT I HAD EXPERIENCED SINCE
25 THAT NIGHT.

1 Q DID HE REFER YOU TO ANY OTHER HEALTH CARE
2 PROVIDERS?

3 A YES, DR. YATES OVER AT CONWAY MEDICAL ON
4 SINGLETON RIDGE ROAD HE MADE A REFERRAL TO THAT DOCTOR WHO
5 HAD MAYBE A LITTLE BIT MORE KNOWLEDGE OF WHY I WAS
6 EXPERIENCING THE NUMBNESS AND ALL THAT STUFF.

7 Q IS THAT DR. YATES FROM COASTAL ORTHOPEDIC
8 ASSOCIATES?

9 A YES.

10 Q AND DID YOU UNDERSTAND WHAT TYPE OF DOCTOR
11 DR. YATES IS?

12 A NOT AT FIRST I DIDN'T, NO.

13 Q DID YOU GET AN APPOINTMENT TO SEE DR. YATES
14 AT SOME POINT?

15 A YES, SIR.

16 Q DO YOU RECALL HOW SOON AFTER THE COLLISION
17 YOU SAW DR. YATES?

18 A I DON'T RECALL THE EXACT.

19 Q WAS IT WITHIN A MONTH?

20 A WITHIN, YES, SIR.

21 Q AND WHAT DID DR. YATES DO FOR YOU?

22 A HE, HE EXAMINED ME, HE, HE HEARD MY, MY
23 ISSUES AND WE WERE TRYING TO DETERMINE THE, THE, THE ORIGIN
24 OF THE, THE PAIN, WHY THE SWELLING STILL EXISTS. I THINK
25 AT THE HOSPITAL I WAS GETTING SOME, SOMETHING FOR, FOR, FOR.

1 THE SWELLING AND THAT REALLY WASN'T WORKING SO THAT WAS HIS
2 JOB TO DETERMINE THE ORIGIN OF THE SWELLING AND TO
3 DETERMINE HOW COULD WE RELIEVE THAT AND TALK ABOUT THE
4 SHOOTING PAIN AND THE NUMBNESS.

5 Q WAS THE PAIN AND THE NUMBNESS SOMETHING
6 THAT YOU EXPERIENCED LIKE ON A DAILY BASIS SINCE THE
7 ACCIDENT?

8 A YES, SIR, IT'S ONE OF THOSE THINGS THAT IT
9 COMES AND GOES AND IT WAS SOMETHING THAT I JUST WASN'T
10 ACCUSTOMED TO SO I DIDN'T HOW TO, HOW TO DEAL WITH IT IN
11 THAT POINT.

12 Q DID DR. YATES ORDER ANY TYPE OF DIAGNOSTIC
13 TESTS OR ANY SCANS?

14 A AT FIRST I THINK WE, HE, HE JUST ORDERED
15 MAYBE XRAYS, MAYBE SEE IF ANYTHING CAN SHOW UP ON XRAYS
16 CAUSE I THINK AT CONWAY MEDICAL THE NIGHT, THE MORNING OF
17 THE INCIDENT WE ALSO DID XRAYS TO TRY TO SEE IF THERE WAS
18 ANYTHING OBVIOUS THROUGH XRAYS.

19 Q AT SOME POINT DID YOU, DO YOU RECALL WHILE
20 YOU WERE UNDER THE TREATMENT OF THE COASTAL ORTHOPEDICS
21 GETTING AN MRI DONE?

22 A YES, SIR, CAUSE THE XRAYS FROM WHAT I
23 UNDERSTAND XRAYS ONLY SHOW LIMITED INFORMATION FOR FURTHER,
24 FOR FURTHER EXPLANATION OF, OF CERTAIN THINGS OF THE BODY
25 YOU HAVE DO AN MRI, IT'S MORE DETAILED. IT GIVES YOU A

1 BRIGHTER PICTURE.

2 Q OKAY, DO YOU RECALL -- SORRY, I DIDN'T MEAN
3 TO INTERRUPT YOU, BUT DO YOU RECALL WHAT, I MEAN HAD YOU
4 EVER HAD AN MRI DONE BEFORE?

5 A NO, SIR.

6 Q OKAY, TELL ME ABOUT THE EXPERIENCE OF
7 HAVING AN MRI, WHAT IS THAT LIKE?

8 A IT'S, YOU MEAN FOR A BIG GUY. THE MACHINE
9 I THINK THE FIRST TIME I DID AN MRI BECAUSE OF MY STATURE
10 THEY HAD TO FIND AN, THE OPEN MRI MACHINE. IT WASN'T AS
11 SIMPLE AS DOING A REGULAR MRI BUT IT'S KIND OF SCARY GOING
12 INTO THE TUNNEL BUT IT'S, IT'S DIFFERENT.

13 Q TELL THE JURY, IF NO ONE'S HAD AN MRI WHAT,
14 WHAT EXACTLY WHAT YOU DO WHILE THE PROCEDURE IS GOING ON?

15 A YOU LAY, YOU'RE LAYING ON A, ON A BASIC
16 TABLE AND YOU HAVE THIS BIG DOUGHNUT LOOKING APPARATUS
17 THAT, THAT ACTUALLY FOR ME THAT YOU, THAT YOU WOULD GO,
18 THAT WOULD SLIDE YOU UP IN CERTAIN INTERVALS TAKING
19 PICTURES OF YOUR BODY AS IT GOES ALONG. IT'S ALMOST LIKE
20 TIME LAPSED PHOTOGRAPHY. I THINK THE OLDER ONES WOULD
21 ACTUALLY ENCASE YOU IN THERE FOR A PERIOD OF TIME AND DO IT
22 SAME, THAT SAME PROCEDURE.

23 Q DID THE TABLE SLIDE INTO THIS SORT OF
24 DOUGHNUT SHAPED APPARATUS WITH YOU JUST LAYING THERE?

25 A YES.

1 Q OKAY, AND WERE YOU ALLOWED TO MOVE OR WERE
2 YOU STRAPPED IN OR HOW ---

3 A STRAPPED, YEAH, YOU'RE TOLD TO BE STILL
4 BECAUSE THE PICTURES.

5 Q NOW DO YOU RECALL WHETHER DR. YATES DID THE
6 MRI OR SOMEONE ELSE ORDERED THE MRI?

7 A I DON'T RECALL WHO, WHO ACTUALLY ORDERED
8 FOR THE MRI.

9 Q OKAY, NOW AT SOME POINT DID DR. YATES REFER
10 YOU TO ANOTHER DOCTOR IN COASTAL ORTHOPEDICS PRACTICE?

11 A YES.

12 Q AND WHO WAS THAT?

13 A DR. MILLS.

14 Q DID DR. YATES TELL YOU WHY HE WAS REFERRING
15 YOU TO DR. MILLS?

16 A BECAUSE ---

17 MR. LAWSON: OBJECTION, YOUR HONOR.

18 THE COURT: RESPONSE?

19 MR. ROTHSTEIN: THIS JUST, I'M NOT OFFERING IT
20 FOR THE TRUTH OF THE MATTER ASSERTED, I'M JUST, IT'S A PART
21 OF HIS MEDICAL DIAGNOSIS.

22 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION.

23 MR. LAWSON: OKAY.

24 MR. ROTHSTEIN: (CONTINUING)

25 Q DID YOU HAVE AN UNDERSTANDING OF WHAT TYPE

1 OF DOCTOR DR. YATES WAS REFERRING YOU TO?

2 A A SPECIALIST.

3 Q OKAY, WHAT TYPE OF SPECIALIST?

4 A A SPINE SPECIALIST.

5 Q OKAY, AND WAS THAT SPINE SPECIALIST DR.
6 MILLS?

7 A YES.

8 Q OKAY, AND WHAT DID, WHAT DID YOU DO WHEN
9 YOU FIRST MET WITH DR. MILLS?

10 A REHASHED THE EVENTS OF NOVEMBER 15TH AND
11 ONCE AGAIN BASICALLY AT THAT TIME MORE DETAIL. HE WANTED
12 TO KNOW EXACTLY MY POSITION, SEAT BELTED, NON SEAT BELTED,
13 BASICALLY HE WANTED TO GET ALL THE BACKGROUND INFORMATION
14 HE COULD SO HE COULD DETERMINE WHAT HAPPENED AND HOW IT
15 HAPPENED.

16 Q DID DR. MILLS DISCUSS WITH YOU THE RESULTS
17 OF THE MRI THAT HAD BEEN DONE?

18 A YES, SIR.

19 Q OKAY, DID HE TELL YOU WHAT HIS DIAGNOSIS OR
20 FINDINGS FROM THE MRI WERE?

21 A YES, SIR, HE DID.

22 Q OKAY, AND WHAT DID HE TELL YOU?

23 MR. LAWSON: OBJECTION, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 MR. ROTHSTEIN: (CONTINUING)

1 Q HAD YOU EVER BEEN, PRIOR TO GOING TO
2 COASTAL ORTHOPEDICS HAVE YOU EVER BEEN, HAD YOU EVER BEEN
3 DIAGNOSED WITH A HERNIATED IN YOUR BACK BEFORE?

4 A NO, SIR.

5 Q DID YOU AND DR. MILLS DISCUSS POSSIBLE
6 TREATMENT OPTIONS FOR YOUR CONDITION?

7 A YES, SIR.

8 Q DID DR. MILLS MENTION SURGERY ---

9 MR. LAWSON: OBJECTION, YOUR HONOR.

10 THE COURT: SUSTAINED.

11 MR. ROTHSTEIN: YOUR HONOR, MAY I, MAY I
12 APPROACH?

13 THE COURT: SURE.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
16 OF THE JURY AND THE COURT REPORTER.)

17 MR. ROTHSTEIN: (CONTINUING)

18 Q NOW AT THAT TIME WHEN YOU WERE MEETING WITH
19 DR. MILLS TO DISCUSS THE, THE MRI WAS SURGERY DISCUSSED,
20 THE POSSIBILITY OF SURGERY DISCUSSED?

21 MR. LAWSON: SAME OBJECTION, YOUR HONOR.

22 THE COURT: I'LL ALLOW THAT, JUST DON'T GET INTO
23 WHAT WAS SAID, YES OR NO.

24 THE WITNESS: (CONTINUING)

25 A WHENEVER I MET WITH DR. MILLS HE, HE DID

1 REVIEW WITH ME MY CONDITION AND AT THAT POINT HE DID REVIEW
2 MY CONDITION AND TREATMENT OPTIONS.

3 Q OKAY, DO YOU RECALL HEARING THE WORD
4 SURGERY ---

5 A YES.

6 Q --- DURING YOUR DISCUSSIONS?

7 A YES.

8 Q WHAT WAS YOUR REACTION WHEN YOU HEARD THE
9 WORD SURGERY?

10 A I'M A BIG GUY BUT I, I'VE NEVER BEEN CUT
11 ON, I'VE NEVER HAD A BROKEN BONE. I'M, I'M NOT FOR THE
12 KNIFE, I'M SCARED OF IT.

13 Q AND DID YOU DISCUSS THAT WITH, YOUR CONCERN
14 WITH DR. MILLS?

15 A YES, I, I, I TOLD HIM THAT, HE LAUGHED AND
16 IT WAS BASICALLY WELL, YOU KNOW ARE THERE ANY OTHER OPTIONS
17 ---

18 MR. LAWSON: OBJECTION, YOUR HONOR.

19 THE COURT: SUSTAINED.

20 MR. ROTHSTEIN: (CONTINUING)

21 Q OKAY, TRY NOT TO SAY WHAT DR. MILLS SAID TO
22 YOU IN THAT MEETING IF YOU COULD?

23 A I WAS TELLING YOU WHAT I SAID.

24 Q OKAY?

25 A WHAT I TOLD HIM WAS THAT ARE THERE ANY

1 OTHER OPTIONS AT THAT POINT.

2 Q DID HE REVIEW WITH YOU THE OTHER OPTIONS?

3 A YES, YES, SIR, WE SPOKE ABOUT SEVERAL
4 DIFFERENT OPTIONS.

5 Q OKAY, DID YA'LL TALK ABOUT ANY LESS
6 INVASIVE OR MORE CONSERVATIVE APPROACHES TO ALLEVIATING
7 YOUR BACK PAIN AT THAT TIME?

8 A YES, SIR.

9 Q AND WHAT DID YOU DECIDE, WHAT COURSE OF
10 TREATMENT DID YOU DECIDE TO DO WITH DR. MILLS AT THAT
11 POINT?

12 A BECAUSE I'M THINKING THAT, THAT THE LESS
13 INVASIVE THAT WE CAN BE THE BETTER FOR ME AND THE FIRST, WE
14 FIRST STARTED OFF WITH PHYSICAL THERAPY.

15 Q DID DR. MILLS RELEASE YOU AT SOME POINT,
16 SHORTLY AFTER YOU FIRST MET WITH DR. MILLS DID HE RELEASE
17 YOU BACK TO WORK, TO GO BACK TO THE CITY OF CONWAY?

18 A YES, HE RELEASED ME FOR TEMPORARY LIGHT
19 DUTY.

20 Q OKAY, DID HE PUT ANY KIND OF RESTRICTION ON
21 YOU GOING BACK TO WORK?

22 A YES, WE HAD LIFTING RESTRICTIONS.

23 Q OKAY, DID YOU, WHAT WAS YOUR, YOUR REACTION
24 WHEN YOU SAW THE RESTRICTIONS ON YOUR ABILITY TO GO BACK TO
25 WORK?

1 A YOU KNOW IT'S, IT WAS JUST, IT WAS JUST
2 ORDERED SO THAT'S REALLY, I REALLY THAT'S WHAT I NEEDED TO
3 DO.

4 Q WHY WERE YOU INTERESTED IN GETTING BACK TO
5 WORK AT THAT POINT?

6 A BECAUSE I, I LOVED THE JOB, THAT'S WHAT
7 I'VE BEEN DOING FOR A NUMBER OF YEARS.

8 Q OKAY, AT SOME POINT AFTER DR. MILLS
9 SUGGESTED THIS LIGHT DUTY DID YOU ASK TO BE RELEASED TO
10 FULL DUTY?

11 A YES, AFTER HE RELEASED ME BACK TO LIGHT
12 DUTY I CALLED HIM AND I ASKED, YOU KNOW, IS THERE ANY WAY
13 POSSIBLE YOU COULD PUT ME BACK ON FULL DUTY AND HE, YOU
14 KNOW, HE ASKED ME A FEW QUESTIONS ON HOW YOU FEELING AND,
15 YOU KNOW, YOU KNOW, AND THE THE POLICE DEPARTMENT, OF
16 COURSE, HAD AN ISSUE WITH IT BECAUSE THEY WANTED TO KNOW
17 WHAT I WOULD BE ABLE TO PERFORM. SO THEY AT ONE POINT THEY
18 HAD TO ACTUALLY SEND OVER A JOB DESCRIPTION SHOWING WHAT I
19 SHOULD BE ABLE TO DO IN ORDER TO MAKE SURE THAT WE WERE ALL
20 READING FROM THE SAME SHEET OF MUSIC WHENEVER IT CAME TO
21 RELEASING ME.

22 Q NOW WHEN DR. MILLS GIVE YOU SOME SORT OF A
23 SLIP OR STATEMENT THAT ALLOWED YOU TO GO BACK TO WORK AFTER
24 THAT?

25 A YES, HE SIGNED, SIGNED I DON'T KNOW IF YOU

1 CALL IT AN ORDER OR WHATEVER BUT IT ACTUALLY IS A RELEASING
2 BACK TO FULL DUTY WITHOUT RESTRICTIONS.

3 Q OKAY, AT THAT POINT WHEN YOU WENT BACK,
4 WERE RELEASED BACK TO WORK TELL ME WHAT YOUR BACK
5 CONDITION, WHAT WERE YOUR, WERE YOU STILL HAVING PAIN AND
6 SWELLING AND, AND TINGLING AND NUMBNESS?

7 A YES, EVERYTHING WAS STILL PRESENT BUT IT
8 WAS JUST I'M A YOUNG GUY, I'M A BIG GUY, STOCKY GUY, SOME
9 THINGS I THINK I COULD BEAR, YOU KNOW, IT'S NOT THE END OF
10 THE WORLD, I'M STILL HERE. I DIDN'T HAVE A BROKEN ARM OR
11 ANYTHING, SO, YOU KNOW, I, I TRIED TO WORK THROUGH THAT
12 STUFF, YOU KNOW. I WRAP UP WITH MY VEST AND, AND NORMALLY
13 BY THE END OF THE SHIFT I'M IN PAIN BUT WHILE I'M WORKING
14 IT KIND OF KEEPS ME GOING SO I WAS ABLE TO ENDURE IT FOR A
15 WHILE.

16 Q NOW AFTER DR. MILLS RELEASED YOU OR SIGNED
17 THAT AUTHORIZATION TO RELEASE YOU BACK TO FULL DUTY DID YOU
18 FOLLOW THROUGH WITH THESE INJECTIONS INTO YOUR BACK MORE
19 CONSERVATIVE TREATMENT APPROACH?

20 A YES, LATER ON WE DID COME, WE DID START
21 DOING OR WE HAD DONE WHAT THEY CALL THE FACET INJECTIONS.

22 Q AND TELL THE JURY WHAT'S INVOLVED IN A
23 FACET INJECTION?

24 A WELL I DON'T KNOW IF YOU'VE EVER INJECTED A
25 TURKEY BEFORE BUT THESE BIG NEEDLES HE, HE WOULD, HE WOULD

1 USE THE BIG NEEDLES TO, TO SHOOT THIS SUBSTANCE, I DON'T
2 KNOW IF IT WAS STEROIDS, I DON'T KNOW REALLY WHAT, WHAT THE
3 SUBSTANCE IS, BUT IT'S SUPPOSED TO RELIEVE THE PAIN IN THE
4 NERVE ENDINGS THAT ARE CAUSING THE PAIN.

5 Q TELL THE JURY HOW BIG THIS NEEDLE IS, I
6 MEAN WERE YOU AWAKE DURING THIS PROCEDURE?

7 A I WAS AWAKE.

8 Q OKAY, DID YOU SEE THE NEEDLE?

9 A YES, SIR, IT'S A LONG NEEDLE AND I DON'T
10 KNOW IT'S A LONG NEEDLE. IT'S ALMOST LIKE LOOKING DOWN
11 THE, IF YOU'VE EVER DID A TURKEY YOU'LL KNOW WHAT KIND OF
12 NEEDLE WE'RE TALKING ABOUT, IT'S A, IT'S KIND OF THICK
13 NEEDLE.

14 Q AND WHEN YOU TALK ABOUT TURKEY LIKE
15 INJECTING SOME SORT OF MARINADE OR SOMETHING IN A TURKEY?

16 A YES, YES.

17 Q NOW WERE THE INJECTIONS THEMSELVES PAINFUL?

18 A YES.

19 Q OKAY, WAS THE, HOW LONG DID IT TAKE OR, OR
20 DID THE AFFECT OF THIS INJECTION, THE PAIN OF THE NEEDLE
21 GOING INTO YOUR BACK LAST FOR A CERTAIN PERIOD OF TIME?

22 A YEAH, HE, HE WAS RIGHT ON IT WITH THAT.
23 HE, YOU KNOW, HE SAID IT WOULD RELIEVE SOME OF MY, MY
24 ISSUES AND IT DID, AND BUT IT SEEMED LIKE IT WORE OFF
25 FASTER THAN I WOULD HOPE IT TO, YOU KNOW, CAUSE I WOULD GO

1 TO HIS OFFICE, HE WOULD, HE WOULD DO WHAT HE'S SUPPOSED TO
2 DO. I COME OUT, OKAY, AND, YOU KNOW, MAYBE A MONTH, TWO
3 MONTHS LATER RIGHT BACK TO THE SAME THING AGAIN, SO, YOU
4 KNOW, IT HELPED FOR, FOR A PERIOD OF TIME, YES.

5 Q I GOT A FLU SHOT THE OTHER DAY AND THEY
6 SAID THERE WAS SOME SORENESS AT THE INJECTION SITE. DID
7 YOU EXPERIENCE THAT TYPE OF SORENESS AFTER THE FACET
8 INJECTIONS, SOME SORT OF, THE NEEDLE SORT OF --

9 A THAT WAS TEMPORARILY, ANY, ANY SORENESS
10 THAT I EXPERIENCED THAT WAS REALLY TEMPORARY AND ACTUALLY
11 MINOR COMPARED TO WHAT I HAD BEEN EXPERIENCING SO --

12 Q NOW HOW DID YOU, AFTER THE, YOU KNOW,
13 COUPLE OF DAYS OR A WEEK OR SO AFTER THE FACET INJECTION
14 HOW DID YOU, HOW DID THAT HELP YOU OR HOW DID THAT AFFECT
15 YOUR PAIN LEVEL FROM THE NUMBNESS AND THE TINGLING AND
16 STUFF?

17 A WITH, WITH TRYING TO GET BACK INTO THE
18 SWING OF THINGS THE INJECTIONS THEY HELPED, THEY REALLY
19 HELPED.

20 Q HOW LONG DID THEY HELP?

21 A LIKE I SAID MAYBE, MAYBE A COUPLE OF
22 MONTHS, COUPLE TO THREE MONTHS MAYBE.

23 Q WHAT HAPPENED AFTER THAT COUPLE OR THREE
24 MONTH PERIOD?

25 A RIGHT BACK AND IN PAIN AGAIN.

1 Q NOW WHAT WERE YOU DOING AT THIS POINT IN
2 TERMS OF YOUR CAREER AT THE POLICE DEPARTMENT AFTER THAT
3 FIRST SET OF FACET INJECTIONS?

4 A WHENEVER, AFTER HE RELEASED ME BACK TO WORK
5 I GO TO WORK LIKE ANYBODY ELSE AND PERFORM MY DUTIES AS, AS
6 PRESCRIBED.

7 Q OKAY, DESCRIBE TO THE JURY ABOUT WHAT TIME
8 FRAME WE'RE TALKING ABOUT, YOU HAD THE ACCIDENT IN NOVEMBER
9 OF 2003; WHEN DO YOU RECALL RECEIVING THAT, THAT SET OF
10 FACET INJECTIONS?

11 A IT WAS I THINK LATER 2004.

12 Q IT WAS JUST AFTER THE FIRST OF THE YEAR
13 SOMETIME IN THAT EARLY SPRING MAYBE?

14 A MAYBE, I DON'T KNOW THE EXACT DATE.

15 Q DO YOU RECALL WHEN YOU RETURNED BACK TO
16 WORK FULL DUTY?

17 A NOT THE ACTUAL DATE, NO.

18 Q OKAY, NOW AS, AS THE FACET, THE EFFECT OF
19 THE FACET INJECTIONS BEGAN TO WEAR OFF DESCRIBE AGAIN FOR
20 THE JURY HOW THAT AFFECTED YOUR PAIN LEVEL AND YOUR WORK
21 LIFE?

22 A WELL BECAUSE I'M NOT A MEDICINE KIND OF GUY
23 I DON'T LIKE NARCOTICS, YOU KNOW THE BEST I CAN DO IS, YOU
24 KNOW, SOME MILD ASPIRIN OR SOMETHING LIKE THAT BECAUSE WITH
25 ME HAVING TO DRIVE I CAN'T USE ANY HEAVY NARCOTICS WHILE

1 DRIVING THE PATROL CAR SO, YOU KNOW, A LOT OF THAT STUFF I
2 TRY TO DEAL WITH. LIKE I SAID BEING STRAPPED UP WITH THE
3 VEST THAT, THAT KIND OF HELPS BUT WHEN YOU TAKE THE VEST
4 OFF THERE YOU GO. THE SWELLING IS THERE AND, AND LAYING IN
5 THE BED THE PAIN IS THERE, BUT YOU, YOU TRY TO WORK THROUGH
6 IT, YOU TRY TO WORK THROUGH IT, YOU TRY TO WORK THROUGH IT
7 BECAUSE THAT'S WHAT YOU DO.

8 Q NOW OVER THE SPRING AND INTO THE SUMMER OF
9 2004 TELL THE JURY HOW YOU WERE FEELING?

10 A I HAVE MY GOOD DAYS AND MY BAD DAYS.

11 Q WERE THERE SOME PARTS OF YOUR JOB THAT
12 CAUSE YOU TO EXPERIENCE MORE PAIN OR NUMBNESS THAN, THAN
13 OTHER PARTS?

14 A YES, IT'S KIND OF FUNNY BUT WHENEVER
15 DEPENDING ON WHAT SHIFT YOU'RE WORKING IF I, IF I WAS STUCK
16 OUT IN WHAT WE CALL DELTA SECTION, WHICH IS THE FAR END OF
17 TOWN WHERE THERE'S REALLY NOT A LOT OF BUILDINGS TO CHECK,
18 LIKE IF I WORK DOWNTOWN AND YOU HAVE TO ACTUALLY GET OUT
19 AND WALK THE BEAT YOUR LEGS GET NUMB A LOT QUICKER OUT
20 THERE BECAUSE, YOU KNOW, YOU DON'T HAVE A LOT OF FOOT
21 TRAFFIC. BUT WHEN YOU WORK DOWNTOWN YOU GET TO GET OUT AND
22 PULL THE DOORS AND STUFF SO YOU, YOU KIND OF GET THAT BLOOD
23 CIRCULATING AND IT KIND OF HELPS YOU OUT A LITTLE BIT.

24 Q ON THOSE DAYS WHERE YOU SPENT MOST OF THE
25 DAY OR MOST OF THE PATROL IN YOUR CAR HOW DID THAT AFFECT

1 YOUR, YOUR BACK AND YOUR PAIN AND NUMBNESS?

2 A IT DIDN'T MAKE FOR A GOOD SHIFT CAUSE AT
3 THE END OF THE DAY WHEN YOU GET HOME YOUR BACK IS ALL PUFFY
4 AND, AND YOUR LEG'S NUMB AND --

5 Q AS THE SUMMER WENT BY HOW, DID YOUR
6 CONDITION, DESCRIBE WHAT HAPPENED, WAS IT THE SAME, DID IT
7 INCREASE, DECREASE, PAIN LEVEL, DID YOU NOTICE ANY
8 DIFFERENCE?

9 A JUST I MEAN YOU'RE LIKE I SAID IT'S LIKE A
10 SEESAW, YOU'RE UP AND DOWN, UP AND DOWN, YOU HAVE GOOD DAYS
11 AND BAD DAYS, YOU KNOW. WHEN YOU COME BACK FROM, THE GOOD
12 DAYS WOULD BE TO LET YOU KNOW WAS WHEN YOU COME BACK FROM
13 YOUR BREAK, WHEN YOU COME BACK FROM YOUR BREAK YOU HADN'T
14 WORN YOUR VEST IN A COUPLE OR THREE DAYS DEPENDING IF
15 YOU'RE ON YOUR TWO DAY BREAK OR YOUR THREE DAY BREAK, THOSE
16 ARE YOUR GOOD DAYS BECAUSE YOU'VE BEEN WITHOUT THAT VEST
17 STRAPPED IN FOR A COUPLE OF DAYS. YOUR BAD DAYS ARE THE
18 SECOND DAY OF YOUR SHIFT, YOU KNOW, YOU'VE BEEN WEARING
19 THIS VEST FOR TWO HOURS AT THE TIME NOW IT STARTS TO GET A
20 LITTLE BAD AND YOU'VE ONLY GOT MAYBE TWO OR THREE MORE DAYS
21 TO GO BEFORE YOU'RE OFF AGAIN, THOSE ARE THE BAD DAYS.

22 Q DID YOU HAVE ANY PROBLEMS AT WORK AT THE
23 END OF THE SUMMER GOING INTO THE FALL 2004?

24 A YES.

25 Q OKAY, DESCRIBE WHAT TYPES OF PROBLEMS OR

1 ANY INCIDENTS YOU HAD WITH YOUR BACK AT THAT POINT?

2 A WHENEVER, WHEN WORKING I GUESS I WAS
3 DISPATCHED TO THE AREA OF 6TH AVENUE AND HIGHWAY 501,
4 NORMAL DAY, NOTHING OUT OF THE ORDINARY, JUST, YOU KNOW,
5 HOW THAT BEACH TRAFFIC IS.

6 Q WHAT TIME OF THE DAY WAS THIS DISPATCH
7 WOULD YOU SAY?

8 A IT WAS PROBABLY, IT WAS UP IN THE DAY,
9 MAYBE AROUND ABOUT 11 OR SO, 11, 12:00 OR SO.

10 Q AND WHAT, DO YOU RECALL WHAT THE DISPATCH
11 ASKED YOU TO RESPOND TO?

12 A REFERENCE TO A DISTRESSED VEHICLE AT 6TH
13 AVENUE AND HIGHWAY 501.

14 Q OKAY, AND THAT'S JUST PAST THE INTERSECTION
15 AT 378, RIGHT?

16 A YES, SIR.

17 Q DESCRIBE THAT AREA OF 501. WAS IT A
18 RELATIVELY FLAT PLACE, WAS IT A HILL, WAS IT A DECLINE,
19 WHAT WAS, WHAT WAS THE ROAD LIKE AT THAT SPOT?

20 A RIGHT BEFORE WHERE THAT BIG OAK TREE IS
21 RIGHT THERE IN CONWAY IT HAD A SLIGHT INCLINE. IT'S NOT
22 TOTALLY FLAT, BUT IT'S A SLIGHT GRADE TO IT GOING, GOING TO
23 THAT SAV-WAY STATION.

24 Q OKAY, AND WHEN YOU ARRIVED ON THE SCENE
25 WITH THE DISTRESSED MOTORIST TELL THE JURY WHAT YOU

1 OBSERVED OR DID?

2 A WHEN I ARRIVED IT WAS A FULL SIZE, I THINK
3 IT WAS A TOYOTA OR HONDA, IT'S A FOREIGN CAR, A FEMALE WAS
4 OUTSIDE THE CAR JUST BALLING HER EYES OUT, JUST CRYING AND
5 CRYING AND CRYING. WHEN I, WHEN I WENT TO HER AND I ASKED
6 HER, YOU KNOW, WHAT HAD HAPPENED, I THOUGHT MAYBE IT WAS A
7 HIT AND RUN OR SOMETHING LIKE THAT, BUT IT WASN'T THAT, HER
8 CAR HAD JUST WENT OUT ON HER.

9 Q AND WAS THE TRAFFIC BACKED UP AT THAT AREA?

10 A YEAH, THE TRAFFIC WAS BACKED UP AND PEOPLE
11 WERE HONKING THEIR HORNS AND, YOU KNOW, IT PROBABLY JUST
12 AGGRAVATED HER BECAUSE SHE WAS JUST, SHE WAS JUST CRYING
13 AND ON THE PHONE AT THE SAME TIME AND CRYING AND --

14 Q HOW OLD WAS THIS WOMAN?

15 A SHE PROBABLY WAS EARLY 20'S, IF THAT.

16 Q AND WHAT DID YOU DO AT THAT POINT?

17 A AT THAT, AT THAT TIME BECAUSE OF THE, YOU
18 KNOW, THE TRAFFIC AND ALL THAT STUFF I ACTUALLY I TOLD HER,
19 I SAID WELL GET IN YOUR CAR, PUT IT IN NEUTRAL AND THEN LET
20 ME GO AHEAD AND PUSH YOU OUT OF THE ROADWAY. AT THAT POINT
21 WE DIDN'T HAVE ANY, ANY OF THOSE BUMPER GUARDS YOU SEE ON
22 CERTAIN POLICE CARS THAT, THOSE, THAT'S WHAT THAT'S FOR TO
23 ACTUALLY PUSH CARS OUT OF THE ROAD. WE DIDN'T HAVE THAT ON
24 ANY OF OUR PATROL VEHICLES.

25 Q OKAY, HOW FAR DID YOU HAVE TO PUSH THE CAR

1 TO GET TO THIS SAV-WAY STATION?

2 A IT MAY HAVE BEEN 75, 50 TO 75 FEET WHICH
3 SHE WAS JUST RIGHT, ACTUALLY RIGHT IN FRONT OF THAT CHURCH
4 WHERE SHE COULD HAVE TURNED RIGHT INTO THE SAV-WAY, BETWEEN
5 THE SAV-WAY AND THE CHURCH SO SHE WAS ALMOST THERE.

