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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Appellate Case No. 2016-000713

RECEIVED

DEC 28 2016

SC Court of Appeals

Do Yeon Kim,

v.

Appellant,

RECEIVED

JAN 09 2017

SC Court of Appeals

County of Richland, Richland
County Sheriff's Department
and Leon Lott in his Official
Capacity as Richland County
Sheriff,

Respondents,

RECORD ON APPEAL

VOLUME I

December 27, 2016

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FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2014CP4006297

Do Yeon Kim

County Of Richland

Richland County Sheriffs Dept

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 25 March 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Daniel Dodson

Thomas Frank Dougall

Robert David Garfield

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Civil Action No.: 2014-CP-40-6297

Do Yeon Kim,

Plaintiff,

v.

County of Richland and
Richland County Sheriff's Department,

Defendants.

CONSENT ORDER

RICHLAND COUNTY
FILED
2015 MAR 18 AM 9:53
JEANETTE W. MCBRIDE
C.C.P. & G.S.

BY AND WITH THE CONSENT OF THE PARTIES, it is agreed that the Defendant Richland County Sheriff's Department (RCSD) is not the proper party defendant in this case. It is further stipulated that the proper defendant is Leon Lott, in his official capacity as Sheriff of Richland County and, therefore, this party should be substituted as the proper party Defendant in this matter pursuant to the South Carolina Tort Claims Act Section 15-78-10 *et. seq.*

IT IS, THEREFORE ORDERED that the Defendant Richland County Sheriff's Department is dismissed with prejudice as a party defendant from this action.

IT IS, FURTHER ORDERED that Leon Lott, in his official capacity as Sheriff of Richland County be substituted as the sole party Defendant in this matter.

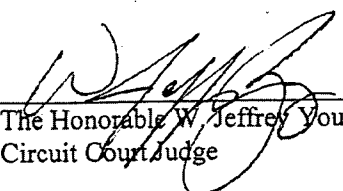
IT IS, FURTHER ORDERED that the Clerk of Court amend the above caption so as to state, "*Do Yeon Kim, Plaintiff, v. County of Richland and Leon Lott, in his official capacity as Sheriff of Richland County, Defendants.*"



SCANNED

Consent Order
C/A No. 14-CP-40-6297
Page Two

AND IT IS SO ORDERED.


The Honorable W. Jeffrey Young
Circuit Court Judge

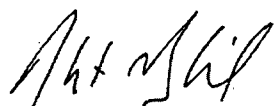
Columbia, South Carolina

March 18, 2015

I CONSENT:

Robert D. Dodson, Esquire
Counsel for Plaintiff

I CONSENT:


Robert D. Garfield, Esq.
Counsel for Defendants

I CONSENT:

Thomas Dougall - With permission of
Thomas F. Dougall, Esq.
Counsel for Do Yeon Kim
as to the Counterclaim

Robert Garfield

Consent Order
C/A No. 14-CP-40-6297
Page Two

AND IT IS SO ORDERED.

The Honorable W. Jeffrey Young
Circuit Court Judge

Columbia, South Carolina

March ____, 2015

I CONSENT:


Robert D. Dodson, Esquire
Counsel for Plaintiff

I CONSENT:

Robert D. Garfield, Esq.
Counsel for Defendants

I CONSENT:

Thomas F. Dougall, Esq.
Counsel for Do Yeon Kim
as to the Counterclaim

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-6297

Do Yeon Kim

County of Richland and

Richland County Sheriff's Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert Dodson, Esq.

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After full consideration, Nisi Additur in the amount of \$4730.13 to the Plaintiff.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of Mar, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of Mar, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-6297

Do Yeon Kim

County of Richland and

Richland County Sheriff's Department
DEFENDANT(S)

PLAINTIFF(S)

Submitted by: Robert Garfield, Esq.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After full consideration, Nisi Additur in the amount of \$2603.14 to the Defendant.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of Mar., 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of Mar., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)

Do Yeon Kim,

Docket No.: 2014-CP-40-

Plaintiff,

versus

COMPLAINT

County of Richland and Richland County
Sheriff's Department,

Defendants.

Plaintiff, complaining of the above named Defendants, would respectfully show unto

the Honorable Court that:

INTRODUCTION

1. This case arises from a wreck that occurred on or about April 24, 2014 on or around an intersection at Alpine Road and Windsor Lake Boulevard in Richland County, South Carolina. At the time of the wreck, a vehicle being operated by Defendants failed to yield right of way by running a red traffic light and caused a wreck.

THE PARTIES, JURISDICTION AND VENUE

2. At the time of the accident Plaintiff was a citizen and resident of Richland County, South Carolina.
3. On information and belief, Defendant, County of Richland, is a municipal corporation organized and existing under the laws of South Carolina.
4. On information and belief, Defendant, Richland County Sheriff's Department, is a political subdivision of the co-Defendant, County of Richland.
5. On information and belief, this Court has jurisdiction over the parties and subject matter to this controversy.

6. On information and belief, venue is properly asserted in Richland County because the wreck at issue occurred in Richland County and because the parties are residents of Richland County.

FACTUAL ALLEGATIONS

7. During the afternoon hours of April 24, 2014, Plaintiff was traveling on Alpine Road in Columbia, South Carolina.
8. On information and belief, a vehicle being operated by an agent and/or employee of one or more of Defendants was traveling on a cross road to Alpine Road, specifically on Windsor Lake Boulevard.
9. The intersection of Alpine Road and Windsor Lake Boulevard is controlled by a traffic light.
10. At the time of the wreck, Plaintiff had a green traffic light and the vehicle being operated by one or more of the named Defendants had a red traffic light.
11. Nonetheless, the vehicle being operated by Defendants approached and entered the intersection despite a red traffic and caused a collision with Plaintiff's vehicle.
12. As a direct and proximate result of the wreck, Plaintiff's car was damaged and he was physically injured.

FOR A FIRST CAUSE OF ACTION

NEGLIGENCE

13. Plaintiff re-alleges the allegations above as if repeated at length herein.
14. In operating a motor vehicle on the public roadways, Defendants and their agents and employees, had a duty to use reasonable and due care in the operation of their vehicle.
15. Defendants further had a duty to comply with all applicable traffic laws.
16. Defendants, through their agents and/or employees, breached these duties in one or more of the following particulars:

- a. In disregarding and running a red traffic light;
- b. In failing to maintain proper control of their vehicle;
- c. In failing to obey posted traffic signals;
- d. In failing to keep its vehicle under control;
- e. In failing to keep a proper lookout;
- f. In failing to abide by applicable traffic laws;
- g. In failing to maintain their vehicle in proper working order;
- h. In failing to apply brakes in order to avoid hitting the Plaintiff;
- i. In failing to yield right of way;
- j. Such other particulars as may be learned during discovery or at the trial of this matter.

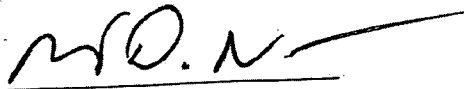
17. As a direct and proximate result of Defendants' negligent, careless, grossly negligent, reckless, and/or unlawful acts as described more fully above, Plaintiff suffered property damage, pain, suffering, mental anguish and discomfort; spent money for medical care and treatment; was unable to enjoy normal life activities; and suffered such other actual, consequential, and/or special damages as may be learned during discovery and/or proven at the trial of this matter.

18. On information and belief, Plaintiff is entitled to judgment against Defendants for all actual, consequential, and special damages.

WHEREFORE, Plaintiff prays that judgment be rendered for the Plaintiff and against the Defendants for all actual, consequential, and special damages (as determined by a judge), the cost of this action, and for such other relief in law or equity as the Court may deem just and proper.

Respectfully submitted,

LAW OFFICES OF ROBERT DODSON, P.A.



Robert D. Dodson
1722 Main Street, Suite 200
Columbia, SC 29201
Phone: (803) 252-2600
Fax: (803) 771-2259
Email: rdodsonlaw@rdodsonlaw.com
Attorney for Plaintiff

Columbia, South Carolina
October 13, 2014

IN THE COURT OF COMMON PLEAS
Civil Action No.: 14-CP-40-6297

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FOR A THIRD DEFENSE

3. The Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

4. That as to the first sentence of Paragraph One (1), the Defendants admit same upon information and belief although expressly deny that the allegations in the Plaintiff's Complaint are meritorious. That as to the second sentence of Paragraph One (1), the Defendants deny same and demand strict proof thereof.

5. That as to Paragraph Two (2), the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, deny same and demand strict proof thereof.

6. That as to Paragraph Three (3), the Defendants admit that Richland County is a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and is under the jurisdiction of said Act.

7. That as to Paragraph Four (4), the Defendants deny same as stated. Further answering, the Defendants deny that RCSD is a legal entity of the State and assert that the proper entity is the Sheriff of Richland County in his official capacity and that his office constitutes a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and is under the jurisdiction of said Act.

8. Paragraph Five (5) is jurisdictional in nature, can neither be admitted nor denied, and the Defendants crave reference thereto. The Defendants further crave reference to the Constitution of South Carolina, the South Carolina Tort Claims Act,

South Carolina Code Ann. § 15-78-10, *et seq.*, and South Carolina Code Ann. § 16-5-60 as to its applicability to this action.

9. Upon information and belief, Paragraph Six (6) the Defendants admit that the acts and/or omissions complained of in the Complaint occurred in Richland County. Further answering, the Defendants crave reference to S.C. Code Ann. § 15-78-100(b), *et seq.* as it pertains to the appropriate jurisdiction and/or venue.

10. That as to Paragraphs Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), and Twelve (12), the Defendants only admit upon information and belief that at the relevant times, RCSD Deputy Kenneth Proffitt was responding to a suspected crime in progress and/or an officer in need of assistance. Further answering and at such time, Deputy Proffitt's patrol vehicle had its blue lights and siren engaged and approached the intersection at issue with an attempt to clear the traffic in the vicinity of the intersection. The Defendants further assert that while Deputy Proffitt was within the intersection and despite the activation of emergency equipment, Plaintiff failed to stop and yield to the police whereupon he collided with Deputy Proffitt's patrol vehicle. Except as stated herein, the Defendants deny these paragraphs in their entirety and demand strict proof thereof.

11. That as to Paragraph Thirteen (13), the Defendants reassert and reallege all previous allegations and defenses.

12. That as to Paragraph Fourteen (14), and Fifteen (15), the Defendants allege upon information and belief that the Plaintiff has set forth legal conclusions which can neither be admitted nor denied and, therefore, crave reference thereto. Further

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answering, the Defendants expressly deny that its employees breached any legal duties owed to the Plaintiff.

13. That as to Paragraphs Sixteen (16), Seventeen (17), and Eighteen (18), the Defendants categorically deny same and demand strict proof thereof. Further answering, the Defendants crave reference to any and all medical records and invoices with respect to any alleged physical and emotional injuries for the most accurate evidence of what is contained therein.

14. Any and all allegations inconsistent with the foregoing are denied. Further, the Defendants assert that the Plaintiff is not entitled to the relief requested in the Complaint, or any other relief against the Defendants.

FOR A FOURTH DEFENSE

15. The Defendant RCSD is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case.

FOR A FIFTH DEFENSE

16. The Defendant Richland County alleges upon information and belief that it is not the proper party defendant in this case since it is not liable for the actions of the Sheriff of Richland County or his deputies, pursuant to the pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 *et. seq.* (1976) as amended as well as the laws of South Carolina.

FOR A SIXTH DEFENSE

17. The Defendants allege that they are immune from suit and liability under the doctrine of sovereign immunity.

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FOR A SEVENTH DEFENSE

18. The Defendants are entitled to immunity under *Long v. Seabrook* and its progeny.

FOR AN EIGHTH DEFENSE

19. The Defendant RCSD, by and through the Sheriff of Richland County, alleges upon information and belief that at all times herein that Deputy Proffitt and/or the Sheriff's deputies were acting within the course and scope of their employment in a discretionary manner, in good faith, without bad faith or malicious motives in the performance of their official duties, and therefore, this Defendant is immune from suit.

FOR A NINTH DEFENSE

20. The Defendants, upon information and belief, allege that any injuries or damages allegedly suffered by the Plaintiff, without admitting same to be true, were due to and caused entirely by the negligence of the Plaintiff which is more than the Defendants' negligence, and that such is a complete bar to the Plaintiff's recovery herein. Further, the Defendants, upon information and belief, allege that if the Plaintiff's negligence was less than the Defendants' negligence, that such negligence should be compared to that negligence of the Defendants, so as to apportion the relative fault as to each party.

FOR A FIRST CAUSE OF ACTION BY WAY OF COUNTERCLAIM

21. The Defendant Richland County reasserts and realleges all previous allegations and defenses stated herein.

22. The Defendant Richland County asserts the damages complained of hereinafter were due to and proximately caused by the negligent, careless, reckless,

willful, wanton and grossly negligent acts or omissions of the Plaintiff as set forth herein below and for which the Plaintiff is liable to this Defendant, *to wit*:

- a. in failing to exercise due care;
- b. in failing to keep a proper lookout;
- c. for such other particulars that will be proved at trial.

23. That as a direct and proximate result of the aforementioned negligent acts of the Plaintiff, this Defendant has suffered damages.

24. WHEREFORE, the Defendant Richland County by way of counterclaim prays for judgment against the Plaintiff,

- a. for actual and consequential damages representing the cost of repair;
- b. for actual and consequential damages from loss of use of the vehicle;
- c. for this Defendant's costs and expenses in bring this counterclaim;
- d. for the Plaintiff's claims against this Defendant be dismissed with prejudice; and
- e. for such other and further relief as this Court may deem just and proper.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

[Signature block on following page]

ADD
#6

DAVIDSON & LINDEMANN, P.A.

BY:


ROBERT D. GARFIELD
1611 Devonshire Drive
Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
e-mail: rgarfield@dml-law.com

Counsel for the Defendants

Columbia, South Carolina

January 2, 2015

106
#7

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Civil Action Number: 14-CP-40-6297

Do Yeon Kim,

Plaintiff,

v.

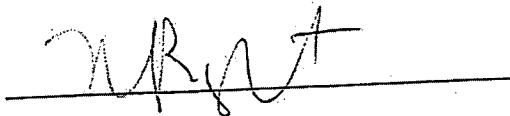
County of Richland and
Richland County Sheriff's Department,

Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Notice of Motion and Motion to Dismiss Defendant RCSD and Answer on Behalf of Defendants and Counterclaim on Behalf of Defendant Richland County** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 2nd day of January, 2015, addressed as follows:

Robert D. Dodson, Esquire
1722 Main Street, Suite 200
Columbia, South Carolina 29201



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

v.

County of Richland and Richland County
Sheriff's Department,

Defendants.

IN THE CIRCUIT COURT

Civil Action No.: 2014-CP-40-06297

REPLY OF PLAINTIFF TO
DEFENDANTS COUNTERCLAIM

(Jury Trial Demanded)

NOW COMES the Plaintiff, Do Yeon Kim, specifically reserving all of her rights to make jurisdictional, Rule 12, or other motions and in reply to the counterclaim by the Defendants, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. Do Yeon Kim denies each and every allegation of the crossclaim not hereinafter specifically admitted, qualified, or explained.
2. The allegations in paragraphs 1 through 19 of Defendants' Answer to the Plaintiff's Complaint do not purport to state any claims against the Plaintiff and, therefore, no responsive pleading is required. To the extent that any of these allegations can be read to state any claim against the Plaintiff they are denied.
3. As to paragraph 20 of the Defendants' Answer and Counterclaim the Plaintiff denies that she was in any way negligent in this matter.

FOR A SECOND DEFENSE

4. As to paragraph 21 of the Answer and Counterclaim the Plaintiff realleges as if fully repeated verbatim herein her foregoing responses above.

REPLY TO COUNTERCLAIM
Z:\TFD\15246185\PLEADINGS\REPLYCC1.DOC

5. Paragraph 22 of the Counterclaim and each and every subparagraph thereunder is denied.

6. Paragraph 23 of the Counterclaim is denied.

7. As to paragraph 24 of the Counterclaim, the Plaintiff denies that the Defendants are entitled to the relief requested therein.

FOR A THIRD DEFENSE

8. Defendants, by and through their employee who was driving the Richland County Sheriff's vehicle at the time of the accident, were negligent, careless, reckless, willful, wanton, and grossly negligent in:

- a. In failing to exercise due care for the safety of other drivers on the roadway;
- b. In failing to keep a proper lookout for other drivers on the roadway;
- c. In failing to obey the traffic laws of South Carolina;
- d. In failing to obey traffic signals; and,
- e. In such other particulars as will be proved at trial.

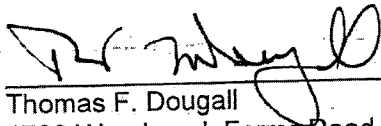
9. Defendants' actions as described in paragraph 8 above were the sole and proximate cause of the damages and injuries sustained by the Plaintiff in this action.

10. As a result of their own negligent, careless, reckless, willful, wanton, and grossly negligent actions, the defendants are barred from any recovery herein under the doctrine of comparative fault.

WHEREFORE, having fully replied the Crossclaim by Defendants and asserted her affirmative defenses, Defendant, Do Yeon Kim prays that the Counterclaim be dismissed be dismissed with prejudice, that she be awarded the costs and reasonable fees associated with this matter, and for such further relief as the court deems just and proper after a jury trial on all issues.

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall
1700 Woodcreek Farms Road
Suite 100
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorney for Do Yeon Kim as to the
Counterclaim

February 2, 2015

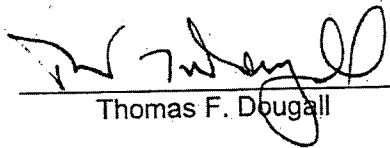
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the foregoing Plaintiff's Reply to Defendants' Counterclaim was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 2nd day of February, 2015 addressed as follows:

Robert D. Dodson, Esq.
Law Office of Robert Dodson
1722 Main Street, Suite 200
Columbia, SC 29201
Attorney for Plaintiffs

Robert D. Garfield, Esq.
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, SC 29202
Attorney for Defendants



Thomas F. Dougall

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

☐ Plaintiff(s),

v.

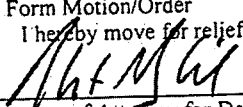
County of Richland and Richland County
Sheriff's Department,

☐ Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-6297

**MOTION & ORDER INFORMATION
FORM COVER SHEET**

Plaintiff's Attorney: Robert D. Dodson, Esquire 1722 Main Street, Suite 200 Columbia, South Carolina 29201		Defendant's Attorney: Robert D. Garfield, Esquire Post Office Box 8568 Columbia, South Carolina 2920-8568 Phone: 803-806-8222 Fax: 803-806-8855	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss		Court Reporter Needed: Yes	
Estimated Time Needed: 15 minutes			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
		January 2, 2015	
Signature of Attorney for Defendants		Date Submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: DATE:	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____			
☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

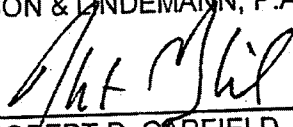
Civil Action No.: 14-CP-40-6297

NOTICE OF MOTION AND
MOTION TO DISMISS ON
BEHALF OF DEFENDANT RCSD

The Defendants' motion is based upon the pleadings filed in this case, the statutory and common law of the State of South Carolina, the rules of court, and such other matters as may be presented to the Court at the time of the hearing.

026

DAVIDSON & LINDEMANN, P.A.

BY: 

ROBERT D. GARFIELD
1611 Devonshire Drive
Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
e-mail: rgarfield@dml-law.com

Counsel for the Defendant RCSD

Columbia, South Carolina

January 2, 2015

10h
#2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

☒ Plaintiff

v.

County Of Richland And Richland County Sheriffs
Department,

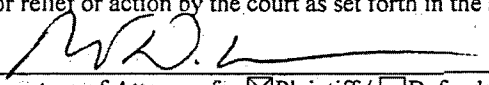
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-40-6297

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Robert D. Dodson, Bar No. 16205 Address: 1772 Main Street, Suite 200 Columbia, SC 29201 phone: 803-252-2600 fax: (803) 771-2259 e-mail: rdodson@rdodsonlaw.com other:		Defendant's Attorney: Robert D. Garfield, Bar No. Unknown Address: Davidson & Lindemann, PA, PO Box 8568 Columbia, SC 29202-8568 phone: 803-806-8222 fax: 903-806-8855 e-mail: rgarfield@dml-law.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Compel Estimated Time Needed: 5 Minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		June 15, 2015 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____			

SCCA/233 (11-03)

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

v.

County of Richland and Richland
County Sheriff's Department,

Defendant.

)
) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO: 2014-CP-40-6297

**NOTICE OF MOTION AND MOTION
MOTION TO COMPEL**

TO: DEFENDANTS AND THEIR ATTORNEY, ROBERT D. GARFIELD,
ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as Attorney for the Plaintiff, will move before the Court ten days after the filing of this Notice of Motion and Motion to Compel, or as soon thereafter as may be scheduled by the Court, for an Order compelling Defendants and their attorney to respond to written discovery. The factual and legal basis for this Motion is set forth below.

On April 3, 2015 Plaintiff's Counsel served interrogatories and requests for production of documents upon Defense Counsel. On May 29, 2015 Plaintiff's Counsel served Defense Counsel with a Rule 11 consultation letter. As of this date, Plaintiff's Counsel has not received any discovery responses from Defense Counsel. Accordingly, Plaintiff seeks an Order from the Court compelling Defendant and his attorney to respond to discovery.

Plaintiff's Counsel certifies that prior to filing this Motion he communicated with Defense Counsel in a good faith effort to resolve the issues raised in this Motion.

Respectfully submitted,



Robert D. Dodson
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, S.C. 29201
Telephone: (803) 252-2600

RICHLAND COUNTY
FILED
2015 JUN 15 PM 05
JEANNETTE W. MORRIS
C.C.P. & G.S.

Fax: (803) 771-2259
Email: rdodson@rdodsonlaw.com
Attorney for Plaintiff

Columbia, South Carolina
June 15, 2015

Law Offices of
ROBERT DODSON, P.A.

1722 Main Street, Suite 200
Columbia, South Carolina 29201

Robert D. Dodson,
Esquire
Attorney at Law
Also Licensed in N.C.



Telephone: 803.252.2600
Facsimile: 803.771.2259

May 29, 2015

Robert D. Garfield, Esquire
1611 Devonshire Drive, 2nd Floor
Columbia, SC 29202

Thomas F. Dougall, Esquire
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29042

RE: **Do Yeon Kim v. County of Richland and Richland County Sheriff's
Department
Civil Action No: 2014-CP-40-6297**

Dear Counsel:

According to our records we have not received discovery responses from you which were served on April 3, 2015.

Please get responses to us within the next 10 business days so that we may avoid filing a Motion to Compel with the Court.

Thank you and please contact me if you have any questions or concerns. With kind regards, I am,

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Dodson'.

Robert D. Dodson

Law Offices of
ROBERT DODSON, P.A.

1722 Main Street, Suite 200
Columbia, South Carolina 29201

Robert D. Dodson,
Esquire
Attorney at Law
Also Licensed in N.C.



Telephone: 803.252.2600
Facsimile: 803.771.2259

April 3, 2015

Robert D. Garfield, Esquire
1611 Devonshire Drive, 2nd Floor
Columbia, SC 29202

Thomas F. Dougall, Esquire
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29042

**RE: Do Yeon Kim v. County of Richland and Richland County Sheriff's
Department
Civil Action No: 2014-CP-40-6297**

Dear Counsel:

Enclosed and hereby served upon you please find Plaintiff's Answers to Defendant's Interrogatories, Plaintiff's Responses to Defendant's Request for Production of Documents, Plaintiff's First Set of Interrogatories to Defendant and Plaintiff's Requests for Production of Documents to Defendants in connection with the above referenced matter.

Thank you and please do not hesitate to contact me should you have any questions or concerns. With kind regards, I am,

Very truly yours,

A handwritten signature in black ink, appearing to read "Brandi Newman".

Brandi Newman
Paralegal to Robert D. Dodson

Enclosures

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-40-6297

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANTS**

**TO: DEFENDANTS AND THEIR ATTORNEYS, ROBERT D. GARFIELD,
ESQUIRE AND THOMAS F. DOUGALL, ESQUIRE:**

YOU ARE HEREBY required to answer the following Interrogatories in writing and under oath pursuant to S.C.R.C.P. 33(b) within thirty (30) days from the date of service hereof; said Interrogatories to be signed by you, the Defendant and/or Defendant's attorney, and to be deemed to continue from the time of service hereof until the time of trial, thereby requiring that any information sought herein shall come to your knowledge or that of you representative or attorney after original Answers hereto have been submitted, shall promptly be transmitted to this party or its counsel.

INTERROGATORIES

1. Give the names and addresses of persons known to the Defendant or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant that relate to the claim or defense in the case.
3. Set forth the names and addresses of all physicians who have treated the Defendant and all hospitals to which the Defendant has been committed in connection with the said injuries and also set forth a statement of all medical costs involved.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

5. Set forth a statement of all other damages claimed to have been sustained by the Defendant.

6. List the names and addresses of any expert witnesses whom the party proposes to use as witnesses at the trial of the case.

7. For each person known to the Defendant or counsel to be witnesses concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

8. For the individual driving Defendant's vehicle at the time of the wreck at issue, give this individual's full legal name, date of birth and social security number.

9. If you claim any party to this action made any statement (written or oral) against that party's interest which you intend to use at the trial of this matter either as part of your case in general or to impeach the party, specifically state:

- a. What you claim such purported admission was;
- b. Identify any and all documents which you claim contain and/or support the alleged admission;
- c. Identify the date(s) of any alleged admission;
- d. Identify the names and addresses of any witness(es) to the alleged admission.

10. If you claim any Plaintiff to this action made any statement (written or oral) which you contend indicates or suggests that the Plaintiff was not injured as a result of the accident at issue, specifically state:

- a. What you claim such purported statement was;
- b. Identify any and all documents which you claim contain and/or support the alleged statement;
- c. Identify the date(s) of any alleged statement;
- d. Identify the names and addresses of any witness(es) to the alleged statement.

11. If you claim any Plaintiff to this action made any statement (written or oral) which you contend indicates or suggests that the Plaintiff contributed to the accident at issue or was in any way at fault for the accident at issue, specifically state:

- a. What you claim such purported statement was;
- b. Identify any and all documents which you claim contain and/or support the alleged statement;
- c. Identify the date(s) of any alleged statement;
- d. Identify the names and addresses of any witness(es) to the alleged statement.

12. List the name and address of each person or entity to which the insurance adjuster (or other like or similar individual) responsible for this case has spoken or written while investigating the matters set forth in Plaintiff's Complaint.

13. List each document, electronic or otherwise, which mentions or refers to the adjuster's contact or the content thereof with each person identified in response to the previous interrogatory.

14. List the name(s), address(es) and telephone number(s) of each individual participating in answering or assisting in anyway with answering these interrogatories.

15. How fast was the Defendant's vehicle traveling at the time of the accident?

16. What was the destination of the driver of Defendant's vehicle at the time of the accident?

17. Where had the driver of Defendant's vehicle been immediately preceding the accident?

18. As a result of the accident at issue, what criminal sanctions or punishments were imposed upon Defendant or the driver of the vehicle?

19. If you contend Plaintiff caused or contributed to the accident at issue, please describe the factual basis for your position.

20. If you contend Plaintiff failed to mitigate his damages, please describe the factual basis for your position and describe what you contend Plaintiff should have done to mitigate his damages.

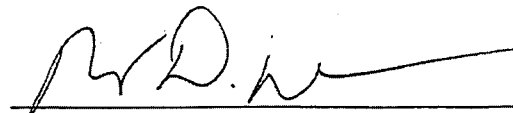
21. If you contend the medical expenses incurred by Plaintiff were not proximately caused by the accident at issue, please describe the factual basis for your assertion.

22. If you contend the medical treatment sought by Plaintiff was not reasonable or necessary please describe the factual basis for your assertion.

23. Describe in detail how you maintain the accident at issue occurred.

These Interrogatories are deemed continuing so as to require supplemental information as it becomes available.

LAW OFFICES OF ROBERT D. DODSON, P.A.



Robert D. Dodson, Esquire
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Phone: (803) 252-2600
Fax: (803) 771-2259
Email: rdodson@rdodsonlaw.com
Attorney for Plaintiff

Columbia, South Carolina

April 6, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

IN THE COURT OF COMMON PLEAS

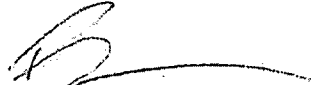
CASE NO.: 2014-CP-40-6297

CERTIFICATE OF SERVICE

I, Brandi Newman, employee of the Law Offices of Robert Dodson, P.A. do hereby certify that on April 6, 2015, I caused to be served a true, correct and accurate copy of Plaintiff's First Set of Interrogatories to Defendant by depositing in United States Mail, postage prepaid, addressed to:

Robert D. Garfield, Esquire
1611 Devonshire Drive, 2nd Floor
Columbia, SC 29202
Attorney for Defendant Richland County Sheriff's Department

Thomas F. Dougall, Esquire
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29042
Attorney for Defendant County of Richland



Brandi Newman, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-40-6297

**PLAINTIFF'S REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
DEFENDANTS**

**TO: DEFENDANTS AND THEIR ATTORNEYS, ROBERT D. GARFIELD,
ESQUIRE AND THOMAS F. DOUGALL, ESQUIRE:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Defendant is hereby required to produce the following documents for inspection within thirty (30) days hereof.

REQUESTS FOR PRODUCTION

1. All repair bills, estimates, reports or other written or prepared documents relating to any claimed damages to personal or real property.
2. All photographs, diagrams, drawings or other similar material relating to any claim or defense.
3. Any and all statements given by either eye witnesses or other possible witnesses to the incident and matters complained of in the Complaint which are in possession of or reasonably available to the Defendant or their attorney, whether written, oral, summarized, recorded on a tape recorder, or otherwise reproduced in any manner relating to the incident as set forth in the Complaint.
4. Copies of any and all documents referenced or listed in response to any interrogatory served by any party.

5. Please produce copies of any and all documents Defendant intends to use at the trial of this case as exhibits, demonstrative evidence, or any other purpose.

6. Please produce copies of all documents obtained by any party or other person or entity or anyone acting on his/her/their behalf via Subpoena Duces Tecum, signed authorization form, or other legal process.

7. Please produce copies of any and all photographs taken of the accident scene, vehicles involved in the accident or otherwise relating to the accident or injuries sustained from the accident.

8. Please produce copies of any and all declarations sheets for insurance related to the Plaintiff or Defendant at the time of the accident.

9. Please produce copies of any and all repair bills, repair orders or repair estimates for any vehicle involved in the accident at issue.

10. Please produce copies of any and all documents related to the criminal prosecution of Defendant or individual driver related to the incident described in the Complaint.

11. Provide the complete personnel file for the individual driving Defendant's vehicle at the time of the wreck.

These requests shall be deemed to be continuing so as to require supplemental responses as additional information becomes available.

LAW OFFICES OF ROBERT D. DODSON, P.A.



Robert D. Dodson, Esquire
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Phone: (803) 252-2600

Fax: (803) 771-2259
Email: rdodson@rdodsonlaw.com
Attorney for Plaintiff

Columbia, South Carolina

April 6, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

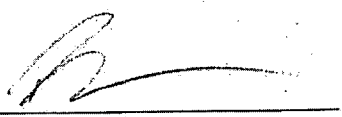
IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-40-6297

CERTIFICATE OF SERVICE

I, Brandi Newman, employee of the Law Offices of Robert Dodson, P.A. do hereby certify that on April 6, 2015, I caused to be served a true, correct and accurate copy of **Plaintiff's First Requests for Production of Documents to Defendant** by depositing in United States Mail, postage prepaid, addressed to:

Robert D. Garfield, Esquire
1611 Devonshire Drive, 2nd Floor
Columbia, SC 29202
Attorney for Defendant Richland County Sheriff's Department

Thomas F. Dougall, Esquire
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29042
Attorney for Defendant County of Richland



Brandi Newman, Paralegal.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CIVIL ACTION NO: 2014-CP-40-6297

Do Yeon Kim,
Plaintiff,

v.

County of Richland and Richland
County Sheriff's Department,

Defendants.

CERTIFICATE OF SERVICE

JEANNETTE W. MORRIS
C.C. & G.S.

2015 JUN 15 PM 3:05

RICHLAND COUNTY
FILED

I, Brandi Newman, employee of the Law Offices of Robert Dodson, P.A. do hereby certify that on June 15, 2015, I caused to be served a true, correct and accurate copy of **Notice of Motion and Motion to Compel** via US Mail, addressed to:

Robert D. Garfield, Esquire
Davidson & Lindemann
PO Box 8568
Columbia, SC 29202-8568
Attorney for Defendants

Thomas F. Dougall, Esquire
Dougall & Collins
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29045
Attorney for Plaintiff


Brandi Newman

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Do Yeon Kim,)

Plaintiff,)

vs.)

County of Richland, et al.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-6297

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Thomas F. Dougall, Bar No. 1729

Address:

1700 Woodcreek Farms Road, Suite 100,
Elgin, South Carolina 29045

Phone: 803-865-8858 Fax 803-865-8944

E-mail: tdougall@dougallfirm.com Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to reform the verdict or for a new trial

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

v.

County of Richland and Leon Lott, in his
official capacity as Sheriff of Richland
County,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

**PLAINTIFF'S
MOTION
TO REFORM THE VERDICT
OR FOR A NEW TRIAL**

Civil Action No. 2014-CP-40-6297

Plaintiff, Do Yeon Kim, through his undersigned counsel, hereby moves, in accordance with Rule 59(a) of the South Carolina Rules of Civil Procedure for an order reforming the jury's verdict¹ or, in the alternative, for a new trial on the issue of damages.

This motion is made on the following grounds:

1. At trial Plaintiff presented uncontrovered evidence of having suffered property damage in the amount of \$9,460.25.
2. The Special Verdict Form returned by the jury does not reflect \$9,460.25 in property damage suffered by Plaintiff. In fact, the jury failed to award Plaintiff any damages on his property-damage claim. *A copy of the Special Verdict Form is attached as Exhibit A.*
3. The jury's finding that no damages to Plaintiff were proven at trial is inconsistent with its affirmative answer to the Special Interrogatory No. 1:
"Do you find that the Defendants County of Richland and Sheriff Leon

¹ "The trial court can correct, reform, or remold . . . a verdict A party seeking amendment of a verdict must lay a proper foundation by a motion for a new trial." *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 724 (Ct. App. 1996).

Lott were negligent and this negligence proximately caused injury to the Plaintiff, Do Yeon Kim?"

4. This Court is vested with the power to correct the verdict to the extent such a correction would express the jury's actual intent. *Id.*
5. This Court may grant a new trial if it finds that the evidence does not justify the verdict. *Id.* 477 S.E.2d at 722.

WHEREFORE, Plaintiff requests this Court to reform the Special Verdict Form in order to cure the verdict's inconsistencies and to reflect the parties' damages proven at trial, or in the alternative, to order a new trial on the issue of damages.

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29045
Tel: (803) 865-8858
Fax: (803) 865-8944
Attorney for Plaintiff Do Yeon Kim

January 28, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

v.

County of Richland and Leon Lott, in
his official capacity as Sheriff of
Richland County,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 14-CP-40-6297

SPECIAL VERDICT FORM

SPECIAL INTERROGATORIES

1. Do you find that the Defendants, County of Richland and Sheriff Leon Lott, were negligent and that the Defendant's negligence proximately caused injury to the Plaintiff, Do Yeon Kim?

☒ YES

☐ NO

GO TO QUESTION 2

2. Do you find that the Plaintiff, Do Yeon Kim, was negligent and that his negligence proximately caused injury to the Defendants, County of Richland and Sheriff Leon Lott?

☒ YES

☐ NO

If you answered **NO** to both question 1 and question 2, then no further deliberation is necessary and you shall not answer any further questions on this verdict form.

If you answered **YES** to question 1 and **NO** to question 2, **GO TO QUESTION 3.**



If you answered **NO** to question 1 and **YES** to question 2, **GO TO QUESTION 4.**

If you answered **YES** to both question 1 and question 2, **GO TO QUESTION 5.**

3. If you answered **YES** to question 1 and **NO** to question 2, please state the total amount of damages, if any, sustained by the Plaintiff, Do Yeon Kim.

\$ _____

This ends your deliberation; do not answer any more questions.

4. If you answered **NO** to question 1 and **YES** to question 2, please state the total amount of damages, if any, sustained by the Defendant, County of Richland and Sheriff Leon Lott.

\$ _____

This ends your deliberation; do not answer any more questions.

5. (Answer only if you answered **YES** to both question 1 and question 2):

Taking the combined negligence that proximately caused the parties' injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff, Do Yeon Kim, and what percentage is attributable to the Defendants, County of Richland and Sheriff Leon Lott?

(The percentages must add up to 100%)

Plaintiff	<u>50</u>	%
Defendant	<u>50</u>	%
Total		100 %

- 5(a) If the Plaintiff Do Yeon Kim's negligence was 50% or less, determine the total amount of his damages proved at trial (do not reduce this number by his percentage of negligence):

\$ 1,500⁰⁰

GO TO QUESTION 5(b)

5(b) If the Defendants County of Richland and Sheriff Leon Lott's negligence was 50% or less, determine the total amount of their damages proved at trial (do not reduce this number by their percentage of negligence):

\$ 0⁰⁰

This ends your deliberation.

Carol P. Rountree
FOREPERSON for the unanimous Jury

Columbia, South Carolina

January 21, 2016

**WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF BY
A KNOCK ON THE DOOR.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

Plaintiff,

v.

County of Richland and Leon Lott, in his
official capacity as Sheriff of Richland
County,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

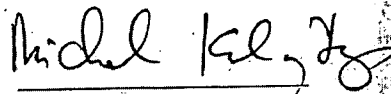
CERTIFICATE OF SERVICE

Civil Action No. 2014-CP-40-6297

I, the undersigned employee of Dougall & Collins, attorneys for Plaintiff, do hereby certify that on January 28, 2016, I served Plaintiff's Motion to Reform the Verdict or for a New Trial on all counsel of record by placing copies of same in the United States mail, first class, postage prepaid, addressed as follows:

Robert D. Garfield, Esq.
DAVIDSON & LINDEMANN, PA
Post Office Box 8568
Columbia, South Carolina 29202-8568
ATTORNEY FOR DEFENDANTS

Robert D. Dodson, Esq.
LAW OFFICES OF ROBERT DODSON, PA
1722 Main Street, Suite 200
Columbia, South Carolina 29201-2851
ATTORNEY FOR PLAINTIFF


Michal Kalwajtys

January 28, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

☒ Plaintiff

v.

County Of Richland And Richland County Sheriff's

Department,

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-40-6297

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Robert D. Dodson, Bar No. 16205
Address:
1772 Main Street, Suite 200
Columbia, SC 29201
phone: 803-252-2600 fax: (803) 771-2259
e-mail: rdodson@rdodsonlaw.com other:

Defendant's Attorney:
Robert D. Garfield, Bar No. Unknown
Address:
Davidson & Lindemann, PA, PO Box 8568
Columbia, SC 29202-8568
phone: 803-806-8222 fax: 903-806-8855
e-mail: rgarfield@dml-law.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Post Trial Motions

Estimated Time Needed: 20 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 21, 2016

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions.
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Do Yeon Kim,

Plaintiff,

Vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

Civil Action No. 2014-CP-40-6297

NOTICE OF MOTION AND MOTION
FOR NEW TRIAL NISI ADDITUR
OR IN THE ALTERNATIVE
JUDGMENT NOTWITHSTANDING THE
VERDICT
OR IN THE ALTERNATIVE
A NEW TRIAL; MOTION FOR COSTS
AND TRANSLATOR'S FEES

TO: DEFENDANTS AND THEIR ATTORNEY, ROBERT D. GARFIELD,
ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as Attorney for the Plaintiff, will move before the Court ten days after the filing of this Notice of Motion and Motion for New Trial Nisi Additur or in the Alternative Judgment Notwithstanding the Verdict or In the Alternative a New Trial; Motion for Costs and Translator's Fees, or as soon thereafter as may be scheduled by the Court, for a new trial nisi additur or in the alternative judgment notwithstanding the verdict or in the alternative a new trial and will seek to have Defendants taxed with the cost of the translator's fees. The factual and legal basis for the motion is set forth below.

MOTION FOR NEW TRIAL NISI ADDITUR

"When the verdict is so grossly excessive or inadequate that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge and this Court to set aside the verdict absolutely." Riley v. Ford Motor Company, (S.C. 2015) citing Easler v. Hejaz Temple, 285 S.C. 348,

356, 329 S.E.2d 753, 758 (1985). In this case, the jury's damage award of \$1,500 bares no rational relationship to the actual damages Plaintiff presented at trial. Like the Riley case, many of Plaintiff's damages in this case were uncontested by Defendants. Like Defendants in Riley, Defense Counsel's "trial strategy was not to 'actively contest...damages but instead to focus its efforts on the issue of liability.'" At least in part, the jury disagreed with Defendants as to liability but the jury's award of damages bares no rational relationship to the actual damages Plaintiff sustained at trial.

At trial Plaintiff introduced evidence of property damage as follows:

Repair Cost - \$8,152.76 (Plaintiff's Exhibit 10);

Tow Charges - \$205.00 (Plaintiff's Exhibit 9);

Rental Car Charges - \$1,102.49 (Plaintiff's Exhibit 11).

These exhibits were admitted without objection. Plaintiff also testified about the damage to his vehicle and introduced a photograph showing extensive damage to his pick-up truck caused by the wreck (Plaintiff's Exhibit 2). Defendants never offered contradictory evidence of property damage. In fact, all the witnesses who testified indicated significant property damage to the Plaintiff's vehicle. At trial, Defense Counsel never questioned the Plaintiff on cross examination or argued to the jury that these damages were inflated or not proximately caused by the wreck.

Similarly, with regard to Plaintiff's personal injuries Plaintiff introduced the following evidence of medical bills and charges:

EMS bill - \$51.05 (Plaintiff's Exhibit 3);

Richland Chiropractic Center \$60.00 (Plaintiff's Exhibit 4);

Sisters of Charity Providence Hospitals \$1,118.20 (Plaintiff's Exhibit 5);

Emergency Physician Statement \$624.00 (Plaintiff's Exhibit 6);

Pitts Radiology - \$35.00 (Plaintiff's Exhibit 7);

Prescription Medications/Rite Aid - \$19.14 (Plaintiff's Exhibit 8).

With the exception of a \$7.58 prescription cost, each of these bills was for medical care and treatment he received on the day of the wreck or the day after the wreck.

The jury's \$1,500.00 verdict is simply inconsistent with Plaintiff's property damage which totaled \$9,460.25 or Plaintiff's medical bills which totaled \$1,907.39. Respectfully, it is incumbent on this Court to correct the injustice done in this matter by awarding Plaintiff the total amount of his property damage and total amount of his medical bills plus a reasonable and appropriate amount of money for pain and suffering.

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR IN THE

ALTERNATIVE MOTION FOR A NEW TRIAL

A trial "judge has the power to order a new trial whenever necessary to prevent injustice." James F. Flanagan and Oliver Ellsworth, South Carolina Civil Procedure, Third Edition (2010), p. 484. The court may grant a new trial for prejudicial errors committed during the trial. "If, after the verdict and upon reflection, the court determines that that there was an error, properly noted by counsel at the time, in the admission or exclusion of evidence, or the instructions, or in other aspects of the trial such as jury selection, the court may order a new trial not only as a matter of fairness but to avoid an unnecessary appeal followed by a remand for the new trial." *Id.* at p. 485. With all due respect to His Honor, the court failed to admit two crucial pieces of evidence concerning liability that should have been admitted and considered by the jury. Further, the court charged the jury on S.C. Code Ann §56-5-760 when that section of the code was not

applicable in this case based upon the testimony and other evidence admitted at trial. For clarity, each issue is discussed below separately.

Excluded Evidence

At trial, Plaintiff attempted to introduce the TR 310 report prepared by Trooper Altman. As this Court is aware, ordinarily such reports are inadmissible because such reports are created pursuant to S.C. Code §§ 56-5-1260 through 56-5-1280. Thus, under §56-5-1290 and SCRE, Rule 803(8) they are not ordinarily admissible. In this case, however, the TR 310 report was prepared under a different code section, S.C. Code Ann. § 56-5-765. That code section mandates that the Department of Public Safety prepare a written report whenever there is a traffic collision between a law enforcement agency that results in injury or death. S.C. Code § 56-5-1290 and SCRE, Rule 803(8) are silent about excluding these reports from evidence. In short, neither the Code nor the Rules of Evidence exclude reports prepared pursuant to S.C. Code Ann. § 56-5-765. With all due respect to His Honor's ruling at trial, evidence and testimony concerning the contents of the report should have been admitted at trial because such evidence was properly admissible under SCRE, Rule 803(8).

Additionally, the Court excluded the testimony of an eye witnesses, Sunny Fain, on the ground that Ms. Fain was not identified as a witness until the Plaintiff's deposition on December 30, 2015. At a pre-trial motions hearing Defense Counsel fully admitted that he had spoken with Ms. Fain about the wreck at issue. At no point had Defendants attempted to depose Ms. Fain by issuing her a subpoena or Notice of Deposition. At no point did Defendants move to have the case continued to allow them to depose Ms. Fain. Even the court and His Honor made reference to allowing Defense Counsel to depose

Ms. Fain at lunch, since she was present in the courtroom and willing to testify. Nonetheless, the Court ultimately excluded Ms. Fain altogether.

The exclusion of the TR 310 report (and testimony concerning its content) and Ms. Fain's testimony was prejudicial to Plaintiff because the primary issue at trial was liability and who was at fault for the wreck. Essentially, each of the parties blamed the other for causing the wreck. Evidence in the TR 310 report and Ms. Fain's testimony were crucial to the issue liability because they came from witnesses who were not parties (or employees or former employees of parties). With due care and consideration to His Honor's evidentiary rulings, the jury should have been allowed to consider this evidence and testimony. For these reasons, the Court should grant a new trial if it ultimately decides to deny Plaintiff's Motion for a New Trial Nisi Additur.

Jury Charge under S.C. Code §56-5-760

The Court charged the jury on S.C. Code § 56-5-760. The jury should not have been instructed on this statute because the prerequisite for application of the statute was not met in this case based on all the facts and evidence at trial.

As this Court is aware, S.C. Code § 56-5-760 allows an emergency vehicle to run a red traffic light only "when responding to an emergency call..." All of the testimony at trial showed that Officer Proffitt and the other officers who responded to Officer Voyles were responding to a request for backup at a routine traffic stop. This was not an emergency. In fact, Officer Voyles specifically indicated that she was "OK for now." While Sheriff Lott and other defense witnesses tried to manufacture an actual emergency by resorting to the general danger officers might face on a traffic stop, the facts in this case show that Officer Voyles pulled over a vehicle for suspicion of marijuana and

nothing more. She called for backup because there two male suspects in the vehicle but there was no emergency. The suspects never threatened Officer Voyles. The suspects did not possess weapons. While appropriate to call for backup, there simply was no emergency that Officer Proffitt was responding to. In fact, the other two officers who responded admitted they were not running their lights and sirens because there was not an emergency. Officer Proffitt explained his position by indicating he thought there was an emergency. His thoughts on the situation, however, do not meet the requirements of S.C. Code § 56-5-765 which requires an emergency and not the subjective thoughts of an emergency.

Without application of S.C. Code § 56-5-765 the case becomes simple: a driver ran a red light and collided with another vehicle who had a green light. On this point, there was no contradiction in the evidence. Accordingly, the Court should have directed a verdict for the Plaintiff on liability: "Where, as here, a driver enters the favored highway, knowing his view is obstructed and he cannot see if there is oncoming traffic, we find such a driver negligent as a matter of law." Miller v. Faerrellgas, 392 S.C. 295, 299, 709 S.E.2d 616, 618 (2011).

Notwithstanding the excluded evidence that the jury did not consider and the jury charge on S.C. Code § 56-5-765, the jury's verdict in this case was against the weight of evidence. Not only did the jury fail to award damages to the Plaintiff that were consistent with the uncontested evidence and testimony at trial, the jury's finding that the Plaintiff was 50% at fault for the wreck is simply inconsistent with the law and evidence. For these reasons, Plaintiff moves for new trial nisi additur, or in the alternative judgment notwithstanding the verdict or in the alternative a new trial.

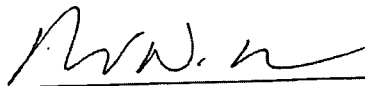
MOTION FOR COSTS AND TRANSLATOR'S FEES

In addition to taxable costs under Rule 54, SCRCP, Rule 43(f) provides:

"When a witness does not speak the English language sufficiently to testify, the court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more the parties as the court may direct..."

In addition to the taxable costs, Plaintiff seeks an Order from the court taxing Defendants with the cost of the translator for trial. A copy of the translator's bill will be submitted once received.

Respectfully submitted,



Robert D. Dodson
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, S.C. 29201
Telephone: (803) 252-2600
Fax: (803) 771-2259
Email: rdodson@rdodsonlaw.com

Attorney for Plaintiff

Columbia, South Carolina
January 28, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Do Yeon Kim,

Plaintiff,

Vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

Civil Action No. 2014-CP-40-6297

CERTIFICATE OF SERVICE

2016 JAN 28 PM 2:40
JEANETTE W. MACBRIDE
C.C. & S.

RICHLAND COUNTY
FILED

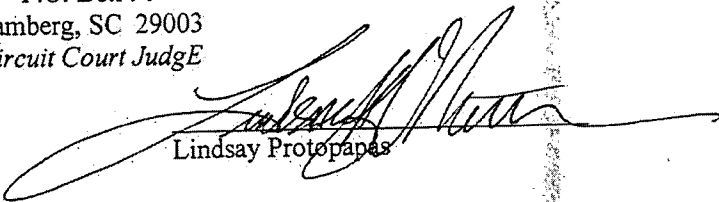
I, Lindsay Protopapas, employee of the Law Offices of Robert Dodson, P.A. do hereby certify that on January 26, 2016, I caused to be served a true, correct and accurate copy of NOTICE OF MOTION AND MOTION FOR NEW TRIAL NISI ADDITUR OR IN THE ALTERNATIVE JUDGMENT NOTWITHSTANDING THE VERDICT OR IN THE ALTERNATIVE A NEW TRIAL; MOTION FOR COSTS AND TRANSLATOR'S FEES via US Mail, addressed to:

Robert D. Garfield, Esquire
Davidson & Lindemann
PO Box 8568
Columbia, SC 29202-8568
Attorney for Defendants

Thomas F. Dougall, Esquire
Dougall & Collins
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29045
Attorney for Plaintiff

The Honorable Doyet A. Early
P.O. Box 90
Bamberg, SC 29003
Circuit Court Judge

This 28th Day of January, 2016


Lindsay Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Do Yeon Kim,

☐ Plaintiff,

v.

