

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

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Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993
South Carolina Court of Appeals
Opinion No. 4799, filed 2 March 2011

JUL - 5 2011

S.C. Supreme Court

L. Paul Trask, Jr., Personally, and as Next of Kin and as
the Duly Appointed Personal Representative of the Estate
of L. Paul Trask, III, deceased, and Meredith C. Trask,

Petitioners,

v.

Beaufort County; Curtis Copeland, in His Official Capacity
as Coroner of Beaufort County and Individually; and
Copeland Company of Beaufort, LLC,

Respondents.

PETITION FOR WRIT OF CERTIORARI

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I. STATEMENT OF THE CASE

On 11 April 2007, the Petitioners, L. Paul Trask, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, sued the Respondents, Beaufort County; Curtis Copeland, in his official capacity as Coroner of Beaufort County and individually; and Copeland Company of Beaufort, LLC. (R.p.4; R.pp.19-34).¹ The Trasks sought damages for the Respondents' gross negligence and intentional misconduct arising from the Respondents' abysmal mismanagement and abdication of their duties to investigate the tragic death of the Trasks' son, L. Paul Trask, III. (R.pp.19-34).

The Trasks asserted claims against Beaufort County and Coroner Copeland for (a) negligence, negligence *per se*, and gross negligence (R.p.4; R.pp.20-27, paras. 7-46, 47-51) and (b) negligent supervision and training (R.p.4; R.pp.20-29, paras. 7-46, 52-61); against Beaufort County for negligent spoliation of evidence (R.p.4; R.pp.20-26,

¹ The Copeland Company of Beaufort, LLC operated a funeral home in Beaufort under the name Copeland Funeral Home. (R.p.5; R.p.23, para. 30). The Respondents apparently hope the Trasks had used the term "Mr. Copeland" when referring to Curtis Copeland in his "individual capacity" and "Coroner Copeland" when referring to him in his official capacity as Beaufort County Coroner. Such a scenario would have been, at best, confusing. ("Coroner Copeland" herein refers to both capacities). This is especially true since, contrary to the Respondents' arguments, it is *virtually impossible to distinguish between Curtis Copeland's official and corporate identities*. Coroner Copeland used his position as Beaufort County Coroner to invite business to his personal enterprises – the Copeland Funeral Home. *He did so in this very case*. (R.p.23, para. 30; R.p.175; lines 13-16). Coroner Copeland failed to exercise any care whatsoever to distinguish his role as Beaufort County Coroner from his role as owner/operator of Copeland Funeral Home. In fact, it was in his clear economic interests to co-mingle those positions. Coroner Copeland uses the *same* office, *same* vehicle, *same* computers, *same* e-mail addresses, *same* land-line telephones, and *same* cell telephones in his both of his roles. Furthermore, Coroner Copeland used employees from the Copeland Funeral Home as members/employees of the coroner's office. (R.p.213, lines 2-18; R.p.222, line 1 – R.p.223, line 22). Curtis Copeland actively declined to distinguish to the public his role as Beaufort County Coroner from that of owner/operator of the Copeland Funeral Home. The same situation existed for Deputy Coroner Herman. These roles, for all practical purposes, were one-in-the-same for both Coroner Copeland and Deputy Coroner Herman. In fact, Coroner Copeland profited economically by doing so. The Trasks only have followed his example in making their claims against him in both capacities. The Court of Appeals completely ignored Curtis Copeland's constant donning of both his official coroner's "hat" and his funeral home operator's "hat" all at the same time. The Court of Appeals repeatedly sought to create distinctions where none, in fact, existed.

29-30, paras. 7-46, 62-70); against Coroner Copeland and the Copeland Funeral Home for (a) negligence, negligence *per se*, and gross negligence (R.p.4; R.pp.20-26, 31, paras. 7-46, 71-75) and intentional and/or negligent spoliation of evidence (R.p.4; R.pp.20-26, 32-33, paras. 7-46, 84-89); and against Coroner Copeland for intentional infliction of emotional distress. (R.p.4; R.pp.20-26, 31-32, paras. 7-46, 76-83).

The Respondents denied the material allegations (R.pp.41-50) and asserted various affirmative defenses. (R.pp.50-52, paras. A-L). They later moved for summary judgment. (R.pp.53-54, 57-60). The Trasks, in turn, moved for partial summary judgment as to liability. (R.pp.55-56).

The Trial Court heard the motions on 7 November 2008 (R.p.2), and issued its written order on 22 December 2008 (R.p.18), granting summary judgment to the Respondents. (R.pp.3-18). The Trial Court denied the Trasks' motion. (R.p.3 n.1). The Trasks sought reconsideration, to amend the court's findings, and to alter/amend the judgment. (R.pp.150-164). The Trial Court denied the motion by written order issued on 13 January 2009. (R.p.1). This appeal followed.

After the Court of Appeals affirmed the Trial Court² the Trasks petitioned for a rehearing/rehearing *en banc*. The Court of Appeals denied the petition on 3 June 2011.

II. STATEMENT OF THE FACTS

A. Paul III's Accident

Paul III, a sophomore at The Citadel (R.p.3; R.p.20, para. 7; R.p.41, para. 7), was on Thanksgiving holiday visiting his parents in Beaufort. (R.p.3; R.p.20, para. 7; R.p.41, para. 7; R.pp.171-173). Late on 21 November 2005, Paul III drove his father's

² See *Trask v. Beaufort County*, ___ S.C. ___, 709 S.E.2d 536 (Ct.App. 2011).

1999 Isuzu Trooper automobile (R.p.3; R.p.20, para. 8; R.p.41, para. 8) to the Xpress Lane, Inc. – a Beaufort gasoline station. (R.p.3; R.pp.20-21, para. 9). Using cash he withdrew from an on-site ATM machine, Paul III purchased two 24-ounce cans of beer and a pack of Camel cigarettes. (R.p.3; R.pp.20-21, para. 9). The Xpress Lane’s sales clerk failed to have Paul III produce a picture and/or age identification or otherwise determine if he was already impaired due to prior alcohol consumption. (R.p.3; R.p.21, para. 10).

Leaving the Xpress Lane at 11:58 p.m. (R.p.3; R.p.21, para. 12), Paul III drove to Fripp Island arriving at the security gate sometime before 1:00 a.m. (R.p.3; R.p.21, paras. 13-14; R.p.42, para. 13). After the gate security guard, James Irby, refused him an entry pass (R.p.3; R.p.21, paras. 13-15; R.p.42, paras. 13-15), Paul III drove back north on the Sea Island Parkway (U.S. Highway 21) for about 3.8 miles away from the Fripp Island security gate. (R.p.3; R.pp.21-22, paras. 15-16; R.p.42, paras. 15-16). Tragically, while approaching a curve in the road, Paul III apparently lost control of the Isuzu Trooper (R.p.3; R.p.22, para. 16; R.p.42, para. 16),³ collided with a tree on the side of the road, and, upon impact, his vehicle burst into flames. (R.p.3; R.p.22, paras. 16-17; R.p.42, paras. 16-17). Paul III sadly died as a result of his injuries. (R.p.3; R.p.22, para. 17; R.p.42, para. 17).

