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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

Do Yeon Kim,

v.

Appellant,

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

Respondents,

RECORD ON APPEAL

VOLUME II

December 27, 2016

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Closing arguments

1 things have to apply. And I would suggest to you none of
2 them apply.

3 And there is no dispute that this gentlemen had a
4 green traffic light. He was going through that
5 intersection, and all of us have gone through intersections
6 before when we have a green traffic light. It is not a
7 situation where he was trying to race a yellow light and
8 get through there or even coast through on a red light. He
9 had a solid green light the whole time.

10 He wasn't doing anything that all of the rest of us
11 don't do every day, even today coming to the courthouse
12 today. And despite that evidence his government in the
13 county where he lives and he's a resident and he pays his
14 taxes and he works 15-hour days in has not been responsive
15 to him. It's not been a responsible government.

16 You know, everybody can make a mistake. You make a
17 mistake and say, you know what, I ran a red light. I
18 thought I had a green light. I just didn't see it. I
19 didn't see the stop sign. Responsible people own up for
20 their mistakes, and they take responsibility and they take
21 the consequences of those mistakes. They've never done
22 that. Not one single time.

23 It will be up to the 12 of you to make them take
24 ownership of a mistake that they made. And if you don't
25 the government won't be responsive to Mr. Kim. The

Closing arguments

1 government simply won't be responsive.

2 when you get the jury verdict form you're going to be
3 asked a couple of different questions. Sometimes they're
4 what lawyers refer to as interrogatories. I've never --
5 nobody has ever explained why lawyers will refer to the
6 word questions as interrogatories. I guess so we can
7 complicate it. That's what we call them. Interrogatories.

8 well, one of those questions, one of those
9 interrogatories, will be property damage, what amount of
10 money should does Mr. Kim get for property damage. Not
11 going to be real hard.

12 He's got three bills that you'll have back in evidence
13 with you. He has a tow bill which has two charges on it
14 which are \$185. It's real faint. It's \$185. And then
15 there's a special equipment fee of like \$20 in the other
16 part of that bill. He has the repair bill, and then he has
17 his rental charges. And you'll have all three of those
18 bills back there.

19 Now, I did the math. Hopefully I did it correctly.
20 Probably not. But that totals \$9,460.25. That's what he
21 should get for his property damage because that's what he
22 was responsible for paying and had to pay out of his pocket
23 to get his vehicle fixed. He shouldn't be responsible for
24 that when they're at fault. They're the ones that caused
25 this wreck. He shouldn't be responsible.

Closing arguments

1 The other thing that you will be asked about are his
2 personal injuries. That's where things get a little harder
3 because that's where you have a real opportunity to make a
4 difference.

5 There you'll have medical bills that total \$1,907.39.
6 Those bills will be the E.M.S. that came to the scene and
7 checked him out. Even though they didn't take him to the
8 hospital, they came and checked him out. They sent him a
9 bill, and that bill was for \$51.50. How ironic that the
10 very -- the very county, the very governmental entity that
11 caused this wreck, then sends him a bill. But he's still
12 legally responsible for paying that bill.

13 Then he had a \$60 chiropractic bill when he went to
14 the chiropractor the day of the wreck. And he was worse.
15 He testified he was worse the next day.

16 So he went to the hospital. They did x-rays. The
17 doctors at the hospital charged him separately; the x-ray
18 people charged him separately; the hospital charged him
19 separately.

20 I can't explain to you why we bill medical stuff the
21 way we do, but the bills are what the bills are. And as of
22 right now this man is legally responsible for those bills
23 because they decided to run a traffic light.

24 And then the other bill that he has is prescription
25 costs which total \$18.69. So you have the authority, you

closing arguments

1 have the power, you have the control on that special
2 interrogatory, that question about his personal injuries,
3 to award him that \$1,900 and stuff and personal injury.

4 You also have the authority to add to that anything
5 that you deem fair, that you deem reasonable for his pain
6 and suffering.

7 He shouldn't have to go through what he went through.
8 He shouldn't have to suffer an injury at the hands of them.
9 He shouldn't have a government that's irresponsible. Where
10 the property damage is a fixed number, where the property
11 damage is something that we can add up and say this is it,
12 it's harder when you talk about personal injury.

13 You can put any number that you think is fair and
14 appropriate in that box. If you put a large number you
15 make them responsible for something they should have been
16 responsible for months ago, years ago, over a year ago
17 anyway.

18 If you put a small number, you don't make them
19 responsible. You essentially let them off the hook for
20 what they did and what they continue to do. By denying
21 something, by covering up something, by destroying video
22 tapes you let them get off the hook by that if you put a
23 small number, effectively not doing justice to this
24 gentleman that's here.

25 So when you go back and deliberate I would ask you

Closing arguments

1 seriously consider filling in that number with a large
2 number because all that Mr. Kim was doing was what all of
3 us do, go through the green light. That is government.
4 Our government wasn't responsive to it. Please hold them
5 responsible in a meaningful way. Thank you.

6 MR. GARFIELD: Every morning when law enforcement
7 officers like Deputy Kristy Boyles gets dressed for work
8 they put on an uncomfortable and bulky bulletproof vest,
9 and they fasten it up into their uniform, and they realize
10 that they have an obligation that's a tremendous obligation
11 to be on the front lines, to keep us safe, safe to live,
12 safe to work, raise our families.

13 It's an incredible responsibility really. It requires
14 courage and oftentimes heroism. They don't get paid a lot
15 for what they do. They don't make a certain amount of
16 money for every call that they make or to every response
17 that they go to.

18 They find themselves oftentimes in dangerous
19 situations, life-threatening situations, but they accept
20 that because it's part of the job. It's what they do.
21 It's what law enforcement officers do.

22 Kristy Boyles stopped a car. I know y'all have heard
23 this so much over the last day and a half, but it's so
24 important. She's on a motorcycle. She stops a car. She's
25 outnumbered. She's got -- she's got two large males in the

Closing arguments

1 car. There's a strong odor of marijuana coming from that
2 car.

3 what is lost in all of this is to whether she's a
4 tough, you know, tough person or not or whether it was a
5 man or a woman or older or younger or seasoned officer or
6 somebody right out of the academy, that really doesn't make
7 a difference.

8 what makes a difference is that the sheriff of
9 Richland County came before you and he told you, folks, I
10 consider this as an officer in need of assistance, I
11 consider this as an officer in danger and because of this I
12 consider this as a priority call and I ask my deputies to
13 respond to help other deputies in an emergency fashion.

14 well, let's just be real clear. That doesn't allow
15 officers to do crazy things. I don't even know what
16 they're suggesting in closing. Officers just can't go run
17 red lights and wreck into us. I understand that. I'm a
18 driver too.

19 what does it allow them to do? An officer in need of
20 assistance -- His Honor will charge you that they can
21 proceed in an emergency fashion. In order for them to
22 proceed past a red light, to disregard a light, a traffic
23 signal, they have to do two things. I agree. They have to
24 have blue lights and they have to have a siren.

25 The officer in need of assistance is just telling them

Closing arguments

1 to get there quickly whether they have the lights or the
2 siren. I think that is fairly clear, and the lawyers have
3 gone over that.

4 But there aren't any exceptions for a police. I
5 agree. They have to have their lights and sirens if
6 they're going to disregard the red light.

7 So code three. You've heard that. The blue lights
8 and siren are required. But what his Honor is going to
9 charge you when all the counsel sit down, he's going to
10 instruct you on the law, and that law says that the officer
11 can use the blue lights and siren. But the officer has to
12 use due regard first for the safety of other -- for the
13 safety of all of us, all other traffic. That's what the
14 law is.

15 He did that. Deputy Proffitt did that here. When he
16 got to that stop bar, he did several things. He looked to
17 his left and he saw Deputy Weaver coming down Alpine Road.
18 If you'll recall, that's the green pen. He saw him respond
19 in code two fashion. Why code two? He had the green
20 light. There'd be no reason for him to have the siren. He
21 had the right of way. Deputy Weaver came that way.

22 He also saw as he looked around cars stopped over
23 here. Cars in the position on Alpine Road had stopped.
24 Why did they stop? Why would these cars stop for a green
25 light? Because what he was coming on, he had his lights

Closing arguments

1 and he had his siren and he cycled it. Woo-woo. We've all
2 heard that cycle, that change in pitch.

3 The driver here heard it and understood it. These
4 drivers heard it and understood it. Because of that he
5 believed that the intersection was clear for him to proceed
6 across in accordance to the law.

7 As Deputy Proffitt told you, it gave him the legal
8 right to be in the intersection so he could respond and
9 help Deputy Boyles on the other side of that light, on the
10 other side of where the school and the church was. He was
11 struck in doing so by the plaintiff.

12 I'd like to just talk a little bit about the signal 18
13 for now. That's their way of communicating with each
14 other. Deputy Boyles told you, and you've heard testimony,
15 that she called back on the radio and said signal 18 for
16 now.

17 Well, I needed a little help to explain that, and the
18 sheriff helped. Signal 18 for now doesn't say forget
19 everything I just said, I was wrong, it's not an emergency.
20 That's not what that means at all.

21 She said something has changed in my mind. That's how
22 she's trying to communicate it. Does that mean officers
23 just need to stop? Well, no. As Deputy Taylor told you,
24 he said that could cause confusion of other drivers, for
25 instance, if Deputy Proffitt all of a sudden cut his lights

Closing arguments

1 and siren off at some point. Drivers are really going to
2 be confused. Go ahead and proceed across the light.

3 Sheriff Lott told you. He said to him a signal 18 for
4 now does not mean the threat is over. Folks, there are
5 times where people overpower law enforcement officers, and
6 they can say signal 18 for now, but they still need help.
7 They could think the threat has passed, and it may not.
8 There are so many factors we live in today, and that's why
9 when you hear that it is unfair, to be honest, to criticize
10 or to misconstrue. What that means is to say that the
11 emergency is, and it's not, and there's no evidence of
12 that.