6 Q WOULD YOU SAY FROM WHERE YOU'RE SITTING
7 THERE TO THE END OF THE COURTROOM IS THAT ABOUT THE
8 DISTANCE THAT YOU HAD TO PUSH THE CAR, MAYBE A LITTLE
9 LONGER?

10 A THERE OR A LITTLE LONGER, YEAH.

11 Q OKAY, WAS PUSHING A CAR SOMETHING THAT
12 YOU'D BEEN REQUIRED TO DO ROUTINELY AS PART OF YOUR JOB AS
13 A POLICE OFFICER BOTH IN MYRTLE BEACH AND THEN AT CONWAY?

14 A YES, WHENEVER I WAS FIRST HIRED BACK IN THE
15 STONE AGES I CAN SAY BACK IN '94 WE AS A PART OF OUR
16 ENTRANCE TEST THAT THE CITY OF MYRTLE BEACH PUT ON, YOU
17 KNOW, WE DO THE RUN AROUND THE TRACK, WE RUN THE STADIUM AT
18 DOUG SHAW STADIUM. THEY ALLOW US TO REST AND THEN WE WOULD
19 ACTUALLY PUSH A CAR A CERTAIN NUMBER OF FEET THEN WE WOULD
20 DRAG A HUNDRED OR SO POUND DUMMY A CERTAIN NUMBER OF FEET
21 SO, YES, IT WAS A PART OF WHAT THEY WANT TO SEE COULD YOU
22 DO IT AND IN THE EVENT THAT YOU MAY HAVE HAD TO DO IT.

23 Q NOW YOU'VE MENTIONED A COUPLE OF TIMES
24 YOU'RE A BIG GUY, MY MOM WOULD KILL ME IF I ASK IT, BUT HOW
25 MUCH DO YOU WEIGH?

1 A 290.

2 Q HOW MUCH DID YOU WEIGH BACK IN THIS SUMMER
3 OR EARLY FALL OF 2004?

4 A PROBABLY ABOUT 295, 300, I DON'T KNOW
5 SOMEWHERE CLOSE.

6 Q PRIOR TO THE NOVEMBER 15TH, 2003, ACCIDENT
7 WHERE YOU WERE HIT FROM BEHIND HAD YOU EVER HAD ANY
8 DIFFICULTY WITH YOUR BACK AFTER PUSHING A CAR?

9 A NO, SIR.

10 Q WHEN YOU ARRIVED ON THE SCENE THAT
11 AFTERNOON TO HELP THE YOUNG WOMAN WHO WAS IN DISTRESS ABOUT
12 THE CAR DID YOU HAVE ANY RESERVATIONS OR CONCERNS ABOUT
13 PUSHING THE CAR OUT OF THE ROAD?

14 A NO, SIR.

15 Q AND TELL THE JURY WHAT HAPPENED AS OR AFTER
16 YOU PUSHED THAT CAR OUT OF THE ROAD?

17 A WHILE I, AFTER MY VEHICLE WAS ALREADY
18 SECURED SO WHAT I DID WAS I PULLED INTO, I WAS ALREADY
19 PULLED IN BEHIND HER TO STOP THE TRAFFIC AND THEN I JUST
20 GOT BEHIND THE CAR AND TOLD HER TO PUT IT IN NEUTRAL, LET'S
21 GO AHEAD AND GET THIS CAR OUT OF THE ROAD AND I STARTED
22 PUSHING. IT WASN'T, IT WASN'T IN PARK, IT WAS IN NEUTRAL
23 SO AND WHENEVER SHE GOT HER FOOT OFF THE BRAKE IT, IT KIND
24 OF ROLLED SMOOTH, IT WASN'T A UPHILL BATTLE.

25 Q DID YOU NOTICE ANY, ANYTHING ABOUT YOUR

1 BACK AFTER YOU PUSHED THE CAR OUT OF THE ROAD?

2 A YES, I THINK AT THAT POINT AFTER I FINISHED
3 WITH HER AFTER I FINISHED PUSHING THE CAR OUT OF THE ROAD I
4 WENT BACK AROUND TO THE FRONT OF THE CAR TO FIND OUT WHO
5 SHE, WHO SHE WAS TALKING TO BUT WHILE I WAS PUSHING THE CAR
6 I ACTUALLY FELT, I DON'T KNOW IF IT WAS A SNAP OR WHAT IT
7 JUST, I FELT IT, NOT SURE IF IT WAS MY, THE VELCRO ON MY
8 VEST OR WHAT, BUT I FELT THAT; AND THEN SO TRYING TO TAKE
9 CARE OF THE BUSINESS AT HAND I GOT THE CAR OUT OF THE ROAD,
10 PULLED MY PATROL CAR OUT THE ROAD, AND THEN WAS TALKING TO
11 HER, MAKE, SHE SAID SHE WAS ON THE PHONE WITH HER MOM AND
12 THAT, YOU KNOW, HER MOM WAS COMING TO PICK HER UP AND SHE
13 THANKED ME AND I GOT BACK IN MY PATROL CAR AND THEN LEFT.

14 Q DID YOU NOTICE, AFTER YOU GOT BACK IN THE
15 PATROL CAR DID YOU NOTICE ANY PAIN IN YOUR, IN YOUR BACK?

16 A NO, JUST, JUST MORE OR LESS DISCOMFORT,
17 THAT MILD DISCOMFORT.

18 Q WHAT PART OF YOUR BACK WAS IT IN?

19 A THE SAME PART, LOWER, THAT LOWER REGION.

20 Q AFTER THE PUSHING THE CAR DID YOU HAVE
21 WORSENING PAIN IN YOUR BACK?

22 A BY THE END OF SHIFT CAUSE IT'S THE EARLY
23 PART OF THE DAY, BY MID TO END SHIFT I, IT WAS, IT WAS LIKE
24 A HEADACHE.

25 Q AND WHERE SPECIFICALLY IN YOUR BACK WAS

1 THAT PAIN?

2 A THE MID REGION.

3 Q HOW DID THE LEVEL OF PAIN AFTER PUSHING THE
4 CAR WOULD COMPARE WITH THE PAIN YOU HAD EXPERIENCED SINCE
5 THE COLLISION?

6 A IT WAS THE SAME RADIATING PAIN THAT I WAS
7 ACCUSTOMED TO.

8 Q NOW AT SOME POINT DID YOU SEEK MEDICAL
9 ATTENTION AFTER PUSHING THE CAR OUT OF THE ROAD?

10 A YES.

11 Q OKAY, WHO DID YOU SEE FIRST, WHAT DOCTOR
12 DID YOU SEE FIRST?

13 A I THINK I, I'M NOT SURE IF I WAS REFERRED
14 BACK TO THE CITY'S PHYSICIAN OR IF I WENT DIRECTLY TO, NO,
15 I THINK I WAS REFERRED BACK TO THE CITY PHYSICIAN CAUSE
16 THEY HAD TO REFER ME BACK TO WHOMEVER THEY CHOOSE WHICH AT
17 THAT TIME I THINK WAS DR. MILLS.

18 Q OKAY, WHEN DR. MILLS RELEASED YOU BACK TO
19 WORK DID HE SORT OF RELEASE YOU AS A, AS A PATIENT?

20 A NO, THE WAY WORKMANS COMP WORKS IS THAT
21 WHENEVER YOU'RE RELEASED YOU'RE RELEASED AND THERE'S EVEN
22 THOUGH I, I GUESS YOU COULD REQUEST FOLLOW UPS OR WHATEVER,
23 I'M NOT SURE IF YOU CAN OR NOT. BUT IT'S MY UNDERSTANDING
24 ONCE, ONCE YOU'RE RELEASED YOU'RE RELEASED AND ANY OTHER
25 VISITS HAVE TO BE APPROVED THROUGH WORKMANS COMP SO IT

1 WASN'T LIKE HE WAS NOW MY ATTENDING PHYSICIAN OR ANYTHING.

2 I COULDN'T JUST GO TO HIM WHENEVER I WANTED TO.

3 Q NOW WHEN YOU WENT BACK TO THE CITY
4 PHYSICIAN TO BE ASSESSED AT SOME POINT DID HE MAKE A
5 REFERRAL TO A, TO A SPECIALIST?

6 A YES, HE REFERRED ME BACK TO DR. MILLS.

7 Q OKAY, AND HOW, I GUESS YOU GOT AN
8 APPOINTMENT WITH DR. MILLS?

9 A YES.

10 Q OKAY, DO YOU RECALL HOW LONG IT TOOK
11 BETWEEN THE TIME YOU SAW THE CITY PHYSICIAN AND YOU WERE
12 ACTUALLY SEEN BY DR. MILLS?

13 A I'M NOT SURE, I DON'T KNOW IF IT WAS A
14 COUPLE OF WEEKS OR SO.

15 Q NOW THE BEACH TRAFFIC THAT YOU MENTIONED
16 WITH THE PUSHING THE CAR OUT OF THE ROAD DO YOU RECALL
17 SPECIFICALLY WHAT DATE THAT INCIDENT OCCURRED?

18 A NO, SIR, NO, SIR, I DON'T.

19 Q WAS IT NEAR LABOR DAY?

20 A IT WAS, YES, SIR. IT HAD TO BE AROUND
21 THERE CAUSE THE TRAFFIC WAS HEAVY ESPECIALLY COMING OUT OF
22 MYRTLE BEACH.

23 Q DOES THE TRAFFIC AFTER LABOR DAY DECREASE
24 NOTICEABLY ON THAT STRETCH OF ROAD?

25 A INCREASE?

1 Q DECREASE OR DESCRIBE WHAT HAPPENS IN CONWAY
2 OR MYRTLE BEACH AFTER THIS?

3 A DEPENDING ON THE DAY ON FRIDAYS GOING TO
4 MYRTLE BEACH, THURSDAYS, BETWEEN THURSDAY TO FRIDAY GOING
5 TO MYRTLE BEACH IS HEAVY. ON THE EARLY MORNING SUNDAY TO
6 MONDAY YOU DON'T EXPERIENCE HEAVY TRAFFIC COMING OUT OF
7 MYRTLE BEACH.

8 Q OKAY, NOW WHEN YOU, WHEN YOU GOT THE
9 APPOINTMENT WITH DR. MILLS A COUPLE OF WEEKS LATER WHAT
10 TYPE OF TREATMENT DID HE PERFORM?

11 A DON'T RIGHTLY RECALL. I THINK HE ORDERED
12 FOR A, I THINK IT'S SOME PROCEDURE, I'M NOT SURE IF I DID A
13 DISCOGRAM THEN OR WHEN I, AT WHAT POINT I ACTUALLY DID
14 THAT.

15 Q DO YOU RECALL HAVING ANOTHER SET OF FACET
16 INJECTIONS?

17 A I THINK THAT WAS THE LAST SET OF FACET
18 INJECTIONS THAT I RECEIVED MAYBE.

19 Q AND HOW DID YOUR PAIN RESPOND TO THIS
20 SECOND SET OF FACET INJECTIONS THAT YOU RECEIVED FROM DR.
21 MILLS?

22 A IT SUBSIDED LIKE IT'S SUPPOSED TO, DID WHAT
23 IT'S SUPPOSED TO, WHAT HE DID HE DID EXACTLY WHAT HE SAID
24 IT WOULD DO, BUT THE LENGTH OF TIME IT'S JUST WASN'T THERE.
25 YOU KNOW ANYTHING PAST A COUPLE OF MONTHS OR THREE MONTHS

1 IT'S NOT, NOT GOING TO, IT'S NOT WORKING.

2 Q OKAY, NOW AT SOME POINT AFTER YOU HAD THESE
3 TWO ROUNDS OF FACET INJECTIONS DID YOU RETURN TO DR. MILLS
4 ABOUT OTHER TYPES OF TREATMENT?

5 A YES, IT WAS AT THAT TIME I WANTED TO, TO
6 MAYBE EXPLORE OTHER, OTHER POSSIBILITIES TO HELP WITH MY
7 PAIN BECAUSE APPARENTLY THE FACET INJECTIONS WERE ONLY A
8 TEMPORARY FIX TO WHATEVER WAS GOING ON WITH ME SO I NEEDED
9 TO DO SOMETHING MORE, SOMETHING MORE AND MORE LONG TERM.

10 Q OKAY, AND WHAT DID YOU AND DR. MILLS
11 DISCUSS AS A POSSIBLE MORE PERMANENT OR LONG TERM SOLUTION?

12 A THE "S" WORD AGAIN IS THE, YOU KNOW, TO
13 MORE INVASIVE PROCEDURE WOULD BE NEEDED TO, TO PRETTY MUCH
14 NARROW IT DOWN.

15 Q HOW MANY TIMES WOULD YOU SAY DR. MILLS
16 MENTIONED THE "S" WORD OR THE SURGERY AS A POSSIBLE
17 TREATMENT OPTION FOR YOUR BACK SINCE YOU FIRST STARTED
18 SEEING HIM IN THE DECEMBER OR JANUARY FOLLOWING THE WRECK?

19 A I WOULD SAY NO MORE THAN THREE.

20 Q DID HE DESCRIBE THE SURGERY TO YOU WHAT IT
21 WOULD ENTAIL?

22 A THE FIRST TIME MENTION DIDN'T WANT TO HEAR
23 IT, JUST THE IDEA OF A KNIFE I DIDN'T WANT TO HEAR IT. I
24 THINK IT WASN'T UNTIL THE THIRD TIME THAT HE, I THINK HE
25 EVEN BROUGHT IN A MODEL, ACTUALLY HE DID BECAUSE HE HAD HIS

1 PHYSICIANS ASSISTANT WAS, WAS DOING SOME WORK THERE FIRST
2 AND THEN HE ACTUALLY HAD A MODEL OF A SPINE AND HE WAS
3 ACTUALLY SHOWING ME EXACTLY WHAT WOULD GO ON.

4 Q HOW DID YOU RESPOND OR REACT TO THAT?

5 A I WOULD HAVE TO THINK ABOUT IT.

6 Q OKAY, AT SOME POINT DID YOU, WERE YOU
7 REFERRED TO GET A SECOND OPINION BY ANOTHER DOCTOR?

8 A YES, IT WAS BECAUSE OF DEALING WITH
9 WORKMANS COMP THEY, THEY NORMALLY REQUIRE FIRST AND SECOND
10 OPINIONS AND I WOULD, TOO, BUT THEY, I WAS REFERRED THEN TO
11 DR. KEY OUT OF MYRTLE BEACH.

12 Q OKAY, AND WHAT, WHAT TYPE OF DOCTOR IS DR.
13 KEY?

14 A HE'S A, HE'S A BRAIN SURGEON. HE'S A, HE'S
15 ONE OF THE BEST IN THIS AREA. HE'S, HE'S HIGHLY
16 RECOMMENDED EVEN BY DR. MILLS. HE REALLY KNOWS HIS STUFF
17 WHEN IT DEALS WITH THE SPINE.

18 Q OKAY, DID YOU ULTIMATELY DECIDE TO HAVE THE
19 SURGERY DONE?

20 A YES.

21 Q AND TELL ME YOUR UNDERSTANDING OF WHAT TYPE
22 OF, OR WHAT HAPPENED IN THE SURGERY?

23 A THE, I DECIDED TO GET THE SURGERY DONE AND
24 I WAS TOLD THAT THERE WAS GOING TO BE A FUSION OF ---

25 MR. LAWSON: OBJECTION, YOUR HONOR, AS TO WHAT

1 HE WAS TOLD.

2 THE COURT: SUSTAINED.

3 MR. ROTHSTEIN: (CONTINUING)

4 Q WHAT IS YOUR, WHAT IS YOUR UNDERSTANDING OF
5 WHAT THE SURGERY INVOLVED?

6 A ENTAILED, IT ENTAILED THE FUSION OF THE
7 AGGRAVATED SPINAL AREA.

8 Q AND WHEN YOU SAY FUSION WHAT DO YOU MEAN BY
9 FUSION?

10 A THE, WITH THE, WITH TITANIUM, WITH A
11 TITANIUM APPARATUS ---

12 MR. LAWSON: YOUR HONOR, I'M GOING TO, THIS IS
13 BEYOND I BELIEVE THE SCOPE OF HIS KNOWLEDGE. HE'S GOING BY
14 WHAT HE WAS TOLD AND I THINK THE DOCTOR IS GOING TO TESTIFY
15 AS TO THE PROCEDURE.

16 THE COURT: COME FORWARD.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
19 OF THE JURY AND THE COURT REPORTER.)

20 MR. ROTHSTEIN: (CONTINUING)

21 Q AND, DON, I KNOW YOU'RE NOT A DOCTOR BUT
22 WHAT WAS YOUR UNDERSTANDING OF WHAT WAS GOING TO HAPPEN IN
23 THAT SURGERY WHEN YOU TALKED TO DR. MILLS AND DR. KEY?

24 A THAT THIS ROD TYPE APPARATUS WHICH WOULD BE
25 USED IN ORDER OF THE STRENGTH OF IT AND IT WOULD BE USED TO

1 ACTUALLY FUSE OR COMBINE AFFECT THE VERTEBRAE PERMANENTLY
2 SO IT COULDN'T MOVE AND I WOULDN'T HAVE THE DISCOMFORT
3 THAT, THAT BULGING PORTION THAT I'M EXPERIENCING THAT WOULD
4 NO LONGER EXIST.

5 Q AND DID DR. KEY PERFORM THE SURGERY?

6 A YES.

7 Q AND WHEN DID YOU HAVE THE SURGERY DONE?

8 A DON'T KNOW THE EXACT DATE.

9 Q OKAY, HOW LONG WERE YOU IN THE HOSPITAL
10 RECOVERING FROM THE SURGERY?

11 A MAYBE A DAY, COUPLE OF DAYS.

12 Q AND ---

13 A NO, NOT A COUPLE OF DAYS, MAYBE A DAY, A
14 DAY AFTER THE SURGERY I THINK I WAS RELEASED.

15 Q AND EXPLAIN TO THE JURY WHAT YOUR RECOVERY
16 PROCESS WAS LIKE AFTER THIS SPINAL SURGERY?

17 A AS DR. KEY SAID YOU'RE NOT TO LAY AROUND,
18 IT WAS ONE OF THOSE THINGS THE VERY NEXT DAY AS SOON AS THE
19 GROGGINESS WORE OFF HE WANTED ME OUT OF THAT BED. HE HAD
20 ME WALKING AROUND IN THE HOSPITAL THE VERY NEXT DAY SO IT
21 WAS, CAUSE HE EXPLAINED TO ME THE BAD PARTS OF LAYING
22 AROUND ON IT SO HE GOT ME UP AND TRIED TO GET ME BACK INTO
23 THE SWING OF THINGS.

24 Q THIS RECOVERY PROCESS DID IT INVOLVE
25 PHYSICAL THERAPY?

1 A AT SOME POINT, NOT INITIALLY, THE PHYSICAL
2 THERAPY FROM AN OUTSIDE SOURCE WOULD INVOLVE CAUSE THE
3 MUSCLES THAT WERE STRETCHED IN ORDER TO PERFORM THE SURGERY
4 NEEDED, NEEDED A CHANCE TO FIND THEMSELVES AGAIN AND FIT
5 BACK WHERE THEY'RE SUPPOSED TO; AND AFTER THAT THEN I WOULD
6 NEED TO GO THROUGH CERTAIN PHYSICAL THERAPIES TO STRENGTHEN
7 THOSE MUSCLES AND TO STRENGTHEN MY, MY BACK AND WHATEVER
8 ELSE WAS, WAS STARTING TO KIND OF GET, SORT OF LAG AROUND,
9 I GUESS, I NEEDED TO GET BACK INTO PHYSICAL THERAPY.

10 Q THAT, THAT PROCESS OF YOUR SORT OF MUSCLES
11 FINDING THEMSELVES HOW LONG WOULD YOU SAY THAT TOOK?

12 A IT TOOK A FEW MONTHS.

13 Q DID YOU GO BACK TO WORK AT THE CITY OF
14 CONWAY?

15 A NO.

16 Q SINCE THE SURGERY HAVE YOU TRIED TO GO BACK
17 TO WORK AS A POLICE OFFICER?

18 A YES.

19 Q OKAY, WERE YOU ABLE TO CONTINUE TO WORK AS
20 A POLICE OFFICER?

21 A NO.

22 Q WHAT WAS YOUR EXPERIENCE LIKE WHEN YOU
23 TRIED TO GO BACK TO WORK?

24 A NOW MY, MY FLEXIBILITY IS NO LONGER HOW YOU
25 SEE IT LIKE THIS, IT'S MORE OR LESS LIKE THIS BECAUSE I

1 DON'T HAVE THAT FLEXIBILITY IN MY VERTEBRAE ANYMORE AND
2 THEN THAT FOR ME THAT CREATED ISSUES ESPECIALLY OFFICER
3 SAFETY. THE WORST THING A POLICE OFFICER COULD DO IS EVER
4 MAYBE LOOSE CONTROL OF HIS GUN AND CAN'T GET IT OFF THE
5 GROUND BECAUSE HE CAN'T BEND HIS BACK AND IT'S, SO THAT'S
6 REALLY ONE OF THE REASONS THAT I KNEW AS A POLICE OFFICER I
7 CAN'T, I CAN'T REALLY FUNCTION IN THAT CAPACITY EVEN THOUGH
8 I'VE TRIED, TRUST ME I HAVE TRIED.

9 Q AND WHAT DID YOU DECIDE TO DO WITH REGARD
10 TO YOUR LAW ENFORCEMENT CAREER AT THAT POINT?

11 A AT THAT TIME CAUSE IT WAS MAYBE A YEAR OR
12 SO OUT OF SURGERY AND, AND GOING THROUGH ALL MY PHYSICAL
13 THERAPY AT THAT TIME I DECIDED THAT I MAY NEED, JUST NEED
14 TO OPT OUT AND DO MY POLICE RETIREMENT BECAUSE IT WAS
15 OBVIOUS THAT I WASN'T GOING TO BE ABLE TO RETURN EVEN AFTER
16 THE EXTENSIVE PHYSICAL THERAPY THAT I HAD UNDERGONE.

17 Q AND WHEN DID YOU APPLY FOR THE DISABILITY
18 POLICE RETIREMENT?

19 A I THINK IT WAS 2007, 2006, 2007.

20 Q AND WERE YOU APPROVED?

21 A YES.

22 Q NOW I WANT TO TURN YOUR ATTENTION TO THE
23 MEDICAL BILLS IN THIS CASE. AS YOU WERE RECEIVING THESE
24 VARIOUS TREATMENTS, STARTING FROM THE DAY OF THE COLLISION
25 WITH THE AMBULANCE AND THE EMERGENCY ROOM TO SEEING DR.

1 MILLS AND THE COASTAL ORTHOPEDICS FOR THE FACET INJECTIONS
2 AND DIFFERENT THINGS, XRAYS AND MRI, DID YOU RECEIVE
3 MEDICAL BILLS FROM THE HEALTH CARE PROVIDERS THAT PROVIDED
4 THOSE SERVICES TO YOU?

5 A SOME OF THEM I DID, YES.

6 Q OKAY, AT SOME POINT DO YOU RECALL SIGNING A
7 MEDICAL RELEASE AUTHORIZING ME TO OBTAIN ALL OF YOUR
8 MEDICAL BILLS AND RECORDS?

9 A YES, SIR.

10 Q OKAY, HAVE YOU, DO YOU BELIEVE YOU'VE
11 RECEIVED MOST IF NOT ALL OF THE MEDICAL BILLS THAT YOU
12 RECEIVED RELATING TO YOUR BACK TREATMENT AFTER THE
13 ACCIDENT?

14 A YES, SIR.

15 Q HAVE YOU PREPARED A SUMMARY OF THOSE
16 MEDICAL BILLS THAT YOU RECEIVED FROM THE VARIOUS HEALTH
17 CARE PROVIDERS?

18 A YES, SIR.

19 MR. ROTHSTEIN: YOUR HONOR, MAY I APPROACH MR.
20 GAUSE?

21 THE COURT: SURE.

22 MR. ROTHSTEIN: (CONTINUING)

23 Q MR. GAUSE, I'M GOING TO HAND YOU A DOCUMENT
24 THAT'S BEEN MARKED AS PLAINTIFF'S EXHIBIT 1; DO YOU
25 RECOGNIZE THAT DOCUMENT?

1 A YES, SIR.

2 Q AND TELL THE JURY WHAT THAT DOCUMENT IS?

3 A IT'S BASICALLY A, IT'S A DETAILED LISTING
4 OF ALL OF MY PROCEDURES WITH THE COSTS ASSOCIATED WITH
5 THOSE PROCEDURES AND FROM THE, AND FROM THE PROVIDER WHO
6 PERFORMED THE PROCEDURES.

7 Q HAVE YOU REVIEWED THIS SUMMARY TO MAKE SURE
8 THAT IT ACCURATELY REFLECTS THE BILLS THAT YOU RECEIVED
9 FROM THESE VARIOUS MEDICAL PROVIDERS?

10 A YES.

11 Q DO YOU BELIEVE THAT THIS SUMMARY IS A FAIR,
12 ACCURATE, REASONABLE ACCOUNTING OF THOSE BILLS?

13 A YES, SIR.

14 MR. ROTHSTEIN: YOUR HONOR, I'D MOVE EXHIBIT 1
15 INTO EVIDENCE.

16 THE COURT: ANY OBJECTIONS?

17 MR. LAWSON: YES, SIR, YOUR HONOR. WE WOULD
18 OBJECT TO EXHIBIT 1 BASED UPON THE FACT WHAT WE BELIEVE
19 WOULD BE THE TESTIMONY FROM THE DEPOSITION OF DR. MILLS
20 THAT HE RELEASED HIM ON MARCH 18TH, 2004, AND THAT HE COULD
21 NOT TESTIFY TO A REASONABLE DEGREE OF MEDICAL CERTAINTY
22 THAT ANY MEDICALS AFTER THAT DATE WAS CAUSALLY RELATED TO
23 THE ACCIDENT.

24 THE COURT: MR. CONNELL?

25 MR. CONNELL: YOUR HONOR, OUR OBJECTION IS, OF

1 COURSE, IT'S AN INTERVENING ACT. HE'S PUSHING A CAR DOWN
2 THE ROAD, HE HAD BEEN BACK TO WORK AND THEN AFTERWARDS HE
3 NEEDS THE SURGERY AND OUR OBJECTION IS THAT HE COULDN'T
4 TESTIFY THAT'S RELATED TO THIS WRECK OR FROM WHAT HAPPENED
5 THAT WOULD BE OUTSIDE THE LAYPERSON'S ABILITY TO DO SO.

6 MR. ROTHSTEIN: AND, YOUR HONOR, THAT WOULD GO
7 TO THE WEIGHT OF THE EVIDENCE NOT THE ADMISSIBILITY. I
8 THINK MR. GAUSE CAN SAY THIS IS A SUMMARY OF THE BILLS, ALL
9 THE BILLS I RECEIVED. IF THE JURY SAYS, YOU KNOW, THE
10 PUSHING THE CAR OUT OF THE ROAD WAS WHAT CAUSED MOST OF
11 THEM THEY COULD GO THROUGH THE SUMMARY AND ITEMIZE WHICH
12 ONES ARE APPROPRIATE.

13 THE COURT: OBJECTION IS OVERRULED.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 1 ENTERED
15 INTO EVIDENCE.)

16 MR. ROTHSTEIN: (CONTINUING)

17 Q MR. GAUSE, LOOKING AT EXHIBIT 1 CAN YOU
18 TELL THE JURY WHAT THE FIRST HEALTH CARE PROVIDER ON THAT
19 LIST IS?

20 A HEALTH CARE PROVIDER IS ATLANTIC PHYSICAL
21 THERAPY.

22 Q OKAY, AND TELL THE JURY HOW THESE VARIOUS
23 HEALTH CARE PROVIDERS ARE LISTED ON THIS SUMMARY?

24 A ACTUALLY THEY'RE LISTED IN ALPHABETICAL
25 ORDER.

1 Q OKAY, AND IS THE NAME OF THE PROVIDER IN
2 THE FIRST COLUMN ON THE LEFT, THE NAME OF THE HEALTH CARE
3 PROVIDER?

4 A YES.

5 Q OR THE COMPANY OR THE HOSPITAL?

6 A YES, SIR.

7 Q ALL RIGHT, WHAT'S IN THE NEXT COLUMN BESIDE
8 THE NAME OF THE PROVIDER?

9 A THE DATES OF SERVICE AND THE DESCRIPTION OF
10 THE SERVICE PROVIDED.

11 Q OKAY, AND, FOR EXAMPLE, ON ATLANTIC
12 PHYSICAL THERAPY IT LOOKS LIKE THE DATES BEGIN ON NOVEMBER
13 24TH, 2003; IS THAT CORRECT?

14 A YES, SIR.

15 Q AND WAS THAT THE PHYSICAL THERAPY YOU
16 RECEIVED AFTER, AFTER TALKING TO THE CITY PHYSICIAN?

17 A YES, SIR.

18 Q OKAY, AND HOW LONG DID YOU ATTEND PHYSICAL
19 THERAPY AT ATLANTIC PHYSICAL THERAPY?

20 A IT SHOWS PROBABLY ABOUT UNTIL DECEMBER,
21 SOMETIME IN DECEMBER.

22 Q AND TO THE NEXT COLUMN TO THE RIGHT AS WE
23 GO ACROSS THE SUMMARY WHAT'S THE NEXT COLUMN?

24 A CAROLINA, EXCUSE ME, IT'S THE AMOUNT, THE
25 BILL AMOUNT.

1 Q HOW DID YOU DETERMINE THE AMOUNT FOR EACH
2 OF THOSE?

3 A IT WAS THE ACTUAL BILL RENDERED FOR THE
4 SERVICE, SERVICES PROVIDED.

5 Q OKAY, AND THEN THERE'S THE NEXT COLUMN THAT
6 SAYS REFERENCE, CAN YOU TELL THE JURY WHAT THAT, WHAT THAT
7 REFERENCE IS?

8 A THE REFERENCE IS, IS WHAT THERE WAS SO MUCH
9 PAPERWORK IT'S THE NUMBER THAT WE ASSIGNED TO THAT
10 PARTICULAR PIECE OF PAPER. IF I HAVE A BILL FROM THE 24TH
11 OF NOVEMBER I ASSIGNED A NUMBER TO THE BOTTOM OF IT AND
12 THAT WAY I CAN, YOU CAN ALWAYS REFER BACK TO THAT NUMBER TO
13 SEE, ACTUALLY SEE THE HARD BILL THAT WAS PROVIDED.

14 Q YOU SEE THESE WHITE BOXES BEHIND MR.
15 NICHOLS?

16 A OH, YES, SIR.

17 Q IS IT YOUR, WHAT IS YOUR UNDERSTANDING OF
18 WHAT'S IN SOME OF THOSE BOXES?

19 A A DEPICTION OF, OF ALL THESE BILLS.

20 Q ARE THE ORIGINAL BILLS IN THOSE BOXES?

21 A SOME OF THEM ARE MOST OF THE ORIGINAL, YES.

22 Q OKAY, AND THIS NUMBER AND LIKE THE FIRST
23 THERE IT SAYS G0533, DO YOU UNDERSTAND WHAT THAT NUMBER IS?

24 A YES, SIR.

25 Q OKAY, TELL THE JURY WHAT THAT NUMBER, IS

1 THAT SOMETHING THAT WAS ADDED TO THE BILL TO KEEP TRACK OF
2 THE NUMBER OF THE BILLS?

3 A YES, SIR, AND THE (G) IS MY LAST NAME SO
4 IT'S (G) AND THEN 0533 IS THE ACTUAL NUMBER THAT WE COULD
5 FLIP THROUGH A PAGE OF, AT THAT POINT IT'S OVER 533 PIECES
6 OF PAPER AND ON G0533 YOU'LL FIND THAT BILL FOR THAT
7 PARTICULAR DATE.

8 Q OKAY, NOW WHAT WAS THE TOTAL MEDICAL BILLS
9 ON THIS SUMMARY THAT YOU, THAT YOU SUSTAINED FROM THE DATE
10 OF THE ACCIDENT UNTIL TODAY?

11 A THE TOTAL WAS \$155,432.64.

12 Q AND YOU BELIEVE THAT'S AN ACCURATE
13 REFLECTION OF THE BILLS YOU RECEIVED FOR THE MEDICAL
14 ATTENTION YOU RECEIVED SINCE THE ACCIDENT?