B. The Accident “Investigation”

At approximately 1:16 a.m. a passing motorist notified Mr. Irby of the automobile fire and he, in turn, contacted the Beaufort County non-emergency dispatch. (R.p.3; R.p.22, paras. 18-19; R.pp.42-43, paras. 18-19). Coroner Copeland was notified of the

³ Paul III was likely driving impaired from the beer he bought at Xpress Lane. (R.pp.20-22, paras. 9-10, 16; R.p.188, lines 22-24).

fatal accident so he could execute his statutorily-mandated investigatory duties. (R.p.3; R.p.23, para. 20; R.p.43, para. 20). When Coroner Copeland⁴ arrived at the accident scene, he made no attempt to identify the body. (R.p.22, para. 21). Instead, after learning the car was owned by Mr. Trask – Paul III’s father – (R.p.4; R.p.22, para. 22; R.p.43, para. 22), he told others at the scene he believed the badly burned body was that of Mr. Trask. (R.p.22, paras. 21-23; R.p.43, para. 23). Coroner Copeland (R.p.3; R.p.22-23, para. 24).⁵ then left the scene without positively identifying the remains. (R.p.22-23, para. 24; R.p.217, lines 15-24),⁶

Instead of carrying out his statutory duties and based solely on vehicle ownership, Coroner Copeland then went to the Trasks’ home. (R.p.4; R.p.23, para. 28; R.p.174, p.93, lines 1-12).⁷ When that entourage arrived, the Trasks determined the only person not accounted for was Paul III. (R.p.23, para. 29; R.p.44, para. 29; R.p.175, lines 1–9). Coroner Copeland advised the Trasks about the accident and Paul III’s death – still without any physical or scientific identification to the body. (R.p.175, lines 9-13). He next solicited the Trasks to use his company, Copeland Funeral Home, to handle the burial arrangements of the still as yet unidentified body. (R.p.23, para. 30; R.p.175; lines 13-16). When Mrs. Trask requested an autopsy be performed (R.p.24,

⁴ Coroners must attend at least 16 hours of annual training. See S.C. Code Ann. § 17-5-130(A) (Thomson West 2003 rev.)). Coroner Copeland did not do so. (R.p.254, line 18 – R.p.255, line 1).

⁵ Coroner Copeland did not seek the advice of nor consult with any medical and/or scientific personnel regarding identification of the remains. (R.p.22-23, para. 24; R.p.203, lines 10-17).

⁶ Coroner Copeland never positively identified Paul III’s body (R.p.22-23, para. 24; R.p.217, lines 15-24), even though he had a statutory duty to investigate the accident and to identify the victim. 39 South Carolina Jurisprudence, Coroners, §§ 10,-11, 12 (S.C. Bar CLE Division 1992 and Thomson/Reuters West 2008 Supp.) (citing S.C. Code Ann. §§ 17-7-10 *et seq.* (Thomson West 2003 rev.)).

⁷ He was accompanied by Reverend Andrew Chaney, pastor of the Beaufort Presbyterian Church, and Raymond Heroux, a Beaufort County police officer. (R.p.4; R.p.23, para. 28; R.p.174, p.93, lines 1-12).

para. 32; R.p.175, p.95; lines 16-18; R.p.184, lines 2-25; R.p.190, line 21 – R.p.191, line 6),⁸ Coroner Copeland told her there was no need for an autopsy because Paul III's cause of death was obvious. (R.p.24, para. 32; R.p.175, p.95; lines 16-18; R.p.184, lines 2-25; R.p.190, line 21 – R.p.191, line 6).⁹

C. The Cremation

On 22 November 2005, Coroner Copeland submitted a Cremation Permit Request form to the Beaufort County Coroner's Office seeking a Cremation Permit authorizing him to cremate the still yet unidentified body. (R.pp.24-25, para. 36; R.p.35). Connie Herman, an admitted Copeland Funeral Home employee and purportedly a Beaufort County "Deputy Coroner"¹⁰ (R.p.213, lines 2-18; R.p.222, line 1 – R.p.223, line 22), signed the Cremation permit for the Coroner's Office. (R.pp.24-25, para. 36; R.p.35). She did so even though she was legally unqualified to act as a deputy coroner.

⁸ Coroner Copeland was required to order an autopsy of the remains found at the accident scene. See S.C. Code Ann. § 17-5-10 (Thomson West Supp. 2007)).

⁹ Coroner Copeland did not initially tell the Trasks that Paul III's body had been burned beyond recognition. (R.p.183, lines 15-18). It was not until months later that he finally told the Trasks "you couldn't tell if the body was black, white[,] or Mexican" (R.p.192, lines 14-18). Had they known this, the Trasks unquestionably "would have demanded and insisted on an autopsy had [they] known those facts, which [Coroner Copeland] never revealed to [them]." (R.p.183, lines 16-20). An autopsy likely would have allowed the Trasks to likely "know for certain whether or not the [remains] w[ere] . . . Paul [III, as well as] the actual cause of death, whether it was the crash itself or whether he burned to death." (R.p.166, lines 2-19). The Trasks just wanted to know the truth about what happened (R.p.169, lines 19-22; R.p.188, lines 5-17), such as his level of intoxication. (R.p.188, line 25 – R.p.189, line 25; R.p.190, lines 4-20). Absent an autopsy, the Trasks will never know, if Paul III died from the accident crash or some other unknown, but likely discoverable, malady.

¹⁰ Deputy coroners must attend certain annual training. See S.C. Code Ann. § 17-5-130(A)). Neither Ms. Herman nor any other Beaufort County Deputy Coroner ever attended the annual training. (R.p.213, lines 2-20). A deputy coroner must be approved by a Circuit Court Judge. See S.C. Code Ann. § 17-5-70 (Thomson West 2007)). Ms. Herman never took the oath of office or was approved by a judge. (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22).

At approximately noon that same day, Coroner Copeland met with the Trasks to have them to sign a cremation authorization for the cremation of what was believed, but still not yet truly known, to have been Paul III's last remains. (R.p.25, para. 41; R.pp.36-38; R.pp.176-184). Notwithstanding the actual time, Coroner Copeland instructed the Trasks to write "9:15 a.m." on the form as the time of their authorization. (R.p.25, para. 41; R.pp.36-38; R.pp.180-183). This timing "change" authorized him, as the crematory operator, to illegally cremate the still yet unidentified body. (R.p.25, para. 41; R.pp.36-38; R.pp.180-183).¹¹

III. ARGUMENT AND CITATION OF AUTHORITY

A. The Court Of Appeals Should Have Reversed The Respondents' Summary Judgment Since The Trasks Presented Substantial Evidence Of The Respondents' Negligence, Negligence Per Se, And Gross Negligence

Intellectually speaking, the Trasks believe their son died in a single-car accident on 22 November 2005. (R.p.173, lines 5-13). The Trasks only "believe" this because they really don't know. Not only do the Trasks not know if Paul III actually died that early November morning, but, even if he did, they really do not know how. The Trasks were entitled to know if the remains were definitely Paul III and, if so, how he died. (R.p.81, line 1 – R.p.82, line 19; R.p.85, line 9 – R.p.86, line 17; R.p.166, lines 2-13). The Trasks were entitled to know this as any parent would when burying their child. Tragically, the Respondents, heaping uncertainty, confusion, and deception upon the

¹¹ See S.C. Code Ann. § 16-17-600 (Thomson West 2003). Coroner Copeland, as the owner and operator of Coastal Cremation Services, cremated the body even though he had made absolutely no medical or scientific effort whatsoever to positively identify the remains as actually being those of Paul III. (R.p.26, paras. 43, 45; R.p.203, lines 10-17).