13 This trial is very straightforward, ladies and
14 gentlemen. It is -- we've heard so much testimony, and
15 there really is one straightforward thing for y'all to
16 decide as that the fact-finder here as to whether Ken
17 Proffitt had his lights and siren on, or if he didn't. If
18 he did not have his lights and siren on, I am the first one
19 to stand here and tell you that he did not drive with due
20 care and the plaintiff was operating with due care -- maybe
21 and maybe not -- and there should possibly be an award for
22 the plaintiff. But that's not what the evidence is.

23 Did he have his blue lights and siren on or did he not
24 have it on? Well, you've heard a bunch of witnesses that
25 have addressed this issue.

Closing arguments

1 The decision y'all have as a jury as to whether y'all
2 want to believe the story that the plaintiff gave you --
3 Mr. Kim -- or the truth in this case as it happened from
4 the deputies, because it couldn't have happened a third
5 way. It had to happen one or the other. There are two
6 choices.

7 His Honor will charge you in deciding the credibility
8 of witnesses you can ask yourself several questions. One
9 of these questions is how reasonable was it, how reasonable
10 was the witness testimony in light of all of the other
11 evidence you heard in this case.

12 In other words, you're hearing what he says. Is that
13 reasonable to you in light of the other testimony and in
14 light of the other evidence?

15 Well, the plaintiff would want you to believe -- he
16 would want you to believe that Ken Proffitt's car -- that
17 the police car struck his car. How do I say that? The
18 plaintiff in his opening statement said, folks, they hit
19 us. Mr. Kim testified the police car hit me.

20 The damage to the car -- to the truck driven by the
21 plaintiff is in the front. All of y'all will have this as
22 you go back for deliberation. The damage to the police car
23 is on the side.

24 Mr. Peters testified as to try to repair the car,
25 repaired the body damage to this side. How reasonable is

Closing arguments

1 his testimony in light of all of the other evidence in the
2 case?

3 What else would they want to have you believe? That
4 this was such a serious wreck and he went to a
5 chiropractor, his friend, the same day? If it happened the
6 way he would want you to believe, that he was struck, he
7 would be seriously injured. He would have been t-boned.
8 It's quite the opposite. He t-boned the officer. It just
9 doesn't add up.

10 What else did he want you to believe to be true?
11 Well, that Deputy Proffitt had no blue lights and siren.
12 Then how on earth could it be that these other folks were
13 stopped at the light, a green light, if there was no blue
14 lights and there was no siren?

15 How on earth was it that Deputy Taylor, who was the
16 third officer come in here that has the best vantage point
17 of everything -- how was it that he saw that cars were
18 stopped and he even recognized and even stopped? Because
19 the truth is if Ken Proffitt did not have blue lights and
20 sirens and fully -- fully rushed through this intersection
21 the way they suggest he would have wrecked with Deputy
22 Taylor because Deputy Taylor had the right of way. Deputy
23 Taylor was coming also in response to the officer needing
24 assistance over here. It just doesn't add up.

25 He would want you to believe that he drove with due

Closing arguments

1 care. His Honor will charge you as all of us as drivers as
2 we proceed towards an intersection and we approach the
3 intersection and we cross the intersection we are required
4 -- and I have my note to make sure I'm saying it right as
5 his Honor is charging it. We must proceed with the
6 appropriate reduced speed.

7 He wants you to believe he drove with due care, but as
8 he approached this intersection he never slowed down. You
9 remember his testimony. He never slowed down. He never
10 braked. He went through that intersection. He never
11 looked. He says he never braked. He never slowed down.
12 He just went straight through.

13 Didn't he also say that he was familiar with this
14 intersection, that it was a dangerous intersection, that he
15 had driven through this intersection almost every day for
16 years and he knew how rough it was? In fact, he had seen a
17 collision at that intersection. In fact, he knew there was
18 a blind spot right here looking to the left.

19 Ladies and gentlemen, you remember that testimony when
20 he said he knew all of these factors? He never slowed
21 down. He never braked knowing all of those things.

22 I'd submit to you that that is not due care. I'm not
23 even talking about the blue lights and siren. I'm talking
24 about his writeup.

25 And here's what's really got to me a little bit. Not

Closing arguments

1 only do we not have evidence. There's no evidence of
2 braking. There's no evidence that he swerved. There's no
3 evidence of skid marks. There's nothing. He went straight
4 through towards that intersection.

5 But it's really kind of an amazing point they're --
6 they're coming at in this trial, is that their entire case
7 is that not only one but perhaps up to three officers were
8 so careless to respond in an emergency and none of them had
9 any lights. None of them. Ken Proffitt didn't have his
10 siren on. All of them forgot to do what they're supposed
11 to do. Amazing. I suppose that could happen. I suppose
12 you could do that. I'm not saying that's not possible.

13 But what Mr. Dodson told you in opening -- and I
14 appreciate y'all's patience, because I know we are getting
15 a little late in the day. But what Mr. Dodson explained to
16 you in opening was -- what did he say? All of us make
17 mistakes. This wouldn't be a mistake.

18 what they want you to believe would be something
19 entirely different. If that were true, that all officers
20 didn't have their lights on and all officers or Ken
21 Proffitt did not have the -- the -- the siren, then all of
22 these individuals would had to have immediately gotten all
23 of their stories straight including Deputy Boyles.

24 All of them would say, okay, we all messed up, we're
25 all reckless, let's get our stories straight. Then they

Closing arguments

1 would have to lie to the trooper, all of them. Right? And
2 then they'd have to lie to their supervisors. Then they'd
3 have to get together and destroy evidence such as video
4 tapes. They'd have to just completely destroy them.

5 And then they'd want you to believe that not only did
6 they make this careless mistake and they're lying and
7 they're covering up and they're tampering with evidence,
8 that every one of these gentlemen, including Kristin
9 Boyles, would come down to this courtroom and take that
10 witness stand and look each of you in the eye and tell you
11 something when they knew in their heart was not true.
12 Every one of them -- every one of them would have to
13 perjure themselves.

14 what kind of person would do that? What Kristin
15 Boyles told you when I heard that siren, do y'all remember
16 what she said? I was relieved. Well, I -- I bet she was.
17 That's not the point. The point is she heard a siren. She
18 heard a siren from way down here because she knew help was
19 on the way. What Mr. Kim is trying to tell you was that
20 there was no siren.

21 She would also have to -- why would she do that? Ken
22 Proffitt no longer works for the agency. He was terminated
23 for reasons having nothing to do with this case that's come
24 out in trial.

25 why would he come down here and say -- why would she

Closing arguments

1 say that for him? Nothing adds up. If you believe their
2 story, all of those things would have to have happened.

3 But it really is quite offensive to be honest with you
4 because we live today in the police culture that we live
5 in, that you can come down here to the courtroom and really
6 as a plaintiff or whoever say whatever you want about
7 anybody in uniform.

8 To be honest with you, it's a little offensive for
9 them to come down and just insinuate because they're cops,
10 they're dirty cops and they're burying evidence and they're
11 destroying it.

12 There is a legitimate explanation about those video
13 tapes. Certainly, I wish I had them. They testified they
14 wish they had them. The sheriff said that at the time
15 these were V.H.S. tapes, which is the generation after, I
16 guess, betamax, you know, those kind of things. I'm
17 showing my age. But they're digital now. We wish we had
18 it. But for them to just suggest those things, that's what
19 they want you to believe in this particular case.

20 One of the things the judge is going to explain to you
21 in saying that you can -- when you're considering
22 everything is to use your common sense. You use your
23 common sense every day. You take it with you wherever you
24 go. You use it. You don't hang it like a hat coming into
25 a room. You use it where -- you use it with your family,

Closing arguments

1 with your kids at work. You're going to use it back in the
2 jury deliberation. You're very important as jurors, as
3 members of our community, to try to understand what
4 happened.

5 You use your common sense. Does your common sense
6 agree when Mr. Kim says that as he came through the
7 intersection, okay, that there was one deputy, first
8 deputy, zoomed through like a bullet going 80 miles an hour
9 and he was in the middle of the intersection and almost
10 crashed into him but didn't? I don't know where that comes
11 from because Deputy Boyles didn't know. And he said in one
12 second after that, came crashing. But the second deputy.
13 So two were two deputies coming from this way, one tailing
14 the other.

15 What does your common sense tell you? Well, common
16 sense would tell you that if one deputy almost took your
17 head off without blue lights, without siren, what would --
18 what would any of us do? We would brake -- we would brake.
19 There'd be a skid. There'd be a swirly.

20 It'd be such a ridiculous thing. It'd be an awful
21 thing. It would be a criminal thing by our officers to do.
22 We would brake. That's what our common sense would tell
23 you.

24 Common sense would also tell you if you're going 30 or
25 35 miles an hour and after the first car cleared, if you

Closing arguments

1 believe this story, he would have already proceeded past
2 the intersection.

3 It doesn't add up, but isn't it reasonable in light of
4 all of the evidence in the case that he was not driving
5 with due care? You know, green light means go, but there
6 are exceptions. There are exceptions to that.

7 Any of us pulling up to that intersection would have
8 seen Deputy Weaver's lights, and we would have slowed down
9 and stopped. Any one of us would have heard the sirens and
10 we would have slowed down. Any one of us may figure that
11 if you hear or see one emergency vehicle go by, sometimes
12 there's more than one. Sometimes there's are two or three,
13 particularly when you hear a siren coming through.

14 Also, it doesn't completely add up, is that the impact
15 was over here on the crosswalk. Might I suggest -- and
16 there's no dispute to that evidence -- might I suggest he
17 -- Mr. Kim came up, saw the green light. Green means go,
18 right? Got around these cars to try to get around
19 illegally passing on the right and running into a police
20 car? How on earth could the impact happen over there
21 unless he was going over there to try to get around these
22 cars?

23 The evidence in this case. There's no medical
24 testimony here in court; there's no expert opinions.
25 There's only his version and some bills.

Closing arguments

1 One last point about the video cameras I'd like to say
2 that the only evidence about these cameras are really two
3 things, number one that we don't have them here today.

4 Deputy Weaver to be very clear had been -- had the
5 video, but it wouldn't have shown the collision because he
6 was going in this direction. One video. But it would have
7 heard a siren in the background.

8 I understand and I agree that'd be helpful to the
9 case. We don't have that. why? Because they fill up
10 these old V.H.S. tapes and they turn it in to internal
11 affairs or the I.T. guy and they recycle them.

