THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2009-CP-46-2671
Appellate Case No. 2015-002361

Ida Lord..... .....Plaintiff/Appellant

v.

D&J Enterprises, Inc. d/b/a Cash on the Spot.....Defendant/Respondent

---

[INITIAL] BRIEF OF APPELLANT

Arthur K. Aiken (SC Bar No. 12983)
Robert J. Reeves
Reeves, Aiken & Hightower, LLC
2231 Devine Street, Suite 201
Columbia, SC 29205
Telephone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com
ATTORNEYS FOR APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

STATEMENT OF ISSUES ON APPEAL

I. **DID THE TRIAL COURT ERR IN EXCLUDING THE TESTIMONY OF LORD'S PRIVATE SECURITY EXPERT WHEN THE QUALIFICATIONS OF LORD'S PRIVATE SECURITY EXPERT SHOWED THAT HE WAS BETTER QUALIFIED THAN THE AVERAGE JUROR TO FORM AN OPINION ON THE PRIVATE SECURITY ISSUES IN THIS CASE AND WHEN HIS TESTIMONY MET THE THRESHOLD RELIABILITY REQUIREMENT FOR ITS ADMISSIBILITY?**

II. **DID THE TRIAL COURT ERR IN GRANTING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT WHEN THAT DECISION WAS BASED ON HOLES IN LORD'S CASE THAT WOULD HAVE BEEN FILLED BY THE TESTIMONY OF HER PRIVATE SECURITY EXPERT IF HIS TESTIMONY HAD NOT BEEN ERRONEOUSLY EXCLUDED?**

STATEMENT OF THE CASE

This is a premises liability case that arises out of an incident in which the Plaintiff, Ida Lord (Lord), was shot in the head and back during an armed robbery attempt on business premises controlled by the Defendant, D&J Enterprises, Inc. d/b/a Cash on the Spot (D&J). D&J made a Motion to Dismiss/Summary Judgment. The trial court granted D&J's Motion for Summary Judgment by Order signed October 26, 2011. Lord received written notice of the October 26, 2011 Order on October 28, 2011. On November 7, 2011, Lord filed and served a Motion to Alter or Amend and for Reconsideration of the October 26, 2011 Order. The trial court denied Lord's Motion to Alter or Amend by Order signed on January 30, 2012. Lord received written notice of the January 30, 2012 Order on February 3, 2012. Lord filed and served her Notice of Appeal on February 21, 2012.

Our Supreme Court heard argument on Lord's appeal of the trial court's grant of summary judgment on January 7, 2014. On April 9, 2014, the Supreme Court issued an opinion that reversed the trial court's grant of summary judgment and remanded this case for trial. Ida Lord v. D & J Enterprise, Inc., 407 S.C. 544, 757 S.E.2d 695 (2014). In its opinion, a majority of the Supreme Court found that the record evidence before it created genuine issues of fact on every essential element of Lord's claim against D & J.

The parties tried this case on October 19, 2015 and October 20, 2015. As her second witness, Lord called her private security expert. Robert Monty Clark (Clark). After Lord presented Clark's qualifications, the trial court allowed D&J's attorney to conduct an examination of Clark on his qualifications. After hearing this testimony, the trial court entered an order excluding Clark's testimony on the grounds that Clark was not qualified in the field of private security. (Tr. pp. 107-112)

Lord proffered the remainder of Clark's testimony. At the conclusion of this proffer, the trial court ruled that Clark's testimony was unreliable and that it was inadmissible on that basis as well. (Tr. pp. 122-123) Lord presented the remainder of her evidence and rested. D&J made a motion for directed verdict. The trial court entered an order granting D&J's motion for directed verdict. The trial court based its decision to grant D&J a directed verdict on holes in Lord's case that would have been filled by Clark's testimony if Clark's testimony had not been excluded.

Lord received notice of the trial court's order excluding Clark's testimony and its order granting D&J's motion for directed verdict when they were announced for the record in open court on October 20, 2015. On November 5, 2015, Lord filed and served her Notice of Appeal. Lord's Notice of appeal appeals from the trial court's order excluding Clark's testimony and from the trial court's order granting D & J's motion for directed verdict.