Trask's unbearable grief, prevented the Trasks from having these critically important answers. (R.p.81, line 1 – R.p.83, line 19; R.p.85, line 9 – R.p.86, line 17; R.p.166, lines 2-13, R.p.169, line 3 – R.p.170, line 1; R.p.188, lines 5-17).

Recognizing these serious delicts, the Court of Appeals concluded that “[t]his case [wa]s troubling because [Coroner] Copeland did violate at least some of the statutes, and conducted himself in a manner [the Court of Appeals] believe[d] was inappropriate.” (Emphasis added).¹² Nevertheless, the Court of Appeals concluded that, even though the Trasks had been clearly “wronged”, they did not have any legal recourse against the Respondents. This result is neither fair nor just nor legally proper.

The records shows the Respondents admittedly (a) ignored their statutory duties, (b) destroyed evidence, and (c) failed to do their job at every turn. The Respondents should and, indeed, must, be held accountable for their actions and inactions. The Respondents must be prevented from inflicting this travesty upon someone else.

The Court of Appeals incorrectly affirmed the Trial Court and denied the Trasks even some small measure of redress. The Trasks presented substantial evidence demonstrating the Respondents failed to meet even their basic responsibilities associated with handling and investigating Paul III's accident. This Supreme Court should grant the Trasks certiorari and reverse the Court of Appeals' decision.

Coroner Copeland was required to “order an autopsy or post-mortem examination to be conducted to ascertain [Paul III's] cause of death.”¹³ He failed to do so and made no attempt whatsoever to identify the body. (R.p.22, para. 21). Coroner

¹² Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 537.

¹³ See S.C. Code Ann. § 17-7-10. See also 6 South Carolina Jurisprudence, Dead Bodies, § 27 (Thomson Reuters West Supp. 2008); 39 South Carolina Jurisprudence, Coroners, §§ 15, 16 (S.C. Bar CLE Division 1992).

Copeland, after learning Mr. Trask owned the car (R.p.4; R.p.22, para. 22; R.p.43, para. 22), simply jumped to the conclusion the remains were his. (R.p.22, paras. 21-23; R.p.43, para. 23). He also failed to seek any medical and/or scientific advice regarding identification of the remains. (R.pp.22-24, para. 24; R.p.404, lines 10-17).

When Mrs. Trask requested an autopsy (R.p.24, para. 32; R.p.175, lines 16-18; R.p.184, lines 2-25; R.p.190, line 21 – R.p.191, line 6), Coroner Copeland refused, asserting the cause of death was obvious. (R.p.24, para. 32; R.p.175, lines 18-20; R.p.184, lines 7-9; R.p.190, line 21 – R.p.191, line 6). The law does not, however, afford Coroner Copeland the discretion to forego ordering an autopsy simply because he feels the cause of death is obvious. He was legally required to order an autopsy and his failure to do so constitutes negligence *per se*.¹⁴

Moreover, Coroner Copeland failed to initially tell the Trasks that Paul III's body was burned beyond recognition. (R.p.183, lines 15-18). It was only **several months later, while the Trasks were attending a meeting at Copeland Funeral Home**, that Coroner Copeland finally told them "you couldn't tell if the body was black, white[,] or Mexican[.]" (R.p.192, lines 14-18). The Trasks "would have demanded and insisted on an autopsy had [they] known those facts" (R.p.183, lines 16-20). They simply wanted to know what truly happened to their son. (R.p.169, lines 19-22; R.p.188, lines 5-17).¹⁵ Had Coroner Copeland ordered an autopsy the Trasks would likely have been able to "know for certain whether or not the [remains were] . . . Paul [III, as well as] the

¹⁴ Wogan v. Kunze, 379 S.C. 581, 588 n.6, 666 S.E.2d 901, 907 n.6 (2008).

¹⁵ Since there was no autopsy, the Trasks do not know if Paul III died from the accident, the ensuing fire, an aneurism, a heart attack, or some other unknown, but likely discoverable malady.

actual cause of death, whether it was the crash itself or whether he burned to death” (R.p.166, lines 12-10) and his actual level of intoxication. (R.p.188, line 25 – R.p.189, line 25; R.p.190, lines 4-20). Coroner Copeland’s actions denied them this truth.

Furthermore, just after telling the Trasks of their son’s tragic death, Coroner Copeland solicited the Trasks to use the Copeland Funeral Home to handle the burial arrangements of the still yet unidentified body. (R.p.23, para. 30; R.p.175; lines 13-16). He asked his own Coroner’s Office to authorize the Copeland Funeral Home to cremate the still yet unidentified body. (R.p.24, para. 36; R.p.35). Copeland Funeral Home employee and “Deputy Coroner” Herman (R.p.213, lines 2-18; R.p.222, line 1 – R.p.223, line 22) signed the permit for the Coroner’s Office. (R.p.24, para. 36; R.p.35).

At about noon that same day, still withholding the condition of the remains, Coroner Copeland had the Trasks, who were still understandably in shock, sign a cremation authorization. (R.p.25, para. 41; R.pp.176-184; R.pp.36-38).¹⁶ Coroner Copeland improperly instructed the Trasks to write “9:15 a.m.” on the form as their authorization time. (R.p.25, para. 41; R.pp.36-38; R.p.180, line 12 – R.p.183, line 4). This allowed Coroner Copeland, as the operator of a crematory, to illegally cremate the still yet unidentified body. (R.p.25, para. 41; R.pp.36-38; R.p.180, line 12 – R.p.183, line 4). Coroner Copeland admittedly “knew full well that there were laws, and rules, and regulations pertaining to a cremation, which he deliberately disobeyed” (R.p.183, lines 5-14).

¹⁶ See S.C. Code Ann. § 16-17-600. Coroner Copeland cremated the body without making any medical/scientific effort to positively identify the remains as actually being those of Paul III. (R.p.26, paras. 43, 45; R.p.203, lines 10-17). The Court of Appeals found it important that “the Trasks authorized the cremation of Paul[Trask]’s body.” Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 538. The Trasks, who signed the authorization within 12 hours of their son’s death (R.p.25, para. 41; R.pp.176-184; R.pp.36-38), were still in shock and simply following Coroner Copeland’s directions so they could bury their son before the impending Thanksgiving holiday.

Coroner Copeland violated the law by cremating the admittedly unidentified remains within the mandatory 30-day waiting period. (R.pp.22-23, para. 24; R.p.91, lines 3-6; R.p.166, lines 2-13; R.p.217, lines 15-24).¹⁷ Instead of following the law and forwarding the body either to MUSC or some other suitable place for preservation during the required 30-day waiting period, Coroner Copeland obtained a fraudulently issued cremation permit the day of the accident and cremated the remains the next day.