12 Number two, the other video. Kim Proffitt came
13 through. He went back and saw that it was snow. He also
14 said he would have loved to have had that video. We might
15 not be here, ladies and gentlemen, if we had the video.

16 His Honor will charge you on spoliation. That does
17 not mean certain things, and it means certain things. What
18 it doesn't mean is that there's -- the Court is telling you
19 that evidence was tampered with or destroyed or lost or
20 compromised. It doesn't mean that. It says I'm not able
21 to provide certain evidence that may at one time have
22 existed.

23 Deputy Taylor didn't even have a video because he was
24 running code two. I don't have that. The question before
25 you is is the response satisfactory. I hope it is because

Closing arguments

1 it's the only response I have, is to say that a year and a
2 half ago, almost two years ago, this antiquated system, we
3 don't have it.

4 We have it now. The sheriff says we've got digital
5 things. We're going to have body cameras one day. Things
6 like that. Back here we don't have it.

7 But the truth is this is not a criminal case. I'm not
8 here to say someone did something wrong criminally or not
9 or the standard of beyond a reasonable doubt. We do not
10 have the burden of proof. The burden of proof is on the
11 plaintiff to prove to you by a preponderance or greater
12 weight of the evidence that we didn't act with due care.

13 This is -- this is a diversion, folks. They're making
14 this about the video tape. We don't have the burden. They
15 have the burden of showing you hard, trustworthy, greater
16 weight of the evidence that we did something.

17 Let me give you a for-instance. Who -- who's another
18 witness that could have been out there? Well, behind the
19 plaintiff, do you remember he had an individual he knew? I
20 think his or her name was Sunny that was Korean. It's --

21 MR. DODSON: Objection.

22 THE COURT: That's not proper in light of my ruling.

23 MR. GARFIELD: Okay. They have the burden of showing
24 you by the greater weight of the evidence that he acted in
25 conformance with the law and that we did not. Anything

Closing arguments

1 outside the evidence is prohibited for you to take a look
2 at it.

3 we heard -- and I'm just addressing things that came
4 through. There could be other agencies or within our
5 agency that looked at this thing afterwards.

6 As His Honor has already explained, that does not
7 enter into the equation, whether the sheriff thought we did
8 something or not or the trooper thought we did something or
9 not, that is not before y'all at all whether it helps us or
10 it hurts us.

11 You are the fact-finders in this case. All of this is
12 fresh evidence before you here in this courtroom. And I
13 believe that when you look at this with a fair and open
14 mind you will see that our deputies did not act
15 inappropriately, that Mr. Kim, with all due respect, did
16 not drive with -- with due care on this particular day.

17 Beyond this we're asserting a counterclaim, that
18 Richland County is asserting a counterclaim based on the
19 fact that this patrol car was removed from the fleet of
20 vehicles.

21 we have a statement to this effect. The work order
22 total was \$5,206.28 to fix the county vehicle. It was
23 taken out of commission for 23 days. I'm just telling it
24 like -- like it is. You heard testimony from Mr. Peters
25 that say this had to be removed from the fleet. What's 23

Closing arguments

1 days worth?

2 Well, Mr. Kim would ask you to pay for his rental car.
3 I don't know. What's 23 days without a police car? They
4 could say they've got plenty of police cars, don't worry
5 about it. Well, I don't know. You're the fact-finders.

6 That car was important to someone. That car was going
7 to help someone at some point because it was going to
8 respond to the scene when somebody's called out. There's
9 cars coming to all of us. I don't know. But that's for
10 you to decide.

11 I really do appreciate your attention to this case.
12 Thank you. It's very important to all of us including our
13 deputies. Thank you.

14 THE COURT: Mr. Dodson.

15 MR. DODSON: Y'all have been listening to lawyers
16 banter back and forth for too long, so I'm going to make
17 two brief points.

18 The first concerns the burden of proof, okay, and what
19 I have to show to prove my case. And it's this. You take
20 a traditional scales of justice, all I had to do is barely
21 tip the scales in my favor. That's a preponderance of the
22 evidence. You can listen to Judge Early on that.

23 The second thing is the video tape. Now, I found it
24 rather amazing that Mr. Garfield got up and made the
25 statement that as the plaintiff you can come into court and

Closing arguments

1 say whatever you want.

2 Ladies and gentlemen, it ain't the plaintiff coming
3 into court and saying whatever they want. It's the
4 defendants coming into court and saying whatever they want,
5 because if we had a video tape that would resolve all
6 doubts as to what happened.

7 THE COURT: Hold on a second. Mr. Garfield, we didn't
8 interrupt you.

9 MR. GARFIELD: I didn't mean to, sir.

10 THE COURT: I understand.

11 MR. GARFIELD: I apologize.

12 THE COURT: You know my rules and certainly knew all
13 of them.

14 Go ahead.

15 MR. GARFIELD: I'm sorry, Your Honor.

16 MR. DODSON: And the judge will instruct you on the
17 law. You have the power to infer that if that video-tape
18 evidence had been produced, it wouldn't have been
19 disfavorable to them. That's the law. That's what Judge
20 Early will tell you. Thank you.

21 THE COURT: Mr. Dougall.

22 MR. DOUGALL: Thank you, Your Honor.

23 Good afternoon. I'm sorry. I was going to say good
24 morning. We've blown through the morning, and I apologize
25 for that.

closing arguments

1 As Judge Early is going to tell you -- and he sort of
2 hinted at it before -- I've got a very small piece of this
3 case. The only piece of this case that I've got is their
4 claim that Officer Proffitt was using due care and
5 therefore Mr. Kim should pay that \$5,206.28 to their
6 vehicle.

7 That's the only evidence that you have in front of you
8 of any damage to them. And it's the Defendant's Exhibit
9 No. 7. It's got \$5,206.28 written on it and circled.
10 You'll have that back in the room with you.

11 There's been no evidence from this stand that the
12 county suffered any loss of use of that vehicle. Mr.
13 Peterson was put up here to talk about the damages to that
14 vehicle. He said, no, we've got spares, it didn't cause
15 Richland County to miss a single call, it didn't cause any
16 trouble, all we had to do was fix it. And there was a cost
17 for that if they're entitled to it.

18 So I was listening to the evidence and I'm trying to
19 think what the heck was going on at this intersection.

20 We've got Officer Boyles who testifies that she did,
21 in fact, put out a 10-48, a call for assistance. And we
22 had three officers who responded to it. I've got no
23 problem with that. I've got a son who is a police officer
24 in the next city over. If he calls for assistance I want
25 every cop who's available responding to him too. Judge

Closing arguments

1 Early is going to tell you they've got to do it safely, and
2 they were doing it safely at the time.

3 Then Officer Boyles says I've got it under control,
4 it's not an emergency, but I'd still like a little backup.
5 So Weaver -- I believe his testimony. He's coming down
6 Alpine Road. He turns off his siren. He goes into code
7 two. That was the proper response to the signal 18.

8 He told you he's a training officer. He's one of
9 four. He knows what the policies and procedures are. He
10 went to code two, which means slow down, respond, but
11 respond in a responsible manner.

12 You've got Officer Taylor behind him who never ran
13 code three the whole time. He told you he was at code two
14 the whole time.

15 So then we have to look at Officer Proffitt. And they
16 put him up there and asked him about being a Marine. Got
17 no problem with that either. But I'll tell you what
18 Officer Proffitt was doing. In the early 70's I got
19 invited by the president to joint the Army.

20 MR. GARFIELD: Objection, Your Honor. Just a personal
21 statement.

22 MR. DOUGALL: I'll tie it in, Your Honor.

23 THE COURT: Tie it in, please.

24 MR. DOUGALL: That's what they train Marines. You
25 respond to save your buddy. That's what he testified to on

Closing arguments

1 the stand. He would do whatever he needed to do to back up
2 his buddy.

3 MR. GARFIELD: Same objection, Your Honor.

4 THE COURT: He was doing whatever he needed to do to
5 save his buddy.

6 Overruled.

7 MR. DOUGALL: That's what was going through his mind
8 at the time of this call. But the problem with that is
9 what happened to Officer Proffitt.

10 He says, well, as much as I know her voice, as much as
11 I wanted to respond, I'm the only person out here who
12 didn't hear her signal 18, because he got so focused on
13 what he was doing. And that's what they brought up another
14 training officer to tell you -- Taylor. Sometimes that
15 happens. You get so focused on what's going on you get
16 tunnel vision. That was his exact words. Tunnel vision.
17 That's what happened with Officer Proffitt. He got tunnel
18 vision. He didn't follow the law; he didn't go from code
19 three to code two because he couldn't hear anything.

20 Well, I mean, I don't really care about the video
21 tapes. We don't have the video tape to show what was going
22 on because he had checked his car and it's working and now
23 it's not. There's a whole lot of inconsistencies with
24 Officer Proffitt's testimony.

25 Now, the judge is also going to tell you that just

Closing arguments

1 like Mr. Kim who I don't represent on the plaintiff's case,
2 has a burden of proving all of his damages and that they
3 were caused by the county.

4 The county has the same burden when they come and ask
5 me to pay for the damage to their car. They've got to
6 prove to you by a preponderance of the evidence that
7 everything Officer Proffitt was doing at the time was
8 correct. And we know it's not because of the testimony of
9 the other officers and the fact that he said, no, I had
10 auditory exclusion.

11 Well, that's an excuse that he's trying to use for the
12 fact that he didn't go to code two and he didn't proceed
13 safely under all of the circumstances, because what that
14 due-regard statute says is you can do it but at all times
15 you have to have full regard for the safety of every person
16 out there in that intersection.

17 So when Mr. Kim comes through on a green light, it
18 doesn't matter where the impact occurred. That's a
19 herring -- a red herring that Mr. Garfield is trying to
20 throw out there.

21 The fact is Officer Proffitt should never have been in
22 that intersection at that time. And when Mr. Kim seen a
23 green light, comes through, there's a car in front of him
24 and he hits it. He did hit it with the front of his car.
25 That car shouldn't have been there when he had a green

Closing arguments

1 light.