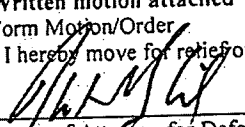
County of Richland and Leon Lott, in his official
capacity as Sheriff of Richland County,

☒ Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-6297

MOTION & ORDER INFORMATION
FORM COVER SHEET

Plaintiff's Attorney: Robert D. Dodson, Esquire 1722 Main Street, Suite 200 Columbia, South Carolina 29201 Phone: 803-252-2600 Fax: 803-771-2259 E-mail: rdodson@rdodsonlaw.com Other:		Defendant's Attorney: Robert D. Garfield Address: 1611 Devonshire Drive, Second Floor Post Office Box 8568 Columbia, South Carolina 29202-8568 Phone: 803-806-8222 Fax: 803-806-8855 E-Mail: rgarfield@dml-law.com ; Other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Conditional Motion for New Trial Nisi Additur on Behalf of Defendants</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: ☒ Yes / ☐ No			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for Defendant(s) <u>February 1, 2016</u> Date Submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: DATE:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ SCCA/233 (11-03)			

) IN THE COURT OF COMMON PLEAS

Civil Action No.: 2014-CP-40-6297

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**NOTICE OF MOTION AND
CONDITIONAL MOTION
FOR NEW TRIAL NISI ADDITUR
ON BEHALF OF DEFENDANTS**

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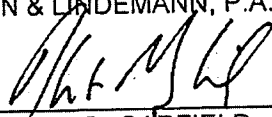
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4. The Special Verdict Form returned by the jury does not reflect \$5206.28 in property damage suffered by Defendants.

5. In light of the jury's finding in Special Interrogatory No. 5 that Plaintiff was responsible for fifty-percent (50%) of the negligence proximately causing the collision, Defendants would be properly entitled to fifty-percent (50%) of the property damage as proven at trial.

Consequently, to the extent that this Court considers and rules upon Plaintiff's request for additur, the Defendants respectfully contend they are entitled to \$2,603.14, which is fifty-percent (50%) of the \$5206.28 property damage as asserted in its counterclaim.

DAVIDSON & LINDEMANN, P.A.

BY: 

ROBERT D. GARFIELD
TODD R. FLIPPIN
1611 Devonshire Drive
Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendants

Columbia, South Carolina

February 1, 2016

ADG
#2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Civil Action Number: 14-CP-40-6297

Do Yeon Kim,

Plaintiff,

v.

County of Richland and Leon Lott, in his
official capacity as Sheriff of Richland
County,

Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Cover Sheet and Notice of Motion and Conditional Motion for New Trial Nisi Additur on Behalf of Defendants** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 1st day of February, 2016, addressed as follows:

Robert D. Dodson, Esquire
1722 Main Street, Suite 200
Columbia, South Carolina 29201

Thomas F. Dougall, Esquire
Dougall & Collins
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29042

Shelley S. Stafford

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF RICHLAND } IN THE COMMON PLEAS COURT
3
4 Do Yeon Kim, }
5 Plaintiff, } TRANSCRIPT OF RECORD
6 -vs- } 2014-CP-40-6297
7 County of Richland and }
8 Richland County Sheriff's }
9 Department, }
10 Defendants. } January 20 and 21, 2016
11 } Columbia, South Carolina

12 B E F O R E:

13 HONORABLE DOYET A. EARLY, JUDGE; and a jury

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

15 ROBERT DODSON, ESQUIRE
16 Attorney for the Plaintiff

17 THOMAS FRANK DOUGALL, ESQUIRE
18 Attorney for the Plaintiff/Defendant

19 ROBERT W. GARFIELD, ESQUIRE
20 TODD FLIPPIN, ESQUIRE
21 Attorneys for the Defendants
22 Richland County and Leon Lott

23 BRITTON LESESNE ALL, ESQUIRE
24 Attorney for the Defendant
25 Richland County Sheriff's Department

Linda D. Moffitt
Bethanie Creppon
Circuit Court Reporters

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1		<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	P-1	Photograph		60
4	P-2	Photograph		60
5	P-3	Payment requested		60
6	P-4	Itemized statement		60
7	P-5	Bill		60
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Photograph		61
D-2	Photograph		61
D-3	Photograph		61
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1 (Proceedings January 20, 2016)

2 THE COURT: This next case is Kim vs. County of
3 Richland, 14-CP-6297 -- 40-6297.

4 All right. Plaintiff ready to proceed? Gentlemen?

5 MR. DODSON: Yes, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MR. GARFIELD: We are, Your Honor. Just a reminder,
8 we have a couple of housekeeping matters, but, yes, sir, we
9 are ready.

10 THE COURT: All right. Help me out, and my court
11 reporter.

12 All right. Gentlemen, from the plaintiff, please
13 identify yourselves for me. Starting with the bow tie.
14 Your name.

15 MR. DOUGALL: Your Honor, my name is Thomas Dougall.
16 I am representing Mr. Kim on the counterclaim by the
17 Richland County Sheriff's Department.

18 MR. DODSON: Robert Dodson. I represent the
19 plaintiff.

20 THE COURT: R-O-B-E-R-T?

21 MR. DODSON: Yes, sir. D-O-D-S-O-N.

22 THE COURT: D-O what?

23 MR. DODSON: D-O-D-S-O-N.

24 THE COURT: Who is your -- do you have a family in the
25 legal professional?

1 MR. DODSON: No, sir. Some people do get me confused
2 with another attorney named Ronald Dodson.

3 THE COURT: Yeah.

4 MR. DODSON: But, yeah, it's fortunate for him that
5 there's no relationship.

6 MR. GARFIELD: Good morning, Your Honor. Robert
7 Garfield for the defendants, Richland County Sheriff Leon
8 Lott and Richland County.

9 Just one thing. Mr. Dougall mentioned that there was
10 a counterclaim. The counterclaim is actually asserted by
11 Richland County since they're actually the owner of the
12 patrol vehicle, not the sheriff's department.

13 And with me --

14 MR. FLIPPIN: I'm Todd Flippin, Your Honor. T-O-D-D,
15 F as in Frank, L-I-P as in Paul, P-I-N.

16 THE COURT: Flippin. As it sounds.

17 MR. FLIPPIN: Yes, Your Honor.

18 MR. GARFIELD: And with me at counsel table, Your
19 Honor, is Britton All who is legal counsel for the
20 sheriff's department.

21 THE COURT: So everyone has a full disclosure. Ms.
22 All was my law clerk several years ago. I try cases with
23 all of my law clerks, all of them solicitors, etc., etc.

24 Anybody have any problem with that?

25 MR. DODSON: No objection from the plaintiff.

Jury qualification

1 THE COURT: All right. Here is what I propose.

2 Let's get the jury in and get the jury struck so I can
3 let those who are not selected go about their business.
4 Once we get them selected, then we'll take a few minutes to
5 do the motions in limine, and then we'll get right in the
6 trial of the case.

7 So bring the jury panel in.

8 Ma'am, if you will, have a seat right here behind you.
9 Somebody help her.

10 (The following takes place in the presence of the jury
11 venire.)

12 THE COURT: Good morning, ladies and gentlemen. How
13 are you all today?

14 Let me tell you where we stand. We've got one trial
15 that we're going to select a jury on this morning. I'll
16 need -- gentlemen, y'all, ladies, gentlemen, y'all go with
17 less than 12 if I lose somebody; or do we need alternates?
18 Plaintiff?

19 MR. DODSON: Go with 11 will be fine.

20 THE COURT: How about ten if I lose two?

21 MR. DODSON: Okay.

22 THE COURT: Gentlemen? Waive the alternates?

23 MR. GARFIELD: It should -- normally would like one.
24 This could go into tomorrow, Your Honor, but just whatever
25 the Court's pleasure is.

Jury qualification

1 THE COURT: No. I'll get an agreement with you all.
2 I'll need 12 jurors and two alternates. That's 14 of
3 you. I will select that jury here in just a few minutes.

4 I've got to ask you a few questions. Once that is
5 done, then the rest of you who are not selected will go
6 back down to the jury assembly room to receive
7 instructions. I know we don't have anything else today, is
8 that correct, Mr. Truluck?

9 THE CLERK: Correct, Your Honor.

10 THE COURT: So you'll be released for the balance of
11 today. You'll receive instructions about tomorrow, but I'm
12 from out of town. I hate to make this representation. I
13 don't think there will be another case to try, but they'll
14 give you those instructions in the jury assembly room.

15 The case we're going to try here today is what we call
16 in the legal profession an automobile wreck case, involves
17 a collision at an intersection. And I'll let, obviously,
18 the lawyers tell you all about it. But I have to select a
19 jury, and so let me ask you a few questions.

20 If any of these questions apply to you, please stand,
21 identify yourself by name and number, and then we'll answer
22 the question.

23 This case is entitled -- I'm sorry if I mispronounce
24 this, Mr. Dodson, but is it Do -- Do Yeon Kim?

25 MR. DODSON: Do Kim, Your Honor.

Jury qualification

1 THE COURT: Do Kim.

2 Mr. Kim is seated in the courtroom.

3 Have him stand, please, and face the jury panel.

4 Stand and face the panel. Thank you.

5 (Whereupon, the plaintiff stood.)

6 THE COURT: Thank you. No.

7 Mr. Kim, ladies and gentlemen, speaks Korean. We will
8 have an interpreter here today in just -- you may -- you
9 may -- Mr. Kim. We'll have an interpreter when he
10 testifies. That will be the only little hitch in the trial
11 but that's -- he speaks Korean, and, as I understand, does
12 not understand too much English. Sort of broken. Is that
13 a fair way of saying it?

14 MR. DODSON: Yes. That's fair, Your Honor.

15 THE COURT: He is bringing a lawsuit against the
16 County of Richland and the Richland County Sheriff's
17 Department.

18 It involves an automobile collision between a deputy
19 employed by Richland County driving a vehicle owned by the
20 County of Richland.

21 Mr. Kim is -- will be asking the jury or trying to
22 convince the jury by the preponderance or greater weight of
23 the evidence that he received some injuries and damage to
24 his vehicle.

25 Out of the same wreck Richland County Sheriff's

Jury qualification

1 Department and the County of Richland has filed a
2 counterclaim back against Mr. Kim saying, no, he was at
3 fault and he owes us the damage done to our patrol vehicle.

4 So you'll be asked to decide these issues. I don't
5 think this case will take very long. We will either get
6 through late this afternoon or surely midday tomorrow. So
7 it's not going to be a long case.

8 Let me ask you a few questions. Is any member of the
9 jury panel related by blood or marriage, or do you now or
10 have you in the past had a close personal or social
11 relationship with Mr. Kim, the gentleman who just stood and
12 faced the jury panel?

13 (No response.)

14 THE COURT: Do I have any member of the -- have any
15 members of the jury panel who is employed or your immediate
16 family employed by the Richland County Sheriff's Department
17 or employed by the County of Richland? If so, please
18 stand.

19 Yes, sir, your name and number.

20 JUROR NO. 231: Samuel Scheib, 231. Would that
21 include Richland county schools?

22 THE COURT: No.

23 Now, I'm going to read out a list of the prospective
24 witnesses in the trial of the case. If any of the
25 witnesses are in the courtroom, please stand.

Jury qualification

1 Kenneth Proffitt.

2 (Whereupon, the witness stood.)

3 THE COURT: Thank you.

4 William Weaver.

5 (Whereupon, the witness stood.)

6 THE COURT: Thank you.

7 Kenneth Tucker.

8 MR. GARFIELD: It's probably a scribner's error. It'd
9 be Kenneth Matt Taylor, Your Honor. My apologies.

10 THE COURT: Kenneth Matt Taylor. I'm reading it like
11 they gave it to me.

12 Kristin Boyles -- Ms. Boyles.

13 (Whereupon, the witness stood.)

14 THE COURT: Thank you.

15 Kelvin Ashe; Sheriff Leon Lott; Bill Peters; Trooper
16 J. Altman.

17 You didn't give me a witness list. Does that cover
18 everybody?

19 MR. DODSON: Sunny Fain is the other witness.

20 THE COURT: Who?

21 MR. DODSON: Sunny Fain.

22 THE COURT: B-A-I-N?

23 MR. DODSON: F-A-I-N.

24 THE COURT: Fain. F-A-I-N. Is she in the courtroom?

25 MR. DODSON: Yes.

Jury qualification

1 THE COURT: Where?

2 (Whereupon, the witness stood.)

3 THE COURT: Thank you.

4 Question: Any member of the jury panel related by
5 blood or marriage, or do you now or have you in the past
6 had a close personal or social relationship with any of the
7 witnesses, potential witnesses, that I just named? If so,
8 please stand.

9 Yes, ma'am. Your name and number, please.

10 JUROR NO. 6: Amy Alimohamed, Juror 6. I'm in
11 organizations with Sheriff Lott.

12 THE COURT: Okay. Well, it's not unusual to be on a
13 jury panel and know some of the parties, particularly in
14 the smaller counties. And the fact that you are in certain
15 organizations that the sheriff is also a member of, would
16 that in any way, ma'am, preclude or keep you from being a
17 fair and impartial juror in the trial of this case,
18 listening solely to the evidence that is presented and
19 making your decision based on that evidence and the law
20 applicable to it?

21 JUROR NO. 6: No.

22 THE COURT: Thank you. You may be seated.

23 Yes, ma'am. Your name and number.

24 JUROR NO. 34: Bridgett Brown, Judge, No. 34. I had
25 cases with Deputy Boyles. I also had cases with Ms. All.

Jury qualification

1 THE COURT: What kind of cases?

2 JUROR NO. 34: I'm a defense attorney, Judge, in --

3 THE COURT: Ma'am?

4 JUROR NO. 34: I'm a defense attorney, Your Honor, and
5 when Ms. All was on the other side of the aisle we had
6 cases with each other.

7 THE COURT: And the fact that you are a lawyer here
8 in -- practicing in Columbia --

9 JUROR NO. 34: Yes, sir.

10 THE COURT: -- and surrounding areas that you,
11 obviously, as most lawyers, come in contact with members of
12 law enforcement and members of the people who work with
13 Richland County, would that in any way, ma'am, preclude or
14 keep you from being a fair and impartial juror in the trial
15 of this case?

16 JUROR NO. 34: No, Your Honor.

17 THE COURT: Thank you. You may be seated.

18 Yes, ma'am.

19 JUROR NO. 158: My name is Sandra McClellan. I'm
20 No. 158. Sheriff Leon Lott filed campaign disclosure
21 reports with our office to take out his commission.

22 THE COURT: He filed campaign what?

23 JUROR NO. 158: Disclosure reports on his run for
24 reelection.

25 THE COURT: And the fact that you're -- where you work

Jury qualification

1 as a place where the sheriff has to under the law file some
2 type of campaign documents, would that in any way, ma'am,
3 keep you from being a fair and impartial juror in the trial
4 of the case?

5 JUROR NO. 158: No, sir.

6 THE COURT: Thank you very much.

7 The plaintiff's lawyer is Mr. Robert Dodson,

8 D-O-D-S-O-N.

9 MR. DODSON: Yes, sir.

10 THE COURT: Stand please.

11 (Whereupon, the attorney stood.)

12 THE COURT: Thank you. You may be seated.

13 Mr. Thomas Dougall is defending the plaintiff in the
14 counterclaim that's been filed against him. I'll explain
15 that in a little bit. He practices over in Elgin, South
16 Carolina. That's a big city between here and Camden.

17 Defending the county and the Richland County Sheriff's
18 Department on the original suit brought by Mr. Kim is
19 Robert Garfield and Todd Flippin. They practice here in
20 Columbia.

21 (Whereupon, the attorneys stood.)

22 THE COURT: Thank you.

23 Ms. Britton All is the lawyer for Richland County, the
24 County of Richland.

25 Question: Does any member of the jury panel or your

Jury qualification

1 immediate family have now or in the past had legal services
2 performed for you by any of the five lawyers? If so,
3 please stand.

4 (No response.)

5 THE COURT: Do I have any member of the jury panel who
6 is related by blood or marriage, or do you now or have you
7 in the past had a close personal or social relationship
8 with any of the lawyers in the case? If so, please stand.

9 (No response.)

10 THE COURT: My next question I'm going to ask you is
11 do you know anything about this case.

12 Let me tell you a little bit about what the
13 allegations are, but it's a wreck that occurred on
14 April 24th of the year 2014 at the intersection of Alpine
15 Road and Windsor Lake Boulevard here in Columbia.

16 It's an intersection -- or a wreck wherein the
17 plaintiff is claiming that the officer driving the vehicle
18 owned by the county was negligent in causing the collision.

19 Out of the same factual allegation the County of
20 Richland, the officer, says, oh, no, no, no, I'm not
21 negligent, you are. So he's brought a counterclaim back
22 against Mr. Kim. So they're pointing fingers at each
23 other.

24 So this is an automobile wreck case that involved a
25 claim by the plaintiff against the county and a claim by

Jury qualification

1 the county back against the plaintiff. It will be up to
2 you to determine whether anyone was at fault and, if so,
3 who or both or none, any kind of combination which I will
4 explain to you as we go along.

5 My question now is does anybody on the jury panel know
6 anything about the facts involved and surrounding this
7 intersectional collision on April the 24th of 2014 in
8 Richland County at Alpine Road and Windsor Lake Boulevard.
9 Anybody read anything about it, heard anything about it,
10 anybody discussed it with you, seen anything on T.V., read
11 anything in the newspaper, any internet information,
12 anything at all? If so, please stand.

13 (No response.)

14 THE COURT: Ladies and gentlemen, when we try a case,
15 whether it be in the civil arena such as this -- civil
16 cases are simply where citizens claim that another citizen
17 has caused them a wrong and they're seeking compensation as
18 a result of that wrong, or in a criminal case where the
19 state is accusing someone of a crime -- when we try those
20 cases we have two judges who participate in the trial of
21 the case.

22 Now, my position as a circuit court judge makes me one
23 of those judges, and my duty in the trial of a case is to
24 instruct and tell you and charge you what the law is. And
25 you've taken an oath to accept the law as I give it to you.

Jury qualification

1 That's a pretty easy job.

2 My other responsibility is to rule on the
3 admissibility of evidence. The lawyers have to ask their
4 questions of the witnesses on the stand, and their
5 questions have to comply with our rules of civil procedure
6 and our rules of evidence. And I have to make sure that
7 those rules are followed.

8 And it is not unusual, particularly in a case like
9 this, that witness A will say the light was green, witness
10 B will say the light was red. Witness A will say it's one
11 thing; witness B will say another thing. And then you get
12 C and D along who may say something in between.

13 In other words, you're going to have conflicting
14 testimony. And that's where the second judge comes into
15 play. And the second judge is the most important judge we
16 have in the trial of any case, and that is the judge of the
17 facts.

18 And my jury who I will select, 12 of you collectively
19 acting as one, will be that judge of the facts. So you'll
20 have to listen to the testimony and determine which
21 testimony is the truth.

22 You'll have to judge the credibility or the
23 believability of the witnesses who testify in the case, and
24 that's a task that you've been doing all of your life. You
25 deal with husbands and wives and children and friends and

Jury qualification

1 employees. You know how to tell when someone is telling
2 the truth. So you judge the credibility and you come up
3 with what the true facts are in the case. You are the
4 judge of the facts.

5 And then the way the system works is that you take
6 those true facts and apply to the law as I give it to you,
7 and then you'll be in a position to render a true and just
8 verdict.

9 Now, having said all of that and describing what your
10 duties are as the judges of the facts, I need to know now
11 do I have any member of the jury panel who is unable to
12 perform that civic duty of listening to the testimony,
13 determining what testimony is true.

14 It may for any religious beliefs, political beliefs,
15 beliefs against the judicial system. You may have strong
16 feelings against law enforcement; you may have strong
17 feelings against me or anybody.

18 Is anybody not able to do that? I need to know now.
19 If it's for a personal belief, I'll be glad to have you
20 come up and discuss it with me personally.

21 Obviously, we live in a country where when people have
22 wrongs they come into a courtroom and ask 12 citizens from
23 the community to decide what the true facts are instead of
24 going out on the street and fighting it out. We live under
25 a rule of law. It's the best system of justice that is

Jury qualification

1 known in the world.

2 Anybody that cannot do that, I need to know now.

3 (No response.)

4 THE COURT: Do I have any member of the jury panel who
5 you or your immediate family is employed with some law
6 enforcement agency? Please stand.

7 My gentleman with the Carolina shirt on. Your name
8 and number.

9 JUROR NO. 57: Fifty-seven, Devin Cornelius.

10 THE COURT: And?

11 JUROR NO. 57: My brother. He's in law enforcement
12 for Camden.

13 THE COURT: Camden.

14 JUROR NO. 57: Yes.

15 THE COURT: Not in Richland County.

16 JUROR NO. 57: No.

17 THE COURT: And the fact that you have a family member
18 in law enforcement, would that keep you from being fair and
19 impartial in the trial of this case?

20 JUROR NO. 57: No, sir.

21 THE COURT: Thank you. You may be seated. You get an
22 extra check for that shirt.

23 Yes, ma'am. On the front in the blue.

24 JUROR NO. 206: Amanda Porter, Juror No. 206. My
25 father is retired from Richland County, and I have an uncle

Jury qualification

1 who is a captain in Richland County.

2 THE COURT: Richland County Sheriff's Department?

3 JUROR NO. 206: Yes, sir.

4 THE COURT: Currently working with -- uncle is
5 currently working with the Richland County Sheriff's
6 Department and dad has just retired or has retired.

7 JUROR NO. 206: Well, he has been retired quite a long
8 time.

9 THE COURT: Quite a long time.

10 JUROR NO. 206: Yes, sir.

11 THE COURT: Move for cause?

12 MR. DOUGALL: Yes, Your Honor.

13 MR. DODSON: Yes, Your Honor.

14 THE COURT: All right. What I've tried to do -- what
15 I have to do is when we jurors who are closely related to
16 the parties, not the fact that they're in law enforcement.
17 Got an uncle who works for the party being sued. I think
18 that's too close.

19 You probably would be a great juror, but I want to
20 eliminate any appearance of impropriety. And your name and
21 number.

22 JUROR NO. 206: Amanda Porter, Juror 206.

23 THE COURT: All right. Take 206 out.

24 You may be seated.

25 And in the green shirt.

Jury qualification

1 JUROR NO. 55: Allen Cooper, No. 55. I'm friends with
2 Officer Bradbury of the Richland County Police Department.

3 THE COURT: Okay. Well, I'm friends with a lot of
4 officers.

5 The fact that you are a friend of a deputy with the
6 Richland County Sheriff's Department, would that in any way
7 keep you from being fair and impartial?

8 JUROR NO. 55: No, sir.

9 THE COURT: You may be seated. Thank you for telling
10 us that.

11 Have any member of the jury panel who has been sued in
12 a lawsuit or has sued someone else for injuries in a
13 lawsuit? In other words, have you ever been involved in
14 civil litigation that ended up in a lawsuit? If so, please
15 stand.

16 (No response.)

17 THE COURT: Have any member of the jury panel who
18 knows any reason whatsoever why you should not serve as a
19 juror in the trial of this case with particular emphasis
20 being placed on your ability to be fair both to the
21 plaintiff and the defendants? If so, please stand.

22 (No response.)

23 THE COURT: Any additional questions by the plaintiff?

24 MR. DODSON: Yes, Your Honor.

25 THE COURT: Which numbers on your voir dire?

Jury qualification

1 MR. DODSON: Numbers seven through ten.

2 THE COURT: Seven through ten. I think I covered that
3 when I asked did anybody have any reason whatsoever why
4 they should not be a juror in the trial of the case.

5 Your voir dire will be part of the record, and you are
6 protected. I respectfully deny charging that.

7 By the defendants?

8 MR. GARFIELD: Your Honor, we would request that the
9 Court inquire as to our requests to charge No. 3 and No. 4.
10 But, otherwise, I believe Your Honor has essentially
11 covered.

12 THE COURT: I think that's covered under my general
13 charge where I asked them do they have any personal
14 reasons.

15 And, ladies and gentlemen, a personal reason would
16 include also if you in the past have had any bad
17 experiences with law enforcement.

18 (No response.)

19 THE COURT: Thank you.

20 MR. GARFIELD: Thank you, Your Honor.

21 THE COURT: All right. Give me the strike sheets,
22 please.

23 MR. GARFIELD: Your Honor, may we approach before? I
24 just have one matter.

25 MR. DODSON: I have a matter too, Your Honor.

Jury qualification

1 THE COURT: Come on up.

2 Matter dealing with the jury?

3 MR. DODSON: Yes, Your Honor. This may not have --

4 THE COURT: If it doesn't have anything to do with the
5 jury, I'll handle that later.

6 (Bench conference held off the record.)

7 THE COURT: Ladies and gentlemen of the jury panel, if
8 we were trying a criminal case what we would do now would
9 be put your name in the -- actually the computer -- and
10 randomly select one at a time, and your name would be
11 called and you would come down and the state would have a
12 strike and the defendant would have a strike. Normally the
13 defendant has five or ten. The state has five.

14 This is a civil action. We draw the jury a little
15 different in this. We will pull 20 -- strike that. We
16 will pull out 20 names on a random selection through the
17 computer.

18 The plaintiff has four strikes; the defendant has four
19 strikes. So if my math is correct 20 less eight leaves us
20 12, and then we'll have one strike each on the two
21 alternates. So however many you need. Mr. Truitt, do that
22 and hand it to them.

23 THE CLERK: Yes, Your Honor.

24 THE COURT: And then they'll have a few minutes to do
25 their selection.

Jury qualification

1 I don't think it's going to take very long. Unless
2 you absolutely have to be excused, I'm going to ask that we
3 all sit tight for a second so we can get this done.

4 Anybody got a dire need to step to the bathroom? If
5 you do, I understand. All right. Go right there. I'm not
6 going to tell you to hurry.

7 (Pause.)

8 THE COURT: Everybody ready? Plaintiff's ready?

9 MR. DODSON: Yes, Your Honor.

10 THE COURT: All right. We will start the strike now.
11 Plaintiffs, you go first. Please strike -- listen to
12 me carefully -- the number on the very far left, not the
13 juror's number but that numerical order on the strike
14 sheet.

15 You may go first.

16 MR. DODSON: Thank you, Your Honor.

17 (Whereupon, a jury was struck.)

18 THE COURT: Ladies and gentlemen, as your name is
19 called would you please come forward and have a seat in the
20 jury box. If you have any personal items -- pocketbook or
21 whatever -- please bring those with you.

22 (Whereupon, a jury was impaneled.)

23 THE COURT: Motion by the plaintiff in connection with
24 the selection of the jury? Yes or no.

25 MR. DODSON: No, Your Honor.

Jury qualification

1 THE COURT: By the defendants? Yes or no.

2 MR. GARFIELD: No, Your Honor.

3 THE COURT: Ladies and gentlemen of the jury panel,
4 those of you who were not selected, I'm going to release
5 you now to go back down to the jury room. Enjoyed being
6 with you.

7 I don't know if you'll have any further
8 responsibilities this week. They will tell you when you
9 get down there. Get down to Bamberg, South Carolina, stop
10 in and see us. We know everybody down there. Thank you.
11 Have a nice day. Everybody else remain seated.

12 (Whereupon, the remaining members of the jury venire
13 were excused.)

14 THE COURT: Ladies and gentlemen of the jury panel,
15 I've got about ten minutes of pretrial matters that I have
16 to do with the lawyers. I'm going to let you go with the
17 bailiff to your jury room.

18 Obviously, you don't know anything about the case, so
19 you can't start discussing it. But take a quick bathroom
20 break. And we should start back in -- no later than 15
21 minutes, probably like ten minutes. We'll get right into
22 the trial of the case.

23 We'll probably go -- it's 10:30. We'll probably go to
24 like 12:30 or a quarter till 1:00, take about an hour or an
25 hour and 15 or hour and a half lunch break and come back

1 and go until around 5:00 unless that's an imposition to
2 anyone.

3 So that will sort of give you a little bit of a plan
4 for today. We should get way down the road on the trial of
5 the case.

6 So back to your jury room with the bailiff, and I'll
7 be right back with you in just a few minutes.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Mr. Dodson, Mr. Dougall, anything on
11 behalf of the plaintiffs before we commence the trial of
12 the case?

13 MR. DODSON: Only to put on the record what we
14 discussed at the side bar.

15 THE COURT: All right. You informed me that there was
16 a particular juror -- I have forgotten which number it was.
17 If you will, go ahead and put that on the record.

18 MR. DODSON: Thank you, Your Honor.

19 It was Juror No. 63, Michael Cox.

20 Mr. Cox lives in my parents' neighborhood, which is
21 GreenHill Parish.

22 GreenHill -- some of the residents in GreenHill
23 Parish, including my parents and Mr. Cox, are involved in a
24 legal dispute with the developers of that subdivision.

25 I sent a lengthy e-mail that got circulated around the

1 neighborhood about some of the legal issues and my opinions
2 about that.

3 It was a meeting with my parents that Mr. Cox
4 attended. I understand that they have discussed my e-mail
5 and possibly filing a suit against the developers. And for
6 that reason we asked that the juror be struck for cause.

7 THE COURT: And that's great. You told me that at the
8 side bar. That conversation was attended by the
9 defendants, and they had no objection to that particular
10 juror being disqualified from the trial of this case for
11 cause.

12 Is that correct, gentlemen?

13 MR. GARFIELD: Yes, Your Honor.

14 THE COURT: Anything else by the plaintiff?

15 MR. DODSON: No, sir.

16 THE COURT: Mr. Garfield.

17 MR. GARFIELD: Thank you, Your Honor. May it please
18 the Court.

19 Could we take care of that jury issue that we had a
20 sidebar concerning?

21 THE COURT: That was Ms. Brown, Juror No. 10.

22 MR. GARFIELD: She was jury list No. 10. She was
23 Juror No. 34, yes, Your Honor.

24 There -- there is a pending civil action brought in
25 state court. I believe the plaintiff's name is Chaffin --

1 C-H-A-F-F-I-N -- in which the plaintiffs have sued a number
2 of law enforcement, Sheriff Lott, some Richland County
3 Sheriff's Department investigators.

4 The lead counsel on that is a lawyer named Aimee
5 Zmroczek -- Z-M-R-O-C-Z-E-K, I believe -- substantially
6 involved with that case because she has a professional
7 relationship or she's counsel of record. I don't have it
8 in front of me, Your Honor. Is Ms. Brown --

9 THE COURT: Ms. Brown I think is a partner of hers or
10 an associate, appears with Ms. Zmroczek.

11 MR. GARFIELD: That is correct. And we just ask for
12 her to be struck for cause for that.

13 THE COURT: And that is what you told me at the side
14 bar.

15 And the plaintiff had no objection to that, is that
16 correct?

17 MR. DODSON: That's correct, Your Honor.

18 THE COURT: All right. Anything else by the
19 defendants?

20 MR. GARFIELD: Yes, Your Honor.

21 We do have a motion in limine with respect to two
22 areas.

23 The first would be motion on behalf of the defendants
24 to exclude a particular witness or identified witness in
25 this case.

1 Your Honor, the pleadings in this case, the complaint,
2 was filed on or about in October of 2014. In response to
3 our discovery requests in April of 2015 --

4 THE COURT: 2015?

5 MR. GARFIELD: April of 2015, yes, sir. The
6 plaintiffs disclosed a number of witnesses.

7 The only witness that they identified that was at the
8 scene as far as a non-law enforcement witness was the
9 plaintiff himself that he would -- the anticipation is that
10 he would testify consistent with the allegations in the
11 complaint.

12 Also, at that time in responses to the requests to
13 produce and also in interrogatories he identified two
14 invoices, one of which was a Providence Hospital related
15 bill for some \$1,100 -- \$1,118.20.

16 The other was a minor or nominal radiology type bill.

17 By way of background, Your Honor, this has been a
18 little bit unusual. We -- it has been a little bit of a
19 challenge for us to locate and retain an interpreter.

20 It's been nearly impossible to find anyone in the
21 Columbia area, including the university, that would
22 actually be able to translate Korean, or be willing to do
23 so. We finally just found someone out of town.

24 Another issue that we had with respect to that is --
25 making sure no juror -- Richland County is self-insured.

1 So I needed to gain approval for actually retaining a court
2 reporter for purposes of taking a deposition of any
3 Korean-speaking witness.

4 We did successfully find one out of Charlotte. We
5 agreed on it. We took the plaintiff's deposition in late
6 December.

7 THE COURT: Of 2015?

8 MR. GARFIELD: December of 2015, yes, sir. Thank you.

9 In this month, which was several days ago, the
10 plaintiff had supplemented his discovery responses. The
11 first he identified, a witness named Sunny Fain --
12 F-A-I-N -- in which Your Honor inquired of the jury whether
13 they knew this person. Sunny --

14 THE COURT: When was Sunny Fain given to you as a
15 witness?

16 MR. GARFIELD: In -- we received it January 11th. I
17 believe they had a certificate of service January 6th or
18 whatever. The issue with that, Your Honor, is that --

19 THE COURT: Which would be nine days ago.

20 MR. GARFIELD: Yes, sir.

21 In all fairness to the plaintiff, when I did inquire
22 of the plaintiff during this deposition were there any
23 other witnesses he mentioned that there was someone named
24 Sunny. That is obviously, with all due respect, an
25 Anglicized or an Americanized name -- S-U-N-N-Y Fain. He

1 produced this name to me not with an address or contact
2 information but merely a cell number.

3 Mr. Dodson had represented to Judge Lee two or three
4 times that he was ready for trial. That includes status
5 conferences as late as December and trial rosters in
6 January.

7 At this 11th hour for us to hear about this person and
8 whether or not she speaks Korean and whether we need an
9 interpreter would be highly prejudicial.

10 On that note, Your Honor, he has also produced along
11 with Ms. Fain a laundry list of medical records. And that
12 was also this month several days ago.

13 Our evaluation of the case is centered around this one
14 chiropractic bill for over almost a year. Now we're
15 hearing about four or five or six other healthcare
16 providers that he's providing us bills on that I understand
17 he's attempting to go ahead and get into evidence.

18 THE COURT: And those were -- what dates were those
19 services rendered?

20 MR. GARFIELD: Yes, sir. In May of 2014. And I'd let
21 Your Honor go through this.

22 There's one statement from a January 20, '16, run, but
23 it reflects a treatment date of April of 2014.

24 We've obviously already deposed the plaintiff. We
25 can't ask him about this. It's an April of 2014; April of

1 2014; May of 2014. There's some medications that he would
2 like to offer, and it's a faded Rite Aid bill April of
3 2014.

4 THE COURT: All of them May or April of 2014?

5 MR. GARFIELD: July of 2015, and then there's -- goes
6 back to the summer of 2015. Yes, Your Honor. So we would
7 ask for all of those to be excluded.

8 THE COURT: The latest one being July of '15 and the
9 earliest one is May of '14.

10 MR. GARFIELD: That's from what I understand, yes,
11 sir.

12 THE COURT: That's what you're looking at. Aren't
13 you?

14 MR. GARFIELD: Yes, sir. But it's -- when you're
15 looking at these bills they're -- it's computer generated,
16 but that's exactly what I'm looking at, is July of 2015,
17 the latest treatment date. And the bills -- it says last
18 payment October 2015. And they ask for this in December of
19 2015.

20 THE COURT: All right. Mr. Dodson.

21 MR. DODSON: Thank you, Your Honor.

22 Let me start with the issue of the witness Sunny Fain.
23 we just learned about her during a four-and-a-half-hour
24 deposition of the plaintiff. He does not --

25 THE COURT: Four and a half hours, I assume, because

1 he had to have an interpreter and it took a little longer.

2 MR. DODSON: No. It was four and a half hours because
3 of the length of the questioning. I mean, does it slow
4 things down that there had to be an interpreter? It does.
5 But it was the longest plaintiff's deposition I've been in
6 practicing law in 18 years.

7 THE COURT: What's that -- what's that got to do with
8 the price of eggs?

9 MR. DODSON: Well, okay. That was the first time that
10 we learned that Ms. Fain witnessed the wreck. She was
11 actually in a car that was behind the plaintiff. So I
12 didn't disclose her or not for any kind of various reason.
13 I didn't disclose her because I didn't know where she was.

14 THE COURT: Nobody suggested that.

15 MR. DODSON: As soon -- as soon as I learned about her
16 we provided Mr. Garfield with her cell phone number, which
17 was on January 6th. And we actually -- my understanding
18 from speaking with Ms. Fain is that Mr. Garfield had a
19 conversation with her.

20 There has not been any motion to continue the matter
21 to take her deposition; there has not been any notice of
22 deposition to take her deposition.

23 This is the first time that I've heard that -- or I
24 guess yesterday's telephone conference was the first time I
25 had heard that there was some objection to her as a

1 witness.

2 THE COURT: Well, how did you learn of her name? Did
3 your client tell you or learn it --

4 MR. DODSON: At the December 30th deposition he
5 mentioned then at the deposition that there was this lady
6 following behind him.

7 THE COURT: Well, I would assume that when you took
8 the case and prepared the answers to interrogatories you
9 had to sit down with him and ask him if he knew of any
10 witnesses, and I'm sure he would have known back then.

11 MR. DODSON: Well, I think what we asked was there
12 anybody in the vehicle with him, and, I mean, that's not
13 the interrogatory that was asked. But I think when we were
14 trying to discern witnesses we asked was there anybody in
15 the vehicle. There was nobody else in the vehicle. She
16 was not listed on the accident report as a witness.

17 But I think the two points that I would emphasize is
18 for the fact that Mr. Garfield had actually talked to her,
19 and all of her testimony is simply going to be what she
20 witnessed, which is -- happens to correspond with what the
21 plaintiff said.

22 There's nothing. There's no new bombshell that she's
23 dropping that the testimony is any different than what
24 we've already heard. It's just she happened to witness the
25 wreck as well.

1 THE COURT: Mr. Garfield, you talk to her?

2 MR. GARFIELD: Yes, sir. And I would like to address
3 that if I may.

4 Quite frankly, the name sounded a little conveniently
5 made up at his deposition, and I'll tell you why.

6 Mr. Plaintiff, the plaintiff, Mr. Kim, said that there
7 was an individual named Sunny. He didn't give any other
8 details.

9 What I wanted to establish when I called her was to
10 find out if she existed. I still didn't get what her name
11 was or what her address was. I just wanted to find out if
12 she, in fact, existed because this is someone that I had
13 learned about just days before.

14 THE COURT: Well, did you ask her about the wreck,
15 what she saw?

16 MR. GARFIELD: She speaks very broken English, and she
17 said she did not want to testify in court, she did not --
18 would she have to be made to. And she said if she had to,
19 she said that the deputies -- one deputy had either had
20 lights on or didn't have lights on, one deputy either had a
21 siren or not a siren. And I was a little confused by it.

22 Then she asked again did she have to come to court.
23 And I said, well, this -- we need you to tell the truth,
24 ma'am, whatever you say. You'd be sworn under oath. If
25 I'm misstating that I apologize.

1 THE COURT: I'm trying to find out if we can
2 understand her. Are we going to have to have an
3 interpreter for her, or what? Did you understand her?
4 MR. GARFIELD: My Charlestoneese was -- I don't know if
5 she understood me more than she -- I understood her, but
6 that's the whole point. I think we have a right under
7 discovery to be able to depose her and find out who she is.
8 This was someone that -- and I assume I hear -- she's here
9 now? Is this the witness?
10 THE WITNESS: It's me.
11 MR. GARFIELD: Is me? The entire --
12 THE COURT: Do you want to break for lunch and let you
13 take her deposition?
14 MR. GARFIELD: I guess so, Your Honor, I mean, if
15 that's -- this is --
16 THE COURT: All right. Anything else?
17 MR. GARFIELD: There was one other, not on this one
18 issue, but there was one other.
19 THE COURT: Let's finish one issue at a time.
20 Anything in response to the lateness of this witness?
21 MR. DODSON: Nothing further from the plaintiff, Your
22 Honor.
23 THE COURT: How about the medical record? Why are you
24 just getting those now?
25 MR. DODSON: I don't think that's an accurate

1 representation that we're just giving them the medical
2 records. There were -- we produced back when we answered
3 original discovery back in April of 2015.

4 THE COURT: What does it say?

5 MR. DODSON: We produced to him then the chiropractic
6 record, the day of the wreck, the hospital emergency room
7 and physicians' bills the day after the wreck. The only
8 two medical records and bills that we submitted on -- that
9 we supplemented on December 31st was --

10 THE COURT: What two are those?

11 MR. DODSON: Were dates of treatment in July of 2015.
12 And, yeah, they were July of 2015.

13 THE COURT: So you got two in July of 2015 that you
14 just gave to him. All the rest you've given to him.

15 MR. DODSON: That's -- that's correct, Your Honor.

16 Now, with regard to the interrogatory answers, we may
17 not have listed each medical bill in our interrogatory
18 answers, but we provided him in response to the request for
19 production of documents the actual bills themselves.

20 And as I was looking at the discovery I went ahead and
21 included, you know included, hard numbers in my
22 interrogatory answers, but the documents for that were all
23 produced.

24 I mean, what we're talking about are the two -- the
25 two bills, one from a family doctor and one from a physical

1 therapist in the summer of 2015. And those records were
2 not available to us because he hadn't had that treatment
3 when we originally answered our discovery in April.

4 THE COURT: He had had the treatment when his
5 deposition was taken. He didn't tell them about it then?

6 MR. DODSON: No. I didn't have them when his
7 deposition was taken. I learned that he had additional
8 treatment at his deposition. I had my paralegal get the
9 records, and I immediately sent them to Mr. Garfield.

10 THE COURT: All right. My ruling is this. I'm going
11 to disallow the two that came in late, the two that you
12 just got, Mr. Garfield.

13 And, obviously, this case is two years old at least.
14 Filed in October of 2014, so it's a year and -- year and
15 four or five months old -- year and three months old.

16 All right. I think you have to comply with,
17 supplement your answers to interrogatories, and I'm going
18 to disallow Ms. Fain to testify -- the lateness of the
19 hour, particularly with the language situation, and I'm
20 going to exclude that witness.

21 what else have we got?

22 MR. GARFIELD: Okay. One other short point, Your
23 Honor.

24 We would make a motion to limit the scope of a
25 particular witness' examination. One witness that's been

1 identified is Deputy Kenneth Proffitt.

2 THE COURT: Proffitt?

3 MR. GARFIELD: Proffitt, yes, sir, P-R-O-F-F-I-T-T.

4 Deputy Proffitt -- it's his conduct that's really
5 giving rise to the suit because it's his patrol car that
6 impacted with the plaintiff's car.

7 Since the time of the collision, which was in April of
8 2014, Deputy Proffitt was involved with another motor
9 vehicle collision. This is after all of the relevant
10 events. And also he is no longer employed with the
11 Richland County Sheriff.

12 There's actually a workers' compensation claim pending
13 with respect to that other action, and I've been on the
14 phone with his counsel on that.

15 THE COURT: So is there any -- any allegations that he
16 was -- he had a bad driving record or something and the
17 county hired him -- a negligent employment type thing?

18 MR. GARFIELD: I don't believe they've alleged it and
19 I don't believe there's any evidence of it.

20 THE COURT: In other words, whatever happened after
21 the wreck is not -- you're not trying to get that in.

22 MR. DODSON: I haven't offered that. I'm not planning
23 to offer that.

24 MR. GARFIELD: Just housekeeping, Your Honor.

25 THE COURT: No problem. That is not relevant.

Jury sworn

1 MR. GARFIELD: Thank you, Your Honor. That would be
2 it.

3 THE COURT: Anything else before we start the trial?

4 MR. GARFIELD: Just a short bathroom break. We'll be
5 ready to go.

6 THE COURT: Five minutes.

7 (Whereupon, a recess was taken.)

8 THE COURT: Anything from the plaintiff before I bring
9 the jury back?

10 MR. DODSON: No, Your Honor.

11 THE COURT: From the defendant?

12 MR. GARFIELD: No, Your Honor.

13 THE COURT: Bring the jury back.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Ladies and gentlemen of the jury panel,
17 the first thing we have to do in order to get started is
18 for you to be sworn in for this particular case. So
19 therefore, if you would, please stand and raise your right
20 hand. And the clerk will administer the oath for this
21 case.

22 (Whereupon, the jury was duly sworn.)

23 THE COURT: Ladies and gentlemen, let me just give you
24 a few opening remarks as far as setting the stage as to
25 where we're going and how hopefully we'll get there.

1 As I told you early today, this is a civil case, and
2 this case has got a few little different quirks than our
3 normal case because in this case the plaintiff is suing the
4 county for injuries and property damage that he received or
5 sustained in an intersectional wreck. In other words, both
6 parties got into the intersection, I think, about the same
7 time, and they collided.

8 The plaintiff is saying that the county is at fault.
9 In the same lawsuit the county has filed a counterclaim
10 back against him, which is like a different lawsuit, or a
11 lawsuit out of the same set of facts, saying, no, we're not
12 at fault, you're at fault and you owe us for the damage to
13 our vehicle.

14 So you're going to be asked to determine who was at
15 fault or if both of them were at fault, and if both of them
16 were at fault who was -- you have to assign percentages to
17 the fault of each one of them.

18 It's called comparative negligence. We'll talk about
19 all of that as we go along, but you're going -- you may
20 find that neither one of them were at fault and it just
21 happened, it was an accident. So there's a number of ways
22 you can decide the case, but that's what you're going to be
23 asked to do in this case.

24 It's a car wreck case, intersection, suit against the
25 county. The county has counterclaimed back against them.

1 So that's what your decision will be. And if you decide
2 that someone is more at fault than the other, then you may
3 have to -- you would have to decide if they received
4 damages or injuries and were they proximately caused by the
5 other one's negligence. So that's what you'll be asked to
6 do at the trial of the case.

7 Since the plaintiff brought the lawsuit he has the
8 initial burden of proving his case. The county has the
9 burden of proving their case. And then the civil case is
10 by what we call the preponderance or greater weight of the
11 evidence. And we'll explain that to you as we -- at the
12 end of the case.

13 Now, since the plaintiff brought the lawsuit and has
14 the burden on his side of the case he will go first, and he
15 will present testimony as to what happened.

16 In this case he is from Korea. As I understand
17 his -- he does not speak English. We have an interpreter
18 here for his testimony and his answers and his
19 cross-examination. So his testimony will be presented
20 through an interpreter, and that may take just a little bit
21 longer than normal if we were asking this back and forth.

22 Once the plaintiff has concluded his case, then the
23 defendant, Richland County, and the sheriff's deputies,
24 they will put up their side of the case.

25 The county owned the car, as I understand, so they're

1 the ones who are bringing the counterclaim for the damage
2 to the vehicle that was involved in the wreck.

3 Once the plaintiff puts his up, the defendant puts
4 their testimony up, the plaintiff has a right to reply to
5 that. Once all of that is done, then we'll be in a
6 position for you to decide the case and determine what the
7 true facts are.

8 As I told you earlier when he selected the jury,
9 you're the judges of the facts. So you determine what the
10 true facts are, apply it to the law as I give it to you,
11 and you will be in a position to render a true and just
12 verdict.

13 I try to run an efficient courtroom. I try to start
14 when I say I'm going to start and quit when I say I'm going
15 to quit. Sometimes we have, you know, things come up that
16 hold us up a little bit, but I understand this is a burden
17 on your time, and I will make every effort to make sure
18 that your needs are catered to. Your time I understand,
19 and I will try not to make you sit back there and wait
20 unnecessarily.

21 Having said that, we'll probably go to like, I said
22 earlier, about 12:30 today and then break for lunch and
23 come back and go to about 5:00 this afternoon.

24 I will ask you each time we take a break, please do
25 not deliberate, talk about the case, do any independent

1 research. The idea is to try this case based solely on
2 what you hear in the courtroom, determine what the true
3 facts are and then apply it to the law as I give it to you.

4 In just a few minutes the lawyers will start off the
5 trial of the case by making opening statements. Please
6 bear in mind that opening statements is not evidence in the
7 case.

8 Obviously, each side represents their respective
9 parties, and they will be advocates for their respective
10 side. And they'll give you in their opening statement sort
11 of a road map as to what and how they're going and what
12 you're to look after and what they intend to prove and what
13 the issues are.

14 But you will make your decision simply on the evidence
15 and the exhibits that are introduced. And that will be at
16 the conclusion of the case.

17 When we take our first break I will ask that the 12 of
18 you -- not the two alternates. I need a foreperson,
19 someone to act as a spokesperson for the jury, someone to
20 bring to my attention any concerns you may have and to head
21 up the deliberations at the conclusion of the trial. So
22 I'll ask that you all select a foreperson for me at the
23 lunch break.

24 We're going to get started right now with the opening
25 statements.

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1 Any objections to my opening remarks by the plaintiff?

2 MR. DODSON: No, Your Honor.

3 THE COURT: By the defendant?

4 MR. GARFIELD: No, Your Honor.

5 THE COURT: Mr. Dodson.

6 MR. DODSON: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. DODSON: Ladies and gentlemen, I introduced myself
10 to you earlier. Again, my name is Robert Dodson. I'm an
11 attorney here in Columbia. My office is right across the
12 street.

13 Mr. Kim is a citizen of the United States. He lives
14 here in Richland County, and he's the plaintiff.

15 And then seated to my left, to your right, is
16 Mr. Dougall who is an attorney right down the road in
17 Elgin.

18 The first thing I want to do is I want to thank you
19 all for being here. I know you will have things that you
20 would rather be doing. I know it is an imposition and an
21 inconvenience to be a juror.

22 The right to a trial by a jury is something that is
23 guaranteed by the United States Constitution. It's an
24 important right that individuals have, and I do sincerely
25 appreciate you participating in the process.

Opening statements

1 This is not a terribly complicated or complex case. I
2 doubt there will be a lot of Perry Mason moments here
3 today. Certainly not from me.

4 But I can tell you this. This is an extremely
5 important case, and it's an important case because it is a
6 case about accountability; it is a case about government
7 accountability; and it is a case about owning up when you
8 make a mistake. All of us make mistakes. Responsible
9 people, responsible governmental entities, own up to their
10 mistakes, and they make it right.

11 Now, when you listen to the evidence that's presented
12 here, and the testimony, I think you're going to find that
13 has not happened. Let me explain.

14 You know from Judge Early's prior comments this
15 involves a wreck. It happened on Alpine Road which is in
16 the northeast part of the county.

17 Mr. Kim works for a janitorial service that cleans a
18 lot of large office buildings. He's worked his way up into
19 a supervisory position. He works a lot of hours. He works
20 really, really long, hard hours. And he was actually going
21 from one place to another on his job site on Alpine Road.

22 He entered an intersection there, he approached an
23 intersection there, and he had a green light. He had a
24 green light as he entered the intersection, not a yellow
25 light. Certainly not a red light. He had a green light at

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1 all times. And I don't think that will be disputed.

2 As he entered that intersection he got whacked pretty
3 darn good by a deputy sheriff's car that was proceeding in
4 perpendicular path of travel and ran the red light in the
5 opposite direction and hit him from the side.

6 I don't think those facts will even be disputed. I
7 think the disputed facts will be whether or not the deputy
8 had his lights and sirens on.

9 Mr. Kim will talk to you. We do have a translator
10 here to interpret for him because his English is not very
11 good. And he's going to tell you that he does not remember
12 the lights and siren of the deputy being on.

13 You will probably hear a different story from the
14 deputy himself.

15 Here's an interesting thing that you will probably
16 also hear. The Richland County sheriff's cars are equipped
17 with a dash cam, a video camera, on their cars. And those
18 video cameras come on any time the deputy turns on their
19 lights and turns on their siren.

20 There's no video tape of this. They say that the dash
21 cam wasn't working. I'll let you decide whether you think
22 it wasn't working or whether that is a convenient excuse.

23 But the best evidence that we would have as to whether
24 or not the officer had his blue lights and sirens on would
25 be evidence that they had in their care, custody and

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1 control in that dash cam video, and they won't be able to
2 produce it. That's what I would expect the evidence to
3 show.

4 A highway patrolman came to the scene of the wreck,
5 and the highway patrolman investigated it. One of the jobs
6 of the highway patrolman is to assign fault, to determine
7 who is at fault for the accident.