Coroner Copeland violated the law by failing to have a toxicology test performed on the remains.¹⁸ He acknowledged he knew the law (R.p.219, lines 19-23), yet failed to have a toxicology test done. (R.p.219, line 19 – R.p.220, line 2). Coroner Copeland admitted he “was wrong”. (R.p.219, line 25). Furthermore, the Respondents admittedly destroyed evidence relating to the death investigation. This destruction included, Coroner Copeland destroying all of the investigative notes from the interviews with, among others, James Irby, arguably the last person to see Paul III alive. (R.p.247, line 1 – R.p.248, line 24; R.p.249, line 17 – R.p.250, line 25).¹⁹ Coroner Copeland also double deleted²⁰ all of the e-mails from his computer - *business related e-mails or otherwise*. (R.p.251, line 1 – R.p.254, line 1).²¹

¹⁷ See S.C. Code Ann. § 17-5-570 (Thomson West 2003 rev.) Coroner Copeland did not try to identify the remains. (R.pp.22-23, para. 24; R.p.217, lines 15-24). In addition, Coroner Copeland apparently cremated the remains before he actually signed Paul III’s death certificate.

¹⁸ See S.C. Code Ann. § 17-7-80 (West Group 2003 rev.). Coroner Copeland had to “examine the body within eight hours of death of any driver . . . , [16] years old or older, who dies within four hours of a motor vehicle accident”. See also 14 South Carolina Jurisprudence, Coroners, § 13 (Thomson Reuters/West Supp. 2008) (This “is to enable the coroner to take, or have taken . . . , blood or other fluids of the victim necessary to determine the presence and percentages of alcohol or drugs.”).

¹⁹ The Coroner’s Office’s assigned death investigator, Captain Robert Bromage of the Beaufort County Sheriff’s Office, shredded all of his handwritten notes made during his investigation of Paul Trask’s tragic death. (R.p.301, line 1 – R.p.302, line 3).

²⁰ “Double-deleting” e-mails involves deleting an e-mail from the e-mail service mailbox which, in turn, moves the electronic document to the e-mail “deleted items’ folder and then purposively

The Respondents consistently violated statutory mandates and/or prohibitions. The Court of Appeals generally, except in some respects as to Coroner Copeland, ignored this evidence. This Supreme Court should grant the Trasks certiorari, reverse the Court of Appeals' decision, and remand the matter back for a merits jury trial.

B. The "Public Duty" Rule Did Not Protect Coroner Copeland From Liability As He Owned A Special Duty To The Trasks.

Contrary to the Court of Appeals' decision, the "public duty" rule does not shield Coroner Copeland from liability for his actions since Coroner Copeland owed the Trasks a special duty of care. While the public duty rule "holds that public officials are . . . not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually"²² it is inapplicable when the official owes a special duty to individuals rather than just the public in general.²³

Even though the law required it, Coroner Copeland failed to have a toxicology test performed on the body of a motor vehicle driver (*i.e.*; Paul III) who had died within four hours of his motor vehicle accident. (R.p.204, line 17 – R.p.205, line 25).²⁴ Like

deleting the document from the "deleted items" folder. (R.p.251, line 14 – R.p.252, line 7). Captain Bromage double deleted e-mails from his county-owned computer even though some of the e-mails admittedly involved his official investigations – including the investigation of Paul III's death. (R.p.294, line 2 – R.p.296, line 23; R.p.297, line 7 – R.p.300, line 20).

²¹ Ms. Herman admitted "all handwritten notes and reports are destroyed after they are transcribed. . . . [on the pretext] they may contain notes on other cases that are unrelated to one another" (R.p.291, para. 1), including the investigators' handwritten notes for Paul III's case. (R.p.291, paras. 4-5).

²² Jensen v. Anderson County DSS, 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991).

²³ Jensen v. Anderson County DSS, 304 S.C. 195, 200, 403 S.E.2d 615, 617. Six elements are used to determine if an asserted "special duty" applies. See Jensen v. Anderson County DSS, 304 S.C. 195, 200, 403 S.E.2d 615, 617. Moreover, if a special duty does exist, the court still must determine whether the alleged misconduct occurred during the performance of a ministerial duty. A "duty is ministerial when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts." Jensen v. Anderson County DSS, 304 S.C. 195, 203, 403 S.E.2d 615, 619.

²⁴ See S.C. Code Ann. § 17-7-80 (Thomson/West 2006). This is mandatory for a coroner. Bradley v. Doe, 374 S.C. 622, 634, 649 S.E.2d 153, 160 (Ct.App. 2007).

the child abuse statute in Jensen v. Anderson County DSS,²⁵ the toxicology statute imposed a very specific mandatory duty on Coroner Copeland. Moreover, contrary to this Court of Appeals' opinion,²⁶ the essential purpose of S. C. Code Ann. § 17-7-80 is to protect those who die in a motor vehicle accident, together with their survivors, their estates, and their heirs, and, equally importantly, to accurately ascertain the level of alcohol or drugs in the decedent's blood and whether the level may have contributed to the decedent's death.²⁷ Had a toxicology report been done the Trasks would have known whether Paul III's alcohol level significantly contributed to his death.

Secondarily, motor vehicle accident victims and their families, such as the Trasks, are a clearly and easily identifiable class. The Trasks and, indeed, Paul III, were plainly persons within that class - just as the deceased child, in Jensen v. Anderson County DSS, was clearly within the class of abused children whose cases had been reported to DSS. Moreover, Coroner Copeland knew Paul III had been in a motor vehicle accident and he reasonably should have foreseen that, by not ordering a

²⁵ Jensen v. Anderson County DSS, 304 S.C. 195, 198, 403 S.E.2d 615, 616. "An exception to the general rule against liability [under the public duty role] exists when a duty is owed to specific individuals rather than the public at large." Platt v. CSX Transp., Inc., 379 S.C. 249, 258-259, 665 S.E.2d 631, 636 (Ct.App. 2008). The injuries the Respondents inflicted on the Trasks were direct and unique. *No member of the general public*, other than the Trasks, would have felt the pain and anguish created by the Respondents' failure to perform their duties. There is no worst nightmare for a parent than to bury a child, except maybe never to know the reason the child died - especially when there were ways to determine the truth which were not used or ignored.

²⁶ Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 541-542. The Court of Appeals, apparently on the basis the section is located in Title 17 Criminal Procedures, concluded "the purpose of the statute [wa]s one of law enforcement." Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 542.

²⁷ The "purpose of imposing these additional duties in motor vehicle accident cases is to enable the coroner to take, or have taken by a qualified person, blood or other fluids of the victim necessary to determine the presence and percentages of alcohol or drugs. See 14 South Carolina Jurisprudence, Coroners, § 13 (Thomson Reuters West 2011).

toxicology test, Paul III and his surviving family would be harmed because Paul III's alcohol use and/or alcohol level would never be determined. Furthermore, after Coroner Copeland pronounced Paul III dead at the scene, he had a statutory obligation to perform the toxicology test.²⁸

Consequently, since this situation involving Coroner Copeland meets each of the six elements of the "special duty" test and since Coroner Copeland's performance of a toxicology test constituted a statutorily-mandated ministerial duty, the "public duty" rule does not shield Coroner Copeland from liability. This Supreme Court should grant certiorari, reverse the Court of Appeals' decision, and remand for a merits jury trial.