2 They make some testimony about what cars were here.
3 well, again -- and I hate -- I'm not impugning police
4 officers. Believe me. I love my son. They do great jobs
5 for us. But if we had the video for weaver's vehicle it
6 would have shown where all cars were in that intersection.
7 we don't have that for you today. So they haven't met
8 their burden of proof.

9 There's some conflicting evidence about what was going
10 on in that intersection, but they haven't met the burden of
11 proof, and therefore from my side of the case they don't
12 get their \$5,200. That's all I'm here to argue about.
13 They don't get that \$5,200.

14 It's plain and simple. And I think when you look at
15 the evidence, you try to figure out what was going on with
16 Officer Proffitt you'll go back there and you'll give me a
17 verdict that I'm not liable for that \$5,200 to Officer
18 Proffitt's vehicle.

19 I, like everybody else here, understand that you've
20 given up two days of your lives. I've had jury duty too.
21 Believe it or not, they make lawyers come to jury duty. I
22 had to sit here for a whole week and never got called on a
23 case. would have loved to actually.

24 what you do is important. The judge is going to tell
25 you that you're the finder of fact. And when you find

Jury charge

1 those facts you're going to render a verdict against the
2 county on its counterclaim and everybody is going to walk
3 out of here saying you did your job.

4 Nobody's going to say you did anything wrong because
5 you get to make those decisions, and we appreciate that.
6 We appreciate your time. I appreciate you listening to my
7 argument, and I'll appreciate your verdict when you render
8 it. Thank you.

9 THE COURT: Madam forelady, ladies and gentlemen, my
10 charge is about 20 minutes -- 15 to 20. Everybody okay?
11 Do you need a bathroom break before we start?

12 (No response.)

13 THE COURT: What I normally do is when I go across the
14 state trying cases, and civil or criminal cases, but the
15 first part of the charge deals with all cases, and then
16 we'll hone in on what this is, which is a negligence case.

17 So the general charges are this. Let me remind you
18 that during the trial of the case, obviously, you and I
19 have two separate and distinct jobs to perform.

20 My position makes me the judge of the law. So I
21 instruct you and tell you what the law is, and you've taken
22 an oath to accept it as I give it to you.

23 I also rule on the admissibility of evidence, and all
24 this evidence has been admitted into the trial of the case.
25 And, obviously, some of it says one thing, and some says

Jury charge

1 another. So it's up to you as the finders of fact to
2 determine what the true facts are.

3 By being the judges of the facts and me being the
4 judge of the law I cannot have an opinion about the facts.
5 So if at any time during the trial of the case I may have
6 rolled my eyes or smiled or frowned or whatever and you
7 think that indicated that I had some opinion about the
8 facts, please set that aside.

9 I try cases all over the state. I hear testimony week
10 in and week out. I can't have any opinion about these
11 facts. So don't think of anything I've done up here that I
12 have an opinion. That is your job, and your job only, to
13 decide what the true facts are in the case. So don't think
14 I have any opinion about those. The law does not allow me
15 to have an opinion.

16 We're in a civil case. If we were trying a murder
17 case or a criminal case the burden of proof would be on the
18 State of South Carolina to prove that defendant guilty
19 beyond a reasonable doubt.

20 That defendant would come into the courtroom with the
21 presumption of innocence. So as we use this as an
22 illustration as the scales of justice, in a criminal case
23 the defendant has the scales of justice weigh in his favor
24 because of the presumption of innocence. And the State has
25 to prove his guilt to a jury beyond a reasonable doubt.

Jury charge

1 That's not the case in a civil case. In a civil case
2 the burden of proof is by the preponderance of the
3 evidence. The plaintiff has to prove his case by the
4 preponderance of the evidence, or the defendant in this
5 case has to prove his counterclaim by the preponderance of
6 the evidence.

7 The preponderance of the evidence simply means the
8 greater weight of the evidence. It is evidence which as a
9 whole shows that the fact sought to be proved is more
10 likely true than not.

11 And as we sometimes illustrate the scales of justice
12 on a criminal case, the scales of justice in a civil case
13 both parties come in an equal footing. For the plaintiff
14 to prevail he has to prove his case by simply tipping the
15 scales ever so slightly in his favor, or counterclaim
16 likewise.

17 If after all of the evidence the scales remain the
18 same, then they have failed to prove their case by the
19 preponderance or greater weight of the evidence. Or on the
20 main case if it tips in favor of the defendant, then,
21 obviously, they failed to prove it, or on the counterclaim
22 if it tips in favor of the plaintiff they have failed to
23 prove it. So it's by the preponderance or greater weight
24 of the evidence. Both parties have the burden of proving
25 the main claim and the counterclaim.

Jury charge

1 Now, in order to determine whether or not the parties
2 have proven their case, obviously, it is up to you to
3 determine what the evidence is and determine which evidence
4 convinces you of its truth.

5 You must determine the credibility of the witnesses
6 who have testified in this case. Credibility simply means
7 believability.

8 Now, as I told you earlier when we drew you yesterday,
9 don't leave your common sense at home. Bring it into this
10 courtroom. You deal with husbands, boyfriends,
11 girlfriends, children, moms, dads, family, employees,
12 employers, friends. You know how to judge when someone's
13 telling the truth. Use that same experience that you've
14 gained throughout life and apply it to determine the
15 credibility or the believability of the witnesses who have
16 testified in this case.

17 You have the absolute right to believe one witness
18 over several, several over one. You can disbelieve
19 everything a witness says; you can believe everything a
20 witness says. You can believe a part of it and disbelieve
21 a part of it. So use that as a guidance in deciding what
22 the true facts are in the case.

23 You also have the right to determine whether a witness
24 has an interest in the result of the trial, whether the
25 witness is prejudiced towards either the plaintiff or the

Jury charge

1 defendant, the opportunity for the witness to have seen the
2 matters and things about which the witnesses may testify.
3 And you also have the right to look and see how the witness
4 acts on the witness stand.

5 So just use your ordinary common sense in determining
6 what the true facts are, and, obviously, when you determine
7 what the true facts are, you take those facts and apply it
8 to the law as I give to you, and you will be in a position
9 to render a true and just verdict.

10 Before we go to the law dealing with negligence,
11 there's another principle of law that's been mentioned a
12 number of times in the courtroom, and this law in South
13 Carolina says this: When evidence is lost or destroyed by
14 a party you may infer that the evidence which was lost or
15 destroyed by that party would have been adverse to that
16 party. That's simply an inference. You may infer it.

17 Now, in this case we're dealing -- obviously, I told
18 you -- with a counterclaim. The plaintiff has brought a
19 case against the county, the sheriff's department.

20 The county, the owner of the vehicle, has brought a
21 case back against him on the counterclaim seeking damages
22 for their patrol car.

23 Both parties have to prove their cases by the
24 preponderance or greater weight of the evidence as I was
25 telling you.

Jury charge

1 Now, this is a negligence case. In the case --
2 plaintiff claims that the defendant was negligent and
3 should compensate the plaintiff for the injuries that he
4 suffered and the property damage he suffered as a result of
5 the defendants' negligence.

6 Likewise, the defendant, County of Richland, claims
7 that the plaintiff was negligent and the plaintiff should
8 compensate the county for the property damage they
9 sustained to their vehicle.

10 In order for the plaintiff to prove the defendant was
11 negligent he must prove a number of things, and likewise in
12 order for the defendant to prove the plaintiff negligent he
13 must prove a number of things.

14 First, they must prove by the greater weight or
15 preponderance of the evidence that they owed each other a
16 duty of care.

17 Well, that's a matter of law. When you drive a
18 vehicle in our state, every driver owes to the other driver
19 a duty of care. So that's a given. That's a matter of
20 law. So that duty exists.

21 The second thing is to -- they have to prove, they
22 have to prove to you by the preponderance or greater weight
23 of the evidence that in driving the police vehicle the
24 driver or the agent of the county breached that duty of
25 care by her negligent act or omission, or, likewise, the

Jury charge

1 county has to prove plaintiff, Mr. Kim, he breached his
2 duty of care.

3 In other words, the duty of care is established here,
4 how an ordinary person would operate a vehicle under
5 similar or like circumstances. And by breaching that duty
6 of care you have to show by the preponderance or greater
7 weight of the evidence that they fell below that standard,
8 they operated their vehicle in a manner which the ordinary
9 person would not have done under like circumstances.
10 That's what's called the breach of the duty.

11 The third thing they must prove by the preponderance
12 or greater weight of the evidence, they sustained damages.
13 Richland County says their patrol car had damage. The
14 plaintiff says his car was damaged and he sustained
15 personal injuries.

16 And then the fourth thing they have to prove is that
17 the damages that either one of them sustained was
18 proximately caused by the negligent act of the other party.
19 Does that make sense?

20 Now, in this particular case dealing with
21 automobiles -- let's talk about that a little bit. There
22 are a number of obligations that drivers must comply with.

23 First of all, in South Carolina a driver has a duty of
24 care as I just talked about. The operator of a motor
25 vehicle is required to use the same care that would be used

Jury charge

1 by a person of ordinary reason and prudence if that person
2 were driving the same vehicle at the same time and place
3 under the same circumstances, what would the ordinary
4 person using prudence and care -- how would he have driven
5 into that intersection, either the plaintiff or the deputy.
6 They owe each other a duty of care.

7 A driver of an automobile also has a duty to keep a
8 proper lookout for other vehicles on the road. This duty
9 requires the driver to watch attentively so that the driver
10 is able to see a person or object on the highway.

11 And, also, the driver of an automobile has a duty to
12 keep the automobile under proper control so that the driver
13 is able to slow down, stop or turn the automobile to avoid
14 colliding with other vehicles on the road.

15 Those are sort of common law standards of care,
16 duties, that an automobile driver owes to the public, the
17 general public.

18 There are also in South Carolina certain what we call
19 statutory laws. And in a statute those are laws that are
20 set out by our legislature, and they're codified in our law
21 books. And the statute is the law of the state.

22 There are certain statutes that are involved in this,
23 and the county is claiming that plaintiff violated a
24 statute. Plaintiff is claiming the defendant violated a
25 statute.

Jury charge

1 So if it is proven to you by the preponderance or
2 greater weight of the evidence that either of the parties
3 failed to follow the statutory rules of this state, that is
4 known as negligence per se or negligence as a matter of
5 law.