FACTS

"We knew there was, you know, a mad man on the loose" (Tr. p. 43, p. 45, pp. 119-120) Darrell Starnes, CEO of D&J

This case arises out of a February 14, 2008 attempted armed robbery committed by Phillip Watts (Watts). The attempted armed robbery occurred at a check cashing location operated by D&J on Cherry Road in Rock Hill South Carolina. (Cash on the Spot location). (App. pp. 12, 14, 16-19, 26, 82-103) Watts shot Lord, who was a customer at the Cash on the Spot, in the head and back during his February 14, 2008 attempted armed robbery. (Pl. Exh. 3)

Lord is fifty, and she has lived and worked in York County for many years. (Tr. pp. 152-153) Prior to the February 14, 2008 shooting, Lord was by all accounts in good health. (Tr. pp. 152-153 Lord was on the premises of the Cash on the Spot location to pick up some money wired to her using Western Union. (Tr. pp. 139-140) D&J operated check cashing, pay day lending and motor vehicle title lending locations in several cities in South Carolina. (Tr. pp. 37-38)

Since before the February 14, 2008 shooting of Lord, D&J's check cashing operations have operated under the trade name Cash on the Spot. (Tr. p. 38) Cash on the Spot was an appropriate name for the Cash on the Spot location. During an average week in February, that location distributed approximately one hundred thousand ($100,000) dollars in net cash payments on cashed checks. (Tr. pp. 43-44)

Prior to the February 14, 2008 shooting of Lord, the Cash on the Spot location had bullet-proof glass surrounding the clerk's location and a panic button near the clerk's station. (Tr. pp. 39-40 and pp. 45-46) D&J also gave its clerks, one or two of whom typically manned the Cash on the Spot location, panic buttons to wear around their necks so that they could notify the authorities even if they were outside of the protected confines of the bullet-proof glass. (Tr. pp. 45-46) The Cash on the Spot location also had bars on all of its windows and doors. (Tr. p. 39)

Before Watts shot Lord at the Cash on the Spot location, Watts had committed two armed robberies within eight days of each other. (Tr. p. 48 and pp. 117-120) During those two prior armed robberies, Watts shot two store clerks and one unfortunate bystander. (Tr. pp. 117-120) Watts shot the two clerks even though they complied with all of his demands and gave him all the money that they had on hand. (Tr. pp. 117-120)

The first prior armed robbery occurred at a seafood market in Rock Hill, South Carolina on January 28, 2008. (Tr. pp. 117-120) The second prior armed robbery occurred at a convenience store in Fort Mill, South Carolina on February 5, 2008. (Tr. pp. 117-120 Like the

Cash on the Spot, the locations of the two prior robberies were small establishments, likely to have cash and likely to be manned by one or two people. (Tr. pp. 117-120)

Without question, D&J personnel knew about Watts' prior armed robberies and related shootings and appreciated the threat posed by Watts. (Tr. pp. 47-49) The CEO of D&J, Darrell Starnes (Starnes) believed that "there was a mad man on the loose." (Tr. p. 43, p. 55 and pp. 119-120) Starnes also held a special meeting with his Rock Hill clerks to prepare them for a potential armed robbery threat. (Tr. 48-49) Despite their knowledge of and appreciation of the threat posed by Watts, D&J personnel did not have a security guard posted at the entrance of the Cash on the Spot location. (Tr. pp. 49-50) Other businesses in the area posted security guards for the protection of their customers. (Tr. p. 52)

Lord suffered catastrophic brain injuries as a result of the February 14, 2008 shooting. (Pl. Exh. 3) Movement disorders from her neurological injuries make it difficult for Lord to walk. (Tr. pp. 155-156) Lord also has a marked cognitive deficit. (Pl. Exh. 3) Lord's medical expenses alone are crippling. They stand at six hundred ten thousand nine hundred eight ($610,908.00) dollars. (Pl. Exh. 2)

STANDARD OF REVIEW

"The qualification of a witness as an expert is a matter largely within the trial court's discretion and will not be reversed absent an abuse of that discretion." Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 551, 658 S.E.2d 80, 85 (2008). An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997); State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

In deciding a motion for a directed verdict, a trial court must view the evidence and all reasonable inferences that can be drawn from the evidence in the light most favorable to the non-

moving party. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999); Rule 50(a) SCRCP. The trial court may grant the motion only if this analysis yields no inference or inference chain pointing to the moving party's liability. Crossley v. State Farm, 307 S.C. 354, 415 S.E.2d 393 (1992). On review of a trial court's decision on a motion for a directed verdict, an appellate court must apply these same standards. Elam v. South Carolina Department of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004).

