

21782

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2014-00420

THE STATE,

Respondent,

v.

JASON RANDALL MORGAN

Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
THE STATE)
)
-VS-)
)
JASON RANDALL MORGAN,)
)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

INDICTMENT # 2013GS3901909

ORDER OF RESTITUTION

Upon Motion of the Solicitor of the Thirteenth Judicial Circuit, it appears South Carolina Code of Laws Section 17-25-22 requires the Court to hold a hearing to determine the amount of restitution due the victim(s) of the defendant's criminal acts which have resulted in pecuniary damage or loss. Further, South Carolina Code of Laws Section 16-3-1530(D)(3) provides that the Court "shall order restitution at every sentencing for a crime against person or property" unless the Court finds a substantial and compelling reason not to order restitution.

The Court upon conducting a Restitution Hearing, hereby finds:

Restitution should be paid by the defendant as a condition of his/her sentence to the designated victims in the following Court-ordered amounts:

2013 DEC 17 AM 9 57
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

To: Ms. Elizabeth Morales-Molina

In the amount of: \$238,660.10

Address: 165 Roanoak Road
Liberty, SC 29657

Phone: 864-307-8888
864-444-8697

AND IT IS SO ORDERED THIS 16 DAY OF Dec 2013 Pickens, South Carolina



PRESIDING JUDGE
THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF PICKENS)	Case No(s) : 2013GS3901909
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
Jason Randall Morgan,)	
)	
Defendant.)	
)	

October 03, 2013
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

A P P E A R A N C E S:

SAM TOOKER, Esquire
Attorney for the Plaintiff

DAN FARNSWORTH, JR., Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
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EXHIBITS PAGE

NO.

DESCRIPTION

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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 (WHEREUPON, the proceedings begin on the 5th day
3 of May, 2014 at approximately 2:03 p.m.)

4 THE COURT: All right.

5 MR. TOOKER: All right. Uh, Your Honor,
6 we are here before you. It's the State versus
7 Jason Randall Morgan indictment 2013-GS-39-
8 1909, Assault and Battery in the second degree.
9 Essentially, the way all this played out, just
10 so Your Honor has a basis, Mr. Morgan was
11 initially charged with Felony DUI.

12 He was involved in a traffic collision in
13 the early morning hours in Pickens county,
14 South Carolina. The driver of the other
15 vehicle was badly injured. We eventually,
16 through pretty extensive negotiations between
17 Mr. Farnsworth and I, came to a plea deal where
18 the State wasn't sure the DUI was the
19 appropriate charge, but Mr. Morgan pled to
20 Assault and Battery second degree. He's on
21 probation. We have agreed that we would have
22 the restitution hearing within 90 days. That's
23 right about now.

24 Mr. Farnsworth and I pretty much agree as
25 to all the facts surrounding this case. I

1 would like to put on the record and get a
2 ruling from Your Honor. In essence, Ms.
3 Elizabeth Miralles-Molena has \$236,000 in
4 medical bills. Okay. Now, as part of this --
5 well, not as part of this but as a result of
6 this incident, Ms. Miralles-Molena retained
7 civil counsel and sued Mr. Morgan. Now, they
8 settled for \$25,000 which I believe is the
9 policy limits.

10 My understanding from communicating with
11 both her civil attorney and with Miralles-
12 Molena is that no medical bills were paid.
13 They didn't negotiate with the provider. They
14 cut her a check for \$17,000 and the medical
15 bills are all entirely outstanding. The
16 Greenville Hospital System actually sent those
17 bills to a collection agency. Really, I think
18 that Mr. Farnsworth and I are entirely on board
19 with that.