15 A YES, SIR.

16 Q OKAY, NOW HAVE YOU EXPERIENCED A LOSS OF
17 INCOME SINCE THE COLLISION?

18 A YES, SIR.

19 Q OKAY, HAVE YOU PREPARED A CALCULATION OF
20 YOUR LOST INCOME?

21 A YES, SIR.

22 Q WERE THERE PERIODS OF TIME SINCE NOVEMBER
23 15TH, 2003, THE DATE OF THE COLLISION WHEN YOU WERE
24 COMPLETELY UNABLE TO WORK BECAUSE OF YOUR BACK CONDITION OR
25 RELATED CONDITIONS?

1 A YES, SIR.

2 Q HOW DID YOU PUT A VALUE ON THE TIME THAT
3 YOU MISSED FROM WORK DURING THE TIMES WHEN YOU WERE
4 COMPLETELY OUT OF WORK?

5 A THE VALUE I PUT BECAUSE, YOU KNOW, YOU'RE,
6 I WAS NOT TOTALLY WITHOUT ANY INCOME, SO I'M NOT SAYING
7 THAT AT ALL. BUT THE DIFFERENCE IN THE AMOUNT OF MONEY
8 THAT, THAT I WOULD MAKE ON MY JOB BARRING ANY OVERTIME OR
9 ANYTHING, ANY, ANYTHING, WAS SUBSTANTIALLY DIFFERENT FROM
10 WHAT I WAS RECEIVING.

11 Q NOW WHEN YOU WERE FIRST INJURED BACK IN
12 NOVEMBER OF 2003 HOW MUCH WERE YOU MAKING AS A CITY OF
13 CONWAY POLICE OFFICER?

14 A BECAUSE I THINK AROUND \$10.00 AND SOMETHING
15 AN HOUR, NOT EVEN \$11.00 AN HOUR.

16 Q WOULD IT REFRESH YOUR MEMORY TO REVIEW THE
17 SUMMARY THAT YOU PREPARED?

18 A YES, SIR.

19 MR. ROTHSTEIN: AND, YOUR HONOR, I'M NOT
20 OFFERING THIS INTO EVIDENCE. I'M GOING TO SHOW IT TO MR.
21 CONNELL AND MR. LAWSON AT THIS TIME. MAY I APPROACH, YOUR
22 HONOR?

23 THE COURT: SURE.

24 MR. ROTHSTEIN: (CONTINUING)

25 Q NOW, MR. GAUSE, I'M GOING TO HAND YOU THAT

1 DOCUMENT, DO YOU RECOGNIZE THAT DOCUMENT?

2 A YES, SIR.

3 Q OKAY, AND TELL THE JURY WHAT THAT DOCUMENT
4 REFLECTS?

5 A IT'S A DOCUMENT THAT REFLECTS THE, MY WAGES
6 DURING THE TIME OF THE ORIGINAL INCIDENT UP UNTIL TODAY'S
7 DATE, YEAH, TODAY'S DATE.

8 Q AND WHAT WAS YOUR HOURLY RATE AT THE CITY
9 OF CONWAY POLICE DEPARTMENT AT THE TIME OF THE COLLISION IN
10 NOVEMBER OF 2003?

11 A TEN-FIFTY AN HOUR.

12 Q OKAY, AND HOW MANY HOURS DID YOU WORK IN A
13 TYPICAL WORK WEEK FOR THE CITY OF CONWAY POLICE DEPARTMENT?

14 A AVERAGE OF 52 HOURS PER WEEK.

15 Q HOW DID YOU COME UP WITH THAT NUMBER?

16 A WE'RE NOT JUST WORKING A STRAIGHT 10 HOUR
17 SHIFT. NORMALLY WE HAVE TO REPORT TO WORK 15 MINUTES EARLY
18 SO, THEREFORE, YOU'RE LOOKING AT 15 MINUTES PER DAY PER
19 SHIFT IN A TWO WEEK TIME FRAME OR IN A WORK WEEK SO THAT'S
20 HOW YOU CALCULATE THAT 52 HOURS. IT WAS THERE, I THINK IT
21 WAS A LITTLE SHORT OF 52.

22 Q HOW, HOW LONG WERE THE SHIFTS THAT YOU
23 ACTUALLY SCHEDULED TO WORK?

24 A TEN-HOUR SHIFTS.

25 Q OKAY, AND HOW MANY SHIFTS WOULD YOU WORK IN

1 A ROW? WERE YOU ON SOME SORT OF A SHIFT CYCLE?

2 A YES, WE TO NOT GET ANYONE BORED WITH THEIR
3 JOB, YOU KNOW. SOMETIMES YOU'LL WORK DAYS, EVENINGS, OR
4 MIDNIGHTS, AND, AND BECAUSE OF THE WAY YOUR DAY, YOU NEVER
5 HAD THE SAME DAYS OFF. THEY, THEY ROTATE BASICALLY SO YOU
6 MAY WORK FOUR ON, TWO OFF, FOUR ON, TWO OFF, AND THEN FOUR
7 ON, THREE OFF, AND, YOU KNOW, YOU WILL COMPLETE YOUR CYCLE
8 IN A, I'M NOT SURE, 25 DAY CYCLE. IT'S BEEN SO LONG BUT I
9 THINK IT'S LIKE A 25 DAY CYCLE IF I'M NOT MISTAKEN.

10 Q ALL RIGHT, AND FROM THE TIME THE DAY AFTER
11 THE ACCIDENT UNTIL DR. MILLS INITIALLY RELEASED YOU BACK TO
12 WORK TO THE CITY OF CONWAY HOW MANY, HOW MANY WEEKS WAS
13 THAT?

14 A EIGHT WEEKS.

15 Q AND DID YOU CALCULATE THE LOST EARNINGS
16 THAT YOU WOULD HAVE EARNED HAD YOU BEEN WORKING FULL TIME
17 AT THAT POINT?

18 A YES, SIR.

19 Q AND WHAT WAS THAT FIGURE FOR THAT PERIOD OF
20 TIME WHERE YOU WERE INITIALLY OUT OF WORK?

21 A \$4,368.

22 Q OKAY, DOES THIS SUMMARY ALSO CONTAIN THE
23 TIME YOU WERE OUT AFTER YOU SOUGHT TREATMENT FOR PUSHING
24 THE CAR OUT OF THE ROAD?

25 A YES.

1 Q OKAY, AND DOES THIS DOCUMENT REFLECT,
2 REFRESH YOUR MEMORY ABOUT THE, THE DATE THAT YOU WERE
3 ACTUALLY OUT OF WORK AFTER THAT INCIDENT?

4 A YES.

5 Q OKAY, AND WHAT WERE THOSE DATES?

6 A OCTOBER 6TH TO OCTOBER 27TH.

7 Q OKAY, THAT OCTOBER 6TH DATE IS THAT THE
8 DATE OR HOW SOON BEFORE THAT DATE WOULD YOU HAVE ACTUALLY,
9 IS THAT THE DATE THE DOCTOR AT CONWAY PUT YOU OUT OF WORK
10 FOR THE CITY DOCTOR?

11 A NO, NO, THE DATE THAT THE, THAT I RE-
12 AGGRAVATED MY, MY INJURY IS, WAS PRIOR TO THAT. IT'S ONLY,
13 YOU HAVE TO GO THROUGH A CERTAIN NUMBER OF DAYS BEFORE
14 WORKMAN COMP INTERVENES AND STARTS TO PAY YOUR SALARY FOR
15 THAT PERIOD OF TIME SO YOU HAVE TO ACTUALLY UTILIZE YOUR
16 SICK TIME AND/OR YOUR PERSONAL TIME OR WHATEVER TO, TO PAY
17 YOU UNTIL, UNTIL THEY KICK IN.

18 Q OKAY, THE LOST WAGES DATE OF OCTOBER 6TH
19 DOES THAT REFRESH YOUR MEMORY ABOUT WHEN THE, I MEAN CAN
20 YOU NARROW DOWN THE DATE A LITTLE BIT MORE ABOUT WHEN THE
21 PUSHING OF THE CAR ACCIDENT OCCURRED?

22 A IT WOULD PROBABLY BE A WEEK AND A HALF OR
23 SO BEFORE THE ACTUAL OCTOBER 6TH DATE.

24 Q OKAY, BY THAT TIME IN 2004 YOU HAD BEEN
25 WITH THE CITY FOR A LITTLE OVER A YEAR, CORRECT?

1 A RIGHT.

2 Q DID YOU RECEIVE ANY PAY RAISES FROM THE
3 INITIAL 10.50 A HOUR THAT YOU STARTED RECEIVING?

4 A YES, AFTER, AFTER YOU, AFTER YOU RECEIVE
5 YOUR REVIEW I THINK MY, MY NEW RATE OF PAY WAS 10.76 AN
6 HOUR.

7 Q OKAY, AND HOW DID YOU CALCULATE THE PERIOD
8 OF TIME THAT YOU MISSED FOR WORK FROM THE, FROM THE I GUESS
9 AFTER YOU AGGRAVATED YOUR BACK FROM PUSHING THE CAR OUT OF
10 THE ROAD?

11 A I TOOK THE RATE OF PAY TIMES THE NUMBER OF
12 HOURS IN A, IN A PAY CYCLE AND, AND MULTIPLIED THAT TIMES
13 THE NUMBER OF WEEKS AND THAT'S HOW I DETERMINED THAT
14 FIGURE.

15 Q AND WHAT WAS THAT AMOUNT FOR THAT SECOND
16 PERIOD OF BEING OUT OF WORK?

17 A \$1,678.56.

18 Q NOW WAS THERE ANOTHER PERIOD OF TIME AFTER
19 THIS SECOND SET OF FACET INJECTIONS WHERE YOUR PAIN STARTED
20 TO GET WORSE AND YOU STARTED TO DISCUSS THE SURGERY OPTIONS
21 WITH DR. MILLS AND DR. KEY?

22 A YES, THIS IS THE PERIOD WHERE IT WAS JUST,
23 EVERYTHING WAS BASICALLY GOING TOWARDS THE SURGERY AND
24 THAT, THAT STARTED AROUND APRIL 25TH OF 2005.

25 Q OKAY, AND WHAT'S THE JULY 12TH, 2006 DATE?

1 A THAT'S THE DATE THAT, I'M THINKING THAT'S
2 UP, UP UNTIL MY, I GUESS MY SURGERY.

3 Q NOW WHEN WERE YOU APPROVED FOR DISABILITY;
4 DO YOU RECALL?

5 A IT WASN'T UNTIL 2007, I BELIEVE, 2006,
6 2007.

7 Q OKAY, COULD IT, WELL COULD I SHOW YOU A
8 DOCUMENT THAT WOULD REFRESH YOUR MEMORY?

9 A YES, PLEASE.

10 Q ABOUT WHEN THAT WAS, WOULD THE ACTUAL
11 DOCUMENT FROM THE BUDGET CONTROL BOARD PROVING YOUR
12 DISABILITY?

13 A YES, SIR.

14 MR. ROTHSTEIN: YOUR HONOR, IF I COULD HAVE ONE
15 SECOND TO PULL THAT DOCUMENT OUT?

16 THE COURT: SURE.

17 MR. ROTHSTEIN: (CONTINUING)

18 Q TAKE A LOOK AT THAT FOR A SECOND, DOES THAT
19 HELP REFRESH YOUR RECOLLECTION OF WHEN THE DATE YOU WERE
20 APPROVED FOR DISABILITY?

21 A YES, SIR.

22 Q AND WHAT DATE WAS THAT?

23 A JULY THE 12TH.

24 Q WHAT YEAR?

25 A 2006.

1 Q SO THE THIRD CATEGORY THAT YOU CALCULATED
2 TELL THE JURY WHAT THAT PERIOD OF TIME REPRESENTS?

3 A IT CALCULATES THE, THE EMPLOYMENT STILL
4 WITH THE CITY OF CONWAY FROM APRIL 25TH, WELL CONTINUING
5 FROM APRIL 25TH THROUGH JULY 12TH WHEN I WAS ACTUALLY
6 APPROVED FOR MY, MY RETIREMENT BENEFITS.

7 Q OKAY, HOW DID YOU CALCULATE THE LOST WAGES
8 THAT YOU WOULD HAVE EARNED DURING THAT PERIOD OF TIME?

9 A THE NUMBER OF WEEKS, THE NUMBER OF WEEKS
10 TIMES THAT CURRENT RATE OF PAY TIMES THE, THE NUMBER OF
11 HOURS WORKED PER SHIFT.

12 Q NOW DID YOU GENERALLY AT THE CITY OF CONWAY
13 HAVE A HISTORY OF RECEIVING RAISES OR DID YOU UNDERSTAND
14 THAT A POLICE OFFICERS GENERALLY RECEIVED LIKE A COST OF
15 LIVING ADJUSTMENT OR SOME TYPE OF REGULAR INCREASE IN THEIR
16 PAY?

17 A PERFORMANCE WITH THE CITY OF CONWAY WAS
18 BASED ON YOUR PERFORMANCE AND YOUR, AT THE NEED OF THE CITY
19 SO THEY WOULD INCREASE YOUR BASE PAY THE CITY OF CONWAY
20 PERIODICALLY.

21 Q OKAY, WHEN YOU WERE CALCULATING YOUR LOST
22 WAGES DID YOU FACTOR IN ANY TYPE OF AN INCREASE IN YOUR
23 RATE OF PAY?

24 A NO, SIR.

25 Q OKAY ---

1 A IT WAS JUST, THE ONLY FACTOR THAT I USED AT
2 THAT POINT IN THIS, IN THIS THIRD SECTION WAS MY CURRENT
3 RATE WHICH AT THAT POINT AS I JUST TOLD YOU WAS 10.76 PER
4 HOUR.

5 Q OKAY, AND HOW MANY WEEKS WAS THAT PERIOD
6 FROM APRIL 25TH, 2005, UNTIL ---

7 MR. LAWSON: YOUR HONOR, WE WOULD OBJECT AT THIS
8 POINT, I THINK THIS GETS INTO THE SPECULATIVE NATURE. THE
9 ONLY TESTIMONY HAS BEEN THAT MR. GAUSE DECIDED TO TAKE
10 EARLY RETIREMENT. THERE'S BEEN NO TESTIMONY FROM EITHER A
11 DOCTOR OR VOCATIONAL REHABILITATION PERSON OR ANYBODY ELSE
12 THAT SAID HE WAS UNEMPLOYABLE, COULDN'T WORK, NOT AVAILABLE
13 FOR WORK. IT WAS JUST HIS OWN TESTIMONY THAT SAYS HE
14 DECIDED TO TAKE EARLY RETIREMENT AND I THINK IT'S

15 SPECULATIVE TO NOW GO ON THIS ROAD DOWN THROUGH THE FUTURE
16 ON ALLOWING HIM TO TESTIFY ON THESE CALCULATIONS THAT AN
17 ECONOMIST USUALLY WOULD DO AS TO LOST WAGES, SOMETHING
18 WE'LL TAKE OUTSIDE THE JURY WE'LL BE GLAD TO DO IT.

19 THE COURT: MR. CONNELL?

20 MR. CONNELL: YOUR HONOR, THE ONLY WAY THE
21 TESTIMONY IS AT ALL ADMISSIBLE IS IF AN EXPERT TESTIFIES HE
22 COULDN'T WORK AND HERE'S WHY AND HERE ARE THE REASONS. I
23 MEAN LOOK AT THE RECORD THEY ALL SAY, ALL THE DOCTORS
24 RECORDS SAY THIS MAN WAS ABLE TO WORK, SO FOR HIM TO OFFER
25 FUTURE WAGE CLAIM WITHOUT THAT KIND OF TESTIMONY IS NOT

1 ONLY SPECULATIVE IT'S PREJUDICIAL CAUSE WE HAVEN'T HAD
2 NOTICE HE WAS GOING TO OFFER SUCH A CLAIM.

3 THE COURT: MR. NICHOLS (SIC)?

4 MR. ROTHSTEIN: ROTHSTEIN, YOUR HONOR. THE,
5 AGAIN THIS DOCUMENT, OR HIS CALCULATION, THIS IS THE TIME
6 OF PERIOD OR PERIOD OF TIME HE WAS ACTUALLY OUT OF WORK.
7 THIS IS NOT A FUTURE WAGE CLAIM. THIS IS A BACK PAY CLAIM
8 SO WE'RE STILL IN 2006. MR. GAUSE TESTIFIED THAT HE WAS
9 OUT OF WORK RELATED TO THE SURGERY. I THINK IF THEY WANT
10 TO ---

11 THE COURT: SO IN OTHER WORDS YOU'RE TELLING ME
12 YOU'RE NOT GOING INTO FUTURE LOST WAGES?

13 MR. ROTHSTEIN: I INTEND TO DO THAT AT SOME
14 POINT. WE'RE STILL IN THE BACK PAY AT THIS POINT AND, YOUR
15 HONOR, AGAIN THIS I BELIEVE WOULD GO TO THE, TO THE WEIGHT
16 OF THE EVIDENCE NOT THE ADMISSIBILITY OF THE EVIDENCE. IF
17 THEY WANT TO BRING SOMEONE IN TO SAY, YOU KNOW, HE'S
18 EMPLOYABLE I THINK THE FACT THAT HE CAN'T DO WHAT HE DID, I
19 MEAN HE TESTIFIED HE COULDN'T PICK UP THINGS, HE COULDN'T -
20 -

21 THE COURT: ALL RIGHT, YOU CAN CONTINUE WITH THE
22 BACK PAY.

23 MR. ROTHSTEIN: (CONTINUING)

24 Q NOW AGAIN DURING THAT PERIOD FROM APRIL
25 25TH, 2005, WHEN YOU STARTED TO DISCUSS THE SURGERY OPTIONS

1 WITH DR. MILLS AND DR. KEY UNTIL YOUR APPROVAL FOR
2 DISABILITY THROUGH THE POLICE OFFICER RETIREMENT SYSTEM HOW
3 MANY WEEKS WAS THAT?

4 A SIXTY-THREE WEEKS.

5 Q OKAY, AND HOW DID YOU CALCULATE THE VALUE
6 OF THE LOST TIME DURING THAT PERIOD?

7 A THE AMOUNT, THE HOURLY RATE TIMES THE
8 NUMBER OF WEEKS TIMES THE HOURS.

9 Q OKAY, AND WHAT WAS THE TOTAL VALUE THAT YOU
10 PLACED ON THAT THIRD PERIOD OF BEING OUT OF WORK?

11 A \$35,249.76.

12 Q OKAY, NOW AFTER YOU WERE APPROVED FOR
13 DISABILITY RETIREMENT THROUGH THE POLICE OFFICER, DO YOU
14 RECALL WHAT YOUR INITIAL BENEFIT WAS?

15 A IT WAS LIKE \$802 A MONTH.

16 MR. CONNELL: OBJECTION, YOUR HONOR. THIS IS
17 THE NOW GOING INTO THE FUTURE, HE'S ALREADY STARTED IN
18 AFTER HE'S ON POLICE DISABILITY RETIREMENT.

19 MR. ROTHSTEIN: WE'RE NOT IN THE FUTURE, WE'RE
20 IN 2006, YOUR HONOR. HE'S BEEN APPROVED FOR DISABILITY
21 RETIREMENT AND, YOU KNOW, I'M JUST GOING TO GO THROUGH
22 TODAY'S DATE, YOU KNOW, TO SHOW WHAT HIS LOST WAGES WERE
23 COMPARED WHAT HE WAS MAKING AS A POLICE OFFICER WITH WHAT
24 HE RECEIVED THROUGH THE DISABILITY.

25 MR. LAWSON: YOUR HONOR, IF I MAY ALSO. THE

1 REASON THAT THIS CATEGORIZE I THINK THE FUTURE IS BECAUSE
2 IT'S THREE YEARS AFTER THE ACCIDENT AND THEN WE'RE NOW A
3 YEAR POST SURGERY AND THERE'S NO TESTIMONY FROM ANYBODY
4 THAT SAYS THAT OTHER THAN THE PLAINTIFF THAT SAYS I JUST
5 DECIDED I DIDN'T WANT TO DO THIS AND THERE'S JUST NO
6 TESTIMONY.

7 THE COURT: YA'LL COME ON UP.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
9 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
10 OF THE JURY AND THE COURT REPORTER.)

11 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
12 LET'S TAKE A 15 MINUTE BREAK, DO NOT DISCUSS THE CASE. IF
13 YOU NEED SOME NABS OR A COKE MAKE SURE THEY GET IT, IF THEY
14 NEED TO GO TO THE BATHROOM MAKE SURE THEY'RE TAKEN CARE OF.

15 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
16 11:26 A.M. AND A RECESS WAS TAKEN BY COURT PERSONNEL AT
17 THIS TIME.)

18 THE COURT: FOR THE RECORD I DID INSTRUCT THE
19 JURY AND WITNESS NOT TO TALK ABOUT THE CASE AND THE DEPUTY
20 THE WITNESS TO THE RESTROOM. OKAY, MR. ROTHSTEIN?

21 MR. ROTHSTEIN: YOUR HONOR, MAY IT PLEASE THE
22 COURT, WE'VE GOT ONE SORT OF SPECIAL REQUEST. THE NEXT
23 WITNESS WOULD BE DR. MILLS. HE I UNDERSTAND HAS PATIENTS
24 AT 2:00. WHAT I'D LIKE TO REQUEST AS A SPECIAL
25 ACCOMMODATION TO HIS PATIENTS IS TO HAVE MR. GAUSE COME

1 RECESS.) THE COURT: ANYTHING BEFORE WE GET
2 STARTED?

3 MR. ROTHSTEIN: WE'RE GOING TO HAVE MR. HUNT,
4 THE SON, TESTIFY IN A LITTLE WHILE AND I'M PROBABLY GOING
5 TO NEED TO PROFFER SOME OF THAT TESTIMONY JUST FOR THE
6 RECORD AND I UNDERSTAND YOUR RULING, BUT OUR POSITION IS
7 THAT, AND I'VE GOT A CASE THAT I PULLED UP LAST NIGHT FROM
8 SOUTH CAROLINA THAT SAYS THAT PUNITIVE DAMAGES ARE
9 IMPUTABLE IN A AGENT PRINCIPAL SITUATION. SO I THINK THE
10 WILLFUL AND THE RECKLESS ACTIONS OF THE SON, I MEAN HE
11 TESTIFIED IN HIS DEPOSITION HE KNEW HE WAS DRUNK WHEN HE
12 WAS DRIVING AND I THINK IT EXPLAINS WHY HE PARKED. HE
13 STOPPED HIS CAR IN THE MIDDLE OF THE ROAD INSTEAD OF
14 PULLING OFF THE SHOULDER AND WHEN HE SAW THE BLUE LIGHTS
15 THE FIRST THING THAT WENT THROUGH HIS MIND WAS I'M GOING TO
16 JAIL. I MEAN THAT'S WILLFUL CONDUCT CAUSE HE'S, YOU KNOW,
17 HE KNOWS HE SHOULDN'T BE DRIVING, HE'S DRIVING IN A WAY,
18 AND I THINK THAT GOES TO PUNITIVE DAMAGES AND I THINK WE
19 SHOULD BE ABLE TO GET THAT.

20 THE COURT: IN RESPONSE?

21 MR. CONNELL: YOUR HONOR, YOU ALREADY RULED
22 WE'RE NOT TRYING A CASE WITHIN A CASE. I MEAN THERE IS NO
23 EVIDENCE OF THAT. THERE'S ALSO EVIDENCE THAT HE STOPPED AS
24 THE POLICE STOPPED HIM, SO I DON'T THINK CONSTITUTIONALLY
25 YOU CAN GET A PUNITIVE DAMAGES JUDGMENT AGAINST SOMEONE IN

1 A FAMILY PURPOSE DOCTRINE WHEN THE ACTUAL ACTOR IS NOT A
2 DEFENDANT. IT DOESN'T MAKE ANY GOOD SENSE FOR THAT.

3 WE DO HAVE A CASE, YOUR HONOR, THAT YOUR HONOR
4 LOOKED AT AT THE SUMMARY JUDGMENT STAGE WE WOULD ARGUE TO
5 YOU AGAIN THAT SAYS THAT THE ACTION OF THE FAMILY PURPOSE
6 OF THE ACTOR AND/OR THE PARENT ARE INDIVISIBLE. SINCE HE'S
7 NOT IN THE CASE WE'RE GOING TO BE MAKING A MOTION AT THE
8 PROPER TIME TO DISMISS IT AGAINST HIM ANYWAY, AGAINST MR.
9 HUNT, THE PROVIDER.

10 THE COURT: AND THERE IS NO LAW REGARDING THAT
11 ISSUE.

12 MR. CONNELL: WELL THERE IS A GEORGIA CASE THAT
13 WAS CITED --

14 THE COURT: THERE'S A GEORGIA CASE BUT THERE IS
15 NO SOUTH CAROLINA CASE.

16 MR. CONNELL: THERE IS NO SOUTH CAROLINA CASE
17 BUT WE TAKE THE POSITION THAT YOUR HONOR'S GOING TO HAVE A
18 MAKE A RULING ON THAT.

19 MR. ROTHSTEIN: AND, YOUR HONOR, THIS CASE
20 ACTUALLY ADDRESSES BOTH OF HIS CLIENTS. IT'S CALLED AUSTIN
21 V. SPECIALTY TRANSPORTATION SERVICES INC. IT'S 594 S.E.
22 2ND 867, COURT OF APPEALS CASE FROM 2004, AND IT SAYS THAT
23 PUNITIVE DAMAGES, YOU DON'T HAVE TO GET A VERDICT AGAINST,
24 I MEAN YOU CAN'T HAVE AN INCONSISTENT VERDICT LIKE IF YOU
25 WENT TO TRIAL WITH PRINCIPAL AND THE AGENT UNLESS THERE WAS

1 A, YOU KNOW, AN ISSUE ON SAY NEGLIGENT ENTRUSTMENT. YOU
2 CAN'T GET PUNITIVE DAMAGES AGAINST ONE WITHOUT GETTING ONE
3 FROM THE OTHER BUT YOU DON'T HAVE TO SUE BOTH THE AGENT AND
4 THE PRINCIPAL AND THAT'S WHAT THIS CASE SAYS IS YOU CAN
5 ELECT TO SUE JUST THE PRINCIPAL FOR THE ACTS OF THE AGENT
6 AND IF, IF PUNITIVE DAMAGES ARE APPROPRIATE, IT'S JUST LIKE
7 IN THE EXXON VALDEZ CASE, I MEAN, THEY DIDN'T GET PUNITIVE
8 DAMAGES ONLY AGAINST THE DRIVER OF THE BOAT, THEY GOT
9 PUNITIVE DAMAGES AGAINST EXXON AND ---

10 MR. CONNELL: YOUR HONOR, FAMILY PURPOSE IS A
11 SPECIAL DOCTRINE NOT TO BE CONFUSED WITH MASTER SERVANT
12 RELATIONSHIP AND THERE IS A SOUTH CAROLINA CASE THAT SAYS
13 THEY'RE INDIVISIBLE AND WE'LL OFFER THAT AS --

14 THE COURT: ALL RIGHT, WHY DON'T YOU PASS THEM
15 UP. I ASSUME WE'RE GOING TO BE ON THE PLAINTIFF FOR A GOOD
16 WHILE ANYWAY.

17 MR. ROTHSTEIN: YOUR HONOR, YOU WANT ME TO WRITE
18 THIS CITE DOWN AND I CAN PRINT ANOTHER --

19 MR. LAWSON: YOUR HONOR, MAY WE APPROACH ON
20 ANOTHER MATTER?

21 THE COURT: SURE.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
23 RECORD OUT OF THE PRESENCE OF THE JURY AND HEARING OF THE
24 COURT REPORTER.)

25 THE COURT: GO AHEAD AND BRING OUT THE JURY.

1 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
2 2:44 P.M.)

3 THE COURT: ALL RIGHT, MR. ROTHSTEIN, IF YOU'D
4 CALL YOUR NEXT WITNESS.

5 MR. NICHOLS: THANK YOU, JUDGE, CALL TROOPER
6 GRAHAM.

7 JOHN C. GRAHAM

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 MADAM CLERK: STATE YOUR NAME FOR THE COURT,
10 PLEASE, SIR?

11 THE WITNESS: JOHN C. GRAHAM.

12 DIRECT EXAMINATION

13 BY MR. NICHOLS:

14 Q GOOD AFTERNOON, TROOPER GRAHAM.

15 A GOOD AFTERNOON.

16 Q I'M JOHN NICHOLS, I'M HERE WITH MR.
17 ROTHSTEIN REPRESENTING MR. GAUSE. WOULD YOU TELL THE JURY,
18 I MEAN I CAN, I ASSUME THAT THEY KNOW WHERE YOU WORK, BUT
19 JUST WOULD YOU GIVE ME THEN AN IDEA WHERE YOU WORK?

20 A I'M A TROOPER WITH THE SOUTH CAROLINA
21 HIGHWAY PATROL AND I'M ON MY 17TH YEAR.

22 Q HOW LONG HAVE YOU BEEN WITH THE HIGHWAY
23 PATROL?

24 A SEVENTEEN YEARS.

25 Q ARE YOU ASSIGNED TO ANY PARTICULAR PART OF

1 THE STATE?

2 A SINCE 2002 I'VE BEEN ASSIGNED TO HORRY
3 COUNTY.

4 Q OKAY, AND THAT'S WHERE YOU'RE ASSIGNED
5 TODAY?

6 A YES, SIR, IT IS.

7 Q NOW WHAT IN, WHAT IS YOUR CURRENT RANK?

8 A I'M A LANCE CORPORAL.

9 Q OKAY, AND WHAT DUTIES DOES THE LANCE
10 CORPORAL WITH THE STATE HIGHWAY PATROL HAVE?

11 A I'M ACTING SUPERVISOR WHENEVER MY
12 SUPERVISOR IS BASICALLY OFF WORK, ANY KIND OF SPECIAL
13 ASSIGNMENTS HE MAY HAVE. WE DO BASIC TRAFFIC ENFORCEMENT
14 WHICH INCLUDES COLLISION INVESTIGATION, PRETTY MUCH A HANDS

15 ON TYPE TROOPER AS FAR AS ANY KIND OF CRIMINAL ACTIVITY
16 THAT MAY BE TAKING PLACE. WE ASSIST THE SHERIFF'S
17 DEPARTMENT AND ALSO THE HORRY COUNTY POLICE AT TIMES, BUT
18 MY MAIN ROLE WOULD BE TO TRAFFIC ENFORCEMENT.

19 Q TROOPER GRAHAM, AS PART OF THOSE DUTIES OF
20 INVESTIGATING TRAFFIC ACCIDENTS DID YOU HAVE OCCASION TO
21 INVESTIGATE AN ACCIDENT ON NOVEMBER 14TH TO 15TH, 2003?

22 A YES, SIR, THE 15TH.

23 Q I'M SORRY, NOVEMBER 15TH, THAT'S CORRECT,
24 TELL, TELL THE JURY HOW YOU CAME TO COME TO THE ACCIDENT
25 SCENE?

1 A OKAY, I WAS WORKING DAY SHIFT ON NOVEMBER
2 THE 15TH, 2003, MY HOURS THAT I WOULD HAVE BEEN WORKING DAY
3 SHIFT, MY HOURS WOULD HAVE BEEN FROM SIX IN THE MORNING
4 TILL SIX IN THE EVENING. I RECEIVED A TELEPHONE CALL AT
5 HOME JUST PRIOR TO COMING OUT THAT THERE WAS A COLLISION ON
6 U.S. 501 NEAR THE STEAM PLANT INSIDE THE CITY LIMITS OF
7 CONWAY, SOUTH CAROLINA, AND THAT I WAS NEEDED TO RESPOND TO
8 THAT COLLISION.

9 Q DO YOU HAVE A SPECIFIC RECOLLECTION OF
10 THAT, THAT MORNING?

11 A I DO, I HAVE A COPY OF THE COLLISION
12 REPORT THAT I FILLED OUT WHICH IS ASSISTING ME RIGHT NOW
13 BECAUSE IT'S BEEN A WHILE SO I'M A LITTLE FUZZY ON SOME
14 STUFF.