C. The Respondents' Actions Constituted Negligence Per Se When They Violated S. C. Code Ann. § 16-17-600 Precluding Summary Judgment

The Court of Appeals found a violation of S.C. Code Ann. § 16-17-600 did not give rise to a private cause of action.²⁹ Nevertheless, a cursory reading of the statute demonstrates that it explicitly contemplates the imposition of civil and, indeed, criminal liability under the appropriate set of circumstances.

The statute's specific reference to a crematory operator's (i.e.; Coroner Copeland's, Copeland Funeral Home) immunity for civil liability in certain circumstances clearly demonstrates our Legislature contemplated that a violation of S.C. Code Ann. § 16-17-600 could serve as the basis for civil liability. Had that not been the case, the statute's reference to civil liability would be impermissible

²⁸ Coroner Copeland's duty to require a toxicology test is imposed upon a specific public officer (i.e.; the coroner) and mandated by S. C. Code Ann. § 17-7-80. It was, therefore, a ministerial duty.

²⁹ Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 540-541. The Court of Appeals, apparently concluded there was no private cause of action since the statute was located in Title 16 - Crimes and Offenses. Nevertheless, crimes such as battery, criminal sexual conduct, and assault all also appear in this same title and routinely form the basis of civil liability.

surplusage.³⁰ Our Legislature’s specific reference to a limitation of civil and/or criminal liability for a crematory operator necessarily requires that civil and/or criminal liability exist in the first instance before there may be a limitation imposed upon such liability – either civil or criminal.

Even though part of the Trasks’ “harm . . . suffered was a loss of settlement value of the Xpress Lane suit because Paul[III’s] body was no longer available,”³¹ the Court of Appeals ignored the plain harm to the Trasks of not having that evidence. Furthermore, the Respondents’ violation of S.C. Code Ann. § 16-17-600 constituted negligence *per se*.³²

Contrary to the Court of Appeals’ position, S. C. Code Ann. § 16-17-600 created a duty flowing from Coroner Copeland and Copeland Funeral Home to the Trasks. Firstly, the essential purpose of S. C. Code Ann. § 16-17-600 is to ensure deceased bodies are not destroyed without proper authority. This was the precise harm Coroner Copeland and Copeland Funeral Home inflicted on the Trasks. Lastly, the protected class includes the estate of the deceased person and family members (*i.e.*; those who regard the remains of loved ones with the highest degree of sanctity). The Trasks fall squarely within this class.

³⁰ See State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 651 (Ct.App. 2008); “Dorman v. Aiken Communications, Inc., 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990); Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 232 (2001).

³¹ Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 540.

³² Under South Carolina law, “ ‘to show [Coroner Copeland and Copeland Funeral Home] owe[d] [them] a duty of care arising from a statute, [the Trasks had to] show two things: (1) . . . the essential purpose of the statute [wa]s to protect from the kind of harm the [Trasks] suffered; and (2) [they were] member[s] of the class of persons the statute [wa]s intended to protect.’ ” Whitlaw v. Kroger Co., 306 S.C. 51, 53, 410 S.E.2d 251, 252 (1991) (*per curiam*). The Trasks have satisfied both elements.

Importantly, given Coroner Copeland's and Copeland Funeral Home's statutory delicts, "[t]he causative violation of a statute constitutes negligence *per se* and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury."³³ At a minimum, the Trasks were entitled to present their case to a jury on Coroner Copeland's and Copeland Funeral Home's statutory violations. This Supreme Court should grant them a writ of certiorari and restore their right to a jury trial.

D. The Trasks Presented Substantial Evidence Supporting Their Claim For Intentional Infliction Of Emotional Distress And Summary Judgment Was Entirely Improper

The Court of Appeals concluded the outrageous statements Coroner Copeland made to the Trasks were made in his official capacity and, therefore, he was immune from liability due to the South Carolina Tort Claims Act.³⁴ The Court of Appeals misinterpreted the facts herein as the offending statements could easily have been and, indeed, most likely were made to the Trasks by Coroner Copeland in his individual capacity as the owner of Copeland Funeral Home. Coroner Copeland is not shielded from liability by the South Carolina Tort Claims Act. The Trasks' intentional infliction of emotional distress claims should be permitted to proceed to trial.

The Trasks alleged that "at approximately 4:00 a.m. on [22 November 2005], in response to an inquiry for an autopsy by [Mrs.] Trask, Coroner Copeland stated 'an autopsy [wa]s not necessary; [since] the cause of death [wa]s obvious.'" (R.p.175, lines 18-20). Coroner Copeland also assured the Trasks the collision had killed Paul III

³³ Austin v. Specialty Transportation Services, Inc., 358 S.C. 298, 314-315, 594 S.E.2d 867, 875 (Ct. App. 2004) (citing Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993)).

³⁴ Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 542 (citing S.C. Code Ann. § 15-78-50 (Thomson Reuters West 2005)).

before the car caught on fire, and yet, some months later, Coroner Copeland told them he did not know whether the crash or the fire was the cause of death. (R.p.192).³⁵ Consequently, mere hours after the accident, Coroner Copeland intentionally concealed from the Trasks the fact the body believed to be that of their son had been burned beyond recognition. (R.p.192, lines 14-18). Several months later, while attending a meeting at the Copeland Funeral Home, the Trasks asked Coroner Copeland about the extent of Paul III's burns, he then finally told them that "there was no skin and you couldn't tell if the body was black, white[,] or Mexican." (R.p.192, lines 14-18).³⁶

A parent burying a child is entitled to the truth about how and why the child died. Anything less, especially when the means and method to the truth are easily within reach, constitutes an affront to moral decency. Mr. Trask has been emotionally damaged as Coroner Copeland chose "to disobey the law in a convoluted way, to deny us the truth . . . what a parent wants is to know the exact truth of what happened to their child." (R.p.188, lines 7-17). Due to the Respondents' abject failures, Mr. Trask has had "dreams where Paul [III] is still alive and it's like a miracle and I think in a — in an intellectual manner, I know that Paul is dead, but on an emotional level, that there is part of me that thinks that somehow, maybe he might walk through a door, you know. So it's - it's very difficult." (R.p.166, line 5 - R.p.170, line 1; R.p.193, lines 7-15).

³⁵ The Court of Appeals inexplicably concluded "[t]he statements [of Coroner Copeland] were made in response to question from the Trasks about . . . an autopsy and the details of the accident. These [were] questions properly addressed to a coroner, not a funeral home owner." *Trask v. Beaufort County*, ___ S.C. ___, ___, 709 S.E.2d 536, 542. (Emphasis added).

³⁶ Even if the Court of Appeals' position was marginally correct for Coroner Copeland's initial statements, clearly this final and most offensive statement concerning the ethnicity of Paul III's remains could have only been made by Coroner Copeland in his private funeral home capacity as he was the last person to view the remains for a lengthy period of time while he was preparing them for cremation at the Copeland Funeral Home.

Coroner Copeland's callous conduct inflicted severe emotional distress on the Trasks. Based on the facts in this case, a reasonable jury, if presented with this case, could easily conclude Coroner Copeland's conduct was so extreme and outrageous as to exceed all possible bounds of decency and, furthermore, such conduct should be regarded as atrocious and utterly intolerable in a civilized community such as Beaufort.