6 If you find that either the plaintiff or defendant
7 failed to follow these statutory rules you must then decide
8 whether or not their failure proximately caused either the
9 plaintiff's injuries and/or property damage and/or the
10 county's property damage.

11 There are a couple of statutes that may be applicable
12 in this case. One of them deals with speed. That is set
13 out in Section 56-5-1520. The general statute says this:
14 A person shall not drive a vehicle on a highway at a speed
15 greater than is reasonable and prudent under the conditions
16 and having regard to the actual and potential hazards then
17 existing.

18 Speed must be so controlled to avoid colliding with
19 another vehicle on or entering the highway in compliance
20 with the legal requirements and the duty of a person to use
21 due care. It's really the statutory saying the same thing,
22 using due care when driving the speed.

23 And under Subsection (f) it says the driver of a
24 vehicle shall drive consistent with what I just read to you
25 at an appropriate reduced speed when approaching and

Jury charge

1 crossing an intersection or when special hazards exist with
2 respect to pedestrians or other traffic by reasons of
3 weather or highway conditions. In other words, you have to
4 drive your vehicle at a speed that you should be able to
5 avoid colliding with any other person on the highway.

6 There are other statutes that are -- I don't know why
7 they have them in a statute, because we all know that's the
8 law, but, anyway, it's statutes that deal with traffic
9 control devices. I'm sure you're going to be shocked when
10 you hear this, but it is what it is.

11 56-5-970 says whenever traffic is controlled by a
12 traffic control signal exhibiting colored lights -- i.e.,
13 red, yellow, green -- vehicular traffic facing a circular
14 green signal may proceed straight through or turn right or
15 left unless such a turn in such a place prohibits either
16 such a turn.

17 And guess what? Vehicular traffic facing a steady red
18 signal alone shall stop at a clearly marked stop line and
19 before entering the crosswalk or the intersection and
20 remain standing until an indication to proceed is shown.
21 In other words, you can go on a green light and can you
22 stop on a red light. That's what the law is, and it's
23 codified.

24 Now, there's another law dealing with maybe sort of an
25 exception to the red light-green light rule in the verdict

Jury charge

1 mentioned by the lawyers.

2 There's a law in South Carolina that the general
3 assembly enacted, and that's called 56-5-790 [sic], which
4 is what I just read to you. The other law I'm referring to
5 is 56-5-760.

6 Now, this deals with a driver of an emergency vehicle.
7 And a driver of an emergency vehicle when responding to an
8 emergency call or in pursuit, actual pursuit, of a person
9 violating the law, that driver if he is responding to an
10 emergency call may proceed past a red light but only after
11 slowing down as may be -- as may be necessary for safe
12 operation. And the exceptions to this emergency vehicle
13 while going to an emergency call, they only apply when that
14 vehicle is making use of an audible signal and visual
15 signals.

16 And the provisions of this section which allow them to
17 proceed through the red light does not relieve that driver
18 of the emergency, of the authorized emergency, vehicle from
19 the duty to drive with due regard for the safety of all
20 persons. So all three of those things have to apply.

21 The first thing you have to determine is whether or
22 not they've proved that they were responding to an
23 emergency call. And while responding to the emergency call
24 they have to have their signal lights on, flashing lights
25 and siren. And with all of that going on, they still have

Jury charge

1 to maintain the duty to drive with due regard for the
2 safety of all persons. So that's the law dealing with
3 that.

4 Now, if you get by that, then you would look to the
5 issue of damages. Give me one second. Let me get to that.

6 (Pause.)

7 THE COURT: If you decide that the plaintiff is
8 entitled to a verdict, in other words, if you decide that
9 the plaintiff has proven to you by the preponderance or
10 greater weight of the evidence that the defendant was
11 negligent and his negligence proximately caused his
12 injuries, then you would go to damages, or vice versa.

13 If you find that the defendant has proven by the
14 preponderance or greater weight of the evidence that the
15 plaintiff's negligence caused them damages, then you would
16 decide the amount of actual damages.

17 Actual damages under our law, they are designed to
18 compensate the party for their injuries or loss and to
19 attempt to put the parties as far as possible in the same
20 position that they were in before the wreck occurred.

21 In other words, actual damages would be the actual
22 losses and expenses which the plaintiff suffered and/or the
23 defendant suffered on the counterclaim.

24 As part of that damage, pain and suffering is an
25 element of damage. That simply compensates the plaintiff

Jury charge

1 for physical discomfort and the emotional response to the
2 sensation of pain caused by the injury itself.

3 There's no definite standard by which to compensate a
4 plaintiff for pain and suffering. You have the authority
5 to determine the amount, if any, to be allowed for pain and
6 suffering using calm and reasonable judgment to ensure that
7 the damages are just and reasonable in light of the
8 testimony and the evidence presented in the case.

9 We have both the plaintiff and defendant claiming
10 damages to their motor vehicle. The amount of damages to a
11 motor vehicle is the difference between the value of the
12 vehicle immediately before it was struck and the value of
13 the vehicle immediately after it was struck. If repairing
14 the vehicle would put it in as good a condition as before
15 the accident, then the measure of damages would be the cost
16 of repair.

17 As to medical expenses, if you find that plaintiff has
18 proven his case to you by the preponderance or greater
19 weight of the evidence, then he's also -- is entitled to
20 what we call all expenses that were necessary and
21 reasonable in the case. That includes, like I just said,
22 pain and suffering, and it also includes all necessary
23 expenses incurred for necessary medical treatment.

24 Now, how do we get to all of that? I hope I'm going
25 to be able to help you. Our Supreme Court has given us a

Jury charge

1 verdict form to use in these types of cases, because
2 basically to get where we're going we're going to be
3 comparing if you find that they were negligent -- comparing
4 their negligence if you find both of them negligent. You
5 may find neither one of them negligent. I don't know
6 however you do it.

7 But let me go over this with you. Just sort of read
8 along with me, and I'll show you how we're going to get
9 there. In order to sort of give you a guideline as to how
10 to analyze the evidence after you determine what evidence
11 convinces you of its truth you have to answer these
12 questions.

13 And, obviously, the first one is do you find that the
14 county and the sheriff's department were negligent, in
15 other words, didn't exercise due care and that their
16 negligence proximately caused injury to the plaintiff.
17 That's a simple yes or no.

18 Okay. And then you go to question two, and that's
19 when you define or decide whether or not Mr. Kim was
20 negligent and his negligence proximately caused the
21 property damage to the County of Richland. That's a simple
22 yes or no.

23 And then you follow the instructions. If you answer
24 no to both questions one and two, then that's it.

25 If you answer yes to one and no to two, go to three

Jury charge

1 and keep on following the directions. If you answered no
2 to one and yes to two, go to four. If you answered yes to
3 one and two, go to five. It's not as difficult as it
4 sounds. And then follow those directions. Okay?

5 When you go to five if you find both of them at fault,
6 then you have to compare their negligence using one hundred
7 percent. Assign a percentage to the plaintiff and a
8 percentage to the defendant totaling one hundred percent.

9 And then look at questions five and B. If you find
10 that the plaintiff's negligence was fifty percent or less
11 you assign an amount of damages likewise to the county.

12 If you have any questions, you write it out on a
13 little piece of paper and give it to the bailiff, and he'll
14 hand it to me and I'll try to answer it.

15 Now, y'all have been great. You've paid close
16 attention, but we're not here to reward any friends and
17 punish any enemies. We're here to perform our civic duty
18 to carefully analyze the evidence, determine what is truth,
19 apply it to the law and then go through the verdict form.
20 And your verdict must be unanimous. All 12 of you must
21 agree.

22 As I said, sometimes during the deliberation process
23 you may have a question. If you have a question the
24 protocol is that you just write it out on a piece of paper.
25 Give it to the bailiff. He'll give it to me. Sometimes I

Jury charge

1 can answer it; sometimes I can't. Just depends on what the
2 question is. But I'll do my best to try to answer
3 everything.

4 I'm going to let you go back to your jury rooms.
5 Don't start deliberating quite yet. I have to ask the
6 lawyers if I've left anything out, gather the evidence.
7 And the bailiff will bring that back.

8 Separate my alternates out.

9 The lunch should be here most any time if not already
10 here.

11 Is it here?

12 THE CLERK: I'm not certain. It should be.

13 THE COURT: We're not certain if it's here or not, but
14 it will be here. We're certain about that.

15 When your lunch comes, you're in charge. You can
16 deliberate while you eat if y'all want to take a few
17 minutes. But you've got to stay together. I can't let you
18 slip out to eat, but however you want to do it, ma'am.
19 Y'all are in charge of yourselves there. So if you want to
20 eat and talk, that's perfectly fine.

21 When you've reached a final verdict fill out the
22 verdict form, sign it and knock on the door and I'll
23 receive you back in my courtroom.

24 Thank you very much.

25 Mr. Bailiff, you can let them go to the jury room.

Jury charge

1 Do you have a question? When you get back if you've
2 got a question, ma'am, if you will, write it out and send
3 it to me.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: All right. Any suggestions or additions,
7 deletions, objections, whatever, by the plaintiff to the
8 charge?

9 MR. DODSON: Yes, Your Honor, two. One would be a
10 charge on the loss of use. I didn't hear that. And then
11 the other would be the tow charges that would be incurred
12 as a proper measure of property damages.

13 THE COURT: The what?

14 MR. DODSON: Tow charges.

15 THE COURT: Isn't that charging on the facts?

16 MR. DODSON: It's a proper measure of damages.

17 THE COURT: Loss of use and tow charges?

18 MR. DODSON: Yes, Your Honor.

19 THE COURT: Anything else, gentlemen?

20 MR. GARFIELD: Just two items, Your Honor. One is,
21 just for the record, respectfully taking exception to Your
22 Honor's decision not to charge on 56-5-2360, which is the
23 operation of vehicles on approach of authorized emergency
24 vehicles.

