THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No.: 2007-CP-42-1966

Raquel Martinez, Employee, Petitioner

v.

Spartanburg County, Employer,
and S.C Association of Counties
Self-Insurance Fund, Carrier, Respondents.

PETITION FOR WRIT OF CERTIORARI

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Arguments

CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 6, 2011.

QUESTIONS PRESENTED

1. Was the Commission's determination that the crime scene investigation performed by Martinez was not unusual and extraordinary supported by substantial evidence and/or affected by an error of law?

2. Was the Commission's determination that Martinez's mental injury was not proximately caused by the crime scene investigation supported by substantial evidence and/or affected by an error of law?

STATEMENT OF THE CASE

We can all be thankful for our dedicated public servants who, like the Appellant, Deputy Raquel Martinez, are willing to perform difficult jobs to protect public safety. Martinez served for over twenty-eight (28) years in law enforcement. Fortunately, none of her past experiences, difficult as they were, prevented her from performing her duties as a police officer or dissuaded her from wanting to become a crime scene investigator. (R. pp. 71, 85-86, 104). A job her supervisor, Captain Steven L. Denton of the Spartanburg Sheriff's Department, said she performed for three and half (3 ½) years diligently, dependably, and without problems of any kind. (R. p. 137). Unfortunately, the crime scene investigation she was called upon to perform on April 4, 2005, that is the subject of this appeal, was neither usual nor ordinary when compared to any investigation she ever performed before. This particular crime scene ended her entire law enforcement career forever.

On April 4, 2005, Martinez was dispatched to investigate a fatal motor vehicle accident involving a fellow police officer who tragically backed over and crushed his two (2) year old daughter.

> [The officer] had backed over – evidently backed over his daughter, who I believe at the time was either two or just under the age of two, and essentially, it had crushed her. If you can imagine taking a watermelon or something like that and running it over with a car, that's essentially what you have, but it's a human being.

(R. p. 134). Captain Denton said emotionally it was the worst crime scene he'd ever seen:

> Well, first of all, having known the officer and having a child run over by a vehicle, or the person having a child run over by a vehicle or the person you know causing the death of that, I've never encountered that. As far as ranking the grotesqueness of it, it's a child. It was run over by a police car. It was an accident. If I had to rank it as far as my feeling, my emotion, it would be the worst.

(R. p. 135). It was this dreadful scene that confronted Martinez when she arrived and learned it was her friend, Officer Johnson, who was the distraught father in the carport. (R. pp. 73-74).

The Respondents try to downplay the significance of Martinez's prior relationship with Officer Johnson. They point out that Martinez and Officer Johnson weren't "best friends." That may be true but Martinez never claimed Officer Johnson was her best friend. Rather she claimed they shared a particular bond of friendship forged between fellow police officers who serve together on "the thin blue line." They backed each other up when they served together with the Spartanburg County Sheriff's Department:

> The county was cut into like eight pieces, and each one was a zone; [Officer Johnson] was assigned another zone. Sometimes we had two to a zone. Sometimes we didn't have but one person working two zones. So, a lot of times if you were in this zone here and there was call in this zone that you're not sure about it, it might be a bad call or whatever or just sounds suspicious, you go that way to go back up the officer that responds to the call. That way you don't have 20 minutes, you know, when they get into a fight or whatever to get there; you're already close to them. So, that's why I said that we backed each other up. Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if he got into fights or if I got into fights, we would respond. He would be there and I would be there.

(R. p. 111). When questioned by the Single Commissioner, Martinez explained:

> It's really us against them and – ... this is the way I feel, anyway as a police officer. I can be in the middle of a park full of people, and if somebody jumps me to hurt me, then I've got to defend myself, but if there's somebody in uniform near me, I know that I'm not going to die because somebody's gonna be there to back me up. That person. I don't know about all the other 99 behind me, but that police officer has a bond that's going to make them help a fellow officer. That's just it. If you ever hear a bunch of lights and sirens going in one direction and more than one or two patrol cars, you know it's a fight that an officer has got and they're trying to get help to him as fast as they can.

(R. pp. 115-116).

It was this prior relationship with Officer Johnson that made the investigation on April 4, 2005 unusual and extraordinary, not just for Martinez but for all the police officers and emergency personnel who responded. Captain Denton testified it was not only unusual, it was the only time in his career that he'd investigated a violent crime where he personally knew the person involved:

Q: In your 20–plus years in law enforcement, how many times have you investigated a crime scene where you knew the victim?

A: I can't - I can't think of any violent crimes, burglaries, property crimes, I can probably name a few, but violent crimes where a person – either suicide or been killed, I can't – I can't recall any.

Q: In your 20-plus years in law enforcement, how many times have you investigated a crime scene where you know the person that caused the crime or the accident?

A: As far as know them in a personal way?

Q: Right.

A: Probably none. I have known them in a business/criminal/law enforcement way, but I won't have known them in a personal way.

(R. p. 142). He testified the crime scene investigation was extreme and out of the ordinary for Martinez:

Q: Well let me ask you this: as a 20-plus year veteran of the Sheriff's Office with 70 to 75 percent of your time spent in death investigations and as [Martinez's] supervisor, would you say that the April 4th, 2005, investigation involving your former employee, A.J., killing his two-year-old child would have been an extreme situation in her employment?

A: Yes.

Q: Was this a scene that was out of the ordinary?

A: Yes.