ARGUMENT

I. THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF LORD'S PRIVATE SECURITY EXPERT WHEN THE QUALIFICATIONS OF LORD'S PRIVATE SECURITY EXPERT SHOWED THAT HE WAS BETTER QUALIFIED THAN THE JURY TO FORM AN OPINION ON THE PRIVATE SECURITY ISSUES IN THIS CASE AND WHEN THE OPINIONS THAT HE EXPRESSED WERE SUFFICIENTLY RELIABLE FOR THEM TO BE ADMITTED.

A. Admissibility of expert opinion

The admission of expert opinion testimony is governed by Rule 702 of the South Carolina Rules of Evidence: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. The Rule allows qualification of an expert so long as the witness is "better qualified than the jury to form an opinion on the particular subject of the testimony." Mizell v. Glover, 351 S.C. 392, 404, 570 S.E.2d 176 (2002). The same notion governs the range of experts eligible for qualification, and "[a]n expert is not limited to any class of persons acting professionally." State v. White, 382 S.C. 265, 268, 676 S.E.2d 684, 685 (2009)

In determining whether expert opinion testimony is admissible, the trial court must make three preliminary findings. "First, the court must determine whether 'the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the

jury.'" Graves v. CAS Medical Systems, Inc., 401 S.C 63, 74, 735 S.E.2d 650, 655 (2012) (quoting Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010)). "Second, the expert must have 'acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter,' although he 'need not be a specialist in the particular branch of the field.'" Id. "Finally, the substance of the testimony must be reliable." Id.

In this premises liability case, Lord sought to present the opinions of Clark as an expert in private security on two issues- 1. whether D&J's breach its duty to use reasonable care that was owed to Lord, who was one of its check cashing business customers, and 2. whether that breach of duty proximately caused Lord's injuries.

B. Clark's proffered expert opinion testimony should have been admitted under the three pronged analysis.

1. Subject Matter

The first inquiry as to the admissibility of expert opinion testimony is whether "the subject matter is beyond the ordinary knowledge of the jury." Watson, 389 S.C. at 446, 699 S.E.2d at 175. In this case, the subject matter of the proffered expert testimony was an examination of the security situation of a check cashing business at the time of Lord's injuries, the amount and nature of security measures necessary for the reasonable protection of invitees to that business, and the foreseeable effects of having substandard security measures in place. The trial court assumed that the private security issues in this case were beyond the ordinary knowledge of the jury and were, therefore, issues whose subject matter was properly addressed with expert testimony. Lord agrees with the trial court on this point.

2. Expert Qualifications

The second inquiry is whether the expert witness has "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter." Watson, 389 S.C. at 446, 699 S.E.2d at 175. The expert "need not be a specialist in the particular branch of the field." Id. As

long as the witness has acquired "through reason of study or experience" expertise beyond that of the jury, their qualification is not dependent on a particular licensure or profession. See White, 382 S.C. at 374, 676 S.E.2d at 688 ("An expert is not limited to any class of persons acting professionally."). Also, any attacks on the qualifications of the expert on "education or experience goes to the weight of the expert's testimony and not its admissibility." Gooding, 326 S.C. at 252-253, 487 S.E.2d at 598.

In this case, the proffered expert, Clark, had ten years of experience as a police officer, including five years in undercover investigations, and thirty-five years' experience as a private investigator. (Tr. pp. 67-70) His time as a private investigator included five years providing site security consulting for Federal Express.(Tr. pp. 76-77) Clark provided security consulting for the Carolina Panthers organization as a security representative and liaison between that organization and the National Football League for fifteen years and performed site security assessments for Fortune 500 corporations including Boeing and Goodyear. (Tr. pp. 67-70 and pp. 77-78) During his thirty-five years as a private investigator, Clark attended approximately two security-related seminars per year including seminars hosted by various state and federal law enforcement agencies. (Tr. pp. 67-70)

With this knowledge, training, experience, and education, Clark had knowledge superior to that of the jury on the subject matter of his proffered opinion testimony, which was an assessment of the actual security situation of the check cashing business where Lord was injured and an opinion on what security measures a reasonable business owner would have taken under the circumstances. Clark had more than sufficient knowledge, training, experience, and education to be qualified to give his proffered opinions, and the trial court abused its discretion in excluding Clark's testimony on the grounds that he was not qualified in the field in which he was proffered as an expert-private security.