15 Q ALL RIGHT, LET ME, LET ME SHOW YOU, I'VE
16 KIND OF DRAWN A DIAGRAM AND I'D LIKE FOR YOU TO LOOK AT IT,
17 PUT IT UP HERE, JUDGE, IF THAT'S ALL RIGHT. DOES THIS
18 DIAGRAM REASONABLY REPRESENT THE POSITION OF THE CARS ON
19 THAT MORNING?

20 A YES, SIR, IT DOES.

21 Q ALL RIGHT, AND I'VE PUT A RED THREE ON THIS
22 CAR, DO YOU KNOW WHICH CAR THAT WAS?

23 A THAT WOULD HAVE BEEN THE CAR DRIVEN BY
24 NATHAN DALE SMITHERS.

25 Q ALL RIGHT, AND A GREEN TWO, DO YOU KNOW

1 WHAT VEHICLE THAT WAS?

2 A THAT WOULD HAVE BEEN THE POLICE CAR THAT
3 WOULD HAVE BEEN DRIVEN BY MR. GAUSE.

4 Q OKAY, AND THEN WHAT ABOUT THE BLUE ONE?

5 A THAT WAS THE VEHICLE THAT HAD BEEN STOPPED
6 PREVIOUS TO MY ARRIVAL WHICH WAS UNOCCUPIED AT THE TIME. I
7 HAD LISTED ON THE REPORT AS A PARKED VEHICLE BECAUSE
8 CURRENTLY AT THE TIME OF THAT COLLISION THAT I INVESTIGATED
9 IT WAS PARKED.

10 Q NOW THE, WAS THERE, WERE THERE ANY OTHER
11 VEHICLES OTHER THAN THAT AT THE SCENE?

12 A AS I RECALL I'M NOT SURE IF IT WAS BEFORE
13 THE COLLISION OR AFTER THE COLLISION BUT I DID SPEAK WITH A
14 WITNESS AND I DID RECALL THAT THERE WAS ONE CAR PARKED IN
15 WHAT I WOULD CONSIDER THE EMERGENCY LANE OR THE RIGHT HAND
16 SHOULDER OF THE ROAD THAT WAS DRIVEN BY THAT WITNESS.

17 Q OKAY, NOW WAS THAT CAR SUFFICIENTLY OFF THE
18 ROADWAY PARKED IN THE EMERGENCY LANE?

19 A YES, SIR.

20 Q ALL RIGHT, NOW THE, THE NUMBER TWO CAR
21 WHICH WOULD HAVE BEEN MR. GAUSE'S CRUISER WHAT DID YOU
22 NOTICE ANYTHING ABOUT IT, WAS IT VISIBLE?

23 A YES, SIR, I MEAN THE FIRST THING I, WELL I
24 WAS ACTUALLY COMING FROM CONWAY WHICH ACCORDING TO THIS
25 WOULD HAVE BEEN JUST NORTH OF THIS LOCATION SO I WOULD HAVE

1 BEEN TRAVELING SOUTH ON THE OTHER SIDE OF THE ROAD TO GET
2 TO THIS COLLISION. THE FIRST THING I NOTICED WAS THERE WAS
3 A LOT OF DAMAGE TO THE CAR AND THAT WAS ONE THING THAT WAS
4 PRETTY OBVIOUS TO ME.

5 Q WAS THE, WAS THE LIGHT RACK ON?

6 A YES, SIR.

7 Q OKAY, WHAT WAS, DO YOU RECALL WHAT THE
8 WEATHER OR THE VISIBILITY WAS THAT NIGHT?

9 A THE VISIBILITY WAS GOOD. I ACTUALLY ON THE
10 REPORT I PUT CLEAR BUT THAT DOESN'T NECESSARILY MEAN THAT
11 YOU COULD SEE THE STARS BUT CLEAR TO ME REPRESENTS THAT
12 THERE'S NO PROBLEMS WITH VISIBILITY AS FAR AS ON THE
13 ROADWAY.

14 Q IS THIS ROADWAY LIGHTED?

15 A NO, SIR.

16 Q OKAY, BUT HOW AT THE POINT ON 501 THERE
17 WHERE THE COLLISION OCCURRED IS THAT A CURVE OR IS IT A
18 STRAIGHTAWAY, DESCRIBE THE ROADWAY?

19 A FURTHER ON BACK SOUTH FROM THIS COLLISION
20 YOU GET INTO A LIKE A SLIGHT CURVE WHERE THE CONWAY POWER
21 PLANT IS BUT THIS PARTICULAR AREA HERE THERE'S PLENTY OF
22 SIGHT DISTANCE. YOU'RE NOT IN A CURVE OR ON A HILL CREST
23 OR ANYTHING BY NO MEANS.

24 Q WAS THERE ANYTHING ABOUT THIS AREA THAT
25 WOULD HAVE OBSTRUCTED SOMEONE'S VIEW IN YOUR MIND?

1 A NO, SIR.

2 Q ALL RIGHT, NOW WHEN YOU ARRIVED AT THE
3 SCENE YOU SAID THERE WAS A LOT OF DAMAGE, WHAT, WHICH CARS
4 WERE DAMAGED?

5 A WELL TWO AND THREE HAD THE MOST DAMAGE AND
6 THEN NUMBER ONE HAD SOME MINOR DAMAGES TO THE REAR PORTION.
7 IT WAS ACTUALLY MORE TO THE LEFT REAR PORTION TO NUMBER
8 ONE.

9 Q I'M GOING TO SHOW YOU SOME PHOTOGRAPHS AND
10 ASK YOU TO TAKE A LOOK AT THOSE PHOTOGRAPHS, DO YOU, WHAT
11 DO THOSE PHOTOGRAPHS REPRESENT?

12 A THOSE ARE THE VEHICLES THAT WERE INVOLVED
13 IN THIS COLLISION THAT WE'RE DISCUSSING.

14 Q OKAY, NOW THERE'S, IT LOOKS TO ME LIKE
15 THERE'S A RED VEHICLE AND A WHITE VEHICLE, DO YOU KNOW
16 WHICH VEHICLES THEY WOULD BE ON THIS DIAGRAM?

17 A THE WHITE VEHICLE WOULD BE THE POLICE
18 VEHICLE; THE RED VEHICLE IS THE CHEVROLET PICKUP TRUCK THAT
19 HAD REAR ENDED THE POLICE VEHICLE.

20 Q SO THAT WOULD HAVE BEEN THE THIRD VEHICLE
21 OUTLINED IN RED?

22 A RIGHT, NUMBER THREE.

23 Q TROOPER GRAHAM, DO THOSE PHOTOGRAPHS
24 REASONABLY DEPICT WHAT YOU SAW THAT NIGHT OR THAT MORNING,
25 I KEEP SAYING NIGHT, BUT THAT MORNING AT THE SCENE?

1 A YES, SIR.

2 MR. NICHOLS: JUDGE, WE'D OFFER THE PHOTOGRAPHS
3 INTO EVIDENCE.

4 THE COURT: ANY OBJECTIONS?

5 MR. LAWSON: NO OBJECTION FROM THE DEFENDANT
6 SMITHERS.

7 MR. CONNELL: NO OBJECTION.

8 THE COURT: ALL RIGHT, THE PHOTOGRAPHS WILL BE
9 MARKED IN EVIDENCE, NUMBER 3.

10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 3 ENTERED
11 INTO EVIDENCE.)

12 MR. NICHOLS: (CONTINUING)

13 Q NOW, TROOPER GRAHAM, WHEN YOU, WHEN YOU
14 WERE INVESTIGATING THIS DID YOU DO ANY KIND OF INVENTORY OF
15 THE CONTENTS OF EITHER OF THE, ANY OF THE CARS?

16 A YES, SIR, WHEN I HAVE A VEHICLE TOWED IT'S
17 NORMAL PRACTICE FOR ME TO DO AN INVENTORY, I MEAN I DON'T
18 HAVE THAT INVENTORY SHEET IN FRONT OF ME SO AS FAR AS THE
19 PARTICULARS I KNOW I DID ONE, PRETTY, FAIRLY POSITIVE I DID
20 ONE ON IT BUT I DON'T HAVE IT IN FRONT OF ME HERE.

21 Q WELL LET'S TALK ABOUT CAR NUMBER THREE
22 WHICH WAS MR. SMITHERS CAR, DO YOU RECALL LOOKING, LOOKING
23 IN MR. SMITHERS VEHICLE WHICH WAS A PICKUP TRUCK AS I
24 UNDERSTAND?

25 A YES, SIR, THE ONE THING THAT I DO REMEMBER,

1 THIS IS OFF, JUST FROM MY OWN RECOLLECTION, NOW I'M NOT
2 SURE IF IT WAS, I'M NOT GOING TO SAY THAT IT WAS INSIDE BUT
3 I DO RECALL SEEING SEVERAL EMPTY BEER CANS AS WELL AS A
4 COOLER THAT HAD ICE IN IT. AS FAR AS CAUSE I ACTUALLY MADE
5 A STATEMENT IN REFERENCE TO THAT TO ANOTHER POLICE OFFICER
6 THAT WAS THERE SOON AFTER I ARRIVED BUT AS FAR AS WHETHER
7 OR NOT THOSE BEER CANS WERE INSIDE OR NOT I'M NOT SURE
8 ABOUT THAT.

9 Q OKAY, NOW TO REFRESH YOUR RECOLLECTION ON
10 THE UNIFORM, THE TR310 UNIFORM COLLISION REPORT, THERE ARE
11 SOME CODES ALONG SORT OF THE CENTER OF THE SHEET AND I SEE
12 CODE 99, WHAT'S THAT CODE?

13 A THAT'S A DRIVING UNDER THE INFLUENCE
14 CHARGE.

15 Q OKAY, AND WE'RE TALKING ABOUT THE THIRD
16 VEHICLE, MR. SMITHERS VEHICLE?

17 A YES, SIR.

18 Q NOW THERE'S ANOTHER CODE THERE IT LOOKS
19 LIKE 94?

20 A YES, SIR.

21 Q CAN YOU TELL ME WHAT THAT CODE IS?

22 A I WOULD NORMALLY INDICATE ALONG WITH A 99
23 CHARGE THAT THERE WAS A CHARGE MADE ALSO FOR OPEN
24 CONTAINER.

25 Q OKAY, WAS THERE ANYTHING ELSE ABOUT THE

1 SCENE THAT YOU FOUND REMARKABLE AND YOU CAN REFRESH YOUR
2 RECOLLECTION FROM THE REPORT IF YOU NEED?

3 A JUST THAT I DID NOT OBSERVE ANY BRAKING
4 MARKS FROM UNIT NUMBER THREE TO INDICATE THAT AT ANY TIME
5 HE HAD SLOWED DOWN OR STOPPED OR TRIED TO MAKE ANY KIND OF
6 A BASIC MOVE AND AGAIN I MEAN THE SITE DISTANCE WAS PRETTY
7 CLEAR SO THAT WAS, THAT WAS ONE THING THAT STUCK OUT IN MY
8 MIND.

9 Q NOW DID YOU, DID YOU SEE MR. SMITHERS AT
10 THE SCENE?

11 A NO, SIR, I DIDN'T.

12 Q DID YOU SPEAK WITH ANY WITNESSES AT THE
13 SCENE?

14 A YES, SIR, I DID TALK TO A MR. JOHN BAYNE
15 WHICH I HAVE LISTED ON THE REPORT AS A WITNESS.

16 Q AS A RESULT OF TALKING WITH THE WITNESSES
17 AND WHAT YOU OBSERVED AT THE SCENE DID YOU CHARGE ANYONE?

18 A YES, SIR, I CHARGED NUMBER THREE.

19 Q ALL RIGHT, AND DID THAT, DID THAT, DID YOU
20 PROSECUTE THAT CASE?

21 A YES, SIR, I DID.

22 Q AND WHAT WAS THE RESULT OF THAT
23 PROSECUTION?

24 A MR. SMITHERS WAS FOUND GUILTY OF DRIVING
25 UNDER THE INFLUENCE OF ALCOHOL BY WAYS OF A JURY TRIAL.

1 Q OKAY, SO IT WAS BY VIRTUE OF A JURY TRIAL,
2 MR. SMITHERS DIDN'T PLEAD GUILTY?

3 A NO, SIR, HE DID NOT.

4 Q ALL RIGHT, I'M GOING TO SHOW YOU, I'M GOING
5 TO SHOW YOU WHAT WE'VE MARKED AS PLAINTIFF'S EXHIBIT 4. DO
6 YOU KNOW WHAT THIS DOCUMENT IS?

7 A IT APPEARS TO BE A RECORD FROM CENTRAL JURY
8 COURT HERE IN HORRY COUNTY INVOLVING A NATHAN DALE
9 SMITHERS.

10 Q IS THIS, IT SAYS DOWN THERE CHARGED DRIVING
11 UNDER THE INFLUENCE FIRST OFFENSE?

12 A YES, SIR.

13 Q AND GUILTY JURY TRIAL ON AUGUST 12TH, 2004?

14 A YES, SIR.

15 Q DOES THIS, DOES THIS COINCIDE WITH YOUR
16 RECOLLECTION OF WHAT HAPPENED IN THIS CASE?

17 A YES, SIR, IT DOES.

18 Q AND YOU ACTUALLY PROSECUTED THE CASE?

19 A YES, SIR, IN FACT ON THE CASE HISTORY FOR
20 THIS FILE IT'S GOT THE TICKET NUMBER DOWN FOR THE
21 PARTICULAR CHARGE THAT THIS SHEET IS VERIFYING AND THAT'S
22 THE CHARGE ON THE WRECK REPORT THAT I FILLED OUT IT'S THE
23 SAME TICKET NUMBER.

24 MR. NICHOLS: OKAY, JUDGE, I WOULD OFFER THIS
25 INTO EVIDENCE.

1 THE COURT: ANY OBJECTIONS?

2 MR. LAWSON: NO OBJECTION FROM DEFENDANT
3 SMITHERS.

4 MR. CONNELL: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT, PLAINTIFF'S NUMBER 4 IN
6 EVIDENCE.

7 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 4 ENTERED
8 INTO EVIDENCE.)

9 MR. NICHOLS: (CONTINUING)

10 Q TROOPER GRAHAM, DO YOU RECALL WHAT THE
11 SPEED LIMIT WAS IN THE AREA WHERE THE WRECK WAS THAT NIGHT,
12 THAT MORNING?

13 A YES, IT'S 50 MILES AN HOUR FROM THERE OUT
14 TO SINGLETON RIDGE ROAD WHICH IS OUT BY THE CONWAY
15 HOSPITAL.

16 Q DO YOU RECALL IF THERE WAS ANYTHING ALONG
17 THE SHOULDER LANE THAT WOULD HAVE PREVENTED AN AUTOMOBILE
18 FROM PULLING OVER THAT, AT THAT LOCATION ONTO THE RIGHT
19 RATHER THAN STOPPING IN THE LANE?

20 A NO, SIR, THERE'S I WOULD CONSIDER IT AN
21 EMERGENCY LANE, I THINK THE LAW WOULD CONSIDER IT THAT, BUT
22 THERE IS A GUARDRAIL JUST TO THE RIGHT OF THE EMERGENCY
23 LANE BUT THAT LANE SHOULD BE AROUND BETWEEN 10 TO 12 FEET
24 WIDE. IN FACT I'VE IN THAT, ALMOST IN THAT SAME LOCATION
25 I'VE HELPED A PERSON CHANGE A TIRE THERE IN THE EMERGENCY

1 LANE WITHOUT DISRUPTING TRAFFIC SO WE HAD ENOUGH ROOM TO DO
2 THAT.

3 Q WAS THE TRAFFIC BAD AT THE TIME OR WHAT WAS
4 TRAFFIC LIKE AT THE TIME, LET ME ASK YOU THAT?

5 A IT WAS STARTING TO PICK UP A LITTLE BIT
6 WHEN I ARRIVED BUT I PUT DOWN AT THE TIME OF THE COLLISION
7 OCCURRED PRIOR TO ME GETTING DISPATCHED, WHICH I GOT
8 DISPATCHED OR CALLED AT HOME AT 5:55, SO ANY TIME PRIOR TO
9 THAT THE TRAFFIC SHOULD HAVE BEEN FAIRLY LIGHT.

10 MR. NICHOLS: I HAVE NO OTHER QUESTIONS, ANSWER
11 ANY QUESTIONS THE DEFENDANTS MAY HAVE.

12 MR. LAWSON: THANK YOU, SIR.

13 CROSS EXAMINATION

14 BY MR. LAWSON:

15 Q CORPORAL GRAHAM, WHAT TIME DO YOU HAVE THE
16 ACCIDENT HAPPENED?

17 A I PUT ON THE REPORT AT 5:50, THAT MAY NOT
18 BE EXACT, I WAS CALLED AT HOME AT 5:55 JUST PRIOR TO COMING
19 OUT.

20 Q OKAY, AND MOST OF THE TRAFFIC EARLY IN THE
21 MORNING IS TRAFFIC LEAVING CONWAY HEADING TOWARDS THE BEACH
22 USUALLY, ISN'T IT?

23 A YES, SIR, I WOULD SAY SO.

24 Q COMING FROM THE BEACH TO CONWAY IS USUALLY
25 ALWAYS PRETTY LIGHT EARLY IN THE MORNING?

1 A YES, SIR.

2 Q OKAY, HOW FAR IS IT FROM UNIT ONE TO THE
3 EMERGENCY LANE, HOW WIDE ARE THESE LANES?

4 A A LANE CAN VARY EASILY FROM ABOUT I'D SAY
5 NO LESS THAN ABOUT NINE AND A HALF FEET UP TO ABOUT 12 AND
6 A HALF FEET BUT I WOULD CONSIDER IT BEING THE U.S. PRIMARY
7 HIGHWAY THAT THOSE LANES WOULD BE AT LEAST 10 FEET.

8 Q ALL RIGHT, SO IF HE'S IN THIS LANE SO 10
9 FEET TO THIS LANE SO ABOUT 10 OR 12 FEET TO GET TO THE
10 OTHER SIDE OF THE ROAD?

11 A YES, SIR.

12 Q OKAY, AND THE TRAFFIC WAS LIGHT THAT TIME
13 OF THE MORNING?

14 A YES, SIR.

15 Q OKAY, AND YOU GOT THAT AS A PARK, YOU HAD
16 IT ON YOUR REPORT AS A PARKED VEHICLE; IS THAT CORRECT?

17 A RIGHT, I MEAN IT WAS CURRENTLY PLACED IN
18 PARK WHEN I ARRIVED.

19 Q LET ME ASK YOU, WHEN YOU, WHEN YOU PULL
20 SOMEBODY OVER AND THEY STOP IN THE MIDDLE, IN THE LEFT LANE
21 OF A U.S. HIGHWAY, DO YOU ASK THEM TO MOVE TO THE SHOULDER?

22 A NORMALLY I WOULD. I HAVE SITUATIONS WHERE
23 I MIGHT NOT BUT IT'S DEPENDING ON WHAT THE PERSON IS BEING
24 STOPPED FOR AS TO WHETHER OR NOT I WANT THEM TO CONTINUE TO
25 DRIVE.

1 Q ALL RIGHT, WOULD THAT BE ALSO DEPENDING ON
2 THE AMOUNT OF TRAFFIC OUT THERE, TOO?

3 A YES, SIR.

4 Q LET ME SHOW YOU, HAVE YOU GOT I THINK IT'S
5 4, YEAH, EXHIBIT 4, THAT'S THE DEPOSITION SHEET?

6 A YES, SIR.

7 Q YOU DIDN'T SEE MR. SMITHERS AT THE SCENE,
8 DID YOU SEE HIM AT THE HOSPITAL?

9 A YES, SIR.

10 Q OKAY, SO HE WAS TRANSPORTED TO THE
11 HOSPITAL?

12 A YES, SIR, HE WAS TRANSPORTED BY AMBULANCE
13 TO THE HOSPITAL.

14 Q OKAY, AND WHEN YOU GOT TO THE HOSPITAL YOU
15 SPOKE TO HIM?

16 A YES, SIR.

17 Q AND YOU PLACED HIM UNDER ARREST AND CHARGED
18 HIM WITH DUI FIRST OFFENSE?

19 A YES, SIR, NORMAL PROCEDURE WOULD HAVE BEEN
20 IF I FELT LIKE AT THE TIME THAT I SPOKE WITH HIM AT THE
21 HOSPITAL I WOULD HAVE INDICATED THAT TO HIM. AT SOME POINT
22 I WOULD HAVE TRIED TO GET IN TOUCH WITH THE ATTENDING
23 PHYSICIAN TO SEE IF IT WAS OKAY FOR HIM TO LEAVE WITH ME TO
24 BE OFFERED A BREATH TEST. IN THIS CASE, I MEAN I DON'T, I
25 DON'T, HONESTLY I DON'T REMEMBER THE PARTICULARS OF IT BUT

1 ON THE REPORT IT INDICATES THAT HE WAS GIVEN A BREATH TEST
2 WHICH WOULD HAVE MEANT THAT HE WOULD HAVE LEFT THE HOSPITAL
3 WITH ME, GO TO A BREATH TESTING SITE, AND THEN AT THAT
4 POINT BE ACTUALLY CHARGED WITH A DRIVING UNDER THE
5 INFLUENCE CHARGE.

6 Q OKAY, SO HE WOULD HAVE RIDDEN WITH YOU FROM
7 THE HOSPITAL PROBABLY OUT TO J. REUBEN LONG?

8 A YES, SIR.

9 Q OKAY, AND YOU WOULD HAVE, SOMEBODY THERE
10 WOULD HAVE ADMINISTERED THE BREATHALYZER?

11 A YES, WELL ACTUALLY ---

12 Q ANOTHER OFFICER?

13 A YES, SIR, WELL SINCE I THINK IT WAS 2001
14 WITH THE DATAMASTERS WE, WE DO OUR OWN TEST.

15 Q YOU DID YOUR OWN TEST BACK IN '03?

16 A YES, SIR.

17 Q OKAY, ALL RIGHT, AND SO AND AS I UNDERSTAND
18 IT, HE WAS COOPERATIVE WITH YOU FROM THE HOSPITAL TO J.
19 REUBEN LONG?

20 A I DON'T RECALL HAVING ANY PROBLEMS WITH
21 HIM, SIR.

22 Q OKAY, ALL RIGHT, AND YOU CHARGED HIM WITH
23 DRIVING UNDER THE INFLUENCE FIRST OFFENSE; ISN'T THAT
24 RIGHT?

25 A YES, SIR.

1 Q NOW OUT ON THE ROADWAY YOU, YOU COULD HAVE
2 HAD THE ABILITY TO CHARGE HIM WITH A FELONY DUI, WOULDN'T
3 YOU, IF YOU WANTED TO?

4 A YES, SIR, I WOULD PROBABLY WOULD HAVE
5 CONSULTED WITH THE SOLICITOR'S OFFICE ---

6 Q OKAY, AND ---

7 A --- IF I FELT LIKE THAT WAS SOMETHING THAT
8 NEEDED TO BE DONE.

9 Q AND YOU CHARGE PEOPLE WITH FELONY DUI WHEN
10 THERE'S SERIOUSLY BODILY INJURY, ISN'T THAT RIGHT?

11 A YES, SIR.

12 Q OKAY, NOW DID YOU HAVE A CHANCE TO SEE MR.
13 GAUSE, YOU TALK TO HIM?

14 A I'M SURE I DID, I'M NOT SURE EXACTLY, I'M
15 SURE I DID. I MEAN HE WAS ANOTHER POLICE OFFICER SO I
16 WOULD HAVE WANTED TO CHECK ON HIS CONDITION BUT AS FAR AS
17 WHAT WE SPOKE ABOUT I'M NOT REALLY SURE ABOUT ALL OF THAT.

18 Q ALL RIGHT, AND BASED UPON YOUR
19 INVESTIGATION OF THE CHARGE WAS DRIVING UNDER THE INFLUENCE
20 FIRST OFFENSE?

21 A YES, SIR.

22 MR. LAWSON: OKAY, THAT'S ALL THE QUESTIONS I
23 HAVE, THANK YOU.

24 THE COURT: MR. CONNELL?

25 MR. CONNELL: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

1
2 BY MR. CONNELL:

3 Q DID YOU SEE MR. EDWARD HUNT THERE THAT
4 NIGHT?

5 A NO, SIR, I DIDN'T.

6 Q AND DO YOU KNOW MR. EDWARD HUNT?

7 A NO, SIR.

8 Q HAVE YOU EVER MET HIM BEFORE?

9 A NO, SIR.

10 Q AND YOU HAVE NO KNOWLEDGE OF HIM BEING
11 INVOLVED AT ALL IN THIS; IS THAT RIGHT?

12 A NO, SIR, AS FAR AS LOOKING AT THE REPORT I
13 MEAN THE ONLY WAY THAT I WOULD HAVE ANY KNOWLEDGE OF HIM IS
14 I HAVE HIM LISTED AS THE OWNER OF THE VEHICLE.

15 Q SO YOU HAVE ---

16 A OR ONE OF THE VEHICLES.

17 Q --- HIM LISTED AS THE OWNER OF WHAT
18 VEHICLE?

19 A THE NUMBER ONE VEHICLE.

20 Q YOU DON'T EVEN KNOW WHO WAS DRIVING THE
21 VEHICLE NUMBER ONE; IS THAT RIGHT, BASED ON YOUR REPORT?

22 A WELL, RIGHT, I MEAN I KNEW I HAD
23 INFORMATION REGARDING THE DRIVER BUT HE WAS NOT THERE AND
24 HE WAS NOT INVOLVED AT THE, HE WAS NOT INVOLVED IN THIS
25 COLLISION AS FAR AS BEING A PASSENGER OR SOMEONE THAT WOULD

1 HAVE BEEN INJURED OR ANYTHING LIKE THAT.

2 Q ALL RIGHT, AND YOU KNOW MR. EDWARD HUNT
3 WHO'S THE OWNER OF THE CAR WAS NOT EVEN IN THAT SCENE;
4 ISN'T THAT RIGHT?

5 A THAT IS CORRECT, SIR.

6 Q AND THE FIRST YOU'VE EVEN SEEN OF MR.
7 EDWARD HUNT IS WHEN YOU SAW HIM TODAY; ISN'T THAT RIGHT?

8 A THAT'S TRUE.

9 Q SO ON THE NIGHT IN QUESTION THE PERSON WHO
10 WAS DRIVING THE VEHICLE NUMBER ONE IS SOMEONE THAT YOU DID
11 NOT EVEN MEET; ISN'T THAT RIGHT?

12 A THAT'S CORRECT.

13 Q AND WHEN YOU GOT THERE AS I UNDERSTAND IT
14 YOUR JOB IS TO INVESTIGATE ANY ACCIDENTS INVOLVING POLICE
15 VEHICLES OUTSIDE THE HIGHWAY PATROL; IS THAT RIGHT?

16 A YES, SIR.

17 Q SO THE REASON WHY YOU WERE CALLED TO
18 INVESTIGATE WAS BECAUSE THIS WAS A WRECK THAT OCCURRED WITH
19 THE, WITH A CITY POLICEMAN; IS THAT RIGHT?

20 A YES, SIR.

21 Q AND AT THE SCENE OF THE CRIME, AT THE SCENE
22 OF THE ACCIDENT, MR. GAUSE WAS WALKING AROUND; IS THAT
23 RIGHT?

24 A I DID NOT SEE HIM AT THE SCENE. HE WAS ---

25 Q YOU DIDN'T SEE HIM AT ALL AT THE SCENE?

1 A RIGHT, HE WAS, HE HAD ALREADY BEEN
2 TRANSPORTED BY AMBULANCE, BOTH HIM AND ALSO MR. SMITHERS
3 WERE NOT AT THE SCENE WHEN I ARRIVED.

4 Q DID YOU KNOW THAT MARCH 18TH, 2000, WELL
5 PRIOR TO MARCH 18TH, DID YOU KNOW HE WENT BACK TO WORK AS A
6 CONWAY POLICE OFFICER?

7 A NO, SIR.

8 MR. ROTHSTEIN: OBJECTION TO THAT, JUDGE, THIS
9 WITNESS WOULD HAVE NO KNOWLEDGE OF THAT OF ANYTHING ABOUT
10 THIS.

11 MR. CONNELL: ASK THE QUESTION, IF HE KNOWS IT
12 OR NOT? HE'S A POLICEMAN MAYBE HE KNOWS HIM OR NOT.

13 MR. NICHOLS: HE'S TESTIFYING TO THE QUESTION,
14 JUDGE.

15 THE COURT: WHAT WAS YOUR QUESTION AGAIN?

16 MR. CONNELL: DID YOU KNOW, DO YOU KNOW WHETHER
17 OR NOT OFFICER GAUSE WENT BACK TO WORK.

18 THE COURT: I'LL OVERRULE THAT, YOU CAN ANSWER
19 IT.

20 THE WITNESS: (CONTINUING)

21 A NO, SIR, I HAD NO RECOLLECTION OF THAT. AS
22 A MATTER OF FACT THIS IS, THIS MORNING WAS THE FIRST TIME I
23 HAD ACTUALLY MET MR. GAUSE TO BEGIN WITH.

24 Q YOU HAD NEVER MET HIM BEFORE?

25 A RIGHT.

1 Q AND WEREN'T AWARE OF HIM BEING A CONWAY
2 POLICE OFFICER UNTIL THAT NIGHT?

3 A THAT'S CORRECT.

4 Q AND HADN'T SEEN HIM SINCE?

5 A THAT'S CORRECT.

6 Q AND SO YOU DON'T HAVE ANY, YOU CAN'T OFFER
7 ANY TESTIMONY ABOUT HIS ABILITY TO BE A POLICE OFFICER NOW;
8 IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q HOW MANY POLICE OFFICERS WERE OUT THERE
11 THAT NIGHT?

12 A I'M NOT SURE, I WANT TO SAY TWO BUT THAT'S
13 SPECULATION. WHEN I ARRIVED I THINK, I THINK MR. GAUSE HAD
14 ALREADY BEEN, WELL I'M SURE MR. GAUSE HAD ALREADY BEEN
15 TRANSPORTED BUT AS TO THE NUMBER OF POLICE THAT WERE THERE
16 I'M SPECULATING TWO OTHER POLICE OFFICERS BEFORE MY
17 ARRIVAL. LOOKING AT THE REPORT IT TOOK ME 23 MINUTES TO
18 ARRIVE FROM THE TIME I WAS DISPATCHED SO --

19 Q YOU HEARD TESTIMONY OF OFFICER GAUSE
20 EARLIER TODAY; DID YOU NOT?

21 A THAT'S TRUE, YES, SIR.

22 Q AND DID YOU HEAR HIM SAY THAT HE ACTUALLY
23 PUSHED ANOTHER CAR OUT OF THE HIGHWAY ON ANOTHER OCCASION
24 AFTER THIS INCIDENT?

25 A YES, SIR.

1 Q AND WOULD IT HAVE BEEN ANY PROBLEM FOR HIM
2 AND THE OTHER CONWAY POLICE OFFICERS TO PUSH THIS CAR OUT
3 OF THIS LANE OVER HERE?

4 A NOT THAT I SEE UNLESS, UNLESS THE TRAFFIC
5 OR SOMETHING WHICH I DON'T THINK THERE WOULD HAVE BEEN
6 PROBLEMS WITH THE TRAFFIC THAT MORNING.

7 Q SO THEY COULD HAVE EASILY PUSHED THAT CAR
8 OFF TO THE SIDE OF THE ROAD; IS THAT RIGHT?

9 A I WOULD SAY SO, YES, SIR.

10 Q ALL RIGHT, AND THIS AREA RIGHT OVER HERE IS
11 REALLY PRETTY NARROW; IS IT NOT? THIS IS A VERY NARROW,
12 THERE'S A DEEP DITCH AND ALL; ISN'T THAT RIGHT?

13 A WELL THERE'S A GUARD RAIL, AS I RECALL I
14 THINK THERE'S A GUARD RAIL ON THE SIDE OF THE ROAD THERE
15 BUT I, I THINK IT'S PROBABLY ABOUT 10 FEET WIDE, GIVE OR
16 TAKE A LITTLE BIT.