The Tort Claim Act does not and did not shield Coroner Copeland from his outrageous statements to the Trasks. The Trasks are entitled to seek redress against Coroner Copeland before a jury.

E. The Respondents Committed Third-Party Spoliation Of Evidence By Destroying Evidence Related To Paul III's Accident³⁷

The Court of Appeals stated the Trasks failed to meet the elements of negligent and intentional third party spoliation of evidence. The Court of Appeals misinterpreted the facts of this case which properly demonstrated the Respondents committed to tort of spoliation of evidence as envisioned in Austin v. Beaufort County Sheriffs Office.³⁸

In this case, contrary to the Court of Appeals' decision, the Trasks presented substantial evidence satisfying all of the elements of a third-party spoliation claim. While the Court of Appeals apparently centered solely on the Respondents' destruction of the remains,³⁹ this completely ignored the Respondents' repeatedly admitted

³⁷ In the Order Denying Petition for Rehearing, the Court of Appeals perplexingly stated the Trasks' "argument that the Court [of Appeals] did not address [their] allegations that emails and investigative notes were spoliated" has not been preserved. (Appx.61). This issue was addressed in the Trial Court (R.pp.6-7, 152, 159, 161) and repeatedly addressed in the Trasks' briefs. The Court of Appeals simply ignored the issue of the deleted e-mails and destroyed investigative notes. (Appx.8).

³⁸ Austin v. Beaufort County Sheriffs Office, 377 S.C. 31, 659 S.E.2d 122 (2008). The Trasks acknowledge this Supreme Court recent opinion in Cole Vision v. Hobbs, ___ S.C. ___, ___ S.E.2d ___ (2011) (2011 WL 2447090, filed 20 June 2011), addressing the viability or lack thereof of a separate and independent tort for negligent spoliation claim.

³⁹ Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 542.

destruction of the other important documentary and investigative evidence, as well as, equally importantly, the evidence which could have and should have been gathered, but due to the Respondents' ineptitude and incompetence, was not.

The Trasks presented proof that when Coroner Copeland cremated and destroyed the body now believed to have been Paul III, a potential and likely civil action existed against the Xpress Lane, Hess Corporation, and possibly others.⁴⁰ Coroner Copeland and Copeland Funeral Home, as a crematory operator, had statutory legal duties to preserve evidence relevant to the potential civil action. (R.p.33, para. 85).⁴¹ Coroner Copeland destroyed evidence by personally destroying the then as yet unidentified body of Paul III by cremation in violation of S.C. Code Ann. § 16-17-600. (R.p.33, para. 86; R.p.412, line 25 – R.p.413, line 24).⁴²

This destruction of evidence, included, Coroner Copeland destroying all of the investigative notes from the interviews with, among others, the Fripp Island Security Gate Attendant, James Irby, arguably the last person to see Paul III alive.⁴³ (R.p.247,

⁴⁰ Given the nature of Paul III's single-car accident in this matter there are numerous potential civil and/or criminal claims which could be brought against any number of different parties depending on the available evidence. Coroner Copeland knew or certainly reasonably should have known that either civil litigation and/or criminal prosecutions were likely. In fact, given his statutory obligations, he should have operated on the basis such civil and/or criminal actions were presumed. Coroner Copeland should have preserved all of the evidence associated with the accident, including having the required autopsy performed, the toxicology test administered, DNA testing performed, and dental records compared.

⁴¹ See S.C. Code Ann. § 16-17-600.

⁴² See generally Oliver v. Stimson Lumber Co., 297 Mont. 336, 349, 993 P.2d 11, 20 (a duty to preserve evidence arises, *inter alia*, where "there is a duty to do so based upon a contract, statute, regulation, or some other special circumstance/relationship).

⁴³ Destruction of the notes relating to Mr. Irby resulted in a bewildering conflict between what Mr. Irby testified occurred at the gate (Paul III was calm and polite and drove away very slowly) and what Coroner Copeland testified Mr. Irby said (an "altercation" occurred and Paul III sped away).

line 1 – R.p.248, line 24; R.p.249, line 17 – R.p.250, line 25).⁴⁴ Coroner Copeland also routinely double deleted⁴⁵ all of the e-mails from his computer, whether such e-mails were business-related or personal. (R.p.251, line 1 – R.p.252, line 1).⁴⁶

The Respondents' unwarranted and illegal destruction of the evidence surrounding the accident and the accident investigation significantly added to the Trasks' grief and the pain they have felt, presently feel, and will continue to feel from Paul III's tragic death. These delicts significantly impaired Mr. Trask's ability to prosecute the Estate's and his family's claims for wrongful death/survival/negligence against the Xpress Lane, Hess Corporation, and other responsible parties. (R.p.33, para. 87; R.p.185, line 20 – R.p.190, line 20). There was an undeniable causal relationship between the Respondents' illegal destruction of the evidence alleged by the Trasks and described herein and the Trasks' pain and uncertainty, as well as, the impairment of their ability to prove the lawsuit against Xpress Lane and others. (R.p.33, paras. 87-88; R.p.185, line 20 – R.p.190, line 20). The Trasks were clearly damaged due to the Respondents' unjustified, unwarranted, and illegal destruction of the evidence. (R.p.33, paras. 87-89; R.p.185, line 20 – R.p.190, line 20).

⁴⁴ Captain Bromage shredded all of his handwritten notes made during his investigation of Paul III's death. (R.p.301, line 1 – R.p.202, line 3).

⁴⁵ Captain Bromage double deleted his e-mails from his county-owned computer even though some of the e-mails involved his investigations for the Coroner's Office – including specifically the investigation of Paul III's death. (R.p.294, line 2 – R.p.296, line 23; R.p.296, line 7 – R.p.300, line 20). No Beaufort County official told him to not to do so. (R.p.294, line 2 – R.p.296, line 23; R.p.296, line 7 – R.p.300, line 20).

⁴⁶ Coroner Copeland admitted he should not have double deleted the "official business" e-mails, especially if they involved anything to do with a coroner's inquest as the Beaufort County record retention policy (Section 12-518.3) required him to maintain those records. (R.p.252, line 8 – R.p.253, line 12). He stated he "wish[ed] [he] hadn't [done so]." (R.p.253, lines 3-6). "Deputy Coroner" Herman admitted that "[a]ny and all handwritten notes and reports are destroyed after they are transcribed. . . [on the pretext] they may contain notes on other cases that are unrelated to one another." (R.p.291, para. 1). She frequently noted all of the investigators' handwritten notes had been destroyed. (R.p.291, paras. 4-5).

The Trasks presented more than sufficient factual evidence to overcome summary judgment to the Respondents on the spoliation claim. Neither the Trial Court of the Court of Appeals agreed. This Supreme Court should grant certiorari, reverse the Court of Appeals, and remand for a merits jury trial.⁴⁷

F. Neither Coroner Copeland Nor Copeland Funeral Home Were Immune From Liability Under S.C. Code Ann. § 32-8-350(A).

The Court of Appeals declined to address whether Coroner Copeland or Copeland Funeral Home were entitled to statutory immunity under S. C. Code Ann. § 32-8-350(A)⁴⁸ on the grounds “[S.C. Code Ann. §] 16-17-700 created no duty owed by Coroner Copeland to the Trasks”⁴⁹ The Court of Appeal should have and could have easily reached this issue as Coroner Copeland owed several duties to the Trasks.