(R. pp. 147-148). When asked if the investigation was unusual and extraordinary when compared to Martinez's normal employment, the Appellants objected on the grounds the question called for a legal conclusion. The Hearing Commissioner overruled the objection as untimely and said:

Well, actually, he's already said – he's already answered the question and it's on the record. He said that he thinks it's unusual and extraordinary. In fact, he said in his entire career he thinks it's one of the most unusual.

(R. p. 149). The evidence having been admitted, Appellants' counsel thereafter fully cross examined Captain Denton but his opinion never wavered:

Q: In fact, everything she did out there as far as her activities at the scene in doing a crime scene investigation was a part of her ordinary duties that day?

A: If you remove the condition of the child itself and knowing the officer, remove that condition and that would be true.

Q: Well, you have to – forensic investigators have to investigate deaths of children, don't they?

A: Sure.

Q: So the fact that she was investigating a child doesn't take it out of her ordinary investigations, does it?

A: I don't think the whole – you get the whole story until you add the condition that existed, and the whole truth is that, that condition existed that day, and I think it was extraordinary because of that.

Q: Because...

A: I don't think it was ordinary that day.

Q: Pardon?

A: I don't think it was an ordinary job for anybody that day, and I think –

Q: But what she did was her job, was it not?

A: What she did was her job. Ordinary, if you're talking about, you know, had it been anywhere else that day, it would have been ordinary. But it wasn't anywhere else, and that's –

Q: Well, as far as the child is concerned – let's take the father out of it. If some other child has been run over, would you consider that to be extraordinary?

A: That's not what happened.

Q: Well, I'm not asking you – I'm saying assume. If it was some other person's child that had been run over, they would that – and she investigated the child, would there be anything unusual or extraordinary about that?

A: No.

Q: So it boils down to the fact that this [child's father] was a former employee of the Spartanburg County's Sheriff's Department?

A: **It boils down – that's half of the fact. The other half of the fact is, again, it's an infant that was run over by a police car that was driven by a former employee whom we were friends with. That's the whole fact.**

(R. pp. 151-153).

Like Captain Denton, Martinez had never been called upon to investigate a crime scene involving somebody she knew, never mind a fellow police officer she considered a friend:

> It's hard to believe that – that I can recall in all 28 years I have never had to deal with someone in a violent situation or in a violent death – I have never had to deal with someone that I actually knew, that I considered a friend, not to mention a co-police officer. We kind of stick together like a thin blue line, if y'all have ever heard that expression. We deal with things all the time that regular people don't see, so you get very close to your workers.

(R. p. 83). Martinez explained precisely how her prior relationship with Officer Johnson changed everything and affected her ability to do her job:

> I think the difference is that like when you go to a burn scene, this is – and it sounds cold, but you get through it the way you get through it this is no longer a person; this is an object. And you have to keep a distance when you do these. I think [Officer Johnson's] case, or the child's case, was different because I have never seen it with anyone that I knew or that I couldn't turn her into an object. I couldn't just say that's just a little girl over there. I couldn't do that. You can't do that.

(R. pp. 93-94).

After learning the investigation involved her friend and fellow police officer, Officer Johnson, Martinez asked to be excused for the first time in her career. (R. pp. 75, 136). Later, describing what it was like to move the child to the Appellant's examiner, she said, "it was like a broken doll - when you moved her, it sounded like you were tumbling over some blocks..." (R. p. 324). But the worst part for her was having to climb under the car to look for evidence:

> I had to get underneath [the car] to take – see if I see any evidence of where the child was underneath the vehicle, and there were clumps of her hair and skin on the tire and

> on the asphalt, and then on the part of the – I don't know the undercarriage of the car very well, but the biggest part, I guess is going to be the gasoline tank. There were fingerprints, and there was the impression of a hand, I should say, not the whole hand but, just the little-bitty fingerprints dragging across the gasoline tank.

(R. pp. 78-79). The little-bitty fingerprints dragging across the gas tank was the image that would keep reoccurring in Martinez's nightmares.

The effect the crime scene investigation had on Martinez was dramatic and immediate. Captain Denton noticed a dramatic change in Officer Martinez, "specifically that day." (R. pp. 137, 139-140). That night she began crying about the child and having the nightmare about the fingerprints. (R. p. 78). A couple of days later, on April 7, 2005, her family physician, Dr. John Wieder, for the first time noted in his records "[t]here is a lot of stress on [Martinez's] job..." (R. p. 170). That same day Martinez broke down crying and told her father about the little girl's death. (R. p. 120).

Over the following days and weeks her condition and job performance deteriorated. Captain Denton asked two (2) chaplains to counsel Martinez but Martinez said "that didn't work, and it kept bothering me. I couldn't sleep at night. It would always be about the little girl, about the fingerprints under the tank." (R. pp. 78, 141).

She became vulnerable to other emotional events in her life. On April 19, 2005 her family physician's office note said she was upset and crying because her cousin had died from AIDS. He prescribed Xanax and took her out of work for "a few days." (R. pp. 170, 172). When she returned to work on April 24, 2005, however, she passed out and had to be taken to the emergency room and admitted to the hospital for four (4) days because of uncontrollable high blood pressure. (R. p. 172). The Respondents overemphasize the role the expected death of her cousin had in Martinez's mental breakdown. While temporally related, her family physician suspected there was something else bothering Martinez. On May 26, 2005, he stated in his office note:

> But I am really at a loss as to explain why this girl's blood pressure is running so high. There has got to be either we are missing the boat somewhere or she is not taking her medicine. It has got to be one or the other, and I have a feeling I am missing the boat on something.