17 Q ALL RIGHT, AND YOU THINK THAT THIS IS
18 BETWEEN THIS CAR AND RIGHT HERE IS ABOUT HOW, HOW MUCH?

19 A THOSE LANES I WOULD ASSUME WOULD BE ABOUT
20 12, 12 FEET, SO ABOUT 12 TO 15 FEET SHOULD BE IN THAT LANE.

21 Q AND IT WAS A FIREBIRD, I BELIEVE; IS THAT
22 RIGHT?

23 A YES, SIR.

24 Q AND TO SIMPLY PUT IT IN NEUTRAL AND PUSHED
25 IT OVER TO THE SIDE WOULD HAVE AVOIDED THIS WRECK; ISN'T

1 THAT RIGHT?

2 A WELL IF IT HAD BEEN OFF THE ROADWAY I'M
3 ASSUMING IT WOULDN'T HAVE BEEN STRUCK, I'M NOT SURE.

4 MR. CONNELL: THANK YOU.

5 THE COURT: REDIRECT?

6 MR. NICHOLS: JUST A FEW, JUDGE.

7 REDIRECT EXAMINATION

8 BY MR. NICHOLS:

9 Q TROOPER GRAHAM, IF SOMEONE HADN'T PARKED IT
10 THERE IT WOULDN'T HAVE BEEN THE WRECK, RIGHT?

11 A THAT'S TRUE.

12 Q AND SO MR. HUNT PARKED HIS VEHICLE ON THE
13 INSIDE LANE?

14 A THAT'S TRUE.

15 Q IS THE INSIDE LANE IS THAT A PROPER PLACE
16 TO PARK A VEHICLE?

17 A NO, SIR.

18 Q IS IT AGAINST THE LAW?

19 A YES, SIR.

20 Q NOW I HEARD THE QUESTION ASKED ABOUT HOW,
21 HOW MR. SMITHERS WAS COOPERATIVE, IF I COULD ASK YOU TO
22 TURN TO THE SECOND PAGE OF THE ACCIDENT REPORT?

23 A I DIDN'T SAY, I DIDN'T SAY COOPERATIVE, I
24 WAS JUST SAYING I DON'T RECALL HIM BEING A PROBLEM OR
25 ANYTHING OUT OF THE ORDINARY WITH HIM.

1 Q I UNDERSTAND, BUT YOU HAD INDICATED THAT
2 HE TOOK THE BREATH TASTE AND IF YOU'LL LOOK ABOUT TWO
3 THIRDS OF THE WAY DOWN THERE'S A SEAL AND RIGHT ABOVE THAT
4 THERE'S A WORD WRITTEN, WHAT'S THAT WORD, IT'S A
5 HANDWRITTEN WORD?

6 A THAT'S A REFUSAL OF THE BREATH TEST.

7 Q WHAT DOES THAT MEAN?

8 A MEANS HE REFUSED TO TAKE THE BREATH TEST.

9 Q SO HE WAS OFFERED THE TEST AND REFUSED?

10 A RIGHT.

11 Q OKAY, NOW WE HEARD A LITTLE BIT ABOUT
12 FELONY DUI, IN, IN THIS TYPE OF ACCIDENT IS A FELONY DUI
13 CHARGE GENERALLY BROUGHT FOR A FIRST DUI, FOR A FIRST DUI
14 WHERE THERE'S THIS KIND OF IN YOUR EXPERIENCE?

15 A CAN YOU REPEAT THE QUESTION FOR ME ONE MORE
16 TIME?

17 Q YES, SIR, IT WAS BADLY WORDED. IN YOUR
18 EXPERIENCE THE TYPE OF DAMAGE THAT YOU SEE HERE AND THE
19 TYPE OF INJURIES THAT YOU BECAME AWARE OF WHERE THERE'S NOT
20 A DEATH DO YOU NORMALLY CHARGE DUI, FELONY DUI?

21 A NO, SIR, I WOULD, I WOULD, AGAIN I MEAN I
22 WOULD CONSULT WITH THE SOLICITOR'S OFFICE BEFORE MAKING
23 THAT CHARGE.

24 Q NOW ON CROSS EXAMINATION YOU ENDED UP THAT
25 YOU SPOKE WITH MR. SMITHERS AT THE HOSPITAL; DO YOU RECALL

1 WHAT HE SAID?

2 A NO, SIR.

3 Q BUT AS A RESULT OF THAT YOU DID PLACE HIM
4 UNDER ARREST AT, WAS HE OFFERED THE BREATHALYZER AT THE
5 HOSPITAL?

6 A NO, SIR, I DON'T HAVE THE MEANS OF, OF
7 GIVING A BREATH TEST, I DON'T HAVE A PORTABLE BREATH TEST
8 KIT.

9 Q I'M SORRY, I MEANT WAS, WHEN WAS THE OFFER
10 MADE, LET ME ASK YOU THAT?

11 A HE WOULD HAVE BEEN PLACED UNDER ARREST FOR
12 DRIVING UNDER THE INFLUENCE AND HE WOULD HAVE BEEN TOLD
13 THAT I WAS, I WOULD BE REQUESTING A BREATH TEST. THE
14 PLACING UNDER ARREST WOULD HAVE BEEN REGARDLESS OF THE
15 BREATH TEST OR NOT, THAT WOULD BE BASED UPON THE EVIDENCE
16 THAT I HAD AT THE TIME TO FEEL LIKE A PERSON WAS UNDER THE
17 INFLUENCE. THE BREATH TEST WOULD BE SECONDARY TO THAT.

18 Q DO YOU THINK HE UNDERSTOOD THAT YOU WERE
19 OFFERING HIM A BREATH TEST?

20 A YES, SIR.

21 Q DO YOU THINK IT WAS CLEAR TO YOU THAT HE
22 WAS REFUSING THE BREATH TEST?

23 A YES, SIR, IN FACT WE HAVE AN IMPLIED
24 CONSENT WARNINGS THAT WE HAVE TO OFFER A PERSON PRIOR TO
25 GIVING THEM THE TEST WHICH IS A, IT'S BASICALLY THEIR RIGHT

1 CONCERNING TAKING A BREATH TEST AND THEY HAVE, IT ALLOWS
2 THEM THE, OR IT TELLS THEM IN THERE THAT THEY CAN EITHER
3 TAKE THE TEST OR REFUSE IT. THERE MAY BE CERTAIN PENALTIES
4 REGARDING A PERSON WHO WOULD REFUSE TO TAKE THE BREATH TEST
5 BUT HE WOULD HAVE HAD TO HAVE SIGNED THOSE FORMS.

6 Q NOW YOU MENTIONED THAT YOU HADN'T MET MR.
7 HUNT, SR., HAVE YOU EVER MET MR. HUNT, THE JR.?

8 A NO, SIR.

9 MR. NICHOLS: OKAY, THANK YOU VERY MUCH.

10 THE COURT: MR. LAWSON?

11 MR. LAWSON: YES, SIR.

12 RECROSS EXAMINATION

13 BY MR. LAWSON:

14 Q PORTABLE, I THINK YOU EXPLAINED IT WELL
15 ENOUGH TO THE JURY, BUT THERE'S NOTHING THAT REQUIRES A
16 PERSON THAT'S CHARGED WITH DRIVING UNDER THE INFLUENCE TO
17 TAKE A BREATH TEST, IS THERE?

18 A NO, SIR, THEY HAVE THE RIGHT TO REFUSE IT.

19 Q IT'S THEIR RIGHT TO REFUSE TO DO THAT; IS
20 IT NOT?

21 A YES, SIR.

22 MR. LAWSON: OKAY, THANK YOU, SIR.

23 THE COURT: MR. CONNELL?

24 MR. CONNELL: JUST A COUPLE OF THINGS.

25 RECROSS EXAMINATION

1 BY MR. CONNELL:

2 Q WITH A FELONY DUI CHARGE THAT REQUIRES
3 SERIOUS BODILY INJURY; DOES IT NOT?

4 A YES, SIR.

5 Q AND IF YOU HAD BEEN TOLD BY THE CONWAY
6 POLICE DEPARTMENT THAT THIS OFFICER HAD SERIOUS BODILY
7 INJURY YOU WOULD HAVE TAKEN THAT TO THE SOLICITOR'S OFFICE
8 AND HAD HIM CHARGED WITH FELONY DUI; ISN'T THAT RIGHT?

9 A I WOULD HAVE CONSULTED WITH THE ATTENDING
10 PHYSICIAN TO FIND OUT OR TRY TO DETERMINE MORE INFORMATION
11 REGARDING THE INJURIES SO THAT I COULD CONSULT WITH THE
12 SOLICITOR'S OFFICE REGARDING THOSE INJURIES.

13 Q YES, SIR, AND NOBODY CONTACTED YOU NEITHER
14 OFFICER GAUSE OR ANYBODY FROM CONWAY POLICE DEPARTMENT
15 AFTER THIS WRECK AND SAID MR. GAUSE HAS SERIOUS BODILY
16 INJURY, DID THEY?

17 A NO, SIR.

18 Q BUT IF THEY HAD YOU WOULD HAVE JUMPED RIGHT
19 ON IT, WOULD NOT?

20 A YES, SIR, I WOULD HAVE CONSULTED WITH THE
21 SOLICITOR'S OFFICE, THAT WOULD BE, THAT WOULD BE SOMETHING
22 I WOULD DO.

23 Q I MEAN THIS MAN MR. SMITHERS HAD RUN INTO
24 THE BACK OF A POLICE CAR WITH BLUE LIGHTS ON IT, CORRECT?

25 A YES, SIR.

1 Q AND IF YOU HAD KNOWN THAT HE WAS CLAIMING
2 SERIOUS BODILY INJURIES YOU WOULD HAVE IMMEDIATELY GONE TO
3 YOUR SUPERVISOR AND YOU WOULD HAVE GONE TO THE SOLICITOR'S
4 OFFICE, SAY LET'S CHARGE HIM; ISN'T THAT RIGHT?

5 A I WOULD HAVE CONSULTED WITH THEM, YES, SIR.

6 Q I MEAN IT'S MORE IMPORTANT WHEN IT'S A
7 POLICEMAN; ISN'T THAT RIGHT?

8 A I TRY TO TREAT EVERYBODY AS EQUAL.

9 Q I UNDERSTAND, BUT THE POLICE TRY TO TAKE
10 CARE OF THEMSELVES, TOO, DON'T THEY?

11 A YES, SIR.

12 Q AND IF YOU KNEW THIS OFFICER WAS OUT THERE
13 AND HAD A TERRIBLE INJURY YOU WOULD HAVE TAKEN A LOT MORE
14 ACTION; WOULD YOU NOT?

15 A YES, SIR, BUT IN THE END OF THE DAY I WOULD
16 HAVE HAD TO GO BY WHAT THE LAW WILL ALLOW ME TO DO.

17 Q I UNDERSTAND --

18 A YOU KNOW I WOULD HAVE, IF I HAD HIM WITH A
19 SERIOUS BODILY INJURY OR NOT OR ANOTHER PERSON WITH A
20 SERIOUS BODILY INJURY I WOULD HAVE STILL CONSULTED THE
21 SOLICITOR'S OFFICE OR NOT EITHER WAY.

22 Q I UNDERSTAND, AND NOBODY CAME UP AND SAID
23 HE'S OFFICER GAUSE HAS A SERIOUS BODILY INJURY FROM THIS
24 WRECK; ISN'T THAT RIGHT?

25 A THAT'S CORRECT.

1 Q NOW YOU'VE BEEN A POLICEMAN A LONG TIME;
2 HAVE YOU NOT?

3 A FAIRLY LONG, YES, SIR.

4 Q AND IS IT TRUE OR IS IT NOT TRUE THAT
5 PEOPLE TEND TO GET FREAKED OUT WHEN A HIGHWAY PATROL TURNS
6 ON THE BLUE LIGHTS TO STOP THEM, ISN'T THAT RIGHT?

7 A I'VE SEEN SOME WEIRD STUFF, YES, SIR.

8 Q I BET YOU HAVE, AND DOES THAT INCLUDE
9 STOPPING IN THE MIDDLE OF THE HIGHWAY WHEN THE HIGHWAY
10 PATROL IS BEHIND THEM WITH THE BLUE LIGHTS ON PEOPLE WOULD
11 DO, WOULD THEY NOT?

12 A YES, SIR, SOME ROADS ARE A LITTLE BIT MORE
13 FREQUENT THAN THAT.

14 Q AND SOME PEOPLE WILL PULL OFF TO THE RIGHT
15 LIKE THEY'RE SUPPOSED TO DO?

16 A YES, SIR.

17 Q TRUE?

18 A THAT'S CORRECT.

19 Q SOME PEOPLE WILL JUST STOP?

20 A YES, SIR.

21 Q AND THEN YOU HAVE TO GET OUT, ISN'T THAT
22 RIGHT?

23 A YES, SIR.

24 Q AND THAT'S WHAT COULD HAVE HAPPENED HERE;
25 ISN'T THAT RIGHT?

1 A YES, SIR.

2 Q AND WHEN YOU SAY PARKED VEHICLE YOU DON'T
3 MEAN THAT THIS MAN LEFT IT PARKED RIGHT THERE IN THAT LANE,
4 HE WAS STOPPED; ISN'T THAT RIGHT?

5 A YES, SIR, HE WAS INITIALLY STOPPED AND THEN
6 AT SOME POINT THE CAR WAS PLACED IN PARK. MY, MY JOB
7 DUTIES CONSISTED OF INVESTIGATING A COLLISION THAT HAD
8 ALREADY HAPPENED, WHAT HAPPENED PRIOR TO THAT I WOULD HAVE
9 TO SPECULATE OR EITHER CALL THE OTHER OFFICER HERE THAT
10 ACTUALLY MADE THE STOP WHICH I HAVE NOT DONE.

11 Q THERE ARE ALL SORTS OF REASONS PEOPLE STOP
12 WHERE THEY STOP WHEN THE POLICE ARE TRYING TO STOP THEM;
13 ISN'T THAT RIGHT?

14 A YES, SIR.

15 Q AND YOU SAID YOU HAD SEEN A NUMBER OF
16 SITUATION WHERE THEY DON'T MAKE THE BEST CHOICES; ISN'T
17 THAT RIGHT?

18 A THAT'S TRUE.

19 MR. CONNELL: THANK YOU.

20 THE COURT: ALL RIGHT, ANYTHING FURTHER?

21 MR. NICHOLS: NO, SIR.

22 THE COURT: ALL RIGHT, YOU MAY STEP DOWN, THANK
23 YOU. ANY OBJECTIONS TO HIM LEAVING?

24 MR. NICHOLS: NO, ABSOLUTELY NOT, HE CAN BE
25 RELEASED FROM HIS SUBPOENA.

MR. GAUSE - CONTINUED DIRECT EXAMINATION BY MR. ROTHSTEIN⁸⁶

1 MR. LAWSON: NO, SIR.

2 MR. CONNELL: NO, SIR.

3 THE COURT: ALL RIGHT, THANK YOU FOR COMING,
4 TROOPER GRAHAM, IF YOU WOULD LEAVE THOSE WITH THE COURT
5 REPORTER.

6 MR. ROTHSTEIN, COME ON UP HERE, IF YOU WOULD.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
8 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
9 OF THE JURY AND THE COURT REPORTER.)

10 THE COURT: MR. GAUSE, YOU ARE STILL UNDER OATH.

11 MR. ROTHSTEIN: (CONTINUING)

12 Q MR. GAUSE, I BELIEVE WE WERE TALKING ABOUT
13 YOUR SUMMARY OF THE WAGE CALCULATIONS THAT YOU HAD MADE?

14 MR. ROTHSTEIN: I APOLOGIZE, YOUR HONOR.

15 Q OKAY, AND, MR. GAUSE, I BELIEVE WE WERE
16 TALKING ABOUT THE, THE FOURTH ELEMENT OF THE, YOUR LOST
17 WAGE CALCULATION OR I THINK WE WERE ACTUALLY ON THE THIRD
18 ELEMENT FROM THE POINT WHERE YOU HAD THE SURGERY UNTIL YOU
19 QUALIFIED FOR THE, THE POLICE OFFICER RETIREMENT
20 DISABILITY, CORRECT?

21 A YES, SIR.

22 Q OKAY, AND I'M GOING TO ASK YOU, IF YOU
23 WOULD, YOU HAVE THE CALCULATED, HAVE THE FIRST THREE
24 NUMBERS THAT WOULD REPRESENT YOUR BACK PAY FROM THE DATE OF
25 THE ACCIDENT NOVEMBER 16TH, 2003, THE DAY AFTER YOUR

MR. GAUSE - CONTINUED DIRECT EXAMINATION BY MR. ROTHSTEIN 87

1 ACCIDENT 2003 TO THOSE TWO DIFFERENT PERIODS OF, OF WHERE
2 YOU WERE OUT OF WORK UNTIL YOU QUALIFIED FOR DISABILITY
3 RETIREMENT?

4 A OKAY.

5 Q AND WHAT, WHAT NUMBER DID YOU COME UP WITH
6 FOR YOUR BACK PAY THROUGH THAT DATE?

7 A \$41,296.32.

8 Q NOW ON TOP OF THE \$155,432.64 YOU TESTIFIED
9 PREVIOUSLY ABOUT YOUR MEDICAL BILLS; DO YOU BELIEVE THAT
10 THAT WOULD BE A FAIR SUMMARY OF THE ECONOMIC LOSSES THAT
11 YOU SUSTAINED BECAUSE OF THIS INJURY?

12 A YES, SIR.

13 Q OR THE ACCIDENT?

14 A YES, SIR.

15 Q SINCE THE ACCIDENT HAVE YOU ATTEMPTED TO
16 FIND OTHER WORK?

17 A YES, SIR.

18 Q OKAY, HAVE YOU ACTUALLY APPLIED TO
19 DIFFERENT PLACES?

20 A YES, SIR.

21 Q TELL THE JURY WHAT STEPS YOU'VE TAKEN TO
22 TRY TO FIND ANOTHER JOB AFTER YOU WERE APPROVED FOR
23 DISABILITY RETIREMENT?

24 A I'VE, I'VE ATTEMPTED TO APPLY FOR DIFFERENT
25 DEPARTMENTS IN THE GEORGIA AREA, I RELOCATED. THE NEWTON

MR. GAUSE - CONTINUED DIRECT EXAMINATION BY MR. ROTHSTEIN⁸⁸

1 COUNTY SOLICITORS OFFICE WERE IN NEED OF AN INVESTIGATOR.
2 IT'S NOT, IT'S NOT ROAD DUTY LIKE I WAS ACCUSTOMED TO BUT
3 IT'S STILL IN LAW ENFORCEMENT. ROCKDALE COUNTY, THAT'S A
4 SHERIFF'S DEPUTY POSITION, I TOOK TESTS FOR THAT.

5 Q WHAT HAPPENED IN THE, WHAT HAPPENED
6 WHEN YOU GO IN FOR AN INTERVIEW OR, OR YOU GOT TO THE
7 TESTING STAGE?

8 A WELL IN GEORGIA IT'S DIFFERENT, PRIOR TO
9 EVEN SUBMITTING AN APPLICATION YOU'VE GOT TO TAKE A, YOU
10 HAVE TO GO A TECHNICAL SCHOOL AND TAKE THEIR, THEY HAVE AN
11 ENTRANCE EXAMINATION, YOU HAVE TO TAKE THAT AND PASS THAT
12 FIRST, A BATTERY EXAM, TOOK THAT AND PASSED THAT. NOW MY
13 NEXT STEP, NOW I CAN APPLY, ONCE I APPLY IT'S UP TO THE
14 INDIVIDUAL AGENCIES TO OFFER, OFFER THE NEXT STEP WHICH IS
15 THE NORMALLY IT'S THE PHYSICAL, PHYSICAL AGILITY. IN THIS
16 PARTICULAR CASE IT WAS THE SHERIFF'S BATTERY EXAM THAT'S
17 NORMALLY REQUIRED.

18 Q AND WHAT, WHAT TYPES OF THINGS ARE REQUIRED
19 OF THOSE, IN THOSE BATTERY, PHYSICAL BATTERY EXAMS?

20 A THEY HAVE THE RUN WHICH IS NORMALLY BASED
21 IN I GUESS LIKE FOUR TIMES AROUND THEIR OWN TRACK. IT'S A
22 CIRCLE TRACK. THEN THEY HAVE IT CAN EITHER BE TIMED OR IT
23 CAN BE, IT CAN BE TIMED OR IT CAN BE THE NUMBER OF LAPS
24 AROUND THE TRACK. THEN I HAD THE, THEY HAVE LIKE A LITTLE
25 STAIR SITUATION WHERE YOU WALK THE STAIRS UP DOWN, UP DOWN,

MR. GAUSE - CONTINUED DIRECT EXAMINATION BY MR. ROTHSTEIN⁸⁹

1 UP DOWN FOR LIKE A MINUTE AND A HALF, TWO MINUTES, HAVE SIT
2 UPS, PUSH UPS, WHICH IS MOST COMMON, AND THEN THE OTHER
3 THING THEY HAVE IS A SIT AND REACH.

4 Q WERE YOU ABLE TO PASS THOSE BATTERY OF
5 EXAMS AFTER YOUR SPINAL FUSION?

6 A NO.

7 Q NOW YOU LOOK RELATIVELY NORMAL, CAN YOU
8 GIVE THE JURY A SENSE OF HOW YOUR SPINAL FUSION SURGERY AND
9 THE, THE DIFFERENT DAMAGES YOU SUFFERED PHYSICALLY SINCE
10 THE WRECK IN 2003 HAVE CHANGED YOUR LIFE?

11 A WELL LIKE I SAID THE, WELL I HAD MY
12 FLEXIBILITY IN MY SPINE WAS, WAS SOMETHING EQUIVALENT TO
13 THIS WHERE AS IF, YOU KNOW, IF I HAD TO PICK UP A FORK OFF
14 OF THE FLOOR OR A GUN OFF OF THE PAVEMENT I COULD BEND DOWN
15 AND PICK IT UP. I WAS ALWAYS BEEN ABLE TO DO THAT.

16 Q AND THAT WAS BEFORE THE COLLISION?

17 A CORRECT.

18 Q OKAY, WHAT'S YOUR MOBILITY OR FLEXION LIKE
19 NOW?

20 A IT'S LIKE THIS CAUSE NOW MY, THAT SPINE IS
21 NOW FUSED SO THEREFORE MY, MY MOBILITY IS NOW LIMITED TO,
22 TO THIS. I HAVE TO, TO PICK UP ANYTHING OFF THE FLOOR IS
23 ALMOST LIKE EITHER I HAVE TO SQUAT DOWN TO RETRIEVE IT OR
24 WHAT THEY CALL A GOLFERS STANCE WHERE ONE LEG IS RAISED AND
25 THE, AND THE ONE LEG IS STRAIGHT AND THEN YOU PICK THAT,

MR. GAUSE - CONTINUED DIRECT EXAMINATION BY MR. ROTHSTEIN90

1 BEND DOWN AND PICK IT UP LIKE THAT BALANCING YOURSELF.

2 Q LIKE A GOLFER PICKING UP A BALL OUT OF A
3 HOLE?

4 A CORRECT, THAT'S CORRECT.

5 Q OKAY, AND HOW DID YOU LEARN TO DO THAT, IS
6 THAT THROUGH PHYSICAL THERAPY?

7 A PHYSICAL THERAPY.

8 Q CAN YOU GIVE THE JURY SOME EXAMPLES OF
9 THINGS THAT YOU COULD DO OR ENJOYED DOING BEFORE THE
10 COLLISION THAT YOU'RE NO LONGER ABLE TO DO BECAUSE OF YOUR,
11 OF YOUR SPINAL FUSION?

12 A I MEAN MY DAUGHTER AT THE TIME SHE WAS
13 ONLY, SHE'S ONLY SEVEN NOW, SHE WAS ACTUALLY SMALL, SMALLER
14 THEN BECAUSE SHE WAS BORN IN 2003. THERE'S A LOT OF THINGS
15 THAT I, YOU KNOW, THE TOSSING UP OF YOUR CHILD. I HAVE A
16 SON THAT'S 16, HE'S A BIG GUY, BUT HE'S, I USED TO BE ABLE
17 TO TOSS HIM UP AND PLAY AROUND WITH HIM. THERE ARE SOME
18 THINGS I MISSED OUT WITH MY DAUGHTER BECAUSE OF MY, AFTER
19 MY SURGERY THERE WAS JUST SOME THINGS THAT I WOULDN'T TRY
20 TO DO AND, YOU KNOW, STUFF AROUND THE HOUSE. I'M NOT, I'M
21 NOT IN THE BED, I'M NOT BEDRIDDEN AND I'M NOT A COUCH
22 POTATO, DON'T GET ME WRONG. I LIKE TO GET OUT AND DO
23 THINGS BUT I'M A LITTLE MORE EASY NOW ABOUT, ABOUT TAKING
24 ON SOME OF THE THINGS LIKE PLAYING BASKETBALL AND STUFF
25 LIKE THAT, I DON'T DO THAT ANYMORE.

MR. GAUSE - CONTINUED DIRECT EXAMINATION BY MR. ROTHSTEIN91

1 Q NOW AFTER THE SURGERY DID YOU ATTEMPT TO
2 FIND, DID YOU ATTEMPT TO DO SOME WORK FOR A PRIVATE
3 INVESTIGATOR?

4 A YEAH, BECAUSE, YOU KNOW, ONCE A POLICE
5 OFFICER ALWAYS A POLICE OFFICER SO TO SPEAK, AND SO I GUESS
6 IF I CAN'T BE A POLICE OFFICER I'LL TRY TO STAY IN THE
7 REALM OF BEING IN LAW ENFORCEMENT SO THE NEXT BEST THING
8 WAS PRIVATE INVESTIGATIVE WORK, YOU KNOW. IT ALLOWS YOU TO
9 STILL BE IN EVERYONE'S BUSINESS, BUT AT THE SAME TIME BE ON
10 THE RIGHT SIDE OF THE LAW AND I TRIED THAT.

11 Q HOW LONG DID YOU TRY THAT?

12 A MAYBE A COUPLE OF MONTHS, WELL ACTUALLY I
13 WAS COMMISSIONED FOR A YEAR BUT MY FIRST CASE WAS OUT OF I
14 THINK BISHOPVILLE AREA. I HAD SEVERAL CASES BUT THAT WAS
15 MY FIRST CASE OUT OF BISHOPVILLE.

16 Q HOW FAR OF A DRIVE WAS IT FROM YOUR HOME
17 OUTSIDE OF ATLANTA TO BISHOPVILLE?

18 A ABOUT FOUR HOURS, THREE AND A HALF FOUR
19 HOURS, THREE AND A HALF.

20 Q HOW DID YOUR BACK HOLD UP ON A DRIVE OF
21 THAT DISTANCE?

22 A IT WASN'T, IT WASN'T COMFORTABLE BUT IT
23 WAS, I WAS ABLE TO ENDURE IT.

24 Q HOW MUCH MONEY WOULD YOU SAY YOU EARNED IN
25 THAT, THAT JOB AS A P.I.?

MR. GAUSE - CONTINUED DIRECT EXAMINATION BY MR. ROTHSTEIN⁹²

1 A PROBABLY ABOUT \$1300.

2 Q DID YOU CONTINUE AFTER THAT ONE JOB OUTSIDE
3 OF BENNETTSVILLE, DID YOU CONTINUE TO DO ANY P.I. WORK?

4 A NO, THE AGENCY THAT I WAS DOING WORK FOR IS
5 OUT OF COLUMBIA, THEY'RE BASED OUT OF COLUMBIA, AND I GUESS
6 THAT'S SOMEWHAT WHENEVER THE DIVORCE RATE WAS KIND OF
7 STABLE. THAT'S NORMALLY WHAT THEY WORK IS DIVORCE CASES
8 AND WHAT NOT, SO IT WASN'T, HE DIDN'T HAVE AN ABUNDANCE OF
9 WORK FOR ME TO DO. WE, YOU KNOW, WE HAD THAT, THAT MURDER
10 CASE AND THEN WE HAD SOME OTHER CASES BUT THERE WASN'T
11 ENOUGH TO SHARE WITH ABOUT FOUR OR FIVE INVESTIGATORS SO IT
12 WASN'T FEASIBLE.

13 Q NOW IN ADDITION TO THINGS YOU CAN'T DO AT
14 ALL ARE THERE THINGS NOW THAT IF YOU DO THEM THEY ARE
15 PAINFUL WHEREAS IF YOU HAD DONE THEM BEFORE THE COLLISION
16 THEY WERE NOT PAINFUL?

17 A YES, I, I KNOW, IN OTHER WORDS I WOULD KNOW
18 ABOUT IT IN THE MORNING. THERE'S ALL THINGS, I'M HARD
19 HEADED, I'LL GO AHEAD AND DO IT BECAUSE IT HAS TO GET DONE,
20 YOU KNOW, BUT AFTER YOU LAY DOWN AND IN THE MORNING YOU'LL
21 KNOW ABOUT IT IN THE MORNING TYPE THING.

22 Q HOW HAVE YOU, OTHER THAN YOUR DISABILITY
23 PENSION HOW HAVE YOU EARNED OR SUSTAINED YOURSELF OR
24 CONTINUED TO PUT FOOD ON THE TABLE SINCE THE SURGERY?

25 A FAMILY, THEY'VE REALLY BEEN, THEY'VE REALLY

1 STEPPED UP. MY, MY MOM AND MY SISTER AND, AND THEY REALLY
2 STEPPED UP.

3 Q DO THEY LIVE HERE IN HORRY COUNTY?

4 A YES.

5 Q OKAY, DO YOU MISS WORKING AS A POLICE
6 OFFICER?

7 A OH, YEAH, YEAH, I'M BY NATURE I GUESS I GET
8 IT FROM MY MOM. I'M NOSEY SO I, IT WAS ONE OF THOSE THINGS
9 THAT, YOU KNOW, YOU CAN ALWAYS BE A PART AND YOU CAN SEE
10 WHAT'S GOING ON AND THEN AT THE SAME TIME YOU CAN BE OF
11 HELP TO SOMEBODY ELSE BESIDES YOURSELF SO I REALLY ENJOYED
12 IT.

13 Q BEFORE THE COLLISION WAS IT YOUR INTENTION
14 TO RETIRE, I MEAN TO SPEND THE REST OF YOUR CAREER AT
15 CONWAY POLICE DEPARTMENT OR SOME OTHER LAW ENFORCEMENT
16 AGENCY?

17 A YES, PRETTY MUCH.

18 MR. ROTHSTEIN: I DON'T HAVE ANY FURTHER
19 QUESTIONS.

20 THE COURT: ALL RIGHT, ANYTHING FURTHER?

21 MR. LAWSON: YES, SIR, PLEASE THE COURT.

22 CROSS EXAMINATION

23 BY MR. LAWSON:

24 Q MR. GAUSE?

25 A HELLO.

1 Q I WANT TO TALK TO YOU FIRST A LITTLE BIT
2 ABOUT SOME PRIOR ISSUES. I UNDERSTAND THAT WHEN YOU, AND I
3 JUST KIND OF WANT TO GET SOME MEDICAL HISTORY FROM THE
4 BACKGROUND?

5 MR. ROTHSTEIN: YOUR HONOR, CAN WE TAKE UP
6 SOMETHING. I THINK I KNOW WHERE HE'S GOING WITH THIS AND
7 I'M GOING TO HAVE TO MAKE AN OBJECTION BUT I DON'T WANT TO
8 KEEP OBJECTING.

9 THE COURT: COME ON UP HERE.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
12 OF THE JURY AND THE COURT REPORTER.)

13 MR. ROTHSTEIN: (CONTINUING)

14 Q OKAY, MR. GAUSE, I BELIEVE THIS WAS A LONG
15 TIME AGO, 1988 I BELIEVE YOU WERE A SCHOOL BUS DRIVER?

16 A YES, SIR.

17 Q AND YOU WERE T-BONED?

18 A YES, SIR.

19 Q I BELIEVE BY SOMEONE, AND HAD SOME INJURIES
20 FROM THAT PARTICULAR ACCIDENT?

21 A YES, SIR.

22 Q IS THAT CORRECT?

23 A YES, SIR, MINOR INJURIES.

24 Q AND THAT WAS BACK OF THE NECK, I BELIEVE,
25 ALSO WITH CHIROPRACTOR CARE?

1 A IT WAS AGGRAVATION, YES, SIR.

2 Q OKAY, AND THEN WOULD YOUR SERVICE WITH THE
3 CITY OF MYRTLE BEACH IN, I BELIEVE, IT WAS '96 YOU WERE
4 INVOLVED IN A HIGH, I KNOW WE THINK IT WAS '96 I KNOW IN
5 THE DEPOSITION YOU WEREN'T SURE OF THE YEAR, BUT A HIGH
6 SPEED CHASE WHERE YOU WERE CHASING SOME SUSPECTS AND HAD AN
7 ACCIDENT?