8 MR. GARFIELD: Your Honor, objection. I'd like to
9 approach.

10 THE COURT: That's no problem.

11 Y'all just disregard that, ladies and gentlemen.

12 MR. GARFIELD: Yes, sir. Thank you.

13 THE COURT: You will determine in this case who, if
14 anybody, was at fault. A highway patrolman's opinion has
15 nothing to do with this case.

16 MR. DODSON: You will hear from the highway patrolman
17 who investigated the accident.

18 THE COURT: A highway patrolman can do this. He can
19 testify about what he sees when he gets there. But unless
20 he's qualified he cannot give an opinion. So bear that in
21 mind.

22 MR. DODSON: But regardless of lights and sirens being
23 on, one of the other things that you're likely to hear at
24 the end of this case is going to come from the judge
25 himself, because at the end of this case after all of the

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1 evidence is presented to you the judge will charge you or
2 instruct you on what the law is.

3 And one of the laws that the judge is likely to
4 instruct you on is this. And you don't have to take this
5 from me even though I'm going read it out of one of the law
6 books. You can listen to Judge Early and his instruction.
7 But one of our laws says this: The driver of an authorized
8 emergency vehicle may proceed past a red or a stop signal
9 or stop sign but only after slowing down as may be
10 necessary for safe operation.

11 The law goes on to say the exemptions in this section
12 granted to an authorized emergency vehicle apply only when
13 the vehicle is making use of an audible signal meeting the
14 requirements of another part of the code and visual signals
15 meeting the requirements of another part of the code.

16 The law goes on, and it says the provisions of this
17 section do not relieve the driver of an authorized
18 emergency vehicle from the duty to drive with due regard
19 for the safety of all persons.

20 That's the law, and that's what Judge Early is likely
21 to instruct you on at the close of this case.

22 So regardless of whether or not the officer had his
23 lights and sirens on, which is questionable at best, that
24 doesn't give him an automatic right to blow through that
25 red light. He can only go through that red light when it's

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1 safe to do so, and he didn't do that in this case.

2 Despite that Richland County has not paid one dime of
3 Mr. Kim's medical bills.

4 MR. GARFIELD: Objection, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, you will
6 be asked, and that will be your decision if the evidence
7 shows as to whether or not to, or not to, award damages
8 that may or may not be proven in this case.

9 The fact that they haven't paid it up until this point
10 in time is of no concern.

11 Move along.

12 MR. DODSON: I will at the end of this case, I will
13 ask you to right the wrong that has been done, because
14 Mr. Kim was hurt in the accident. His vehicle was damaged.

15 You will see copies of pictures showing the damage to
16 his vehicle, and it was significant. It was about \$8,000
17 worth of damage to the vehicle.

18 An ambulance came to the scene. Mr. Kim didn't feel
19 like he needed to go to the hospital, but they did come,
20 and they checked him out, and they sent a bill for it.

21 Later that same day he went on his own to see a
22 chiropractor that he knew. The chiropractor checked him
23 out.

24 The next day his condition was worse. So he went to
25 the hospital emergency room, and he got checked out at the

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1 hospital emergency room, and they sent him a bill.

2 They did x-rays. The doctors that looked as those
3 x-rays sent him a bill, and the doctors that actually
4 checked him out, which bill independently from the hospital
5 itself, sent him a bill.

6 And so at the end of this case we will ask you to make
7 them pay for those bills, because Mr. Kim did everything
8 that any reasonable driver, that anyone in this courtroom,
9 might do.

10 He approached that intersection with caution. He had
11 a green light. He got hit. And so it will be up to you at
12 the end of this case to right that wrong and to make this
13 governmental entity accountable for what it caused. Thank
14 you.

15 MR. GARFIELD: May it please the Court, plaintiff's
16 counsel and ladies and gentlemen of the jury.

17 The events that we're here for today happened on
18 April 24th of 2014 about 10:45 in the morning. At that
19 time the Richland County sheriff's deputy -- her name is
20 Kristin Boyles -- thank you -- she had stopped a car on
21 Windsor Lake Boulevard in Richland County.

22 And I may just walk around with this a bit, and I'll
23 put it back on the easel. You'll become a little bit
24 familiar with this aerial view of this intersection. This
25 is Alpine Road. Doesn't really go north, south, east or

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1 west. It's a little bit of an angle. This is Windsor Lake
2 Boulevard here in Richland County. There's a school up
3 here; there's a church down here.

4 For those of y'all that are familiar with it, Deputy
5 Boyles had stopped the vehicle somewhere in this vicinity
6 on Windsor Lake Boulevard.

7 She encountered a car with two occupants, two male
8 occupants, two large guys. She also detected a strong odor
9 of marijuana coming from the car.

10 Now, Deputy Boyles is by herself. She is outnumbered
11 by two large males. So what Deputy Boyles does is what she
12 should do as the evidence will show, is that she asked over
13 dispatch that she needed some help and she needed
14 assistance. So the call goes out like this. "I need help.
15 I need backup. I need other deputies to come."

16 And coming to her aid were three deputies, and you'll
17 hear that that's policy with the Richland County Sheriff's
18 Department because when one officer is in need they treat
19 this as not only a priority call. It's an emergency call.
20 So three individuals came. And you met them earlier during
21 jury selection.

22 Apologize for the easel again, but one was William
23 Weaver. And you'll hear from him today.

24 (Whereupon, the witness stood.)

25 MR. GARFIELD: Thank you, Deputy Weaver.

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1 The second was Deputy Proffitt, Ken Proffitt.

2 (Whereupon, the witness stood.)

3 MR. GARFIELD: Thank you.

4 And the third is Matt Taylor, Deputy Matt Taylor with
5 the Richland County Sheriff's Department.

6 (Whereupon, the witness stood.)

7 MR. GARFIELD: Thank you.

8 You'll hear from these individuals, how they came to
9 assist her.

10 Now, again, I'm walking around because of the way the
11 lay of this courtroom is, but you'll hear testimony that if
12 the female deputy, Deputy Boyles, was down here, three
13 officers were coming.

14 The first officer was Deputy Weaver who is coming down
15 this way on Alpine Road. I'm just using my finger, but
16 they'll end up marking this most likely.

17 Deputy Weaver had a green light. Deputy Weaver came
18 and took a left onto Windsor Lake Boulevard. Deputy Weaver
19 since he had a green light had his emergency flashers on.
20 There would have been no reason for him to have a siren on
21 because he had the green light.

22 The second deputy that was coming was Deputy Proffitt,
23 coming down Windsor Lake Boulevard. You're not having to
24 memorize this. Again, you'll -- we'll be a little more
25 specific later. He was coming up Windsor Boulevard,

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1 Windsor Lake Boulevard.

2 You'll hear testimony that Deputy Proffitt had a red
3 light.

4 The third deputy was Deputy Matt Taylor. He was
5 coming behind Deputy Weaver coming down Alpine Road. All
6 three deputies were coming to the assistance and the aid of
7 Deputy Boyles who is down here. That was the location that
8 they were trying to respond to.

9 Deputy Weaver had emergency flashers on with the green
10 light; Deputy Taylor had emergency flashers on with the
11 green light. But the case is really about Deputy Proffitt
12 who had the red light.

13 Mr. Dodson is absolutely correct on the law. An
14 officer can't just run a red light in the State of South
15 Carolina for an emergency or otherwise unless he does one
16 very important thing.

17 The law is very clear. He has to run blue lights; he
18 has to have a siren visible and where we can all hear as
19 other drivers to alert everybody that he's coming. He
20 can't run a red light.

21 The testimony is Deputy Proffitt came to this stop
22 mark with blue lights and siren and he cycled this siren,
23 which we sometimes hear as drivers -- blue lights. And
24 you'll hear the siren in court where he changes the pitch
25 while he sits there before he advances and clears the

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1 intersection.

2 The testimony is -- and you'll hear evidence that
3 other drivers were stopped at that green light, as we all
4 would, to allow the officer to come by.

5 But despite the fact that Deputy Proffitt had his blue
6 lights and despite the fact that he had his siren on, the
7 plaintiff, Mr. Kim, is coming in this direction on Alpine
8 Road.

9 Granted, he had the green light, but he failed to
10 yield to the right of way which was the officer's blue
11 lights and siren, and he smashed into Deputy Proffitt.

12 Despite that happening and despite him not having a
13 proper lookout, Mr. Dodson said that our deputy did not
14 approach with care, that his client approached with due
15 care.

16 Absolutely, the evidence will not show that in this
17 case, and here's why. He has already told you and said the
18 evidence will show that his -- that our officer, Deputy
19 Proffitt, struck his car. He said, I think, he gave him a
20 good whacking on the side of his car.

21 The testimony will show that the officer's car was
22 struck on the side. The evidence will also show that
23 Mr. Kim's car was struck, was damaged, in the front.

24 The evidence will not show, as he is telling you,
25 ladies and gentlemen, that we hit him. Folks, the evidence

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1 will show just the opposite, that Mr. Kim struck our car.

2 So with that being said, and in the interest of
3 fairness, Richland County has asserted a counterclaim
4 against Mr. Kim, because not only will the evidence show
5 that he's not entitled to damages. The evidence will show
6 just the opposite.

7 Mr. Dodson has already stated to you that the county
8 has not paid for any of his bills in this case. This is
9 not an insurance company. This is self-funded. Richland
10 County --

11 MR. DODSON: Objection, Your Honor.

12 THE COURT: Ladies and gentlemen, please disregard
13 that. The insurance or whether it has it doesn't have --
14 has nothing to do with the trial of this case.

15 MR. GARFIELD: Thank you, Your Honor.

16 We have counterclaimed in this particular case because
17 Richland County owns a fleet of Richland County sheriffs'
18 deputies' cars. This car was damaged out of no fault of
19 the law enforcement officer here.

20 You will hear testimony about the dashboard cams.
21 You'll hear testimony specifically about what the officer
22 saw and what they experienced. And we are asking for a
23 counterclaim in this case. We do not believe he should be
24 awarded damages. We believe that the county should be
25 awarded for the price of the damage for the patrol car.

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1 And I thank you in advance.

2 THE COURT: You may call your first witness.

3 MR. DOUGALL: May I respond?

4 THE COURT: I'm sorry -- I'm sorry. I forgot about
5 the counterclaim.

6 MR. GARFIELD: I'm sorry, Your Honor. I think this
7 may have been blocking the -- one of the alternate's views,
8 and I apologize. May I?

9 Mr. Dougall. My apologies.

10 THE COURT: So y'all, everybody, will know who is who,
11 Mr. Dougall's a lawyer from Elgin. He is defending the
12 plaintiff on the counterclaim.

13 MR. DOUGALL: The judge just about summed up my whole
14 introduction. I just want to let you know, as you've seen
15 so far, you're not going to hear a whole lot from me
16 throughout this trial.

17 I have a very limited purpose. I am defending Mr. Kim
18 on the counterclaims brought by Richland County, not the
19 sheriff's department but Richland County. They own the
20 vehicle. There's a dispute as to who caused this accident.

21 I agree with Mr. Dodson's comments that there's a law
22 that's called due-regard statute and that Richland County's
23 sheriff violated that and that's what caused the damage to
24 the Richland County vehicle. And we'll go through that
25 evidence. At the end of the trial I'll have a chance to

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1 discuss that with you again. But I just wanted to make
2 sure that you knew I'm not a potted plant sitting over
3 there. I do have a function here today, albeit a very
4 limited one. And we'll discuss the final aspects of that
5 probably tomorrow morning, maybe later today. Thank you.

6 THE COURT: Mr. Dodson, you may call your first
7 witness.

8 MR. DODSON: Thank you, Your Honor. We have a matter
9 to take up with the court before we call our first witness.

10 THE COURT: I thought we did all of that awhile ago.
11 Come over here.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 THE COURT: All right. The lawyers have agreed on all
15 of the exhibits, so give me a second to mark them. That
16 moves us along in an efficient manner.

17 (Photograph marked Plaintiff's Exhibit No. 1;
18 photograph marked Plaintiff's Exhibit No. 2; payment
19 requested marked Plaintiff's Exhibit No. 3; itemized
20 statement marked Plaintiff's Exhibit No. 4; bill marked
21 Plaintiff's Exhibit No. 5; statement of charges marked
22 Plaintiff's Exhibit No. 6; bill marked Plaintiff's Exhibit
23 No. 7; Rite Aid receipt marked Plaintiff's Exhibit No. 8;
24 towing bill marked Plaintiff's Exhibit No. 9; estimate
25 marked Plaintiff's Exhibit No. 10; rental agreement marked

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1 Plaintiff's Exhibit No. 11; photographs marked Defendant's
2 Exhibits Nos. 1 through 6; work order report marked
3 Defendant's Exhibit No. 7.)

4 (Pause.)

5 MR. DODSON: Thank you, Your Honor. The plaintiff
6 would like to call the plaintiff, Do Kim, to testify.

7 THE COURT: Madam interpreter, if you would, please
8 come to the clerk and he will give you an oath.

9 (Whereupon, the interpreter was duly sworn.)

10 DO YEON KIM, having been first
11 duly sworn, testified as follows:

12 THE CLERK: State your full name for the record.

13 THE COURT: Ladies and gentlemen of the jury --

14 THE WITNESS: My name is Do Yeon Kim. First name is a
15 D-O, middle name Y-E-O-N, last name Kim, K-I-M.

16 THE COURT: You may be seated.

17 Ladies and gentlemen, you're going to hear testimony
18 of this witness. He may -- sounds like his English might
19 be better than we think, but if he doesn't understand
20 English he will be testifying in Korean -- is that correct?

21 MR. DODSON: That's correct, Your Honor.

22 THE COURT: He'll be testifying through an
23 interpreter. Some of you may know Korean. I certainly
24 don't. Don't rely on your own knowledge of the Korean
25 language. Even if you disagree with the interpreter, you

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1 have to accept the translation of the witness' testimony as
2 relayed to us by the interpreter.

3 So, Mr. Dodson, are you going to try it in English, or
4 are you going to try it through the interpreter? What's
5 the best way?

6 MR. DODSON: I think we're going to go through the
7 interpreter, Your Honor.

8 THE COURT: All right, sir. You may start.

9 DIRECT EXAMINATION BY MR. DODSON

10 Q Mr. Kim, can you tell the jury how old you are?

11 (Pause for interpretation.)

12 A 1953 December 8.

13 (Pause for interpretation.)

14 THE INTERPRETER: I'm 62 years old.

15 THE COURT: Madam interpreter, you're going to have to
16 speak up pretty loud because I have got to hear over here.

17 THE INTERPRETER: Yes, Your Honor.

18 I'm 62 years old.

19 Q And are you a United States citizen?

20 (Pause for interpretation.)

21 THE INTERPRETER: Yes, I am a U.S. citizen.

22 Q How long have you been a U.S. citizen?

23 (Pause for interpretation.)

24 A It's seven years.

25 THE INTERPRETER: It's been seven years.

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1 Q How long have you lived in South Carolina?

2 (Pause for interpretation.)

3 THE INTERPRETER: It's been about 19 years.

4 Q What do you do for a living?

5 (Pause for interpretation.)

6 THE INTERPRETER: I'm a cleaning supervisor.

7 Q Explain what you do on a day-to-day basis at your job.

8 (Pause for interpretation.)

9 THE INTERPRETER: I manage personnel and I check the
10 work that they do.

11 Q About how many hours a week do you work on average?

12 (Pause for interpretation.)

13 THE INTERPRETER: I work about 15 hours a day.

14 Q Do you pay taxes in Richland County?

15 (Pause for interpretation.)

16 THE INTERPRETER: Yes, I do.

17 Q Do you have an active South Carolina driver's license?

18 (Pause for interpretation.)

19 THE INTERPRETER: Yes, I do have a South Carolina
20 driving license.

21 Q How long have you had a South Carolina driver's
22 license?

23 (Pause for interpretation.)

24 THE INTERPRETER: So out of the 19 years I've had my
25 license, minus four that I was in Georgia, the remaining

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1 years I was a South Carolina driver's license holder.

2 Q At any point since you had a driver's license in the
3 United States has anyone sought to suspend or restrict your
4 license in any way?

5 (Pause for interpretation.)

6 THE INTERPRETER: No, never.

7 Q Are you required to wear eye glasses to drive?

8 (Pause for interpretation.)

9 THE INTERPRETER: No, I am not.

10 Q How is your vision?

11 (Pause for interpretation.)

12 THE INTERPRETER: He says I'm not exactly sure what my
13 vision is, but I have good vision.

14 Q How is your hearing?

15 (Pause for interpretation.)

16 THE INTERPRETER: I have good hearing.

17 Q Were you involved in an automobile wreck on
18 April 24th of 2014?

19 (Pause for interpretation.)

20 THE INTERPRETER: Yes, that's correct.

21 Q Where did the wreck happen?

22 (Pause for interpretation.)

23 THE INTERPRETER: On Alpine Road at a four-way
24 intersection, on the corner of a school.

25 Q Are you familiar with that intersection?

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1 (Pause for interpretation.)

2 THE INTERPRETER: Yes. I'm very familiar with that
3 intersection.

4 Q Where were you coming from and where were you going to
5 immediately prior to the wreck?

6 (Pause for interpretation.)

7 THE INTERPRETER: I was on my way to my office, which
8 is in a tower building near the post office.

9 Q Had you been drinking any alcohol before the wreck?

10 (Pause for interpretation.)

11 THE INTERPRETER: No. I don't drink or smoke.

12 Q Had you been talking on a cell phone immediately prior
13 to the wreck?

14 (Pause for interpretation.)

15 A No.

16 THE INTERPRETER: No.

17 Q Had you been sending text messages before the wreck?

18 (Pause for interpretation.)

19 THE INTERPRETER: I don't know how to text.

20 Q Good for you.

21 Had you been doing anything else on your cell phone
22 immediately prior to the wreck?

23 (Pause for interpretation.)

24 THE INTERPRETER: No.

25 Q Immediately prior to the wreck had you been doing

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1 anything else distracting like eating, drinking, changing
2 the radio station, anything of that nature?

3 (Pause for interpretation.)

4 THE INTERPRETER: No. None of the sort.

5 Q About what time of the day did this wreck happen?

6 (Pause for interpretation.)

7 THE INTERPRETER: I think around 11:00 o'clock in the
8 morning. I'm not exactly sure of the exact time, but I
9 would say about 11:00 a.m.

10 Q Okay. That's fine.

11 MR. DODSON: May I approach, Your Honor?

12 Q Mr. Kim, I'm going to show you what we've marked as
13 Exhibit No. 1.

14 (Pause for interpretation.)

15 Q Does that look like an aerial view of the intersection
16 where this wreck happened?

17 (Pause for interpretation.)

18 THE INTERPRETER: Yes. That's correct.

19 MR. DODSON: Your Honor, at this time I'd offer and
20 file and introduce Plaintiff's Exhibit 1 into evidence.

21 THE COURT: I thought we had agreed on them.

22 MR. GARFIELD: We had, Your Honor.

23 THE COURT: All right. All of them are in.

24 MR. DODSON: Okay. Thank you, Your Honor.

25 Q Before entering the intersection where the wreck

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1 happened did you look to see if the intersection was clear?

2 (Pause for interpretation.)

3 THE INTERPRETER: Before I --

4 (Pause for interpretation.)

5 THE INTERPRETER: Before I entered the intersection
6 the road was clear. There were no cars. There was only
7 one car, but otherwise it was clear. And then after that
8 I'm not sure because the accident happened and I was dazed.

9 Q Did you see any blue lights or hear any sirens
10 immediately before the wreck?

11 (Pause for interpretation.)

12 THE INTERPRETER: No. I did not hear or see anything.

13 Q Okay. At the intersection where this wreck happened
14 and from the direction that you were traveling before the
15 wreck can you see down the street that crosses over Alpine
16 Road?

17 (Pause for interpretation.)

18 THE INTERPRETER: You can only see to the left of you
19 on that road once you enter into the intersection and
20 you're about midway through the intersection.

21 Q Is there anything at that intersection that obstructs
22 you seeing down the cross street?

23 (Pause for interpretation.)

24 THE INTERPRETER: Yes. There are some trees, and on
25 the left-hand side of the road from where I was coming

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1 from. So from my point of view you can't see the car
2 that's on the left and also the car, the deputy's car, or
3 the law enforcement officer's car would not have been able
4 to see my car either.

5 Q Based on what you could see as you approached the
6 intersection did the intersection appear clear to you?

7 (Pause for interpretation.)

8 THE INTERPRETER: So when I had the green light and as
9 I was passing through the intersection there was one police
10 car that whizzed --

11 (Pause for interpretation.)

12 THE INTERPRETER: That whizzed by me at an estimated
13 speed of about 80 miles per hour.

14 Q And at the time that that police car went through were
15 you already in the intersection?

16 (Pause for interpretation.)

17 THE INTERPRETER: He stated that the lights were not
18 on and they could -- and there were no sirens.

19 (Pause for interpretation.)

20 THE INTERPRETER: Yes. And there was a green light.

21 (Pause for interpretation.)

22 THE INTERPRETER: I was the green light and the
23 officer did not have a green light.

24 Q Okay. Is that the vehicle that hit you, or was it
25 another vehicle that hit you?

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1 (Pause for interpretation.)

2 THE INTERPRETER: It was the second vehicle.

3 Q Now, as you approached the intersection -- well, first
4 of all, let me ask this. I think we've got that. Let me be
5 clear.

6 Is there a traffic light at this intersection?

7 (Pause for interpretation.)

8 THE INTERPRETER: Yes, there is a traffic signal.

9 Q As you approached the intersection what color was the
10 traffic light before you actually entered the intersection?

11 (Pause for interpretation.)

12 THE INTERPRETER: Before I entered into the
13 intersection it was a green light.

14 Q Okay. And before you got hit did the traffic light
15 ever change to yellow or red?

16 (Pause for interpretation.)

17 THE INTERPRETER: And it was still a green light.

18 Q Can you explain to the jury in your own words how this
19 wreck happened?

20 THE INTERPRETER: How? I'm sorry? How the --

21 Q How the wreck happened.

22 (Pause for interpretation.)

23 THE INTERPRETER: As my line of vision, I was looking
24 straight ahead. So I'm not sure, but from what I remember
25 there was a car that came and hit me from the side.

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1 Q Okay. Was it a Richland County sheriff's vehicle that
2 hit you?

3 (Pause for interpretation.)

4 THE INTERPRETER: I'm not sure what county; I'm not
5 sure which county.

6 Q Okay. Was it a police car?

7 (Pause for interpretation.)

8 THE INTERPRETER: Yes, it was.

9 Q Did you later learn after the accident that it was a
10 Richland County police car?

11 (Pause for interpretation.)

12 THE INTERPRETER: I'm not really sure. All I know is
13 that the accident happened and then another police officer
14 came onto the scene.

15 Q To the best of your knowledge did the car that hit you
16 have its lights and siren on when it hit you?

17 (Pause for interpretation.)

18 THE INTERPRETER: The -- the vehicle that hit me did
19 not have their lights on, or there were no sirens.

20 Q How fast would you estimate the sheriff's car was going
21 that hit you?

22 (Pause for interpretation.)

23 THE INTERPRETER: I'm not sure at what speed the
24 vehicle was traveling, the vehicle that hit me. I do know
25 that the speed limit posted in that area is about 35 miles

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1 because of the school zone.

2 Q And how fast were you going at the time that you were
3 hit?

4 (Pause for interpretation.)

5 THE INTERPRETER: I was going at 35 miles an hour.

6 Q When you first saw the car that hit you, how much time
7 did you have to react?

8 (Pause for interpretation.)

9 THE INTERPRETER: There was no time to react. The car
10 had already hit me.

11 Q Between the time you first saw the sheriff's car that
12 hit you and the time that -- of the impact or the collision,
13 what could you have done to avoid the wreck?

14 (Pause for interpretation.)

15 THE INTERPRETER: There was absolutely no way to avoid
16 getting hit. I mean, it happened all of a sudden. And the
17 light only came on after the collision happened. The
18 police vehicle that was following the car that hit me
19 turned its lights on at the time of the collision.

20 Q So the blue lights and siren came on only after the
21 wreck happened?

22 (Pause for interpretation.)

23 THE INTERPRETER: So I'm not sure if the car that was
24 following the car that hit me had its lights on from the
25 beginning, but all I know is that the car that hit me did

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1 not have its lights or sirens on. After the collision I
2 noticed that the third vehicle that was following had its
3 lights on.

4 Q Okay. I'm going to show you what we've marked as
5 Exhibit No. 2.

6 (Pause for interpretation.)

7 THE INTERPRETER: This is my truck.

8 Q And this photograph is Exhibit No. 2. What caused the
9 damage to your truck that we see in that photograph?

10 THE INTERPRETER: A police vehicle hit my truck, and
11 that's where the damage came from.

12 (Pause for interpretation.)

13 THE INTERPRETER: Would it be okay for me to...

14 (Pause for interpretation.)

15 THE INTERPRETER: So if I had hit the police vehicle,
16 then the front of my car would be smashed in. But because
17 the police vehicle hit me from the side, that's why the
18 side, my bumper, came off.

19 Q Okay. Mr. Kim, can you explain that to the jury
20 showing them the photograph and what you're talking about?

21 (Pause for interpretation.)

22 THE INTERPRETER: So if I had smashed into the police
23 vehicle, then the front of my bumper would be completely
24 smashed in and my air bags would have deployed. But
25 because the police vehicle hit me from the side, that's why

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1 my bumper has come off.

2 Q Can you point with your finger and show me kind of
3 where the police vehicle hit your car?

4 (Pause for interpretation.)

5 THE INTERPRETER: It was here on the corner, and as it
6 was passing me by you can see that the bumper came off. So
7 if I had hit, again, the police vehicle, then my air bags
8 would have deployed and the front would be smashed in.

9 Q So your airbags did not deploy, is that correct?

10 (Pause for interpretation.)

11 THE INTERPRETER: No. They were not deployed.

12 Q Were you physically injured in the wreck?

13 (Pause for interpretation.)

14 THE INTERPRETER: Yes. And I still have pain in my
15 neck.

16 Q Okay. And that was going to be my next question. What
17 parts of your body were hurt in the wreck?

18 (Pause for interpretation.)

19 THE INTERPRETER: Initially, the first time of the
20 accident my neck didn't hurt but my chest area was in pain.

21 Q Why was your chest area in pain?

22 (Pause for interpretation.)

23 THE INTERPRETER: I think it was because of the
24 seatbelt.

25 Q Okay. Did an ambulance come to the scene of the wreck?

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1 (Pause for interpretation.)

2 THE INTERPRETER: Yes.

3 Q Okay. Did the E.M.S. workers check you out at the
4 scene of the wreck?

5 (Pause for interpretation.)

6 THE INTERPRETER: They asked me if I wanted to go to
7 the emergency room, and I told them that I was having
8 little difficulty breathing and was in some pain but I
9 didn't want to go to the emergency room.

10 Q And you did not, in fact, go to the emergency room the
11 day of the wreck?

12 (Pause for interpretation.)

13 THE INTERPRETER: No. I did not go to the E.R. that
14 day.

15 Q Did you get a bill from E.M.S.?

16 (Pause for interpretation.)

17 THE INTERPRETER: I went to the chiropractor.

18 (Pause for interpretation.)

19 THE INTERPRETER: And I had neck pain after that, and
20 so I went to the doctors after that.

21 Q Okay.

22 THE INTERPRETER: But not that day.

23 Q Sure. We're going to get to that.

24 (Pause for interpretation.)

25 Q Did you get a bill from the E.M.S. that came and

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1 checked you out?

2 (Pause for interpretation.)

3 THE INTERPRETER: Yes. They did.

4 Q I'm going to show you what we've marked as Plaintiff's
5 Exhibit No. 3. Is that the bill that you got from E.M.S.?

6 (Pause for interpretation.)

7 THE INTERPRETER: Yes. That's correct.

8 Q Okay. Now, did you get any other medical care or
9 treatment the day of the wreck?

10 (Pause for interpretation.)

11 THE INTERPRETER: No.

12 Q Did you see a chiropractor that -- the day of the
13 wreck?

14 MR. GARFIELD: Objection, Your Honor. It's leading.

15 THE COURT: Well, that's pretty innoxious.

16 Go ahead. We've got an interpreter.

17 MR. DODSON: Yes, sir.

18 (Pause for interpretation.)

19 THE INTERPRETER: I'm not really sure. I'm not sure
20 if it was the day of, but I know I went to the see the
21 chiropractor. I don't know what day it was.

22 Q Okay. Would it help refresh your recollection to look
23 at the bill from the chiropractor's office?

24 (Pause for interpretation.)

25 THE INTERPRETER: Yes.

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1 Q Let me show you what we've marked as Exhibit 4. I'm
2 going to point to the date there.

3 (Pause for interpretation.)

4 THE INTERPRETER: Yes. That's correct. That was the
5 day of the accident.

6 Q Okay. Does that refresh your recollection about when
7 you saw the chiropractor?

8 (Pause for interpretation.)

9 A Yeah.

10 Q And what day did you see the chiropractor?

11 (Pause for interpretation.)

12 THE INTERPRETER: Yes. The day of the accident, the
13 24th.

14 Q Okay. Now, Exhibit No. 4, is that the bill that you
15 got from the chiropractor's office?

16 (Pause for interpretation.)

17 THE INTERPRETER: Yes. That's correct.

18 Q Okay. Did any lawyer or law firm prompt you to go see
19 the chiropractor?

20 (Pause for interpretation.)

21 THE INTERPRETER: No.

22 Q Okay. Did you seek that care and treatment on your
23 own?

24 (Pause for interpretation.)

25 THE INTERPRETER: Yes. My nephew told me that if I

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1 was in pain that I should go see this chiropractor.

2 Q Okay. And your nephew is not a lawyer, is he?

3 (Pause for interpretation.)

4 THE INTERPRETER: No, he is not.

5 Q Doesn't work for any law firm or lawyer's office.

6 (Pause for interpretation.)

7 THE INTERPRETER: He's a realtor.

8 Q Okay. The next day, which would have been

9 April 25th of 2014, was your pain better or worse the next
10 day?

11 (Pause for interpretation.)

12 THE INTERPRETER: Yes. I started experiencing a lot
13 of pain in my neck.

14 (Pause for interpretation.)

15 THE INTERPRETER: And I woke up from my sleep because
16 of the pain.

17 Q Did you go to the hospital the next day?

18 (Pause for interpretation.)

19 THE INTERPRETER: Yes.

20 Q Okay. And just -- we kind of got at this, so I just
21 want to make sure I'm clear.

22 what was hurting you the day after the wreck that
23 prompted you to go to the hospital?

24 (Pause for interpretation.)

25 THE INTERPRETER: Because I was experiencing severe

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1 pain in my neck, and I would have these shooting pains when
2 I was trying to sleep.

3 Q Okay. What did they do for you at the hospital?

4 (Pause for interpretation.)

5 THE INTERPRETER: I got some x-rays taken and they
6 gave me some medicine.

7 Q Okay. Did the doctors examine you there as well?

8 (Pause for interpretation.)

9 THE INTERPRETER: Yes.

10 Q Okay. And the medicines that you mentioned, were those
11 prescription medicines?

12 (Pause for interpretation.)

13 THE INTERPRETER: Yes. I was prescribed medicine.

14 Q Okay. And did any lawyer or law firm prompt you to go
15 to the hospital the next day?

16 (Pause for interpretation.)

17 THE INTERPRETER: No. I went because of the pain that
18 I was experiencing.

19 Q Did you get a bill from the hospital?

20 (Pause for interpretation.)

21 THE INTERPRETER: Yes.

22 Q Let me show you what we've marked as Plaintiff's
23 Exhibit No. 5. Is that a copy of the bill that you got from
24 the hospital?

25 (Pause for interpretation.)

Do Yeon Kim
Direct examination by Mr. Dodson

1 THE INTERPRETER: Yes. That's correct.

2 Q Okay. Did you also get a bill from the doctors who saw
3 you at the hospital?

4 (Pause for interpretation.)

5 THE INTERPRETER: Yes.

6 Q Let me show you what we've marked as Plaintiff's
7 Exhibit No. 6. Is that a copy of the bill that you got from
8 the doctors who saw you at the hospital?

9 (Pause for interpretation.)

10 THE INTERPRETER: Yes. That's correct.

11 Q Now, I think you said earlier that they did some x-rays
12 at the hospital.

13 (Pause for interpretation.)

14 THE INTERPRETER: Yes. I did have x-rays done at the
15 hospital.

16 Q Did you get a bill for those x-rays at the hospital?

17 (Pause for interpretation.)

18 THE INTERPRETER: Yes.

19 Q Show you what we've marked as Plaintiff's Exhibit
20 No. 7. Is that a copy of the bill you got for the x-rays at
21 the hospital?

22 (Pause for interpretation.)

23 THE INTERPRETER: Yes. That's correct.

24 Q Now, you mentioned that you got a prescription for some
25 medication at the hospital.

Do Yeon Kim
Direct examination by Mr. Dodson

1 (Pause for interpretation.)

2 THE INTERPRETER: Yes.

3 Q And did you actually get those prescriptions filled at
4 a pharmacy?

5 (Pause for interpretation.)

6 THE INTERPRETER: Yes.

7 Q I'm going to show you what we've marked as Plaintiff's
8 Exhibit No. 8. Are those the receipts from where you
9 purchased medication?

10 (Pause for interpretation.)

11 THE INTERPRETER: Yes. That's correct.

12 Q After you left the hospital on April 25th of 2014 did
13 you experience any more pain from your injuries the day
14 after that?

15 (Pause for interpretation.)

16 THE INTERPRETER: Yes. I was experiencing ongoing
17 pain.

18 Q Okay. And can you describe in detail to the jury what
19 that pain was like in the days and weeks following the
20 wreck?

21 (Pause for interpretation.)

22 THE INTERPRETER: So the pain was worse at night, and
23 it would keep me up. Sometimes when I fell asleep there
24 would be these shooting, jolting pains that would wake me
25 up in my sleep. And it wasn't getting better, and that's

Do Yeon Kim
Direct examination by Mr. Dodson

1 why I went to several different doctors to get treatment to
2 see if there was anything that would make it better.

3 Q Okay. Any of the medical care and treatment that
4 you've received, did any lawyer or lawyer's office prompt
5 you to see any kind of specific doctor or hospital?

6 (Pause for interpretation.)

7 THE INTERPRETER: No. Nothing like that.

8 Q Do you still have pain today?

9 (Pause for interpretation.)

10 THE INTERPRETER: Yes. Even now to this day
11 sometimes, you know, my pain will -- my arm will
12 involuntarily shoot out because of the pain sometimes.

13 Q Did you have that problem before this wreck?

14 (Pause for interpretation.)

15 THE INTERPRETER: No. Nothing like that.

16 Q Okay. Does the pain come and go, or is it a constant
17 pain?

18 (Pause for interpretation.)

19 THE INTERPRETER: I feel like it might never get
20 better. It's just short of a constant pain. There's
21 sometimes where it's more subtle than others.

22 Q We've talked a little bit about your truck, but could
23 you drive your truck after the wreck?

24 (Pause for interpretation.)

25 THE INTERPRETER: No.

Do Yeon Kim
Direct examination by Mr. Dodson

1 Q Was your truck towed from the wreck scene?

2 (Pause for interpretation.)

3 THE INTERPRETER: Yes.

4 Q Okay. Was there a bill for that?

5 (Pause for interpretation.)

6 THE INTERPRETER: Yes.

7 Q I'm going to show you what we've marked as Exhibit No.

8 9. Is that a copy of the bill that you got from the tow
9 company?

10 (Pause for interpretation.)

11 THE INTERPRETER: Yes. That's correct.

12 Q Okay. Now, did you get an estimate to repair the
13 damage to your truck?

14 (Pause for interpretation.)

15 THE INTERPRETER: I did.

16 Q Okay. I'm going to show you what we've marked as
17 Plaintiff's Exhibit No. 10.

18 (Pause for interpretation.)

19 Q Is that a copy of the estimate that you got to repair
20 your truck?

21 (Pause for interpretation.)

22 A Yes.

23 THE INTERPRETER: Yes.

24 Q Did you, in fact, get your truck repaired?

25 (Pause for interpretation.)

Do Yeon Kim
Direct examination by Mr. Dodson

1 THE INTERPRETER: Yes.

2 Q And to the best of your knowledge were the repair costs
3 what is actually reflected on that estimate?

4 (Pause for interpretation.)

5 THE INTERPRETER: Yes.

6 Q Okay. Now, while your truck was in the body shop being
7 repaired did you get a rental car?

8 (Pause for interpretation.)

9 THE INTERPRETER: Yes.

10 Q Did you incur charges for that rental car?

11 (Pause for interpretation.)

12 THE INTERPRETER: Yes.

13 Q Let me show you what we've marked as Exhibit No. 11.

14 (Pause for interpretation.)

15 Q Is that a copy of the bill for the rental car while
16 your truck was being repaired?

17 A Yes.

18 THE INTERPRETER: Yes. That's correct.

19 MR. DODSON: Now, Judge, I just want to make sure
20 we've offered, filed and introduced Plaintiff's Exhibits 1
21 through 11 and those are into evidence.

22 THE COURT: They are. I mean, you all agree.

23 MR. GARFIELD: Yes, Your Honor.

24 Q The E.M.S. bill, which was Exhibit No. 3 --

25 (Pause for interpretation.)

Do Yeon Kim
Direct examination by Mr. Dodson

1 Q -- has Richland County paid any portion of that medical
2 bill?

3 (Pause for interpretation.)

4 MR. GARFIELD: Objection, Your Honor.

5 THE COURT: Hold on a second. What's the objection?

6 MR. GARFIELD: This is --

7 (Pause for interpretation.)

8 THE COURT: Hold on one second -- one second.

9 THE INTERPRETER: Sure.

10 MR. GARFIELD: This ducktails to the assertion he made
11 in opening argument whether or not the county has already
12 paid -- or not the county has paid. So I just -- he can
13 discuss his bills, but what has been paid and what has not.

14 THE COURT: It obviously hasn't been paid. That's for
15 the jury to determine --

16 MR. GARFIELD: Yes, sir.

17 THE COURT: -- whether or not Richland county owes it.
18 No. It hasn't been paid. You stipulate they haven't been
19 paid. This is for the jury to determine who is responsible
20 for them, if anybody.

21 MR. DODSON: I just want it to be clear to the jury
22 they've not paid one dime of the medical bills. If that's
23 stipulated, then I won't ask those questions.

24 THE COURT: That's stipulated, but that's for the jury
25 to determine who, if anybody, owes that.

Do Yeon Kim
Direct examination by Mr. Dodson

1 Q Do you want the county to pay these bills and these
2 expenses that you incurred as a result of this wreck?

3 (Pause for interpretation.)

4 THE INTERPRETER: Yes. That's correct.

5 Q Can you explain to the jury why?

6 (Pause for interpretation.)

7 THE INTERPRETER: The reason is because the police
8 officer was at fault, and I was wronged in this situation.

9 Q You feel you're responsible for paying for the repair
10 bill to the officer's vehicle?

11 (Pause for interpretation.)

12 THE INTERPRETER: No, I don't. I don't see any reason
13 why I would have to pay anything for the police officer.

14 Q And can you explain why not?

15 (Pause for interpretation.)

16 THE INTERPRETER: It's because I wasn't at fault. I
17 -- I feel like I've been so wronged in this situation.
18 I've -- you know, this has eaten up so much of my time. I
19 don't have much else to say.

20 THE COURT: Speak up for me, now.

21 THE INTERPRETER: I'm sorry, Your Honor.

22 THE COURT: Speak up.

23 THE INTERPRETER: There's one other thing that I could
24 say.

25 MR. GARFIELD: Objection, Your Honor. There's no

Do Yeon Kim
Direct examination by Mr. Dodson

1 nothing to respond to.

2 THE COURT: You have to ask a question.

3 (Pause for interpretation.)

4 THE COURT: No. Nothing further.

5 Q Why has this eaten up so much of your time?

6 (Pause for interpretation.)

7 THE INTERPRETER: I'm a supervisor of about 25 people.

8 I oversee about 25 people, and so I need to constantly be

9 there, and we're always very busy. But because of this I

10 haven't really been able to be there at work because of
11 this situation.

12 Q Is that because of the injuries that you sustained?

13 (Pause for interpretation.)

14 THE INTERPRETER: I mean, sure, the pain is always

15 there, but I'm talking about having to go, you know, to --

16 to trial and things like that. Like even today I can't be
17 at work because of this.

18 MR. DODSON: Nothing further subject to redirect, Your
19 Honor.

20 MR. GARFIELD: Thank you, Your Honor.

21

22

23

24

25

Do Yeon Kim
Cross-examination by Mr. Garfield

1 CROSS-EXAMINATION

2 BY MR. GARFIELD

3 Q Good morning, Mr. Kim.

4 (Pause for interpretation.)

5 THE INTERPRETER: Good morning.

6 Q I met you last month. Do you remember that?

7 A Yes.

8 (Pause for interpretation.)

9 THE INTERPRETER: Yes. I do.

10 Q So I could understand your employment situation, you
11 work as a supervisor at B.C.M.

12 A Yes.

13 (Pause for interpretation.)

14 THE INTERPRETER: Yes.

15 Q B.C.M. stands for Business Cleaning and Maintenance?

16 (Pause for interpretation.)

17 THE INTERPRETER: That's correct.

18 Q This cleaning company is Korean based?

19 (Pause for interpretation.)

20 THE INTERPRETER: It's a Korean owned company.

21 Q The -- in other words, B.C.M. is owned by your sister's
22 husband.

23 (Pause for interpretation.)

24 A Yeah, my sister.

25 THE INTERPRETER: Yes. That's correct.

Do Yeon Kim
Cross-examination by Mr. Garfield

1 Q And B.C.M. employees roughly 50 people, is that right?

2 A Yeah.

3 (Pause for interpretation.)

4 THE INTERPRETER: Yes. That's correct. Fifty.

5 Q And you said that about half of them you supervise.

6 (Pause for interpretation.)

7 THE INTERPRETER: Yes. That's correct.

8 Q And these buildings are distributed all around the
9 area.

10 (Pause for interpretation.)

11 THE INTERPRETER: There is one in Parkland and Clemson
12 and other areas. There's two in Clemson.

13 Q About 43 or so of the employees are native United
14 States, is that right?

15 (Pause for interpretation.)

16 THE INTERPRETER: I think there are about five
17 citizens, and then I think the rest of them are green card
18 holders.

19 Q Okay. Most of the supervisors are Korean, is that
20 right?

21 (Pause for interpretation.)

22 THE INTERPRETER: There are two Mexican supervisors.

23 Q Now, on this particular day you had or the company had
24 hired a new night supervisor, is that right?

25 (Pause for interpretation.)

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE INTERPRETER: That's correct.

2 Q And you -- before the collision you had gone to help
3 make a badge for the new night supervisor, right?

4 (Pause for interpretation.)

5 THE INTERPRETER: Yes. That's correct.

6 Q Okay. And she's Korean and she goes by Sunny, is that
7 right?

8 A Yeah, Sunny, Sunny, yeah.

9 (Pause for interpretation.)

10 THE INTERPRETER: Yes. That's correct.

11 (Pause for interpretation.)

12 THE INTERPRETER: And she -- she works once a week for
13 an hour a week.

14 Q Okay. So you and Sunny had been at the tower building
15 on I-77 and I-20, is that right?

16 (Pause for interpretation.)

17 THE INTERPRETER: Yes.

18 Q Okay. So before the accident your route, you were
19 driving up Alpine Road, correct?

20 (Pause for interpretation.)

21 THE INTERPRETER: Yes. That's correct. I was on
22 Alpine Road.

23 Q And you were intending to continue on Alpine Road at
24 the time of the collision, is that right?

25 (Pause for interpretation.)

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE INTERPRETER: I was on the way to the office, yes.

2 That's correct.

3 Q And you were -- your route was you were going,
4 intending to go, through the intersection of Alpine and
5 Windsor Lake, right?

6 A Yeah, yeah.

7 (Pause for interpretation.)

8 THE INTERPRETER: Yes. That's correct. I was going
9 up Alpine.

10 Q Because your office building is across the intersection
11 next to the post office, is that right?

12 A Yeah.

13 (Pause for interpretation.)

14 THE INTERPRETER: Yes. It's right next to the Bi-Lo.

15 Q But it had been up here on Alpine Road, is that right?

16 (Pause for interpretation.)

17 THE INTERPRETER: Yes. My office is if you pass
18 through this four-way intersection that you see in this
19 picture, there's a post office not far up, and then you
20 take a right there, and that's my office.

21 Q Understood. And thank him.

22 (Pause for interpretation.)

23 Q Now, following you at the time of the collision, behind
24 you, was this individual Sunny, is that right?

25 (Pause for interpretation.)

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE INTERPRETER: Yes. She was following me.

2 Q Okay. And you testified that you had the green light.

3 A Green light.

4 (Pause for interpretation.)

5 THE INTERPRETER: Yes. That's correct. Green light.

6 Q And as you were approaching the intersection, you'd
7 agree with me that you were in this middle lane attempting
8 to go straight.

9 (Pause for interpretation.)

10 THE INTERPRETER: Yes. I was in the middle lane.

11 Q Attempting to go straight.

12 (Pause for interpretation.)

13 THE INTERPRETER: Yes. Going straight.

14 Q Now, you talked about this first police car, and I'm
15 going to ask you questions about that.

16 (Pause for interpretation.)

17 THE INTERPRETER: Yes. There was a first car that was
18 traveling at about 80 miles per hour.

19 Q That's what I'm going to ask you.

20 (Pause for interpretation.)

21 Q This first police car was driving down Windsor -- your
22 testimony is that your first police car is driving down
23 Windsor Lake Boulevard going that way, is that right?

24 (Pause for interpretation.)

25 THE INTERPRETER: Yes. And it passed by.

Do Yeon Kim
Cross-examination by Mr. Garfield

1 Q In other words, from his left to his right, is that
2 correct?

3 (Pause for interpretation.)

4 THE INTERPRETER: Yes, that's correct, going toward my
5 right direction.

6 Q You agree that he went flying across the intersection.

7 (Pause for interpretation.)

8 THE INTERPRETER: Yes.

9 Q Okay. In a blinding instant, is that correct?

10 (Pause for interpretation.)

11 THE INTERPRETER: Yes, it was a blinding instant.

12 Q Like a bullet, I think you testified before, is that
13 correct?

14 (Pause for interpretation.)

15 THE INTERPRETER: Yes, that's correct, like a bullet.

16 Q And this first officer had no lights.

17 (Pause for interpretation.)

18 THE INTERPRETER: No. No lights on the first car.

19 A No lights.

20 Q He ran the red light on Windsore Lake, right?

21 (Pause for interpretation.)

22 THE INTERPRETER: Yes, that's correct. He ran the red
23 light.

24 Q Do you recall where in the intersection you were when
25 the first officer went 80 miles an hour and almost hit you?

Do Yeon Kim
Cross-examination by Mr. Garfield

1 (Pause for interpretation.)

2 THE INTERPRETER: In my estimate, my rough estimate,
3 he was going about 80 miles an hour. I don't know the
4 exact speed, but he was going very fast.

5 (Pause for interpretation.)

6 THE INTERPRETER: I was in the middle of the four-way
7 intersection at that point.

8 Q Okay. If you could before I get you to draw it so I
9 could understand, again, I'm sorry about the mobility of the
10 easel -- can you ask him to just point where in the
11 intersection that his car was when he was almost hit by the
12 first car?

13 (Pause for interpretation.)

14 THE INTERPRETER: So when the first car was going I
15 was --

16 (Pause for interpretation.)

17 (Whereupon, the witness demonstrated.)

18 THE INTERPRETER: I mean, it happened in a flash like
19 I could -- I could barely see it.

20 (Pause for interpretation.)

21 THE INTERPRETER: And I was right where I pointed when
22 that first car passed by.

23 Q Okay. To your refresh your recollection, do you recall
24 at your deposition putting an "X" on a map?

25 (Pause for interpretation.)

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE INTERPRETER: I don't really remember the exact
2 location at the time of the accident.

3 Q Okay. Do you disagree that your car was where the "X"
4 is on this at the time that you were almost hit by the first
5 car?

6 (Pause for interpretation.)

7 THE INTERPRETER: I mean, I -- maybe roughly. I would
8 think it was about that.

9 Q In the middle of the intersection.

10 (Pause for interpretation.)

11 THE INTERPRETER: Yes. That's correct. Almost to the
12 exact center of the intersection.

13 Q And then after that first car, the second police car
14 actually collided with you, correct?

15 (Pause for interpretation.)

16 A Yeah.

17 THE INTERPRETER: Yes. That's correct. The second --

18 (Pause for interpretation.)

19 THE INTERPRETER: The second car hit me, and then the
20 third police car turned its lights on.

21 Q The time between the first police car that almost
22 struck you and the second car that you did collide with,
23 that was about one to two seconds, is that right?

24 (Pause for interpretation.)

25 THE INTERPRETER: I was going about a second, maybe if

Do Yeon Kim
Cross-examination by Mr. Garfield

1 that. I mean, it was just -- it happened so quickly.

2 Q Within a blink of the eye.

3 A Yes.

4 (Pause for interpretation.)

5 THE INTERPRETER: Yes. With the blink of an eye.

6 Q Now, this third police car came up behind you, right?

7 (Pause for interpretation.)

8 THE INTERPRETER: Right after the collision the third
9 car came, and it had lights on. I don't know if it had its
10 lights on before the collision or after the collision, but
11 Sunny, my friend who was following behind me, said --

12 MR. GARFIELD: Objection.

13 THE COURT: She's answering your question.

14 MR. GARFIELD: I wanted to know -- this is hearsay,
15 she said certain things.

16 THE COURT: Who?

17 MR. GARFIELD: Sunny. She -- the last thing was
18 Sunny said --

19 THE COURT: Hold on. You can't testify about what a
20 witness said. Okay.

21 (Pause for interpretation.)

22 THE COURT: Just what he knows of his own observation.

23 (Pause for interpretation.)

24 THE INTERPRETER: So what I saw was the second car hit
25 me, and the third light came and -- the third car came and

Do Yeon Kim
Cross-examination by Mr. Garfield

1 the third car had its lights on at that time.

2 (Pause for interpretation.)

3 THE INTERPRETER: But the car that hit me didn't have
4 its lights on, so my assumption or guess is that the third
5 one --

6 MR. GARFIELD: Objection.

7 THE COURT: Tell us what you know.

8 (Pause for interpretation.)

9 THE INTERPRETER: Okay.

10 Q I understand. That third car, your testimony is he was
11 going extremely fast, is that right?

12 THE INTERPRETER: The third car?

13 MR. GARFIELD: The third car, yes, ma'am.

14 (Pause for interpretation.)

15 THE INTERPRETER: I'm not sure of what's needed. What
16 I know for sure is that the first car was traveling at
17 extremely high speed. The second car that hit me was also
18 traveling at a very high speed.

19 Q We know you've been -- you were very familiar with this
20 particular intersection, right?

21 (Pause for interpretation.)

22 THE INTERPRETER: Yes. That's correct.

23 Q In fact, you used to live in an apartment near this
24 intersection, correct?

25 (Pause for interpretation.)

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE INTERPRETER: Yes. Near the Kangaroo. There's an
2 apartment building there.

3 Q In fact, your office is right up the road.

4 (Pause for interpretation.)

5 THE INTERPRETER: Yes. Past the intersection next to
6 the Bi-Lo.

7 Q You traveled through this intersection, you would
8 agree, many, many times.

9 (Pause for interpretation.)