(R. p. 176). Officer Martinez returned to work again on June 7, 2005 but her family physician reported continued panic attacks and stress at work. (R. p. 179). On August 7, 2005 Officer Martinez suffered a complete mental breakdown.

Martinez's father described what he found when he was called to his daughter's home early that morning:

> It was about 6:00 to 6:30 in the morning. I got a call from her next-door neighbor, she called and said, 'Mr. Martinez, Raquel is going up and down in the front yard, and she's talking weird. I mean, something is wrong with her. I think its good for you to come and look and it.' So I did. I got in my car and went over there. As soon as I got there, I saw something was really bad because the car windshield was smashed to pieces. So I continued going to her house door, knock on the door, and it wasn't locked. I opened the door, and I knew right away that something was real bad. It looked like a hurricane came through it. Everything was everywhere. The glass back door was to pieces, one of the window screens was all smashed. I mean it was a mess. So I went through the house asking, 'Raquel, Raquel, where are you?' And I could not find her, so I went outside and looked in the yard. I didn't see her, so I told the next-door neighbor, I said, 'Please call 911 because I'm gonna go and find – and try to find Raquel. But when I find her, I want somebody here.' So I took my car, I went around the neighborhood, and I could not find her. So when I was coming back, a lady said, 'Hey, sir, are you looking for somebody?' I said, "yes, ma'am." She said, "Well, there's a young lady behind these bushes.'

(R. pp.. 120-121). When he asked what was wrong, Martinez wanted him to meet an imaginary little girl because they were going to take a trip together. (R. pp. 80-81). She kept saying, "I want this little girl to be with me. I want her here. I want her here." (R. p. 124). Her mother testified Martinez was brushing the little girl's hair on the way to the hospital in the ambulance. (R. p. 129).

Martinez was admitted to the hospital for psychotic delusions, including a delusion she was traveling on a steamboat down the Mississippi River with an imaginary little girl. (R. p. 195, 122). She was discharged from the hospital to out-patient care but quickly had to be "stepped up" back to in-patient care. (R. p. 279, 285).

In group counseling her treating psychiatrist, Dr. Ralph Castriotta, realized "because of [Martinez's] work as a police officer, she feels reluctant to open up in group in case there are some people in some way related to open cases she's working on." (R. p. 279). Captain

Denton confirmed it was against Department policy for police officers to discuss death cases. (R. pp. 145-146).

Martinez continued to receive follow-up care by Dr. Castriotta, her psychiatrist, Luther A. Diehl, Ph.D., her clinical psychologist, and her family physician all of whom have related her breakdown to the investigation she performed on April 4, 2005. On June 16, 2006, Dr. Sherbondy stated his opinion:

> The above referenced patient is currently under my care for Major Depressive Disorder the Post Traumatic Stress Disorder. It is my professional opinion that the patient's current condition is directly related to the incident that occurred in April of 2005 while employed with the Sheriff's Department. Ms. Martinez investigated the accidental death of a two year old child whose death occurred while her father was moving a car.

(R. p. 295). On April 18, 2006 Dr. Diehl stated in his opinion:

> I am writing in response to your request about two issues related to Ms. Martinez and her psychiatric difficulties. She did experience a significant traumatic work related situation which occurred on April 4, 2005. This situation involved investigation of a death which was of a young child and the death was a result of her father's moving of a car. The father was a former Spartanburg County Deputy and current Greenville County deputy. The severity of injuries along with the personal involvement regarding the father were certainly an unusual and fairly unique set of circumstances. It would be my impression that Ms. Martinez had been functioning quite well in her employment situation with the Sheriff's Department for six years and prior to that in Probation and Parole in South Carolina for about ten years. While she experienced the recent death of a cousin, this individual has serious medical problems and was really considered to have a terminal prognosis. Based on these factors, it is my opinion that her current psychological difficulties and impairment in work functioning were precipitated by the work related stressor on April 4, 2005.

(R. p. 317). On May 3, 2006 her family physician, put the pieces together, and said:

> Raquel comes back to the office today after a long absence she is no longer with the Sheriff's Department due to some very severe emotional problems that occurred during an investigation... She has been hospitalized for emotional problems after the investigation of a former deputy who ran over his little two-year-old girl in their driveway accidently and it was just the last straw for Raquel.

(R. p. 180).

Apparently not satisfied with the unanimous opinions of Officer Martinez's treating psychiatrist, clinical psychologist, and family physician, the Respondents sent Martinez for

an independent psychiatric evaluation by Dr. John F. Abess. In response to specific written questions posed by the Respondents' counsel, Dr. Abess answered:

1) WHAT IS YOUR DIAGNOSIS OF MS. MARTINEZ'S PSYCHIATRIC CONDITION? Her primary psychiatric diagnoses are: Post Traumatic Stress Disorder, Recurrent Episode, Chronic Bipolar I Affective Disorder.

2) IN YOUR OPINION, DID SHE HAVE ANY OF THESE CONDITIONS PRIOR TO 4 APRIL 2005? Claimant has evidence of Bipolar Mood Disorder existing prior to her related trauma although the diagnosis was not officially recognized.

3) IN YOUR OPINION WAS ANY OF MS. MARTINEZ'S PSYCHIATRIC CONDITIONS CAUSED OR AGGRAVATED BY THE ACCIDENT INVESTIGATION CONDUCTED BY MS. MARTINEZ ON APRIL 4, 2005? Yes. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on April 4, 2005.