20 Mr. Farnsworth showed me this morning or
21 this afternoon, I guess as part of that civil
22 judgment, there was an abrogation of -- she
23 essentially agreed, I guess, by signing the
24 judgment or signing -- I don't do civil --

25 MR. FARNSWORTH: What it is, judge, is her

1 attorneys went to -- Dick James Law Firm either
2 failed or refused to address the lien that they
3 were required to address. Then, when they
4 settled, my client had insurance limits
5 consistent with the law, 25,000 limits. Ms.
6 Miralles, my understanding, I think she was a
7 illegal alien.

8 MR. TOOKER: I believe she is illegal.

9 MR. FARNSWORTH: Didn't have insurance, I
10 don't think, or at least UIM, I guess from what
11 I can gather. So, she did not have excess
12 coverage to help. Even though the amount is
13 not sufficient to the hospital bills, unless
14 there is no potential lien signed, then you are
15 kind of lucky and can get the money without
16 paying the medical bills. You are still
17 responsible for them but you don't have to pay
18 them out of your settlement funds.

19 So what we did is called and talked to
20 Michael Hart who is the attorney over at Dick
21 James firm who handled the civil case for the
22 victims. He said we gave all of the money to
23 her. We have a copy of the lien signed. Her
24 injuries were I think, broken arm, broken
25 hip --

1 MR. TOOKER: Hip, I think some broken ribs
2 as well. She had to have surgery and had some
3 metal implants put in.

4 MR. FARNSWORTH: There is no question it
5 was a bad accident. He was actually on his way
6 to work the next morning before daylight, 5:30
7 or 6:00, in that neighborhood. Just briefly,
8 the evidence would have shown that there was a
9 couple of beers, I believe, that he had the
10 night before and some of the things that were
11 going on.

12 The next morning when -- he stayed there to
13 be safe, at his friends house. He drove -- we
14 planned on the possibility of having to try
15 this at one point. There was some lab reports
16 that showed evidence of no intoxication at the
17 time. We worked this out to the unsolved. Not
18 for the intentional act but for an act of
19 arguably careless or reckless.

20 What has happened is -- and I have got a
21 release here that is very strong. The release
22 that she signed includes a number of things.
23 It includes a \$25,000 amount to accept releases
24 his responsibility for any other payment. That
25 is why he carries insurance. Now, we all wish

1 it was more. And of course, if she had
2 insurance, it would help for some.

3 But Section 2 where I showed and I
4 highlighted -- and I can pass it up to Your
5 Honor to review. I showed Sam today. It is
6 the express intent of the parties that my
7 client here shall never at any time be liable
8 to the victims, his or her subrogees, which
9 would be the hospital, beyond the consideration
10 expressed herein and paid. That's the whole
11 essence of a release.

12 One thing I know from doing injury work is
13 what you look for is whether there is a valid
14 lien. Sometimes there is Medicare involved and
15 that's an automatic lien. It's a state lien.
16 But if it is a hospital or a private provider,
17 you've got to make sure they have a signed
18 lien. Otherwise they don't have any right to
19 that particular set of money. And we have
20 that. We have that.

21 So not only is it a release from Mr. Hart,
22 that should relieve my client of any further
23 responsibility as far as restitution. But also
24 this lien shows that he should've used whatever
25 money he had and resolved that. Typically,

1 even though in this amount -- it's actually
2 pretty regular that this happens. You would
3 take the -- as you know, Judge, the 25,000 is
4 available, 50 or 100 and you divide it
5 basically into three. The attorney will get
6 his third. The hospital will agree to the same
7 the attorney is getting and then the injured
8 person gets the remainder. In this case, the
9 attorney did not make any effort. In fact, on
10 his release, he initials and signs. I think
11 these are his initials. At least his note's
12 there. Uh, full fee. Client pay all bills, no
13 liens. There is a lien right here. All you
14 got to do is look for it. Right there.

15 My point is -- and Sam hasn't done civil, I
16 guess. Clearly, in any crime, you are
17 responsible for the restitution for the damage
18 you cause. But if you're -- civilly, your
19 insurance and civil remedies have exhausted
20 your responsibility. I just don't think,
21 unless I am wrong, I don't think that
22 restitution is -- additional restitution is
23 proper. What ought to be addressed is why this
24 attorney didn't do what the law says he's
25 obligated to do on the lien.