10 THE INTERPRETER: Yes, yes. I mean, even today I went
11 across that intersection three times before I came here.
12 So, yes, I travel that intersection frequently.

13 Q Frequently. In fact, every day for about five years,
14 is that right?

15 (Pause for interpretation.)

16 THE INTERPRETER: Yes. That's correct.

17 Q Okay. And you knew this at the time to be a very
18 dangerous intersection.

19 (Pause for interpretation.)

20 A Yeah.

21 THE INTERPRETER: Yes. That's correct.

22 (Pause for interpretation.)

23 THE INTERPRETER: Yes. I'm familiar with it, and it's
24 a -- you can't really see because of the trees.

25 Q You can't see to the trees to the left.

Do Yeon Kim
Cross-examination by Mr. Garfield

1 (Pause for interpretation.)

2 THE INTERPRETER: Yes. There are trees on the left
3 that obstruct the view.

4 Q In fact, you've seen more than one -- several
5 collisions around this intersection.

6 (Pause for interpretation.)

7 THE INTERPRETER: There's one accident that I've seen
8 there. You know, it happened a long time ago, so I don't
9 really remember exactly, but.

10 Q Okay. You've seen several collisions around this
11 intersection, isn't that true?

12 (Pause for interpretation.)

13 THE INTERPRETER: No, not several. I would say I've
14 seen it once, and it happened a long time ago.

15 Q Okay. You -- you had the green light all the way,
16 through and through, right?

17 (Pause for interpretation.)

18 THE INTERPRETER: Yes. Before I entered the
19 intersection at the time of the collision and even after
20 the collision it was a green light.

21 Q You never applied the brakes, correct?

22 (Pause for interpretation.)

23 THE INTERPRETER: No. There was no time to react or
24 to even brake.

25 (Pause for interpretation.)

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE INTERPRETER: I mean, I had a green light I was
2 going through, and everything happened very quickly.

3 Q Okay. Sir, you never applied your brakes, is that
4 correct?

5 (Pause for interpretation.)

6 MR. DODSON: Objection. Asked and answered, Your
7 Honor.

8 THE COURT: He has asked. Sustained.
9 Move along.

10 MR. GARFIELD: Okay.

11 Q You maintained --

12 MR. GARFIELD: Thank you, Your Honor.

13 Q You maintained the same speed as you were driving on
14 Alpine Road up until the collision.

15 (Pause for interpretation.)

16 THE INTERPRETER: Yes. I was going at 35 miles per
17 hour, and because of the trees that are hiding the view on
18 the left I was traveling at the speed even more to be -- to
19 be careful.

20 Q To be careful?

21 (Pause for interpretation.)

22 THE INTERPRETER: Not careful. I'm just going
23 straight through the intersection, and I can't see what's
24 on my left.

25 Q Okay. Directly behind you at the time of the collision

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Cross-examination by Mr. Garfield

1 was Sunny, right?

2 (Pause for interpretation.)

3 THE INTERPRETER: Yes. Sunny's car was behind me.

4 Q There were no cars between Sunny and your car, right?

5 (Pause for interpretation.)

6 THE INTERPRETER: No. I -- I -- I don't believe there
7 were any other cars at the time.

8 Q Sunny was driving a Lexus at the day of the collision?

9 A Yes.

10 (Pause for interpretation.)

11 THE INTERPRETER: Yes. That's correct.

12 Q Okay. She still drives that same car?

13 (Pause for interpretation.)

14 MR. DODSON: Objection.

15 THE COURT: Stand up when you make your objection.

16 MR. DODSON: I'm sorry, Your Honor. Objection,
17 relevance. I don't know what kind of car she was in.

18 THE COURT: That's not relevant, what kind of car she
19 was driving.

20 MR. GARFIELD: Thank you, Your Honor.

21 Q To your knowledge did -- did you talk -- I don't want
22 to know what was said. Did you have a conversation with the
23 trooper? Did you, sir?

24 THE INTERPRETER: You don't want to know what was
25 said.

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Cross-examination by Mr. Garfield

1 MR. GARFIELD: I don't want to know what was said,
2 yes.

3 (Pause for interpretation.)

4 THE INTERPRETER: My English is not very proficient,
5 but I know that the policeman asked if I was okay and if I
6 wanted to go to the hospital. That much I know.

7 Q I don't want to know what was said, but Sunny to your
8 knowledge had a conversation with the trooper, correct?

9 (Pause for interpretation.)

10 THE INTERPRETER: Yes. I think that they did have a
11 conversation.

12 Q She speaks English fairly well, correct?

13 (Pause for interpretation.)

14 THE INTERPRETER: Yeah. I would say she has about
15 50 percent proficiency.

16 Q You had -- you or Sunny had asked your nephew to come
17 to the scene, is that right?

18 (Pause for interpretation.)

19 THE INTERPRETER: Yes. Sunny called my nephew to come
20 to the scene.

21 Q Okay. You'd agree with me that a good driver, a
22 defensive driver, when coming up to a green light should
23 look to the left or right before crossing the intersection.

24 MR. DOUGALL: Objection, Your Honor. Leading.

25 THE COURT: Overruled. He's on cross-examination. He

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Cross-examination by Mr. Garfield

1 can lead all he wants to.

2 MR. DOUGALL: I understand, but it's got no relevance
3 to the fact that Mr. Kim had the green light. And there's
4 been no evidence that --

5 THE COURT: Overruled.

6 MR. DOUGALL: Thank you, Your Honor.

7 MR. GARFIELD: And I can ask it again if it helps.

8 (Pause for interpretation.)

9 THE INTERPRETER: That's correct. That's very normal
10 behavior for a defensive driver.

11 Q Right. The exception, one of the exceptions, would be
12 an emergency vehicle, is that right?

13 (Pause for interpretation.)

14 MR. DOUGALL: Objection, Your Honor.

15 THE COURT: Now, he can't testify about what the law
16 is or should be. That's for me to tell the jury what that
17 is.

18 Q Okay. The day of the collision, you testified that you
19 were experiencing pain, correct?

20 (Pause for interpretation.)

21 THE INTERPRETER: Yes. That's correct.

22 Q And you went to a friend of yours who's a chiropractor,
23 right?

24 (Pause for interpretation.)

25 THE INTERPRETER: I don't personally know the

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Cross-examination by Mr. Garfield

1 chiropractor. My nephew referred me to the chiropractor.

2 I -- I don't know anyone.

3 Q Do you deny that you went to a friend of yours who is a
4 chiropractor?

5 (Pause for interpretation.)

6 THE INTERPRETER: No. He's not a friend.

7 Q Do you recall on December 30th of last year giving
8 your -- giving a deposition in this case?

9 (Pause for interpretation.)

10 THE INTERPRETER: Yes. I remember.

11 Q Do you recall going to my -- my law office in Columbia?

12 (Pause for interpretation.)

13 THE INTERPRETER: Yes.

14 Q And do you recall swearing to tell the truth?

15 (Pause for interpretation.)

16 THE INTERPRETER: Yes.

17 Q In fact, Ms. Grace here was actually the translator at
18 the time.

19 (Pause for interpretation.)

20 THE INTERPRETER: Yes.

21 Q And your lawyer, Mr. Dodson, was there as well, wasn't
22 he?

23 (Pause for interpretation.)

24 THE INTERPRETER: Yes.

25 Q okay.

Do Yeon Kim
Cross-examination by Mr. Garfield

1 MR. GARFIELD: I am going to refer Your Honor to page
2 29, starting line two. I'll let counsel get situated.

3 MR. DODSON: I'm sorry. What page and line number?

4 MR. GARFIELD: It's -- I'm going to start line two,
5 page 29.

6 "Q You'd agree with me that the day of
7 the accident you were experiencing pain,
8 right?"

9 A Yeah.

10 THE INTERPRETER: Yes. I agree.

11 Q Okay.

12 MR. GARFIELD: Grace, I'm going to need your
13 assistance here.

14 Q Isn't it true that you went to a friend of yours who is
15 a chiropractor?

16 (Pause for interpretation.)

17 THE INTERPRETER: He's not a friend. I mean, I didn't
18 know his name prior to this.

19 Q Okay.

20 MR. GARFIELD: I would just ask either to publish
21 this, Your Honor, or the Court's indulgences for Grace to
22 read this out so -- or I could read it and she could
23 translate it.

24 THE COURT: Let me just do it this way.

25 MR. GARFIELD: Yes, sir.

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE COURT: Ladies and gentlemen, when we have a
2 lawsuit we have to give the names of all of the witnesses,
3 and then the lawyers have an opportunity to take the
4 witness' deposition, which is sworn testimony. And this is
5 done before the trial. Testimony is then transcribed and
6 put into booklet form.

7 At that deposition Mr. Garfield asked the plaintiff,
8 "How soon after the collision did you go see a
9 chiropractor?"

10 And the plaintiff said this. His answer was this.
11 "So, the day of the accident, because I was experiencing
12 pain, I went to a friend of mine who is a chiropractor.
13 So, I went the day of the accident. And after that I was
14 experiencing neck pain, so that's when I went to the
15 hospital and got an x-ray."

16 Move along.

17 MR. GARFIELD: Yes, sir. Thank you.

18 BY MR. GARFIELD

19 Q You went -- I'm going to ask you about going to the
20 hospital and having that x-ray you just said.

21 (Pause for interpretation.)

22 THE INTERPRETER: Yes.

23 Q The results to your knowledge showed no particular
24 damage.

25 MR. DODSON: Objection, Your Honor.

Do Yeon Kim
Cross-examination by Mr. Garfield

1 THE COURT: Sustained.

2 Q Okay. You went back to the chiropractor afterwards,
3 right?

4 (Pause for interpretation.)

5 THE INTERPRETER: I went --

6 (Pause for interpretation.)

7 THE INTERPRETER: I went to an American facility, a
8 rehab center, because I heard that they were -- they were
9 good.

10 Q Good. You mentioned that if the collision happened a
11 certain way your airbags would have deployed, is that right?

12 (Pause for interpretation.)

13 A Yeah.

14 THE INTERPRETER: Yes. That's correct.

15 Q Okay. Are -- do you have any experience or
16 qualifications in traffic accident reconstruction?

17 (Pause for interpretation.)

18 THE INTERPRETER: No. I don't.

19 Q Or -- or vehicle -- vehicular or vehicle design?

20 (Pause for interpretation.)

21 Q And I'm looking for a yes or no answer.

22 (Pause for interpretation.)

23 A No.

24 THE INTERPRETER: No.

25 Q Okay.

Do Yeon Kim
Cross-examination by Mr. Garfield

1 MR. GARFIELD: I beg the Court's indulgence.

2 (Pause.)

3 Q Your -- the last question is your lawyer had asked you
4 did a -- did a lawyer send you to the doctor.

5 (Pause for interpretation.)

6 A No.

7 Q You'd agree with me that because a collision -- because
8 the collision involved a law enforcement officer, you agreed
9 that it was best to get a lawyer.

10 (Pause for interpretation.)

11 MR. DODSON: Object, Your Honor, on relevance.

12 MR. GARFIELD: Goes to bias, Your Honor.

13 THE COURT: He can answer it, but, you know.

14 MR. GARFIELD: That's the last question, Your Honor.

15 (Pause for interpretation.)

16 THE INTERPRETER: Yes. My -- my nephew told me that
17 because it involved a law enforcement officer that it was
18 going to take a long time to -- to resolve the issue, and
19 so he recommended that I get an attorney.

20 Q Attorney to sue.

21 THE COURT: Attorney to what?

22 MR. GARFIELD: Attorney to file a lawsuit, to sue.

23 MR. DOUGALL: Objection, Your Honor.

24 MR. GARFIELD: Okay.

25 THE COURT: Sustained.

Do Yeon Kim
Redirect examination by Mr. Dodson

1 MR. GARFIELD: I don't have anything else. Thank you.

2 THE COURT: Just disregard that last, ladies and
3 gentlemen.

4 Anything on redirect?

5 MR. DODSON: Very briefly, Your Honor.

6 THE COURT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. DODSON

9 Q Your nephew, what is your nephew's name?
10 (Pause for interpretation.)

11 A It's Sing Ming Kim.

12 THE INTERPRETER: Sing Ming Kim.

13 Q And what does your nephew do for a living?
14 (Pause for interpretation.)

15 A A realtor.

16 THE INTERPRETER: He is a realtor.

17 THE COURT: A what?

18 THE INTERPRETER: A realtor.

19 A Yeah.

20 Q Does your nephew to the best of your knowledge have any
21 relationship or connection with me or my law firm?

22 (Pause for interpretation.)

23 THE INTERPRETER: No. Nothing like that.

24 Q To the best of your knowledge does your nephew get any
25 kind of money, any kind of benefits, anything of that nature

Do Yeon Kim
Redirect examination by Mr. Dodson

1 from me or my office?

2 (Pause for interpretation.)

3 THE INTERPRETER: No. Nothing like that.

4 Q Anything like that with regard to Mr. Dougall and his
5 office?

6 (Pause for interpretation.)

7 THE INTERPRETER: No. Nothing like that. I have
8 nothing. Never seen you before.

9 Q Okay.

10 MR. DODSON: Nothing further, Your Honor.

11 THE COURT: You may step down.

12 Next witness.

13 MR. DODSON: Your Honor, my next witness is going to
14 be here at 2:00.

15 So, well, what I would move is that we recess for
16 lunch or in the alternative let the defendants go ahead and
17 put up one of their witnesses before lunch.

18 THE COURT: Who is your next witness?

19 MR. DODSON: It's the trooper, Trooper Altman. He's
20 actually coming from Rock Hill. He no longer works in this
21 district.

22 THE COURT: That's fair enough.

23 Ladies and gentlemen of the jury panel, let's break.

24 It is one -- let's start back at 2:15.

25 Don't discuss the case; don't let anybody discuss it

1 with you. When you get back how about just go ahead and
2 select me a foreperson. And we'll see you back. We'll
3 start right at 2:15. Thank you.

4 Everybody else remain seated.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Anything from the plaintiff before we
8 break for lunch?

9 MR. DODSON: Nothing from the plaintiff.

10 THE COURT: Defendant?

11 MR. GARFIELD: No, Your Honor.

12 THE COURT: All right. We'll start at 2:15.

13 MR. DODSON: Your Honor, I'm sorry. Just one more
14 matter.

15 THE COURT: Hold on, hold on.

16 MR. DODSON: I'm sorry. I do apologize. May I excuse
17 the interpreter?

18 THE COURT: Are y'all going to call him in your case?

19 MR. GARFIELD: No. I was thinking about it. No, Your
20 Honor. She can be excused.

21 MR. DOUGALL: No objection.

22 THE COURT: Very well.

23 (Whereupon, the interpreter was excused.)

24 (Whereupon, a recess was taken.)

25 THE COURT: Anything from the plaintiff before we

1 start up?
2 MR. DODSON: Nothing, Your Honor.
3 THE COURT: Defendants?
4 MR. GARFIELD: Defendant just clarification, Your
5 Honor, based on --
6 THE COURT: What's that?
7 MR. GARFIELD: It is -- this is just a laptop. This
8 is my iphone, and I intend at the appropriate time for
9 demonstrative purposes -- I have a siren and a cycle. And
10 it's just on the chip on my phone and it's all --
11 THE COURT: Everybody has got one of those on their
12 phone?
13 MR. GARFIELD: Sir?
14 THE COURT: Everybody has got one of those on their
15 phone?
16 MR. GARFIELD: I have it on my phone. I don't -- I
17 don't know enough about it, but it's welcome to play it now
18 so they can hear it. It's just --
19 THE COURT: I thought maybe I could put one on mine
20 and go home.
21 MR. GARFIELD: I did wake up the courtroom during the
22 break though. I think the court reporter may have been a
23 little frightened.
24 MR. DODSON: Your Honor, I am -- I don't know if we're
25 on the record or not, but I am going to lodge an objection

1 to this. This is the first time I've heard about this.

2 THE COURT: We'll cross that bridge when we come to
3 it.

4 MR. DODSON: Sure.

5 MR. GARFIELD: The only thing we're asking right now,
6 Your Honor, I understand that the plaintiff is going to
7 call trooper -- I understand Trooper Altman with the
8 department of public safety.

9 Just to make sure we're all on the same page based on
10 opening statement that Trooper Altman is not going to be
11 asked, he's not going to testify, to any sort of
12 conclusions.

13 THE COURT: I don't know. I don't know whether he'll
14 be qualified at this point.

15 If he has had the MAIT and all of that, he may can.
16 If he hasn't, he can't.

17 MR. GARFIELD: Yes, sir. Thank you.

18 THE COURT: We all know the rules.

19 MR. GARFIELD: Yes, sir, yes, sir.

20 THE COURT: But the rule is highway patrolmen can't
21 offer an opinion unless you're qualifying him to do so.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: Did you get us a foreperson? Who is my
25 forelady? Congratulations. I guess you need to get into

Justin Altman
Direct examination by Mr. Dodson

1 politics. Your first election you were successful.

2 I hope you had a pleasant lunch. It was cool outside.
3 we walked down the street.

4 You may call your next witness.

5 MR. DODSON: Thank you, Your Honor.

6 I'd like to call Trooper Justin Altman.

7 JUSTIN ALTMAN, having been
8 first duly sworn, testified as follows:

9 THE CLERK: State your full name for the record, and
10 please spell your last.

11 THE WITNESS: Justin Altman, A-L-T-M-A-N.

12 DIRECT EXAMINATION BY MR. DODSON

13 Q Trooper Altman, how old are you?

14 A Twenty-four.

15 Q And what do you do for a living?

16 A I'm a state trooper.

17 Q What training did you receive to become a state
18 trooper?

19 A I went to the South Carolina Criminal Justice Academy
20 for -- would have been 20 -- 21 weeks, I believe.

21 Q And what specific training, if any, did you receive at
22 the criminal justice academy in wreck scene or accident
23 scene investigation and reconstruction?

24 A We have the -- the training that we go through with the
25 basic criminal justice academy, and then also once we've

Justin Altman
Direct examination by Mr. Dodson

1 completed that -- I went back and it was, I believe it was,
2 a week if I remember correctly.

3 Q Okay. So let's talk about the 21 week. What
4 specifically in the 21-week training did you get on accident
5 reconstruction and investigation?

6 A As far as which week or --

7 Q Yeah. Like what -- what was the training? Tell us
8 what was the training.

9 A Well, at the basic criminal justice academy when I went
10 through it was -- they'd laid out scenes for us, and we
11 would then fill out the -- conduct the investigation and
12 fill out the TR-310.

13 Q And how long did that last?

14 A I want to say it was a week.

15 Q And did you receive additional training in accident
16 scene reconstruction?

17 A Yes, sir. The way -- it's different now, but the way
18 when I went through it, the way it was laid out, we
19 graduated from the criminal justice academy, went to the
20 road for -- for F.T.O. training, and then came back for an
21 additional four weeks. And it would have been a week, I
22 believe. May have been -- I believe it was a week.

23 Q Okay. Have you ever received any specific training or
24 instruction on what your duties and obligations are as a law
25 enforcement officer when responding to an emergency in a car

Justin Altman
Direct examination by Mr. Dodson

1 or while you're using your lights and siren?

2 A/ Yes, sir.

3 Q Can you tell us about that?

4 A well, whenever we respond to an emergency, codes,
5 lights and sirens, if -- and then you -- and you're
6 approaching the intersection -- I assume that's what you
7 want me to address.

8 Q Yes, sir.

9 A You're supposed to stop so you can reasonably negotiate
10 that intersection safety, or slow down.

11 Q Okay. Now, how long have you been a state trooper?

12 A About three and a half years.

13 Q Okay. And during that roughly three and a half years
14 how many wreck scenes and accident scenes would you say that
15 you have investigated?

16 A Just overall?

17 Q Yes.

18 A If I had to estimate between working in Richland and
19 where I work now I'd say probably 700 approximately.

20 Q Okay. Now, in those approximately 700 accident scenes
21 that you have investigated is part of your job to assess
22 fault or who was at fault for an accident?

23 A Yes, sir.

24 Q Okay.

25 MR. GARFIELD: Objection, Your Honor.

Justin Altman
Direct examination by Mr. Dodson

1 THE COURT: Well, he hasn't asked a question yet.

2 MR. GARFIELD: Yes, sir.

3 MR. DODSON: Your Honor, at this time I would proffer
4 Trooper Altman as an expert in accident investigation,
5 reconstruction and obligations while responding to an
6 emergency as a law enforcement officer.

7 THE COURT: You have not come anywhere close to
8 qualifying him as an expert to give an opinion.

9 I'll let you proffer him when we take a break, but his
10 training does not rise to the level that where it's
11 required to render opinions on accident reconstruction and
12 speed and anything else.

13 He can testify about what he saw when he got there.

14 MR. DODSON: If I may make a proffer outside the
15 presence of the jury.

16 THE COURT: I told you I'd allow you to do it when we
17 take a break.

18 MR. DODSON: Thank you, Your Honor. Do you want me to
19 do it in front of the --

20 THE COURT: No, sir. When we take a break. Move
21 along.

22 MR. DODSON: All right.
23
24
25

Justin Altman
Direct examination by Mr. Dodson

1 Q Did you respond to a wreck on Alpine Road at
2 approximately 10:43 a.m. on April 24th of 2014?

3 A Yes, sir.

4 Q Did you investigate the wreck scene itself?

5 A Yes, sir.

6 Q Is that something that you're required to do as part of
7 your job?

8 A Yes, sir.

9 Q Can you explain to the jury what you did and how you
10 investigated this wreck scene?

11 A I arrived on the scene. And generally you -- you talk
12 to both drivers, and then you would -- you would take
13 with -- with it being -- with law enforcement with injuries,
14 you take pictures.

15 As I said, you interview both drivers, and then you
16 investigate the evidence that would be in the roadway, the
17 damage to the vehicles, and you'd make a decision.

18 And in this case with it being law enforcement, our
19 supervisor comes to the scene. We both do what I -- do as I
20 just said. And then we call a ranking officer to basically
21 make the final decision going by what -- what we -- what we
22 tell him.

23 Q Now, were you able to talk to the drivers at this
24 accident scene, recognizing Mr. Kim does not speak very good
25 English?

Justin Altman
Direct examination by Mr. Dodson

1 A Yes, sir. We -- I can't remember if it was someone in
2 his family or maybe one of his friends, but we did have a
3 short conversation using the -- the person at the scene as
4 an interpreter.

5 Q Okay. And did you also have an opportunity to talk to
6 the deputy who was involved in the wreck with Mr. Kim?

7 A I'm not sure if it was at the scene, but I did go to
8 the hospital afterward. So at some point I talked to him.

9 Q Okay. Do you recall talking to anyone else at the
10 accident scene?

11 A I can't remember to say for sure --

12 Q Okay.

13 A -- other than the drivers and my other troopers that
14 were with me.

15 Q Okay. What cars were involved based on your
16 investigation?

17 A Based on my investigation it was Deputy Proffitt's
18 patrol vehicle and Mr. -- Mr. -- I don't know how to
19 pronounce his name, but his personal vehicle.

20 Q Okay. And the deputy's car, was that a Richland
21 sheriff's office car?

22 A Yes, sir.

23 Q Okay. Now, on your patrol car, does your patrol car
24 have a video camera mounted in it?

25 A Yes, sir.

Justin Altman
Direct examination by Mr. Dodson

1 Q Can we -- can I refer to that as a dash cam?

2 A Yes, sir.

3 Q Okay. Does the dash cam turn on automatically when you
4 turn on your lights and siren?

5 A If you have it set to automatic, it will.

6 Q Is that how you have yours set?

7 A well, it -- the actual camera comes on itself, yes,
8 sir.

9 Q Okay. The camera itself comes on. Okay. And what's
10 the reason for that? Why is that important?

11 MR. GARFIELD: Objection. Relevance.

12 THE COURT: Overruled.

13 You may answer it.

14 A As far as relevance, I guess to protect you or someone
15 else if something happens when you're carrying out your
16 duties.

17 Q That way if something happens there's a recording of
18 what actually happened.

19 A Yes, sir.

20 Q Now, the Richland County patrol car in this wreck, it
21 also was equipped with a dash cam that turns on when the
22 lights and siren turn on. Is that your understanding?

23 A I don't remember.

24 Q Were you able to as part of your investigation, were
25 you able to review any footage on the dash cam of the

Justin Altman
Direct examination by Mr. Dodson

1 vehicle that hit Mr. Kim's vehicle?

2 A No, sir.

3 Q Okay. Are you aware that that footage actually doesn't
4 exist now?

5 A At the time we didn't have it. I'm not sure if it's
6 because the car didn't have a dash cam altogether or maybe
7 it wasn't activated. I'm not sure. But at the time when I
8 investigated the collision we didn't have a -- we didn't
9 have that video.

10 Q Okay. And based on your investigation who did you
11 determine caused or contributed to the wreck?

12 MR. GARFIELD: Objection, Your Honor.

13 THE COURT: Sustained.

14 Q Did you cite Mr. Kim for any --

15 THE COURT: Sustained.

16 MR. DODSON: No further questions at this time.

17 THE COURT: Madam forelady and ladies and gentlemen,
18 y'all step out just for a second.

19 I have to ask the lawyers something outside of your
20 presence. I'm sorry you have to get up and down.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: You may do your proffer.

24 MR. DODSON: Thank you.

25

Justin Altman
Direct examination by Mr. Dodson

1 BY MR. DODSON

2 Q Have you ever been qualified in any other court in
3 South Carolina as an expert witness in accident
4 investigation and reconstruction?

5 THE COURT: That's two questions.

6 MR. DODSON: Okay. I will rephrase.

7 THE COURT: Investigation, one.

8 Q Have you ever been qualified in any other court in
9 South Carolina as an ex -- as an expert in accident
10 investigation?

11 A In Lancaster, yes.

12 THE COURT: In where?

13 THE WITNESS: In Lancaster County, sir.

14 A I do need -- the way they do court there is a lot
15 different. It will not be on record or anything.

16 Q Okay.

17 A That's the way they do it.

18 Q Okay.

19 A We just go in the office with the judge.

20 Q Okay. I understand.

21 Has anybody to the best of your knowledge -- has a
22 judge in South Carolina ever failed to qualify you as an
23 expert in accident investigation?

24 A I'm sorry I didn't point this out earlier. It's
25 accident reconstruction, and I only have done it twice.

Justin Altman
Direct examination by Mr. Dodson

1 Q And that was going to be my next question. Have you
2 ever been qualified as an expert in accident reconstruction?

3 A Yes.

4 Q Has any judge ever failed to recognize you as an expert
5 in accident reconstruction?

6 A No, sir.

7 THE COURT: It's a lot more than that. That's not --
8 that's not -- doesn't go to his qualifications, doesn't go
9 to his training, education in accident reconstruction.

10 what school has he attended? Tell me the classes he's
11 done, how many hours he's worked in accident
12 reconstruction, what is his methodology.

13 Q What specific classes have you received in accident
14 reconstruction or in your training as a state trooper?

15 A It would just be the -- like I said, either the one
16 week or two weeks when we went back after -- after the short
17 F.T.O. period.

18 Q Okay. And can you specifically describe for the judge
19 what that training involved on a day-to-day basis?

20 A It was determining the speed of vehicles based off of
21 time distance, was the main bulk of it. But we -- it was
22 just mainly going to the -- the area where we -- where we
23 trained in setting up wrecks and wanting us to explain who
24 contributed and then also having a car go and lay down skid
25 marks and telling how much speed was lost during the --

Justin Altman
Direct examination by Mr. Dodson

1 during that.

2 THE COURT: Did you make any analysis in this case on
3 speed?

4 THE WITNESS: No, sir, other -- other than the -- the
5 estimate, which was not based off anything of that. I
6 mainly just used the speed limits and the amount of damage
7 for that, and it's just an estimate. It's not...

8 Q Okay. How were you able to make an estimate in this
9 case on the speed of the vehicle?

10 A It -- it would just be based off talking to the -- to
11 the two drivers and then what the speed limit was and what I
12 was told to put there.

13 THE COURT: What were you were what?

14 THE WITNESS: What I was told to put there. As I
15 stated we --

16 THE COURT: Who told you to put it there?

17 THE WITNESS: As I stated, the supervisor goes to the
18 scene with us. We call -- we call a lieutenant, Lieutenant
19 Harrington, and he tells me basically how -- how he wants
20 it filled out because it...

21 THE COURT: All right.

22 Q Is that routine for investigating scenes like this one
23 that involve another law enforcement agency?

24 A Yes, sir.

25 Q Was there anything different in this accident scene

Justin Altman
Direct examination by Mr. Dodson

1 investigation that varied from any of your other accident
2 scene investigations as it pertains to wrecks with other law
3 enforcement vehicles?

4 A No, sir.

5 Q Okay. And were you able to formulate any opinion on
6 the cause of this wreck?

7 A Well, as I said, I -- in my opinion I put what I was
8 told to put, and I -- I do agree with that, with what I put
9 on the report.

10 Q Okay. So anything that any -- any conclusions that you
11 would have reached were your own conclusions.

12 A Yes, sir.

13 THE COURT: Well, that's not what he said. He said he
14 listened to what his boss said and then he put it down and
15 he agreed with it. That's not an independent conclusion.

16 And he hasn't come even close to qualifying him -- and
17 I'm not being critical of him -- of an expert being able to
18 render opinion testimony as to cause and effect and speed
19 and whatever else accident reconstructionist do. And it's
20 not his fault. I mean, he's not a member of the MAIT team.

21 You're not a member of the MAIT team, are you?

22 THE WITNESS: No, sir.

23 THE COURT: You know what all kind of training those
24 guys receive.

25 THE WITNESS: It's a lot, yes, sir.

Justin Altman
Direct examination by Mr. Dodson

1 THE COURT: A lot, right, for them to be able to come
2 in and reconstruct an accident.

3 THE WITNESS: Yes, sir.

4 THE COURT: You haven't had that kind of training,
5 have you?

6 THE WITNESS: No, sir.

7 THE COURT: Anything else?

8 MR. DODSON: Beg the Court's indulgence for one,
9 moment.

10 (Pause.)

11 MR. DODSON: Nothing further, Your Honor.

12 THE COURT: Anything on his qualifications, or are you
13 going to rely?

14 MR. GARFIELD: I was going to cross him, Your Honor,
15 but the judge's inquiries -- you asked the same questions I
16 would have.

17 THE COURT: Thank you. With all due respect, he's --
18 he's simply not qualified to give an opinion in a field of
19 accident reconstruction.

20 It wouldn't be fair to him, you, your client, anybody
21 else in the courtroom. And he's doing exactly what he's
22 supposed to do. He goes out and tells us what happened at
23 the scene. He reports the physical findings, and that's
24 what he's in here to do.

25 I've questioned thousands of officers during my day,

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Direct examination by Mr. Dodson

1 and that's all I could ever get out of them. That's what
2 the law allows them to do unless they've got that extra
3 training. So I'm not going to qualify him as an expert in
4 accident reconstruction.

5 All right. Bring the jury in, please.

6 MR. GARFIELD: Your Honor, before if I may, I have a
7 very -- just a brief matter where the jury shouldn't be
8 here for.

9 THE COURT: Go ahead.

10 MR. GARFIELD: Just very briefly. We would like to
11 make a motion for a mistrial at this time.

12 THE COURT: For what?

13 MR. GARFIELD: On the -- on the grounds that
14 Mr. Dodson, when he didn't mention that the trooper didn't
15 have some sort of direct conclusion, what he mentioned at
16 the time of the opening, he did not have a good faith
17 belief to believe that, he has mentioned that in front of
18 the jury, and whether this trooper actually had a
19 conclusion in an accident investigation or reconstruction
20 several times in front of this jury. I'd appreciate Your
21 Honor's curative instruction. And I'm not insinuating that
22 the jury wouldn't take that to heart, but this has gone on
23 three or four different times. This trooper is not
24 qualified for reconstruction. We believe we've been unduly
25 prejudiced this far in the trial.

Justin Altman
Cross-examination by Mr. Garfield

1 THE COURT: Thank you. Motion is denied. I'll give
2 an instruction.

3 MR. GARFIELD: Thank you, Your Honor.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: Cross, please.

7 MR. GARFIELD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. GARFIELD

10 Q Trooper Altman, good afternoon.

11 A Good afternoon.

12 Q As part of your investigation in this case, the wreck,
13 you had a conversation with maybe one or two individuals out
14 at the scene?

15 A Yes, sir.

16 Q One of the conversations you may have had would have
17 been with Deputy Kenneth Proffitt. That would be the deputy
18 operating the patrol car that was involved in the collision?

19 A Yes, yes, sir.

20 Q Okay. Did Deputy Proffitt indicate one way or the
21 other as to whether -- or to you as to whether he had his
22 siren on?

23 MR. DODSON: Objection. Hearsay.

24 MR. GARFIELD: It's an admission by a party.

25 THE COURT: Hold on.

Justin Altman
Cross-examination by Mr. Garfield

1 MR. GARFIELD: I'm sorry, Your Honor.

2 THE COURT: He's not a party. Sustained.

3 BY MR. GARFIELD

4 Q Based on your understanding of the investigation did
5 anyone make any indication one way or the other as to
6 whether sirens were on?

7 MR. DODSON: Objection. Hearsay.

8 MR. GARFIELD: Your Honor, he conducted an
9 investigation. I just wanted to know what he learned at
10 the scene from the different people speaking with him.

11 THE COURT: As a result of talking to everyone at the
12 scene did you make a determination as to whether or not the
13 dash cam siren was on at the time of collision?

14 THE WITNESS: The -- the siren, yes, sir. The dash
15 cam, no, sir.

16 Q Did you have an occasion to speak with the plaintiff,
17 Mr. Kim, or through his interpreter to gain his side of the
18 story?

19 A Yes, sir.

20 Q Did you ascertain from Deputy Proffitt, from his side
21 of things, which direction he was traveling?

22 MR. DODSON: Objection. Hearsay, Your Honor.

23 THE COURT: What did your investigation reveal as far
24 as the direction of the travel of Officer Proffitt?

25 THE WITNESS: It -- it would have been on Windsor Lake

Justin Altman
Cross-examination by Mr. Garfield

1 east -- eastbound I believe. Yes, sir.

2 Q What did your...

3 MR. GARFIELD: Thank you, Your Honor.

4 Q What did your accident investigation yield with respect
5 to what, if anything, the plaintiff, Mr. Kim, through his
6 interpreter represented to you?

7 A That he -- he was under the impression that
8 Mr. Proffitt came from a different direction than he
9 actually came from.

10 Q I don't have any further questions. Thank you.

11 THE COURT: Redirect?

12 MR. DODSON: Nothing further on redirect, Your Honor.

13 THE COURT: You may step down.

14 And may he be excused from this subpoena?

15 MR. DODSON: Yes, sir.

16 THE COURT: Thank you, sir, for coming.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness was excused.)

19 THE COURT: Madam forelady and ladies and gentlemen,
20 there was a little bit of back and forth between me and the
21 lawyers.

22 The rule of evidence is this: You and I get up there
23 to testify, we can only testify about what we know, see,
24 observe, have direct knowledge of.

25 If someone has specialized training or through

1 education or experience has obtained special skills and
2 knowledge in a field -- normally such as accident
3 reconstruction, medicine or chemistry or those sorts of
4 things -- upon proper foundation if they're qualified as an
5 expert they can render opinion testimony.

6 Normally when a trooper testifies -- you know, they
7 investigate wrecks, but they don't have that additional
8 training to allow them to give opinion testimony. That's
9 why the officer was not allowed to give opinion testimony
10 in the case.

11 So disregard any pandering back and forth between me
12 and the lawyers, or the lawyers and the lawyers, or
13 whatever. That's what that was all about, as to whether or
14 not he had -- he's only been on the force three years --
15 whether or not he was a member of the MAIT team and all of
16 that other stuff where it gives them specialized.

17 okay. Next witness, please.

18 MR. DODSON: Nothing further from the plaintiff. The
19 plaintiff rests.

20 THE COURT: All right. Madam forelady and ladies and
21 gentlemen, that concludes the plaintiff's case. We will
22 now hear from the defendants' sides of the case. And then
23 we'll conclude all of the testimony. And then we'll see
24 where we are and how we stand.

25 I will do motions. I will allow it nunc pro tunc when

Kristin Boyles
Direct examination by Mr. Garfield

1 we take the next break.

2 Call your first witness.

3 MR. GARFIELD: Thank you, Your Honor.

4 The defense would call to the stand Kristy Boyles.

5 KRISTIN BOYLES, having been
6 first duly sworn, testified as follows:

7 THE CLERK: Please state your first and last name, and
8 spell your first and last name.

9 THE WITNESS: My name is Kristin -- K-R-I-S-T-I-N --
10 Boyles, B-O-Y-L-E-S.

11 DIRECT EXAMINATION BY MR. GARFIELD

12 Q Where are you presently employed?

13 A Richland County Sheriff's Department.

14 Q Deputy Boyles, how long have you worked for the
15 Richland County Sheriff's Department?

16 A October of '15 was 11 years.

17 Q Where are you from originally?

18 A I'm originally from North Augusta, South Carolina,
19 Aiken County. Not too far up the road.

20 Q And could you share with the jury your educational
21 background?

22 A I graduated from North Augusta High School, got to
23 Columbia via Columbia College and got a four-year degree
24 from Columbia College. And also attended the University of
25 South Carolina graduate studies program -- studies under the

Kristin Boyles
Direct examination by Mr. Garfield

1 studies in the criminal justice academy --

2 THE COURT: Ma'am, can you speak up a little louder
3 for us, please?

4 THE WITNESS: Yes, sir.

5 A Went to Columbia College, and then from Columbia
6 College went to the University of South Carolina and got a
7 graduate studies program in alcohol and drug studies, and
8 then through my employment with the department went to the
9 criminal justice academy.

10 Q Do you have any other professional experience other
11 than law enforcement and other than which you have just
12 represented? Do you have a background in any sort of
13 emergency medical --

14 A I previously -- at the same time I was employed with --
15 I was an E.M.T. for a short while. In the process of
16 getting hired here I was hired at Lexington County briefly
17 as part time and did volunteer work at Batesburg Leesville
18 High School, I mean, Batesburg Leesville Rescue Squad.

19 Q Okay. And you completed the South Carolina Criminal
20 Justice Academy in 2004.

21 A Correct.

22 Q And you've been a law enforcement officer ever since?

23 A Yes.

24 Q Have you been working continuously since that time with
25 the Richland County Sheriff?

Kristin Boyles
Direct examination by Mr. Garfield

1 A Yes.

2 Q And what is your rank presently?

3 A I just obtained senior master deputy.

4 Q Congratulations.

5 A Thank you.

6 Q Let me direct your attention to April 24th, 2014,
7 particularly in that morning. What was your -- what were
8 your hours at that particular time?

9 A That particular day and I -- to be honest to tell you
10 exactly, I couldn't tell you the exact hours, but the way my
11 team works, I have been on the traffic safety unit since
12 approximately 2006, thereabouts, 2007, and became a
13 motorcycle officer in Richland County, first female
14 motorcycle officer in Richland County, about 2008, 2009-ish.

15 Our schedules work 7:00 a.m. to 3:30 p.m. one week, and
16 then the following week we work 8:30 a.m. to 5:00 p.m. And
17 every other weekend we work 8:00 at night to 4:30 in the
18 morning on Friday night and Saturday night. So our schedule
19 is pretty -- primarily day shift.

20 Q Okay. That's what I was going to ask you. It's a day
21 shift regardless.

22 A Yes.

23 Q Okay. You were working the traffic unit at this time?

24 A Yes, sir.

25 Q And that you were assigned to work in patrol on a

Kristin Boyles
Direct examination by Mr. Garfield

1 motorcycle.

2 A Yes, sir.

3 Q Could you describe what kind of motorcycle this is?

4 A Yes, sir. It's a Harley Davidson Electra Glide, 2008
5 model, approximately 850 pounds, equipped
6 motor-police-officer with 360 lights, sirens. A pretty big
7 bike.

8 Q Are you considered a supervisor on the traffic unit
9 presently?

10 A Yes, sir, I am.

11 Q How many deputies do you supervise?

12 A We're broken into shifts, approximately three to four,
13 just depends on what the shifts are running.

14 Q Now, on this particular morning had you had an occasion
15 to stop a vehicle at or around Windsor Lake Boulevard?

16 A Yes. I did.

17 Q And what county is that in?

18 A Richland County.

19 Q Can you please share with the jury what you encountered
20 that morning?

21 A I am assigned to the area of Two Notch Road, Region Two
22 area, which encompasses Windsor Lake Boulevard and Alpine.

23 I was sitting at the light on Alpine with the school to
24 my right and the church to my left. I was in the turning
25 lane to turn left onto Alpine Road.

Kristin Boyles
Direct examination by Mr. Garfield

1 Cool but comfortable day. I was the only vehicle in
2 the intersection as a black in color, dark-colored -- I
3 believe it was Cadillac -- came by me, windows rolled down.

4 And I specifically remember the gentleman driving
5 staring at me constantly, and at which time I noticed when
6 he came by a strong odor of marijuana emanating from the
7 vehicle, at which time of course caught my attention. And I
8 proceeded to make a suspicious vehicle stop on the vehicle
9 for that particular purpose.

10 THE COURT: I'm sorry? You commenced to do what?

11 THE WITNESS: Conduct a traffic -- a suspicious
12 vehicle and traffic stop, suspicious for drug
13 paraphernalia, drug activity, because of --

14 THE COURT: Regular traffic stop for suspicious
15 activity?

16 THE WITNESS: Excuse me, sir?

17 THE COURT: A regular traffic stop for suspicious
18 activities.

19 THE WITNESS: The only difference is is we may call it
20 out as a 10-48 code versus a 10-38 code.

21 THE COURT: What does that mean?

22 THE WITNESS: A 10-38 code would be there's an actual
23 traffic violation that we're stopping them for. And I was
24 stopping them for a suspicious activity for the drugs
25 coming from the vehicle, emanating from the vehicle.

Kristin Boyles
Direct examination by Mr. Garfield

1 BY MR. GARFIELD

2 Q Would another way of saying this, would there be an
3 articulable, reasonable suspicion for the stop?

4 A Absolutely.

5 Q And the suspicion would be potential drug activity.

6 A Suspicion of the drug activity.

7 Q And you could actually smell what you believe to be
8 marijuana from your motorcycle?

9 A Yes, sir. When he came by me I'm in the traffic -- in
10 the turn lane to turn left. He literally -- his driver's
11 window came right beside me.

12 And I don't know if any of y'all ever ride with your
13 windows down. If anybody's smoking even a cigarette in
14 front of you, you can actually smell that cigarette smell
15 coming from the vehicle.

16 So my experience -- and I happen also to have been an
17 alcohol and drug counselor for 11 years in the State of
18 South Carolina -- and been in our drug suppression team for
19 several years, our state narcotics team -- I'm very aware of
20 what the smell of marijuana smells like coming from a
21 vehicle. So that's -- drew my suspicion to conduct the
22 traffic stop.

23 Q Okay. Now, I'm going to show you Defendant's Exhibit
24 No. 1, and I'm going to try not to be in anybody's way here.
25 So your testimony is you were proceeding down Alpine Road in

Kristin Boyles
Direct examination by Mr. Garfield

1 this direction.

2 A No. It was on Windsor Lake.

3 Q Oh, I'm sorry. Windsor Lake. You were coming --

4 A This is the school here.

5 Q Yes.

6 A This is the church here. I was in this actual turn
7 lane right here.

8 Q Yes.

9 A The vehicle in question was coming through here in this
10 turn lane turning left right beside my motorcycle.

11 Q My apologies. I'm turned around because I'm looking
12 upside down.

13 A This.

14 Q Okay. And there is -- you mentioned a school nearby.

15 A Yes, sir. The school is actually right here. This is
16 the school grounds on the inside of that.

17 Q Okay. And is there a church in the vicinity of --

18 A Church sets on this corner right here directly across
19 the street from the church -- school.

20 Q And so this suspicious vehicle in making a left was
21 actually going in the road between the school and the
22 church?

23 A Correct.

24 Q Okay. And what, if anything, happened at that point,
25 ma'am?

Kristin Boyles
Direct examination by Mr. Garfield

1 A Obviously, when the gentleman came by me I had direct
2 eye contact with him. He was a fairly large gentleman.

3 There were two people in the vehicle. I could barely
4 see the guy on the other side, but he was extremely tall
5 also.

6 When I called out the stop, because I am 5'5", 125
7 pounds soaking wet, 140 with all the equipment on, I called
8 out for an additional officer to proceed to the scene just
9 because I don't know exactly what I'm going to be
10 encountering at that time and because of the drug -- you
11 know, smell from the car. You know, you're at a heightened
12 interest at that point.

13 So when I made out the call for the traffic stop and my
14 location I asked for additional officers to respond.

15 THE COURT: Asked for additional officers to respond?
16 Is that what you said?

17 THE WITNESS: Yes, sir.

18 Q And what were your concerns at that time, if
19 anything --

20 A That that --

21 Q -- when you called out for additional officers to
22 respond?

23 A The biggest thing was the fact that I had two suspects
24 versus my individual person on a motorcycle. I don't have a
25 lot of cover. And there were also -- like I said, the

Kristin Boyles
Direct examination by Mr. Garfield

1 driver was an extremely large gentleman. If I'd had any
2 contact, you know, I was at a big disadvantage at that point
3 in time.

4 Q Okay. Were you -- you were acting within the course
5 and scope of your employment?

6 A Absolutely.

7 Q Were you wearing a uniform similar to what you're
8 wearing today?

9 A Yes, sir.

10 Q Were you wearing a bulletproof vest?

11 A Yes, sir.

12 Q And once you requested backup assistance what, if
13 anything, did you observe or encounter at that point?

14 A I could hear -- it's a good sound -- sirens coming at
15 you when you ask for assistance, and I could hear them
16 communicating on the radio that they were en route to me as
17 I was making contact with the driver.

18 The demeanor of the individuals in the vehicle at that
19 time was very polite. I then, once felt a little more
20 comfortable, I proceeded to say that I was. They call it
21 signal 18. And signal 18 is actually basically saying that
22 I am okay. And then sometimes we'll add so far behind it.
23 And that's to indicate to them I am okay but I still need an
24 additional officer there with me, at which time I gave that
25 indication. And I believe Deputy Weaver was the first one

Kristin Boyles
Direct examination by Mr. Garfield

1 on the scene. And we started working with the individuals
2 in the vehicle.

3 Q What, if anything, was going through your mind when you
4 heard that siren coming in your direction?

5 A Relief. It is a relief to know that you've got
6 somebody coming to you.

7 And, you know, when you start hearing different tones
8 you're like, okay, I'm good, I got -- I got what I need and
9 I feel save. And, like I said, we do communicate and make
10 sure that our road is still covered. So if we are okay, we
11 give that signal 18 so that if they need to break it down
12 and relief -- relieve themselves, then they can.

13 Q Did you have an understanding at some point that there
14 was a motor vehicle collision in your vicinity?

15 A Only whenever I took my sole focus off of the two
16 gentlemen that I was working with and was able to discern
17 what was going on there, was I able to back off and ask
18 Deputy Weaver.

19 You know, I could in the distance see the lights,
20 because I could only see the tops of the vehicles at this
21 time because of the distance to the intersection. And I saw
22 the lights in the intersection still sitting there, and
23 that's when I asked is everybody okay. And he was like
24 everybody's okay. I'm like what happened. He goes there's
25 been an accident. I'm like is everybody okay.

Kristin Boyles
Direct examination by Mr. Garfield

1 MR. DODSON: Objection. Hearsay, Your Honor.

2 THE COURT: Well, just don't tell us what they said
3 other than it was an accident.

4 MR. GARFIELD: Yes, sir.

5 Q And you got the judge's instruction on that?

6 A Yes.

7 Q You did mention you saw lights.

8 A I did see.

9 Q Tell me what you recall seeing as far as lights.

10 A I could see that in relation to the experience I've had
11 in the intersection, the angle I was at, that I could see
12 that there were lights in the vicinity of the intersection
13 area.

14 Q When you say lights, you're talking about civilian
15 lights, patrol lights?

16 A They were blue patrol lights.

17 MR. GARFIELD: Just one moment, Your Honor.

18 (Pause.)

19 Q Deputy Boyles, thank you. Please answer any question
20 Mr. -- questions Mr. Dodson may have for you.

21 CROSS-EXAMINATION

22 BY MR. DODSON

23 Q The -- just so I'm clear, the Cadillac that you pulled
24 over with the marijuana smell, that was not Mr. Kim's
25 vehicle, was it?

Kristin Boyles
Cross-examination by Mr. Dodson

1 A No.

2 Q And by the time you got that vehicle pulled over you
3 were a good piece down the road, correct?

4 A Yes.

5 Q Now, you didn't actually witness this wreck that we're
6 here about today, did you?

7 A No.

8 Q You did not see that wreck happen.

9 A No.

10 Q So you don't know who caused or contributed to that
11 wreck, do you?

12 A No.

13 Q Thank you.

14 MR. DODSON: No further questions.

15 THE COURT: Anything on redirect?

16 MR. GARFIELD: No, Your Honor.

17 THE COURT: Madam forelady and ladies and gentlemen, I
18 hate to do this, but I need about five more minutes with
19 the lawyers.

20 So y'all step out just a second. I won't do it again
21 hopefully.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Ms. Boyles, I need to have something
25 clarified for me.

Kristin Boyles

1 I had a little trouble hearing you. You were talking
2 towards the jury, and sometimes it's hard to -- you stopped
3 Cadillac for suspicious activity?

4 THE WITNESS: Yes.

5 THE COURT: You called in a what code?

6 THE WITNESS: It's called a 10-48. If I remember
7 correctly, I probably called it out as a 10-48 instead of a
8 10-38. I'm not specifically sure. I'd have to go back and
9 obviously --

10 THE COURT: Well, you testified it was a 10-48. So
11 what is a 10-48?

12 THE WITNESS: A 10-48 is a suspicious vehicle stop. A
13 10-38 is a traffic stop.

14 If we suspect suspicious activity within a vehicle
15 we -- or tend to call it out as a different ten code.

16 I work traffic every day, so I call 10-38 constantly
17 by habit, so there's very possibility I could have called a
18 10-38 versus a 10-48. But the initial reason for the stop
19 was for suspicious activity.

20 THE COURT: Okay. And then when you got up to the
21 vehicle, I think you told me you finally became
22 comfortable, you were okay and you didn't need any backup
23 assistance after that.

24 THE WITNESS: I said that I was -- when I said that I
25 was okay so far, it's a way that we kinda communicate the

Kristin Boyles

1 fact that we are okay but I still need an additional unit.

2 THE COURT: So at any time did you have any trouble
3 out of these people?

4 THE WITNESS: Not particularly other than that the
5 driver was 5'11" and 285 pounds and I was getting him outta
6 the vehicle to search the vehicle. I need an additional
7 officer there.

8 THE COURT: Well, I guess what I'm asking, did you
9 have any emergency situation that was -- that needed
10 response from anybody else other --

11 THE WITNESS: Not after Deputy Weaver got there.

12 THE COURT: Well, what was emergent about the whole
13 situation, is what I'm asking.

14 THE WITNESS: Concerning the drugs, the size of the
15 individuals and me on a motorcycle by myself.

16 THE COURT: And you classify that as being an
17 emergency?

18 THE WITNESS: I can call for additional, yeah, that --
19 as to the emergent. It's emergent in the line of size and
20 jeopardy and potential harm.