(R. pp. 333-334).

ARGUMENT

This appeal involves the compensability of a purely mental injury, sometimes called a "mental-mental" injury, under the Workers' Compensation Act. The South Carolina Legislature codified the South Carolina Court decisions by amending the statutory definition of an "accident" in 1996 to provide:

> Stress arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury is not a personal injury unless it is established that the stressful employment conditions causing the mental injury were extraordinary and unusual to the normal conditions of the employment.

§ 42-1-160, S.C. Code Anno., (Supp. 2002).

Over the years, two issues have repeatedly arisen. The first issue is the Commission's focus on the usual and ordinary aspects of the employee's general employment instead of the particular employee's normal working conditions. And, the second issue was whether the unusual and extraordinary conditions of the employment had to be the sole cause of the mental injury or whether, like in all other workers' compensation cases, the unusual and extraordinary conditions of the employment had to either cause, aggravate, or contribute to the mental injury. Both of these questions arise again in this appeal.

The first question worked its way up through the appellate process to the South Carolina Supreme Court in the case of Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (S.C. 2000). The facts in that case involved an undercover police agent who had infiltrated a bar to obtain drug trafficking evidence. The undercover agent suffered a mental breakdown and was hospitalized for depression, suicidal thoughts, post-traumatic stress disorder, and acute alcoholism. The Commission found the incidents alleged were a usual and ordinary part of the job of an undercover police agent and denied the claim. The Circuit Court and Court of Appeals affirmed on the ground the findings were supported by substantial evidence. Shealy v. Aiken County, Op. No. 98-UP-573 (S.C. App. filed December 16, 1998).

The Supreme Court granted certiorari and reversed the Court of Appeals. After reviewing the statutory and case law, the Supreme Court ruled as a matter of law the unusual and extraordinary rule is not an objective test but rather a subjective test. The condition or combination of conditions of the employment alleged to have caused the mental injury are not compared with the usual and ordinary conditions of the type of employment generally but are to be compared to the conditions of the employee's particular employment to determine whether they are unusual or extraordinary. The Supreme Court held:

> This Court has never applied an objective standard of reasonable employment when considering whether a worker was exposed to unusual or extraordinary work conditions, but rather has compared the conditions to the worker's particular employment.

Shealy, 535 S.E.2d at 443. The Supreme Court then applied the substantial evidence standard of review and concluded the substantial evidence on the whole record established the combination of conditions alleged to have caused the undercover agent's mental injury were unusual and extraordinary when compared to the conditions of his particular employment. In reaching this conclusion the Supreme Court did not dispute that death threats, incidents with violent drug dealers, or fear of disclosure and retaliation might all be part of the usual and ordinary conditions of the employment of an undercover police agent. The Supreme Court focused, however, on other undisputed facts which lead to conclusion

that knowing there was a plot to be murdered by drug dealers willing and able to commit such a crime was "certainly extraordinary." Shealy, 535 S.E.2d at 444.

The same issue worked its way up through the appellate process again and was revisited by the Supreme Court in the more recent case of Doe v. Dept. of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (S.C. 2008). The facts in that case involved a licensed practical nurse who worked in a community home for emotionally disturbed patients. The LPN was trained how to and occasionally had to deal with aggressive patients in her employment. As part of a downsizing program, however, the Department changed the population in the LPN's community home from one consisting of passive patients to a mix of passive and aggressive patients resulting in a dramatic increase in the level of violence in the home. The LPN began receiving psychiatric care and was hospitalized for severe depression.

The Commission found that the changes in the types of patients the LPN cared for, changes in the level of care patients required, and having to deal with aggressive patients were all usual and normal conditions of an LPN's employment and denied the claim. The Court of Appeals ruled the Commission's findings were supported by substantial evidence. Doe v. Dept. of Disabilities, 364 S.C. 411, 615 S.E.2d 785 (S.C. App. 2005).

The Supreme Court again granted certiorari and reversed the Court of Appeals. The Supreme Court concluded the substantial evidence on the whole record indicated the particular combination of conditions alleged to have caused the mental injury were unusual and extraordinary. In reaching this conclusion the Supreme Court did not dispute LPN's are trained and have to deal with aggressive patients, that patients are sometimes moved from one facility to another, or that the amount of care patients require can also change. Again, however, the Supreme Court focused on additional undisputed facts and found because the community home became "more chaotic" and there was a "significant increase" in violent behavior the new mix of passive and aggressive patients was unusual and extraordinary when compared to the normal conditions of the particular LPN's employment. Doe, 660 S.E.2d

262. In a separate concurring opinion, Chief Justice Toal took a somewhat different approach and would have reversed as a matter of law because:

> The reasoning of the single commissioner shares a fatal flaw with that employed by the court of appeals in reinstating the single commissioner's decision. In my view, that fatal flaw is the focus on the ordinary aspects of Petitioner's employment to the exclusion of an examination of the extraordinary, and the consequent use of those ordinary aspects to support the conclusion that Petitioner's injury is not compensable.
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> * * *
>
> In my view, both the single commissioner and the court of appeals failed to consider whether the changed conditions of Petitioner's employment were, for her, unusual or extraordinary, and similarly failed to evaluate how the changed conditions affected Petitioner. I believe this was error under Stokes [supra. 410 S.E.2d 248 (S.C. 1991)], and based on this error of law, I would reverse.

Doe, 660 S.E.2d 260, 263.