8 A YES.

9 Q AND YOU ALSO INJURED YOUR NECK AND BACK IN
10 THAT ACCIDENT?

11 A YES, SIR.

12 Q OKAY, AND THEN IN 2000 OR THEREABOUTS YOU
13 WERE, I THINK, CHASING SOME SUSPECTS ON FOOT AND HAD
14 ANOTHER INJURY TO YOUR BACK; DO YOU REMEMBER THAT?

15 A I'M NOT SURE ABOUT THAT ONE BUT, YEAH, I
16 GUESS SO.

17 Q OKAY, AND THEN I THINK THERE WAS ONE OTHER
18 THING YOU TOLD US ABOUT I WASN'T AWARE OF SOME KIND OF
19 INCIDENT WITH A GOLF CART ON OCEAN BOULEVARD?

20 A WELL THAT, YEAH, THAT WAS WHEN I WAS
21 WORKING WITH MYRTLE BEACH THE, THE, WE USED TO HAVE GOLF
22 CARTS ON THE BOULEVARD AND WE WERE HIT BY A, A VEHICLE.

23 Q OKAY, AND AGAIN ALL THIS IN GETTING
24 TREATMENT, THOUGH, FOR YOUR NECK AND BACK FOR THOSE
25 INCIDENTS?

1 A NOT NECESSARILY TREATMENT TO, IT'S POLICY.
2 WHENEVER YOU'RE INVOLVED IN AN OFFICER RELATED INJURY OR A
3 SITUATION WHERE I DON'T CARE IF I TEAR MY PANTS OR IF I
4 JUST GET A SCRAPE IT'S POLICY TO HAVE IT CHECKED, CHECKED
5 OUT FOR JUST TO COVER THE DEPARTMENT.

6 Q OKAY, BUT YOU DID GO TO A CHIROPRACTOR FOR
7 THAT?

8 A YES, SIR.

9 Q OKAY, THE, THE INCIDENT THAT GIVES RISE TO,
10 TO THIS I JUST WANT TO MAKE SURE I'M RIGHT ABOUT THIS, YOU
11 GET A CALL HIGHWAY PATROL STOPPED SOMEBODY AT 501 HEADING
12 INTO CONWAY?

13 A YES, SIR.

14 Q OKAY, AND WHEN YOU GET THERE EVERYTHING IS
15 IN THIS LEFT HAND THRU LANE, THE LEFT HAND LANE?

16 A YES, SIR.

17 Q OKAY, AND YOU PULL UP BEHIND MR. HUNT'S
18 VEHICLE AND THEN YOU'RE OUT THERE TO TAKE CARE OF THE SCENE
19 UNTIL THE TOW TRUCK GETS THERE; IS THAT RIGHT?

20 A OKAY, FIRST THINGS FIRST I PULL UP BEHIND
21 THE, THE TROOPER'S VEHICLE.

22 Q RIGHT? .

23 A WHICH WAS DIRECTLY BEHIND MR. HUNT'S
24 VEHICLE, YES, SIR.

25 Q OKAY, BUT AT THE TIME YOU GOT THERE THE

1 TROOPER WAS THERE?

2 A YES, SIR.

3 Q AND YOU WERE THERE?

4 A YES, SIR.

5 Q HOW ABOUT THE DETECTIVE, WAS HE THERE YET?

6 A HE WAS RIGHT BEHIND ME SO, SO WHEN I GOT
7 THERE HE WAS, HE WAS PULLING UP, TOO.

8 Q OKAY, SO WE HAVE YOU, THE DETECTIVE, AND
9 THE TROOPER?

10 A YES, SIR.

11 Q ALL OUT THERE AT ONE TIME?

12 A YES, SIR.

13 Q BEFORE THE TROOPER LEFT WITH MR. HUNT?

14 A NO, SIR, MR., THE TROOPER NEVER LEFT WITH
15 MR. HUNT.

16 Q OKAY, THAT'S RIGHT, THE DETECTIVE LEFT WITH
17 MR. HUNT?

18 A CORRECT.

19 Q AND THE TROOPER WENT ON TO WHATEVER HE HAD
20 TO DO?

21 A YES, SIR.

22 Q OKAY, SO THREE ABLE BODIED POLICE OFFICERS
23 AT THE SCENE AT ONE TIME?

24 A YES, SIR.

25 Q OKAY, ALL RIGHT, AND THEN WE'VE TALKED

1 ABOUT THE ACCIDENT AND THEN YOU WITH THE HELP OF THIS MR.
2 BAYNE YOU WERE ABLE TO GET OUT OF THE CAR AND WALK AROUND?

3 A YES, SIR.

4 Q OKAY, SO IT WOULD BE FAIR TO SAY YOU WERE
5 AMBULATORY AT THE SCENE, IN OTHER WORDS YOU WERE WALKING
6 AROUND AT THE SCENE?

7 A YES, SIR.

8 Q OKAY, AND SO WHEN THE EMS GOT THERE THEY
9 SAY THAT IN THEIR REPORT THAT'S CORRECT WHEN THEY FOUND YOU
10 YOU WERE OUTSIDE THE CAR WALKING AROUND?

11 A YES, SIR.

12 Q OKAY, AND THEY TRANSPORT YOU TO THE CONWAY
13 HOSPITAL, CORRECT?

14 A YES, SIR.

15 Q AND YOU WERE THERE AND THEN TREATED AND
16 RELEASED?

17 A YES, SIR.

18 Q AND YOU TOLD US YOU WERE THERE ABOUT THREE
19 HOURS, MAYBE FOUR, WHATEVER IT WAS?

20 A YES, SIR.

21 Q OKAY, AND THEY CHECKED YOU OUT AND DECIDED
22 THAT YOU COULD GO ON HOME?

23 A YES, SIR.

24 Q DID NOT ADMIT YOU FOR ANYTHING?

25 A NO, SIR, THEY DID NOT.

1 Q AND THEN YOU FOLLOW UP WITH, WITH DR., WELL
2 YOU GO TO THE CITY DOCTOR?

3 A CORRECT.

4 Q AND YOU TOLD US THE, YOU HAVE TO GO TO THAT
5 BECAUSE YOU TESTIFIED ABOUT THE WORKERS COMP, AND THEN THEY
6 REFERRED YOU OVER TO COASTAL ORTHOPEDICS?

7 A CORRECT.

8 Q OKAY, AND FROM DR. YATES WHO IS A KNEE MAN
9 TO DR. MILLS WHO'S A SPINE GUY?

10 A CORRECT.

11 Q DID YOU GO SEE DR. YATES TO BEGIN WITH
12 BECAUSE YOU COMPLAINED ABOUT YOUR KNEE?

13 A REALLY I'M NOT SURE AS TO THE REASON WHY
14 THE CITY DOCTOR RECOMMENDED DR. YATES. I DON'T KNOW, I
15 DON'T KNOW IF IT WAS BECAUSE OF THAT BUT HE MADE A
16 RECOMMENDATION, I NEVER KNEW OF A DR. YATES PRIOR TO THAT.

17 Q OKAY, BUT YOUR CHIEF COMPLAINTS THAT NIGHT
18 INCLUDED YOUR KNEE AND YOUR CHEST AND YOUR, AND YOUR BACK?

19 A YEAH, I GUESS THAT'S WHAT, THAT'S WHAT IT
20 WAS. I KNOW, I KNOW MY KNEE BECAUSE IT WAS JAMMED RIGHT UP
21 AGAINST THE DASHBOARD.

22 Q OKAY, ALL RIGHT, AND THEN YOU GO AND THEN
23 DR. YATES SENDS YOU OVER TO SEE DR. MILLS AND I THINK YOU
24 SAW HIM ON JANUARY THE 12TH OF 2004?

25 A OKAY.

1 Q AND THEN THE NEXT DAY YOU CALLED HIS OFFICE
2 AND ASKED HIM TO RETURN YOU TO FULL DUTY, JANUARY 13TH,
3 2004?

4 A OKAY, YEAH, I GUESS AFTER ALL THE, THE
5 PHYSICAL THERAPY AND ALL THAT STUFF, YES, SIR.

6 Q OKAY, BUT YOU ASKED HIM TO RETURN YOU TO
7 FULL DUTY?

8 A YES, SIR.

9 Q AND YOU WENT BACK TO FULL DUTY?

10 A YES, SIR.

11 Q AND IN FACT YOU WORKED FULL DUTY AND IF YOU
12 LOOK AT THAT LIST YOU WERE USING TO REFRESH YOUR MEMORY ON
13 YOUR WAGES YOU, YOU WENT BACK TO FULL DUTY ON JANUARY 15TH
14 OF 2004 AND THEN YOU DIDN'T COME BACK OFF OF WORK,

15 ACCORDING TO THE NOTES YOU'RE USING, UNTIL OCTOBER THE 6TH,
16 2004?

17 A YES, SIR, WELL THAT'S TRUE IN A SENSE BUT,
18 YES, SIR.

19 Q OKAY, AND SO THAT'S ABOUT A LITTLE LESS
20 THAN 10 MONTHS?

21 A OKAY.

22 Q ALL RIGHT, IS THAT CORRECT?

23 A WELL LIKE I SAID IN A SENSE BECAUSE IN
24 BETWEEN THOSE TIMES THERE MAY HAVE BEEN SOME DAYS OF SICK
25 DAYS OR WHATEVER THAT ARE NOT ASSOCIATED WITH CALLING

1 WORKMANS COMP TO SAY, YOU KNOW, HE'S NOT FEELING WELL
2 TODAY.

3 Q OKAY.

4 A SO, SO IN PART THAT'S A TRUE DEPICTION,
5 YES, SIR.

6 Q ALL RIGHT, SIR, ALL RIGHT, AND THEN I WANT
7 TO TALK ABOUT THIS, THIS PUSHING OF THE CAR. YOU ON
8 SOMETIME IN SEPTEMBER, NOW WE DON'T KNOW THE EXACT DATE BUT
9 YOU'VE SAID LABOR DAY WHICH IS THE FIRST PART OF SEPTEMBER,
10 AND YOU'VE SAID A WEEK AND A HALF BEFORE YOU WENT OUT ON
11 OCTOBER THE 6TH WHICH WOULD BE THE END OF SEPTEMBER, BUT
12 SOMETIME IN SEPTEMBER YOU WERE PUSHING THIS CAR AND FELT
13 AND/OR HEARD A POP?

14 A CORRECT.

15 Q OKAY, AND THEN GOT BACK TO THE DOCTOR FOR
16 TREATMENT FOR THAT?

17 A YES.

18 Q OKAY, NOW THIS CAR YOU WERE UP AT SIXTH
19 AVENUE AND 501?

20 A YES, SIR, CHURCH STREET AND SIXTH AVENUE.

21 Q RIGHT, WE CALL IT CHURCH STREET IN CONWAY -

22 --

23 A YES, SIR.

24 Q --- ONCE YOU GET INTO TOWN?

25 A YES, SIR.

1 Q OKAY, BUT THAT'S RIGHT THERE NEAR THE SAV-
2 WAY?

3 A YES, SIR.

4 Q ALL RIGHT, SO IF YOU'RE COMING FROM THE
5 BEACH THROUGH CONWAY ON 501, WE CALL IT BYPASS BUT THE SAV-
6 WAY IS ON THE RIGHT?

7 A CORRECT.

8 Q AND THERE'S SOME CHURCHES RIGHT IN THERE
9 AND WHEN YOU GET DOWN THERE'S A WENDY'S AT NINTH AVENUE,
10 THERE'S PAST THAT NYE'S DRUGSTORE ---

11 A YES, SIR.

12 Q --- BI-LO AND ALL THAT STUFF ---

13 A YES, SIR.

14 Q --- SO THIS CAR WAS DISABLED IN THE MIDDLE
15 OF THE ROAD AT 501?

16 A NO, SIR, IT WAS DISABLED IN LANE TWO.

17 Q OKAY, I'M SORRY, WHEN I SAY THE MIDDLE OF
18 THE ROAD, BUT IT WAS IN THE TRAVEL PORTION OF THE ROADWAY
19 ON 501?

20 A CORRECT.

21 Q AND WHEN YOU CALL LANE ONE IS THAT THE LEFT
22 HAND LANE?

23 A LANE, LANE, LANE TWO IS THE OUTERMOST LANE
24 CLOSE TO THE CURB.

25 Q OKAY, SO UNLIKE MR. HUNT'S VEHICLE NOT THE

1 LEFT LANE THIS IS THE RIGHT LANE?

2 A NO, MR. HUNT WAS THE, WAS IN THE LEFT LANE.

3 Q LEFT LANE AND THIS CAR, THIS LADY RIGHT
4 LANE?

5 A IT WAS IN THE RIGHT LANE.

6 Q IT WAS IN THE RIGHT LANE?

7 A CORRECT.

8 Q OKAY, AND YOU PUSHED HER CAR ABOUT 75 OR
9 100 FEET?

10 A YES, SIR.

11 Q TO GET IT OUT OF THE ROAD?

12 A YES, SIR.

13 Q AND FELT THAT POP?

14 A YES, SIR.

15 Q NOW YOU CURRENTLY RESIDE IN GEORGIA?

16 A YES, SIR.

17 Q HOW LONG HAVE YOU LIVED IN GEORGIA?

18 A SINCE BACK AND FORTH SINCE ABOUT 2005.

19 Q OKAY, YOU WERE TALKING ABOUT YOUR DAUGHTER,
20 IS SHE LIVING IN GEORGIA OR HERE?

21 A SHE LIVES, SHE STILL LIVES HERE.

22 Q OKAY, SO AFTER, SO WHEN SHE WAS TWO YOU
23 WERE LIVING IN GEORGIA?

24 A I DON'T --

25 Q SHE WAS BORN IN '03?

1 A SHE WAS BORN IN, IN JUNE 7, '03, SO, YEAH,
2 WHEN SHE WAS TWO I WAS, I WAS BACK AND FORTH TO GEORGIA,
3 YEAH.

4 Q OKAY, ALL RIGHT, AND SO AND I UNDERSTAND WE
5 LOVE OUR KIDS BUT YOU WOULD NOT SEE HER EVERY DAY?

6 A CORRECT.

7 Q ALL RIGHT, SO BUT WHEN YOU WOULD COME SEE
8 HER YOU WOULD DRIVE TO HORRY COUNTY?

9 A YES, SIR, OR THEY WOULD, THEY ACTUALLY
10 WOULD COME TO GEORGIA, EITHER WAY.

11 Q ALL RIGHT, BUT YOU, YOU MADE TRIPS FROM
12 RIGHT OUTSIDE ATLANTA TO MYRTLE BEACH AREA ON A FAIRLY
13 REGULAR BASIS, DID YOU NOT?

14 A NO, SIR, MOST OF THE TIME THANKS MY FAMILY
15 LIKED TO COME VISIT ME SO, SO THEY MAKE MORE FREQUENT TRIPS
16 THAN I DO.

17 Q DO YOU STILL OWN YOUR RENTAL PROPERTY AT
18 THE BEACH?

19 A YES, SIR.

20 Q DO YOU COME AND CHECK ---

21 A WELL IT'S, YEAH, NO, MY SISTER RUNS THAT.

22 Q OKAY, ALL RIGHT, BUT YOU STILL OWN IT,
23 THOUGH?

24 A YES, SIR.

25 Q OKAY, AND THAT'S TWO, YOU OWN FIVE UNITS

1 AND ONE APARTMENT AND 16 UNITS AT ANOTHER ONE?

2 A NO, IT'S, I OWN FIVE AT ONE PLACE THEN I
3 OWN 15 AT THE OTHER.

4 Q RIGHT, OKAY, AND DO YOU, WHEN YOU COME TO
5 MYRTLE BEACH YOU STAY IN ONE OF THOSE UNITS?

6 A YES, SIR.

7 Q OKAY, THE WORK YOU WERE DOING WITH
8 AMERICA'S PRIVATE EYE, IS THAT API?

9 A YES, SIR.

10 Q NOW THAT WAS WHERE YOU WERE INVOLVED IN
11 HELPING SOME PEOPLE INVESTIGATE A MURDER CASE IN
12 BISHOPVILLE?

13 A YES, SIR.

14 Q ALL RIGHT, AND I UNDERSTAND YOU GOT GOOD,
15 GOOD REVIEWS ON THAT, YOU DID A GOOD JOB FOR THEM?

16 A YES, SIR.

17 Q YOU WERE WORKING FOR ATTORNEY WHEELER?

18 A YES, SIR, YES, SIR.

19 Q OKAY, AND, AND YOU WERE ABLE TO PERFORM
20 THOSE TASKS WITHOUT ANY PROBLEM, YOU WERE ABLE TO DO WHAT
21 THEY ASKED YOU TO DO WITHOUT ANY PROBLEMS?

22 A YES, SIR, IT WAS MOSTLY, YOU KNOW, FOOT
23 WORK.

24 Q RIGHT?

25 A BUT, YES, SIR.

1 Q OKAY, AND, AND WITH THE DOWN TURN IN THE
2 ECONOMY MOST OF THE API WORK WAS ON DOMESTIC CASES, IS THAT
3 WHAT YOU WERE TOLD BY THEM I GUESS?

4 A YES, SIR.

5 Q ALL RIGHT, WELL MAYBE THINGS WILL GET
6 BETTER WOULD YOU, THAT'S SOMETHING THAT INTERESTS YOU, IS
7 IT NOT?

8 A YES, SIR.

9 Q OKAY, MR. GAUSE, I'M GOING TO ASK YOU TO
10 LOOK AT PLAINTIFF'S EXHIBIT 1, THOSE ARE YOUR MEDICAL
11 BILLS?

12 A OKAY.

13 Q THE, THE LAST MEDICAL BILL THAT I SEE, AND
14 YOU CAN HELP ME WITH THIS, I WANT YOU TO HELP ME WITH THIS
15 I MAY HAVE MISSED SOMETHING. BUT THE LAST BILL THAT I SAW
16 AFTER THE INCIDENT WITH MR. SMITHERS AND BEFORE THE
17 INCIDENT WITH THE CAR WAS IN MARCH OF 2003 AND I THINK THAT
18 WAS COASTAL ORTHOPEDIC?

19 MR. ROTHSTEIN: I MISSED THAT QUESTION. COULD
20 YOU, I'M SORRY, I'M NOT SURE I UNDERSTOOD IT. YOU SAID, I
21 THINK YOU SAID THE LAST BILL HE RECEIVED WAS IN 2003?

22 MR. LAWSON: SHOULD HAVE BEEN 2004, I'M SORRY.

23 Q (CONTINUING) ACTUALLY ON THIS SHEET I THINK
24 IT'S ACTUALLY JANUARY OF 2004?

25 A FROM COASTAL ORTHOPEDIC?

1 Q YES, SIR, WHAT WAS THE LAST VISIT TO
2 ATLANTIC PHYSICAL THERAPY, LET'S DO IT THIS WAY?

3 A OKAY, ATLANTIC PHYSICAL THERAPY 12-12-03.

4 Q OKAY, SO ALL OF YOUR, ALL OF YOUR TREATMENT
5 AT ATLANTIC PHYSICAL THERAPY WAS AFTER THE INCIDENT WITH
6 MR. SMITHERS AND BEFORE THE INCIDENT PUSHING THE CAR?

7 A CORRECT.

8 Q OKAY, ALL RIGHT, LET'S LOOK AT CAROLINA
9 BONE AND JOINT, THERE ARE TWO THERE, ONE WAS ON 1-16-04?

10 A YES, SIR.

11 Q THE SECOND ONE WAS ON 11-17-04?

12 A CORRECT.

13 Q THE FIRST INJECTIONS WAS AFTER THE INCIDENT
14 WITH MR. SMITHERS; THE SECOND INJECTION WAS AFTER THE
15 INCIDENT WITH PUSHING THE CAR?

16 A OKAY.

17 Q ALL RIGHT, CAROLINA RADIOLOGY LOOKS LIKE
18 THE LAST BILL FROM THEM WAS BEFORE THE INCIDENT WITH THE
19 CAR WOULD HAVE BEEN DECEMBER 26TH, 2003; IS THAT RIGHT?

20 A YOU SAID THE LAST?

21 Q YEAH, THE LAST ONE BEFORE THE INCIDENT WITH
22 THE CAR?

23 A OKAY, YEAH, DECEMBER 26TH.

24 Q OKAY, IN FACT THE NEXT ONE DOESN'T EVEN
25 PICK UP UNTIL THE YEAR 2005; IS THAT RIGHT?

1 A CORRECT.

2 Q OKAY, ALL RIGHT, COASTAL ORTHOPEDICS THE
3 LAST ONE AFTER THE INCIDENT WITH MR. SMITHERS WOULD HAVE
4 BEEN JANUARY 28TH OF 2004?

5 A OKAY.

6 Q AND THEN YOU DON'T PICK BACK UP WITH THEM
7 UNTIL OCTOBER 22ND OF 2004?

8 A OKAY.

9 Q ALL OF YOUR BILLING FROM HEALTH SOUTH WAS
10 AFTER, ACTUALLY AFTER SURGERY, WAS IT NOT?

11 A CORRECT.

12 Q OKAY, SO THAT WAS LIKE IN 2005?

13 A CORRECT.

14 MR. LAWSON: THAT'S ALL THE QUESTIONS I HAVE,
15 THANK YOU, SIR.

16 THE COURT: MR. CONNELL?

17 THE WITNESS: YOU'RE WELCOME.

18 CROSS EXAMINATION

19 BY MR. CONNELL:

20 Q MR. GAUSE, YOU DON'T KNOW EDWARD HUNT, DO
21 YOU?

22 A NO, SIR.

23 Q AND HE WASN'T THERE THAT NIGHT, WAS HE?

24 A NO, SIR.

25 Q AND YOU'VE NEVER SEEN HIM BEFORE TODAY;

1 ISN'T THAT RIGHT?

2 A ACTUALLY I HAVE.

3 Q YOU HAVE?

4 A YEAH.

5 Q AND YOU WOULD AGREE WITH ME, WOULD YOU NOT,
6 THAT HE NEVER DROVE ANY CAR ON THE NIGHT THIS WRECK
7 OCCURRED; ISN'T THAT RIGHT?

8 A NOT TO MY KNOWLEDGE.

9 Q AND ALL YOU KNOW ABOUT EDWARD HUNT WAS HE
10 WAS THE OWNER OF ONE OF THE CARS; ISN'T THAT RIGHT?

11 A YES, SIR.

12 Q NOW I THOUGHT I HEARD YOU SAY THAT YOU HAD
13 APPLIED FOR A NUMBER OF POLICE JOBS; IS THAT RIGHT?

14 A YES, SIR.

15 Q AND YOU COULDN'T GET ANY OF THEM; ISN'T
16 THAT RIGHT?

17 A I HAVEN'T GOTTEN ANY OF THEM.

18 Q ALL RIGHT, AND I GET THE IMPRESSION FROM
19 THAT THAT YOU LIKE BEING A POLICEMAN; IS THAT RIGHT?

20 A YES, SIR.

21 Q THAT WAS YOUR LIFE?

22 A YES, SIR.

23 Q IS THAT RIGHT?

24 A YES, SIR.

25 Q AND THIS WRECK HAS RUINED YOUR LIFE; IS

1 THAT RIGHT?

2 A IT'S DISRUPTED MY LIFE, IT HASN'T RUINED
3 IT.

4 Q YES, SIR, BUT IT'S MADE IT DIFFICULT TO GET
5 A POLICE JOB; IS THAT RIGHT?

6 A YES, SIR.

7 Q WELL TELL ME, SIR, WHY IN THE WORLD DIDN'T
8 YOU TAKE THE CONWAY DEPARTMENT'S COMMUNITY POLICE JOB WHEN
9 YOU HAD AN OPPORTUNITY AFTER THIS WRECK CAUSE THEY OFFERED
10 IT TO YOU, DIDN'T THEY?

11 A OH, YES, SIR.

12 Q AND YOU SAID, NO, ISN'T THAT RIGHT?

13 A YES, SIR.

14 Q AND THE CHIEF OF POLICE CAME DOWN AND SAID,
15 YOU KNOW WHAT, WE'RE GOING TO OFFER YOU, MR. GAUSE, A
16 SPECIAL JOB AS A COMMUNITY POLICE OFFICER AND THAT WAS
17 RIGHT AFTER THIS WRECK, IN FACT SOMETIME AFTER YOU HAD THE
18 SURGERY; ISN'T THAT RIGHT?

19 A YES, SIR.

20 Q AND YOU SAID NO?

21 A RIGHT.

22 Q SO YOU HAD YOUR OPPORTUNITY TO GET A POLICE
23 JOB AGAIN AT CONWAY; THEY WANTED TO KEEP YOU, DIDN'T THEY?

24 A YES, SIR; DO YOU WANT ME TO ANSWER THE
25 QUESTION?

1 Q YEAH, GO AHEAD?

2 A WELL BECAUSE ---

3 Q I THINK THE JURY WOULD LIKE TO KNOW WHY YOU
4 WOULDN'T TAKE A POLICE JOB WHEN YOU TELL THEM THAT YOU
5 WOULD TAKE ONE DOWN IN GEORGIA BUT YOU WON'T TAKE ONE IN
6 CONWAY NOW?

7 A WELL WHEN THAT, AFTER MY OPERATION I'M
8 STILL GOING THROUGH PAIN; AFTER MY OPERATION I KNOW MY
9 LIMITATIONS. AFTER MY OPERATION I UNDERSTAND WHAT OFFICER
10 SAFETY IS ABOUT, I'M BEEN DOING THIS LONG ENOUGH. THERE'S
11 NOTHING MORE HURTFUL THAN TO GET OUT THERE AND GET INTO A
12 TUSSELE WITH SOMEONE AND CAN'T PERFORM. THERE'S NOTHING
13 MORE DEVASTATING THAN TO DROP YOUR GUN AND YOU CAN'T PICK
14 THAT, BEND DOWN TO PICK IT UP. THAT'S WHERE I WAS. HE
15 WASN'T GIVING ME, OFFERING ME A POSITION AS, AS A, AS A
16 DISPATCHER. HE WASN'T OFFERING ME A POSITION AS A, AS THE,
17 WELL EVEN THE STORE ROOM CLERK, SHE'S ALSO CERTIFIED AND
18 SHE CARRIES A GUN AS WELL. WHENEVER YOU, WHENEVER YOU PUT
19 THAT BADGE AND THAT GUN ON YOU ARE A TARGET AND I WOULD NOT
20 WANT, AT THAT POINT IN MY LIFE I WOULD NOT WANT TO BE OUT
21 IN THE PUBLIC WEARING THAT UNIFORM AND HAVE TO DO MY JOB
22 AND COULDN'T DO IT SO AT THAT POINT I MADE A DECISION THAT
23 THAT'S WHAT, THAT WASN'T WHAT I WAS GOING TO DO.

24 Q YES, SIR, BUT YOU WOULD AGREE, WOULD YOU
25 NOT, THAT THE POLICE CHIEF OF CONWAY SAID YOU CAN DO THIS

1 JOB; ISN'T THAT RIGHT?

2 A OH, HE OFFERED ME THE JOB.

3 Q HE OFFERED IT TO YOU?

4 A YES, SIR.

5 Q YES, SIR, AND YOUR DOCTOR, THE DOCTOR WHO
6 SAT UP HERE JUST A LITTLE WHILE AGO HE SAID YOU COULD DO
7 THE JOB, TOO, DIDN'T HE?

8 A NO, SIR, HE WAS NOT MY DOCTOR AT THAT
9 POINT.

10 Q BUT HE WROTE IN HIS RECORDS ALL THE WAY
11 THROUGH IN 2004 AND 2005 YOU COULD RETURN TO FULL DUTY;
12 ISN'T THAT RIGHT?

13 A HE WAS NOT MY DOCTOR AT THAT POINT, SIR.
14 AT THAT POINT MY, MY, MY ATTENDING PHYSICIAN WAS DR. DAVID
15 KEY.

16 Q YOU COULD PASS ANY TEST TO BE THE COMMUNITY
17 POLICE OFFICER IN CONWAY?

18 A NO, SIR.

19 Q WELL THE POLICE CHIEF OFFERED YOU A JOB
20 THAT YOU COULDN'T PASS THE TEST FOR?

21 A IF, IN ANY DAY AND TIME, SIR, IF YOU, IF I
22 WERE TO GO OUT TO QUALIFY AT THE RANGE AND JUMP THE DITCH,
23 CLIMB OVER THE WALL, ALL THE OBSTACLE COURSE THAT THEY HAVE
24 SET UP OUT THERE, I'M TELLING YOU I WOULD NOT HAVE BEEN
25 ABLE TO DO IT. THAT'S, THAT'S WHAT I'M TELLING YOU.

1 Q AND YOU WOULD AGREE THAT THE CONWAY POLICE
2 CHIEF THOUGHT YOU COULD DO IT AND OFFERED IT TO YOU?

3 A I CAN'T SAY WHAT HE THOUGHT. ALL I KNOW IS
4 HE THOUGHT ENOUGH OF ME TO MAKE THAT OFFER.

5 Q YES, SIR, IT'S A NEWLY FORMED POSITION THAT
6 HE WAS GOING TO GET YOU TO TAKE?

7 A YES, SIR.

8 Q HE WAS GOING TO OFFER IT TO YOU?

9 A YES, SIR.

10 Q AND YOU'D STILL BE IN UNIFORM IF THAT WERE
11 THE CASE; ISN'T THAT RIGHT?

12 A YES, SIR.

13 Q SO THIS BUSINESS ABOUT YOU CAN'T GET A
14 POLICE JOB IN GEORGIA, MYRTLE BEACH, OR WHEREVER, YOU'VE
15 HAD AN OFFER OF A POLICE JOB; ISN'T THAT RIGHT?

16 A YES, SIR.

17 Q ALL RIGHT, AND YOU ALSO WORKED FOR
18 AMERICA'S PRIDE AT INVESTIGATING THAT WORK; ISN'T THAT
19 RIGHT?

20 A YES, SIR.

21 Q ISN'T THAT THE ONE YOU SEE ON TELEVISION
22 WHERE YOU CAN HIRE A PRIVATE EYE AND HE'LL COME OUT THERE
23 AND INVESTIGATE STUFF FOR YOU?

24 A NO, SIR.

25 Q THAT'S NOT THE ONE WHERE THEY OFFER, THEY

1 RUN THE TELEVISION COMMERCIALS WHERE YOU CAN GET PAID SO
2 MUCH AN HOUR AND YOU'LL GO OUT AND DO WORK FOR THEM?

3 A NO, SIR.

4 Q IN YOUR DEPOSITION, WHICH WAS TAKEN BACK IN
5 2007, YOU INDICATED THAT YOU HAD JUST FINISHED SOME JOBS
6 AND YOU WERE WORKING AS AMERICA'S PRIVATE EYE; ISN'T THAT
7 RIGHT?

8 A YES, SIR.

9 Q AND YOU DID THAT ON A NUMBER OF OCCASIONS;
10 ISN'T THAT RIGHT?

11 A INCLUDING DRIVING TO DILLON, SOUTH CAROLINA
12 FROM DOWN IN GEORGIA, THREE-OR-400 MILES ROUND TRIP; ISN'T
13 THAT RIGHT?