The cremation authorization form did not comply with S.C. Code Ann. § 32-8-325 and was void due to numerous deficiencies. (R.pp.36-38). Most importantly, the law requires the cremation authorization form contain “the identity of the human remains and the date and time of death”.⁵⁰ Coroner Copeland never positively identified the remains. (R.p.217, lines 15-24). Also, the form must contain “the name, address, and phone number of the agent. . . .” statutorily authorized to consent to the cremation.⁵¹

⁴⁷ Even in light of Cole Vision v. Hobbs, ___ S.C. ___, ___ S.E.2d ___, the Trasks assert that the Respondents’ admitted immediate and eventual wholesale destruction of evidence relating to Paul III’s accident warrant substantial sanctions against the Respondents once this matter returns to the Trial Court for a merits trial. The Trasks assert that the outrageous facts and circumstances of this case would clearly support a “negligent” spoliation of evidence claim if it existed in this State.

⁴⁸ See S.C. Code Ann. § 32-8-350(A) (Thomson West 2007).

⁴⁹ See S.C. Code Ann. § 32-8-350(A) (Thomson West 2007). Trask v. Beaufort County, ___ S.C. ___, ___ n.7, 709 S.E.2d 536, 541 n.7).

⁵⁰ See S.C. Code Ann. § 32-8-325(A)(2)(a) (Thomson West 2007).

⁵¹ See S.C. Code Ann. §§ 32-8-325(A)(2)(d)-(e) (Thomson West 2007); S.C. Code Ann. §§ 32-8-320(A) (Thomson West 2007) (listing people who may be a decedent’s approving agent).

The authorization form did not contain either the addresses and/or telephone number of the agents, or Mrs. Trask's signature. (R.p.38). Lastly, the form was legally void since Coroner Copeland improperly instructed the Trasks to "backdate" the document. (R.p.178, line 24 – R.p.182, line 13; R.p.217, lines 1-14). This "backdating" showed Coroner Copeland "knew full well that there were laws, and rules, and regulations pertaining to a cremation, which he deliberately disobeyed" (R.p.183, lines 5-14).

Furthermore, there can be no immunity for either Coroner Copeland or Copeland Funeral Home since S.C. Code Ann. § 32-8-325(A)(3) contains a specific condition precedent to cremation. The law requires a crematory authority to obtain a cremation permit pursuant to either S. C. Code Ann. § 17-5-600 or S. C. Code Ann. § 17-5-610.⁵² The Coroner's Cremation Permit Request herein was inherently and facially invalid. (R.p.35). Both Coroner Copeland and Copeland Funeral Home knew it.

On the morning after Paul III's accident, Coroner Copland submitted a Cremation Permit Request form to his own Beaufort County Coroner's office requesting issuance of a Coroner's Cremation Permit from his own Beaufort County Coroner's office authorizing him to cremate the still yet unidentified body. (R.pp.24-25, para. 36; R.p.35). Ms. Herman, a Copeland Funeral Home employee (R.p.213, lines 2-18; R.p.222, line 1 – R.p.223, line 22), signed the Coroner's Cremation Permit for the Beaufort County Coroner's Office (R.pp.24-25, para. 36; R.p.35), even though she was not statutorily qualified to serve as a "deputy coroner". (R.p.213, lines 2-22; R.p.222,

⁵² See S.C. Code Ann. § 17-5-600 (Thomson West 2003 rev.); S.C. Code Ann. § 17-5-610 (Thomson West 2003 rev.).

line 1 – R.p.223, line 22).⁵³ Therefore, Ms. Herman signed the Coroner’s Cremation Permit as both a private citizen and a Copeland Funeral Home employee, however, she did not sign the form as a Beaufort County official.

Since Ms. Herman was not a qualified deputy coroner (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22) authorized by law to execute the Coroner’s Permit to Cremate (R.p.214, lines 1-8), the cremation permit was void. Both Coroner Copeland and Copeland Funeral Home undisputedly knew “Deputy Coroner” Herman was not legally qualified to act as a “deputy coroner”. (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22). The Beaufort County Coroner’s Office illegally issued the Coroner’s Cremation Permit and both Coroner Copeland and Copeland Funeral Home knew the permit was invalid. Both Coroner Copeland and Copeland Funeral Home forfeited any possibility of immunity under S.C. Code Ann. § 32-8-350(A).

Finally, the law⁵⁴ expressly restricts the limitation of liability to the crematory authority’s simple negligence. Grossly negligent actions are not protected. Any question as to whether Coroner Copeland’s and/or Copeland Funeral Home’s actions constituted gross negligence is explicitly excluded from immunity and constitutes an issue of fact to be submitted to the jury.⁵⁵

⁵³ Coroner Copeland admitted Ms. Herman signed the Cremation Permit “under the auspices of the [C]oroner’s [O]ffice” (R.p.214, lines 1-8). He noted if Ms. Herman was not a legitimate “deputy coroner” when she signed the form, as Ms. Herman was indeed not (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22), she would not have had the legal authority to do so. (R.p.214, lines 9-16). Consequently, the cremation permit was invalid as a matter of law and Coroner Copeland knew it when he cremated the then still as yet unidentified remains. (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22)

⁵⁴ S.C. Code Ann. § 32-8-325(D) (Thomson West 2007).

⁵⁵ See Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006) (The determination of gross negligence is generally best left to a jury.).

G. Beaufort County Was Liable For Coroner Copeland's And The Beaufort County Coroner's Office's Negligent Supervision And Negligent Training

The Court of Appeals concluded Beaufort County was not liable to the Trasks because Coroner Copeland was not liable to the Trasks.⁵⁶ Conversely, if Coroner Copeland is, indeed, liable to the Trasks then Beaufort County likely is liable to the Trasks via S. C. Code Ann. § 17-5-100,⁵⁷ as well as other recognized authorities.⁵⁸ The Trasks were entitled to bring their action against Beaufort County for Coroner Copeland's, "Deputy Coroner" Herman's, and the Beaufort County Coroner's Office's negligent supervision and negligent training. The Court of Appeals ignored the law.

In this case S.C. Code Ann. § 17-5-100 authorizes Beaufort County to both control and direct Coroner Copeland. As the Court of Appeals reasoned in Eargle v. Horry County, in order to maintain the smooth operation over and of Coroner Copeland, Beaufort County must have some level of control over the Beaufort County Coroner's Office. Since S.C. Code Ann. § 17-5-100 authorizes such control, S.C. Code Ann. § 4-9-650, in turn, does not abrogate Beaufort County's control over Coroner Copeland.⁵⁹

⁵⁶ Trask v. Beaufort County, ___ S.C. ___, ___, 709 S.E.2d 536, 542-543.

⁵⁷ S. C. Code Ann. § 17-5-100 (Thomson West 2003 rev.).