3. Reliability

The third inquiry on the admissibility of expert testimony is whether the expert's testimony is reliable. Graves, 401 S.C. at 74, 735 S.E.2d at 655. On the issue of reliability, testimony is divided into scientific testimony and experience-based or nonscientific testimony. Graves, 401 S.C. at 73-74, 642 S.E.2d at 655-656. Clark's testimony was experience-based, nonscientific testimony. See, White, 382 S.C. at 268, 676 S.E.2d at 688 (2009) (dog handler's testimony nonscientific) and State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338-339 (forensic interviewer's testimony nonscientific). In cases involving the reliability of experience-based or nonscientific expert testimony, our appellate courts have adopted no formulaic approach and have "declined to offer any specific factors for the circuit court to consider." Graves, 401 S.C. at 74-75, 735 S.E.2d at 656. Nevertheless, the trial court must still answer the "threshold questions of qualification and reliability" before admitting expert testimony. White, 382 S.C. at 268, 676 S.E.2d 684, (2009).

The leading case decided in U.S. courts addressing the threshold reliability of a nonscientific expert's testimony is Kumho Tire v. Carmichael, 526 U.S. 137, 119 S.Ct. 1167 (1999). In Kumho, The U.S. Supreme Court concluded that the general principles underlying the requirement of reliability that it had applied to scientific expert testimony in its earlier case, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993), applied to nonscientific testimony as well. As highlighted by the Court in Kumho, The Daubert Court held that reliability "requires a valid connection to the pertinent inquiry as a precondition to admissibility." Daubert, 509 U.S. at 592, 113 S.Ct. at 2796. Where the expert testimony's factual basis, data, principles, methods, or their application are sufficiently called into question, the trial court must determine whether the testimony has "a reasonable basis in the knowledge and experience of the relevant discipline." Daubert, 509 U.S. at 592, 113 S.Ct. at 2796. In other

words, trial courts must "make certain that an expert, whether basing his testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." Kumho, 526 U.S. at 145, 119 S.Ct. at 1171.

Clark testified to two opinions in this case – 1 that in the exercise of reasonable care, D&J should have posted a security guard at the incident location and 2 that if that security guard had been posted at that location, the attempted armed robbery in which Lord was shot in the head and back most probably would not have occurred. (Tran. pp. 84-85). During the proffer of his testimony, Clark testified that in the field of private security "awareness of a threat requires a response." (Tran. p. 120). Clark then identified the characteristics of the incident location-bars on the windows, bars on the doors, clerks encased in bullet proof glass, and a panic button-as indicia of D&J's general awareness of the threat of an armed robbery. (Tran. pp. 121-122) Clark also testified that Starnes' statement that he knew that there was a madman on the loose showed an awareness of the specific threat posed by Watts. (Tr. p. 120) According to Clark, the reasonable response, given D&J's awareness of the general threat of an armed robbery and its awareness of the specific threat posed by Watts, was to post a security guard at the incident location. (Tr. pp. 84-85)

Clark's causation testimony is based on the security concept of deterrence, which he discussed in his proffer. Visible deterrence methods deter crime. As a visible deterrence method, posting a security guard would most probably, as Clark testified, have caused Watts to go "some place else." (Tr. p. 114)

Clark's expert testimony had a valid connection to the private security issues in this case and had a reasonable basis in the field of private security. Clark's expert testimony also had intellectual rigor in that it logically followed form an application of the principles of private

security to the essentially undisputed fact of this case. The trial court abused its discretion in excluding Clark's testimony on the grounds that his testimony was unreliable.

II. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT WHEN THAT DECISION WAS BASED ON HOLES IN LORD'S CASE THAT WOULD HAVE BEEN FILLED BY THE TESTIMONY OF HER PRIVATE SECURITY EXPERT IF HIS TESTIMONY HAD NOT BEEN ERRONEOUSLY EXCLUDED.