21 THE COURT: I assume just about everybody you stop is
22 bigger than you are.

23 THE WITNESS: Sometimes.

24 THE COURT: Yeah. I would think so. Thank you.
25 That's all I've got. You may step down.

William Weaver
Direct examination by Mr. Garfield

1 Bring the jury back.

2 MR. GARFIELD: Judge, can she go?

3 MR. DODSON: That's fine.

4 (Whereupon, the witness was excused.)

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: Next witness.

8 MR. GARFIELD: The defendants call William Weaver to
9 the stand.

10 WILLIAM WEAVER, having been
11 first duly sworn, testified as follows:

12 THE CLERK: State your full name for the record.
13 Please spell your last name.

14 THE WITNESS: My name is William Weaver. Last name,
15 W-E-A-V-E-R.

16 DIRECT EXAMINATION BY MR. GARFIELD

17 Q Deputy Weaver, are you presently employed with the
18 Richland County Sheriff's Department?

19 A Yes, sir, I am.

20 Q And what is your rank?

21 A Right now I'm a lance corporal, also known as a field
22 training officer as an F.T.O.

23 Q Shall I address you as lance corporal or deputy, or
24 what would be appropriate?

25 A Most people go by and call us F.T.O.s because there's

William Weaver
Direct examination by Mr. Garfield

- 1 only four of us at the department.
- 2 Q F.T.O. Weaver, where did you go to high school?
- 3 A Batesburg Leesville.
- 4 Q And did you graduate from Batesburg Leesville?
- 5 A I did.
- 6 Q And what year was that?
- 7 A 2002.
- 8 Q Beyond high school do you have any -- any military
9 experience?
- 10 A I did. I joined the United States Navy in 2003 and
11 stayed in there until 2007.
- 12 Q And what grade did you obtain in the United States
13 Navy?
- 14 A I obtained petty officer third class, which is an E-4.
- 15 Q And what was your speciality with the Navy?
- 16 A I was a machinist in the Navy.
- 17 Q And since then have you been discharged with the United
18 States Navy?
- 19 A I was. I was discharged with an honorable discharge.
- 20 Q Okay. Did you receive any medals or decorations during
21 your military service?
- 22 A I received several of them -- C Service, Global War on
23 Terrorism, several other small ones.
- 24 Q I've asked you about your high school background. Any
25 other education background?

William Weaver
Direct examination by Mr. Garfield

1 A Other than I've been -- attended the South Carolina
2 Criminal Justice Academy. I've also gone back and been
3 certified with -- for DataMaster, S.F.S.T. certification, as
4 well as a field training officer certification through the
5 South Carolina Criminal Justice Academy.

6 Q When did you graduate from the academy, criminal
7 justice academy?

8 A I graduated from the criminal justice academy in April
9 of 2009.

10 Q And you've been employed with the Richland County
11 Sheriff's Department since what time?

12 A June of 2007.

13 Q And did you receive any promotions in rank since that
14 time?

15 A I have. I have been promoted to the rank of senior
16 deputy and then to field training officer.

17 Q I will bring you now to April 14th -- I believe that's
18 right -- 2014, the day of this collision. The -- F.T.O.
19 Weaver, you were assigned to what division at that time?

20 A April 24th I was assigned to field -- assigned to the
21 training division as a field training officer.

22 Q Thank you for the correction on that.

23 What are some of the duties as an F.T.O.?

24 A My sole job is -- is when people go to the criminal
25 justice academy they learn all of the rules and regulations,

William Weaver
Direct examination by Mr. Garfield

1 but they don't learn how to talk to people. They don't
2 learn the individual department's policies, procedures,
3 paperwork, things along that lines.

4 Once they graduate that they come into what they call
5 field training. Every department's different. With us in
6 our department they come with one of us four field training
7 officers. We teach them to learn what they've learned at
8 the academy to apply it to the real-world use while
9 maintaining our policies, our procedures and doing our
10 paperwork.

11 Q Okay. What, if anything, do you do with respect to
12 9-1-1 response -- the officers?

13 A We -- what I do is we have different divisions inside
14 of the department as well.

15 Most deputies are considered regular road deputies or
16 line deputies or 9-1-1 responders. And that's what I am as
17 well, but that's what I'm also training my trainees
18 specifically to be, is 9-1-1 responders versus a special
19 agent. That's like Ms. Boyles does traffic. I teach them
20 how to be a regular road deputy or a 9-1-1 responder.

21 Q Let me bring you to April 24th of 2014. Were you
22 working the day shift?

23 A I was.

24 Q And did you have an occasion to hear out on the radio
25 any information with respect to Deputy Boyles?

William Weaver
Direct examination by Mr. Garfield

1 A I did. I was -- I was actually working region two that
2 day. I had no trainee that day, and I was working that day
3 in that area once she called it out on the radio.

4 Q And let me pause you --

5 THE COURT: As far as called what? I couldn't hear
6 you. She called what?

7 THE WITNESS: Once she called out her stop on the
8 radio.

9 THE COURT: Go ahead.

10 Q And you mentioned region two. What -- your best
11 estimate, or could you just try to describe for us what are
12 the perimeters of region two?

13 A There are several different regions in the sheriff's
14 department. What they do is they break it down for --
15 that a-way we have one group of individuals assigned to that
16 area that get to know that area, people in the community,
17 get to know them.

18 Region two is the area -- it consists of from downtown
19 to Fort Jackson over to Farrow Road all the way out to,
20 almost to, Sandhills Mall. It encompasses -- it's a long,
21 thin strip, but it also encompasses Windsor Lake Boulevard
22 and Alpine Road.

23 Q And what, if anything, did you hear on the radio with
24 respect to Deputy Boyles and the nature of the call?

25 A Well, Deputy Boyles and I had already -- I had actually

William Weaver
Direct examination by Mr. Garfield

1 spoken that morning. We knew she was on a motorcycle. She
2 notified the regions when she was out and when they'd be
3 specifically on a motorcycle.

4 THE COURT: Can you slow down a little bit, please?

5 Q Speak in there, please, sir. Thank you.

6 A Whenever they're out on motorcycles they like to let us
7 know because it is an extra precaution.

8 We heard -- I heard Deputy Boyles call out the
9 suspicious vehicle stop, stated she was trying to turn
10 around on a -- on a vehicle occupied by two occupants, large
11 odor of marijuana coming from it and asked if there was a
12 unit in the area to come assist.

13 Q Okay. Let me stop you there. You gave us quite a bit
14 of information.

15 Your understanding on the radio was that you had a
16 female motorcycle unit that was calling for backup.

17 A Yes.

18 MR. DODSON: Objection. Leading.

19 MR. GARFIELD: Okay. Trying to understand and just
20 slow it down, Your Honor.

21 THE COURT: You're on direct now. You can't lead.
22 You know that.

23 MR. GARFIELD: Yes, sir. Okay.

24 Q Okay. When a deputy, male or female, based on your
25 qualifications and your training and your experience --

William Weaver
Direct examination by Mr. Garfield

1 THE COURT: He can't give an opinion. Let's don't get
2 into that.

3 MR. GARFIELD: I'm not asking necessarily an opinion.
4 I wanted an understanding from a law enforcement
5 perspective if I could at least be -- just ask the
6 question, Your Honor. I don't want an opinion.

7 Q His Honor is right. I'm not asking for an actual
8 opinion.

9 What are the concerns, if anything, from a law
10 enforcement officer with respect to suspicions as far as
11 marijuana or drugs? Then stop.

12 MR. DOUGALL: Objection, Your Honor.

13 MR. DODSON: Objection. Calls for speculation.

14 THE COURT: Sustained.

15 We're talking about this stop.

16 MR. GARFIELD: I'm talking about this stop.

17 Q Let me ask it this way, F.T.O. Weaver.

18 What were your concerns, if anything, when you heard at
19 this particular time --

20 MR. DOUGALL: Objection, Your Honor.

21 THE COURT: Well, he hasn't asked the question.

22 Q What was your -- what were your concerns, F.T.O.
23 Weaver, when you -- when Deputy Boyles called out on this
24 particular stop when you heard that there was a suspicion of
25 drugs with relation to the subjects?

William Weaver
Direct examination by Mr. Garfield

1 THE COURT: He can ask that.

2 Go ahead.

3 A Okay. The -- my -- my fears were that normally
4 associated with drugs are weapons, more importantly guns,
5 and the fact that she's a female officer on a motorcycle.
6 She doesn't have protection we have of a patrol car or
7 bullet proof panels and things along that lines on the
8 sides.

9 Q When you say bullet proof panels --

10 A Bullet proof.

11 Q -- are you talking about -- well, I'm talking about
12 drugs. There are concern drugs -- about guns?

13 A Whenever there's normally associated -- guns and drugs
14 are a good combination, and so they're normally -- when
15 you're dealing with one, you're dealing with the other.

16 THE COURT: Well, was there any indication of guns in
17 this case? We're talking about the case and not in
18 general.

19 Q Did she call out that there were guns in this case?

20 A No.

21 Q Doing that. Okay. But did you have concerns?

22 A I did.

23 Q That some of you responded.

24 MR. DOUGALL: Objection, Your Honor.

25 THE COURT: Hold on.

William Weaver
Direct examination by Mr. Garfield

1 Your objection is what?

2 MR. DOUGALL: It's not his concerns that matter. It
3 was Deputy Boyles, and he should have asked her those
4 questions, and he didn't. And her concerns were two large
5 males.

6 THE COURT: Yes, sir. I am going to allow him to
7 answer the question, what his concern was.

8 Go ahead.

9 Q And what were your concerns?

10 A My concerns was if there's drugs associated with it
11 there's probably going to be some sort of a weapon or
12 firearm related with it. And she was there with no
13 protection, and she was there by herself.

14 Q What, if anything, did you do, F.T.O. Weaver, when you
15 heard that type of call come out on the radio?

16 A Okay. I heard that type of call come on the radio.
17 That's an officer needing assistance. And what I did is I
18 immediately came up across the radio saying I was going to
19 be en route as well. And I activated my blue lights and
20 sirens, which is in accordance with our policy for an
21 officer needing assistance, and started heading towards her
22 location.

23 Q Okay. You had your blue lights and siren?

24 A Yes, sir.

25 Q Okay. Tell me what happened at that point.

William Weaver
Direct examination by Mr. Garfield

1 A Okay. At that point in time I was traveling to her. I
2 ended up turning onto Alpine Road heading into the direction
3 of where she was.

4 As I was approaching the intersection of Alpine and
5 Windsor Lake she had heard our -- well, as I was approaching
6 that section a call came across the radio from Deputy Boyles
7 saying that she was okay so far at which point in time I
8 deactivated my blue lights and my siren knowing working with
9 that, knowing that she's still going to need somebody there
10 I -- we have a different type of emergency or urgent
11 response called code two, which is turning on our flashers
12 to identify people that we're still in an emergency going
13 somewhere.

14 I activated -- I activated my flashers. As I
15 approached the intersection of Windsor Lake and Alpine I had
16 the green light. I was on Alpine Road and had the green
17 light. I observed -- in the oncoming traffic there was two
18 vehicles stopped in the oncoming lane stopped --

19 Q Let me -- let me pause you because we're getting a
20 little ahead of the question.

21 Show you Defendant's Exhibit No. 1. And, again, I'm
22 going to stand up here just because -- for the benefit of
23 the Court and the jury.

24 Can you tell me the direction that you were -- you were
25 proceeding down?

William Weaver
Direct examination by Mr. Garfield

1 A I was coming down Alpine Road coming from Two Notch
2 coming down this way.

3 Q Okay. And as you were coming down that way you had the
4 benefit of the green light?

5 A I did.

6 Q Okay. Would there have been a need to have the siren
7 on top of the emergency flashers as you had the green light?

8 A No.

9 Q Okay. So tell me what kind of emergency equipment you
10 had as you proceeded into the intersection?

11 A As I proceeded into the intersection I had -- I had --
12 well, as I was coming down I had my blue lights and sirens
13 on. I was turning them off and turning my flashers on as I
14 proceeded into the intersection because she'd called she was
15 okay so far. And so when I came into the intersection all I
16 had was my emergency flashers on.

17 Q And --

18 THE COURT: Why did you turn -- why did you turn your
19 siren off before you got into the intersection?

20 Q You can turn so the judge can hear you too.

21 A Okay.

22 THE WITNESS: The -- the reason I had turned my blue
23 lights and sirens off was because I actually had the green
24 light, and there was no need for -- the traffic had already
25 been stopped -- was already stopping and allowing us to go.

William Weaver
Direct examination by Mr. Garfield

1 And so I had -- because she said she was okay so far, she
2 still needed another unit, still was an urgent response,
3 but it was no longer an emergency response.

4 THE COURT: When did the urgent response stop and it
5 became just going down to check on her?

6 THE WITNESS: When she called out that she was okay so
7 far.

8 THE COURT: And that was before you went through the
9 intersection?

10 THE WITNESS: That's as I was pulling up to the
11 intersection and going through it, Your Honor.

12 THE COURT: Were you the first policeman through the
13 intersection?

14 THE WITNESS: I was, Your Honor.

15 BY MR. GARFIELD

16 Q So as the first policeman that was going through the
17 intersection you still had your emergency flashers on?

18 A I did.

19 Q Okay. And you were taking -- you said you were coming
20 down Alpine Road. You were taking a left or right on
21 Windsor Lake Boulevard?

22 A I was taking a left and going that way on Windsor Lake
23 Boulevard.

24 Q In the direction of Deputy Boyles?

25 A Yes, sir.

William Weaver
Direct examination by Mr. Garfield

1 Q What -- what is code two? Do you have any knowledge
2 what code two refers to at the Richland County Sheriff's
3 Department?

4 A Yes. We have three different types of response calls
5 for -- that we respond to calls.

6 Code one is the routine response. It means there's no
7 sort of an emergency.

8 We have code three, which is blue lights and sirens.
9 It encompasses a lot more.

10 We have some specific things we're allowed to run that
11 for.

12 And then we have urgent response, which is code two,
13 which is in between them. It's because we need to get
14 somewhere to check on something, make sure we get there. We
15 actually -- we have more reasonable suspicion that we need
16 to get there faster than just a routine response, but it
17 does not justify blue lights and sirens at that point.

18 THE COURT: And what code were you under when you went
19 through the intersections?

20 THE WITNESS: I was at code two.

21 THE COURT: Code two. No longer code three.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: And you were the first one.

24 Q So -- so that's an important clarification. You're
25 saying that you went from code three at some point to code

William Weaver
Direct examination by Mr. Garfield

1 two.

2 A Yes.

3 Q So as you were approaching or proceeding in crossing
4 the intersection you were in code two mode, response mode,
5 at that time.

6 A Yes, yes.

7 Q No other patrol car had gone through the intersection
8 at that point to your knowledge.

9 A No.

10 Q And you took a left at that. The intersection was a
11 green light?

12 A Yes, sir.

13 Q Okay.

14 MR. DODSON: Objection. Leading, Your Honor.

15 Q And all --

16 THE COURT: Hold on, hold on, please. Quit asking
17 leading questions.

18 MR. GARFIELD: And I'll withdraw that.

19 THE COURT: Thank you.

20 MR. GARFIELD: I was trying to get the witness back to
21 a point I needed.

22 THE COURT: I understand that.

23 MR. GARFIELD: Yes, sir.

24 THE COURT: But please play by the rules.

25 MR. GARFIELD: Yes, sir, certainly. And I apologize.

William Weaver
Direct examination by Mr. Garfield

1 THE COURT: That's fine.

2 Q So after you took a left, can you please explain to the
3 jury what happened next?

4 A As I took a left pulling onto Windsor Lake Boulevard I
5 heard a loud crash, and as I looked through my rear-view
6 mirror I saw a truck hitting a patrol car in my rear-view
7 mirror in the intersection.

8 Q Okay. At the time -- did you say you heard the
9 collision?

10 A I did.

11 Q Before hearing the collision did you have an occasion
12 to hear any sirens?

13 A I did. As I was approaching the intersection I had the
14 green light. I observed from my right a patrol car coming
15 with blue lights and sirens on. I saw him slowing down to
16 stop because he had a red light on Windsor Lake. I saw him
17 slowing down before I stopped. I recognized it as Corporal
18 Taylor. I know Corporal Taylor. We had worked together
19 before. I knew he was going to stop for that, which is why
20 I went ahead and turned left in front of him. And as I was
21 turning left I heard him change his sirens twice.

22 Q You said Corporal Taylor?

23 A I'm sorry. Corporal Proffitt.

24 Q Well, let's be clear --

25 A Yeah.

William Weaver
Direct examination by Mr. Garfield

1 Q -- because this is important. I know we're getting
2 some officers -- can you please tell me when you heard the
3 siren, okay, what direction did you hear the siren in?

4 A I heard the -- I heard the siren coming from my right,
5 which would have been coming from this direction here. And
6 I heard it when I started deactivating my blue lights and
7 sirens around here. I could still hear a siren coming from
8 this direction. And as I approached the intersection I
9 could see Corporal Proffitt driving this way coming to a
10 stop and changing his sirens.

11 Seeing him coming to a stop and me having a green
12 light, I went ahead and turned and continued on. As I got a
13 little ways down the road I heard a loud crash, and I looked
14 in my rear-view mirror. I saw the truck.

15 MR. DOUGALL: Objection, Your Honor. He's already
16 said he heard a crash. He didn't see the crash.

17 THE COURT: You get to cross-examine him.
18 Go ahead and answer.

19 THE WITNESS: Okay.

20 A As I looked in my rear-view mirror I saw a patrol car
21 and truck being hit.

22 Q Would there -- other than Deputy Proffitt did you --
23 were you aware of any other law enforcement officers,
24 sheriff's department deputies, in the vicinity?

25 A There was another deputy in the vicinity. That was

William Weaver
Direct examination by Mr. Garfield

1 Master Deputy Taylor at the time. He's a corporal now. And
2 he was actually about a hundred to two hundred yards behind
3 me coming down Alpine Road.

4 Q What else do you recall about these sequence of events?

5 A After these sequence of events I was the closest one to
6 Deputy Boyles, so I went ahead and responded to her. And
7 after we got done handling her situation with the two
8 individuals I came back down to the scene to see if there
9 was anything I could do to help.

10 Q Was there anything you could do to help?

11 A When I got down there the state trooper was still
12 there. I told the state trooper, you know, what --

13 MR. DODSON: Objection. Hearsay, Your Honor.

14 THE COURT: He told somebody? He can testify to what
15 he told them.

16 Go ahead.

17 A I told the trooper what -- that I had actually been the
18 first through the intersection and if he needed any
19 information from me, because I was -- I was there -- I had
20 cleared the intersection first -- that I would -- I'd be
21 available if he needed any additional information. He told
22 me if he did he --

23 THE COURT: No, sir. Don't talk about what he said.

24 THE WITNESS: Okay.

25 Q That's all right. What, if anything, did you tell the

William Weaver
Direct examination by Mr. Garfield

1 trooper with respect to -- did you tell the trooper with
2 respect to whether Deputy Proffitt had his emergency
3 equipment engaged?

4 A I did tell him that I approached the intersection and I
5 was the first to go through it, that I had observed Deputy
6 Proffitt with his blue lights and sirens on.

7 MR. GARFIELD: Beg the Court's indulgence.

8 (Pause.)

9 Q Was your patrol car equipped with a dash cam video?

10 A Yes, it was.

11 Q Okay. Did it record or capture these events that we've
12 already discussed?

13 A I am uncertain if it did or did not.

14 Q And explain why you're uncertain.

15 A I was in an older patrol vehicle, and they recorded on
16 V.H.S. tapes. And what happens with those V.H.S. tapes, a
17 supervisor has to come and take them out of your car, and
18 they automatically get turned into our internal affairs
19 office, which they're then reviewed and disposed of
20 properly, at which point in time after this wreck when my
21 tape had run out, it was taken by a supervisor and turned
22 into internal affairs office for them to review, and I
23 honestly don't know if they saw anything on it or not.

24 Q Okay. Normally, the video, it would take up a video
25 and an audio?

William Weaver
Direct examination by Mr. Garfield

1 A Yes.

2 Q Okay. The video can't -- would it normally pick up the
3 sound of a siren?

4 A It would pick up the sound of a siren.

5 Q What direction? Let's say hypothetically that the dash
6 cam video was in operation and you have a copy and we could
7 play it today. What would be the perspective of the video?
8 In other words, what --

9 MR. DODSON: Objection. Calls for speculation.

10 THE COURT: Okay. Stand, please.

11 MR. DODSON: I'm sorry. Objection. Calls for
12 speculation.

13 THE COURT: Overruled.

14 Q Can you please describe what we would see in the video
15 as far as what --

16 THE COURT: The video captures the direction it goes
17 in, correct? Which direction? Not what you would see,
18 which direction?

19 Q Which direction you would see from the video?

20 A The direction you would see would be the direction that
21 I am heading, which is always in the forward direction of my
22 patrol car that I am in.

23 Q Would it have shown the collision or the impact?

24 A No, it would not have.

25 Q Do you happen or have the occasion to observe any other

William Weaver
Direct examination by Mr. Garfield

1 vehicles, either stopped or in the position, in the vicinity
2 of the intersection at the time you proceeded through?

3 A I did. I do remember seeing --

4 MR. GARFIELD: Yes. I certainly will. Flip it this
5 way?

6 A I was traveling this way, and as I approached the
7 intersection I was changing from code three to code two. I
8 observed two vehicles, one stopped right here and one
9 stopped right here.

10 As I was approaching the intersection with the green
11 light I observed that both of them were stopped before --
12 were stopped before the intersection, which knowing that it
13 was only a left-turn lane or straight lane and both of them
14 stopped, I was cleared to go ahead and go forward.

15 Q I'm going to provide you with a marker, F.T.O. Weaver.
16 In your recollection, to the best of your ability, could you
17 depict the lane or the position of travel as you traveled
18 from Alpine into Windsor Lake?

19 A Do you want me to draw what I was doing?

20 Q Yes, sir. It doesn't have to -- it's just trying to
21 give your best estimate.

22 MR. GARFIELD: And let the record reflect he's got a
23 green pen.

24 (Whereupon, the witness complied.)

25 Q Could you perhaps do an arrow at the end?

William Weaver
Cross-examination by Mr. Dodson

1 (Whereupon, the witness complied.)

2 Q Thank you. Please answer any questions one of these
3 lawyers have for you. Thank you.

4 CROSS-EXAMINATION

5 BY MR. DODSON

6 Q At the time that -- before you entered this
7 intersection -- first of all, you were the first car that
8 went through the intersection to the best of your knowledge,
9 is that right?

10 A Yes.

11 Q The first Richland County car, correct?

12 A Yes, sir.

13 Q Okay. You were the first. And at the time that you
14 entered the intersection it was your understanding at that
15 time that -- and I'm sorry. I forgot her name, and I feel
16 bad about it. The -- the patrol.

17 A Deputy Boyles.

18 Q Deputy Boyles. I'm sorry. That at that time Deputy
19 Boyles already had that black Cadillac pulled over, correct?

20 A Correct.

21 Q Okay. So they were at the side of the road there,
22 right?

23 A Yes.

24 Q Fairly near this, where this wreck happened, correct?

25 A It was a couple of hundred yards down the road, but

William Weaver
Cross-examination by Mr. Dodson

1 yes.

2 Q A couple. Okay. That's fine. A couple of hundred
3 yards down the road. But at the time that you entered that
4 intersection she was not in pursuit of a suspect because she
5 already had that suspect pulled over, correct?

6 A She was not in pursuit, no.

7 Q Okay. And at the time that you entered the
8 intersection she had not declared any kind of an emergency,
9 had she?

10 A She had only called out that she was okay so far, which
11 means she still needed an additional unit.

12 Q I understand that. But she had not declared that there
13 was any kind of an emergency there at that traffic stop, did
14 she, or suspect stop, whatever we want to call that?

15 A She had not called across the radio any specific
16 emergency, only that she needed another officer's presence.

17 Q Right. It was your understanding when you went through
18 this intersection that there was no emergency on Officer
19 Boyles' part, correct?

20 A As I -- as I stated, as I was going -- approaching the
21 intersection she stated she was okay so far. So far could
22 be many a-things. There was no known emergency because she
23 had not expressed it across the radio. But it was still an
24 urgency that she needed somebody there.

25 Q But the answer to my question is she had not declared

William Weaver
Cross-examination by Mr. Dodson

1 at any point any kind of an emergency. Had she?

2 A She had declared that she needed another officer's
3 assistance.

4 Q That wasn't the question I asked, sir. The question
5 that I --

6 THE COURT: Sir, answer the question. Then you may
7 explain.

8 Ask the question again.

9 MR. DODSON: Thank you.

10 Q She had not declared any kind of emergency at any -- at
11 any time, had she?

12 A Not across the radio, sir, no.

13 Q What she had indicated is that because of her size and
14 the fact that she was on a motorcycle and the other things
15 that she testified to, that she needed backup assistance.

16 A Yes.

17 Q Correct?

18 A Yes.

19 Q But she at no point indicated that there was any kind
20 of an emergency situation there, correct?

21 A No.

22 Q And there was nothing else that would indicate an
23 emergency situation. She didn't indicate that a suspect
24 pulled a gun on her, for example, correct?

25 A No. She did not indicate that a suspect pulled a gun

William Weaver
Cross-examination by Mr. Dodson

1 on her, no.

2 Q She -- she did not indicate that there -- that the
3 suspect even had a gun in the car, did she?

4 A Not across the radio, sir, no.

5 Q She didn't indicate any other kind of weapon like a
6 club or a knife or anything like that.

7 A No.

8 Q Your understanding was that the only reason for her
9 call was that she needed -- needed backup, right?

10 A Yes, the reason for the call is she needed a backup.

11 Q But it was not an emergency situation, correct?

12 A Not as she stated across the radio.

13 Q Not as she stated it across the radio. And that was
14 your understanding too, correct, that it was not an
15 emergency situation?

16 A Yes.

17 Q And she was not in pursuit of another suspect, was she?

18 A Not as she stated across the radio.

19 Q Okay. And it's -- and so at that point there was no
20 reason for -- I mean, you were the first vehicle to go
21 through this, right?

22 A I was the first vehicle to go through the intersection,
23 yes.

24 Q Now, you indicated -- you were talking earlier about a
25 dash cam video.

William Weaver
Cross-examination by Mr. Dodson

1 A Yes.

2 Q So you had a dash cam that was functioning properly on
3 this day.

4 A Yes.

5 Q It would have shown the intersection as you entered it,
6 correct?

7 A It would have, yes.

8 Q Okay. And you turned that -- it was a V.H.S., the old
9 timey V.H.S. video, right?

10 A Correct.

11 Q You turned that video tape over to the sheriff's
12 office.

13 A To the internal affairs office, yes.

14 Q Okay. Where is that tape today? Because I haven't
15 seen it.

16 A All tapes that we have that were V.H.S. went to the
17 internal affairs office for review. That's for every deputy
18 that has a video tape. They review it. And then once
19 they -- they've -- if they find anything that they have on
20 there that's a necessity to keep, they do so. If they do
21 not, then they do whatever they do with the tapes. I don't
22 know. I don't work for the internal affairs office.

23 Q So the decision as to destroy that tape or not bring it
24 or whatever the situation may be, that was a decision that
25 was made solely by the sheriff's office.

William Weaver
Cross-examination by Mr. Dodson

1 A It would have been made by somebody in the internal
2 affairs office, sir.

3 THE COURT: Well, who is the internal affairs? Is
4 that the sheriff's office or somebody else?

5 THE WITNESS: It is.

6 Q So the internal affairs at the sheriff's office deemed
7 that this video tape could essentially be done with
8 whatever. We don't know where it is. You don't know where
9 it is today, do you?

10 A I have no idea where it is today, sir.

11 Q And, I mean, you've been talking with all of them today
12 about this case and about this wreck, right?

13 A I have.

14 MR. GARFIELD: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. GARFIELD: I'm just trying to understand where
17 he's going with this. He says talking about all of them
18 today. It's just ambiguous.

19 THE COURT: That's not an objection. You have to give
20 me a reason.

21 MR. GARFIELD: It's just ambiguous, Your Honor.

22 THE COURT: Okay. I will overrule it.

23 Q But as far as you know, and even what you've learned
24 today, you don't know where that -- that dash cam video is
25 from your patrol car right around the time that this wreck

William Weaver
Cross-examination by Mr. Dodson

1 happened.

2 MR. GARFIELD: Objection. Asked and answered.

3 THE COURT: Overruled.

4 Q You have to answer my question, sir.

5 A Okay. No. I do not.

6 Q And to be clear, I mean, the sheriff's office knew
7 about this wreck with Mr. Kim, right?

8 A I mean, yes. It involved a deputy.

9 Q It was their car. You yourself talked -- it was their
10 car, right?

11 A It is the sheriff's department's car.

12 Q And you talked to the trooper that came out that
13 investigated the wreck yourself.

14 A I did.

15 Q So you knew that this dash cam video was potentially
16 relevant, didn't you?

17 A Yes, except for it wouldn't have shown the wreck. It
18 would have shown the opposite direction of the wreck.

19 Q It would have shown the intersection immediately before
20 the wreck, wouldn't it?

21 A It would have, yes.

22 Q And you knew that that video tape was relevant,
23 correct?

24 A It would have been, yes.

25 Q Yes. It would have been relevant, correct?

william weaver
Cross-examination by Mr. Dodson

1 A Yes.

2 Q Which is exactly why you did what you were supposed to
3 do, which was give it to internal affairs, correct?

4 A Yes.

5 Q But what internal affairs did with it, you have no
6 idea.

7 A Correct.

8 Q All you know is that we don't have the video tape
9 today, correct?

10 A Correct.

11 Q Even though you would fully admit, and just did admit
12 in front of the jury here today, that it's relevant.

13 MR. GARFIELD: Objection, Your Honor. Asked and
14 answered. Argumentative.

15 THE COURT: Sustained.

16 You've already asked it twice. That's enough. Move
17 along.

18 MR. DODSON: One moment, Judge.

19 (Pause.)

20 MR. DODSON: Nothing further from me, Your Honor.

21 MR. DOUGALL: If I may, Your Honor.

22 THE COURT: It's a little unusual, ladies and
23 gentlemen of the jury, to let two lawyers on the same side
24 cross-examine, but he's got a different role than
25 Mr. Dodson, so I will allow him.

William Weaver
Cross-examination by Mr. Dougall

1 MR. DOUGALL: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. DOUGALL

4 Q Just to clarify a few things, Deputy Weaver, you're a
5 field training officer.

6 A Yes, sir.

7 Q One of four in the department.

8 A Yes, sir.

9 Q So as to deputies Proffitt and Taylor, you outrank
10 them.

11 A No, sir.

12 Q All right. What's your role as far as training then?

13 A I do field training officer. While I have a rank, it
14 is not in the supervisory field. So I cannot even be
15 compared in the same group as them as to whether I outrank
16 them or not.

17 Q All right. But you're one of the four people in the
18 department who's supposed to train new deputies on the rules
19 of the road when you're out patrolling, correct?

20 A Yes.

21 Q And so that means you're teaching them what Sheriff
22 Lott's policies and procedures are.

23 A Correct.

24 Q And you've talked about code one and code two and code
25 three.

William Weaver
Cross-examination by Mr. Dougall

1 A Yes, sir.

2 Q Code one, basically, you're out patrolling the streets,
3 correct?

4 A Yes, sir.

5 Q And code three, there's an emergency. You need to get
6 there. You need to get there fast. You've got lights and
7 sirens on.

8 A Yes, sir.

9 Q All right. And when we go back to what you testified
10 to just about this accident, you're coming down Alpine Road
11 from Two Notch, correct?

12 A Yes, sir.

13 Q And before you even get to this intersection you get a
14 radio call from Deputy Boyles who has never declared an
15 emergency and, in fact, says I'm okay for now, correct?

16 A Yes, sir.

17 Q And at that point you turn off your lights and sirens
18 because it's no longer a code three, correct?

19 A Yes, sir.

20 Q It's now a code two.

21 A Yes, sir.

22 Q Which means Taylor who's a hundred yards behind you --

23 A He's a couple -- he's a hundred, two hundred yards
24 behind me. Maybe a little further. I don't know exactly.

25 Q Okay. 200 yards, an eighth of a mile, correct? Did he

William Weaver
Cross-examination by Mr. Dougall

1 turn off his lights and siren?

2 A Yes, sir.

3 Q Okay. So now we've got two cars that say no lights, no
4 sirens, we're code two now.

5 A Yes, sir.

6 Q Deputy Boyles has told us she's okay for now. She just
7 needs one car to come and assist her, correct?

8 A Well, doesn't necessarily mean one call -- car but --

9 Q You said a unit. That was your testimony. She needs a
10 unit, correct?

11 A Yes.

12 Q Not three units. A unit.

13 A Yeah.

14 Q Correct?

15 A Yes, sir.

16 Q Okay. You understood it. Taylor understood it,
17 correct?

18 A Yes, sir.

19 Q And Proffitt still has his lights and siren on to your
20 testimony?

21 A Yes, sir.

22 Q So he's not following procedure any more because he's
23 heard the same radio transmission that you and Taylor heard,
24 correct?

25 A I don't know if he heard it or not.

William Weaver
Cross-examination by Mr. Dougall

1 Q Is there any reason why he shouldn't have heard it?

2 A He may not have heard it while he was with his blue
3 lights and sirens on. He may have been avoiding something.
4 There's an auditory -- auditory exclusion that when you're
5 in -- running in a high stress situation sometimes you don't
6 hear everything the first time as you're trying to focus
7 everything else that is going on. I can't testify to
8 whether Proffitt heard it or not.

9 Q But you and Taylor knew it's now a code two. You've
10 cleared the intersection without lights and siren.

11 A Yes.

12 Q And the only thing you then hear is the noise of the
13 collision, correct?

14 A No. I still heard Corporal Proffitt's lights and
15 siren. Well, sirens.

16 Q But then you hear a collision, correct? You didn't see
17 the collision. You looked up at that time after you've
18 already heard the noise --

19 A Saw --

20 Q -- and you see two cars that have hit each other.

21 A Correct.

22 Q But you didn't see the collision, correct?

23 A No. Sure didn't.

24 Q That's all I've got for you. Thank you.

25 THE COURT: Anything on redirect?

William Weaver
Cross-examination by Mr. Dougall

1 MR. GARFIELD: No, Your Honor.

2 THE COURT: Thank you. You may step down.

3 All right. It's 3:30. It's about break time. Let's
4 take about a 10 or 15 minute break. And then we'll come
5 back and we'll go until -- let's take a 15-minute break
6 because I've got a few things to do with the lawyers. Go
7 until about 5:00.

8 Don't discuss the case and don't deliberate. Thank
9 you.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: All right. Mr. Dodson, did you in
13 discovery ask for the video cams of all of the drivers?

14 MR. DODSON: Your Honor, we did, and we actually had a
15 motion to compel. I believe it was heard before Judge
16 Cooper, and we raised that issue with Judge Cooper.

17 I mean, they have produced an affidavit saying they
18 don't have anything and they don't have a video, but, you
19 know, my position -- and that's why when you asked for jury
20 charges I included a spoliation of evidence.

21 THE COURT: I've got that, but I want to know where
22 the video is.

23 MR. GARFIELD: I can address that. This would be
24 arguments of counsel, but the affidavit itself is
25 actually -- the individual who drafted the affidavit is Ms.

1 Altman on behalf of the sheriff because she did a diligent
2 investigation.

3 I can represent to you, Judge, based on the motion to
4 compel and what's in the affidavit is that every -- the
5 existence of any particular video is a little bit of a
6 different perspective depending on the officer.

7 Deputy Weaver -- his video got turned into internal
8 affairs from what I understand. The videos if it goes
9 through training, they take a look at it, and there's
10 nothing depicted or captured on the video that would
11 directly help a fact-finder such as the accident review
12 board to show when it was in the collision, that video goes
13 back and gets recycled and used again in some format.

14 THE COURT: Weaver's in the collision and shows the
15 collision, and that doesn't help us do anything?

16 MR. GARFIELD: We -- what Weaver -- what --

17 THE COURT: Who was driving the car that wrecked?

18 MR. GARFIELD: Ken Proffitt.

19 THE COURT: Where's Proffitt's video?

20 MR. GARFIELD: Okay. Ken Proffitt's video based on
21 the affidavit -- he had had a loaner car. It was the very
22 first day he was in that car. The video itself was
23 defective or the video player would have been defective.
24 It didn't depict anything. His testimony --

25 THE COURT: I want whoever from internal affairs here

1 tomorrow to be subject to any kind of examination by
2 plaintiff. Sounds awfully -- all three of them not
3 available, that's sort of interesting. Anyway, have them
4 here tomorrow morning.

5 MR. GARFIELD: Thank you.

6 THE COURT: Now, also, I don't think we're going to
7 finish all of the testimony this afternoon. If we do, I'm
8 not going to argue and charge.

9 I want you to get me some law on why 56-5-760 is even
10 applicable in this situation as it relates to the testimony
11 that we've already heard. There's testimony there's no
12 emergency. If there were an emergency, it changed. And
13 certainly they weren't in pursuit of anybody. Anyway, we
14 will deal with that tomorrow.

15 Motions at the end of the plaintiff's case. Do you
16 want to make any?

17 MR. GARFIELD: I reserve the right to make a motion at
18 the end of our case, Your Honor, based on Your Honor's
19 concerns and considerations. I'd like to make a motion at
20 the end of our case.

21 THE COURT: Okay. We'll take about a ten-more-minute
22 break. You've got two more officers.

23 MR. GARFIELD: Yes, sir. That's going to be Ken
24 Proffitt and --

25 THE COURT: That's all right. I know who they are.

1 | who else besides the two officers?

2 MR. GARFIELD: Bill Peters who is the fleet manager
3 with the county to testify to the damage to the patrol car.

4 THE COURT: Sure. Anybody else?

5 MR. GARFIELD: No, sir, not today.

6 MR. DOUGALL: Mr. Peters should be very short.

7 THE COURT: Well, how about tomorrow?

8 MR. GARFIELD: We would have the internal individual
9 to answer those questions.

10 THE COURT: Sure. All right. We'll stand at ease.

11: (whereupon, a recess was taken.)

12 THE COURT: Anything for the record by the plaintiff
13 before we start?

14 MR. DODSON: Nothing, Your Honor.

15 THE COURT: By the defendant?

16 MR. GARFIELD: No, Your Honor.

17 THE COURT: Defendants?

18 MR. GARFIELD: Defendants. I made that mistake too.
19 No, Your Honor.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Next witness, please.

23 MR. FLIPPIN: Your Honor, the defense calls Mr. Bill
24 Peters.

25 WILLIAM PETERS, having been

William Peters
Direct examination by Mr. Flippin

1 first duly sworn, testified as follows:

2 THE CLERK: State your full name for the record.
3 Please spell your last name.

4 THE WITNESS: Name?

5 DIRECT EXAMINATION BY MR. FLIPPIN

6 Q Mr. Peters, can you state your full name for the
7 record?

8 A My name is William Peters.

9 Q Will you spell your last name, please?

10 A I'm sorry?

11 Q Will you spell your last name, please?

12 A P-E-T-E-R-S.

13 Q Mr. Peters, do you suffer from some hearing
14 deficiencies?

15 A I do.

16 Q Will you describe those to the Court very briefly?

17 A My hearing problem?

18 Q Yes, sir.

19 A I have a problem where it's -- it's a little bit of a
20 volume issue, but I've lost the ability to hear certain
21 tones and frequencies. So often I can -- I hear your noise,
22 but I can't make out your words. So I kind of -- I kinda
23 need you to be close enough to where I can see your face.

24 Q Yes, sir. With that in mind, I will work very hard to
25 speak fluent.

William Peters
Direct examination by Mr. Flippin

1 A I'll let you know.

2 Q Yes, sir. Thank you. With whom are you employed, Mr.
3 Peters?

4 A I'm sorry?

5 Q With whom are you employed?

6 A I work for Richland County, the department of support
7 services. I'm the -- currently the deputy director of that
8 department.

9 Q And have you always been a deputy director of that
10 department?

11 A I'm sorry?

12 Q Have you always been the deputy director?

13 A No, sir. I started with the company, with the county,
14 in 2003 in July as the county fleet manager, held that
15 position up until about six months ago when I was promoted
16 into the current position.

17 Q What were your duties as the fleet manager?

18 A The biggest duty for the fleet manager is management of
19 the contract for our maintenance provider. We subcontract
20 our maintenance and repair.

21 I also am responsible for the county fuel sites, DHEC
22 issues, fuel, and budgeting and capital planning for
23 equipment.

24 Q Do you have any information regarding a 2010 Crown
25 Victoria that was involved in an accident on or about

William Peters
Direct examination by Mr. Flippin

1 April 24th of 2014?

2 A The vehicle was involved in the accident on April 24th.
3 It was brought to the shop, towed to the shop, on that same
4 day.

5 From there it was sent to a body shop about four days
6 later. The vehicle was subsequently repaired and completed
7 by my maintenance vender on May 22nd, I think.

8 MR. FLIPPIN: If I may approach the witness, Your
9 Honor.

10 THE COURT: You may.

11 Q Mr. Peters, can you identify this document?

12 A Yes, sir. That, this document, is a work order from
13 our maintenance vender.

14 When a vehicle is brought into the shop they begin a
15 work order with all the pertinent information, including a
16 description of the work that needs to be done.

17 This is the final work order at the completion of the
18 work, which includes the work and the amount of spending on
19 the vehicle.

20 Q And who produces the work order?

21 A I'm sorry?

22 Q Who produces that work order?

23 A This work, because it's subcontracted to First Vehicle
24 Services, part of their contract involves accident repair as
25 well. So they have a list of venders, body shops, that we

William Peters
Direct examination by Mr. Flippin

1 use within the county.

2 Normally, in a situation like this they would get
3 estimates from subcontractor, their subcontractor, the body
4 shops, and send it out. We do not do body work at our -- at
5 our county garage, so.

6 Q Thank you. And what vehicle does that invoice
7 describe?

8 A What vehicle?

9 Q Yes, sir.

10 A This is unit No. DG-30. DG -- D designates it as a
11 sheriff vehicle. G would designate the year of the
12 vehicle -- 2010. And then it's vehicle 30 in that year.
13 They purchase about 80 vehicles a year.

14 It is a 2010 Ford. It's listed as a Crown Vic, but
15 it's actually what's called a pursuit of Crown Vic. It's a
16 police designed vehicle.

17 Q And does that document indicate to you how much the
18 repair cost Richland County?

19 A The repair cost?

20 Q Yes.

21 A The document explains at the end, and this is the
22 document that would have been sent to the sheriff's
23 department for their payment. The document lists two items.
24 The first one is a tow charge in the amount of \$125, and the
25 second item is the body shop repair which was \$5,081.28.

William Peters
Direct examination by Mr. Flippin

1 Q Thank you.

2 MR. FLIPPIN: Permission to approach the witness, Your
3 Honor.

4 Q Mr. Peters, I'm going to hand you a picture,
5 photograph. Can you identify the vehicle in the photograph
6 and --

7 A That would be the vehicle that was in the accident.
8 That was the damage on the vehicle.

9 Q And is --

10 A Basically, they repaired not just this part, but they
11 also did some repairs on the back side of it, the back door
12 as well.

13 THE COURT: On the back door? Did he say on the back
14 door?

15 Q Will you please repeat for the Court?

16 A I'm sorry?

17 Q Will you please repeat for the Court what you just said
18 where the damage occurred on that vehicle?

19 A Where the damage occurred?

20 Q Yes. Where did the damage occur on that vehicle?

21 A I'm sorry. I can't understand.

22 Q Where did the damage occur on that patrol car?

23 A The -- the vehicle was damaged pretty much along most
24 of the right side by the accident repair.

25 The problem is when you -- when you have damage on the

William Peters
Direct examination by Mr. Flippin

1 vehicle of -- of that nature the -- the vehicle frame takes
2 damage and twists as well.

3 By looking at the repair I see that they also did some
4 repair to the center post, the main post, and the door post
5 as well. Generally, the right side of the vehicle. Mostly
6 this right portion right here by the --

7 Q Thank you.

8 MR. FLIPPIN: And for the record show the witness is
9 identifying or using Defendant's Exhibit No. 5.

10 Q Mr. Peters, in reviewing that -- sorry. Apologize.
11 Mr. Peters in reviewing that invoice, does it indicate to
12 you how long that vehicle was inoperable?

13 Strike that question. Let me ask you a different
14 question, please.

15 Can you review that document and tell me -- strike that
16 question again.

17 Was that vehicle capable of being used while it was
18 being repaired?

19 A No. While it was being repaired?

20 Q Yes.

21 A No. The vehicle would be pretty much torn apart. They
22 would have pulled the quarter panels, the side panels. I
23 think they pulled the doors, bumper covers. It would be
24 torn down like any body repair from an accident.

25 Q Can you discern from that document how long that

William Peters
Direct examination by Mr. Flippin

1 vehicle was inoperable?

2 A The date of the accident was 4/24. We released it on
3 five twenty -- 5/23. I'm sorry. And then it immediately
4 went across the street from our shop, is the shop where the
5 sheriff's department installs their decals. It needed to
6 have decals put on it. So it left us on the 23rd of May and
7 went across the street to the sheriff. I would assume maybe
8 another day or two with the sheriff's department.

9 MR. DOUGALL: Objection, Your Honor.

10 THE COURT: Please don't.

11 MR. FLIPPIN: I'm sorry. One moment, please. What
12 was the objection?

13 THE COURT: Not to assume.

14 Q Please don't assume in your answers. If you would,
15 just refer to what you know.

16 A Okay. It left us on 5/23 and went to the sheriff's
17 department.

18 Q In your experience how long does it typically take the
19 sheriff's department to return a vehicle for the decals?

20 MR. DOUGALL: Objection, Your Honor.

21 A That's -- that's -- we cannot say for sure.

22 THE COURT: He can't say for sure.

23 Go ahead.

24 MR. FLIPPIN: Thank you.

25 Q Mr. Peters, based on that document is it fair to say

William Peters
Direct examination by Mr. Flippin

1 that that vehicle was out of service for 23 days?

2 A I'm sorry?

3 Q Based on your review of that document is it fair to say
4 that that vehicle was out of service for 23 days?

5 A Yes.

6 MR. FLIPPIN: And the record would reflect that the
7 witness is referring to Defendant's Exhibit No. 7.

8 No further questions for this witness, Your Honor.

9 THE COURT: Any questions?

10 MR. DOUGALL: Very quickly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. DOUGALL

13 Q Mr. Peters, the first four days that vehicle sat in
14 your yard --

15 A I'm sorry. Can you? I apologize.

16 Q That's not your fault.

17 MR. DOUGALL: If I can just approach so he can hear
18 me.

19 Q The vehicle accident occurred on April 24.

20 A Yes, sir.

21 Q And it was towed to your location, correct?

22 A It was towed to our shop, yes, sir.

23 Q And you know didn't release it to your repair
24 contractor for four days.

25 A Yes, sir.

William Peters
Cross-examination by Mr. Dougall

- 1 Q Okay. So that four days was just time that was wasted
2 while you were trying to get it to a contractor to have it
3 repaired.
- 4 A Yeah. Generally what happens is we'll get it in and
5 we'll try to get estimates on it --
- 6 Q Okay.
- 7 A -- before we choose one to send it out.
- 8 Q And once it goes to the subcontractor for the
9 maintenance it's out of your hands, correct?
- 10 A Yes, sir, that's correct.
- 11 Q And were you aware that on the day of the accident this
12 particular Crown Vic was a loaner that Officer Proffitt was
13 using instead of his regular car?
- 14 A I'm sorry. Was I aware of what?
- 15 Q That it was a loaner? In other words, it wasn't
16 Officer Proffitt's or Deputy Proffitt's normal car.
- 17 A It was a loaner car, I think.
- 18 Q Right.
- 19 A Yeah.
- 20 Q Okay. Which means it wasn't his normal vehicle.
- 21 A Yes, sir. That's correct.
- 22 Q All right.
- 23 A The sheriff's department keeps some spares.
- 24 Q They keep spares around because they know they're going
25 to have vehicles that are down for maintenance or down

William Peters
Cross-examination by Mr. Dougall

1 because of accidents.

2 A Yes, sir.

3 Q Are you aware of any patrol or any sheriff's department
4 mission that did not get accomplished because this
5 particular loaner vehicle was not available?

6 A Am I -- I am not aware. That would not be in my
7 purview.

8 Q And, in fact, that's the whole purpose for keeping
9 loaner vehicles, correct?

10 A Yes, sir.

11 Q All right. Did Deputy Proffitt ever report to you as
12 the fleet manager that the dash cam on this loaner was not
13 working?

14 A No, sir. The dash cam is not one of the items that we
15 would -- we would repair. The --

16 Q That wasn't the question. Did Deputy Proffitt --

17 A No, he did not. I'm sorry.

18 Q Thank you. That's all I've got.

19 A Okay.

20 MR. FLIPPIN: Nothing further, Your Honor.

21 THE COURT: You may step down. Thank you.
22 Next witness.

23 MR. FLIPPIN: Your Honor, will it be okay to release
24 this witness?

25 MR. DOUGALL: Absolutely, Your Honor.

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 (Whereupon, the witness was excused.)

2 THE COURT: Next witness.

3 MR. GARFIELD: The defendants call Kenneth Proffitt to
4 the stand.

5 KENNETH EDWARD PROFFITT,
6 having been first duly sworn, testified as follows:

7 THE CLERK: State your full name for the record.
8 Please spell your last.

9 THE WITNESS: My full name is Kenneth Edward Proffitt.
10 Last name is Proffitt. It's P as in Paul, R as in Romeo, O
11 as in Oscar, F as in Frank, F as in Frank, I as in India, T
12 as in Tom, T as in Tom.

13 DIRECT EXAMINATION BY MR. GARFIELD

14 Q Mr. Proffitt, where are you originally from?

15 A I was born in Salem, Virginia, raised in North
16 Carolina.

17 Q And can you describe your educational background for
18 the jury, please?

19 A Yes. I received a high school diploma in 1995 from
20 Salisbury High School in Salisbury, North Carolina.

21 I then completed recruit training for the United States
22 Marine Corps at Parris Island, South Carolina, in October of
23 that -- September of that year. Spent four years in the
24 Marine Corps where I then moved to Columbia to go to college
25 at Columbia International University.

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

- 1 Q Did you obtain any degrees from Columbia International
2 University?
- 3 A Yes. I received a bachelor's in science.
- 4 Q And what was your field of study?
- 5 A Youth ministry, Bible and outdoor leadership education.
- 6 Q Any degrees beyond a bachelor's?
- 7 A Yes. I have a masters of arts in theological study.
- 8 Q Very good. Are you a little nervous here today?
- 9 A Yes. I'm sorry.
- 10 Q Okay. That's okay. It's understandable.
- 11 You -- you told us that you are a United States Marine.
- 12 A Yes.
- 13 Q And what year were you discharged?
- 14 A I was discharged honorably in 1999.
- 15 Q Did you have an occasion to attend the South Carolina
16 Criminal Justice Academy?
- 17 A Yes, I did. I attended twice. The first time was in
18 2004 for what is known as a limited duty certification.
19 That is basically the certification of the officers you see
20 here assigned to the courthouse in the county building. And
21 then in 2007 I received my class one certification.
- 22 Q I'm going to bring you to April 24th, 2014. Were
23 you -- where were you employed at that time?
- 24 A I was employed by the Richland County Sheriff's
25 Department.

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 Q And what was your rank within the rank structure at
2 that time?