Similarly, the second question, whether the unusual or extraordinary conditions of employment have to be the sole proximate cause of the mental injury, has continued to arise. The concept of proximate cause, sometimes called the "cause in fact," "legal cause," or "but for cause," is no better defined in workers' compensation law than in tort law. A generally accepted definition of proximate cause is a cause which, in a natural and continuous sequence, produces the injuries and damages, and without which the injuries and damages would not have occurred. It is recognized that there may be more than one (1) proximate cause of an injury and where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes. Childers v. Gaslines, Inc., 141 S.E.2d 761 (1966); Sanders v. Western Auto Supply Co., 183 S.E.2d 312 (1971).

South Carolina Courts have applied this general concept of proximate cause in workers' compensation cases. It has been held in workers' compensation cases, "[a]n accident arises out of the employment when it arises because of it, as when the employment is a contributing proximate cause." Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (S.C. 1960). One way the concept of proximate cause has been applied in workers' compensation is in cases involving the aggravation of pre-existing conditions. It has been

held the aggravation, acceleration, or lighting up of a pre-existing or latent infirmity or weakened physical condition is compensable, even though the accident would not have caused an injury to a perfectly healthy individual. Ferguson v. State Highway Dept., 197 S.C. 520, 15 S.E.2d 775 (S.C. 1941); Heirs v. Brunson Const. Co., 221 S.C. 212, 70 S.E.2d 211 (S.C. 1952); Glover v. Columbia Hospital of Richland County, 236 S.C. 410, 114 S.E.2d 565 (S.C. 1960). The aggravation of a pre-existing condition is compensable unless it is due solely to the natural progression of the pre-existing condition. Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76, 80 (Ct.App. 1996).

The problem with applying the concept of proximate cause in mental injury cases appears to have arisen because two (2) Court decisions have been read together and misinterpreted to support a much narrower definition of proximate cause. The first decision is Shealy, supra., 535 S.E.2d at 442, which held "[i]n order for [a claimant] to recover workers' compensation benefits [for a purely mental injury], he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown." The second decision is Nawa v. Wackenhut Corp., 341 S.E.2d 800 (S.C. App. 1986) which held South Carolina law "requires the employee's job be more than one factor, to any extent, in the injury or death. Nawa, 341 S.E.2d 801. Read together these cases have been misinterpreted to require that the unusual and extraordinary condition must be the sole cause of the mental injury.

It is respectfully submitted the Supreme Court never intended for the preposition "the" to be interpreted to mean "the sole" cause. The Supreme Court went on in Shealy, supra. 593 S.E.2d 496, to cite Powell v. Vulcan Materials Co., supra., Gambrell v. Burleson, 252 S.C. 98, 165 S.E.2d 622 (S.C. 1969) both stating the claimant must only prove a causal connection between the injury and the subsequent condition in workers' compensation cases. See also: Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E.2d 491 (S.C. App. 2004).

Nawa certainly proves the old adage bad facts make bad law. In that case the claimant had a pre-existing brain aneurysm. He suffered a fatal stroke at home while having sexual intercourse with his wife. His family claimed stress at work was a factor contributing to his stroke and their lawyer claimed if stress was a factor, to any degree, the stroke was compensable. The Commission, Circuit Court, and Court of Appeals refused to adopt the expansive definition of proximate cause suggested by the claimant's counsel, that the stressful conditions arising out of the employment need only be a factor, no matter how remote, and affirmed the denial of the claim finding the decision was supported by substantial evidence. In reaching its decision the Court of Appeals noted the testimony of the claimant's supervisor disputing the claimant was under undue stress at work, the medical evidence a person with an aneurysm is always at risk for spontaneous rupture, the medical evidence that blood pressure raises 40% during sexual intercourse and that aneurysms frequently rupture during intercourse, and expert medical testimony the claimant most probably would not have suffered the ruptured aneurysm had he not been having sexual relations. Clearly, there was substantial evidence, including expert medical testimony, the claimant would not have suffered the stroke "but for" having sex with his wife. Unfortunately, this case has been misinterpreted to require that the unusual and extraordinary conditions of employment be the one and only cause of an alleged mental stress injury. This is the interpretation taken by the Commission below and the Respondents in this appeal. (Appellants' Final Court of Appeals Brief, pp. 31-32).

Such an interpretation is not only contrary to the definition of proximate cause, it would preclude an aggravation of a pre-existing mental condition from being compensable under any circumstances. The issue whether the aggravation of a pre-existing mental condition was compensable was raised in Shealy, supra., but not preserved for appellate review. Shealy, 535 S.E.2d 444 - 445. It was raised again, however, in Doe, supra. According to the Court of Appeals decision, the Commission's denial of benefits was reversed by the Circuit Court because "a physical injury need not be the direct cause of a

mental injury." Doe, 615 S.E.2d 785, 790. The Court of Appeals reversed the Circuit Court on the grounds there was substantial evidence supporting the Commission finding the mental injury was not "caused or induced by" by the minor physical injuries the claimant sustained and there was substantial evidence "that other stressors in her life that were unrelated to work caused her mental injuries." Doe, 615 S.E.2d 785, 790. The Supreme Court held:

> Finally, the Court of Appeals observed that Claimant had non-work related stressors, including a prior bout with depression in 1980 and her father's cancer and death in December 1997, that 'could impact her mental injury.' There is no support in the record for the conclusion that any of these outside factors caused or even contributed to Claimant's disability. The only evidence of causation is that Claimant's mental injury was caused by her stress at work as stated by Dr. Lowe. Moreover, a history of pre-existing depression does not preclude workers' compensation benefits for a mental-mental injury. See: Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (S.C. 2006). See also: Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E.2d 268 (S.C. App. 2006) (the right of a claimant to compensation for the aggravation of a pre-existing condition psychiatric condition arises where there is a dormant condition which has produced no disability but which becomes disabling by reason of the aggravating injury) citing Anderson v. Baptist Med. Ctr., 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001).
>
> It is in accordance with this applicable law that the questions presented for

appellate review can now be considered.