1 MR. TOOKER: Your Honor, Mr. Farnsworth
2 and I are in agreement entirely with regards to
3 everything that happened. I think the only
4 thing that we disagree about -- and I looked
5 for case law. I could not find any case law on
6 how restitution in a criminal case ---

7 THE COURT: Uh-huh.

8 MR. TOOKER: --- fits into it. That
9 doesn't mean it's not out there.

10 THE COURT: All right.

11 MR. TOOKER: I just wasn't able to get it.
12 How it fits into a civil case. The State's
13 opinion and my personal opinion is that
14 restitution is essentially a matter of fairness
15 and a matter of making the victim whole. We
16 understand that there are -- any sort of civil
17 claims have been satisfied by the judgment.

18 THE COURT: Tell me his name again.

19 MR. TOOKER: The defendant's name is Jason
20 Randall Morgan.

21 THE COURT: Okay.

22 MR. TOOKER: Our victim name is Elizabeth
23 Miralles Molena.

24 THE COURT: All right. I'm want to take
25 this matter under advisement. I need to just

1 look into it a little bit. To be honest with
2 you, I tend to agree with you, Mr. Farnsworth.
3 But I just want to see what is out there
4 because I agree with you two. I mean, it is a
5 matter of fairness. Sometimes part of the
6 retribution that somebody gets is the result of
7 a sentence is they have to be responsible. I
8 just have to look into it.

9 MR. TOOKER: Yes, ma'am.

10 MR. FARNSWORTH: Yes, Your Honor. I
11 wasn't able to find anything either. I just
12 know that every time -- I'm sure you know every
13 time this comes up with the insurance involved,
14 typically the court says let's let insurance
15 handle it. And it isn't fair that this wasn't
16 enough.

17 THE COURT: Normally, the liens are
18 negotiated. That's the first thing that they
19 will do.

20 MR. FARNSWORTH: We do it all the time.

21 THE COURT: You know, who knows? It could
22 have been negotiated under that amount.

23 MR. FARNSWORTH: We had a lien where we
24 paid 10 percent and they accepted it willingly.
25 The hospital did. There's probably a lot where

1 they don't get anything. Unfortunately, what I
2 run into a lot to and what we all have is the
3 law is not always fair.

4 THE COURT: Yeah.

5 MR. FARNSWORTH: But he has accepted
6 responsibility for what he did. He's gotten
7 his insurance that he paid for at the time this
8 happened. To me, legally, he has met his
9 responsibilities. I would be curious to find
10 if the answer's different too.

11 THE COURT: I will lock into it. But I
12 tend to think probably under the law, you are
13 right.

14 MR. TOOKER: Thank you, judge. Uh, I
15 guess just for -- we don't need to come back in
16 front of Your Honor.

17 THE COURT: No.

18 MR. TOOKER: Will Your Honor just, I
19 guess, let us know what your decision is?

20 THE COURT: I'll just rule. I'll just
21 rule. I will send you my ruling.

22 MR. TOOKER: Thank you, judge.

23 MR. FARNSWORTH: Thank you, Judge.

24 (WHEREUPON, the proceedings conclude at
25 approximately 3:07 p.m.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

COVENANT NOT TO EXECUTE

This COVENANT NOT TO EXECUTE (hereinafter, "COVENANT") made this 18th day of November, 2010, by and between Elizabeth Morales-Molina & Antonio Reyes, individually and as husband and wife, hereinafter sometimes referred to as "Covenantor," Jason Morgan, hereinafter sometimes referred to as "Covenantee," and Progressive Max Insurance Company, hereinafter sometimes referred to as "Insurer."