25 THE COURT: I think you were protected on that charge.

Jury charge

1 MR. GARFIELD: Yes, sir.

2 THE COURT: And also you had something else you wanted
3 me to charge about the lane changing.

4 MR. GARFIELD: Yes, sir.

5 THE COURT: And you're protected on that.

6 MR. GARFIELD: And thank you very much.

7 THE COURT: Anything else?

8 MR. GARFIELD: Yes, sir, one more. This is more of an
9 addendum.

10 If it was -- I apologize. I'm not sure I've tried a
11 case with you, particularly recently, and I'm not sure I've
12 had the advantage of seeing any sort of proposed charges by
13 the plaintiff. So I have not received anything. But there
14 is a Supreme Court case that actually provides a model
15 spoliation charge. It is Stokes vs. Spartanburg Regional
16 Medical Center. The cite is 629 S.E. 2d 675.

17 THE COURT: Hold on a second, please, sir.

18 MR. GARFIELD: Yes, sir.

19 THE COURT: What's the name of the case?

20 MR. GARFIELD: Stokes vs. Spartanburg Regional Medical
21 Center.

22 THE COURT: Well, guess what? I read a charge
23 straight out of our charge book that the Supreme Court
24 gives us, and it cites Stokes vs. Spartanburg Regional
25 Medical Center.

Jury charge.

1 MR. GARFIELD: The model charge --

2 THE COURT: And I read the model charge.

3 MR. GARFIELD: Which -- and what I had was it charges
4 when a party fails to preserve material evidence for trial,
5 it is for you to determine whether the party has offered a
6 satisfactory explanation for that failure.

7 If you find the explanation is satisfactory you are
8 permitted, but not required, to draw the inference that the
9 evidence would have been unfavorable to the party's claim.
10 And what that does is it expands. It's not inconsistent.
11 It expands upon your charge that explains that if we have a
12 reasonable explanation, which there is evidence that the
13 sheriff provided --

14 THE COURT: Wonder why they haven't updated our
15 standard charge book.

16 MR. GARFIELD: And I apologize for not having a copy
17 of the case.

18 THE COURT: Any response by the plaintiff?

19 MR. DODSON: I think you've appropriately charged
20 already on --

21 THE COURT: This is a memorandum. Where is the case
22 law?

23 MR. GARFIELD: That's my brilliant cocounsel did that
24 late last night, so --

25 THE COURT: Gentlemen, this is the suggested jury

Jury charge

1 charges that the Supreme Court gives us. I'm going to
2 stand by that spoliation of evidence charge.

3 I will add proper elements of damage on the property
4 damage could include, maybe include, towing and loss of
5 use. Good for the goose is good for the gander on the loss
6 of use over here.

7 MR. GARFIELD: Just one moment, Your Honor.

8 (Pause.)

9 MR. GARFIELD: We agree with that, Your Honor, as far
10 as the goose and the gander.

11 THE COURT: Do you know what that means?

12 MR. GARFIELD: Well, I do, but I didn't want to say it
13 on the record.

14 THE COURT: Bring them back in real quick for me.

15 MR. DOUGALL: I have nothing to add, Judge.

16 MR. GARFIELD: Am I protected on the spoliation? I'm
17 sorry, Judge.

18 THE COURT: You are. It's an exception.

19 MR. GARFIELD: Thank you.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: On your consideration of property
23 damage -- that's the damage to the vehicle by -- of the
24 plaintiff's car and/or the defendant's car -- I think
25 that's a charge that you -- when it's repaired the repair

Jury charge

1 bill is -- is evidence of the damage lost.

2 You can also include in that if you find the facts
3 have been proven by the preponderance or greater weight of
4 the evidence towing bills, as well as any loss of use by
5 the plaintiff and/or the defendant for the vehicle. Those
6 are two other elements of damages that you can consider.

7 The spoliation of evidence -- spoliation of
8 evidence -- I said that when evidence is lost or destroyed
9 by a party you may infer that the evidence which was lost
10 or destroyed by that party would have been adverse to that
11 party.

12 We've had a recent case that adds this: I charge you
13 that when a party fails to preserve material evidence for
14 trial it is for you to determine whether the party has
15 offered a satisfactory explanation for that failure.

16 If you find the explanation unsatisfactory you are
17 permitted but not required to draw the inference that the
18 evidence would have been unfavorable to the party's claim.
19 That's just the same thing, but it's just a little extra
20 added to it.

21 Thank you, and we're going to send the evidence back,
22 and you'll start your deliberations here just as soon as I
23 get it back there.

24 Is your food back there?

25 THE FOREPERSON: Yes.

Jury charge

1 THE COURT: Okay. And the alternates get to eat your
2 food. You just have to eat separate and apart.

3 (Whereupon, the jury retired to deliberate at 1:12
4 p.m.)

5 THE COURT: Any objection to the additional charge by
6 the plaintiff?

7 MR. DODSON: No, sir.

8 THE COURT: By the defendant?

9 MR. GARFIELD: No, Your Honor.

10 THE COURT: I think that takes care of you on that
11 spoliation.

12 MR. GARFIELD: And I agree. That does take care of
13 us.

14 THE COURT: All right. Gentlemen, if you all will,
15 please come forward -- lady and gentlemen. Please come
16 forward and make sure all of the exhibits are in order.
17 You've already reviewed the verdict form which is right
18 here. She's got the verdict form with her.

19 THE BAILIFF: Your Honor, permission to deliver these
20 to the --

21 THE COURT: Hold on, gentlemen -- Mr. Dodson.
22 Everybody -- all sides, both sides, have reviewed all of
23 the exhibits and find them to be in order. Is that
24 correct, gentlemen?

25 MR. DODSON: That's correct, Your Honor. Yes, Your

Jury charge

1 Honor.

2 MR. DOUGALL: Yes, Your Honor.

3 MR. GARFIELD: Yes, Your Honor.

4 THE COURT: I'm going to have the bailiff present it
5 to the jury. They can start deliberating. It's 1:16 or
6 17.

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. Two questions from the jury.
9 Question one, what is the actual laws regarding due care
10 for civilian drivers and for emergency vehicles. Two, what
11 is the definition of preponderance of the evidence.

12 I discussed the -- those questions with the lawyers in
13 chambers. We pretty much agreed what the response would
14 be. It's just simply a recharge on what I've already
15 charged. What was that speed statute, gentlemen? 56-5-12
16 -- 1520.

17 MR. GARFIELD: 1520.

18 THE COURT: And the stop sign statute is 970 and the
19 emergency statute is 760.

20 MR. GARFIELD: That's correct, yes.

21 THE COURT: Those are the three statutes, and then
22 just the general common law on keeping and maintain proper
23 lookout, etc.

24 All right. Bring the jury in for me, please.

25 (Whereupon, the jury returned to the courtroom at 3:14

Jury charge

1 p.m.)

2 THE COURT: Thank you.

3 Madam forelady, I received a note from you. It says
4 you want to know the definition of preponderance of the
5 evidence. That was one of them.

6 All right. Let's do it this way. The charge that we
7 normally give on this is this: The burden of proof is by
8 the preponderance of the evidence.

9 A preponderance of the evidence simply means the
10 greater weight of the evidence. It is evidence which as a
11 whole shows that the fact sought to be proved is more
12 likely true than not.

13 And I gave you the scales-of-justice illustration.
14 They come in on equal footing. To prevail they have to by
15 the preponderance or greater weight of the evidence tip the
16 scales ever so slightly to meet that burden.

17 Sometimes lawyers and sometimes judges say it's like a
18 football game. In a criminal case the burden of proof is
19 beyond a reasonable doubt.

20 The state starts on the one yard line and has to score
21 a touchdown on the other end. In a civil case they both
22 start on the 50 yard line and if they can move them over
23 the 50 yard line they have met their burden. If they stay
24 on the 50 or go the other way they haven't met the burden.
25 So it's evidence which as a whole shows that the fact

Jury charge

1 sought to be proved is more likely true than not.

2 Okay. And then you wanted to know those common law
3 and statutory rules that the drivers have to comply with,
4 the duty of care.

5 All right. There are common law duties of care that
6 drivers that have to comply with or common law duties that
7 drivers have to comply with. And those common law duties
8 apply both to the operator, a civilian operator, or the
9 operator of someone operating an emergency vehicle.

10 The first one is that the operator of a motor vehicle
11 is required to use the same care that would be used by a
12 person of ordinary reason and prudence if that person were
13 driving the same vehicle at the same time and place under
14 the same circumstances. In other words, what an ordinary
15 person would do, would do under the same and like
16 circumstances.

17 A duty to keep a lookout, a proper lookout. The
18 driver of an automobile has a duty to keep a proper lookout
19 for other vehicles on the road.

20 This duty requires the driver to watch attentively so
21 that the driver is able to see a person or object on the
22 highway.

23 Duty to keep a vehicle under control. The driver of
24 an automobile also has a duty to keep the automobile under
25 proper control so that the driver is able to slow down,

Jury charge

1 stop or turn the automobile to avoid colliding with other
2 vehicles.

3 Now, that applies to the emergency drivers as well as
4 the general public. Those are common law duties that
5 drivers owe to other drivers.

6 There are some statutes likewise that set out the duty
7 owed, and the first one has to do with speed, applies to
8 both sets of drivers.

9 It is against the law. A person shall not drive a
10 vehicle on a highway at a speed greater than is reasonable
11 and prudent under the conditions and having regard to the
12 actual and potential hazards then existing.

13 Speed must be so controlled to avoid colliding with a
14 person or vehicle while entering the highway or on the
15 highway. The driver of a vehicle shall drive consistent
16 with the requirements that I just read at an appropriate
17 reduced speed when approaching and crossing an intersection
18 and when special hazards exist with respect to other
19 traffic or by reason of weather or highway conditions.

20 That's a statutory duty, one that we all know is the
21 statute dealing with controlled traffic lights. And that
22 says that whenever traffic is controlled by a traffic
23 control signal -- whenever traffic is controlled by traffic
24 control signals vehicular traffic facing a circular green
25 signal, green light, may proceed straight through or turn

Jury charge

1 right or left.

2 Vehicular traffic facing a steady circular red signal
3 alone shall stop at a clearly marked stop line and before
4 entering the intersection and shall remain standing until
5 the light changes, an indication to proceed is shown.