14 A YES, SIR.

15 Q AND GETTING PAID OVER \$100 AN HOUR; IS THAT
16 RIGHT?

17 A NO, SIR.

18 Q I THOUGHT YOUR TESTIMONY WAS THAT YOU WERE
19 PAID OVER \$100 A HOUR AS A CONTRACT PRIVATE INVESTIGATOR?

20 A YOU THOUGHT WRONG, SIR, I WISH I WAS.

21 Q OKAY, LET'S LOOK AT YOUR TESTIMONY THEN?

22 A OKAY.

23 Q HOW WERE YOU PAID TO WORK ON A CASE?

24 A BY THE HOUR.

25 Q ALL RIGHT, AND HOW MUCH DID YOU GET FROM

1 THAT AND YOUR ANSWER WAS WHAT?

2 A NO, MY ANSWER WAS ABOUT \$10 AN HOUR.

3 Q WELL YOU SAID \$1300?

4 A \$1300 IS CORRECT.

5 Q YOU DON'T KNOW HOW MANY HOURS IT WAS; IS
6 THAT WHAT YOU'RE SAYING?

7 A NO, WELL THE AMOUNT OF HOURS I PUT INTO
8 THAT MURDER CASE I'M NOT SURE FOR THAT \$1300, I'M NOT SURE
9 IF THAT WAS WITH THE MILEAGE THAT THEY ALLOWED ME OR IF
10 THAT WAS JUST STRAIGHT TIME BUT I THINK HE GAVE ME A
11 SEPARATE CHECK FOR THE MILEAGE AND GAS BUT NOT \$100 AN
12 HOUR.

13 Q ALL RIGHT, BUT YOU DID WORK FOR THEM; ISN'T
14 THAT RIGHT?

15 A YES, SIR.

16 Q ON MORE THAN A NUMBER OF OCCASIONS?

17 A YES, SIR.

18 Q SO YOU WERE ABLE TO DO THAT JOB, TOO?

19 A YES, SIR.

20 Q ALL RIGHT, YOU, I THINK YOU JUST SAID, I
21 MEAN WHEN ONE OF THE QUESTIONS WAS ASKED WAS IT YOUR
22 INTENTION TO SPEND YOUR CAREER WITH THE CONWAY POLICE
23 DEPARTMENT; ISN'T THAT WHAT --

24 A YES, SIR.

25 Q YOU INTENDED TO DO THAT; IS THAT RIGHT?

1 A YES, SIR.

2 Q YOU JUST DIDN'T WANT TO BE THE COMMUNITY
3 POLICE OFFICER?

4 A I WANTED TO BE A POLICE, I WANTED TO BE A
5 POLICE OFFICER AND BASICALLY I WOULD HAVE STILL BEEN IN
6 SAME GRADE, SAME PAY, BUT THERE WERE JUST LIMITATIONS IN
7 THERE.

8 Q NOW YOU HAVE MENTIONED THE TERM WORKERS
9 COMPENSATION AT LEAST FIVE OR SIX TIMES?

10 A YES, SIR.

11 Q YOU WERE ON WORKER COMPENSATION BENEFITS
12 FROM THE CITY OF CONWAY; ISN'T THAT RIGHT?

13 A CORRECT.

14 Q AND THESE LOST WAGES THAT YOU CLAIM WERE
15 PAID BY WORKERS ---

16 MR. ROTHSTEIN: YOUR HONOR, THIS IS A COLLATERAL
17 SOURCE ISSUE.

18 MR. CONNELL: YOUR HONOR, HE OPENED THE DOOR.
19 THEY OFFERED TESTIMONY ---

20 THE COURT: COME ON UP HERE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
22 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
23 OF THE JURY AND THE COURT REPORTER.)

24 MR. ROTHSTEIN: (CONTINUING)

25 Q AND, MR. GAUSE, YOU'VE BEEN INVOLVED IN A

1 NUMBER OF OTHER LAWSUITS; IS THAT RIGHT?

2 A YES, SIR.

3 Q AND TELL THE JURY, IF YOU WOULD, HOW MANY
4 LAWSUITS YOU'VE HAD IN THE PAST BESIDES THE ONE WE'RE HERE
5 ABOUT TODAY?

6 A FROM 1988 A BUS ACCIDENT.

7 Q YOU HAD A BUS ACCIDENT AND GOT INJURED; IS
8 THAT RIGHT?

9 A YES, SIR.

10 Q BROUGHT A SUIT, SETTLED THE CASE?

11 A CORRECT.

12 Q ALL RIGHT, WHAT OTHER CASES HAVE YOU HAD?

13 A ACTUAL CASES --

14 Q YES, SIR, YOU HAD TWO WORKERS COMPENSATION
15 CLAIMS; DID YOU NOT?

16 A MEANING THIS ONE?

17 Q YES, SIR?

18 A WITH THIS ONE?

19 Q YOU'VE HAD TWO WORKERS COMPENSATION CLAIMS?

20 A WITH THIS ONE, YES, SIR.

21 Q ALL RIGHT, AND THOSE WERE?

22 A WITH THIS ONE WAS THE ONE IN NOVEMBER OF
23 2003 AND THEN THE ONE IN OCTOBER OF 2004.

24 Q ALL RIGHT, OCTOBER 2004 IS PUSHING THE CAR
25 OUT OF THE ROAD; ISN'T THAT RIGHT?

1 A OCTOBER, YES, SIR.

2 Q AND NOVEMBER 2003 IS THIS ONE; IS THAT
3 RIGHT?

4 A CORRECT.

5 Q AND THEN YOU HAD WHEN YOU WORKED FOR THE
6 MYRTLE BEACH POLICE DEPARTMENT YOU HAD SOME SORT OF WRECK
7 WITH THE GOLF CART; IS THAT RIGHT?

8 A YES, SOMEONE HIT THE GOLF CART.

9 Q AND YOU BROUGHT A CLAIM OVER THAT; IS THAT
10 RIGHT, BROUGHT A LAWSUIT?

11 A I DON'T KNOW IF IT WAS A LAWSUIT, I DON'T
12 RECALL THAT BUT MAYBE IT WAS.

13 Q AND THEN YOU BROUGHT SOME SORT OF WRONGFUL
14 TERMINATION CLAIM AGAINST THE CITY OF MYRTLE BEACH; ISN'T
15 THAT RIGHT?

16 A YES, SIR.

17 Q YOU SUED THE CITY?

18 A YES, SIR.

19 Q ANYTHING ELSE?

20 A I DON'T KNOW, I DON'T HAVE ALL OF THEM.

21 Q IS THERE ANYTHING MORE MISSING?

22 A I'M NOT SURE.

23 Q THAT'S FIVE; IS THAT RIGHT, FIVE CASES?

24 A YES, SIR.

25 Q DO YOU AGREE?

1 A YES, SIR.

2 Q ALL RIGHT, AND YOU AGREE, DO YOU NOT, THAT
3 FROM MARCH OF 2004 UNTIL OCTOBER 2004 YOU WORKED FULL TIME
4 AS A POLICE OFFICER ON THE ROAD 40 HOURS A WEEK?

5 A MORE THAN 40 HOURS.

6 Q MORE THAN 40 HOUR?

7 A RIGHT, RIGHT.

8 Q AND THAT INCLUDED STOPPING PEOPLE FOR
9 COMMITTING CRIMES, CORRECT?

10 A CORRECT.

11 Q HAVING TO FIGHT WITH PEOPLE IF YOU HAD TO;
12 ISN'T THAT RIGHT, WRESTLE WITH THEM, ARREST THEM?

13 A NO, I ---

14 Q PUT THEM IN JAIL?

15 A I NORMALLY DON'T HAVE TO FIGHT WITH THEM
16 BUT, YES, SIR.

17 Q BUT IF THAT WAS WHAT HAD TO BE DONE YOU HAD
18 TO DO IT; IS THAT RIGHT?

19 A I WOULD HAVE HAD TO DO IT, YES, SIR.

20 Q ALL RIGHT, AND SO FOR THAT SIX-MONTH-PERIOD
21 BETWEEN THIS ACCIDENT AND THE TIME WHEN YOU WERE PUSHING
22 THE CAR OUT OF THE ROAD YOU WERE ON THE DUTY ABLE TO DO
23 ANYTHING YOU NEEDED TO DO; ISN'T THAT RIGHT?

24 A NO, SIR, THAT'S NOT CORRECT.

25 Q WELL DIDN'T YOU WORK DURING THAT PERIOD OF

1 TIME?

2 A YES, SIR, I WORKED.

3 Q ALL RIGHT, YOU DIDN'T, YOU DIDN'T TAKE ANY
4 TIME OFF DURING THAT PERIOD OF TIME, DID YOU?

5 A WELL I CALLED IN SICK A FEW DAYS. THERE'S
6 CERTAIN TASKS THAT I KNEW I WASN'T ABLE TO PERFORM BUT I'M
7 A TROOPER. I TRIED TO BE A TROOPER AND I TRY TO DO MY WORK
8 SO, THEREFORE, I'VE WENT TO WORK SICK BEFORE LIKE A LOT OF
9 OUR GUYS. THEY'LL GO TO SICK WORK, WORK SICK, EXCUSE ME,
10 AND, AND THAT'S WHAT I DID.

11 Q BUT IT INCLUDED BEING A FULL TIME ---

12 A YES, SIR.

13 Q --- POLICE OFFICER; ISN'T THAT RIGHT?

14 A YES, SIR.

15 Q INCLUDING CATCHING FLEEING SUSPECTS IF YOU
16 HAD TO; ISN'T THAT RIGHT?

17 A YES, SIR.

18 Q AND YOU WOULD AGREE, WOULD YOU NOT, THAT
19 DR. MILLS RELEASED YOU IN MARCH OF 2004; ISN'T THAT RIGHT,
20 FROM HIS CARE? ISN'T THAT WHAT HE SAYS IN HIS RECORDS?

21 A I'M NOT SURE WHAT HIS RECORDS SAY.

22 Q YOU WERE CLEARED TO GO BACK TO FULL DUTY AS
23 OF MARCH 18TH, 2004; ISN'T THAT RIGHT?

24 A OKAY, YES, SIR.

25 Q YOU AGREE WITH THAT?

1 A OKAY.

2 Q AND YOU WENT BACK TO FULL DUTY UNTIL
3 OCTOBER 2004 WHEN YOU FELT A POP IN YOUR BACK WHEN YOU WERE
4 PUSHING THE CAR OUT OF THE ROAD?

5 A YES, SIR.

6 Q ISN'T THAT RIGHT?

7 A YES, SIR.

8 Q NOW LET ME ASK YOU THIS SINCE WE'RE TALKING
9 ABOUT PUSHING CARS OUT OF THE ROAD. YOU AGREE, DO YOU NOT,
10 IT WOULDN'T HAVE BEEN ANY PROBLEM WHATSOEVER FOR YOU AND
11 THE DETECTIVE AND ANY OTHER POLICE OFFICER WHO WAS THERE TO
12 PUSH THE CAR OWNED BY MR. HUNT OUT OF THE ROAD THAT NIGHT;
13 ISN'T THAT RIGHT?

14 A I DISAGREE.

15 Q YOU DO?

16 A YES, SIR.

17 Q SO IT'S OKAY TO PUSH A CAR OUT OF THE ROAD
18 IF IT'S A CRYING LADY AND IF THERE'S A CAR LEFT UNATTENDED
19 IN THE ROAD YOU'RE GOING TO LEAVE IT THERE?

20 A YOU HAVE TWO DIFFERENT SET OF
21 CIRCUMSTANCES. THE FIRST SET OF CIRCUMSTANCES IS DUE TO AN
22 ARREST. NORMALLY WHEN YOU HAVE AN ARREST YOU HAVE PEOPLE
23 THAT ARE NOT REALLY THAT HAPPY ABOUT BEING ARRESTED SO,
24 THEREFORE, ACCUSATIONS ARE MADE, YOU KNOW, YOU JAMMED MY
25 CLUTCH, YOU DIRTIED MY CARPET, STUFF LIKE THAT.

1 DEPARTMENTAL POLICY DOES NOT ALLOW US TO REMOVE A VEHICLE
2 FROM THE SCENE ONCE IT STOPS, ESPECIALLY IF IT STOPS WITH A
3 DRIVING OFFENSE SUCH AS A SUSPICION OF A IMPAIRED DRIVER,
4 IT DOES NOT ALLOW US TO MOVE THE VEHICLE. TRUE ENOUGH IN A
5 PERFECT WORLD ONE VEHICLE COULD HAVE BLOCKED BOTH LANES OF
6 TRAFFIC COMING INTO CONWAY AND ME AND OFFICER WILLIAMS
7 COULD HAVE MAYBE MOVED THAT VEHICLE TO THE SIDE OF THE ROAD
8 BUT IT STILL WOULD HAVE LEFT ONE PERSON PUSHING THAT CAR
9 CAUSE SOMEBODY HAD TO STEER IT AND SO, THEREFORE, WHAT
10 YOU'RE SAYING IS NOT FEASIBLE. IT COULD NOT HAVE BEEN
11 DONE.

12 Q ALL RIGHT, FAIR ENOUGH. NOW YOU BRINGING
13 THIS LAWSUIT AGAINST MR. HUNT SEATED RIGHT OVER HERE; YOU
14 UNDERSTAND THAT, RIGHT?

15 A YES, SIR.

16 Q AND YOU AGREE MR. HUNT DIDN'T DO ANYTHING
17 THAT NIGHT; ISN'T THAT RIGHT? HE WASN'T OUT ON THE ROAD,
18 WAS HE?

19 A NO, SIR, HE WAS NOT ON THE ROAD.

20 Q ALL RIGHT, AND YOU HAD NEVER MET HIM
21 BEFORE?

22 A NO, SIR..

23 Q AND YOU CAN'T POINT TO ONE SINGLE THING ON
24 THE NIGHT OF THIS WRECK THAT HE DID AT THE SCENE; ISN'T
25 THAT RIGHT?

1 A BESIDES LET HIS SON HAVE HIS CAR, THAT'S
2 THE ONLY THING.

3 Q WELL LET ME ASK YOU THIS SINCE YOU BROUGHT
4 THAT UP, YOU HAVE A DAUGHTER; IS THAT RIGHT?

5 A YES, SIR.

6 Q HOW OLD IS SHE?

7 A SEVEN.

8 Q SEVEN YEARS OLD?

9 A YES, SIR.

10 Q YOU DON'T HAVE ANY CHILDREN THAT ARE OVER
11 16?

12 A YEAH, MY SON.

13 Q YOU DO

14 A HE JUST GOT HIS PERMIT.

15 Q WELL DO YOU LET YOUR SON DRIVE THE CAR?

16 A NO, SIR.

17 Q YOU DON'T?

18 A UH-UH, HE JUST GOT HIS PERMIT.

19 Q ALL RIGHT, BUT YOU'RE GOING TO LET HIM;
20 AREN'T YOU?

21 A YEAH, AT SOME POINT.

22 Q ISN'T EVERYBODY GOING TO LET THEIR CHILD
23 DRIVE THE CAR?

24 A YES, SIR.

25 Q ARE YOU ABLE TO, ARE YOU ABLE TO MAKE SURE

1 THAT EVERYTHING THAT YOUR CHILD DOES IS SOMETHING THAT YOU
2 THINK IS A GOOD DECISION?

3 A YOU'RE NOT ABLE TO, NO.

4 Q ALL RIGHT, SO YOU'RE GOING TO LET HIM DRIVE
5 YOUR CAR WHEN HE GOES OUT AT NIGHT?

6 A WHENEVER I FEEL THAT HE'S RESPONSIBLE
7 ENOUGH AND HE'S, HE'S CONDUCTED HIMSELF IN A MANNER IN
8 WHICH I THINK I CAN RELINQUISH THAT RESPONSIBILITY I THINK
9 I WILL LET HIM DRIVE.

10 Q AND YOU THINK IT'S RIGHT TO HOLD YOU
11 RESPONSIBLE IF HE GOES OUT THERE AND REAR ENDS SOMEBODY?

12 MR. ROTHSTEIN: YOUR HONOR, WHETHER IT'S RIGHT
13 OR NOT THE LAW IN SOUTH CAROLINA SAYS HE IS RESPONSIBLE.

14 MR. CONNELL: YOUR HONOR, THAT'S NOT THE LAW.

15 THE COURT: I'M GOING TO GIVE YOU ABOUT TWO MORE
16 QUESTIONS AND I THINK YOU CAN WRAP THAT UP.

17 MR. CONNELL: ALL RIGHT.

18 Q (CONTINUING) YOU AGREE, DON'T YOU?

19 A PLEASE REPEAT THE QUESTION?

20 Q YOU GOING TO LET YOUR SON DRIVE THIS CAR
21 WHEN HE GETS OUT, WHEN HE GETS TO BE HAVING A DRIVERS
22 LICENSE?

23 A IF HE, IF HE EXHIBITS THE RESPONSIBLE,
24 RESPONSIBLE ATTITUDE TO BE ABLE TO DRIVE ONE OF MY
25 VEHICLES, YES, SIR.

1 Q ALL RIGHT, NOW YOU AGREE, DO YOU NOT, THAT
2 ON THE DATE THIS WRECK OCCURRED YOU DIDN'T HAVE ANY
3 COMPLAINTS AT THE SCENE; ISN'T THAT RIGHT?

4 A I WOULDN'T SAY NOT HAVE ANY COMPLAINTS
5 BECAUSE THAT'S, THAT'S THE PURPOSE IN WHICH THE AMBULANCE
6 WOULD HAVE HAD TO TRANSPORT ME.

7 Q ALL RIGHT --

8 A SO I DID HAVE SOME COMPLAINTS BUT I WAS
9 JUST INVOLVED IN THIS 70-MILE-AN-HOUR IMPACT.

10 Q ALL RIGHT, SIR, WE TOOK YOUR DEPOSITION,
11 REMEMBER THAT?

12 A YES, SIR.

13 Q DO YOU REMEMBER YOU WERE UNDER OATH AT YOUR
14 DEPOSITION?

15 A YES, SIR.

16 Q AND DO YOU REMEMBER WHAT DAY THAT WAS?

17 A NO, SIR.

18 Q SEPTEMBER 27TH, 2007, YOU WERE THERE; IS
19 THAT RIGHT?

20 A YES, SIR.

21 Q AND YOU SWORE TO TELL THE TRUTH?

22 A YES, SIR.

23 Q ALL RIGHT, ON PAGE 14 QUESTION NUMBER 16
24 WAS ASKED AND WHAT WERE YOUR COMPLAINTS TO EMS AND READ
25 THAT, IF YOU WOULD, TO THE JURY ON THAT DATE AT THAT TIME?

1 A ACTUALLY I DON'T THINK I HAD ANY COMPLAINTS
2 BECAUSE I GUESS THE ADRENALINE WAS GOING, I DON'T RECALL
3 ANY MAJOR COMPLAINTS THAT I HAD WITH THEM.

4 Q ALL RIGHT, SO YOU DIDN'T HAVE ANY
5 COMPLAINTS AT THE SCENE; IS THAT RIGHT?

6 A NO, SIR, THAT'S NOT SAYING THAT. YOUR
7 QUESTION IS DID I HAVE ANY COMPLAINTS, I HAD COMPLAINTS.
8 WHO DID I VOICE THEM TO, ARE YOU SPEAKING WHAT DID I SAY TO
9 EMS OR DIDN'T SAY TO EMS? I'M NOT, I'M NOT UNDERSTANDING
10 YOUR QUESTION, IT'S AN OPEN ENDED QUESTION.

11 Q WELL THE QUESTION WAS WHAT COMPLAINTS DID
12 YOU HAVE TO EMS?

13 A TO EMS?

14 Q YES, SIR, THE ANSWER IS NONE; ISN'T THAT
15 RIGHT?

16 A RIGHT, NO MAJOR COMPLAINTS, NO MAJOR
17 COMPLAINTS.

18 Q YES, SIR?

19 A RIGHT.

20 Q YES, SIR, AND YOU DIDN'T CALL THE HIGHWAY
21 PATROL AFTER THIS WRECK AND TELL THEM THAT YOU HAD A
22 SERIOUS INJURY, DID YOU?

23 A NO, SIR.

24 Q YOU CERTAINLY DIDN'T CALL THE HIGHWAY
25 PATROL, DID YOU, MR. GAUSE, AND TELL THEM THAT YOU HAD THE

1 KIND OF INJURY YOU'D NEVER BE ABLE TO WORK AGAIN, DID YOU?

2 A BECAUSE THAT WASN'T, THE ANSWER IS NO.

3 Q CAUSE YOU WERE BACK TO WORK, ISN'T THAT
4 RIGHT?

5 A I WASN'T, NO, SIR, I WASN'T IMMEDIATELY
6 BACK TO WORK.

7 Q WELL BUT YOU ---

8 A BUT MY, THE REASON IF I'M ALLOWED TO
9 ANSWER?

10 Q YES, SIR?

11 A THE REASON I DIDN'T IMMEDIATELY CALL THE
12 HIGHWAY PATROL FIRST OF ALL THEY HAVE A JOB TO DO. HE, HE
13 FOLLOWS UP HIS OWN CASES BECAUSE I'M, YOU KNOW, BEING A
14 POLICE OFFICER I KNOW YOU FOLLOW UP YOUR CASES AND IF HE
15 DECIDES TO ELEVATE THE CHARGES THAT'S UPON HIM. I HAVE NO
16 CONTROL OVER THAT. YOU KNOW, YOU DON'T, YOU DON'T DABBLE
17 IN THINGS THAT DON'T CONCERN YOU AND IT WASN'T MY POSITION
18 TO TELL HIM HOW TO DO HIS JOB.

19 Q YES, SIR, BUT IF YOU WERE THE VICTIM, YOU
20 KNOW WELL ENOUGH TO KNOW YOU KNOW VICTIMS COMPLAIN TO
21 POLICE ALL THE TIME, DON'T THEY?

22 A YES, SIR.

23 Q AND IF YOU WERE A VICTIM THAT WAS SO
24 SERIOUSLY INJURED THAT YOU COULDN'T GO BACK TO WORK AND
25 THAT YOU COULDN'T DO YOUR PROFESSION YOU WOULD HAVE CALLED

1 THE HIGHWAY PATROL AND SAID LOOK MR. SMITHERS NEEDS TO BE
2 CHARGED WITH FELONY DUI; ISN'T THAT RIGHT?

3 MR. ROTHSTEIN: YOUR HONOR, AGAIN HE'S ASSUMING
4 FACTS THAT ARE NOT IN EVIDENCE. MR. GAUSE SAID THAT HE DID
5 GO BACK TO WORK IMMEDIATELY. I MEAN HE, I MEAN IT'S NOT
6 UNTIL THE SURGERY AND BY THAT TIME THE CHARGE, I THINK HE
7 HAD ALREADY BEEN FOUND GUILTY IN A DUI CASE.

8 THE COURT: COME UP HERE.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
10 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
11 OF THE JURY AND THE COURT REPORTER.)

12 MR. CONNELL: (CONTINUING)

13 Q NOW YOU OWN A NUMBER OF OTHER PROPERTIES;
14 DO YOU NOT?

15 A YES, SIR.

16 Q HOW MANY?

17 A TWO.

18 Q TWO APARTMENT BUILDINGS, I BELIEVE; IS THAT
19 RIGHT?

20 A I OWN A RENTAL PROPERTY AT 1410 DUNBAR AND
21 I OWN A RENTAL PROPERTY AT 1212 DUNBAR.

22 Q AND I BELIEVE YOU WERE DOING THE
23 MAINTENANCE WORK THERE, TOO, ISN'T THAT RIGHT?

24 A YES, SIR.

25 Q AND BACK IN 2004 YOU WERE DOING ALL THE

1 MAINTENANCE WORK; ISN'T THAT RIGHT?

2 A THE MAJORITY OF IT, YES.

3 Q WHEN I SAY ALL I'M TALKING ABOUT PLUMBING,
4 ELECTRICAL, PAINTING, WHATEVER WAS NECESSARY?

5 A TO AN EXTENT, YES, SIR.

6 Q ALL RIGHT, AND THAT WAS AT THE SAME TIME
7 THAT THIS ACCIDENT HAD OCCURRED; ISN'T THAT RIGHT?

8 A THE FIRST ACCIDENT HAPPENED 2003.

9 Q YES, SIR?

10 A YES, SIR.

11 Q WHEN YOU WERE DOING, WHEN YOU WERE ---

12 A YES, SIR.

13 Q --- DOING FULL DUTY?

14 A YES, SIR.

15 Q ISN'T THAT RIGHT?

16 A YES, SIR.

17 Q AND YOU'VE STILL GOT THOSE PROPERTIES
18 TODAY; IS THAT RIGHT?

19 A YES, SIR.

20 Q STILL COLLECTING RENT OFF OF THOSE?

21 A WELL ACTUALLY THAT'S THE JOB ---

22 Q THAT'S YOUR SISTER'S JOB; IS THAT RIGHT?

23 A RIGHT.

24 MR. CONNELL: ALL RIGHT, SIR, THANK YOU VERY
25 MUCH.

1 THE WITNESS: THANK YOU.

2 THE COURT: ANYTHING FURTHER?

3 MR. ROTHSTEIN: YOUR HONOR, I'VE GOT A COUPLE OF
4 QUESTIONS. I'VE GOT ONE THAT'S FOR A LOGISTIC PROBLEM. I
5 GOT A DOCUMENT YESTERDAY THAT I DON'T HAVE COPIES OF AND I
6 WANT TO USE IT WITH MR. GAUSE. I DON'T THAT, I DIDN'T
7 PROVIDE IT TO THEM ---

8 THE COURT: WHY DON'T YOU SEE IF THEY HAVE ANY
9 PROBLEM WITH IT AND IF THEY DON'T I DON'T?

10 DOES ANYBODY ON THE JURY NEED A BREAK, ARE YA'LL
11 OKAY? ANYBODY NEED A BREAK, IF YOU DO JUST RAISE YOUR
12 HAND?

13 MR. LAWSON: YOUR HONOR, I'M GOING TO OBJECT TO
14 THIS.

15 THE COURT: WHAT IS IT?

16 MR. LAWSON: I'VE NOT SEEN IT BEFORE.

17 THE COURT: COME ON UP.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
19 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
20 OF THE JURY AND THE COURT REPORTER.)

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 5 MARKED
22 FOR IDENTIFICATION.)

23 REDIRECT EXAMINATION

24 BY MR. ROTHSTEIN:

25 Q MR. GAUSE, MR. CONNELL WAS ASKING YOU

1 WHETHER YOU MADE ANY STATEMENTS OR COMPLAINED ABOUT ANY
2 INJURIES AT THE, AT THE SCENE OR AT THE TIME AND I HAND YOU
3 A DOCUMENT THAT'S BEEN MARKED PLAINTIFF'S EXHIBIT 5 AND
4 TELL ME WHAT THAT DOCUMENT IS?

5 A THIS IS A CITY OF CONWAY INCIDENT REPORT.

6 Q WHAT'S THE DATE OF THAT DOCUMENT?

7 A 11-15-2003.

8 Q WHAT TIME WAS THAT DOCUMENT COMPLETED?

9 A 6:05, 06:05, THAT WOULD MEAN 6 A.M.

10 Q OKAY, SO THAT WAS WITHIN MINUTES OF THE
11 ACCIDENT?

12 A AFTER, YES.

13 Q OKAY, AND WHAT DOES IT SAY THERE UNDER
14 COMPLAINTS THAT YOU MADE ABOUT?

15 A IT SAYS NECK, LOWER BACK, AND RIGHT KNEE.

16 Q OKAY, NOW THERE'S SOME TALK ABOUT SOME
17 OTHER ISSUES YOU'VE HAD WITH YOUR BACK, I THINK YOU
18 TESTIFIED EARLIER YOU GRADUATED FROM HIGH SCHOOL IN 1988?

19 A CORRECT.

20 Q AND WHAT PART OF YOUR BACK DID YOU, YOU
21 WERE A SCHOOL BUS DRIVER AT THAT TIME?

22 A YES, SIR.

23 Q OKAY, AND YOU WERE T-BONED AT AN
24 INTERSECTION?

25 A YES, OAK STREET AND 29TH AVENUE NORTH I WAS

1 GOING BACK TO THE MIDDLE SCHOOL WHEN A IMPAIRED DRIVER
2 AGAIN COMES OFF OF 29TH AVENUE GOING TOWARDS KINGS HIGHWAY
3 AND JUST RAMPS THE BUS PROBABLY ABOUT MIDWAYS OF THE BUS,
4 KNOCKING THE BUS OFF OF THE ROADWAY INTO THAT YARD ON THE
5 CORNER.

6 Q WERE THERE ANY STUDENTS ON THE BUS?

7 A YES, IT WAS PROBABLY ABOUT, ABOUT BETWEEN
8 15 TO 20 STUDENTS.

9 Q WERE ANY OF THE STUDENTS INJURED?

10 A YES.

11 Q DID THAT EVENT MAKE THE NEWSPAPER?

12 A OH, YES, YES, SIR.

13 Q NOW WHAT PART OF YOUR BACK WAS HURT AFTER
14 THAT WRECK?

15 A I'M NOT SURE BECAUSE IT WAS THE BIG
16 STEERING WHEEL WHEN I TWIST TO TRY TO AVOID IT I'M NOT SURE
17 EXACTLY WHAT, WHAT, WHAT PART IT WAS, IT WAS IN 1988.

18 Q DID YOU EVER SEEN AN ORTHOPEDIC SURGEON IN
19 1988?

20 A NO, SIR, I WENT THROUGH A LITTLE BIT OF
21 CHIROPRACTIC CARE AND THAT WAS PRETTY MUCH IT.

22 Q OKAY, DID, DID ANYONE EVER DIAGNOSE YOU
23 WITH A HERNIATED DISC IN 1988?

24 A NO, SIR.

25 Q OKAY, NOW TO YOUR KNOWLEDGE WERE THERE A

1 NUMBER OF LAWSUITS BROUGHT BY PEOPLE THAT WERE INJURED ON
2 THAT BUS AT THAT TIME?

3 A YES, SIR.

4 Q OKAY, NOW THE OTHER ISSUE WAS TACKLING I
5 THINK THEY MENTIONED SOMETHING ABOUT AN INCIDENT WHERE YOU
6 WERE TACKLING A SUSPECT AND YOU STRAINED YOUR BACK OR HURT
7 YOUR BACK; DO YOU RECALL THAT?

8 A YES, SIR.

9 Q AND THAT WAS WHEN YOU WERE IN THE CITY OF
10 MYRTLE BEACH POLICE DEPARTMENT?

11 A PROBABLY WAS, YES.

12 Q OKAY, DID THAT, DID YOU SEE AN ORTHOPTIC
13 SPINE SPECIALIST AFTER THAT INCIDENT?

14 A NO, SIR.

15 Q DID ANYONE DIAGNOSE YOU WITH A HERNIATED
16 DISC AFTER YOU TACKLED A SUSPECT?

17 A NO, SIR.

18 Q OKAY, HAD IN THESE TWO INCIDENCES WITH THE
19 BUS AND THE TACKLING OF THE SUSPECT, DID YOU EVER
20 EXPERIENCE NUMBNESS AND RADIATING PAIN DOWN YOUR LEGS LIKE
21 YOU DID AFTER THE CRASH IN 2003?

22 A NO, SIR.

23 Q NOW THESE BUILDINGS THAT MR. LAWSON AND MR.
24 CONNELL TALKED ABOUT, WHEN DID YOU ACQUIRE THOSE BUILDINGS?

25 A BETWEEN 1996 AND 2001.

1 Q OKAY, SO THAT WAS WELL BEFORE YOU WENT, YOU
2 EVEN WENT TO WORK FOR THE CITY OF CONWAY POLICE DEPARTMENT?

3 A CORRECT.

4 Q ONE MORE QUESTION, YOU, WELL MAYBE A COUPLE
5 MORE. WHEN YOU SAID NO TO CHIEF GOSNELL ABOUT THE, THE
6 OFFER THAT HE MADE TO YOU, WAS THAT A DIFFICULT DECISION
7 FOR YOU?