WHEREAS, on 08/21/2010, in Pickens County, South Carolina, Covenantor was injured in a vehicular collision or incident with Covenantee; and

WHEREAS, the automobile being driven and owned by Covenantee at the time of the aforementioned automobile accident was insured by Insurer under policy number 41706994-01, and had Twenty Five Thousand Dollars (\$25,000.00) in available liability coverage under said policy; and

WHEREAS, the damages sustained by Covenantor in the aforementioned automobile accident may exceed the liability limit of the said insurance policy, and the Covenantor is desirous of protecting his/her right to proceed to suit against Covenantee for purposes of collecting excess liability and/or underinsured motorist insurance benefits;

NOW, FOR AND IN CONSIDERATION OF the payment to Covenantor of the total sum of Twenty Five Thousand Dollars (\$25,000.00) by Insurer on behalf of Covenantee, the receipt and sufficiency of which is hereby acknowledged, Covenantor, Covenantee and Insurer agree as follows:

1. ~~If and in the event Covenantor is unable to resolve by agreement and settlement of his/her claim with any excess liability or underinsured motorist insurer, Covenantor shall have the right to bring suit against Covenantee and/or any such excess liability and/or underinsured motorist insurer, in accordance with South Carolina law, and prosecute the same to final judgment.~~

2. Notwithstanding any judgment that may be rendered in any such lawsuit, it is the express intent of the parties that Covenantee, his/her/its/their agents, representatives, heirs and assigns, shall never at any time, be liable to Covenantor, his/her subrogees, agents, representatives, heirs or assigns, beyond the consideration expressed herein and paid, by reason of any damages or injuries on which such judgment may be based except as herein stated. In consideration of the payment to Covenantor of the aforementioned sum, Covenantor, his/her subrogees, agents, representatives, heirs or assigns, shall not at any time, nor shall anyone for them or in their behalf, enforce against Covenantee, ~~by execution or otherwise, any judgment that may be rendered in any such lawsuit except as herein stated.~~ Further, immediately upon rendition to judgment of any such lawsuit, Covenantor, his/her subrogees, agents, representatives, heirs or assigns, will provide Covenantee with an executed satisfaction of said judgment. Moreover, this COVENANT or a photocopy hereof shall be considered and serve as a satisfaction of any such judgment in any claim or lawsuit presented by Covenantor against Covenantee for the aforementioned vehicular collision or incident, and can be recorded as such should Covenantor, his/her subrogees, agents, representatives, heirs or assigns fail to execute a Satisfaction of Judgment.

3. Covenantor, Covenantee and Insurer expressly reserve all rights of action, claims, demands or other legal remedies against all firms, persons or entities of any nature or kind, except as modified by the terms of this COVENANT. This COVENANT is not a release, nor shall it be construed as a release of any party, person, firm or corporation.

4. Covenantor expressly represents that he/she has been fully advised of all facts of a potential lawsuit, and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this COVENANT will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description against Covenantee, his/her/its/their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

OK = N

5. In executing this COVENANT, Covenantor represents and warrants that he/she has relied on his/her investigation and has not relied on any statement, representation or commitment of any kind made by Covenantee, his/her/its/their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

6. All provisions and recitals in this COVENANT are intended to be and are covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

7. Covenantor agrees that if there exists any subrogation, assignment, lien, or interest, whether created by contract, statute or otherwise, that he/she will obtain a release from the person or entity holding such interest and that Covenantor will protect, save, defend, hold harmless, and indemnify Covenantee from any such subrogation, assignment, claims, or interests. By entering this agreement Covenantee makes no representation as to the effect of this agreement on Covenantor's claim for excess liability or underinsured motorist insurance benefits and Covenantor expressly acknowledges this disclaimer.

8. Covenantor and Covenantor's attorney, if represented by counsel, expressly agree to keep Insurer abreast of developments in Covenantor's attempts to pursue and collect excess liability and/or underinsured motorist insurance benefits, including specific notice as to the date of trial, the amount of verdict, status of excess liability and/or underinsured motorist insurance coverage and whether a settlement of excess liability and/or underinsured motorist benefits has been achieved.