6 Then there is the emergency vehicle. I guess you
7 could call it an exception to the red light. And that says
8 the driver of an authorized emergency vehicle when
9 responding to an emergency, that driver may proceed past a
10 red or stopped signal or stop sign but only after slowing
11 down as may be necessary for safe operation.

12 This exception, in other words to slow down and go
13 through the red light, applies only -- only when the
14 vehicle is making use of an audible signal and visual
15 signals -- siren and flashing lights.

16 And the provisions of this section do not relieve the
17 driver of the authorized emergency vehicle from the duty to
18 drive with due regard for the safety of all persons.

19 Is that what you wanted to hear?

20 THE FOREWOMAN: Yes, sir.

21 THE COURT: Anything else?

22 THE FOREWOMAN: No, sir.

23 THE COURT: Okay. Let us know if you have any other
24 questions.

25 (Whereupon, the jury retired to deliberate.)

Jury charge

1 THE COURT: Any objections or requests to delete or
2 modify or change the charge and response to the jury's
3 questions by the plaintiff?

4 MR. DODSON: Nothing from the plaintiff, Your Honor.

5 THE COURT: By the defendant?

6 MR. GARFIELD: None from the defendants, Your Honor.

7 THE COURT: Thank you.

8 All right. We'll continue to stand at ease.

9 (Whereupon, a recess was taken.)

10 THE COURT: Is the plaintiff ready to receive the
11 verdict?

12 MR. DOUGALL: No, he's not, Your Honor. He's on his
13 way. He's across the street. He'll be here in less than
14 five minutes.

15 (Pause.)

16 MR. DOUGALL: We're ready, Your Honor.

17 THE COURT: Bring the jury in, please.

18 (Whereupon, the jury returned to the courtroom at 4:50
19 p.m. to report its verdict.)

20 THE BAILIFF: Your Honor, the jury is present.

21 THE COURT: Thank you.

22 What's my male juror's name?

23 THE JUROR: Josh.

24 THE COURT: Josh, the lawyers and the court personnel,
25 police officers, the plaintiff and everybody are going to

Verdict

1 give you a merit and award. Bless your heart.

2 THE JUROR: Thank you.

3 THE COURT: Y'all have been wonderful. It's been fun
4 to work with. I hope -- you know, it's a serious matter,
5 but I hope we've made a little levity with you and didn't
6 make you wait too long on us. And I appreciate all you've
7 done -- all of us. Thank you.

8 You have reached a verdict, ma'am?

9 THE FOREWOMAN: Yes, sir, we have.

10 THE COURT: Hand it to the bailiff, please.

11 You may publish it.

12 THE CLERK: Yes, Your Honor.

13 In the State of South Carolina, in the County of
14 Richland, in the Court of Common Pleas, Case No.
15 2014-CP-40-6297, Do Yeon Kim, plaintiff, vs. County of
16 Richland and Leon Lott in his official capacity as Sheriff
17 of Richland County, defendants.

18 The verdict is, Question No. 1, do you find the
19 defendants, County of Richland and Sheriff Leon Lott, were
20 negligent and that the defendants' negligence proximately
21 caused injury to the plaintiff, Do Yeon Kim. The answer is
22 yes.

23 Question two, do you find the plaintiff, Do Yeon Kim,
24 was negligent and that his negligence proximately caused
25 injury to the defendants, County of Richland and Sheriff

Verdict

1 Leon Lott. The answer is yes.

2 If you answered yes to both questions one and two, go
3 to question No. 5.

4 Taking the combined negligence that proximately caused
5 the party's injuries as one hundred percent, what
6 percentage of the negligence is attributed to the
7 plaintiff, Do Yeon Kim, and what percentage is attributable
8 to the defendants, County of Richland and Sheriff Leon
9 Lott? Plaintiff, fifty percent; defendant fifty percent,
10 total of one hundred percent.

11 No. 5-A. If the plaintiff, Do Yeon Kim's, negligence
12 was fifty percent or less determine the total amount of his
13 damages proved at trial. Do not reduce this number by its
14 percentage of negligence. The amount is \$1,500 -- one
15 thousand, five hundred dollars.

16 5-B. If the defendant's -- if defendants, County of
17 Richland and Sheriff Leon Lott's, negligence was fifty
18 percent or less determine the total amount of their damages
19 proved at trial. Do not reduce this number by the
20 percentage of negligence. The amount is zero dollars.

21 Signed, Carol Routh, on this 21st day of January 2016.

22 Madam forelady, is this your verdict and the verdict
23 of the entire jury?

24 THE FOREWOMAN: Yes, sir, it is.

25 THE CLERK: Thank you, ma'am.

Verdict

1 THE COURT: Anything before I dismiss the jury by the
2 plaintiff?

3 MR. DOUGALL: No, Your Honor.

4 THE COURT: By the defendants?

5 MR. GARFIELD: Nothing from us, Your Honor.

6 THE COURT: Madam forelady, ladies and gentlemen, that
7 concludes your service this week. The County of Richland
8 will be mailing you a huge check.

9 I want to thank you, seriously. Y'all have done a
10 great job. Still the best way in the world to resolve
11 disputes. Y'all did what I think ninety percent of the
12 people would have done. Sort of a 50-50 split on this
13 thing.

14 It was an interesting factual situation, and maybe
15 everybody should have been a little more on the lookout
16 when they went into the intersection. That's what I felt
17 like. Same thing y'all felt like. So thank you. If you
18 want to go back to your jury room -- anybody need a work
19 excuse?

20 THE CLERK: I have them, Your Honor.

21 THE COURT: He has them. Y'all can go back and meet
22 with him. He can tell you when you should expect your
23 large check. And I thank you so much. Enjoyed working
24 with you. Have a wonderful evening and weekend and stay
25 warm.

1 (Whereupon, the trial jury was excused at 4:55 p.m.)
2 THE COURT: Y'all want a few days to do your posttrial
3 motions? Ten days?

4 MR. DODSON: Yes, Your Honor.

5 MR. GARFIELD: Yes, Your Honor. Thank you.

6 THE COURT: All right. Only caveat on that is that I
7 don't think I'm scheduled to be back up here any time real
8 quick, so you may have to come to me if you want to argue
9 them or if you want a break or whatever. Just ten days,
10 and we'll all get together by way of a conference call or
11 something and work it out. I enjoyed working with each one
12 of you. Thank you.

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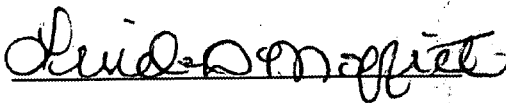
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 20th and 21st days of January 2016 as reported by Linda D. Moffitt and Bethanie Creppon and transcribed by Linda D. Moffitt.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 7, 2016



Linda D. Moffitt
Circuit Court Reporter

State of South Carolina
County of Richland

Court of Common Pleas

Do Yeun Kim,	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2014-CP-40-06297
	)	
County of Richland,	)	
Richland County Sheriff's	)	
Department and Leon Lott	)	
in his Official Capacity	)	
as Richland County	)	
Sheriff,	)	
<u>Defendants.</u>	)	

March 1, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Robert Dodson, Esquire
Attorney for the Plaintiff

Robert Garfield, Esquire
Todd Flippin, Esquire
Attorneys for the Defendants

Bethanie K. Creppon
Circuit Court Reporter

I N D E X

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1 (The following proceedings were held March 1,
2 2016.)

3 THE COURT: All right. The first thing I have
4 on the schedule this morning is post-trial motions
5 in Kim vs. County of Richland. Yes, sir.

6 MR. DODSON: Thank you, Your Honor. Robert
7 Dodson for the plaintiff. I guess since I represent
8 the plaintiff in chief, it would make sense for me
9 to address the --

10 THE COURT: It's your motion.

11 MR. DODSON: -- motion first. Well, I think
12 everybody has filed the same motion, essentially,
13 but I'll take the lead.

14 THE COURT: Thank you.

15 MR. DODSON: So we first have a motion for a
16 new trial on the additur based on the facts and law
17 that --

18 THE COURT: Well, what law?

19 MR. DODSON: Well, I cited it in my brief, but
20 Riley vs. Ford Motor Company, which was -- as you
21 well know, because it was your case. The trial --

22 THE COURT: It is my case. Which case did you
23 cite? Did you cite the Court of Appeals' decision
24 or the Supreme Court?

25 MR. DODSON: I cited the Supreme Court

1 decision --

2 THE COURT: That was wise.

3 MR. DODSON: -- Your Honor, which to quote from
4 that case: When the verdict is so grossly excessive
5 or inadequate that the amount awarded is so
6 shockingly disproportionate to the injuries as to
7 indicate the jury was moved or actuated by passion,
8 caprice, prejudice, or other considerations not
9 found in the evidence, it becomes the duty of the
10 trial judge in this court to set aside the verdict
11 absolutely.

12 THE COURT: And that's correct. That was a
13 wrongful death case involving Ford Motor Company
14 where the sheriff of Jasper County was ejected from
15 the vehicle. And the jury brought back in what I
16 thought was a grossly inadequate amount, and I
17 misjudged it up to, I think, close to a million
18 dollars. The Court of Appeals said I was wrong; the
19 Supreme Court unanimously agreed with me.

20 But this case what we had was a little old
21 fender-bender wreck case. The guy, I think, went to
22 the hospital -- doctor one time, had some property
23 damage. And the damage for the property damage
24 wasn't even as much as his bill was -- or his repair
25 bill was. But this was a contested liability. I

1 don't know how I can nisi this one up to being
2 grossly inadequate.

3 MR. DODSON: Because, Your Honor, the \$1,500
4 jury verdict does not even account for the
5 stipulated damages as to property damage. His
6 property damages, which were stipulated to at trial,
7 were \$9,460.25. That was uncontested. And
8 additionally he had --

9 THE COURT: Maybe they thought he had 1,500 in
10 pain and suffering and -- I don't know what they
11 thought, to be honest with you. I was -- I thought
12 if you were going to get a verdict, you'd at least
13 get the amount for the property damage, to be honest
14 with you. I don't know where they came up with
15 \$1,500. I mean, a long time ago, 40 years ago, I
16 quit trying to trying to decide what those 12 people
17 do.