3 A I was ranked as a corporal. It's essentially the --
4 what's known as an assistant road supervisor.

5 The way it works is we have a day shift and a night
6 shift that rotates back and forth every 28 days. And a
7 sergeant would direct both shifts, and the corporals would
8 be the supervisor, the immediate supervisor, over the area
9 for that perspective shift.

10 So on that day I would have been in charge of assigning
11 patrol areas and things of that nature for the day shift.

12 Q You said you attended the South Carolina Criminal
13 Justice Academy.

14 Did you have an occasion to participate in any driver
15 training while at the academy?

16 A Yes.

17 Q And did that driver training, did it include training
18 with respect to emergency vehicles?

19 A Yes, it did.

20 Q Did you successfully complete the courses of
21 instruction?

22 A Yes, I did. And, additionally, every year through our
23 own training division we had to do driving as well.

24 Q With the Richland County Sheriff's Department?

25 A That is correct.

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 Q Now, on this particular day, April 24th of 2014, which
2 shift were you working on?

3 A It was on day shift for region two, which has been
4 previously explained.

5 Q And you were operating what vehicle at that time?

6 A I was operating a 2010 Ford Crown Victoria police
7 interceptor.

8 Q Was this a particular car that you were familiar with,
9 this particular car you were driving on this day?

10 A No, not that particular vehicle.

11 Q And why not?

12 A Because it was a loaner from our shop, as mine was
13 being repaired.

14 Q How long? I'm talking about April 24th of 2014. How
15 long had you been operating that particular vehicle?

16 A To my recollection, I believe I picked that vehicle up
17 maybe a day prior to coming on shift because mine had to go
18 to the shop. And that very day I would have done my checks
19 of all of the equipment for policy such as the video camera.
20 And at that time it was still idle. The video did appear to
21 operate. However, when driving it appeared as if the V.H.S.
22 deck on the back either had a loose wire or was wobbling.

23 Q Well, let's talk about that. You're getting a little
24 ahead of us.

25 A Okay.

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 Q It was equipped to your knowledge with a dash cam
2 video?

3 A It was.

4 Q And you mentioned what type or format the video was.
5 which was that?

6 A It was a V.H.S.

7 Q Do -- are the patrol cars -- strike that question.
8 When you say V.H.S. you're talking a V.H.S. tape that would
9 go into the player?

10 A Yes.

11 Q And to your knowledge you had a working understanding
12 or assumption that that was in proper working order?

13 A Yes.

14 Q And what about that made you believe that it was
15 working properly?

16 A Well, when we start our shifts each day we typically
17 check our radio equipment -- lights, siren and the video --
18 to do a general test. But that test is kind of done more or
19 less in a parking lot, so you're in a still position.

20 With those old V.H.S. camcorder units the vibration of
21 the vehicle can knock the wires loose, or the way it's
22 installed in the trunk, it can also loosen the player and
23 cause the player to shift in the trunk.

24 Q Okay. I may ask you a little bit more about that as we
25 go, but now that I understand what's equipped on this

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 particular patrol car, I'm going to take you to about a
2 quarter till 11:00 in the morning -- 10:45 in the morning.

3 Did you receive a call from Deputy Boyles --

4 A Yes. That --

5 Q -- or receive information over the radio?

6 A Yes. Like I said, I was hired back in 2004, and
7 actually my limited duty academy was at the same time as
8 Deputy Boyles' class one academy. So we've had ample
9 opportunity to work together, and under that I'm used to
10 hearing her voice on the radio and kind of knowing when
11 something's just a little more not right than others.

12 At that time her tone of voice was kind of very nervous
13 and concerned sounding as she advised that she was stopping
14 a vehicle with a strong drug smell coming from the vehicle
15 and two large males in it.

16 She had earlier advised to the shift that she was going
17 to be operating a motorcycle that day, which, as previously
18 described, does not have the cover that the engine -- the
19 8-engine block of a patrol vehicle would have.

20 Q What concerns, if anything, did you have when you heard
21 her voice and received that call?

22 A Well, based on her request for assistance and our
23 policy defining an emergency response for officer
24 assistance -- that is an emergency response by our policy
25 and under state law -- I activated my blue lights and siren

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 and proceeded to the area in which Deputy Boyles had the
2 vehicle stopped.

3 Q Have you ever heard of a term called priority one
4 status?

5 A Yes.

6 Q And what is that?

7 A That is regular routine patrol operations.

8 Q Okay. Priority one status, is that addressed in your
9 policy and procedure manuals?

10 A Yes, it is.

11 Q What, if anything, does a priority one status provide
12 the ability for an officer to do in circumstances with an
13 officer in need of assistance?

14 A Nothing.

15 Q Nothing. So what is code three versus code one?

16 A Code -- code three is a -- specifically an emergency
17 response with lights and siren, and it is used specifically
18 especially when it comes to officer safety and an
19 officer-in-need-of-assistance call.

20 We never know until that officer clears that call,
21 specifically in traffic stops and things of that nature, if
22 that officer is safe until they are done with that call.

23 Q Did you consider the nature and the degree of this
24 particular call from Deputy Boyles as an emergency?

25 A Yes, I did.

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 MR. DODSON: Objection. Leading, Your Honor.

2 THE COURT: Overruled.

3 Q So when you received that call over the radio what, if
4 anything, did you do at that point?

5 A I advised our dispatch that I was en route to the call.
6 I activated my blue lights and sirens, and I proceeded to
7 the call from Windsor Lake and Truent [sic] Extension -- or
8 excuse me -- Oakcrest and Truent Extension.

9 Q And you were proceeding -- we've used this Defendant's
10 Exhibit No. 1 several times. You were proceeding in the
11 direction of what intersection?

12 A I was proceeding in the direction of the intersection
13 of Alpine Road at Windsor Lake Road.

14 Q I show you Defendant's Exhibit No. 1. Are you familiar
15 with this aerial view and what's depicted in this picture?

16 A Yes, I am.

17 Q Okay. What all do we see in this -- in this picture?

18 A I would have been coming from this direction here.
19 This is an older picture, so there is a strip mall storage
20 area here now.

21 Q And when you say from this direction, could we be clear
22 for the court?

23 A Yes. I'm coming from -- I'm going this way on Windsor
24 Lake Boulevard getting ready to cross Alpine Road, which is
25 right here.

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 Again, there's a new storage facility here. There's a
2 patch of trees here, Methodist church here, and E.L. Wright
3 Middle School is right there.

4 Q Okay. And you testified that you had your blue lights
5 and siren on.

6 A Yes.

7 Q Are you positive about that?

8 A Yes, I am.

9 Q How are you positive about that?

10 A Because it makes a very distinct noise in the vehicle
11 when they're on.

12 Q Okay. Would you ever respond to a call with blue
13 lights and siren when you were trying to go up against, for
14 instance, to disregard a traffic signal?

15 A No.

16 Q Why not?

17 A Because by our policy -- even the state law allows you
18 to yield. We are expected in training to stop at
19 intersections and make sure that we can establish ourselves
20 inside the intersection legally with due care prior to
21 proceeding through the intersection.

22 Q So as you were approaching the intersection, can you
23 describe the -- the road itself? Was it straight; was it
24 curvy? How would you describe it?

25 A It's a slight curve going past E.L. Wright Middle

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 School, but for the most part it's straight coming into that
2 intersection.

3 Q And what were the weather conditions and the road
4 conditions at that time?

5 A It was clear and sunny and the pavement was dry.

6 Q Now, as you approached the intersection of Alpine and
7 Windsor Lake Road or boulevard, what was the stoplight from
8 your perspective?

9 A I had the red light.

10 Q From your lane of travel you said you had a red light.

11 A That is correct.

12 Q Did you have an occasion to see any other deputies or
13 any other patrol cars in the immediate vicinity?

14 A Yes. I was able to observe Deputy Weaver approaching
15 from my left, which would have been the Two Notch Road side
16 of Alpine Road, with his green light since he was running
17 lights and siren at the time I saw him. And he had the
18 green light. I came to a complete stop to yield to his
19 patrol vehicle as expected that I'm supposed to make, mind
20 all traffic signals when dealing with an emergency response.

21 Q Okay. So if you're coming in this direction going on
22 Windsor Lake Boulevard as you're approaching this stop bar,
23 what, if anything, did you do when you reached this general
24 area right here of the stop bar?

25 A I came a complete stop and I cycled my siren from one

Kenneth Edward Proffitt
Direct examination by Mr. Garfield

1 mode to another.

2 Q And when you say cycled your siren, can you please
3 explain to the jury what you mean by that?

4 A Yes. Inside our vehicle are -- we have a siren box.
5 And Deputy Weaver mentioned earlier audio inclusion. The
6 way the siren box is designed and the way that you're
7 trained each time you come to an intersection or some other
8 point of traffic or as you deem it appropriate based on
9 traffic conditions you change the sound of the siren so
10 people can pick up on different sound changes as opposed to
11 a constant sound.

12 So, for instance, if you turn on the radio your ears
13 may kind of perk up a little more as you change the radio
14 station or get static as opposed to a good sound than you
15 would if you were just playing the same radio station the
16 whole time you're in the car. It's really the same
17 principle.

18 There's three different sounds that that siren box will
19 make, and we cycle through each sound at each intersection
20 or, like I said, as traffic dictates for safety reasons so
21 we know that people around us hear us.

22 Q Okay. I'm going to pause you real quick.

23 MR. GARFIELD: May we approach, Your Honor, based on
24 an issue that the plaintiff's counsel addressed during the
25 break with respect to demonstrative evidence?

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1 THE COURT: Yeah.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 THE COURT: Madam forelady, give me five minutes,
5 please. Y'all step out just for a second. I'm sorry.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. Let the record reflect that
9 the defense counsel now wishes to play a siren-changes
10 pitch or whatever.

11 MR. GARFIELD: Yes, Your Honor.

12 THE COURT: Tell me about what you've got.

13 MR. GARFIELD: I've got a 10-second clip that
14 replicates the type of siren and the pitch change that this
15 witness has testified to. We would like to be able to play
16 this to the jury for demonstrative purposes so as to
17 explain.

18 THE COURT: That clip comes from where? Where was it
19 taken, off the vehicle in question or just generic?

20 MR. GARFIELD: It was -- it was kind of neither. It
21 wasn't the vehicle in question, but it was somebody ran a
22 tape out to a car, from what I understand, and taped the
23 way the -- the vehicle siren sounds.

24 THE COURT: Have you provided copies of this
25 demonstrative evidence to the plaintiff?

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1 MR. GARFIELD: No, sir, because we've -- this we've
2 only -- I obtained this very recently, and we weren't going
3 to introduce it. We're just going to use it for
4 demonstrative purposes.

5 THE COURT: Well, on April 6th of 2015 he filed this
6 request for production.

7 MR. GARFIELD: Yes, sir.

8 THE COURT: And he asked for copies of all documents
9 you intend to use at the trial -- exhibits, demonstrative
10 evidence or any other purpose. Have you not done so?

11 MR. GARFIELD: We just got our hands on it. We did
12 not -- I did not let him listen to it, or did we produce
13 that? I'm just thinking by way of e-mail.

14 THE COURT: And they just got their hands on Sunny
15 Fain, which you objected to.

16 MR. GARFIELD: Yes, sir. But the same -- the same
17 thing. I'm sorry. Oh, the witness -- I'm sorry. I was
18 just thinking of the audio but it's -- we would like --

19 THE COURT: I'm going to feed y'all out of the same
20 spoon.

21 MR. GARFIELD: I understand.

22 THE COURT: All right. I'm going to deny it. I'm
23 going to grant the motion to not allow it.

24 Bring the jury back in.

25 (The following takes place in the presence of the

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1 jury.)

2 THE COURT: You may proceed.

3 BY MR. GARFIELD

4 Q Mr. Proffitt, you testified that you saw Deputy Weaver
5 turn left in front of you.

6 A Yes.

7 Q You were approaching the -- bringing you back to the
8 point.

9 A Yes.

10 Q I'm asking you questions at the point that you were at
11 or about the stop bar.

12 A That is correct.

13 Q Okay. Was your siren in proper working condition?

14 A Yes, it was.

15 Q Okay. Was there anything to compromise the degree or
16 the volume of sound that it omitted?

17 A No, there was not.

18 Q How about the pitch that you were changing? Was that
19 also in proper working condition?

20 A Yes, it was. The way the pitch works is it is actually
21 wired through our pounern [sic] on the vehicle. So you were
22 able to press the horn in the center of the steering wheel
23 each time you change the sound.

24 Q After you saw Deputy Weaver turn to your left did you
25 have an occasion to see any vehicles potentially at any

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1 other part of the intersection?

2 A Yes. I was able to observe a vehicle stopped. I was,
3 again, coming from this direction, this stop bar here.
4 There was no other vehicles coming this way except I could
5 barely see Deputy Taylor's vehicle coming up from this
6 direction, as I discussed before, approximately a hundred to
7 two hundred yards off. I observed a vehicle in this lane
8 and a vehicle in this lane.

9 Q When you say this lane, the first lane, what lane?
10 Could you describe it for me?

11 A Lane No. 1, which is a left turn lane going from Alpine
12 Road onto Windsor Lake traveling back towards Oakcrest and
13 under I-20 to 77.

14 The center lane here, which is the straight lane going
15 this way, of Alpine Road towards Two Notch Road, and this
16 right turn lane that goes up Windsor Lake towards Two Notch
17 Road.

18 Q Okay.

19 A All vehicles were stopped. I was still here. I,
20 again, changed my siren mode and proceeded into the
21 intersection.

22 I lawfully established myself in the intersection
23 literally taking lane by lane. So, in other words, I used
24 my vehicle here into this lane, again, observing up this
25 way. Just established myself in the center of the

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1 intersection, again, observing these vehicles here and then
2 continued on. And then I was struck right here in the
3 pedestrian crosswalk, and my vehicle came to rest on this
4 curb by this drainage ditch right here.

5 Q Okay. Can you put an "X" on Defendant's Exhibit No. 1
6 to where you just pointed to -- to the best of your
7 knowledge where your car was impacted?

8 A Do you want the area too from where I was coming from?

9 Q Well, if you could do the arrow where you were coming
10 from and then an "X" at the appropriate place.

11 (Whereupon, the witness complied.)

12 Q So to be clear, the "X" designates what on Plaintiff's
13 Exhibit No. 1?

14 A It designates the point of impact of my vehicle, which
15 was about two thirds through the intersection. I was
16 actually coming out of the intersection at the time of
17 impact.

18 THE COURT: And at that time what color was the light,
19 the traffic light, in your direction?

20 THE WITNESS: I had the red light.

21 THE COURT: You had it. So no question he had the
22 green light and you had the red light.

23 THE WITNESS: That is correct, Your Honor.

24 Q Okay. This is marked as Defendant's Exhibit No. 5, I
25 guess for identification purposes at this point. Can you

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1 please share with the jury what you see in that picture?

2 A This would be a picture of my patrol car after the
3 accident.

4 Again, to orient -- orient -- orient those who are
5 familiar with the area, this is the sidewalk immediately
6 beside the E.L. Wright Middle School. This is the curb of
7 the roadway on the opposing side of traffic from which I was
8 coming from.

9 I came to rest on that curb, and this is the damage
10 right here to my vehicle that -- the visible damage is
11 between the back side of the "D" of deputy sheriff above the
12 wheel well going back to the door handle of the door. And
13 you've already heard that there's more damage back here.

14 Q Okay.

15 MR. GARFIELD: Not sure if we've done this before,
16 Your Honor. I'd move to introduce into evidence
17 Defendant's Exhibit No. 1 and No. 5.

18 MR. DODSON: I thought we'd already introduced all of
19 them, Your Honor.

20 MR. GARFIELD: Well, I wasn't sure, Your Honor.

21 THE COURT: They're all in.

22 MR. GARFIELD: Everything is in. Okay. Thank you.

23 Q I'm going to also show you Defendant's Exhibit No. 2.
24 Can you please explain? What, if anything, do you see in
25 this picture you might be familiar with?

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1 A Yes. This is the direction that the plaintiff's
2 vehicle would have been coming from.

3 I would have been posted at this intersection right
4 here. Deputy Weaver came through the intersection right
5 here.

6 As Deputy Weaver cleared I again observed that there
7 were three vehicles stopped right here. So I then changed
8 my siren cycle again and, as I said to explain further, step
9 by step I established this lane, observed this lane and this
10 lane, established this lane, observed this lane and this
11 lane and then continued through the intersection.

12 Q Okay. Similarly on this, can you draw the direction of
13 travel with this blue pen?

14 MR. GARFIELD: Let the record reflect this is a blue
15 pen on both Defendant's Exhibits 1 and 2.

16 A Going that way and, again, the point of impact is
17 about right there.

18 Q So when you say about right there you're talking --
19 what are you drawing on there?

20 A This is the point at which my vehicle was hit and
21 thrown, come land again over here.

22 Q But the impact was at this crosswalk?

23 A Yes, it was.

24 Q In and around that crosswalk?

25 A Yes, it was, even though I was coming out of the

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1 intersection.

2 Q Immediately after the impact, what do you recall
3 happening at that point?

4 A I recall my vehicle moving, again, laterally, and I
5 recall feeling the glass from the passenger-side window hit
6 me in the right side of my face.

7 Q Was there an occasion for an emergency medical services
8 unit to come out?

9 A Yes. I was transported to the hospital.

10 Q You were transported to the hospital?

11 A Yes, I was.

12 Q And did you have injuries as a result of this accident?

13 A There was some concern of my shoulder, neck, and also I
14 believe I may have --

15 MR. DODSON: Objection, Your Honor. They've not
16 asserted or produced anything in discovery.

17 THE COURT: Well, it's not relevant. They're not
18 claiming any personal injury. So he doesn't have a claim.
19 Sustained.

20 A I lost a diagnosis --

21 THE COURT: Sustained.

22 THE WITNESS: My apologies, Your Honor.

23 THE COURT: Sustained.

24 Q Do you believe you sufficiently stopped before entering
25 into the intersection?

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1 A Yes. I did.

2 Q Are you absolutely sure that you waited and ensured
3 that the intersection was clear before proceeding?

4 MR. DODSON: Objection. Leading.

5 THE COURT: Well, not only is it leading. That's the
6 ultimate question for the jury to determine. Sustained.

7 Q He asked you questions. Questions have been asked in
8 this case about the dash cam videos.

9 A Yes.

10 Q And I asked you a little bit them. You believe that it
11 was in proper working order.

12 A Yes.

13 Q Did --

14 THE COURT: I'm sorry. Did you say proper?

15 MR. GARFIELD: Proper working order, yes, sir.

16 THE COURT: Thank you.

17 Q Was your video camera in proper working order?

18 A It turned out --

19 Q Did you find out as it turned out?

20 A As it turned out during the operations where the
21 vehicle was in motion, that was the first time that day I
22 had to activate my lights and siren for anything.

23 At that time with the vehicle accelerating the speed
24 and activating lights and siren with the video camera coming
25 on, when it came on it was literally -- looks like an old

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1 black and white television with the snow and the waves. So
2 it was apparent that something in the vibration of the
3 vehicle was causing the camera to malfunction.

4 Q So you're saying that it would not have produced
5 anything that would be useful or workable?

6 A You --

7 MR. DODSON: Objection, Your Honor.

8 THE COURT: Hold on.

9 What's the objection?

10 MR. DODSON: I think it's a leading question, Your
11 Honor.

12 THE COURT: Well, overruled.

13 A You are able to -- there's a small monitor in the
14 vehicle about that big that you are able to observe what the
15 camera's recording.

16 Like I said just a few seconds ago, on that small
17 monitor with the red light on you could observe the lines in
18 the static. On playback you would have seen the same thing.

19 Q At what point did you find out beyond this that you
20 would not be able to have a video?

21 A When I spoke to the on-scene supervisor that had done
22 the wreck packet for our department policy that they weren't
23 able to see anything on the video.

24 I then proceeded to our shop to make contact with our
25 portion of the fleet manager, Deputy Justin Minon [sic] to

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1 notify him that that piece of equipment was not working on
2 that spare vehicle.

3 Q What was your state of mind about knowing that the
4 video was not working, was not working properly?

5 A Could you clarify?

6 Q Sure. With your state of mind renewed, tell me how you
7 felt about it.

8 A Well, I was aggravated because, like the plaintiff's
9 counsel has already advised, that video can really clear
10 this matter up really quickly.

11 Q Because why do you say it would have cleared this up
12 rather quickly?

13 A Well, because if the video is working it would have
14 shown my entrance in the intersection properly as per
15 department policy, training and state law.

16 MR. GARFIELD: I beg the Court's indulgence.

17 (Pause.)

18 Q Do you have any knowledge as to why you were operating
19 in a code three status and other officers were operating in
20 other code statuses?

21 A Except that I didn't hear in my vehicle that she was
22 signal 18 so far. I did not produce code. I was still
23 concerned for officer safety until I knew somebody was on
24 the scene with her.

25 Q I'm going to show you Defendant's No. 6. Can you

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1 explain what that is?

2 A That appears to be the plaintiff's Toyota Tacoma pickup
3 truck.

4 Q Your testimony, which vehicle struck which vehicle?

5 A The plaintiff's vehicle struck my patrol vehicle on the
6 pedestrian crosswalk two thirds through the intersection.

7 Q The damage to your patrol car, where was the vehicle
8 struck?

9 A The vehicle was struck through observation on the
10 left -- pardon me -- right fender, right passenger-side
11 door, front, causing the side-view mirror to fall off and
12 the right passenger window to shatter into the compartment
13 of the vehicle.

14 Q Okay. Thank you. Thank you for your service, and also
15 please answer any questions Mr. Dodson may have for you.

16 A Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. DODSON

19 Q Mr. Proffitt, you're aware of the fact that this matter
20 was investigated by a state trooper, correct?

21 A Yes, sir.

22 Q And the state trooper is not affiliated with the
23 Richland County Sheriff's Department, is that correct?

24 A That is correct.

25 Q It's an independent investigation.

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Cross-examination by Mr. Dodson

1 A Yes, it is.

2 Q Correct? And are you aware that by state statute the
3 state trooper is required to do a written report?

4 A Yes. He is.

5 Q Have you seen that written report?

6 A Just recently as in like the past three weeks or so.

7 Q And, in fact, that written report cites you --

8 MR. GARFIELD: Objection, Your Honor.

9 THE COURT: Wow, wow, wow. We've been over this.

10 MR. GARFIELD: Objection.

11 MR. DODSON: May -- I'd like to make a proffer of this
12 evidence, Your Honor.

13 THE COURT: Well, you can in a little bit. Keep on
14 going.

15 Have you got a case you want me to read while you're
16 doing it?

17 MR. DODSON: There are a couple of statutes.

18 THE COURT: Let me see it. Just hand it to me.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 THE COURT: All right. Madam forelady, I'm sorry.
22 Step right out just a second.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Do your proffer.

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Cross-examination by Mr. Dodson

1 MR. DODSON: Thank you, Your Honor.

2 THE COURT: Hold on a second.

3 MR. GARFIELD: Could we ask what statute he's
4 referring to, Judge?

5 MR. DODSON: Thank you, Your Honor.

6 THE COURT: Put it on the record -- the statute.

7 MR. DODSON: Okay. It's statute 56-5-765(A) as in
8 apple.

9 THE COURT: And your proffer?

10 MR. DODSON: That statute provides that --

11 THE COURT: I thought you wanted to do a proffer.

12 MR. DODSON: I do, and I just want to make my argument
13 if I may, Your Honor.

14 THE COURT: Well, I can't -- I don't know what you're
15 going to argue until you put up the testimony.

16 MR. DODSON: Okay. Oh, I'm sorry. My apologies.

17 THE COURT: No. You don't have to apologize.

18 56-5-765 says that the state highway patrol must
19 investigate a collision dealing with a --

20 MR. DODSON: Right.

21 THE COURT: And it says must file a report with
22 findings --

23 MR. DODSON: Right.

24 THE COURT: -- and whether the agency's motor vehicle
25 was operated properly within the guidelines.

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1 And the next statute is what?

2 MR. DODSON: The next statute is 56-5-1290.

3 THE COURT: And it says none of those reports to be
4 used as evidence in this case, right?

5 MR. DODSON: No, sir.

6 THE COURT: What does it say?

7 MR. DODSON: It specifically references two other
8 statutes -- 56-5-1260 and 56-5-1280. It does not reference
9 what I just cited to Your Honor -- 56-5-765.

10 THE COURT: Well, hand me 1260 and 1280, I think is
11 what you said.

12 MR. DOUGALL: I believe it's 1260 through 1280, Your
13 Honor.

14 THE COURT: That'll be fine.

15 MR. DOUGALL: So it'll be 1270 included.

16 MR. DODSON: I'm looking at 1290, and then it says
17 reports generated under 1260 through 12 -- 1280 don't come
18 into evidence. But this report wasn't generated just
19 pursuant or even pursuant at all to those statutes. It
20 was -- it was produced pursuant to 765. That's my
21 argument.

22 THE COURT: Let me look at it.

23 This is the investigation when it's dealing with a law
24 enforcement agency's motor vehicle. Highway patrol must
25 investigate, must file a report of findings on whether the

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Cross-examination by Mr. Dodson

1 agency's motor vehicle or motorcycle is operated within the
2 guidelines of appropriate statues and regulations.

3 1290 excludes those reports and 1260 and 1280, and the
4 statute you're referring to is 765.

5 MR. DODSON: And there is no statute that excludes 765
6 that I'm aware of. So in an ordinary wreck case if it was
7 just two citizens, absolutely the report doesn't come in.
8 But this report was generated under a different subsection
9 of the code, and there's no -- there's no other code
10 section that excludes it.

11 MR. GARFIELD: Yes, Your Honor. Thank you. He's
12 referring to 56-5-1290.

13 THE COURT: I've got to have it.

14 MR. GARFIELD: 56-5-1290. The title of that section
15 as Your Honor has just observed is evidentiary use of
16 reports.

17 THE COURT: That's correct.

18 MR. GARFIELD: It says none of the reports required by
19 sections 56-5-1260 to 56-5-1280 may be evidence of the
20 negligence or due care of either party at the trial of any
21 action at law to recover damages.

22 Your Honor, the way I am reading that is that it would
23 be 1260 including but not limited to all of the statutes
24 that would be covered between 1260 and 1280 which would
25 include, for instance, 1270, 1275, which refer to TR-310s

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Cross-examination by Mr. Dodson

1 that would have been generated by the trooper in this case
2 that's an accident investigation report.

3 It's -- he's not extracting a hyper-technicality to
4 say it is only those two statutes that do not apply. And
5 the general assembly passed this.

6 It's pretty much common knowledge that in a trial for
7 negligence or where due care of a party is -- is at issue
8 in a trial that the TR-310s would not be admissible. And
9 this particular statute prohibits this as evidence,
10 including any type of accident report, which I think is
11 56-5-1275 which is entitled, "Requests for accident
12 investigation reports." And 1270, which discusses and sets
13 forth the perimeters of law enforcement officers, "shall
14 make written reports of certain accidents and
15 investigations."

16 THE COURT: why -- why is the statute so clear that
17 you can't use them? I never used them. why is it an
18 exception under the state agencies or law enforcement's
19 vehicle involved? why would it be any different?

20 MR. DOUGALL: Because the statute requires an
21 independent agency to come to the scene and investigate the
22 accident because a law enforcement vehicle was involved.

23 Therefore 765(A), which in this case we had a law
24 enforcement vehicle involved with a civilian vehicle, the
25 state statute says you've got to call in an independent

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1 agency.

2 It further goes on to say you can do a dual track
3 investigation, but the independent agency called in -- in
4 this case the state highway patrol -- must render a written
5 report. They must find a cause. And that's exactly what
6 they did under 765(A).

7 It's exactly what Trooper Altman testified to, that
8 he's got to call in his sergeant. He's got to call in his
9 lieutenant. And they have to do that for a specific
10 reason, because they're investigating another law
11 enforcement agency. And under the statute they've got to
12 make that determination by law as to whether or not
13 Mr. Proffitt was at fault when he was trying to clear that
14 intersection.

15 And they did that. They found him at fault. And
16 there's been nobody here to testify that anything he did
17 was outside of that statute, and therefore the report comes
18 in because the exclusion that Mr. Garfield is implying or
19 relying upon is for routine traffic cases that fall between
20 1260 and 1280. And they do include 1270 and 1275, but they
21 don't exclude 765(A), which says they've got to do it.

22 THE COURT: Anybody got any case law on this?

23 Quite frankly, this is good lawyering, but it's the
24 first time I've had this, so I'm going to look at it a
25 little closer.

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1 MR. GARFIELD: Your Honor, I know you're looking at
2 this a little closer, I guess what I'd like to put on the
3 record is our strenuous objection is not based on the fact.
4 It's based solely -- not based solely on the fact that this
5 should be excluded based on 56-5-1290.

6 But if he did want to introduce this as an exhibit
7 that's not been premarked, first of all. But even if it
8 was the actual -- the actual -- the finder of fact in an
9 accident case in South Carolina should be as Your Honor has
10 noted, is the jury.

11 It should not be based on what this trooper came out
12 and saw and what he didn't see. Notwithstanding hearsay,
13 relative exceptions or exclusions based on hearsay, just
14 because the -- just because there are certain requirements
15 and criteria that's been carved out in 56-5-765.

16 That is a first for me to say that that is carte
17 blanche, provides the ability at trial to admit the actual
18 investigative report into the jury where certainly that
19 trooper who investigated the actual collision, whether or
20 not it even involved a law enforcement officer, that that
21 could be used as evidence, because I think that's exactly
22 why in 1290 there is a special separate emphasis that none
23 of these reports may be evidence of negligence.

24 So that really is a first for me, and I'm not aware of
25 any case law that spells it out either way because I think

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Cross-examination by Mr. Dodson

1 that's black-letter, statutory law.

2 THE COURT: Anything else from the plaintiff?

3 MR. DODSON: I would just point out that -- and I'm
4 not looking at the full opinion -- but it is an attorney
5 general's opinion on this 56-5-765. And I'll pass it up
6 for Your Honor to read what the snippet on that attorney
7 general's opinion is.

8 I think it goes along with exactly what we're saying,
9 which is that because this involved a law enforcement
10 agency -- this is not a typical wreck case -- that's the
11 reason for this provision. And, you know, if the
12 legislature had wanted the report that's generated by 765
13 excluded, the legislature could have put it into 1290, and
14 they didn't do it.

15 MR. DOUGALL: Your Honor, if you look at State vs.
16 Shelton it's exactly what we're talking about here.

17 THE COURT: Well, State vs. Shelton, that was where
18 the highway patrol guy was in the wreck and the sheriff's
19 office was supposed to investigate it --

20 MR. DOUGALL: Correct.

21 THE COURT: -- pursuant to this statute. They didn't
22 have the resources, so they called the MAIT team in, which
23 was part of the South Carolina Highway Department, so they
24 violated 765 and --

25 MR. DOUGALL: But implicit in reading State vs.

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1 Shelton is you called in an independent agency. And that
2 is admissible.

3 What State vs. Shelton is saying is because MAIT tried
4 to investigate their own agency was inadmissible. But the
5 clean reading of the statute is if the county had done it,
6 it would have been admissible under 765(A).

7 THE COURT: Yeah. But you've got different problems
8 here. You've got a young highway patrolman on the witness
9 stand who says that he just put down what somebody else
10 told him. He's not qualified to make an accident
11 reconstruction.

12 MR. DOUGALL: It's not an accident reconstruction.
13 It's a written report required by the statute that he, his
14 sergeant and his lieutenant worked on together, and it was
15 filed so there --

16 THE COURT: That report is different than all other
17 collision reports that are precluded by the other statute?

18 MR. DOUGALL: It is very clearly so. And the question
19 before the witness is has he seen the report which is
20 required by the statute. He says he has. Has he read it?
21 He says he has.

22 And the follow-up question is it found you at fault,
23 didn't it? The sheriff --

24 THE COURT: All right. Do the proffer for me. Ask
25 the questions that you intend to ask.

Kenneth Edward Proffitt (In-camera)
Examination by Mr. Dougall

- 1 MR. DOUGALL: Okay. The questions I would ask him
2 are:
3 EXAMINATION BY MR. DOUGALL
4 Q Mr. Proffitt, have you seen the accident report arising
5 out of this incident on April 24th of 2014.
6 A Recently, yes.
7 Q So you've seen it.
8 A Yes.
9 Q Have you read it?
10 A Yes.
11 Q And did, in fact, that written report go to the
12 sheriff's department to your knowledge?
13 A To my knowledge all the sheriff's department received
14 was the FR-10.
15 Q You don't know.
16 A To my knowledge the sheriff's department only received
17 the FR-10 at the time of this.
18 Q Did the report find you at fault for the accident?
19 A No. Found me contributing to the accident.
20 Q All right. Did it find you contributing to the
21 accident?
22 A There is a difference in the statute.
23 Q Did it find you contributing to the accident,
24 Mr. Proffitt?
25 A Yes, it did.

Kenneth Edward Proffitt (In-camera)
Examination by Mr. Dougall

1 Q Did it find Mr. Kim contributing to the accident?

2 A No, it did not.

3 MR. DOUGALL: That'd be my proffer, Your Honor.

4 MR. GARFIELD: If I may be heard on this, Judge,
5 sub -- or excuse me -- Section 56-5-1270.

6 THE COURT: Well, back to 1270?

7 MR. GARFIELD: Yes, sir, back to 1270.

8 If you would, direct Your Honor's attention to the
9 second full paragraph. I may looking at a different type
10 book, but it's --

11 THE COURT: Hold on a second.

12 MR. GARFIELD: Yes, sir.

13 THE COURT: That starts with every law enforcement
14 officer.

15 MR. GARFIELD: Yes, sir. It states -- and I read
16 verbatim -- "Every law enforcement officer who, in the
17 regular course of duty, investigates a motor vehicle
18 accident that results in injury or to death -- to or death
19 of any person or total property damage."

20 And I'm going to continue on where I think it's
21 superfluous language until it says, "Must forward a written
22 report of the accident to the Department of Motor Vehicles
23 included -- including the names of interviewed participants
24 and witnesses."

25 Trooper Altman who was a law enforcement officer, Your

1 Honor, who in the regular course of his duty
2 investigated -- he didn't perform a reconstruction, but he
3 investigated the motor vehicle accident giving rise to this
4 claim that results in an alleged injury to the plaintiff in
5 this case.

6 He did generate a report. That one report, the
7 contents of which included the accident itself, included
8 the names of interviewed participants and witnesses going
9 back to 56-5-1290, which references several statutory
10 provisions in which Mr. Dougall does concede that would
11 include 56-5-1270, clearly states none of the reports may
12 be evidence of the negligence or due care of either party.

13 They are very clear that because a trooper -- the same
14 way a law -- Your Honor, the sheriff's department also
15 investigates accidents. The Richland County Sheriff's
16 Department may investigate an accident by a smaller agency.

17 They would come in to investigate a Columbia police
18 department. Your Honor, the Aiken County Sheriff's Office
19 would go from time to time if there was an accident in
20 Eureka -- Monetta -- that kind of thing.

21 Any time they investigate an accident if they're
22 acting within the course and scope of their official duties
23 it triggers the function of 1270, and that is why the
24 general assembly -- as Mr. Dodson referred to -- he said he
25 would have -- general assembly in their infinite wisdom

1 would have had something else. well, here it says none of
2 the reports required by that would be in evidence. And
3 there's no exceptions to that.

4 It says however law enforcement officers may refer to
5 these reports, which have been done, when testifying, which
6 was done, in order to refresh their recollection of
7 events -- the evidence of this. And to impeach or
8 cross-examine this particular witness either through the
9 proffer or elsewhere is improper, and this should
10 completely be held out of evidence in this trial.

11 MR. DOUGALL: Your Honor, Rule of Evidence 803(8),
12 again, only those accident reports generated pursuant to
13 56-5-1260 to 1280 are not admissible.

14 THE COURT: Let me see that rule that you're reading.

15 MR. DOUGALL: Public record and reports.

16 MR. GARFIELD: 803 what?

17 MR. DOUGALL: 803(8). Those are prepared pursuant to
18 765 are not excluded by that rule of evidence. Our rules
19 are clear. If it's not excluded, it's admissible.

20 MR. GARFIELD: I believe Mr. Dougall's made the point
21 for us.

22 MR. DOUGALL: I don't think so. I think you're
23 reading more into the statute than is there. This is not a
24 report pursuant to 1260 through 1280. It's a report
25 pursuant to 765(A).

1 THE COURT: Well, 1270 requires the report, a report,
2 of all vehicle accidents.

3 MR. DOUGALL: That's right, but 765(A) is very
4 specific.

5 THE COURT: 765 is for transparency purposes so we
6 don't have your agency investigating your officer until you
7 call in an outside agency, and he does the report.

8 MR. DOUGALL: Which also has additional requirements
9 under that statutory section that says they've got to
10 determine who was at fault in the accident.

11 THE COURT: And 1290 excludes those that are generated
12 pursuant to 1270. And there are a whole line of cases, a
13 host of cases.

14 It says in any event a long line of South Carolina
15 decisions has excluded the opinions of the investigating
16 officers of automobile accident case. It goes on to list,
17 gosh, knows, cases that we've relied on forever -- Doremus
18 and Robinson and Willard, Gentry.

19 And I am of the opinion that 1290 does exclude the
20 report which was required by 1270. And even though 765 is
21 not mentioned in the exclusion, it's still the same type of
22 report. It's required by the statute that is included.

23 This just simply -- this is the law that has been
24 passed to ensure that this objective review of the
25 accident, not by the same agency where the same officers

1 are derived, so I'm going to disallow it.

2 Bring the jury back, please.

3 You're protected, I think, as much as you can be. And
4 that is good lawyering. I just disagree with you.

5 MR. GARFIELD: Thank you, Your Honor.

6 THE COURT: Bring the jury in, please.

7 How much longer we've got in this witness?

8 MR. DOUGALL: I've got maybe three minutes with him.

9 MR. DODSON: About the same as the others, I would
10 expect. I'm not going to spend an hour either.

11 THE COURT: What we'll probably do is finish up with
12 this witness and cut him loose.

13 We've got one witness left? Are you going to call
14 him?

15 MR. GARFIELD: It could be two witnesses, Your Honor,
16 based on the issues that we talked about at the last break
17 about as far as the video tape.

18 THE COURT: Okay.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: All right. I'm sorry, Madam Forelady,
22 ladies and gentlemen. It's just sort of an interesting
23 issue that we had to discuss outside of your presence.
24 We've got it resolved.

25 We're going to finish this witness, which I suspect

Kenneth Edward Proffitt
Cross-examination by Mr. Dodson

1 will be about another ten minutes, and then I'll talk to
2 you about tomorrow.

3 You may continue.

4 MR. DODSON: Thank you, Your Honor.

5 CONTINUED CROSS-EXAMINATION BY MR. DODSON

6 Q The dash cam that has been referred to a lot, that dash
7 cam in the car that you were driving on April 24th of 2014,
8 that dash cam comes on automatically when you turn on the
9 lights and sirens, correct?

10 A That is correct in about a two-to-five second delay.

11 Q And you tested that dash cam before you left out on
12 patrol that day, correct?

13 A Yes, I did, but, again, the vehicle was idled in a
14 parking lot.

15 Q And when you tested it, it was working correctly.

16 A Yes.

17 Q Correct? The first time that you indicated you saw
18 snow was actually after this traffic collision, correct?

19 A Negative. It was while activating my blue lights and
20 siren to respond to the call.

21 Q Now, the dash cam does record the date and time down in
22 the corner, doesn't it?

23 A Normally, yes.

24 Q And so that date and time would have -- you would see
25 that aside from the snow, correct?

Kenneth Edward Proffitt
Cross-examination by Mr. Dodson

1 A I'm not sure if it was there or not.

2 Q But snow or no snow, you don't have that video tape
3 here with you today.

4 A No. I do not.

5 Q And as far as you know the sheriff's office has never
6 produced that video tape to me or to anyone else --
7 Mr. Dougall -- anyone else, correct?

8 A That is correct.

9 Q So we're just left to essentially take your word for it
10 and take the sheriff's office word for it, correct?

11 A Yes, sir.

12 Q Now, you indicated this was not a vehicle that you were
13 familiar with. This was not your regular vehicle that you
14 were driving.

15 A Not that particular vehicle, no.

16 Q Your vehicle was being repaired.

17 A Yes, it was.

18 Q Why was it being repaired?

19 A Someone improperly backed into my vehicle in a parking
20 lot.

21 Q Because of a wreck, correct?

22 A Because someone improperly backed into my vehicle, yes.

23 Q Now, I think you indicated earlier that when you
24 approached this intersection where this wreck happened you
25 had at all times a red traffic light.

Kenneth Edward Proffitt
Cross-examination by Mr. Dodson

1 A That is correct.

2 Q And at all times Mr. Kim had a green traffic light.

3 A That is also correct.

4 Q This is not a situation where Mr. Kim was racing a
5 yellow traffic light to get through an intersection, was it?

6 A No. It was not.

7 Q Now, you indicated that you had your lights and sirens
8 on. But of course we don't have the dash cam that also has
9 an audio recording on it, do we?

10 A Yes, no. We do not have that.

11 Q Right. And on the radio Officer Boyles never indicated
12 that this was an emergency that she was requesting backup
13 on, did she?

14 A A request for backup by policy is considered an
15 emergency that requires a response by code three.

16 Q That wasn't the question that I asked.

17 THE COURT: Please listen to the question and answer
18 yes or no. And you may explain it.

19 Q She never indicated this was an emergency, did she?

20 A Yes, she did, that she needed assistance.

21 Q She said she needed assistance. But she did not say
22 over the radio that it was an emergency, correct?

23 A Had she it'd been too late.

24 THE COURT: I'm sorry. What?

25 THE WITNESS: Had she, it would have been too late.

Kenneth Edward Proffitt
Cross-examination by Mr. Dodson

1 THE COURT: Please answer the question, and then you
2 may explain.

3 A No. She never said it was an emergency.

4 Q She never herself referred to this as a code blue, did
5 she? I'm sorry? I used the wrong term. A code three.

6 Yeah. I goofed up. She never referred to this as a code
7 three, did she?

8 A No.

9 Q And the other officers that responded and actually were
10 ahead of you in line actually would have gotten there before
11 you had turned off their lights and sirens, hadn't they?

12 A I guess. I really didn't notice. I was paying
13 attention to all of the traffic.

14 Q Okay. So assuming that they did do that, they didn't
15 then recognize it as an emergency, did they?

16 A I can't speak to what they did or did not do.

17 Q Okay. Now, Officer Boyles never indicated that she was
18 in any kind of danger, did she?

19 A She was concerned.

20 Q She never stated that she was in any kind of danger,
21 did she?

22 A No.

23 Q She never indicated that anybody had pulled a gun on
24 her.

25 A No.

Kenneth Edward Proffitt
Cross-examination by Mr. Dodson

1 Q She didn't indicate that anybody was acting violently
2 or aggressively towards her.

3 A No.

4 Q She didn't indicate that anyone used or threatened to
5 use any other kind of a weapon like a knife or a club.

6 A No.

7 Q She didn't indicate that the occupants of the Cadillac
8 that she had pulled over had improperly exited the vehicle
9 and -- and by fact that they had exited the vehicle had put
10 her in any kind of an emergency.

11 A No.

12 Q She didn't indicate that they had ever threatened her
13 with any kind of physical violence in any way, shape,
14 fashion or form, did she?

15 A No.

16 Q In fact, what she did indicate is specifically that she
17 was, quote, okay for now, correct?

18 A Again, I didn't hear it, no.

19 Q You didn't hear it, but, in fact, that's what she said,
20 that she was okay for now.

21 MR. GARFIELD: Objection.

22 THE COURT: What's the objection?

23 MR. GARFIELD: Asked and answered.

24 THE COURT: Overruled.

25 A That was her testimony earlier today I believe.

Kenneth Edward Proffitt
Cross-examination by Mr. Dodson

1 Q Right.

2 THE COURT: I'm sorry? What did you say? I didn't
3 hear you. What did you say, sir?

4 THE WITNESS: I said that was her testimony earlier
5 today. I didn't hear her that day on the radio, so I can't
6 testify to what I didn't hear.

7 Q Now, she never indicated that her safety was in
8 question, correct?

9 A Not directly, no.

10 Q But someone's safety is in question when an officer
11 disregards a red traffic light and goes through an
12 intersection improperly, right?

13 A If they did so improperly, yes.

14 Q And, in fact, you're acutely aware of that because you
15 had another incident in 2012 of that very nature, didn't
16 you?

17 A No.

18 Q You didn't.

19 Okay. Now, you no longer work for the sheriff's
20 department.

21 A That is correct.

22 Q You were terminated.

23 A Yes.

24 Q And one of the reasons given for your termination was
25 this wreck.

Kenneth Edward Proffitt
Cross-examination by Mr. Dodson

1 MR. GARFIELD: Objection, Your Honor. May we
2 approach?

3 THE COURT: Well, you said this wreck?

4 MR. DODSON: This wreck, April 24th of 2014.

5 THE COURT: Why is that not relevant?

6 MR. GARFIELD: May we approach, Your Honor?

7 THE COURT: You may.

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 MR. GARFIELD: I just wanted clarification, Your
11 Honor. Thank you.

12 THE COURT: Rephrase, reask the question. Restate it.

13 MR. DODSON: Thank you, Your Honor.

14 Q You, in fact, were terminated from the sheriff's office
15 in July of 2014, correct?

16 A That is correct.

17 Q And one of the reasons was this wreck on April 24th of
18 2014, correct?

19 A Not to my knowledge. I only received a letter saying
20 my position had to be vacated at the sheriff's department.

21 Q All right. But about three months after this wreck you
22 were, in fact, terminated.

23 A Yes. I was.

24 Q Thank you.

25 MR. DODSON: Nothing further, Your Honor.

Kenneth Edward Proffitt
Cross-examination by Mr. Dougall

1 THE COURT: Redirect? I'm sorry. We've got two more.

2 MR. DOUGALL: Very quickly, Your Honor. I'm going to
3 try to get this wrapped up.

4 CROSS-EXAMINATION

5 BY MR. DOUGALL

6 Q All right. Mr. Proffitt, you said you were former --
7 or excuse me -- there are no former Marines, are there?

8 A There's former Marines, not ex-Marines.

9 Q Once a Marine, always a Marine, right?

10 A That is correct.

11 Q Never leave a Marine behind.

12 A That is right.

13 Q All right. And on the day of this accident what time
14 did your shift start?

15 A My shift started approximately 7:00 a.m.

16 Q Okay. At 7:00 a.m. before that shift started you had
17 to go out and you had to check your lights.

18 A Correct.

19 Q They were operating.

20 A Yes.

21 Q You had to check your sirens.

22 A That is correct.

23 Q They were operating.

24 A Yes.

25 Q You had to check your video.

Kenneth Edward Proffitt
Cross-examination by Mr. Dougall

1 A That is correct.

2 Q And at 7:00 o'clock in the morning you believe that
3 video was working.

4 A That is correct.

5 Q All right. So around 10:43 officer -- or excuse me --
6 Deputy Boyles puts out a call, and three units respond --
7 you, Weaver and Taylor.

8 A That is correct.

9 Q All right. And we've already heard. And you were here
10 when Officer or Deputy Weaver testified he's coming down
11 Alpine. He has to make this sweeping left-hand turn to go
12 to where Deputy Boyles is.

13 A That is correct.

14 Q And before he gets to this intersection --

15 THE COURT: Can everybody see?

16 Q Before he gets to this intersection -- in fact, he
17 testified before he even got to the stop line Deputy Boyles
18 has called signal 18, and he goes from code three to code
19 two, correct?

20 A That is what he testified to, yes.

21 Q All right. And you're coming up Windsor Lake in this
22 direction, correct?

23 A Yes.

24 Q And you saw him make that turn.

25 A Yes.

Kenneth Edward Proffitt
Cross-examination by Mr. Dougall

1 Q And it's your testimony that you didn't see that his
2 lights and siren were off?

3 A Well, again, as I approached the intersection I was --
4 once I saw him clear the intersection safely my concern at
5 that point --

6 Q That wasn't my question.

7 A I apologize.

8 Q My question was you watched him make that sweeping
9 left-hand turn.

10 A Yes.

11 Q And his lights and his siren were not activated at that
12 time, were they?

13 A I did not notice.

14 Q You didn't notice that?

15 A No, I did not.

16 Q And your radio was working.

17 A Yes.

18 Q And you testified that you heard Officer Boyles put out
19 a 10-48 --

20 A Correct.

21 Q -- that she testified to. But then all of a sudden you
22 didn't hear anything else after that.

23 A Due to my siren my audio exclusion may have occurred
24 and I wasn't focused on that.

25 Q You didn't hear what everybody else heard, correct?

Kenneth Edward Proffitt
Cross-examination by Mr. Dougall

1 A That is correct.

2 Q Okay. And you testified as you're coming across you
3 looked up to your left and you saw Officer or Deputy Weaver
4 about 200 yards up the road, correct?

5 A Deputy Taylor.

6 Q Taylor. I'm sorry. Is that your testimony?

7 A I saw the bumper and his headlights, yes.

8 Q Okay. Did you see his flashing blue lights?

9 A No, I did not.

10 Q Did you hear a siren?

11 A I don't know because I couldn't hear because of my
12 siren.

13 Q Okay. You didn't hear or see him because he'd done
14 what Officer Weaver did because the call had been cleared.
15 And he's not running code three any more, is he?

16 A That'll assist us.

17 Q Okay. Now, you said you came to a complete stop at
18 that stop bar.

19 A That is correct.

20 Q And in all of that time you've seen Weaver clear this
21 intersection. You cycled your siren according to your
22 testimony, right?

23 A Yes.

24 Q So now the only thing that's working on your car is
25 your siren, because you can't hear anything on your radio,

Kenneth Edward Proffitt
Cross-examination by Mr. Dougall

1 and you say your dash cam isn't working either.

2 A My radio worked. It's just that I did notice the
3 signal 18 on that.

4 Q Well, you didn't hear anybody on your radio, did you?
5 And you intercross this intersection lane by lane. That's
6 your testimony.

7 A Yes, it is.

8 Q How long did it take you to go lane by lane across that
9 intersection?

10 A Matter of seconds, probably doing about two to five
11 miles an hour.

12 Q Okay. Two to five miles an hour. In all of that time
13 Taylor's coming back down Alpine towards that intersection,
14 correct?

15 A Yes.

16 Q And so you've got all of that time to observe that he's
17 still not running lights and siren, don't you?

18 A At that time I was observing the vehicles coming from
19 the opposite direction.

20 Q Okay. That's fine. And Mr. Kim has testified he's in
21 the center lane so that he can go straight across, correct?

22 A He was not in the center lane.

23 Q All right. And you're all the way almost out of the
24 intersection before he hits you while you're going two to
25 five miles an hour clearing those lanes.

Kenneth Edward Proffitt
Redirect examination by Mr. Garfield

1 A That is correct.

2 Q But at two to five miles an hour he's able to knock you
3 to the left, and you end up way over here?

4 A That is correct.

5 Q That's an amazing act of physics, isn't it?

6 MR. GARFIELD: Objection, Your Honor.

7 THE COURT: Disregard that last question. Disregard
8 it.

9 MR. DOUGALL: That's all, Your Honor.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. GARFIELD

13 Q Mr. Proffitt, officer in need of assistance. Do you
14 need to hear specific words to trigger an emergency
15 response?