⁵⁸ S.C. Code Ann. § 17-5-100 ("Coroners must execute all lawful orders directed to them by the respective governing bodies of their respective counties, or the chairmen thereof, and must receive the same fees and costs as are allowed in other cases." Admittedly, while there are some limits imposed on the county government's control, these limits are not absolute. See S.C. Code Ann. § 4-9-650 (Thomson Reuters West 2006) ("With the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State."). This provision reflects the "striking of a careful balance between the county governing body's interest in the smooth operation of county offices and the electorate's interest in having its votes given effect." See Eargle v. Horry County, 335 S.C. 425, 431, 517 S.E.2d 3, 6 (Ct.App. 1999), *affirmed*, 344 S.C. 449, 545 S.E.2d 276 (2001).

⁵⁹ The South Carolina Attorney General has recognized "[a] coroner in South Carolina is deemed an officer of the county." Letter from the Honorable Robert D. Cook, Assistant Deputy Attorney General, to the Honorable B. Keith Turner, Coroner, Saluda County dated October 22, 1996, 1996 WL

Beaufort County knew or should have known "Deputy Coroner" Herman and the rest of the Coroner's Office's "deputy coroners" failed (a) to receive the basic "deputy coroner" training, (b) to have an oath of office administered, and (c) to take the annual continuing education courses – all as required by South Carolina law. (R.pp.25, 28-29, paras. 40, 53-61).**60** Coroner Copeland knew of and acknowledged "Deputy Coroner" Herman's official "failures".

Furthermore, Beaufort County had a responsibility to its citizens to ensure "Deputy Coroner" Herman was actually qualified to serve in the position of a deputy coroner. She is consistently quoted in newspaper articles as "Beaufort County's Deputy Coroner"**61** and personally listed herself in that position.**62** Beaufort County provided her with official business cards listing her as a "deputy coroner". It is clear "Deputy Coroner" Herman was not qualified and should not have been consistently representing herself to the public as Beaufort County's deputy coroner when she did not, for the very beginning of her tenure, meet to minimum requirements for the position and, moreover, never undertook any attempt to meet the statutory obligations of the job.

679509 *1 (S.C.A.G. 1996) (*citing* Op. Atty. Gen., Op. No. 83-83 (November 2, 1983)). *See also* 10/22/1996 Attorney General Opinion, 1996 WL 679509 *1 (*citing* Op. Atty. Gen., (October 6, 1986)) (the "coroner's salary and other benefits are generally paid by the county."); Letter from the Honorable Karen LeCraft Henderson, Senior Assistant Attorney General, to the Honorable Ed McElveen, Lee County Administrator dated August 19, 1980 (1980 WL 120834 *1 (S.C.A.G. 1980).

60 *See* S.C. Code Ann. §17-5-70.

61 *See e.g.*; "20-Year Old Cadet Dies In Crash" (Charleston Post & Courier, Nov. 24, 2005) (<http://photo05.citadel.edu/pao/newsclips/archive20052006/6485.html>) ("Trask, the only occupant in the vehicle, died at the scene from head injuries, said Beaufort County Deputy Coroner Connie Herman.").

62 *See* Connie Herman's home page on classmates.com (www.classmates.com/profile/user/view?registrationId=8679155238) ("Spent 9 years in the Marine Corps. Currently a deputy coroner in Beaufort, South Carolina. I am currently trying to get a position on the South Dakota Highway Patrol.").

The Court of Appeals should have and could have easily addressed Beaufort County's responsibility for Coroner Copeland's and the Beaufort County Coroner's Office's improper actions and inactions vis-à-vis the Trasks. Beaufort County was not entitled to summary judgment on the theory that Beaufort County could not be held liable for either Coroner Copeland's or the Beaufort County Coroner's Office's negligent training and/or supervision. This Supreme Court should grant certiorari, reverse the Court of Appeals and remand for a merits jury trial.

IV. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Petitioners, L. Paul Trask, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, respectfully request this Supreme Court to grant them a Writ of Certiorari to review and reverse the decision of the Court of Appeals.

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

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Attorneys for the Petitioners

Charleston, South Carolina

1 July 2011

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

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S.C. Supreme Court

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993
South Carolina Court of Appeals
Opinion No. 4799, filed 2 March 2011

L. Paul Trask, Jr., Personally, and as Next of Kin and as
the Duly Appointed Personal Representative of the Estate
of L. Paul Trask, III, deceased, and Meredith C. Trask,

Petitioners,

v.

Beaufort County; Curtis Copeland, in His Official Capacity
as Coroner of Beaufort County and Individually; and
Copeland Company of Beaufort, LLC,

Respondents.

PROOF OF SERVICE
For The
PETITION FOR WRIT OF CERTIORARI

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*Attorneys for the Appellants,
L. Paul Trask, Jr., personally, and as next of
kin and as the duly appointed personal
representative of the Estate of L. Paul Trask,
III, deceased, and Meredith C. Trask*

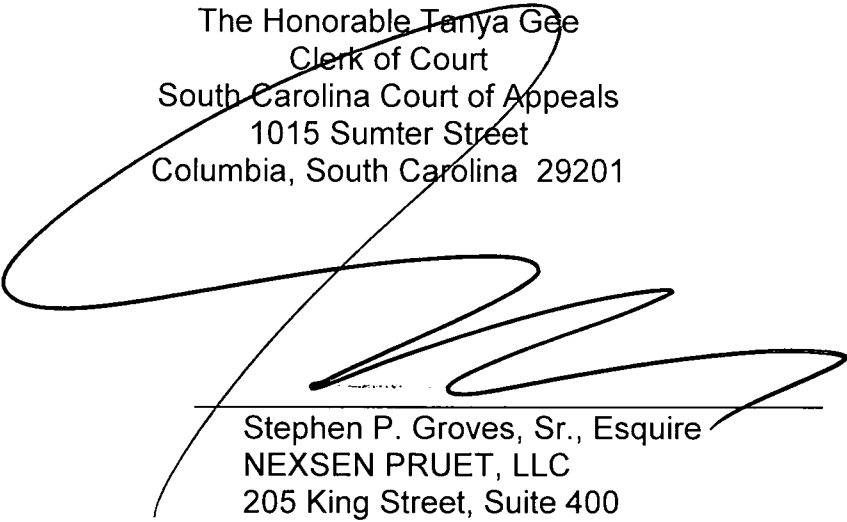
I, Stephen P. Groves, Sr., Esquire, hereby certify that on 1 July 2011, I served one copy each of the **Petition for Writ of Certiorari** and **Appendix to Petition for Writ of Certiorari** submitted by the Petitioners, L. Paul Trask, Jr., personally, and as next of kin and as the duly appointed personal representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, on counsel for the Respondents via United States Mail, postage pre-paid, and addressed as follows:

Marshall H. Waldron, Jr., Esquire
GRIFFITH, SADLER & SHARP, P.A.
Post Office Drawer 570
Beaufort, South Carolina 29910-0570
*Attorneys for the Respondents,
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As Coroner of Beaufort County*

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Post Office Box 8568
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*Attorney for the Respondents,
Curtis Copeland, Individually and Copeland Company, LLC*

I, Stephen P. Groves, Sr., Esquire, also hereby certify that on 1 July 2011, I served one copy of the **Petition for Writ of Certiorari** submitted by the Petitioners, L. Paul Trask, Jr., personally, and as next of kin and as the duly appointed personal representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, on the Office of the Clerk of Court for the South Carolina Court of Appeals via United States Mail, postage pre-paid, and addressed as follows:

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201



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1 July 2011

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