8 A YES, SIR.

9 Q OKAY, DID YOU WANT TO CONTINUE TO WORK AS A
10 POLICE OFFICER?

11 A YES, SIR.

12 Q OKAY, WHY DID YOU TELL CHIEF GOSNELL THAT
13 YOU DIDN'T FEEL LIKE YOU COULD TAKE THAT POSITION?

14 A BECAUSE, YOU KNOW, PRETTY MUCH I OWE IT TO
15 MY FELLOW OFFICERS AS WELL. I MEAN YOU DON'T WANT TO GET
16 SOMEONE ELSE SHOT, STABBED, OR HURT AS A RESULT OF YOU NOT
17 BEING ABLE TO PERFORM YOUR DUTIES. YOU SEE IT EVERY DAY,
18 POLICE OFFICERS, YOU KNOW, WITH THE STOMACH HANGING OVER
19 THEIR PANTS AND YOU WONDER HOW CAN THEY CHASE ANYONE AND
20 YOU SEE THE GUYS THAT YOU SAY WELL WHAT CAN THEY DO AS A
21 POLICE OFFICER, YOU KNOW, YOU WONDER WHY THEY CAN'T DO,
22 THEY REALLY, YOU KNOW THEY CAN'T REALLY DO WHAT THOSE SLIM
23 GUYS AND THOSE REAL STOCKY GUYS CAN DO; AND YOU WONDER
24 THAT, BUT THEY ALL, THEY ARE POLICE OFFICERS AND THEY
25 WEREN'T ALWAYS THAT WAY. I CARE ENOUGH ABOUT MYSELF AND

1 OTHER POLICE OFFICERS THAN TO PUT MYSELF IN THE POSITION
2 WHERE I CAN'T COME TO THEIR DEFENSE OR EVEN COME TO MY OWN
3 DEFENSE.

4 Q NOW MR. CONNELL MENTIONED, I THINK HE SAID
5 YOU'VE HAD FIVE LEGAL CLAIMS, THREE OF THOSE INVOLVE THIS
6 ACCIDENT; ISN'T THAT RIGHT, TWO WORKERS COMP CASES AND THEN
7 THIS LAWSUIT?

8 A YES.

9 Q OKAY, SO IT'S REALLY TWO OTHER CLAIMS
10 BEFORE YOU HAD THIS COLLISION?

11 A CORRECT.

12 Q AND ONE OF THEM WAS WHEN YOU WERE A HIGH
13 SCHOOL STUDENT DRIVING A SCHOOL BUS, CORRECT?

14 A YES, SIR.

15 Q OKAY, AND THE OTHER ONE WAS A TUSSELE WITH A
16 SUSPECT WHERE YOU SORT OF WRENCHED YOUR BACK?

17 A RIGHT.

18 MR. ROTHSTEIN: AND, YOUR HONOR, JUST FOR THE
19 RECORD I WANT TO MOVE THAT EXHIBIT NUMBER 5 INTO EVIDENCE.

20 THE COURT: ANY OBJECTIONS?

21 MR. LAWSON: YES, SIR, WE OBJECT TO THAT
22 EXHIBIT, WHAT NUMBER IS IT, I'M SORRY?

23 MR. ROTHSTEIN: FIVE.

24 MR. LAWSON: EXHIBIT NUMBER 5.

25 THE COURT: ALL RIGHT, I'M GOING TO OVERRULE

1 THAT OBJECTION.

2 MR. ROTHSTEIN: I DON'T HAVE ANY FURTHER
3 QUESTIONS.

4 THE COURT: PLAINTIFF'S NUMBER 5.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 5 ENTERED
6 INTO EVIDENCE.)

7 THE COURT: RECROSS?

8 MR. LAWSON: I DON'T HAVE ANYTHING FROM MR.
9 SMITHERS.

10 THE COURT: ALL RIGHT, MR. CONNELL?

11 MR. CONNELL: I JUST HAVE ONE QUESTION.

12 RECROSS EXAMINATION

13 BY MR. CONNELL:

14 Q BACK WHEN CHIEF GOSNELL OFFERED YOU THE JOB
15 YOU DIDN'T THINK YOU COULD DO IT THEN; IS THAT RIGHT?

16 A CORRECT.

17 Q BUT NOW DOWN IN GEORGIA YOU'VE BEEN
18 APPLYING FOR POLICE JOBS; ISN'T THAT RIGHT?

19 A THAT'S CORRECT.

20 Q SO YOU THINK YOU CAN DO IT NOW; IS THAT
21 RIGHT?

22 A I'M GOING TO TRY.

23 MR. CONNELL: ALL RIGHT, THANK YOU, SIR.

24 THE WITNESS: YOU'RE WELCOME.

25 THE COURT: YOU MAY STEP DOWN.

1 THE WITNESS: THANK YOU.

2 THE COURT: THANK YOU. YOU WANT TO GO WITH
3 ANOTHER WITNESS OR YOU WANT TO HAVE A BREAK? YOU NEED A
4 BREAK, YOU'RE GOOD? ALL RIGHT, CALL YOUR NEXT WITNESS.

5 MR. ROTHSTEIN: WE'D CALL DETECTIVE CHRIS
6 WILLIAMSON.

7 DETECTIVE CHRIS WILLIAMSON

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 MADAM CLERK: STATE YOUR NAME FOR THE COURT,
10 PLEASE.

11 THE WITNESS: CHRIS WILLIAMSON.

12 DIRECT EXAMINATION

13 BY MR. ROTHSTEIN:

14 Q GOOD AFTERNOON, DETECTIVE WILLIAMSON, I
15 APPRECIATE YOU BEING HERE ALL DAY. WHEN WAS THE FIRST TIME
16 YOU AND I MET?

17 A PERSONALLY, IT WAS YESTERDAY.

18 Q OKAY, AND CAN YOU TELL THE JURY WHERE
19 YOU'RE EMPLOYED?

20 A CONWAY POLICE DEPARTMENT.

21 Q AND HOW LONG HAVE YOU WORKED FOR THE CONWAY
22 POLICE DEPARTMENT?

23 A ABOUT NINE YEARS NOW.

24 Q AND WHAT IS YOUR RANK IN THE CONWAY POLICE
25 DEPARTMENT?

1 A I'M A DETECTIVE.

2 Q HOW LONG HAVE YOU BEEN A DETECTIVE?

3 A ABOUT THREE YEARS NOW.

4 Q WHAT WAS YOUR POSITION IN NOVEMBER OF 2003?

5 A JUST A PATROL OFFICER.

6 Q OKAY, WERE YOU A LITTLE BIT SENIOR TO MR.
7 GAUSE AT THAT TIME?

8 A TO THE CITY OF CONWAY BUT NOT TO LAW
9 ENFORCEMENT, I'D BEEN ON STREET FOR ABOUT A YEAR WHEN THIS
10 ACCIDENT OCCURRED.

11 Q BUT IN TERMS OF SENIORITY AT THE DEPARTMENT
12 YOU WOULD HAVE SORT OF OUT RANKED MR. GAUSE?

13 A THAT IS CORRECT.

14 Q ALL RIGHT, NOW I'M GOING TO TURN YOUR
15 ATTENTION TO THE NIGHT OF NOVEMBER 14TH INTO THE EARLY
16 MORNING OF NOVEMBER 15TH, 2003, DO YOU RECALL THAT DAY?

17 A YES, SIR.

18 Q CAN YOU TELL THE JURY WHERE OR WERE YOU ON
19 DUTY THAT NIGHT?

20 A YES, SIR, WE HAD BEEN ON ALL NIGHT GETTING
21 READY TO GET OFF AT 6 THAT MORNING.

22 Q OKAY, AND WHAT WAS YOUR SPECIFIC ASSIGNMENT
23 THAT NIGHT, WHERE WERE YOU PATROLLING?

24 A I DON'T REMEMBER MY SPECIFIC ASSIGNMENT
25 WHAT AREA OF THE CITY OR IF I WAS FLOATING THROUGHOUT THE

1 ENTIRE CITY, BUT IT WAS TO PATROL THE CITY.

2 Q ALL RIGHT, DO YOU RECALL BEING CALLED
3 TOWARD THE END OF THE SHIFT TO ASSIST A TROOPER WITH A
4 TRAFFIC STOP SOMETIME BETWEEN FIVE AND 5:30 A.M.

5 A YES, SIR, I DO.

6 Q AND DID YOU RESPOND TO THAT CALL?

7 A YES, SIR, I DID.

8 Q AND WHERE DID YOU, WHERE DID YOU COME FROM
9 TO RESPOND TO THAT CALL?

10 A I BELIEVE I CAME FROM NORTH 501 HEADING OUT
11 ONTO LAKE BUSBEE SO I ACTUALLY HAD TO PASS THE ACCIDENT AND
12 MAKE A U-TURN AND COME UP AROUND BEHIND IT.

13 Q OKAY, WHEN YOU CAME UP BEHIND THE SCENE WAS
14 MR. GAUSE'S PATROL CAR ALREADY THERE?

15 A YES, SIR.

16 Q AND WAS HE BEHIND THE TROOPER AND THE HUNT
17 CAR?

18 A YES, SIR.

19 Q DID YOU NOTICE WHETHER OR NOT MR. GAUSE'S
20 EMERGENCY LIGHTS WERE ACTIVATED?

21 A YES, SIR, THEY WERE ACTIVATED.

22 Q WERE YOUR LIGHTS ACTIVATED AS WELL?

23 A AS SOON AS I GOT TO THE POINT WHERE I
24 PASSED THE WRECK AND BEGAN MY U-TURN I ACTIVATED MY LIGHTS
25 ALSO.

1 Q AND WHERE DID YOU PARK YOUR CRUISER AFTER
2 YOU GOT TO THE SCENE?

3 A IT WOULD DIRECTLY IN LINE BEHIND MR., MR.
4 GAUSE'S CRUISER.

5 Q AND WHAT DID YOU OBSERVE WHEN YOU ARRIVED?

6 A THERE WAS THE HIGHWAY PATROL OFFICER AND
7 OFFICER GAUSE CRUISER BEHIND A BLUE, I THINK IT WAS A
8 FIREBIRD. I DON'T RECALL IF MR. HUNT WAS ALREADY OUT OF
9 THE VEHICLE OR NOT BUT I ARRIVED NOT LONG AFTER OFFICER
10 GAUSE HAD SPOKEN WITH THE TROOPER ABOUT WHAT, WHAT WAS
11 GOING ON AND WHAT THE TRAFFIC STOP WAS MADE FOR.

12 Q WERE YOU IN THE COURTHOUSE A FEW MINUTES
13 AGO WHEN TROOPER GRAHAM WAS TESTIFYING?

14 A YES, SIR.

15 Q DID YOU SEE THE DIAGRAM MR. ---

16 A YES, SIR.

17 Q --- WENT THROUGH, DID THAT APPEAR TO BE AN
18 ACCURATE DEPICTION OF THE SCENE WITH THE ABSENCE OF THE
19 SMITHER'S CAR WHEN YOU GOT THERE?

20 A YES, SIR.

21 Q AND, OF COURSE, THE CAR, MR. GAUSE'S CAR
22 AND MR. HUNT'S CAR WERE NOT DAMAGED?

23 A CORRECT.

24 Q AND THERE'S BEEN SOME TALK ABOUT THAT
25 EMERGENCY LANE OFF TO THE RIGHT SIDE OF THE ROAD. HAVE YOU

1 EVER BEEN SEEN, I MEAN DO YOU HAVE PERSONAL KNOWLEDGE ABOUT
2 THAT EMERGENCY LANE?

3 A I KNOW THERE'S A LANE OVER THERE, YES, SIR.

4 Q AND DO YOU BELIEVE IT'S BIG ENOUGH TO STOP
5 A VEHICLE IN?

6 A YES, SIR, IT'S BIG ENOUGH FOR A VEHICLE TO
7 FIT IN.

8 Q IN YOUR EXPERIENCE AS A POLICE OFFICER
9 WHAT'S THE PURPOSE OF THE EMERGENCY LANE OFF THE RIGHT SIDE
10 OF THE HIGHWAY?

11 A FOR VEHICLES HAVING TROUBLE THAT NEEDS TO
12 PULL OVER TO GET OFF THE ROAD OR IF YOU'RE BEING PULLED
13 OVER FOR THE VEHICLES TO PULL OFF INTO THAT EMERGENCY AREA
14 OFF THE ROADWAY.

15 Q NOW WHEN YOU GOT TO THE SCENE WAS THERE
16 ANYTHING, ANY INDICATION THAT MR. HUNT'S VEHICLE WAS
17 DISABLED IN ANY WAY?

18 A NO, SIR.

19 Q AFTER YOU ARRIVED TELL ME, TELL THE JURY
20 WHAT, WHAT YOU DID?

21 A I DON'T RECALL THE SPECIFICS BUT I GUESS ME
22 AND OFFICER GAUSE HAD A CONVERSATION AND MR. HUNT WAS
23 SUBSEQUENTLY ARRESTED AND PLACED IN THE BACK OF MY VEHICLE
24 AND THE DECISION WAS MADE FOR ME TO GO AHEAD AND TAKE MR.
25 HUNT TO JAIL AND FOR OFFICER GAUSE TO STAND BY AND DO THE

1 VEHICLE INVENTORY AND STAND BY FOR THE WRECKER.

2 Q WAS THE WRECKER JOB THE LEAST, THE LESS
3 GLAMOROUS OF THE TWO JOBS?

4 A WELL EITHER ONE CAUSE THERE'S SOME, YOU
5 STILL GOT PAPERWORK TO DO ON EITHER ONE SO --

6 Q BUT YOU AS THE MORE SENIOR OFFICER DECIDED
7 TO TAKE MR. HUNT TO JAIL AND, AND ---

8 A YES, SIR.

9 Q --- LEAVE MR. GAUSE AT THE SCENE, WAS THAT
10 YOUR CALL TO MAKE?

11 A I DON'T RECALL. I BELIEVE I PROBABLY MADE
12 THAT CALL ON THE SCENE, YES, SIR.

13 Q WHY DIDN'T YOU OR MR. GAUSE ATTEMPT TO MOVE
14 THE HUNT VEHICLE OUT OF THE ROAD?

15 A AT THE TIME WITH THE CIRCUMSTANCES I DIDN'T
16 DEEM IT NECESSARY. WE WERE ON A FLAT STRAIGHTAWAY, IT WAS
17 CLEAR, YOU COULD SEE THE BLUE LIGHT AS SOON AS YOU COME
18 OVER THE HILL. HEADING SOUTHBOUND YOU COULD SEE THE BLUE
19 LIGHTS AS SOON AS YOU COME AROUND THE CORNER, GOING
20 NORTHBOUND YOU COULD SEE THE BLUE LIGHTS. IT WAS EARLY
21 MORNING, LIGHT TRAFFIC, AND IT WAS FLOWING FREELY BY WHERE
22 WHERE WE WERE STOPPED AT AND TO TELL YOU THE TRUTH IT
23 DIDN'T EVEN CROSS MY MIND TO MOVE THE VEHICLE OUT OF THE
24 LANE.

25 Q ARE YOU FAMILIAR WITH THE CONWAY POLICE

1 DEPARTMENT'S POLICIES ABOUT HANDLING TRAFFIC STOPS OR
2 SITUATIONS LIKE THAT WHERE A MOTORIST IS STOPPED AND TAKEN
3 FROM THE SCENE?

4 A I DON'T RECALL THE EXACT WRITTEN POLICY OR
5 EXACTLY WHAT IT SAYS.

6 Q OKAY, NOW HOW SOON AFTER YOU GOT THERE DID
7 THE TROOPER LEAVE?

8 A IT WAS PROBABLY A MINUTE OR TWO, I MEAN AS
9 SOON AS WE GOT THERE AND HE GAVE US A QUICK BRIEFING HE
10 WAS, HE WAS OUT OF THERE.

11 Q OKAY, SO THERE WOULD HAVE BEEN, AFTER HE
12 LEFT AFTER A MINUTE OR SO IT WOULD HAVE BEEN YOU AND MR.
13 GAUSE THERE?

14 A CORRECT.

15 Q IF YOU TRIED TO PUSH THAT VEHICLE OUT OF
16 THE ROAD HOW MANY OFFICERS WOULD IT TAKE TO, TO ACCOMPLISH
17 THAT? WELL YOU HAVE TO HAVE ONE PERSON PUSHING IT, RIGHT?

18 A RIGHT, AND YOU'D HAVE, PROBABLY HAVE TO
19 HAVE ONE INSIDE STEERING IT.

20 Q OKAY, NOW WHO'S GOING TO KEEP AN EYE OUT
21 FOR TRAFFIC COMING DOWN THERE IF YOU GUYS ARE DOING THAT?

22 A YOU COULDN'T AND ALSO YOU'D HAVE TO KEEP AN
23 EYE ON THE SUBJECT THAT WAS HANDCUFFED IN THE BACK OF ONE
24 OF THE PATROL CARS.

25 Q OKAY, YOU DON'T WANT HIM GETTING OUT AND

1 RUNNING AWAY, DO YOU?

2 A NO, SIR.

3 Q DID YOU TAKE, WHEN YOU TOOK MR. HUNT TO THE
4 J. REUBEN LONG DETENTION CENTER DID HE SAY ANYTHING TO YOU
5 ON THE WAY TO THE JAIL?

6 A I DON'T RECALL.

7 Q OKAY, WHEN DID, WHEN, WHEN DID YOU LEARN
8 THAT MR. GAUSE HAD BEEN STRUCK BY ANOTHER CAR AT THE SCENE
9 AFTER YOU LEFT THE SCENE?

10 A IT WAS, IT HAPPENED NOT LONG AFTER I LEFT
11 CAUSE I REMEMBER HEARING OFFICER GAUSE CALL OUT ON THE
12 RADIO THAT HE HAD BEEN IN A 1050 WHICH IS THE TEN CODES FOR
13 A VEHICLE ACCIDENT AND I HEARD THAT BEFORE I ARRIVED AT THE
14 JAIL SO IT WASN'T LONG AFTER I LEFT THAT THE ACCIDENT
15 OCCURRED.

16 Q DID YOU AT SOME POINT, AFTER COMING BACK
17 FROM J. REUBEN LONG DID YOU GO BACK BY THE SCENE OF THE
18 ACCIDENT?

19 A NEVER OUT TO THE SCENE, NO, SIR.

20 Q DID YOU EVER SEE MR. GAUSE'S PATROL CAR
21 AFTER IT HAD BEEN REMOVED FROM THE SCENE?

22 A YES, SIR, LATER THAT EVENING WHEN WE CAME
23 BACK IN I WENT DOWN TO THE CITY SHOP WHERE IT WAS TOWED AND
24 LOOKED AT THE VEHICLE.

25 Q CAN YOU DESCRIBE WHAT THAT CAR LOOKED LIKE?

1 A IT WAS VERY BADLY DAMAGED, THE REAR END
2 THERE WAS BASICALLY NO TRUNK LEFT. IT WAS, THE TRUNK WAS
3 SMASHED UP INTO THE BACK SEAT. MY FIRST THOUGHT WHEN I SAW
4 IT WAS IF I HAD STILL BEEN SITTING THERE WHEN, WHEN THE
5 WRECK OCCURRED THE SUSPECT THAT WAS IN THE BACK SEAT OF MY
6 CAR PROBABLY WOULD HAVE BEEN KILLED.

7 MR. ROTHSTEIN: I DON'T HAVE ANY FURTHER
8 QUESTIONS, THANK YOU..

9 THE COURT: ANYTHING FURTHER, MR. LAWSON?

10 MR. LAWSON: I DON'T HAVE ANY QUESTIONS OF THIS
11 WITNESS, YOUR HONOR.

12 THE COURT: MR. CONNELL?

13 CROSS EXAMINATION

14 BY MR. CONNELL:

15 Q AT THE TIME THAT YOU LEFT I THOUGHT I HEARD
16 YOU SAY THAT YOU DIDN'T DEEM IT NECESSARY TO MOVE THE CAR
17 FROM THE INSIDE LANE; IS THAT RIGHT?

18 A I TELL YOU THE THOUGHT NEVER EVEN CROSSED
19 MY MIND TO MOVE THE CAR CAUSE OF THE SITUATION WE WERE IN.
20 WE WEREN'T ON A BLIND CURVE OR I DIDN'T SEE A SITUATION
21 WHERE IT WAS EMINENT TO GET THE CAR MOVED TO THE SIDE.

22 Q THE MR. HUNT YOU'RE TALKING ABOUT IT'S NOT
23 THIS EDWARD HUNT SITTING NEXT TO ME?

24 A NO, SIR, NO, SIR.

25 Q HE WASN'T THERE THAT NIGHT, WAS HE?

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1 A NO, SIR.

2 Q HE WASN'T INVOLVED AT ALL, WAS HE?

3 A NO, SIR.

4 Q AND YOU NEVER MET HIM UNTIL TODAY; IS THAT
5 RIGHT?

6 A THAT'S CORRECT.

7 Q AND YOU DON'T KNOW ANYTHING ABOUT WHERE HE
8 WAS THAT NIGHT; IS THAT RIGHT?

9 A THAT IS CORRECT.

10 Q AND HE WASN'T THE EDWARD HUNT THAT WAS
11 ARRESTED IN THE BACK OF YOUR PATROL CAR; IS THAT RIGHT?

12 A THAT IS CORRECT, YES, SIR.

13 Q TO BE ABSOLUTELY CLEAR THAT HE HAS NO
14 INVOLVEMENT IN THE WRECK; ISN'T THAT RIGHT?

15 A THAT IS CORRECT.

16 MR. CONNELL: THANK YOU, SIR.

17 MR. ROTHSTEIN: NOTHING FURTHER.

18 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

19 THE WITNESS: THANK YOU.

20 THE COURT: THANK YOU.

21 MR. ROTHSTEIN: IF HE COULD BE RELEASED, JUDGE?

22 THE COURT: SURE, ANY OBJECTIONS?

23 MR. CONNELL: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 MR. ROTHSTEIN: YOUR HONOR, WE'VE GOT ONE MATTER

1 TO TAKE UP. I THINK IT WILL TAKE A MINUTE, I THINK IT'S
2 TIME FOR A SHORT BREAK.

3 THE COURT: WHY DON'T WE TAKE A 15 MINUTE BREAK,
4 DO NOT DISCUSS THE CASE.

5 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
6 4:23 P.M.)

7 THE COURT: GO AHEAD.

8 MR. ROTHSTEIN: MY NEXT TWO WITNESSES ARE GOING
9 TO BE THE HUNT'S. I THINK WE NEED TO GET THIS ISSUE, KIND
10 OF SOME GROUND RULES ABOUT WHAT WE CAN GET INTO WITH REGARD
11 TO WHY HE STOPPED THAT NIGHT. I THINK THE ISSUE OF THE
12 INTOXICATION IS RELEVANT, SURE IT MAY BE PREJUDICIAL
13 BECAUSE HE WAS DRIVING DRUNK, BUT THAT DOESN'T MEAN IT
14 SHOULD BE EXCLUDED FROM EVIDENCE. I THINK IT ESTABLISHES
15 HIS STATE OF MIND. I THINK WE CAN ---

16 THE COURT: I AGREE THAT IT IS RELEVANT, HOWEVER
17 I HAVE FOUND THAT IT IS SUBSTANTIALLY PREJUDICIAL, HOWEVER
18 THERE'S NO REASON WHY YOU CAN'T SAY, YOU KNOW, WHY DID YOU
19 PULL HIM? HE WAS DRIVING ERRATIC, HE WAS DRIVING OVER THE
20 WHITE -- THEY'VE HEARD ALCOHOL ALREADY THREE, FOUR, OR FIVE
21 TIMES, THEY KNOW EXACTLY WHY HE WAS PULLED.

22 MR. ROTHSTEIN: CAN WE MAKE A PROFFER OF THAT
23 TESTIMONY AT SOME POINT? I DON'T KNOW WHO SHOULD DO IT. I
24 GUESS OUTSIDE THE PRESENCE OF THE JURY OR DO YOU WANT ME TO
25 JUST TELL YOU WHAT THE TESTIMONY WOULD BE; WOULD THAT BE

1 SUFFICIENT TO PRESERVE THE RECORD?

2 THE COURT: GO AHEAD.

3 MR. ROTHSTEIN: THE SON, EDWARD RAYMOND HUNT,
4 TESTIFIED IN HIS DEPOSITION THAT HE SPENT MOST OF THE
5 EVENING ON THAT FRIDAY NIGHT AT THE MASTERS GENTLEMENS CLUB
6 IN MYRTLE BEACH. HE ADMITS THAT HE HAD AT LEAST FIVE
7 DRINKS, SOMEWHERE BETWEEN FIVE AND TEN DRINKS. HE ADMITS
8 THAT HE WAS DRUNK, STAYED THERE TILL LAST CALL, WENT OUT TO
9 THE PARKING LOT ABOUT 2:00, GOT IN HIS VEHICLE, LAID THE
10 SEAT BACK AND SLEPT FOR AN HOUR. HE WAKES UP, HE KNOWS
11 HE'S DRUNK, HE GETS AND STARTS THE CAR, STARTS HEADING HOME
12 TO HIS HOUSE IN CONWAY. HE LIVED ON THE OTHER SIDE OF
13 CONWAY SO HE WAS COMING OFF THE STEAM PLANT. HE ADMITTED
14 HE KNEW HE WAS DRUNK. HE ADMITTED THAT HE KNEW IT WAS
15 IMPROPER TO DRIVE WHILE HE WAS DRUNK. HE ADMITTED THAT HE
16 HAD DRIVEN BUZZED OR SLIGHTLY INTOXICATED ON AT LEAST ONE
17 OCCASION BEFORE THIS.

18 THE NEXT THING HE KNOWS HE SEES THE BLUE LIGHTS
19 IN HIS REAR VIEW MIRROR. I ASKED HIM WHAT WAS THE FIRST
20 THING THAT WENT THROUGH YOUR MIND WHEN YOU SAW THE BLUE
21 LIGHTS, HE SAYS, I'M GOING TO JAIL. HE KNEW THAT HE WAS
22 INTOXICATED AND I THINK THIS GOES TO THE RECKLESS ISSUE,
23 WILLFUL AND WANTON CONDUCT THAT WE CAN ESTABLISH FOR
24 PUNITIVE DAMAGES.

25 THE CASE I HANDED UP TO YOUR HONOR SHOWS THAT

1 PUNITIVE DAMAGES IN AN AGENT PRINCIPAL RELATIONSHIP ARE IN
2 IMPUTABLE TO THE PRINCIPAL FOR THE ACTS OF THE AGENT, SO WE
3 THINK IT'S RELEVANT. CERTAINLY IT'S, IT'S GOT SOME
4 PREJUDICIAL VALUE BUT IT IS VERY PROBATIVE AS TO THOSE
5 ISSUES FOR PUNITIVE DAMAGES, YOUR HONOR.

6 HE ALSO TESTIFIED THAT HE KNEW THAT IT WAS
7 IMPROPER TO STOP WHERE HE STOPPED AND HE HAD BEEN TRAINED
8 IN DRIVERS ED TO PULL OFF THE RIGHT SIDE OF THE ROAD. I
9 ASKED HIM WHY HE DIDN'T DO THAT AND HE SAID I, I DON'T
10 KNOW, AND SO I THINK THE INFERENCE IS THAT HE WAS SO DRUNK
11 HE JUST STOPPED THE CAR AND I THINK THAT IS VERY RELEVANT
12 TO, TO OUR CASE AND THAT'S THE TESTIMONY I WOULD PROFFER.

13 THE COURT: HOW YA'LL RESPOND?

14 MR. LAWSON: THIS IS GENE'S CLIENT, YOUR HONOR,
15 SO I'LL LET HIM HANDLE THAT.

16 THE COURT: GENE?

17 MR. CONNELL: YOUR HONOR, WE PASSED UP THE CASE
18 OF GIBSON V. GROSS AND THIS IS A QUESTION OF INTERVENING
19 PROXIMATE CAUSE AND WHETHER OR NOT THAT MR. HUNT WHO WAS
20 THE ALLEGED DRIVER WAS ACTUALLY THE PROXIMATE CAUSE OF THE
21 WRECK AND AS YOUR HONOR KNOWS FROM THE CASE I HANDED UP I
22 MEAN THERE'S NO WAY THEY CAN CONNECT UP THE TWO. EVEN THE
23 POLICE THAT HAVE JUST TESTIFIED SAID THAT HE DIDN'T DEEM IT
24 NECESSARY TO MOVE THE CAR OUT OF THE ROAD THAT NIGHT AND
25 MR. HUNT, THE DRIVER, STOPPED BECAUSE HE WAS STOPPED BY THE

1 POLICE AND HE STOPPED RIGHT WHERE HE WAS STOPPED. IT
2 DOESN'T APPEAR, AND MR. HUNT, THE DRIVER, IS NOT UNDER,
3 HE'S NOT BEING SUED IN THIS CASE. THEY'RE TRYING TO TAR
4 HIS FATHER WITH THE FACT THAT HE WAS DRIVING UNDER THE
5 INFLUENCE ON THE NIGHT IN QUESTION. I DON'T THINK THEY'RE
6 ABLE TO DO THAT BECAUSE AS I SAID BEFORE IT'S AN
7 INDIVISIBLE CLAIM AND, YOUR HONOR, I'VE HANDED YOU UP AT
8 LEAST ONE CASE THAT SAYS THAT IT'S AN INDIVISIBLE CLAIM SO
9 HOW ARE THEY GOING TO GET THE JURY AGAINST MR. HUNT, THE
10 OWNER, WITHOUT MR. HUNT THE DRIVER IN THE CASE.

11 THE COURT: I THINK IF THEY PROVE THE SON WAS
12 NEGLIGENT OR GROSSLY NEGLIGENT THEY HAVE GOTTEN TO THE
13 FATHER. I HAVEN'T FOUND ANYTHING THAT SAYS HE HAS TO BE A
14 PARTY TO THIS CASE. NOW I'VE GOT A BUNCH OF OPINIONS, WE
15 MAY BE WRONG BUT A LOT OF PEOPLE HAVE AGREED WITH ME,
16 LOGICALLY IT MAKES SENSE TO ME, THEY JUST HAVE TO PROVE
17 THAT THE SON WAS NEGLIGENT OR GROSSLY NEGLIGENT AND I STILL
18 THINK YOU CAN DO THAT WITHOUT BEATING HIM OVER THE HEAD
19 WITH THE ALCOHOL. NOW IF HE GETS UP THERE AND SPOUTS OFF
20 THAT'S HIS PROBLEM BUT IT'S OBVIOUS HE WAS AT THE CLUB, HE
21 WAS AT THE CLUB TILL IT CLOSED. HE GOT IN THE CAR, HE
22 SLEPT, HE DROVE, HE STOPPED IN THE MIDDLE OF THE ROAD LATE
23 AT NIGHT, BLUE LIGHTS, ARRESTED, HAULED OFF. I THINK
24 EVERYTHING YOU NEED IS THERE; I HAVE JUST TEMPERED IT A TAD
25 JUST TO KEEP IT FROM GOING CRAZY.

1 MR. CONNELL: YOUR HONOR, HIS TESTIMONY IS ALSO
2 GOING TO BE, MR. HUNT, THE DRIVER, THAT HE WAS BUYING THE
3 CAR FROM HIS FATHER AND HE PAID SEVERAL HUNDRED DOLLARS ---

4 THE COURT: WELL THAT'S WHATEVER THAT IS THAT
5 MAY BE AN ISSUE FOR THE JURY. I'M JUST TALKING ABOUT HOW
6 FAR YOU CAN GO RIGHT NOW WITH THAT.

7 MR. CONNELL: THAT GOES DIRECTLY TO THE PART OF
8 THE FAMILY PURPOSE DOCTRINE.

9 THE COURT: SURE, IT DOES.

10 MR. CONNELL: WHETHER OR NOT THERE'S ANY
11 LIABILITY.

12 THE COURT: IT DOES, NO QUESTION.

13 MR. ROTHSTEIN: JUDGE, ONE OTHER THING EITHER I
14 DON'T REMEMBER WHO IF IT WAS, MR. CONNELL AND MR. LAWSON,
15 ONE OF THEM CROSS EXAMINING TROOPER GRAHAM BASICALLY, I
16 THINK IT WAS MR. CONNELL HAD TROOPER GRAHAM TESTIFY THAT
17 OFTENTIMES WHEN A POLICE OFFICER PULLS OVER SOMEONE THEY
18 STOP AND WHAT IS, WHAT IS IT THAT YOU DO? YOU GET OUT OF
19 THE CAR AND YOU ASK THEM TO PULL THE CAR OVER, ALL RIGHT.
20 THAT WASN'T DONE IN THIS CASE AND MR. HUNT THE JUNIOR
21 EXPLAINED WHY BECAUSE HE, HE SAID THEY, THEY WOULDN'T LET
22 ME MOVE THE CAR BECAUSE I WAS DRUNK AND THEN THEY COULD
23 CHARGE ME WITH DUI AND --

24 THE COURT: WHATEVER HE SAYS IS WHAT HE SAYS BUT
25 ---