1. THE CRIME SCENE INVESTIGATION WAS UNUSUAL AND EXTRAORDINARY.

In the present case, the Circuit Court correctly ruled the Commission's decision was affected by an error of law because it improperly focused on the usual and normal aspects of Martinez's employment to the exclusion of the unusual and extraordinary circumstances surrounding the crime scene investigation and failed to perform any analysis of the effect such circumstances had upon her. (R. pp. 24-25). The Circuit Court further ruled the Commission's finding that the investigation of the death of a child, even the child of a former Sheriff's Deputy, was not an unusual or extraordinary condition of Martinez's employment was not supported by substantial evidence on the whole record. (R. pp. 56, 22 – see footnote 4). And, the Circuit Court further ruled the Commission's finding Martinez failed to prove she encountered an unusual or extraordinary condition in her employment on April 4, 2005

was not supported by substantial evidence on the whole record. (R. pp. 56, 22 – see footnote 4).

The Circuit Court based its ruling that the finding there was nothing unusual or extraordinary in the investigation of the child's death involving a fellow police officer was not supported by substantial evidence on the testimony of both Martinez and Captain Denton, the only witnesses who testified, that the investigation was unusual and extraordinary in their combined forty-eight (48) years of law enforcement experience. Not only was the investigation unusual and extraordinary, it was unique because neither Martinez nor Captain Denton had ever been called upon to investigate a violent death that involved a person they knew and a fellow officer. (R. p. 25). The Court of Appeals challenged this ruling by pointing to other testimony, also given by Martinez and Captain Denton, which showed all that Martinez actually did on the day in question was collect evidence, take photographs and measurements, process data, and write reports, all of which were usual duties of a crime scene investigator. (R. pp. 508-509). No one disputes this is what she did or that these activities were part of her normal duties **but, in the words of Captain Denton, "that's half of the fact" and, until you include the gruesome condition of the child and knowing Officer Johnson, you don't get the "whole story."** The Court of Appeals committed the same fatal error as in Shealy and Doe. They ignored the elephant in the room. They ignored Martinez's prior relationship with Officer Johnson which made it impossible for her to turn her friend's crushed little girl into an object she could distance herself from emotionally. No evidence of any kind was submitted by anyone supporting the idea that only "best friends" could be affected by such a tragic and gruesome event. None of the four (4) experts who weighed in on this case gave the opinion that only "best friends" could be affected this way. In fact, every expert who ever touched this case, including that of the Respondent, says her mental injuries are related to the incident in question. The notion that they would need to be "best friends" appears to have been pulled out of thin air. Even if that requirement was

supported by some evidence in the record, to do so imposes an objective standard which is strictly forbidden. Shealy, supra., Doe, supra.

Realizing the prior relationship between Martinez and Officer Johnson is the very reason the investigation on that day was usual and extraordinary, the Respondents argue the Commission, as the exclusive finder of fact, considered the relationship but found Martinez and Officer Johnson were neither best friends nor social friends. Further, when they served together as fellow police officers, they patrolled different areas of the Spartanburg County. (R. pp. 509-510). Again, all that may be true but to require they be best friends of even social friend imposed an objective standard. It was undisputed Martinez and Officer Johnson actually backed each other up while on patrol. In the words of Martinez, "Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if he got into fights or if I got into fights, we would respond. He would be there and I would be there." (R. p. 111). Just as Martinez has not disputed the facts described by the Respondents, the Respondents have not disputed the additional facts described by her. These additional undisputed facts cannot simply be ignored. Judicial review of the substantial evidence is based on the whole record, not evidence viewed blindly from one side of the case. Etheredge v. Monsanto Co., supra.; Gibson v. Spartanburg School District #3, supra.

No one disputes that police officers and crime scene investigators are called upon to investigate violent deaths, or that Martinez herself may herself have been called upon to investigate violent deaths during her twenty-eight (28) year law enforcement career. But, by the same token, no one disputes the crime scene investigation Martinez she performed on April 4, 2005 was more than just an ordinary and normal violent death, if there even is such a thing. It was the gruesome, violent death of the two (2) year old daughter of Martinez's friend and fellow police officer, Officer Johnson, so unlike the usual and normal conditions of her employer that Martinez couldn't turn the crushed little girl into an object she could distance herself from emotionally.

Where the facts are admitted, or established, or where the evidence is susceptible of but one reasonable inference, the question of compensability is one of law for the Court, rather than one reserved exclusively for the Commission. Jordan v. Dixie Chevrolet, Inc., 218 S.C. 73, 61 S.E.2d 794 (S.C. 1950); Sylvan v. Sylvan Bros., Inc., 225 S.C. 429, 82 S.E.2d 794 (S.C. 1954); Kinsey v. Champion Am. Service Center, 268 S.C. 177, 232 S.E.2d 720 (S.C. 1977); Sturkie v. Ballenger, supra.; Mullinax v. Winn-Dixie Stores, Inc., supra. The additional undisputed facts establish the crime scene investigation Martinez performed on April 4, 2005 was unusual and extraordinary. Every witness that testified did so by saying the crime scene investigation was unusual and extraordinary. Of course, the Commission and Court of Appeals can remove portions of the facts and water down this scenario to the point where we are just discussing her normal job duties, but again, as Captain Denton put it, "that's half the fact."