On appellate review of an order granting a motion for directed verdict, the appellate court must "affirm ... where there is no evidence on any one element of the alleged cause of action." Guffey v. Columbia/Colleton Regional Hospital, Inc., 364 S.C. 158, 162, 612 S.E.2d 695, 697 (2005). This section II presents the case that considering the record including Clark's erroneously excluded testimony, there is evidence on each of the essential elements of Lord's negligence claim.

A. The essential elements of Lord's cause of action

Lord's negligence claim has the following essential elements – "(1) a duty or obligation to conform to a particular standard of conduct toward another; (2) a breach of that duty; (3) proximate causation; and 4) injury." Daniel v Days Inn of America, Inc., 292 S.C. 291, 295, 356 S.E.2d 129, 131 (Ct. App. 1987).

B There is record evidence that D& J owed a duty to Lord to post a security guard at its business to protect her from a foreseen criminal act by Watts.

1. Lord was an invitee to whom D&J owed a duty to discover risks and to take safety precautions to warn of or eliminate unreasonable risks.

To isolate the duty owed by D&J to Lord, it is first necessary to determine Lord's status on the premises of the Cash on the Spot location. Lord was an invitee on those premises. An invitee is a person on the premises with the permission of the owner for the purpose of benefitting the owner. Parker v Stevenson Oil Co., 245 S.C. 275, 140 S.E.2d 177 (1965). "Business visitors are considered invitees as long as their purpose for entering the property is

either directly or indirectly connected with the purpose for which the property owner uses the land." Hoover v Broom, 324 S.C. 531, 535 479 S.E.2d 62, 65 (Ct. App. 1996). Lord was a business visitor, and, therefore, an invitee to whom D&J owed a duty to discover risks and to take safety precautions to warn of or eliminate unreasonable risks. Bruno v Pendleton Realty Company, 240 S.C. 46, 124 S.E.2d 580 (1962).

2. Since its personnel actually foresaw the risk of an attempted armed robbery and shooting by Watts on its premises, there is evidence that D&J had a duty to post a security guard while the madman was on the loose.

The balancing approach adopted by our Supreme Court in Bass v. Gopal, Inc., 395 S.C. 129, 716 S.E.2d 910 (2011) flows from the observation that "a business owner has a duty to take reasonable action to protect its invitees against the *foreseeable* risk of harm." 395 S.C. at 135, 716 S.E.2d at 913. (emphasis in original). "The balancing approach acknowledges that duty is a flexible concept, and seeks to balance the degree of foreseeability of harm against the burden of the duty imposed." 395 S.C. at 138, 716 S.E.2d at 915 (quoting, McClung v Delta Square Ltd. P'ship, 937 S.W.2d 891, 901 (Tenn. 1996). "As the foreseeability of potential harm increases, so, too, does the duty to prevent against it." 395 S.C. at 139, 716 S.E.2d at 915. "The more foreseeable a crime, the more onerous is a business owner's burden of providing security." 395 S.C. at 138, 716 S.E.2d at 915 (citing, McClung, 937 S.W.2d at 901).

The risk that befell Lord was not merely foreseeable; it was foreseen. D&J's CEO, Starnes knew before the shooting of Lord that there was "a madman on the loose." Starnes also described a meeting that he had with D&J employees in which he reviewed procedures for a possible armed robbery and shooting by Watts. Starnes foresaw the attempted armed robbery and shooting by Watts at the Cash on the Spot location for obvious reasons.

The place of the Cash on the Spot location in fact caused D&J personnel to anticipate an armed robbery attempt with a shooting. Starnes knew about Watts' prior armed robberies and

shootings in Fort Mill, South Carolina and Rock Hill, South Carolina, and he obviously perceived that Watts was a threat because of the proximity of the Cash on the Spot location to the locations of these prior crimes. Otherwise, Starnes would not have reviewed procedures for responding to armed robberies with his Rock Hill clerks before Watts' February 14, 2008 shooting of Ida Lord.

The character of D&J's business at the Cash on the Spot location also caused D&J personnel to anticipate an armed robbery and shooting of Lord. Watts' prior armed robberies and shootings occurred at small businesses, likely to have cash and likely to be manned by either one or two employees. D&J's business at the Cash on the Spot location fits this profile. Armed robbers seek cash, and it goes without saying that a business which have a trade name that includes the word cash and which had weekly net cash payment on cashed checks of $100,000 during the month of the shooting of Lord is the most tempting of targets.