16 A No.

17 Q Do you need to hear specific words to justify that the
18 officer is actually in danger?

19 A No, because by that time it could be too late.

20 Q And I've heard you say it's too late. Do you need to
21 hear -- and I'll ask you about that in a moment. Do you
22 need to hear the word gun?

23 A No.

24 Q Do you need to hear the word knives?

25 A No.

Kenneth Edward Proffitt
Redirect examination by Mr. Garfield

1 Q Or any other kind of weapon?

2 A No.

3 Q And when you say it's too late, what do you mean by
4 that?

5 A Well, there's two things that tend to flip-flop as far
6 as officer fatalities every year -- domestic calls and
7 traffic stops -- nationwide. If it's not one, it's the
8 other year by year. Traffic stops are the single most --

9 MR. DODSON: Objection, Your Honor. There's no
10 foundation for this.

11 THE COURT: Sustained. You haven't laid any
12 foundation.

13 Just disregard that, ladies and gentlemen. We're not
14 trying stuff nationwide. We're trying this case right here
15 in this courtroom.

16 Q Is it your understanding that officers pay the ultimate
17 sacrifice in their jobs?

18 A Yes, basically.

19 Q Generally --

20 MR. DODSON: Objection, Your Honor.

21 THE COURT: Hold on.

22 That's -- that's sustained.

23 Disregard that.

24 Q You've known Officer Boyles for several years, you
25 testified.

Kenneth Edward Proffitt
Redirect examination by Mr. Garfield

1 A Yes.

2 Q In your best estimate how many years have you known
3 Kristy Boyles?

4 A Since 2004. We both got hired around the same time.

5 Q Would you describe her as a pretty tough cop, tough
6 individual?

7 A Yes.

8 Q How so?

9 MR. DODSON: Objection to relevance, Your Honor.

10 THE COURT: Absolutely.

11 How is that relevant?

12 MR. GARFIELD: Well, I'm about to get there, Your
13 Honor, because he -- with this witness -- this witness has
14 testified. I don't want to suggest an answer, but what
15 he's testified that he --

16 THE COURT: Ask him the question.

17 Q Does the fact that you receive information or you're
18 hearing Ms. Boyles' demeanor over the radio -- what, if
19 anything, does that do to indicate to you that she may be in
20 danger?

21 A Again, I've -- I've been with the department about ten
22 years. I've heard her on the radio a number of times.

23 I can recall specific pitches in her voice where things
24 may have been more serious as opposed to a standard stop
25 where she was calm, collected and everything was okay.

Kenneth Edward Proffitt
Redirect examination by Mr. Garfield

1 I could tell by her voice that particular day that she
2 had some legitimate concerns about her own safety in that
3 moment, and based on that I responded accordingly, based on
4 our policy.

5 Q Plaintiff's counsel asked you about your termination
6 from the Richland County Sheriff's Department.

7 Do you understand that this particular collision that
8 we're here for today underwent evaluation by the traffic
9 collision review board?

10 A It did.

11 MR. DODSON: Objection, Your Honor.

12 MR. GARFIELD: They made it an issue, Your Honor.

13 THE COURT: Hold on.

14 What's your objection?

15 MR. DODSON: There's no foundation, and I mean, and
16 this is the very thing that Your Honor ruled on for us
17 earlier.

18 THE COURT: That's exactly right. He may be opening
19 the door for you. So you sort of sit down.

20 Sure you want to go there, Counsel?

21 MR. GARFIELD: Well, it was a different agency, Your
22 Honor.

23 THE COURT: Not precluded. You -- you may ask the
24 question.

25 MR. GARFIELD: I understand that. I was just saying

Kenneth Edward Proffitt
Redirect examination by Mr. Garfield

1 it was a different agency. I'm going to withdraw the
2 question.

3 THE COURT: Thank you.

4 MR. GARFIELD: Just one moment, Your Honor.

5 (Pause.)

6 MR. GARFIELD: Beg the Court's indulgence.

7 THE COURT: Certainly.

8 (Pause.)

9 MR. GARFIELD: No other questions.

10 Q Thank you very much.

11 THE COURT: Thank you. You may step down.

12 Mr. Garfield, gentlemen, y'all approach.

13 (Bench conference held off the record in the presence
14 of the jury but out of the hearing of the jury.)

15 THE COURT: Madam forelady and ladies and gentlemen, I
16 think at the most we've got two witnesses, perhaps one. So
17 we probably don't have much more testimony.

18 I've got about an hour I need to spend with them. I
19 don't want to keep sending y'all back and forth. I'm
20 sorry. I apologize for that. Sometimes I have to hear
21 what they're going to say before I rule on it. And if they
22 blurt it out and you're not supposed to hear it, then the
23 cat's outta the bag. That was why.

24 So here's -- let's do this. I'm going to have them
25 here before 9:00, make sure I get everything out of the way

1 with them.

2 Y'all be here at 10:00. We'll start right at 10:00.
3 We'll take the rest of the testimony. They will do their
4 final arguments, and I'll charge and instruct you on the
5 law.

6 And I will order lunch in tomorrow, and that way we
7 don't have to break for lunch. And you can deliberate
8 right through lunch or however you want to do that. And
9 it'll be in your hands. Is that fair enough? 10:00
10 o'clock an imposition to anybody? Does anybody need a ride
11 home? Everybody okay? All right. I will see you at
12 10:00 in the morning.

13 Please don't discuss the case with anyone. Don't
14 start any deliberations. Don't do any type of independent
15 research on any of the issues that you may have heard here
16 today. And we'll start right at 10:00 o'clock. Thank you.

17 Everyone else remain seated.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Gentlemen, let's be here at 10:00 in the
21 morning -- I'm sorry -- 9:00. Thank you.

22 Food for thought. Consider this over the evening. If
23 based on the testimony I find that there was not an
24 emergency or the emergency -- had there been one that had
25 been called off -- and if Section 56-5-760 is not

1 applicable -- that's the emergency vehicle going through a
2 red light -- if that's not applicable, where does that
3 leave us? Because that could very well be the situation.
4 So just think about that over the evening.

5 Anything else I can do to help anyone from the
6 plaintiff?

7 MR. DODSON: No, Your Honor.

8 THE COURT: Defendants?

9 MR. DOUGALL: No, Your Honor.

10 MR. GARFIELD: No, Your Honor. Thank you.

11 THE COURT: Y'all have a pleasant evening, and I will
12 see you at 9:00 o'clock in the morning.

13 END OF PROCEEDINGS JANUARY 20, 2016
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1 (Proceedings January 21, 2016)

2 (The following takes place outside the presence of the
3 jury.)

4 MR. GARFIELD: Good morning, Judge.

5 THE COURT: All right. Do you want to make your
6 motions that you would have made at the conclusion? Did I
7 give you an opportunity to do that yesterday and you did
8 not want to do it?

9 MR. GARFIELD: I just reserved the right to do it at
10 the end of our case, Your Honor.

11 THE COURT: Very well.

12 MR. GARFIELD: Yes, sir.

13 THE COURT: All right. Before we go into the request
14 to charge, charge conference, I am right now of the opinion
15 that 56-5-760 is probably not applicable in this case, for
16 the reason is that the evidence has failed to show that
17 when the accident wreck occurred that the trooper's vehicle
18 -- officer's vehicle, deputy's vehicle was responding to an
19 emergency call or pursuing an actual violator of the law.

20 Quite to the contrary, this lady initially called in.
21 Not sure what she called in, but it wasn't an emergency.

22 whatever her concerns were, she had called those off.
23 And the other two officers were responding, I guess,
24 appropriately under a code two as opposed to an emergency
25 situation, which would take out of play the 56-5-760 where

1 emergency vehicles are allowed to proceed past a stop sign
2 or signal and disregard the red light.

3 The testimony is uncontradicted that the officer had
4 the red light the whole time, the plaintiff had the green
5 light. So I'm not so sure that that is applicable by the
6 defendants, but I guess I need to wait until it's all over,
7 said and done to make that decision.

8 MR. GARFIELD: Yes, Your Honor.

9 THE COURT: But that will vastly change how the case
10 is charged, and it will be charged simply on a negligence
11 matter as to whether or not the plaintiff has proven by the
12 preponderance or greater weight of the evidence the
13 elements of negligence. And I assume you would make a
14 directed verdict on your counterclaim motion. And if I
15 continue to feel that way, obviously, it would probably be
16 granted.

17 Anyway, the charges will be as follows: I will charge
18 the duty of the judge and the jury and the preponderance of
19 the evidence, credibility of witnesses.

20 And then I'm going to charge negligence, and then get
21 into the automobile negligence, and that will carry various
22 statutory requirement, duty of care, proper lookout, keep a
23 vehicle under control.

24 And then damages -- actual damages, property damage.

25 And on the personal injury side -- reasonable

1 necessary medical expenses, pain and suffering.
2 There's no testimony about permanent injuries or any
3 other type. No lost wages or anything of that nature.
4 All right. I'll be glad to hear from the plaintiff on
5 anything else that you need.
6 MR. DODSON: Thank you, Your Honor.
7 We would also request a charge on the -- just the
8 general red-light statute, which I can give you the cite
9 here. It's 56-5-970, traffic control signal.
10 THE COURT: You have that in your proposed charges?
11 MR. DODSON: Yeah. I prepared -- I prepared a
12 supplemental based on the -- the evidence.
13 THE COURT: Hand it up to me.
14 Any other statutes that are applicable other than the
15 red light? And then, of course, we'll argue about the
16 emergency care -- emergency vehicle.
17 MR. DODSON: And then the other thing I would request,
18 Your Honor, would be a charge on negligence per se.
19 THE COURT: Negligence per se?
20 MR. DODSON: Yes, Your Honor.
21 THE COURT: You're not asking for punitives, are you?
22 MR. DODSON: No. I don't think I can, the
23 governmental entity.
24 THE COURT: That is correct. Tort Claims Act
25 precludes it. I was just testing you this morning.

1 MR. GARFIELD: I don't believe we've got copies of his
2 requests to charge. If we did it was --
3 THE COURT: I'm not charging any of them. I'm
4 charging my general charge.
5 MR. DODSON: It appears I left that at my office
6 because I had --
7 THE COURT: 56-5-970?
8 MR. DODSON: 970, yes, sir.
9 THE COURT: I got it up here.
10 MR. DODSON: But I'd probably have to change it again
11 because I had included some other stuff that doesn't need
12 to be charged, so.
13 THE COURT: Any other statutes you want charged other
14 than red light?
15 MR. DODSON: No, Your Honor.
16 THE COURT: Spoliation of evidence?
17 MR. DODSON: Yes, Your Honor. I did submit a
18 spoliation of evidence charge.
19 THE COURT: Anything else?
20 MR. DODSON: Nothing else, Your Honor.
21 THE COURT: Well, let's assume I allow the emergency
22 -- strike that.
23 How about the defendant?
24 MR. GARFIELD: Okay. Your Honor, we've have a request
25 to charge that we submitted. I'd like to go over -- I

1 believe Your Honor's asking about statutory chapters first.
2 THE COURT: Hold on one second for me, please. Thank
3 you.
4 (Pause.)
5 THE COURT: 56-5-970 is a long statute. So tell me
6 what you want out of it.
7 MR. DODSON: Yes, sir.
8 Specifically, the sentence that says the -- it's
9 little (a)(1), vehicular traffic facing a circular green
10 signal may proceed straight through or turn left or right.
11 THE COURT: Okay.
12 MR. DODSON: That sentence. And then subsection
13 little (c)(1), vehicular traffic facing a steady circular
14 red signal alone shall stop at a clearly marked stop line.
15 THE COURT: (c)(1)?
16 MR. DODSON: Yes, Your Honor.
17 THE COURT: Okay.
18 MR. GARFIELD: Could I be heard on that statute, Your
19 Honor?
20 THE COURT: You may.
21 MR. GARFIELD: If Your Honor presupposes just for
22 purposes of the conference, if you will, I -- the statute
23 56-5-760, that would appear to allow that provision Mr.
24 Dodson refers to, would be inconsistent. I just want to
25 understand. That would be only if Your Honor does not

1 allow the 760? Because they seem to be somewhat in
2 contravention with one another.

3 THE COURT: well, I'm going to charge that's the
4 general law.

5 If I charge the 760 I'm going to charge it like the --
6 I'm going to charge it -- I'll charge the general law on
7 the red light. They have to stop until it's clear.

8 And then I may say that y'all claim that you are
9 exempt from that under that 760. But in order to prove
10 that 760 is applicable -- language is just a little easy to
11 understand -- that the first thing the defendant has to
12 prove in order to be able to argue that statute or have the
13 -- that statute apply is that, you know, they have to prove
14 the defendant county by the preponderance or greater weight
15 of the evidence, that an emergency was being pursued or
16 that they were responding to an emergency call or in
17 pursuit of an actual suspect -- suspected -- actual or
18 suspected violator of the law.

19 If you have failed to prove that, then you don't get
20 the benefit of that statute, and the regular red-light
21 statute applies.

22 MR. GARFIELD: And just to be sure, we wouldn't need
23 to actually prove that, or should there just be a
24 reasonable inference at trial for us to argue that?

25 MR. DOUGALL: Got the burden of proof, Your Honor.

1 THE COURT: You've got to prove it.

2 MR. GARFIELD: Oh, you're talking about the
3 counterclaim? I just wanted to be specific, Judge.

4 THE COURT: You're going to -- if you're relying on
5 that as an affirmative type of defense, you're going to
6 have to prove, that it's applicable by proving to the jury
7 for it to be applicable that an emergency existed and they
8 were responding to a call or pursuing a violator.

9 MR. GARFIELD: And just to be clear, that would be
10 through the defense as an affirmative defense --

11 THE COURT: Yes.

12 MR. GARFIELD: -- or are we talking about we would
13 need to prove it in terms of our counterclaim?

14 THE COURT: Both. That law is not applicable unless
15 there's an emergency call. You've got to prove that there
16 was an emergency call for the statute to be applicable.
17 Aren't you using that as an affirmative type defense?

18 MR. GARFIELD: Well, I don't know if it's a -- in an
19 affirmative defense in terms of an avoidance that you would
20 have to -- it's -- it's the law of the state.

21 I don't -- I don't believe there's anything that
22 states that we -- there is a burden for us to show by a
23 preponderance of the evidence that every aspect of that
24 statute came into play. There's --

25 THE COURT: Very well.

1 MR. GARFIELD: One moment, Your Honor.

2 (Pause.)

3 MR. DODSON: Your Honor, speaking to the statute,
4 there are actually three prerequisites of the statute
5 applying. The first is what Your Honor has just pointed
6 out that there has to be an emergency or in pursuit.

7 The second is found -- that pertains to this case is
8 found in subsection (b)(2), because there are also -- he
9 has to have his lights and sirens on.

10 And then the third requirement for that statute is
11 found in subsection (d), is that he still has to, quote,
12 drive with due regard for the safety of all persons.

13 So there's actually those three requirements, have to
14 be met. And we would request a charge that makes clear to
15 the jury -- and I'll have -- I printed one up but I just --

16 THE COURT: I've got it. I'm going to charge the
17 whole statute if I find it to be applicable.

18 Right now I don't think there's any evidence the
19 statute's applicable under the facts of this case. But if
20 it is, then I will charge the statute if that's where
21 they're -- they claim that they have the right to go
22 through the intersection. But then this is the statute
23 that governs if that is the case.

24 Then I will talk about emergency and slow down and
25 still not hit anybody else basically. But we may eliminate

1 all of that together if the facts don't support it.
2 All right. Anything else on behalf of the plaint --
3 the defendant?
4 MR. GARFIELD: Yes, Your Honor.
5 I think, which we discussed of whether Your Honor
6 considers instructing on what we would have as our request
7 to charge No. 8, 56-5-760, I think that needs to be read in
8 context with 56-5-2360, and that's our request to charge --
9 THE COURT: Hold on and let me get it.
10 MR. GARFIELD: Yes, sir.
11 THE COURT: No. 8?
12 MR. GARFIELD: No. 9, sir.
13 THE COURT: No. 9?
14 MR. GARFIELD: Yes.
15 THE COURT: That's not applicable in this case.
16 No. 9?
17 MR. GARFIELD: Yes, sir, because --
18 THE COURT: That's riding down the road and cop comes
19 up -- blue light comes up behind you or somewhere you pull
20 over and yield to them. That hasn't got anything to do
21 with a stop sign situation.
22 MR. GARFIELD: Well, it's -- well, I -- I tend to
23 disagree, Your Honor, when it's -- if I may, a driver of
24 the vehicle traveling along multilane road shall yield the
25 right of way to allow for the police officer.

1 I understand Your Honor's concerns. That's when like
2 an E.M.S. or a police officer goes by you can't be in their
3 way. But the way this statute reads, it says the driver of
4 every other vehicle traveling along shall yield to the
5 right of way of the officer.

6 When read in context with 760 it shows the duties of
7 not only the emergency vehicle but all other vehicles along
8 the highway and what their responsibilities are.

9 And of course, it has the point -- the same thing Mr.
10 Dodson stated, this section should not operate to relieve
11 the driver of the authorized emergency vehicle from the
12 duty to drive with due regard for the safety of all persons
13 using the highway.

14 THE COURT: Yes, sir.

15 MR. DODSON: Your Honor, I -- I would just agree with
16 you.

17 What we have is sort of a situation where there's a
18 general -- general statute, which is 2360, and then there's
19 a more specific statute, which is 760. And what governs is
20 760.

21 I think at best 2360 is a general statute. At most I
22 think it's what Your Honor just said, which is, you know,
23 if an emergency vehicle's coming you pull your car over to
24 the side of the road and get out of the way, which is not
25 applicable at all here.

1 MR. GARFIELD: But the statute clearly provides the
2 emergency vehicle making use of an audible signal meeting
3 the requirements of the companion section and visual
4 signals meeting the requirements of the other section.

5 There is evidence in this case. There's testimony
6 from several officers that both the audible signals and the
7 visual signals were in play here, therefore the charge
8 would be applicable because the question for the jury is
9 determining whether the plaintiff used due care, is to
10 decide whether he yielded the right of way in light of the
11 fact that there was blue lights and siren and flashing
12 lights. Read in context with 760, I think it's entirely
13 appropriate.

14 MR. DODSON: And, Judge, if you read down into the
15 statute book, I mean, it says making use along a two-lane
16 roadway shall yield right of way and there is -- that's not
17 what we have here.

18 I mean, that -- that's what I was saying earlier and
19 that's, I think, what Your Honor was saying. This -- this
20 statute pertains to a factual scenario that we simply do
21 not have here.

22 MR. GARFIELD: Well, if you keep reading, Judge, it
23 says two-lane, and then it says multilane roadway, shall
24 yield the right of way. It's providing two different
25 options. It shall remain and/or move to a location that

1 allows the emergency vehicle or police -- or police vehicle
2 to pass safely except as otherwise directed by a police
3 officer.

4 This statute's -- whereas, I think it's more
5 oftentimes applied practically, when we do see the
6 responsibilities of drivers when -- when emergency vehicles
7 go by, this says clearly where the right of way of the
8 driver is once he sees a law enforcement officer, a police
9 car, an emergency vehicle, once they have the blue lights
10 and siren on. And I think it -- he can argue that we don't
11 have the blue lights and siren on, but there's certainly
12 evidence of that.

13 MR. DOUGALL: The statute still doesn't apply, Your
14 Honor, because they're talking about an emergency vehicle
15 coming on the same roadway.

16 That's not the case here. We have a cop coming from a
17 left across an intersection on a different road who opted
18 to run a red light. Therefore, the only statute that could
19 apply to that would be 760, the due-regard statute. This
20 statute doesn't apply under the facts of this case.

21 MR. GARFIELD: With all due respect, Judge, we have --
22 the testimony here is that there were two different
23 officers coming from two different directions, one that had
24 emergency flashers that came across a green light moments
25 before the plaintiff entered the intersection.

1 The second officer whose testimony, that he had the
2 blue lights and siren before and during the time he
3 approached and crossed the intersection, the question is
4 whether the plaintiff or any other vehicle out there,
5 including perhaps the third officer who had the green
6 light, what the responsibilities were for a driver when
7 they entered or approached the intersection as far as due
8 care. What this statute does is it addresses who needs to
9 yield the right of way.

10 THE COURT: The third officer had the green light?

11 MR. GARFIELD: The Matt Taylor, the other one coming
12 in with flashers. He had the green light.

13 THE COURT: Well, you mean not third in line, second
14 in line, third officer.

15 MR. GARFIELD: The one that came behind Officer Weaver
16 along Alpine Road, what's about to testify this morning.

17 THE COURT: Well, I am not going to charge it. You're
18 protected on the record, and I think the regular stop-light
19 statute is applicable.

20 The exception to that stop-light statute is the
21 emergency vehicle. And if we find that that's an
22 applicable situation, I will charge it. If I find that the
23 law -- the facts do not support that, I will not charge it.

24 MR. DOUGALL: Yes, sir. Thank you.

25 MR. GARFIELD: There -- there were two other charges

1 that we submitted. One would be charge 10, and charge 11.
2 They both address that statute, so we would ask the -- the
3 Court to charge in this matter. Plaintiff should have a
4 copy of that.

5 THE COURT: No. 10 is a passing statute, driver pass
6 on the right of another vehicle only upon --

7 MR. GARFIELD: Well, there's -- there's evidence.
8 There's testimony based on what Your Honor has already
9 heard that the plaintiff improperly passed the other cars
10 on the right.

11 What one or more officers have already testified to is
12 that the impact occurred somewhere around this crosswalk,
13 clearly to the right of the intersection.

14 And there's also going to be testimony we anticipate
15 coming today that the plaintiff was not in a straight a
16 lay -- straight away lane.

17 There's testimony that there were two cars stopped,
18 one in the left turn lane, one in the straight away lane.
19 And the plaintiff in proceeding through, proceeded through
20 the intersection. And the impact happened way over at the
21 right. There's certainly an inference that he was
22 illegally or improperly passing on the right, and that's
23 the statute that addresses that issue.

24 THE COURT: You're protected, but I'm not going to
25 charge it. That's not what this case is about, not what

1 the facts -- not what the facts support.

2 what else?

3 MR. GARFIELD: Okay. And then the final one, Your
4 Honor -- and thank you for considering that -- would be
5 request to charge No. 11.

6 THE COURT: My 11 is out.

7 MR. GARFIELD: Do you not have it, Your Honor?

8 THE COURT: I do not.

9 MR. GARFIELD: That's one we submitted on a
10 supplemental. I can certainly refer to the statute.
11 It's -- I'll wait for Your Honor to get situated. It's
12 56-5-1520.

13 THE COURT: The speed statute.

14 MR. GARFIELD: That's the speed statute, but also
15 addresses lower speeds may be required.

16 THE COURT: Which section?

17 MR. GARFIELD: It's -- it'd be section (A) and section
18 (F).

19 THE COURT: (A) and (F)?

20 MR. GARFIELD: Yes, sir.

21 THE COURT: I think that's appropriate.

22 MR. GARFIELD: I'm making sure I understand because
23 there's -- that it is appropriate?

24 THE COURT: Yes, it's appropriate.

25 MR. GARFIELD: Okay. Thank you, Your Honor.

1 THE COURT: Applies to your people as much as it does
2 the plaintiff.

3 MR. DODSON: Pardon, Your Honor? I didn't hear what
4 you said.

5 THE COURT: It is appropriate, the speed statute. You
6 have to maintain your speed such that you won't collide
7 with somebody. That's basically what it is -- proper care.
8 Applies to the officers as well as your client, anybody who
9 is driving.

10 All right. Anything else?

11 MR. DODSON: Nothing further from the plaintiff, Your
12 Honor.

13 MR. GARFIELD: Nothing, Your Honor.

14 THE COURT: All right. Y'all have given me a verdict
15 form. It's a comparative negligence verdict form, right?

16 MR. DODSON: Yes, Your Honor.

17 THE COURT: Well, what if everything goes to the jury?
18 How does that affect the counterclaim?

19 MR. DOUGALL: Your Honor, it affects the counterclaim
20 depending on how you rule on the directed verdict. I think
21 if you rule --

22 THE COURT: Well, what if I deny your motion for
23 directed verdict? Is this verdict form going to cover your
24 counterclaim?

25 MR. DOUGALL: It does.

1 THE COURT: It does, D-O-E-S?

2 MR. DOUGALL: Yes.

3 THE COURT: If I rule on your motion for a directed
4 verdict we just need a simple verdict, we find for the
5 plaintiff blank dollars actual damages, we find for the
6 defendant.

7 MR. DOUGALL: Well, I think if you direct a verdict --

8 THE COURT: Strike that -- strike that. We'll need a
9 comparative negligence on that as well.

10 MR. DOUGALL: Well, I think if you direct a verdict on
11 the counterclaims the -- find there was no emergency and
12 all of the evidence indicates that then Deputy Proffitt was
13 entering the intersection on a red light, then you've got
14 Miller vs. FerrellGas which says you direct a verdict on
15 our damages it's to the property damage also, because he's
16 got no defense for that.

17 So I think then you would direct a verdict as to the
18 counterclaim and as to the repair of Mr. Kim's vehicle, his
19 rental car expenses and the tow charge and --

20 THE COURT: And let the jury decide the amount of
21 damages on the pain and suffering and medical expenses?

22 MR. DOUGALL: Exactly.

23 MR. GARFIELD: Your Honor, I'm sorry. We had
24 submitted a proposed verdict form, and that's what I
25 thought Your Honor was actually referring to. We haven't

1 received anything from the plaintiff, so I'm a little on
2 the dark side.

3 MR. DODSON: I emailed him on Tuesday, Your Honor.

4 THE COURT: I don't see one.

5 MR. GARFIELD: That would be -- I believe ours, it
6 says special verdict form, yes, Your Honor.

7 MR. DOUGALL: We emailed it to Your Honor on Tuesday,
8 I believe.

9 THE COURT: I got it.

10 MR. DOUGALL: Your Honor, if I may approach. But,
11 again, if you direct a verdict on the counterclaim, then it
12 becomes a very simple verdict form because the jury is
13 going to determine whether the medical claims were
14 reasonable and necessary, and any pain and suffering. All
15 the other issues would be gone.

16 THE COURT: Y'all have sent me the same verdict form,
17 both of you, right?

18 MR. DODSON: They're similar, but they're, I think,
19 slightly different.

20 MR. GARFIELD: They are different. They're just --

21 THE COURT: How are they different?

22 MR. GARFIELD: Well, I'm still reading over his but I
23 -- they're substantially similar. I just need to read
24 those. I'd just like a moment to read the language if I
25 can have a moment.

1 THE COURT: Sure.
2 MR. GARFIELD: Thank you.
3 (Pause.)
4 MR. GARFIELD: I'm still trying to get my head around
5 it, Judge, but I do see that his proposed, plaintiff's
6 proposed, verdict form does not provide the ability for the
7 jury to come back and say that nobody was negligent.
8 THE COURT: Does yours?
9 MR. GARFIELD: Yes, Your Honor. It says -- and I do
10 understand if ours unfortunately is a little bit
11 convoluted, but that's the way this kind of case goes. Go
12 to question two.
13 THE COURT: Where?
14 MR. GARFIELD: Question two.
15 THE COURT: No wonder his looked like yours, because I
16 was looking at both of his. Well, that makes me feel
17 better and I'm not totally --
18 MR. GARFIELD: Well, I thought I was losing my mind
19 because --
20 THE COURT: Let me read mine.
21 How about look at theirs in case I leave everything in
22 there?
23 MR. GARFIELD: Yes, sir.
24 THE COURT: I think yours covers everything if
25 everything stays.

1 MR. GARFIELD: From me, yes, Your Honor.
2 THE COURT: The defendant, yes, sir.
3 well, if I leave everything in there, I will use that
4 verdict form.
5 Have you seen it?
6 MR. DOUGALL: Yes, Your Honor, I've seen it. I have a
7 copy.
8 THE COURT: I think that takes care of everything.
9 All right. As soon as I get my jury here, we well
10 crank up and move along.
11 I had some concern yesterday about the interesting
12 coincidence that all of those dashboard tapes were no
13 longer available, but I'm not going to open that issue
14 unless anybody deems it needs to be opened.
15 I mean, you've got the evidence in there. They're all
16 gone. You can argue it. I mean, I don't know why they're
17 not here, why they decided not to keep them.
18 Obviously, one of the -- one of the officers said his
19 was just not working, or it worked that morning but not two
20 hours later. It turned to snow. But I'm not going to read
21 anything into it other than just give a charge on the
22 spoliation of evidence if I deem that appropriate.
23 So we just have that one witness?
24 MR. GARFIELD: We have two witnesses, Your Honor.
25 THE COURT: who is the second one?

1 MR. GARFIELD: One witness would be Matt Taylor.
2 THE COURT: Driver of the second vehicle.
3 MR. GARFIELD: Which was the third -- the third
4 vehicle actually, the one responding to the rear of Deputy
5 Weaver. He was the first. He was the one the plaintiff
6 was referring to that came up after the scene.
7 THE COURT: The other witness -- the other witness
8 would be who?
9 MR. DOUGALL: It would be Sheriff Leon Lott.
10 MR. DODSON: Your Honor, Sheriff Lott has not been
11 named in discovery as a witness.
12 MR. GARFIELD: He's a party to the lawsuit, Your
13 Honor.
14 THE COURT: He is?
15 MR. GARFIELD: Yes, sir.
16 THE COURT: Where?
17 MR. GARFIELD: Sheriff Leon Lott.
18 THE COURT: I've got two -- two different captions.
19 MR. GARFIELD: There was a -- there was a motion to
20 dismiss.
21 THE COURT: He's a named party.
22 MR. GARFIELD: Yes, sir. And the caption is amended
23 to reflect Sheriff Leon Lott.
24 THE COURT: It does.
25 MR. DOUGALL: I would still note that he has not been

1 named as a witness either in the original discovery
2 responses I got or in the supplemental discovery responses
3 that I got in December.

4 THE COURT: I don't think he has to be named. He's a
5 party. He certainly can testify in his own defense.

6 Sheriff, good morning.

7 SHERIFF LOTT: Good morning, sir.

8 THE COURT: Always a pleasure to be in your
9 jurisdiction.

10 SHERIFF LOTT: Thank you, sir.

11 THE COURT: Sheriff Ed Darnell as being sheriff,
12 speaks highly of you, who is my best friend, my good friend
13 who is running again.

14 SHERIFF LOTT: That's right.

15 THE COURT: Right at 80. He's doing a good job.

16 All right. I'll see you as soon as the jury gets
17 here. They're supposed to be here and ready to go at
18 10:00. We'll come on back out and start the balance of the
19 testimony and go from there.

20 Anything else?

21 MR. GARFIELD: I don't believe at this time. No, sir.

22 MR. DOUGALL: No, Your Honor.

23 THE COURT: Thank y'all very much.

24 (Whereupon, a recess was taken.)

25 MR. GARFIELD: I don't have a response yet but I

1 started the motion, Your Honor.

2 THE COURT: Well, how long does it take to get a
3 response?

4 MR. GARFIELD: Well, it is -- this is self insured.
5 So I have -- the sheriff is obviously here, but we've
6 already discussed with the risk manager. The risk manager
7 wants to discuss this with the county attorney's office. I
8 understand they're talking right now. It's not -- it's not
9 an insurance adjustor that would ordinarily be a phone
10 call.

11 THE COURT: I'm not fussing at you. You know that.

12 MR. GARFIELD: Yes, sir.

13 THE COURT: Let's go ahead and start the case because
14 we may be all day. You know how the county attorneys are.
15 I was the county attorney for Bamberg.

16 Bring the jury in, please.

17 (The jury enters the courtroom at 10:11 a.m.)

18 THE BAILIFF: Your Honor, the jury is present.

19 THE COURT: Good morning, ladies and gentlemen of the
20 jury.

21 I hope you had a pleasant evening. We're going to
22 continue on with the other, the last two witnesses.

23 MR. GARFIELD: Thank you, Your Honor. Good morning.
24 May it please the Court.

25 The defendants call Deputy Matt Taylor.

Kenneth Taylor
Direct examination by Mr. Garfield

1 KENNETH TAYLOR, having been
2 first duly sworn, testified as follows:

3 MS. ALL: Your Honor, may we approach briefly?

4 THE COURT: Sure.

5 (Bench conference held off the record in the presence
6 of the jury.)

7 THE CLERK: Please have a seat and state your full
8 name for the record.

9 THE WITNESS: Yes, ma'am. My name's Kenneth Taylor.
10 Last name, T-A-Y-L-O-R.

11 DIRECT EXAMINATION BY MR. GARFIELD

12 Q Deputy Taylor, good morning.

13 A Good morning, sir.

14 Q Where are you from originally?

15 A Originally from Latta, South Carolina, sir.

16 Q Okay. And can you briefly describe your educational
17 background?

18 A Yes, sir. I graduated from Latta High School in 2000,
19 from Francis Marion University in 2005, bachelor's in
20 business administration, from the South Carolina Criminal
21 Justice Academy in 2007, Class 1 deputy, as a Class 1 deputy
22 rather, and I also got a certification in 2013 as a field
23 training officer.

24 Q And how long have you worked with the Richland County
25 Sheriff's Department?

Kenneth Taylor
Direct examination by Mr. Garfield

- 1 A A little over eight and a half years.
- 2 Q Deputy Taylor, have you had any promotions during that
3 time?
- 4 A Yes, sir, I have.
- 5 Q And what are they?
- 6 A I was promoted to senior deputy after three years of
7 service, a master deputy, and to corporal at this point in
8 time, sir.
- 9 Q And presently can you tell the jury what your duties
10 are?
- 11 A Yes, sir. I'm an assistant shift leader. Outside of
12 sergeant, I take control and command of my shift and assist
13 them in any duties that are necessary. And I have certain
14 deputies that under my supervision that I have appointed to
15 me.
- 16 Q I'd like to bring you to April 24th, 2014. What rank
17 did you hold at that time?
- 18 A I was a master deputy, sir.
- 19 Q And what were your duties at that time?
- 20 A I was the assistant to the assistant shift leader, sir.
21 Corporal Proffitt was my corporal.
- 22 Q We've heard some testimony about regions within
23 Richland County. What are regions? What region were you
24 assigned to on this day?
- 25 A It would have been region two, sir, the area of Two

Kenneth Taylor
Direct examination by Mr. Garfield

1 Notch Road which encompassed Alpine and Windsor Lake
2 Boulevard.

3 Q And what shift were you working on that day?

4 A That would have been day shift, sir.

5 Q And at some point during that shift -- and I'll direct
6 you to the morning -- did you have an occasion to receive an
7 assistance call?

8 A Yes, sir, I did.

9 Q And what kind of unit was requesting assistance?

10 A It would have been a traffic safety unit, sir.

11 Q And explain to the jury what you understood to be
12 taking place.

13 A Yes, sir. I'm very familiar with Master Deputy Kristin
14 Boyles. I've worked with her for numerous years. At that
15 point in time she had conducted a traffic stop. She advised
16 over the radio that she was out with two rather large males
17 and she did detect a strong odor of marijuana.

18 At that point in time we responded as backup units.
19 Master Deputy Boyles hardly ever asked for assistance, so it
20 was an expedited assistance call.

21 Q Let me ask you some questions about this
22 officer-in-need-of-assistance call.

23 A Yes, sir.

24 Q Are you familiar with the Richland County Sheriff's
25 Department policies reflecting that one issue?

Kenneth Taylor
Direct examination by Mr. Garfield

1 A Yes, sir, I am.

2 Q Is that any different -- officer in need of
3 assistance -- with an officer-in-danger call?

4 A There is no difference.

5 Q Why not?

6 A An officer in need of assistance -- what some folks
7 don't quite understand is we can be in need of assistance
8 and we don't even really know -- we don't really know what
9 we need at that point in time because it's the unknown.

10 That's what people don't understand on a traffic stop.
11 It's one of the most dangerous things that we do. On a
12 traffic stop there's always an unknown. And when there's
13 the presence of narcotics the risk is heightened.

14 In my experience in doing the job as I've done with
15 traffic stops dealing with narcotics, just about every
16 vehicle that I've dealt with narcotics there's typically a
17 weapon involved. So we respond with a heightened sense of
18 awareness and need so that we can get to that deputy in a
19 timely manner.

20 Q Now, you're testifying as to a need. What level of
21 priority would you say an officer-in-need-of-assistance call
22 is?

23 A The highest priority.

24 Q And what is that?

25 A That's code three.

Kenneth Taylor
Direct examination by Mr. Garfield

1 Q Is that an emergency?

2 A That would be an emergency.

3 MR. DOUGALL: Objection. Leading, Your Honor.

4 THE COURT: Please rephrase your question.

5 MR. GARFIELD: Yes, sir.

6 Q When you say the highest level, can you describe to the
7 jury from a law enforcement perspective or from your
8 perspective --

9 A Yes, sir.

10 Q -- how you respond?

11 A In a code three situation you respond with lights and
12 sirens. You respond as quickly and as safely as you
13 possibly can.

14 You want to get to the deputy to ensure their safety,
15 but you want also to ensure the safety of others. And by
16 doing that we respond in such a manner where we do clear
17 intersections, we do stop for our signs, and we stop at
18 intersections to ensure the safety of others.

19 Again, in my traffic stops I back up folks on routine
20 occasions where they've called that they're signal 18 so
21 far, get out with them, and I've actually had subjects try
22 to pull weapons on them after they're called signal 18. It
23 happens on a regular basis. It's not something that's
24 fictitious. These things happen. They're a real danger,
25 and that's why we continue going to them even after they've

Kenneth Taylor
Direct examination by Mr. Garfield

1 called signal 18. You don't know what's going to happen on
2 a traffic stop. There's no way to predict it until it is
3 over.

4 Q So when an -- now, the officer-need-of-assistance, just
5 to be clear, that is also known as signal 18 to you?

6 A I'm sorry, sir?

7 Q Signal 18.

8 A A signal 18, I do apologize. A signal 18 status means
9 officer no longer needs assistance. But what we will
10 typically say is if we want folks to continue coming but
11 kinda slow it down, we'll say signal 18 so far. And I think
12 that was touched upon yesterday.

13 Q Okay. So an officer in need of assistance is what
14 code?

15 A I'm trying to -- again, code three, sir.

16 Q Code three.

17 A That would be running blue lights and sirens.

18 Q So to be clear, if a signal 18, or in this case signal
19 18 for now, follows a code three is it prudent from the
20 standpoint of a law enforcement officer to just absolutely
21 withdraw from the situation?

22 A Well --

23 MR. DOUGALL: Objection. Leading, Your Honor.

24 THE COURT: Please, y'all. You've got him on direct
25 examination.

Kenneth Taylor
Direct examination by Mr. Garfield

1 MR. GARFIELD: Yes, sir.

2 THE COURT: You all know the rules. Direct
3 examination, you have to ask nonleading questions.
4 Cross-examination you can lead.

5 MR. GARFIELD: Certainly.

6 Q To what extent -- what, if anything, do you as a law
7 enforcement officer when you hear signal 18, what does that
8 mean to you?

9 A Well, it means a few things. One, we can can try to
10 downgrade our response to a lesser grade response. So
11 possibly the code two response that we referred to --
12 flashing emergency lights and our emicliaise [sic] trio.
13 Y'all have probably seen the little blue lights that are on
14 the corners of our -- our blue lights, or our light bars
15 rather. But sometimes the downgrade does not justify at
16 that point in time.

17 If you're already approaching an intersection and
18 you've got blue lights and sirens on, everyone has already
19 come to a stop. You can't just cut your blue lights and
20 sirens off. You're going to confuse everyone that's there.
21 You may have someone run into the back of someone because
22 they don't see what the emergency response is doing.

23 So it's better to just go ahead and clear that
24 intersection than opposed to just cut your stuff off and
25 people are wondering, well, why did this cop just cut their

Kenneth Taylor
Direct examination by Mr. Garfield

1 lights off, what's going on. So at least folks in a
2 questionable state of mind when they see someone who has cut
3 emergency equipment off and they've already stopped for that
4 particular emergency vehicle.

5 Q Have you ever heard of the term called auditory
6 exclusion?

7 A I have, sir.

8 Q And what is that?

9 A Auditory exclusion is basically when you're responding
10 some of your senses, it's almost as if you --

11 MR. DODSON: Objection, Your Honor. There's no
12 foundation or qualifications for this.

13 THE COURT: Sustained.

14 MR. GARFIELD: May we approach, Your Honor, on that
15 note?

16 THE COURT: Yes, sir.

17 (Bench conference held of the record in the presence of
18 the jury but out of the hearing of the jury.)

19 Q Where did you first learn about the term auditory
20 exclusion?

21 A Yes, sir. We are actually taught about auditory
22 exclusion in our training department. Every year we go
23 through in-service training. It's about a week long,
24 sometimes split into separate days. But actually you're
25 trained. And in the field I've experienced it numerous

Kenneth Taylor
Direct examination by Mr. Garfield

1 times.

2 Q When you say it, that experienced it, could you now
3 explain to the jury what exactly auditory exclusion is?

4 A Yes, sir. I apologize. It would be referring to
5 auditory exclusion --

6 MR. DODSON: Objection, Your Honor. It's still not a
7 proper foundation for testifying. It's essentially an
8 expert on auditory exclusion.

9 THE COURT: He's not giving an opinion. He's telling
10 what it is. He learned about it in training. He can do
11 that. Overruled.

12 Q Go ahead.

13 A Yes, sir. Auditory exclusion is when you focus and
14 it's -- if you've never experienced it, it's kind of hard to
15 explain, but I'll do my best.

16 You become focused. It's almost as if you get tunnel
17 vision. You focus on one thing. You know, that priority
18 becomes centralized.

19 I hope and pray none of you have ever been shot at, but
20 I have. And your focus becomes whatever's shooting at you.
21 Your surroundings become less visible, and it's almost as if
22 you focus on that one thing. That's what auditory exclusion
23 is to my best example. You focus on whatever is your
24 primary objective.

25 Q Thank you.

Kenneth Taylor
Direct examination by Mr. Garfield

1 Now, you talked about officer-in-need-of-assistance
2 call. why -- would it be in some cases that it would be a
3 certain number of deputies that respond? Does that weigh
4 into the considerations?

5 A Well, sir, there's nothing in our policy that exactly
6 says there needs to be one deputy responding, there needs to
7 be two deputies responding, needs to be three deputies
8 responding.

9 In this particular instance, again, something that you
10 all have seen is numerous deputies responding, and that's
11 because we all have the experience and knowledge of who
12 Master Deputy Boyles is. Master Deputy Boyles, although she
13 came across as a very sweet lady, she's very tough, and she
14 very rarely asks for assistance.

15 So when she asked for assistance we know what she's
16 doing and we know what kind of need she has. If she asked
17 for assistance, I guarantee you it's urgent. You know, she
18 doesn't just come across the radio and say, hey, can I get
19 people over here on a daily basis. I worked around her for
20 almost nine years now, and in those nine years I've heard
21 her call for assistance maybe twice.

22 Q Deputy, I'm going to take you to the moment you
23 actually received the officer-in-need-of-assistance call.
24 What direction were you coming from?

25 A Yes, sir. Would you like for me to point?

Kenneth Taylor
Direct examination by Mr. Garfield

1 Q And, yes, sir, I believe that would be best. I believe
2 we've got these fancy clips.

3 A Yes, sir. I was traveling down Alpine Road from Two
4 Notch towards Windsor Lake in the direction of the green
5 arrow. So from Two Notch down Alpine Road towards Windsor
6 Lake, Master Deputy Boyles was in our back side.

7 Q The intersection that we see right there, what two
8 roads converge at that interchange?

9 A This intersection is the intersection of Alpine and
10 Windsor Lake Boulevard, sir.

11 Q Are you familiar with that immediate vicinity, Deputy?

12 A Very familiar, sir.

13 Q Okay. In 2014, how long at that point had you worked
14 that immediate area?

15 A Approximately five years, sir.

16 Q Now, as you approached the Alpine-Windsor Lake
17 interchange, Alpine itself, what color light was that?

18 A Yes, sir. It was green.

19 Q And would that be in just one lane of travel, or both
20 lanes as far as Alpine?

21 A Alpine Road was green for travel-through traffic if
22 that makes sense.

23 Q Sure.

24 A The Windsor Lake Boulevard was red.

25 Q And just to be clear, some intersections may not be the

Kenneth Taylor
Direct examination by Mr. Garfield

1 same light on each side. What would have been the light
2 coming up this way of Alpine?

3 A It would have been green, sir.

4 Q If you could, if you don't mind, keep standing.

5 A Yes, sir.

6 Q Because I want to make sure we're clear on that map.

7 A Yes, sir.

8 Q And that's an aerial view, Defendant's Exhibit No. 1.

9 Did you have an occasion to see Deputy William Weaver?

10 A I did, sir.

11 Q Okay. What was he doing?

12 A He was traveling in front of me, probably a couple
13 hundred yards. He was driving -- as he was driving down
14 Alpine Road from Two Notch in the same direction I was
15 coming from.

16 Q Thank you.

17 You can have a seat for the moment. I will get you to
18 stand back up in a moment.

19 A Yes, sir.

20 (Whereupon, the witness returned to the stand.)

21 Q And he was operating in -- in what code?

22 A He was operating in code three, sir.

23 Q And you were operating in what code?

24 A I was actually operating in code two, sir.

25 Q Okay. We've heard a lot of testimony, and I admit it

Kenneth Taylor
Direct examination by Mr. Garfield

1 gets confusing, so I'd like to be real clear on this.

2 what are the different priority calls in terms of code
3 two, code three?

4 A Code three, again, officer in trouble, burglaries, home
5 invasions, active assaults, fights in progress. Those are
6 our code three calls -- blue lights and sirens. Code two is
7 --

8 Q Let me break it here.

9 A Yes, sir.

10 Q Code three is blue lights and sirens.

11 A Yes, sir.

12 Q Specifically, on the vehicle --

13 A Yes, sir.

14 Q -- what is activated to designate a code three
15 response? Go over how that exact -- take me to that
16 vehicle. And what do we see and what do we hear?

17 A Yes, sir. On our county vehicles at all times we have
18 our headlights on. Whenever we come onto our shifts we
19 activate what's called our Mickey lights. They make us more
20 visible during the day. They're the little blue lights on
21 the corners.

22 whenever we respond code three, at that point in time
23 we activate our blue lights and sirens.

24 Q When an officer responds code three, based on your
25 understanding and your training, can he or she exceed the

Kenneth Taylor
Direct examination by Mr. Garfield

1 speed limit?

2 A Yes, sir.

3 Q Okay. Can he or she disregard traffic control devices?

4 A Yes, sir, with due care.

5 Q But that individual, that deputy, has to have on his
6 blue lights or her blue lights and siren.

7 A That's correct, sir.

8 Q Now we've heard about code two. You were running code
9 two?

10 A I was, sir.

11 Q Okay. Similarly can you explain what specifically is
12 activated on your patrol vehicle which alerts the public
13 that you are operating code two?

14 A Yes, sir. Code two is, again, you have your headlights
15 activated at the beginning of the shift. You have your
16 Mickey lights on so that you have higher visibility.

17 And there's also flashers on. The flashers, then
18 according to our policy, to speed, approach the speed limit,
19 by a moderate amount, but you cannot disregard traffic
20 control devices. So we can still get there quicker, but we
21 don't disregard traffic control devices.

22 If we come up to a traffic control device and we feel
23 the need that we have to clear that intersection, at that
24 point in time we did upgrade to the blue lights and sirens
25 to clear the intersection if we needed to.

Kenneth Taylor
Direct examination by Mr. Garfield

1 Q So when approaching an intersection with a red light
2 and the individual or deputy is running code three, what, if
3 anything, does that deputy need to do at the stop bar or
4 before approaching and crossing the intersection?

5 A Yes, sir. Any time you approach any emergency vehicle,
6 whether you are an emergency vehicle or civilian vehicle, we
7 yield to fire trucks. We yield to ambulances. The same
8 applies to a patrol car. If I'm downgraded to a code two
9 status I would yield right to way to the vehicle that's
10 running code three, which is what happened.

11 Q Okay. To be clear, you were running code two. Could
12 you run or can you proceed past a red light?

13 A No, sir.

14 Q Did you have an occasion to see Deputy Ken Proffitt
15 during this time?

16 A I did, sir.

17 Q Okay. What, if anything, was he doing?

18 A When I approached the intersection, sir, he was
19 actually stopped at the stop bar.

20 Q I'm going to get you to stand up, Deputy.

21 A Yes, sir.

22 (Whereupon, the witness left the stand.)

23 Q It's just the way this is configured.

24 A I understand.

25 Q Up and down. So could you just point to the jury what

Kenneth Taylor
Direct examination by Mr. Garfield

1 stop bar you were crossing?

2 A Yes, sir. He was stopped at this stop bar here at
3 Windsor Lake Boulevard with his blue lights and siren
4 activated.

5 Q Now, did Deputy Weaver ever proceed into and pass the
6 intersection?

7 A Deputy Weaver had already -- whenever I saw Deputy
8 Proffitt -- Proffitt -- he was at the stop bar with his blue
9 lights and sirens. Deputy Weaver had already gone through
10 the intersection.

11 Q And he went through intersection with what color of
12 light?

13 A With a green light, sir.

14 Q Now, as, I believe you're stating, that Deputy Proffitt
15 approached the Windsor Lake and Alpine interchange, what was
16 his light?

17 A Deputy Proffitt's light was red.

18 Q And what, if anything, did he do at that point once he
19 was around the stop bar?

20 A Once he came to the stop bar, per our policy we have to
21 cycle our siren, and I think that was kinda explained
22 yesterday, but it changes pitch and tone to alert drivers.
23 That way if you hear a particular tone, once we're at that
24 stop bar we'll cycle it. It changes the pitch, and it kinda
25 draws your attention a little more if you didn't hear it

Kenneth Taylor
Direct examination by Mr. Garfield

1 whenever you were approaching. That cycling the siren will
2 actually allow you to hear a different pitch and possibly
3 draw your attention a little greater than -- than it would
4 have been had you just heard that first pitch.

5 Q This siren, was that loud enough for you to audibly
6 hear?

7 A Yes, sir. I heard it at least 150 yards away.

8 Q And the change in pitch as well, or just the siren?

9 A Yes, sir. I actually heard him cycling the siren at
10 the stop bar.

11 THE COURT: You may sit down.

12 THE WITNESS: Thank you, sir.

13 (Whereupon, the witness returned to the stand.)

14 Q What -- what position was his car?

15 A Corporal Proffitt, sir?

16 Q Yes, sir. And I'm actually going to bring the poster
17 to you because I -- I do agree with His Honor. I'm not
18 trying to get you to stand up and down.

19 A Yes, sir.

20 Q So I'm going to come to you. What position was his car
21 when you heard the siren?

22 A His car was stopped at this stop bar whenever I heard
23 the siren, and he then cycled.

24 Q Okay. And what position was your vehicle at the time
25 you heard the siren?

Kenneth Taylor
Direct examination by Mr. Garfield

1 A My vehicle is going to be a little bit up Alpine Road.
2 It's going to be out of the view. Again, there's nothing
3 here to obstruct my view. There's actually a strip mall
4 here, so I could see him clearly.

5 Q Now, at this time when he's activating his siren --

6 A Yes, sir.

7 Q -- or you're hearing the siren when he's at the stop
8 bar, can you please point out for the jury the location, if
9 any, of any other cars along this intersection?

10 A Yes, sir. There was one vehicle in the turning lane.
11 There were at least two vehicles in the travel-through lane,
12 which would be the center lane. I did not see any vehicles
13 in the right-hand turning lane.