Substantial evidence must be such evidence as would allow reasonable minds to reach the conclusion reached by the administrative agency. Etheredge v. Monsanto Co., supra.; Gibson v. Spartanburg School District #3, supra. It is respectfully submitted it is patently unreasonable for the Commission or anyone to find, in the absence of an off-duty personal or social friendship, a bond of friendship cannot develop between police officers, soldiers, firemen, or any of our dedicated public servants who face life and death situations while serving together to protect our safety. This is especially true when no expert or lay witness introduces any kind of a foundation of such an objective standard. In fact, all of the experts and lay witnesses in this case say the exact opposite.

Having found the investigation Martinez performed on April 4, 2005 was neither unusual nor extraordinary, **the Commission never performed any analysis of the effect her friendship or relationship with Officer Johnson had upon her.** As stated by Justice Toal, the Commission was required to not only consider whether the conditions of the investigation were, for Martinez, unusual or extraordinary, but also to consider how the conditions affected her. Doe, 660 S.E.2d at 263. The undisputed evidence is the effects were immediate and

dramatic. Upon learning the investigation involved Officer Johnson, Martinez, for the first time in her career, asked to be excused from performing her duties. (R. pp. 75, 136). To her credit she did her duty and worked the crime scene for four (4) hours. (R. p. 77). Captain Denton noticed a dramatic change Martinez, "specifically that day." (R. pp. 137, 139-140). That night she testified she began crying, couldn't sleep, and began having nightmares about the little-bitty fingerprints under the gas tank. (R. pp. 78).

The findings of the Commission reversed by the Circuit Court were affected by an error of law because they improperly focused on the usual and normal aspects of Martinez's employment as a crime scene investigator to the exclusion of the unusual and extraordinary circumstances surrounding the investigation and because the Commission failed to perform any analysis of the effect such circumstances had upon her. The findings of the Commission reversed by the Circuit Court that the investigation of the death of a child, even the child of a fellow police officer, was not an unusual or extraordinary condition of Martinez's employment were an unusual or extraordinary condition in her employment were not supported by substantial evidence on the whole record. The finding of the Commission reversed by the Circuit Court that a bond of friendship cannot develop between fellow police officers absent a personal or social friendship outside of work is patently unreasonable and unsupported by any of the experts, lay witnesses or evidence of any kind in the record. The Court of Appeals decision reversing the Circuit Court Order should be reversed.

2. THE CRIME SCENE INVESTIGATION PROXIMATELY CAUSED, AGGRAVATED, AND/OR CONTRIBUTED TO MARTINEZ'S MENTAL INJURY.

The Circuit Court began its discussion of the causation issue by noting the Commission's decision Martinez failed to prove her mental injury was compensable was deficient as a matter of law because it required the Court to speculate how, factually, she did not meet her burden of proof. (R .pp. 56, 26-27). The Circuit Court correctly ruled the Commission's decision was affected by an error of law because it misinterpreted Nawa, supra., to require Martinez prove the crime scene investigation of April 4, 2005 was **the sole**

cause of her mental injury and failed to consider that an aggravation of a pre-existing psychiatric condition can be compensable. (R. pp. 27-29). And, the Circuit Court correctly ruled the Commission's decision was unsupported by substantial evidence because the unanimous opinions of the medical experts, including the Appellants' consulting psychiatrist, was that the crime scene investigation of April 4, 2005 either caused or contributed to Martinez's mental injury or aggravated a pre-existing dormant mental condition resulting in her disability. (R. pp. 29-30).

The Circuit Court Judge based his ruling on the unanimous opinions of Martinez's treating physicians that the crime scene investigation was a contributing proximate cause of Martinez's mental injury. Fowler v. Abbott Motor Co., supra. Her treating psychiatrist said, "[i]t is my professional opinion that the patient's current condition is directly related to the incident that occurred in April of 2005 while employed with the Sheriff's Department." (R. p. 295). Her treating clinical psychologist said, "it is my opinion that her current psychological difficulties and impairment in work functioning were precipitated by the work related stressor on April 4, 2005." (R. p. 317). Her family physician, when he put the pieces together, said, "[s]he has been hospitalized for emotional problems after the investigation of a former deputy who ran over his little two-year-old girl in their driveway accidently and it was just the last straw for Raquel." (R. p. 180). **The Decision and Order of the Commission failed to even mention any of these opinions.**

The Appellants challenge this finding and point out Martinez's treating physician's also noted Martinez had other mental stressors in her life. They ask this Court to ignore the obvious fact every mental health professional called upon to diagnose and treat a patient for a mental condition obtains a complete family, social, and medical history, including information about other emotional stresses in the patient's life. The mental health professional then considers this information, together with his or her clinical interview and treatment of the patient, any relevant medical evidence, and the results of any diagnostic tests or studies that have performed in reaching their diagnosis of the patient's condition. The

Commission's decision points to the history of other stressors but excludes consideration of the physician's ultimate opinions. This is like taking your car to a mechanic because it won't start. In the process of inspecting the car, the mechanic notices the power steering fluid is low. He writes that down. He continues the inspection and comes to the conclusion that the car won't run because the battery is dead. This Commission's refusal to consider the experts' final opinions yet picking out pieces from the diagnostic process is like the person with the car problems concluding the car won't run because of the absence of power steering fluid.