9. Should any damages be incurred by Covenantee due to the failure to immediately satisfy any judgment hereafter rendered, Covenantor agrees to save, defend, hold harmless and indemnify Insurer from any and all liability therefrom.

10. The parties expressly recognize that the payment made or to be made as a result of this COVENANT is in partial settlement and satisfaction of a doubtful and disputed claim, that Covenantee denies any and all liability to Covenantor and that this agreement and any payment thereunder is not intended as, nor should it be construed as, an admission of liability.

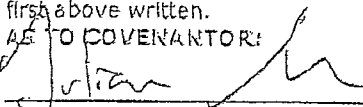
11. All parties agree that this COVENANT is a product of negotiation and agreement among the parties.

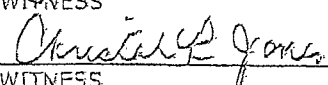
12. The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the agents, representatives, heirs, executors, administrators, assigns and successors in interest of the parties hereto.

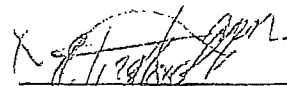
13. The execution of this COVENANT is acknowledged to have taken place in the State of South Carolina and the parties agree that it shall be construed and enforced pursuant to South Carolina law.

14. Covenantor acknowledges that he/she has been advised to seek the services of an attorney for advice and counsel on the consequences of executing this COVENANT. Further, Covenantor acknowledges that Covenantee has made no representations on the availability or applicability of any excess liability or underinsured motorist insurance coverage.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.

AS TO COVENANTOR:


WITNESS

WITNESS


Elizabeth Morales-Molina


Antonio Reyes

"Verdin, Letitia H. Law Clerk (Elizabeth M. Gailey)" <lverdinc@sccourts.org>
To: "Dan@FarnsworthLawOffices.com" <Dan@FarnsworthLawOffices.com>, "Tooker, Samuel
(STooker@greenvillecounty.org)" <STooker@greenvillecounty.org>
Restitution issue- State v. Jason Morgan

November 21, 2013 3:35 PM

Dan and Sam,

Thank you for your patience and for getting me the documents I needed to fully research this issue. Judge Verdin believes that, given the language in the Covenant Not to Execute, Ms. Morales-Molina did not in fact waive her right to collect restitution from Mr. Morgan. Specifically, it says the Covenant "shall be considered and serve as a satisfaction of any such judgment in any claim or lawsuit presented by [Morales-Molina] against [Morgan] for the aforementioned vehicular collision...." Nothing in the Covenant refers to or extinguishes the right of the State to seek restitution against Mr. Morgan. My notes from your last appearance on this matter do not indicate a specific amount of restitution, and I believe I am correct that the amount was never before the Judge to decide. Should you decide another restitution hearing is warranted, you can set that before Judge Verdin or Judge Miller (who will be the Chief Admin Judge for General Sessions starting January 1).

Thank you both, please let me know how else I can be of assistance.

Elizabeth

467-8449

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2014-000420

THE STATE,

Respondent,

v.

JASON MORGAN,

Appellant.

PROOF OF SERVICE

I certify that I served the Record on Appeal on the South Carolina Appellate Court by hand delivery to 1220 Senate Street, Columbia, South Carolina 29201, and Alan Wilson and Mary W. Leddon by depositing a copy of it in the United States Mail, postage prepaid, on April 2, 2015, addressed to:

Alan Wilson
Attorney General

Mary W. Leddon
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Brad Tollison

Brad Tollison Paralegal to
Daniel J. Farnsworth, Jr.,
2 Williams Street
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APR 02 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2014-000420

THE STATE,

Respondent,

v.


JASON MORGAN,

Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I also certify that the Record on Appeal contains no matter which is irrelevant to this appeal.

April ^{1st}, 2015


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APR 02 2015

SC Court of Appeals