14 Q Okay. And you could see this even though you're
15 somewhat off this -- this grid or this --

16 A It's a straight road, sir, and I could see perfectly.

17 Q All right. You being kind of a witness here, did you
18 have any concerns about Deputy Proffitt advancing through
19 the red light?

20 A At the time, sir, I didn't.

21 MR. DODSON: Objection, Your Honor. Speculation.

22 THE COURT: Sustained.

23 Q What was your state of mind when you observed Deputy
24 Proffitt being in this position at the stop bar?

25 A My state of mind --

Kenneth Taylor
Direct examination by Mr. Garfield

1 MR. DODSON: Same objection.

2 THE COURT: Overruled.

3 Q Yes, sir. Please answer.

4 A My state of mind at that point in time was I was going
5 to yield the right of way to the emergency vehicle that was
6 traveling through the intersection.

7 Q So once Deputy Proffitt -- did he proceed into the
8 intersection?

9 A He did, sir.

10 Q Okay. What, if anything, did you observe at that time?

11 A I observed him get through the crosswalk. If you don't
12 mind me illustrating where the blue --

13 Q Yes, sir. And I will just turn this way.

14 A Yes, sir. I observed him travel to this point where
15 his car was just past the crosswalk at which point in time a
16 tan in color Toyota Tocomo impacted him in his right front
17 door.

18 Q Okay. Can you point out for the jury -- you saw the
19 impact happen.

20 A I saw the glass shatter. I saw him hit the hood of his
21 car. I saw him, yes, sir.

22 Q Did you have an occasion to observe the location of the
23 two vehicles as a result or immediately after the collision
24 happened.

25 A Yes, sir, I did. The impact pushed Corporal Proffitt's

Kenneth Taylor
Direct examination by Mr. Garfield

1 vehicle into the curb on Windsor Lake Boulevard. It
2 actually caused the back end of his car to lift up.

3 Q Okay. Can you then explain to the jury what you saw
4 with respect to Mr. Kim, the plaintiff's car, or where it
5 ended up?

6 A Yes, sir. His vehicle was right in this area. The
7 impact, again, shifted Corporal Proffitt's vehicle to the
8 curb here.

9 Q So you believe the vehicle wasn't in the crosswalk, it
10 was even farther this way.

11 A It was, sir. It was -- again, it was three quarters of
12 the way at least through the intersection, sir. The front
13 of his -- the front of the hood of his car, sir, was
14 actually past the crosswalk. The vehicle struck him in his
15 passenger front door. So the hood of his vehicle had to be
16 past the crosswalk, sir. And that is where I observed him
17 at.

18 Q What, if anything, were you thinking or what was your
19 frame of mind with respect to the actual -- where the
20 collision was and where the cars ended up?

21 A It was a hard impact. My thought initially was -- you
22 know, I was trying to figure out how someone if they were
23 turning right impacted a vehicle at that speed.

24 Q How about the location itself?

25 A The location itself?

Kenneth Taylor
Direct examination by Mr. Garfield

1 Q Yeah, where the cars ended up.

2 A Again, based on the speed of the vehicle here it -- the
3 forward motion of this vehicle and the motion of this
4 vehicle, it surprised me that it knocked it this far.

5 Again, I saw the back end of the car lift off the
6 ground, glass shatter. These things happen -- it happened
7 very quickly. But for us it's almost in slow motion. And
8 just, again, things slow down for us. I can't explain that,
9 but they do.

10 Q Okay. At what point along this process do you recall,
11 if anything --

12 A Yes, sir.

13 Q -- when the -- if I have this right -- a signal 18
14 followed the code three call --

15 A Yes, sir.

16 Q -- or the signal 18 if you can or --

17 A Well, again, some of these things are kinda hard to
18 explain, but I'll do as best I can.

19 All this happens in an instant. It doesn't happen --
20 you know, although we see these things and it kinda appears
21 that they're in slow motion, it all happens instantaneous.
22 As we're approaching the intersection, as Deputy Weaver was
23 turning into the intersection, she had called signal 18 for
24 now. I think it upped one time. He had possibly cut his
25 blue lights and siren off. I can't speak for him.

Kenneth Taylor
Direct examination by Mr. Garfield

1 But Corporal Proffitt was at the stop bar. He was
2 cycling his siren just behind Deputy Weaver, and all of
3 these things happened almost instantaneous. It took -- you
4 know, this didn't take a week to happen. It took seconds.

5 Q Okay. You were a supervisor at that time?

6 A I was assistant supervisor, yes, sir. I was a master
7 deputy.

8 Q Okay. And you are a full supervisor now?

9 A Yes, sir, I am.

10 Q Would you ever train or teach your subordinates to stop
11 at this crossbar --

12 A Right.

13 Q -- and cut -- cut everything off just because they hear
14 a signal 18 for now?

15 A Well, again, it's dependent upon the situation, but at
16 that particular time it's more confusing for motorists to
17 see someone, just cut things off and come to a stop. And in
18 some cases it could be more dangerous for them.

19 Q Would you like some water, Deputy? Are you okay?

20 A I'm good. Thank you.

21 Q You said you could see perfectly coming down Alpine.
22 Was there anything obstructing your view?

23 A Nothing, sir.

24 Q Now, you talked about the collision. What, if
25 anything, did you do immediately after the collision?

Kenneth Taylor
Direct examination by Mr. Garfield

1 A Yes, sir. I pulled behind the gentleman's vehicle in
2 order to prevent a secondary collision from happening. I
3 activated my blue lights to alert traffic that there had
4 been an accident.

5 I immediately called for highway patrol, jumped out of
6 my vehicle. I checked on Mr. Kim, checked on Corporal
7 Proffitt. I asked both of them if they needed medical
8 assistance. I could see that Corporal Proffitt was dazed.
9 He didn't know where he was. So I immediately called for
10 E.M.S.

11 Q From your perspective can you describe the visibility
12 of Deputy Proffitt's blue lights?

13 A I saw the blue lights fine, sir. Whenever you see blue
14 lights your eyes are naturally drawn to the blue lights just
15 as they are your ears drawn to a siren. You look for them
16 whenever you're approaching an intersection. You hear
17 ambulances coming, you don't know which way they're coming
18 from, so you're automatically looking for them. Same thing
19 in my case. It's no different.

20 Q Have you ever heard of the term driving 360?

21 A Yes, sir. That's what --

22 Q Where did you first hear of that term or learn of that
23 term?

24 A Yes, sir. That was actually taught to us by Instructor
25 Dave Black. He --

Kenneth Taylor
Direct examination by Mr. Garfield

1 Q And who is the instructor? I'm sorry. I cut you off.

2 A You're fine, sir. He works for the training division
3 of the Richland County Sheriff's Department. He's actually
4 an expert in quite a few things. But he's taught us to
5 drive not only with our eyes forward but always checking
6 mirrors side by side, rear.

7 We are more of what you would consider a defensive
8 driver than offensive driver because we're always at a
9 heightened risk. Usually when you see us driving we're
10 probably responding somewhere, and we're just trying to keep
11 all of our lanes checked.

12 When we're running code, we're not just looking at the
13 car in front of us. We're looking at ten cars in front of
14 us because sometimes at the speed that we're going you have
15 to -- to go ahead and plan for those things.

16 Q One thing I'm not sure I understand.

17 A Yes, sir.

18 Q You had the green light, correct?

19 A I did, sir.

20 Q Are -- is what you are driving considered an emergency
21 vehicle?

22 A That is correct, sir.

23 Q Emergency vehicle. I'm just talking about the car
24 itself.

25 A That's correct, sir.

Kenneth Taylor
Direct examination by Mr. Garfield

1 Q If you had the green light and you were driving an
2 emergency vehicle, what, if anything, was your
3 responsibilities when you see a deputy or -- excuse me -- a
4 law enforcement officer running code three up in this part?

5 A Yes, sir. I still have to yield to that deputy. I
6 said I have to yield to the emergency lights and sirens.

7 In most cases we try to know everything that's going on
8 in every region even if we're not assigned to that region.
9 If we're in other places we try to scan and put our radios
10 to the proper text. But if we miss something, I might not
11 know it, but a deputy is running to something that I didn't
12 hear.

13 So I still need to yield the right of way to that
14 particular individual. Or it may be a different
15 jurisdiction. Just because I'm in a police car doesn't mean
16 that I give up the rights of the state law.

17 Q Let me change directions just for a moment.

18 A Yes, sir.

19 Q Did you have a video system in your patrol vehicle at
20 that time?

21 A I did, sir.

22 Q Was it in proper working order?

23 A It was, sir.

24 Q Now, having stated you were in an excellent position to
25 view the collision, did you have a video capturing the

Kenneth Taylor
Direct examination by Mr. Garfield

1 collision?

2 A No, sir. I was running code two. At no point in time
3 was my video activated prior to the accident.

4 Q Now, that may sound strange, you're running code two.
5 If you could, explain that.

6 A Again, I was running with the flashers, the Mickey
7 lights and the headlights on which caused decreased
8 visibility. Per our code two status, we can still increase
9 speed per policy. But without the code three, the lights
10 and sirens were off, so the video was not activated.

11 Q What, if anything, did you learn about the status of
12 the video situation with respect to Deputy Proffitt and
13 Deputy -- deputies Proffitt and Weaver?

14 A Yes, sir. After the accident I was the reviewing
15 supervisor on the scene. I had to do what we call accident
16 packet.

17 Highway Patrol comes, and they actually work the
18 accident, but we have an internal accident review board, and
19 we have to do an accident packet to --

20 MR. DODSON: Objection, Your Honor.

21 MR. GARFIELD: And that's beyond my question, and I
22 can cure that.

23 THE WITNESS: I apologize.

24 MR. GARFIELD: I don't want --

25 THE COURT: Disregard that last statement.

Kenneth Taylor
Direct examination by Mr. Garfield

1 MR. GARFIELD: Yes, sir.

2 Q I just would like for you to know -- what did you
3 ascertain with respect to the status or the condition of or
4 the existence of nonexistence of the videos?

5 THE WITNESS: I apologize.

6 A I had to check the video to see if it was operating to
7 see if there was anything on the video, and there was
8 nothing recoverable on the video.

9 Q Any doubt whatsoever that Deputy Proffitt had the blue
10 light activated at the time he was approaching and advancing
11 the intersection?

12 MR. DODSON: Objection. Asked and answered.

13 MR. GARFIELD: I'm asking it --

14 THE COURT: Sustained. You've been over that two or
15 three times. Move along.

16 MR. GARFIELD: Okay. Well, very good.

17 Q Just one moment.

18 A Yes, sir.

19 MR. GARFIELD: And I beg the Court's indulgence.

20 THE COURT: Certainly.

21 (Pause.)

22 Q Did you have an occasion to see the plaintiff's truck
23 before the accident?

24 A I did not see the plaintiff's truck before the
25 accident.

Kenneth Taylor
Direct examination by Mr. Garfield

1 Q You did say that you -- and for the final time I am not
2 going to ask you to stand up.

3 A Yes, sir.

4 Q But you said you had an occasion to see the other cars
5 along the interchange.

6 A Yes, sir. That's correct.

7 Q All right. I have a red pen. I'm just going to ask
8 you in your best recollection and estimate where the cars
9 were situated.

10 A Yes, sir.

11 Q Were they stopped or were they moving?

12 A The vehicles were stopped at this intersection at this
13 stop bar. There was a vehicle in the left-hand turning lane
14 and the center through lane. There were also two vehicles
15 at least. I did not see anything in this travel-through
16 lane, sir.

17 Q Yes, sir. Any indication to believe that they were in
18 motion?

19 A They were completely stopped, sir.

20 MR. GARFIELD: One more moment, Your Honor.

21 (Pause.)

22 Q Just for clarification, your video -- your video --

23 A Yes, sir.

24 Q -- was it inoperable or was it just not activated?

25 A It was not activated.

Kenneth Taylor
Cross-examination by Mr. Dodson

1 Q And because of the priority response or what?

2 A Because I was running code two, sir.

3 Q Okay. Deputy Taylor, thank you. Please answer any
4 questions one of these gentlemen may have.

5 A Thank you, sir. Yes, sir.

6 THE COURT: Mr. Dodson.

7 MR. DODSON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. DODSON

10 Q Deputy Boyles' initial call for backup, it was just
11 that, a call for backup, correct?

12 A She asked for another unit, yes, sir.

13 Q Okay. And the stop that she made was either a traffic
14 stop or the suspicion of marijuana. Is that your
15 understanding?

16 A It was what we call a suspicious traffic stop, sir.
17 She called 10-48.

18 Q Okay.

19 A And she also advised over the radio through
20 transmission that there were two large individuals and an
21 odor of marijuana.

22 Q Okay. She at no point in that 10-48 called a code
23 three, did she?

24 A Sir, the deputy doesn't call for a code three.

25 Q Did she call for a code three? Yes or no.

Kenneth Taylor
Cross-examination by Mr. Dodson

- 1 A No, sir. She didn't.
- 2 Q At any time during that 10-48 did she say that there
- 3 was an emergency?
- 4 A It's implied in a 10-48 status, sir.
- 5 Q Well, I know. And that's not the question that I
- 6 asked, sir.
- 7 A Okay.
- 8 Q Did she ever say that there was an emergency?
- 9 A She didn't have to, but, no, she didn't.
- 10 Q Okay. Did she ever indicate that any of the suspects
- 11 that she had pulled over for suspicion of marijuana had made
- 12 any kind of threatening gesture to her?
- 13 A She didn't.
- 14 Q Did she ever indicate that the suspects she pulled over
- 15 had any kind of weaponry in their car -- a gun, a knife, a
- 16 club?
- 17 A She did not.
- 18 Q Okay. So at that time that she made that 10-48 call
- 19 she had simply asked for backup assistance, is that correct?
- 20 A It wasn't that she simply asked for backup assistance.
- 21 There's certain things that you can hear in someone's voice,
- 22 and when they ask for another unit and it's already a
- 23 suspicious traffic stop, again, it is a heightened sense of
- 24 response.
- 25 Q Now, there were three officers that actually responded

Kenneth Taylor
Cross-examination by Mr. Dodson

1 to that initial 10-48, correct?

2 A That's correct.

3 Q And in the order that those officers went through this
4 intersection --

5 A Yes, sir.

6 Q -- you would have been the last officer there.

7 A Had I gone through, yes, sir, that would have been
8 correct.

9 Q Right. Okay. Deputy Weaver would have been the first
10 officer that went through that intersection.

11 A He was the first officer that went through.

12 Q Now, and then Deputy Proffitt was the second, correct?

13 A Well, he attempted to go through. He was --

14 Q Right. He was the second one into the intersection,
15 correct?

16 A That's correct.

17 Q And then you were the third unit to arrive at the
18 intersection.

19 A Yes, sir. That is correct.

20 Q Okay. And so Deputy Weaver at that time was not
21 running with his blue lights and sirens on, was he?

22 A He was not.

23 Q Okay. And that is because prior to Deputy Weaver
24 getting to the intersection Deputy Boyles had indicated an
25 18 for now.

Kenneth Taylor
Cross-examination by Mr. Dodson

- 1 A Signal 18 for now.
- 2 Q A signal 18 for now.
- 3 A That is correct.
- 4 Q Meaning that she was okay for now.
- 5 A Yes, sir.
- 6 Q Okay. And so your understanding is that Deputy Weaver
- 7 who was the first officer to the intersection had already
- 8 downgraded this to a code two, correct?
- 9 A Yes. And, again, this is something that happens very
- 10 quickly.
- 11 Q I understand. Please answer the question that I asked.
- 12 A He did.
- 13 Q Okay. And you by the time you got to the
- 14 intersection --
- 15 A Yes, sir.
- 16 Q -- you also did not have your lights and sirens on, and
- 17 you had downgraded to a code two.
- 18 A I had never actually downgraded, sir. I was running
- 19 code two the entire time.
- 20 Q You were -- okay. I'm sorry. You were running code
- 21 two the entire time.
- 22 A That's correct, sir.
- 23 Q Okay. And so that's why we don't have a dash cam video
- 24 of you.
- 25 A You're correct, sir.

Kenneth Taylor
Cross-examination by Mr. Dodson

1 Q Once the wreck occurred you turned on your lights and
2 sirens because there had been a traffic wreck, right?

3 A That's correct, sir.

4 Q And that's when the dash cam in your vehicle came on,
5 correct?

6 A Correct.

7 Q Where is that video today?

8 A That video was turned into internal affairs, sir. It
9 was pointing at a church, so you wouldn't have seen
10 anything. My vehicle was blocking Mr. Kim's vehicle from a
11 secondary impact. So the only thing you would have viewed
12 was a parking lot.

13 Q But you don't know where that video is today, correct?

14 A Once it's turned in we don't know, sir.

15 Q And you don't know where the video is on Deputy
16 Proffitt's cruiser, do you?

17 A No, sir.

18 Q Even though you reviewed it --

19 A Yes, sir.

20 Q -- you don't know where it is today.

21 A It was turned in, sir. So where it is today, I'm not
22 sure.

23 Q Turned into, I think you said, internal affairs.
24 That's part of the sheriff's department, right?

25 A That's part of our protocol, yes, sir. When a video

Kenneth Taylor
Cross-examination by Mr. Dodson

1 tape runs out -- they're eight-hour video tapes. After a
2 certain amount of traffic stops or after the video's been on
3 for a certain amount of time that video runs out. A
4 supervisor --

5 Q That's not really the question that I asked.

6 A Okay. I'm sorry.

7 Q The question that I asked is you don't know where that
8 tape is from Officer Proffitt's vehicle.

9 A I can only tell you where it went to.

10 Q And you don't know where the video tape is from Deputy
11 Weaver's vehicle either.

12 A I can only tell you where it went to, sir. No, sir.

13 Q And the answer is you don't know where that is either.

14 A In internal affairs, yes, sir.

15 Q But I want to be clear. You saw Deputy Weaver enter
16 this intersection.

17 A That's there, yes.

18 Q And at that time in the sequence of this, is that he
19 had already turned off his lights and siren by the time he
20 got to that intersection.

21 A Just prior to the intersection, that's correct.

22 Q He was the first deputy there.

23 A He was.

24 Q And then Proffitt was the second deputy at this
25 intersection that we're looking at here, right?

Kenneth Taylor
Cross-examination by Mr. Dodson

1 A You're correct, sir.

2 Q And he had not turned off his lights.

3 A No, sir.

4 Q He had not turned off his siren.

5 A That's correct.

6 Q Which would mean that according to Richland County
7 Sheriff's Office policy and the way those dash cams are set
8 up, we should have a video of that. But we don't, do we?

9 A Well, if the video would have been operating, you would
10 have a video, that's correct.

11 Q We don't have that video, do we?

12 A You don't, sir.

13 Q How convenient.

14 MR. DODSON: I don't have any further questions.

15 MR. DOUGALL: Nothing, Your Honor.

16 THE COURT: Redirect, if any. Redirect?

17 MR. GARFIELD: One moment, Your Honor.

18 (Pause.)

19 MR. GARFIELD: No, Your Honor.

20 THE COURT: You may step down.

21 Next witness, please.

22 MR. GARFIELD: Defendants call Sheriff Leon Lott.

23 LEON LOTT, having been first
24 duly sworn, testified as follows:

25 THE CLERK: Have a seat, please, and state your full

Leon Lott
Direct examination by Mr. Garfield

1 name for the record.

2 THE WITNESS: Leon Lott.

3 DIRECT EXAMINATION BY MR. GARFIELD

4 Q Sheriff, what is your job title?

5 A The sheriff of Richland County.

6 Q How many years have you been the elected sheriff of
7 Richland County?

8 A Twenty years.

9 Q When did you first become employed with the Richland
10 County Sheriff's Department?

11 A 1975.

12 Q And, generally, what positions have you held during
13 your tenure with the sheriff's department?

14 A Virtually every position from starting at the very
15 bottom as a deputy, right on up through the ranks to
16 captain.

17 Left the Richland County Sheriff's Department in
18 December of 1992 and was the police chief in St. Matthews
19 for three and a half years, and was elected sheriff in 1996.

20 Q Have you ever heard of a response call called officer
21 in need of assistance?

22 A That's correct.

23 Q And what, if anything, is that?

24 A Somebody needs help, and they need help quick.

25 Q To you as the sheriff or to you as a law enforcement

Leon Lott
Direct examination by Mr. Garfield

1 officer is there a difference between officer in need of
2 assistance and officer in danger?

3 A It's the same.

4 Q When a deputy calls out officer in need of assistance,
5 what, if anything, is that in terms of a priority type call?

6 A That is highest priority. I expect everybody in close
7 vicinity to get there as quick as possible.

8 Q When you say quick as possible, on what level -- on
9 what level of urgency do you consider that?

10 A At the top urgency -- blue lights, sirens, whatever is
11 necessary to get there safely and get there very quickly, as
12 quick as you can.

13 Q To you, Sheriff, what, if anything, should deputies do
14 when they hear that call? You stated that they should be --
15 prioritize the call. Did they do code three versus code
16 two? What are your expectations?

17 A I expect them to get there as quickly as possible. And
18 if that's necessary to use blue lights and sirens, then use
19 that.

20 If you use code two, which is the flashers on a car
21 that allows them to exceed the speed limit, then I expect
22 them to do that. I expect them to get there as quickly as
23 they can. That's -- that's a matter of life and death, and
24 seconds matter in situations like that. So I expect them to
25 get there as soon as they can.

Leon Lott
Direct examination by Mr. Garfield

1 Q But in order for a deputy to disregard a traffic signal
2 what must he or she do?

3 A Have the blue lights and sirens, but, again, we want
4 them to be as safe as possible and try to arrive there,
5 which means, you know, stop at that intersection, attempt to
6 make sure it was clear but have that blue light going and
7 the siren going when you're approaching the intersection.

8 But, again, disregard that traffic signal, if you stop
9 and wait until the traffic light changes, that's precious
10 seconds that could cost somebody their life. So we want
11 them to get there quickly.

12 Q Have you ever heard of the term signal 18 or signal 18
13 for now?

14 A That's correct. I have.

15 Q And -- and what is that?

16 A That means that situation is possibly under control at
17 this moment but I still need assistance, don't stop coming
18 to me.

19 Q Does that mean necessarily that the emergency is over?

20 A No, does not mean that the emergency is over with.

21 Q And could you explain why not, or could you provide an
22 example?

23 A We have to look at the totality of the whole situation.
24 We put the call out, what type of call it is, what that
25 officer is engaging in, how many people are there to look

Leon Lott
Direct examination by Mr. Garfield

1 at -- look at everything. You have to look at all of those
2 factors and take them in consideration when you go to that
3 type of call.

4 I'm not being sexist, but a female deputy, you know,
5 they are challenged sometimes more than what males are. So
6 if a female deputy called out and said I need assistance,
7 then you really need to get there.

8 If they're outnumbered, if you have one deputy and
9 there's two suspects, then you're going -- the odds, I mean,
10 you're making the odds even greater. If there's two
11 suspects you're going to have at least three officers there,
12 or more.

13 You take all of these things into consideration. You
14 take the officer's demeanor, their voice over the radio, how
15 they're acting, what they called in, what type of call it
16 is, you know, versus -- you know, if it's a case where, one,
17 you're outnumbered, if they smell drugs, if there's a weapon
18 there. You take all those factors. You just can't take one
19 thing. You have to look at the totality.

20 And when that officer says I need assistance that means
21 I need help -- I need help and get over there. And then if
22 they signal 18, that doesn't mean to stop. That means to
23 still come on over there, but like at this moment I don't
24 have a gun to my head but I still need you here though.

25 Q Would that also include signal 18 for now?

Leon Lott
Direct examination by Mr. Garfield

1 A For now means at this moment I'm fine but it could
2 change any second now. And that still means get to me, I
3 need your help.

4 Q Now, there's testimony in this trial about the
5 existence or nonexistence of dashboard video tapes. Have
6 you had an opportunity to look into or investigate the
7 existence or nonexistence of video tapes?

8 A In this case, not really. I just know overall the
9 department what we've done with video tapes 15 --
10 Q Oh -- I'm sorry.

11 A Fifteen or 17 years ago I made a decision that the
12 technology -- cameras in the car -- was something that we
13 wanted to do. We didn't have to do it. The law didn't
14 require us to do, but I felt like that was something that we
15 could use to our benefits and the citizens' benefits and
16 make us transparent as we could. So we bought cameras in
17 our cars. We put them in our patrol cars and regular deputy
18 marked cars.

19 Technology at that point was the V.H. system, that old
20 V.H. tapes that don't exist anymore. That was the
21 technology. So we started that technology.

22 The tapes, we would recycle the tapes. We would use
23 them. If there was not anything deemed of evidentiary
24 value, then we would recycle them and just tape over them
25 and use them again. We did that, but we also -- you know,

Leon Lott
Direct examination by Mr. Garfield

1 this is equipment that's in a car. Sometimes it works;
2 sometimes it doesn't work. You know, these are challenges
3 that we've had to face.

4 In the last year we've attempted to change over to
5 digital. The new technology, you can't buy V.H. test --
6 V.H. tapes anymore. The V.H. cameras in the car don't work
7 any more and they can't be fixed any more.

8 We still have about 23 cars that have V.H. tapes in
9 them, and we have to recycle those. \$500,000 for the new
10 cameras, and they're expensive. We paid to get that in over
11 a period of time. We have almost 600 cars in our fleet.
12 When we're through we'll probably have about 270 cars that
13 have cameras. So it's -- the tapes we -- we've got to reuse
14 them at this time. They're just not available.

15 Q When an officer runs code two that means, from what I
16 understand, emergency flashers, correct?

17 A That's correct.

18 Q What, if anything, occurs with the video taping system
19 in that car?

20 A Nothing. The technology we have with the V.H. test and
21 with our new system that we have now with digital, when you
22 hit the switch to turn the blue lights and sirens on that
23 turns the cameras on. The cameras don't come on until you
24 get the -- the blue lights. That's what activates the
25 cameras.

Leon Lott
Direct examination by Mr. Garfield

1 So if you're running code two and you don't have your
2 flashing lights on, that means the camera's not running.
3 They only come on when you hit that light. There's a switch
4 that turns the flashing lights on.

5 Q And there's testimony here that Deputy Proffitt was
6 running code three.

7 what, if anything, would have been -- what type of
8 video tape system would have been in his patrol car at the
9 time?

10 A My understanding, it was a spare car. It would have
11 been the old system, the V.H.S. system, in the spare car
12 that he was using.

13 MR. GARFIELD: Just one moment, Your Honor.

14 (Pause.)

15 Q Thank you for coming down here this morning. Please
16 answer any questions any of these lawyers have for you.

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Leon Lott
Cross-examination by Mr. Dodson

1 CROSS-EXAMINATION

2 BY MR. DODSON

3 Q Sheriff, you never personally investigated this wreck
4 that happened on April 24th of 2014, did you?

5 A No.

6 Q You never went out to the wreck scene, looked at it.

7 A No, sir.

8 Q Never interviewed any of the deputies specifically
9 related to this wreck.

10 A No, sir.

11 Q Now, I believe you testified on direct that you made
12 the decision approximately 17 years ago that your patrol
13 cars were going to have dash cams, correct?

14 A That's correct.

15 Q You thought that that was important all the way back to
16 17 years ago.

17 A That's correct.

18 Q And so you started implementing that policy of having
19 dash cams way back then 17 years ago.

20 A Yes, sir.

21 Q And the way that you had those patrol cars wired up,
22 the way that you wanted it done as the sheriff, is that when
23 the lights and siren came on, the dash cam came on.

24 A Right.

25 Q And you thought that that was so important 17 years ago

Leon Lott
Cross-examination by Mr. Dodson

1 that you did that even in the age of V.H.S. tapes.

2 A Correct.

3 Q Okay. And, in fact, Proffitt's vehicle was actually
4 equipped with one of those dash cam videos, correct?

5 A The spare car he was driving, yes, sir.

6 Q And so if he turned on his lights and sirens, what you
7 would expect to see is a video tape of that, right?

8 A That's what I would expect.

9 Q That's what you would expect to see. In fact, that's
10 the very reason that you implemented this policy, right?

11 A Right.

12 Q Is because having those video tapes, having that dash
13 cam footage, can reveal a lot about what happens.

14 A Correct.

15 Q It can reveal a lot, for example, if somebody's pulling
16 over somebody for suspicion of marijuana like Deputy Boyles
17 indicated she was pulling over somebody, correct?

18 A Correct.

19 Q There are certain statutes with regards to D.U.I.s.
20 You're familiar with those, right?

21 A Yes.

22 Q And so by having that video you have a video made of
23 somebody that's charged with a D.U.I.

24 A Correct.

25 Q And a jury in those, that, can see was this person

Leon Lott
Cross-examination by Mr. Dodson

1 intoxicated, were they impaired, could they walk a straight
2 line, right?

3 A Correct.

4 Q They can see the field sobriety. And, in addition,
5 those videos will show what happens at an accident scene,
6 won't they?

7 A Correct.

8 Q Now, you testified earlier you don't know where that
9 video is from Officer Proffitt's vehicle. Do you?

10 A No, sir. I wasn't asked that question.

11 Q Do you know where it is?

12 A No, sir, I don't.

13 Q You don't know where that video is of -- from -- from
14 officer Proffitt's vehicle.

15 A No, sir.

16 Q Have you ever looked at that video?

17 A I don't know if that video ever existed.

18 Q Well, it should have existed --

19 A No, sir.

20 Q -- if he turned on his blue lights. It should have
21 come on, shouldn't it?

22 MR. GARFIELD: Objection, Your Honor.

23 THE COURT: Hold on. What's the objection?

24 MR. GARFIELD: It's argumentative.

25 THE COURT: Well, he's on cross.

Leon Lott
Cross-examination by Mr. Dodson

1 A No, sir. The equipment malfunctions sometimes,
2 equipment doesn't work.

3 Quite often -- quite often the video cameras in our
4 cars don't operate. They don't work. We have to get them
5 fixed. And so we don't have videos every time the blue
6 lights are turned on because the equipment malfunctions.
7 That's not -- that's not abnormal. It's almost a normal
8 that we don't have tapes because video equipment doesn't
9 work.

10 In a perfect world it'd be working all the time, but
11 this is equipment. These cars are driven a lot.
12 Equipment's used a lot. They break down; they malfunction.
13 So we don't. That's -- that's not abnormal not to have a
14 tape.

15 Q Okay. Well, were you aware that the video was working
16 that morning before this wreck? Did you know that?

17 A No, sir.

18 Q You didn't know that.

19 A Again --

20 Q Who -- who repaired?

21 A Again, that's not --

22 THE COURT: Hold on -- hold on. Let him finish his
23 answer.

24 A That's not abnormal to go on your shift and your
25 camera's working and during your 12-hour shift the camera

Leon Lott
Cross-examination by Mr. Dodson

1 malfunctions and stops working. That's -- that's no more
2 abnormal at all. That happens. It happens on a regular
3 basis.

4 Q When -- when equipment stops working, who repairs it?

5 A We do.

6 Q Where's the work order on repairing this video in
7 Officer Proffitt's vehicle?

8 A The spare car?

9 Q Yeah.

10 A I'll have to give you a general answer. If that car
11 was totaled we would have never fixed the video camera in
12 that car. I don't know.

13 Q Well, Sheriff --

14 A And I don't -- we normally don't do work orders. We do
15 internal work. So if a camera is malfunctioning the deputy
16 just takes it to our own shop, and the deputies who work in
17 that shop would just fix it. There's no work orders on it.

18 Q In fact, there was a work order on this particular
19 vehicle to repair it, right? Did you know that?

20 A Repair the vehicle or repair the camera?

21 Q Repair the vehicle.

22 A Okay.

23 Q Okay. Where is the work order to repair the camera?

24 A That's separate. The -- repairing the car is done by
25 body shops independent of the sheriff's department. We

Leon Lott
Redirect examination by Mr. Garfield

1 don't repair cars. We put equipment in the cars and we
2 maintain the vehicle.

3 Q Who repaired --

4 A So -- so a work order to repair the car would have went
5 to one of our body shops that they did out -- the county
6 does that. We just maintain that camera and the siren and
7 blue lights. We do that in determining to save the
8 taxpayers money.

9 Q Sheriff, I just want to know who repaired the video in
10 Officer Proffitt's vehicle. That's what I want to know.
11 Who did that?

12 A I can't answer that.

13 Q Do you even know if it was done?

14 A No, sir, I don't.

15 Q If it was done, you don't know, but when was it done?

16 A No, sir.

17 MR. DODSON: No further questions.

18 THE COURT: Anything on redirect?

19 MR. GARFIELD: One moment, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. GARFIELD

22 Q Under what circumstances, Sheriff, are video tapes
23 maintained or preserved in a normal course of business?

24 A If we know that they have evidentiary value on them,
25 then we'll maintain them. But if we don't know for a fact

Leon Lott
Redirect examination by Mr. Garfield

1 there's any evidence on it, then they're recycled. And we
2 just reuse them over and over.

3 Q What if there's not an internal affairs complaint on a
4 subject? Does that impact one way or the other as to
5 whether these video tapes, the existence, would be
6 maintained or preserved?

7 A If there's not a complaint or reason for us to keep
8 them, we wouldn't keep it.

9 Q What if, for instance, there's a lawsuit that would
10 come down months or years after the event? What, if
11 anything -- what affect does that have on whether video
12 tapes are maintained or preserved?

13 A We would not have known to keep that tape, so it would
14 have been recycled. At that point that we had it and we
15 need to reuse it we would have no reason to keep it if
16 there's not a reason to.

17 THE COURT: Sheriff, thank you.

18 MR. DODSON: Wait.

19 THE COURT: I don't do recross.

20 You may step down.

21 I'm sorry.

22 MR. DODSON: May I recross, Your Honor?

23 (Shakes head.)

24 THE COURT: Discretionary with the Court.

25 All right. Next witness, please.

1 MR. GARFIELD: May the sheriff be excused, Your Honor?

2 MR. DOUGALL: Absolutely, Your Honor.

3 THE COURT: Thank you, Sheriff.

4 (Whereupon, the witness was excused.)

5 THE COURT: Next witness, please.

6 MR. DOUGALL: Your Honor, that concludes for the
7 defendants Richland County and Sheriff Leon Lott.

8 THE COURT: Anything in reply, gentlemen?

9 MR. DODSON: Nothing from the plaintiff.

10 THE COURT: Madam forelady and ladies and gentlemen,
11 that concludes the testimony in the case.

12 I need about 20 minutes with the lawyers. If you want
13 to go outside and stretch, I can push it to 30 minutes.
14 And we'll probably go ahead and send out the order for the
15 lunch.

16 So when you get back we'll do closing arguments. I'll
17 charge, and then you'll be in a position to start
18 deliberating. So we must be ready to go back at a quarter
19 till 12:00. That's 30 minutes. If you want to step out
20 and get some fresh air, you're welcome to.

21 Everybody else remain seated.

22 Don't discuss or deliberate the case.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: All right. Any motions by the plaintiff?

1 MR. DODSON: Your Honor, at this time we would make a
2 motion for a directed verdict as to liability and property
3 damage.

4 Before the witness testimony with the Court we passed
5 up the case of Miller vs. FerrellGas. And in that case the
6 Supreme Court made very clear that situations like this
7 where somebody has essentially entered an intersection
8 where they don't have the right of way, they are liable.

9 I think the most relevant part of the case is on the
10 second page that I handed to Your Honor, and I highlighted
11 it. "But there may be motor vehicle accidents in which a
12 question of fact is presented when the driver pulls from an
13 unfavored highway to a favored highway." This is not one
14 of those cases.

15 "Where is here? A driver enters the favored highway
16 knowing his view is obstructed and he cannot see if there
17 is oncoming traffic. We find such a driver is negligent as
18 a matter of law."

19 I think the only way to avoid that case is reliance on
20 the statute 7-6 -- 56-5-760.

21 THE COURT: That's correct.

22 MR. DODSON: But that statute, as Your Honor indicated
23 earlier, is not applicable.

24 THE COURT: Well, I didn't indicate it was not
25 applicable. I indicated that I had serious concerns and I

1 wanted to share that with y'all as to whether or not there
2 was evidence in the record where the jury could find that
3 that statute was applicable, or whether there was not
4 evidence in the record.

5 So I will not charge the statute. It's not applicable
6 to the facts before the court. It's a close call.

7 Go ahead.

8 MR. DODSON: Thank you, Your Honor.

9 The facts, since we had the conference this morning on
10 the record -- the facts have really not changed, and the
11 facts were that, first of all, this was a routine traffic
12 stop.

13 THE COURT: well, it's routine with a little added
14 addition that she is a petite female police officer
15 stopping two drug suspects and she requested assistance.

16 Now, then we get to the testimony that that's
17 basically the same thing as an officer in danger, which
18 gives them high priority. It's the same thing as an
19 emergency situation. And that's how they were responding
20 to it. And there's some testimony about it being
21 downgraded and some testimony about some officers not
22 knowing it was downgraded.

23 So out of an abundance of caution I think when I
24 review the evidence in the light most favorable to the
25 nonmoving, i.e., the defendant in this case -- and I'm very

1 familiar with the testimony that she never declared it an
2 emergency, never said it was code three -- but I still
3 think it's a factual issue as to whether or not this was an
4 emergency call, a factual issue for the jury to decide.

5 And at this stage of the trial I have to view it in
6 the light most favorable to the defendant. I'm going to
7 respectfully deny the motion for a directed verdict.

8 MR. DOUGALL: Your Honor, at this time I'd make a
9 motion for a directed verdict as to their counterclaim
10 because in that situation they now bear the burden of
11 proof, and that same standard that you just applied to the
12 plaintiff's burden of proof applies to them.

13 As to the counterclaim, they have not met the
14 requirement of the preponderance because this was not an
15 emergency. You've got two officers who've already
16 testified they had downgraded to a code two.

17 You've got the testimony of Officer Boyles that she
18 called and told people signal 18, I've got it under control
19 for now. All you've got then left is Deputy Proffitt
20 trying to make an excuse that he just -- unlike everybody
21 else, he didn't hear it.

22 THE COURT: But that is a factual issue for the jury
23 to decide as to whether or not making an excuse or whether
24 or not that, in fact, happened. That's why we have to find
25 as a fact -- it's just a close question. I'm going to

1 respectfully deny your motion.

2 MR. DOUGALL: Thank you, Your Honor.

3 THE COURT: Anything on behalf of the County of
4 Richland and other defendants?

5 MR. GARFIELD: Yes, Your Honor. We do move for a
6 directed verdict on behalf of both the sheriff and Richland
7 County for the following reasons: In our answer, one of
8 our affirmative defenses, we raised South Carolina Code
9 Section 15-78-60. I'd like to draw Your Honor's attention
10 to two particular subsections, one being Subsection (4).

11 THE COURT: Which? Which section?

12 MR. GARFIELD: 15-78-60. It would be subsections --

13 THE COURT: Well, I need to see the law.

14 MR. GARFIELD: Yes, sir. And I was about to -- all I
15 have is this Tort Claims Act book. Subsection (4) and
16 Subsection (6).

17 THE COURT: That's 15-78-60(4).

18 MR. GARFIELD: Subsection (4) and Subsection (6), yes,
19 Your Honor.

20 THE COURT: All right.

21 MR. GARFIELD: To the extent that the evidence in this
22 case has gone forward, that the plaintiff questions or
23 challenges the validity of the sheriff's practice, its
24 policies, its written policies, whether they're valid or
25 invalid with respect to an emergency. What Subsection (4)

1 states is that a governmental entity is not liable for a
2 loss resulting from certain things. As Your Honor is aware
3 and before -- before I make a point, I see Your Honor has a
4 question maybe.

5 THE COURT: Well, no, not a question. I just -- have
6 y'all said they violated any policies?

7 MR. DODSON: No, Your Honor.

8 THE COURT: I haven't heard any evidence of that.
9 This is just strictly whether or not they are entitled to
10 the 56-5-760 and whether they violated that.

11 MR. DODSON: Yes, sir.

12 THE COURT: Stop-sign law -- stop-light law. I don't
13 see where that's applicable at all.

14 MR. GARFIELD: Okay. To -- to the extent that Your
15 Honor had concerns about -- you said it was a close call --
16 about charging the emergency vehicle statute --

17 THE COURT: Well, if I've denied their motion for a
18 directed verdict based on that, obviously, I'm going to
19 charge it.

20 MR. GARFIELD: Okay. Well, then the second subsection
21 I would address is that the governmental entity is not
22 liable for a loss resulting from -- and this is subsection
23 (6) -- with --

24 THE COURT: Civil disobedience, rioting, insurrection
25 or rebellion --

1 MR. GARFIELD: Yes, sir.

2 THE COURT: -- or the failure to provide the method --

3 MR. GARFIELD: Yes, sir.

4 THE COURT: -- police or fire protection?

5 MR. GARFIELD: Yes, sir.

6 THE COURT: How is that applicable?

7 MR. GARFIELD: It's applicable -- it's applicable
8 here, Judge. Much of the examination has centered on
9 challenging -- the plaintiff challenging methods, the
10 methods that the sheriff's department had chose to utilize
11 in responding to a call for help by a fellow police
12 officer.

13 To the extent we've heard testimony for a day and a
14 half that they challenge the fact that these deputies ran
15 code, that they ran code for an emergency, whether these
16 officers or whether Deputy Proffitt disregarded a traffic
17 signal in responding in the way that he did, whether it was
18 code two versus code three, or whether it was one officer
19 versus three officers or four officers, all of these are
20 methods that these deputies chose to utilize police
21 protection in this case.

22 There's testimony that you had an officer -- and with
23 all due respect I do disagree. This is not a circumstance
24 where this was a routine call with an added fixture
25 involved, which would be it was a female deputy -- the

1 sheriff has testified -- the sheriff is also the elected
2 official, and I would say the agency head -- the entity
3 should enjoy absolute sovereign immunity under the Tort
4 Claims Act when the loss is a result from the methods that
5 these officers chose.

6 what the plaintiff -- or it's alleging and I
7 understand this particular case and lawsuit and they're
8 going to argue to the jury is that the methods that these
9 officers chose to utilize to come to the protection and the
10 aid of a fellow officer, that they criticize.

11 what the -- what the general assembly has done in
12 abrogating sovereign immunity, they're carved out these
13 exceptions to the waiver of sovereign immunity that permits
14 the agency itself, the entity, sovereign immunity in these
15 circumstances. And it makes sense, because if every time
16 the police officers or law enforcement officers respond in
17 a certain way and come to the protection, police
18 protection, for someone --

19 THE COURT: well, you have two officers responding one
20 way, and one officer responding another way. So which
21 method do you think is right?

22 MR. GARFIELD: Well, that's exactly my point, Your
23 Honor.

24 THE COURT: Well, it's exactly my point too.

25 MR. GARFIELD: Well, that -- and that's exactly my

1 point. What -- what this carves out is --

2 THE COURT: Which is the correct method, the one that
3 hit the guy, the one that didn't hit the guy?

4 MR. GARFIELD: But that's why we have this exclusion,
5 is because --

6 THE COURT: I respectfully disagree with you.

7 MR. GARFIELD: I -- if I could just make this one
8 point, I understand Your Honor disagrees. But/and
9 respectfully, I don't mean to quibble with the Court.

10 THE COURT: Well, you're not, but I'm getting ready to
11 rule. So go ahead and make your point.

12 MR. GARFIELD: Yes, sir. My point is this: Because
13 differing minds approach this in different ways it is --
14 what the Supreme Court has stated -- and I have the case
15 here. I can offer it. But it doesn't offer much more in
16 terms of authoritative language, that it's the methods that
17 the officers employed, because you may as a law enforcement
18 officer or as I may see a certain circumstance to be a
19 priority call and that two or three deputies may actually
20 differ on how they approach it, it's the methods they chose
21 to utilize.

22 The criticism here, what the plaintiff's case is
23 centered on, is the methods that they chose. They're
24 saying they should not have run code, they should not have
25 had two or three officers.

1 THE COURT: They shouldn't have run code through the
2 red light because there wasn't an emergency. That's all
3 they're saying. Respectfully denied.

4 MR. GARFIELD: Thank you, Your Honor.

5 THE COURT: This is a negligence case based on whether
6 or not it was an emergency situation, that they had the
7 right to go through the red light, and if they did, they
8 had to use -- exercise caution.

9 The jury will have to determine if the statute's
10 applicable, and if it is, did they comply with it. If they
11 didn't comply with it, that's what this is all about.

12 MR. GARFIELD: Yes, sir.

13 THE COURT: It's a simple wreck case with a little
14 different statute than we deal with on a normal basis.

15 MR. GARFIELD: Yes, sir.

16 THE COURT: But thank you. Denied.

17 All right. Anything else before we bring the jury
18 back in?

19 MR. DODSON: Yes, Your Honor. And I apologize for
20 this. But when we were talking earlier this morning I was
21 fumbling furiously for the redone jury -- proposed jury
22 charge. I'm relying on 56-5-970. I finally found that in
23 my box, and I'd like to submit it now if I may. It
24 coincides with --

25 THE COURT: Yes, sir. That's the red light. I told

1 you -- isn't it the red light?

2 MR. DODSON: Yeah. That's the red light. That's the
3 red-light statute. I just wanted --

4 THE COURT: I'm going to charge it and also 56-5-760.

5 All right. We're going to stand at ease for about 20
6 minutes. Everybody can take a bathroom break.

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. Gentlemen, the arguments will
9 go Mr. Dodson first; county second.

10 And, Mr. Dodson, you have the right to reply to them.

11 And then, Mr. Dougall, you have the right to reply as
12 well. And I'll explain that to the jury.

13 Anything else before I bring them in?

14 MR. DODSON: Nothing further from the plaintiff, Your
15 Honor.

16 MR. GARFIELD: No, Your Honor.

17 THE COURT: All right. Bring the jury in, please.

18 THE BAILIFF: Yes, Your Honor.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Thank you.

22 Madam forelady and ladies and gentlemen, we're now
23 going to do the final arguments.

24 Final arguments, like opening statements, it's not
25 evidence in the case. Obviously, you have heard all of the

closing arguments

1 evidence from which you will make your decision.

2 As I told you before, the lawyers represent their
3 respective clients and will argue the case in the light
4 most favorable to their respective clients. I ask that you
5 pay close attention, that you've heard all of the evidence,
6 and that's where you'll make your decision.

7 The arguments will go plaintiff. Mr. Dodson will go
8 first, followed by the defendants, and then Mr. Dodson will
9 have a right to reply to that.

10 Since there's a counterclaim in this case, Mr. Dougall
11 then will also have a right to reply -- or reply to that.

12 What that simply means is normally I will sue you.
13 I'm the plaintiff; you're the defendant. This case is a
14 little different because when I sue you, you, in turn, sued
15 me back. That's the counterclaim. So that's why we've got
16 the equitable argument in that, and I'll explain all of
17 that to you as we get down the road.

18 So, Mr. Dodson, do you want to go ahead with your
19 argument? And then we'll follow up.

20 MR. DODSON: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Absolutely. Thank you.

23 MR. DODSON: The first thing I want to do is I want to
24 thank all 14 of you for being here the last day and a half,
25 two days. I've had to do jury duty too. I know it's not

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1 fun. I know it's disruptive to your life. So I want you
2 to know that on behalf of Mr. Kim and myself and Mr.
3 Dougall we really do sincerely appreciate your efforts in
4 being here. So thank you.

5 Now, when this case started, in opening statements I
6 told you then this was going to be a case about responsible
7 recovery, and that is exactly what it's about.

8 You know, I think it was Abraham Lincoln in the
9 Gettysburg Address that said that we have a government of
10 the people, by the people and for the people. And part of
11 what that means is that our government doesn't get to be
12 above the law. Police officers, deputy sheriffs don't get
13 to be above the law.

14 They are supposed to follow the same law that all of
15 us in this courtroom have to follow. And one of those laws
16 is the law with regard to traffic lights. They have to
17 stop at red traffic lights, or at least they're supposed
18 to, just like all of us have to stop at red traffic lights.

19 Now, there are of course exceptions to the law. Don't
20 take my word for what the law is. Listen to Judge Early.
21 He'll give you the law. But there's an exception to that
22 for police officers, as well as there should be, that
23 they're allowed to run through a red traffic light if
24 certain conditions are met. But only, only if certain
25 conditions are met does that exception to the law apply.

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1 what are those conditions? Judge Early is going to tell
2 you.

3 okay. First of all, they have to be responding to an
4 actual emergency. Don't just get to flip on your lights
5 and your siren and take off and run through red lights.
6 You have to be responding to an actual emergency.

7 They weren't, and here's how you know that they
8 weren't.

9 Let's start with the first witness that they called.
10 Don't take my word for it. Listen to what their witnesses
11 say. Officer Boyles specifically testified it was not an
12 emergency.

13 Her testimony was she called for backup on a suspected
14 traffic stop. And before any of those officers went
15 through that intersection she had sent another command on
16 her radio, code 18 for now. She was okay for now.

17 Now, I appreciate the fact that deputies have a hard
18 job, but the simple fact is she sent out a command that
19 said she was okay. And the other two officers who
20 responded -- weaver and Taylor -- they weren't running
21 their blue lights and they weren't running their siren
22 because they realized it was not an actual emergency.

23 Now, I don't know what Proffitt thought. It doesn't
24 matter what Proffitt thought, because the exception that
25 allows them to run a red light is that there has to be an

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1 emergency. There was no emergency according to everybody
2 they put up to testify who was there. He was the only one
3 that said he thought that there was an emergency.

4 I'm sure there are people that sincerely think the
5 world is still flat. I'm sure that there are people who
6 think man never landed on the moon and all of that was made
7 it. Even if they sincerely believe those things doesn't
8 make it reality. The reality here is that was not an
9 emergency. That's the first thing that they have to show
10 to blow through that traffic light.

11 That's not all. They have to show that they had their
12 lights and sirens on. Conflicting testimony about whether
13 they had their lights and sirens on.

14 what would be the very best evidence that I could
15 offer you that he didn't have his lights and sirens on? A
16 video tape from his dash cam, a video tape from his dash
17 cam that Sheriff Lott testified he thought those videos
18 were so important that he implemented that policy 17 years
19 ago. We don't have the video.

20 They don't even know where it is. They say, well, we
21 looked at it and it wasn't working. They say, well, you
22 know, we looked at it, it had snow on it. But where is it?
23 where is it? Did they present it to you to show, yeah, in
24 fact, it was malfunctioning? No. Do they know where it is
25 today? No.

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1 when you listen to Judge Early's instruction he's
2 going to tell you that you may consider that, the fact that
3 they don't have that evidence. You may infer from that
4 that if they had actually produced that evidence it would
5 be unfavorable to them.

6 Now, that's not going to come from me. That's coming
7 from the judge. And you can listen for that in his
8 instruction, that if they had produced that evidence it
9 would -- you may infer that it would have been against
10 them, which is exactly why they didn't produce it.

11 But even if you find it was an emergency -- lights and
12 sirens on -- the law still says this: You have to use due
13 regard for the safety of all persons. When you enter that
14 intersection you have to use safety for all persons. He
15 didn't do that. He did not do that.

16 He indicated that he was creeping at a snail's pace
17 through that intersection. That's not what Mr. Kim said.
18 We don't have any other video tape showing he was going
19 through there at a snail's pace. We don't have any of the
20 other video tapes from any of the other officers that show
21 that he was going.

22 And it doesn't match up with what you hear, heard,
23 here, which is where those vehicles ended up. Simply
24 doesn't add up. And so for them to be able to violate that
25 law and run through a traffic light, all three of those