The Commission points to evidence that goes all the way back to when Martinez was "sexually abused for almost two years as a child by a male family friend in Puerto Rico." (R. p. 56). While this may be true, there was no medical or lay testimony her sexual abuse as child caused or contributed to her mental breakdown. The closest any physician came to suggesting this or any other emotional stress Martinez may have suffered had anything to do with her mental breakdown was the opinion of the Appellants' consulting psychiatrist. In a response to a specific question by Appellants' counsel as to causation, he suggested Martinez had undiagnosed pre-existing bi-polar and post traumatic stress disorders that were aggravated by the crime scene investigation of April 4, 2005. (R. p. 334). Even if Martinez had these undiagnosed mental conditions as suggested, it was undisputed Martinez served for twenty-eight (28) years in law enforcement. It was undisputed nothing in her past and nothing in her experience as a police officer prevented her from performing her duties or dissuaded her wanting to become a crime scene investigator, a job her Captain, Captain Denton, testified she performed her duties as a crime scene investigator for three and a half (3 ½) years diligently, dependably, and with no problem of any kind. It was undisputed she never asked to be excused from performing her duties. If Martinez had undiagnosed bi-polar and post traumatic stress disorders, they were certainly dormant and there is no evidence they manifested themselves into any disability.

The Respondents' argument fails as a matter of law. Even accepting the opinion of the their consulting psychiatrist as constituting substantial evidence, the aggravation of those

conditions by the crime scene investigation that resulted in a complete nervous breakdown and total disability would still be compensable as a matter of law. Ellison v. Frigidaire Home Prods., supra; Smith v. NCCI, Inc., supra. When asked if Martinez's mental injury was either caused or aggravated by the crime scene investigation, the **Respondents' psychiatrist said, "Yes. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on April 4, 2005."** (R. p. 334).

The substantial evidence required to support an administrative finding is not based on selected facts viewed blindly from one side of the case, or upon an incomplete or watered down set of facts, but based on the whole record. Etheredge v. Monsanto Co., supra.; Gibson v. Spartanburg School District #3, supra. The undisputed facts in this case are that the crime scene investigation of April 4, 2005 had an immediate and dramatic effect on Martinez. Captain Denton said he noticed a change in her "specifically that day." (R. pp. 137, 139-140). She started crying and had her first nightmare about the little-bitty fingerprints on the gas tank that night. (R. p. 78). Two days later, her family physician noted she had a lot of stress on the job and she broke down crying and told her father about the investigation. (R. pp. 170, 120). She couldn't sleep because of her recurring nightmare. (R. p. 78). She became vulnerable to other emotional events in her life, including the expected death of her cousin who suffered from AIDS, for which her family physician prescribed Xanax medication and he took her out of work for a few days. (R. pp. 170, 172). When she returned to work she passed out, was taken to the emergency room, and hospitalized for uncontrollable high blood pressure. (R. p. 172). Even her family physician realized there was something serious bothering Martinez and commented in his record:

> But I am really at a loss as to explain why this girl's blood pressure is running so high. There has got to be either we are missing the boat somewhere or she is not taking her medicine. It has got to be one or the other, and I have a feeling I am missing the boat on something.

(R. p. 176). When she returned to work again she continued to suffer panic attacks. On August 7, 2005 she suffered a complete mental breakdown. She destroyed her home,

broke the windows of her police cruiser, and was found hiding in the neighbor's bushes. When her father asked what was wrong she wanted him meet the imaginary little girl she was going on a trip with. (R. pp. 80-81, 122). The same imaginary little girl her mother said she was brushing the hair of in the ambulance on the way to the hospital where she was admitted for psychotic delusions including the delusion she was traveling on a steamboat down the Mississippi with an imaginary little girl. (R. pp. 80-81, 129).

The Respondents point out Martinez's initial admission and hospital records did not relate her mental breakdown to the crime scene investigation of April 4, 2005. **This again is true but simply ignores the undisputed evidence which explained this omission. Her treating psychiatrist became concerned "because of her work as a police officer, she** feels **reluctant to open up in group in case there are some people in some way related to open cases she's working on." (R. p. 279). Captain Denton confirmed it is against department policy to discuss death cases.** (R. pp. 145-146). In individual counseling, instituted to address this concern, Martinez finally opened up and all of her treating mental health professionals related her mental breakdown to the crime scene investigation of April 4. 2005.

Not only the substantial evidence, but the only medical evidence presented on the issue of causation, including the opinion of the Appellants' independent consulting psychiatrist, established the investigation of was a contributing proximate cause of Martinez's mental injury.

CONCLUSION

The Appellant requests that the Court of Appeals decision be reversed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No.: 2007-CP-42-1966

Raquel Martinez, Employee, Petitioner

v.

Spartanburg County, Employer, and S.C Association of Counties Self-Insurance Fund, Carrier, Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he served the above-named Respondents, Spartanburg County, Employer, and S.C Association of Counties Self-Insurance Fund, Carrier, with a copy of the Petition for Writ of Certiorari of the Appellant and a copy of the Appendix this 2 day of November, 2011, by depositing copies of same in the United States Mail, postage prepaid, addressed to its attorney of record Richard B. Kale, Jr., Esquire, and Mitchell K. Byrd, Jr., Esquire, Wilson, Jones, Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.

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