In ordinary times, D&J personnel appreciated the risk of an armed robbery. During most of their work day, D&J's clerks were encased in bullet-proof glass with a ready panic button to notify the authorities. D&J's clerks also wore panic buttons around their necks in case they were outside of their bullet-proof enclosure during an armed robbery. The Cash on the Spot location also had bars on all of its windows and doors. Is it too much to ask of a business to give its customers protection somewhat comparable to that given to employees of that business?

These were not ordinary times in Rock Hill, South Carolina, and Starnes knew it. A serial armed robber who had already shot two compliant store clerks and an innocent bystander was abroad. It is not enough to analyze the foreseeability of a particular risk of third party criminal conduct; it is also vital to assess the gravity of the risk. Obviously, an imminently foreseeable risk that a customer may be slightly injured in a purse snatching is not entitled to as much weight in the balance as a somewhat less foreseeable risk that a customer may be shot or even killed. In this

case, we have a foreseen risk of great bodily injury or even death. This risk weighs heavily in the balance and justifies a requirement that D&J post a security guard.

Starnes believed that "there was a madman on the loose." Despite this belief, D&J did nothing of real substance to protect customers from Watts. Other businesses posted security guards to provide this protection, but D&J did nothing. Given the foreseen risk of a shooting during the course of an armed robbery at its Rock Hill, South Carolina Cash on the Spot location, D&J there is evidence that it had a duty to post a security guard until the threat posed by Watts had passed.

C There is evidence that D&J breached its duty to Lord.

Clark gave his opinion that under the circumstances of this case, a reasonable business owner in the position of D&J would have had a security guard posted at its entrance until Watts was apprehended. (Tr. pp. 84-85) This is evidence that D&J breached this duty by failing to post a security guard

D There is evidence that D&J's breach of its duty to Lord proximately caused her injuries.

"The touchstone of proximate cause in South Carolina is foreseeability of some injury from a defendant's acts or omissions." Daniel, 292 S.C. at 301, 356 S.E.2d at 134. "If the actors conduct is a substantial factor in the harm to another, the fact that he neither foresaw nor should have foreseen the extent of harm or the manner in which it occurred does not negative his liability." Childers v Gas Lines, Inc., 248 S.C. 316, 325, 149 S.E.2d 761, 765 (1966). Clark's testimony presents evidence of proximate cause through his opinion that the February 14, 2008 shooting of Ida Lord most probably would not have occurred if D&J had posted a security guard.

E There is evidence that Lord suffered injuries

Lord suffered an open head injury in the February 14, 2008 shooting. This injury has caused profound neurological complications that make it difficult for Lord to walk, talk and

think. Lord's medical expenses of six hundred ten thousand nine hundred six ($610,908.00) dollars have left her virtually destitute.

CONCLUSION

The trial court erred in excluding the testimony of Lord's private security expert. The trial court then compounded this error by granting D&J's motion for directed verdict because of holes in Lord's case created by the trial court's erroneous exclusion of the testimony of Lord's private security expert. Because of both of these errors, this Court should reverse and remand this case for a new trial.

Respectfully Submitted,

REEVES AIKEN & HIGHTOWER, LLC

By: _____

ARTHUR K. AIKEN
ROBERT J. REEVES
2231 Devine Street, Suite 201
Columbia, South Carolina 29205
Phone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com
ATTORNEYS FOR THE APPELLANT

Columbia, SC
June 26, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2009-CP-46-2671
Appellate Case No. 2015-002361

Ida Lord.....Plaintiff/Appellant

v.

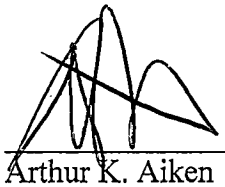
D&J Enterprises, Inc. d/b/a Cash on the Spot.....Defendant/Respondent

---

PROOF OF SERVICE

I certify that, on June 27, 2016, I served the Initial Brief of Appellant and Appellant's Designation of Matter on all other parties by mailing copies of the Initial Brief of Appellant and Designation of Matter to:

Leland B. Greeley
Leland B. Greeley. PA
PO Box 2981
Rock Hill, SC 29732
Attorney for Respondent



Arthur K. Aiken
Reeves, Aiken & Hightower, LLC
2231 Devine Street, Suite 201
Columbia, SC 29205
Telephone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com

Columbia, SC
June 27, 2016