18 MR. DODSON: And therein lies the problem,
19 because there is absolutely no rational basis
20 between the \$1,500 award and the evidence of damages
21 that was presented at trial. You know, if you look
22 at the property damage, there's no way you can
23 add --

24 THE COURT: That was not disputed.

25 MR. DODSON: That was not disputed.

1 THE COURT: It was stipulated.

2 MR. DODSON: It was stipulated.

3 THE COURT: You got a good argument.

4 MR. DODSON: And then as to the medical bills,
5 he had -- Plaintiff had an additional \$1,907.39 in
6 medical bills which included an EMS bill the day of
7 the wreck. He had a \$60 chiropractic bill that
8 afternoon of the wreck. The following day he went
9 to Providence Hospital and he had a bill there of
10 \$1,118.20. The physician's statement, of course
11 billed separately from the hospital charges, was
12 \$624, the radiology bill from the hospital was \$35,
13 and then he had \$19.14 of prescription medication.

14 THE COURT: Well, they could have very well
15 found that he did not suffer from any pain and --
16 did not sustain and pain and suffering, that medical
17 bills were necessary and reasonable, but that he
18 wasn't hurt. And I can sort of see that. I can't
19 see \$1,500 though when you got \$9,000 in property
20 damage. That sort of bothers me.

21 If I do anything, I'd probably nisi that for
22 the amount of the property damage. I don't know
23 that the verdict screams that it's inadequate for
24 his very minor injuries that were treated by a
25 chiropractor once or twice.

1 MR. DODSON: Well, they weren't just created by
2 a chiropractor. He went to the hospital the day
3 after the wreck. EMS showed up at the accident
4 scene and offered to take him to the hospital. His
5 testimony at trial -- and this part of his testimony
6 was really not contradicted in any shape, fashion,
7 or form. But when EMS showed up, he thought he was
8 going to be okay then. That afternoon he started
9 getting sore, he went to a chiropractor that he
10 knew, and then the following day he was worse and so
11 he went to the hospital. And so sort of based on
12 the same rationale as to the property damage, you
13 know, he certainly ought to be entitled to --

14 THE COURT: Just because he testified to it
15 doesn't -- I mean, the jury may not have found him
16 to be credible of that.

17 MR. DODSON: That he --

18 THE COURT: But the other ones are stipulated,
19 uncontested. You have to find that as a matter of
20 fact, so that was the proper -- what do you say,
21 sir?

22 MR. GARFIELD: Good morning. May it please the
23 Court. Certainly we agree that the verdict was
24 inconsistent. There's no evidence in the case
25 neither --

1 THE COURT: So I ought to nisi the property
2 damage up?

3 MR. GARFIELD: I'll get there, Your Honor.
4 Basically, there's no evidence that the jury was
5 tainted. There's nothing that Mr. Dodson addressed
6 that the jury in this case was improperly
7 influenced. And I'm not sure what the methodology
8 of the jury was either. I think we're all in
9 agreement here.

10 But I believe, with all due respect, that the
11 appropriate action for which to have taken at the
12 time would have been to cure this by sending the
13 jury back at that time rather than now ascertain or
14 try to ascertain or speculate what the best guess of
15 what they intended. It's --

16 THE COURT: Well, neither one of you asked me
17 to do that.

18 MR. GARFIELD: Well, I understand that. I mean
19 --

20 THE COURT: I'm certainly not going to do it on
21 my own.

22 MR. GARFIELD: Well, whether Your Honor decides
23 to -- or likes to do that sua sponte or not, our
24 position is, is for whatever reason, it didn't
25 happen. I didn't raise it, these counsel didn't

1 raise it, all sides, at that point, would waive
2 challenging the verdict form for better or worse,
3 whether it's to our benefit or detriment. At that
4 time --

5 THE COURT: It was y'all's verdict form.

6 MR. GARFIELD: I understand that. But nobody
7 stood up and put their finger in the air and tried
8 to challenge it. At that time, for us to try to
9 guess retrospectively as to what was in the minds of
10 the jury, the way to fix that, the proper remedy,
11 would be to send them back and get them to specify.
12 And it's not casting the persons or blames on anyone
13 at the time, that no one did it, and our position is
14 it's waived.

15 THE COURT: Well, he's not waiving his right to
16 the motion for new trial and nisi additur though.
17 That doesn't waive that.

18 MR. GARFIELD: Well, no, but that would have
19 been the proper way to fix an inconsistent verdict.
20 Alternatively, Your Honor --

21 THE COURT: You admit it was an inconsistent
22 verdict?

23 MR. GARFIELD: Sir?

24 THE COURT: You admit it was an inconsistent
25 verdict?

1 MR. GARFIELD: Yes, Your Honor.

2 THE COURT: Sure it was. And you admit the
3 property damage as stipulated, 9,000-plus?

4 MR. GARFIELD: During the course of the trial.
5 But, you know, similarly, if Your Honor's going to
6 consider stipulation of the property damage, be it
7 9,000 --

8 THE COURT: That's uncontested fact. Go ahead.
9 I'm listening.

10 MR. GARFIELD: We also filed a motion for a --
11 or a conditional motion for a new trial additur. To
12 the extent Your Honor does not agree with our
13 position, is inclined to nisi this case, in that
14 respect I think we would, under the same rationale,
15 be entitled to an additur because we also put in
16 evidence of property damage. The patrol car
17 suffered -- sustained \$5,200 -- \$5,206.28. That
18 evidence was uncontroverted in this case. And
19 that's going to be apportioned by 50 percent, which
20 comes to \$2,603.14. You know, by the same token, we
21 should be able to request that as well. But we do
22 believe that the appropriate way to deal with an
23 inconsistent verdict would be to send it back. But
24 that's, of course, our position. Thank you.

25 THE COURT: Anything else, gentlemen? Either

1 one of you want to respond to his request to nisi
2 the property damage the County sustained?

3 MR. FLIPPIN: As to the counterclaims only,
4 Your Honor, I agree that the stipulated facts that
5 the trial awarded Mr. Kim's property damage was
6 \$9,460.25 and the County's was \$5,206.28. I think
7 it's well within the purview of the trial judge to
8 grant those damages to both parties at this stage,
9 despite what went on late in the evening that week.

10 THE COURT: What went on late in the evening?

11 MR. FLIPPIN: Well, it was late and I believe
12 there were -- people were trying to get out to go to
13 other things. But in any event, it doesn't really
14 matter; this is still an appropriate motion and an
15 appropriate time --

16 THE COURT: Well, wait a minute. Are you
17 suggesting I was trying to get out?

18 MR. FLIPPIN: Absolutely not, Your Honor.

19 THE COURT: I thought the verdict came back
20 well before 5:00.

21 MR. GARFIELD: I think it came back a little
22 after 5:00. But I don't think that really matters
23 as to his argument that we should have sent the jury
24 back because --

25 THE COURT: Well, you brought that up. I was

1 just --

2 MR. FLIPPIN: Well, I'm saying I don't think it
3 matters when he was saying we should have sent it
4 back to the jury, because at this stage, the Court
5 can still, on a motion -- post-trial motion, which
6 granted us ten days at that point, motions were
7 filed on time, and those damages were stipulated and
8 uncontroverted. So as to those damages, I think the
9 Court can, in fact, additur. It's also within the
10 discretion, as Mr. Dodson said, for you to consider
11 the plaintiff's medical bills and whether you want
12 to additur that or not.

13 THE COURT: Well, I think that was question of
14 fact for the jury to determine. I think they just
15 probably did not find him credible or didn't think
16 he was hurt. I'm going to nisi additur both sides
17 full amounts that were stipulated, property damage
18 on each. So if you want a form order or if you want
19 a formal order, both of you send me one. I don't
20 think this is a Riley v. Ford case that needs to be
21 sent to the Supreme Court.

22 MR. FLIPPIN: We have no problem with the form
23 order.

24 THE COURT: How much is the property damage?

25 MR. FLIPPIN: Plaintiff \$9,460.25.

1 THE COURT: And for the County?

2 MR. FLIPPIN: \$5,206.28 and those numbers
3 should be reduced by 50 percent, so the final
4 judgment is \$4,730.13 and for the County it's
5 \$2,063.14.

6 THE COURT: I'll do the form order today.

7 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Richland County, South Carolina, on the 1st of March, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 18, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Do Yeon Kim,

Plaintiff,

vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

**PLAINTIFF'S ANSWERS TO
DEFENDANT'S INTERROGATORIES**

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

Plaintiff, by and through the undersigned attorney, hereby responds to Defendant's First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure. In setting forth his responses, Plaintiff does not waive the attorney-client, work-product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the interrogatories. Plaintiff does not concede the relevance or materiality of the interrogatories or the subject matters to which the interrogatories refer. These answers are submitted by the plaintiff subject to and without waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege, and admissibility of evidence for any purpose, of any of the documents referred to or responses given or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the interrogatories; and,

C. The right at any time to revise, correct, add to, or clarify any of the responses set forth or documents referred to.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties 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.

ANSWER:

**Do Yeon Kim
c/o Robert D. Dodson, Esquire
Law Office of Robert Dodson, PA
1722 Main Street, Suite 200
Columbia, South Carolina 29201**

Do Yeon Kim is the Plaintiff in this matter and is expected to testify as to the facts and circumstances giving rise to the Complaint. He is also expected to testify about his injuries, his knowledge of Defendant's condition immediately following the wreck and damages sustained as the result of Defendant's negligence. No written or recorded statements have been taken.

**Richland County Sheriff's Department
5623 Two Notch Road
Columbia, SC 29223**

Richland County Sheriff's Department is a Defendant in this matter and is expected to testify as to the facts and circumstances surrounding the wreck they caused. No written or recorded statements are in Plaintiff's possession.

**County of Richland
2020 Hampton Street, 4th Floor
Columbia, SC 29204**

County of Richland is a Defendant in this matter and is expected to testify as to the facts and circumstances surrounding the wreck they caused. No written or recorded statements are in Plaintiff's possession.

Officer J. Altman

Officer Altman was the investigating officer in this accident and he/she is expected to testify as to his/her investigation. While a formal recorded statement has not been made, it is

believed Officer Altman completed a SC Uniform Traffic Collision Report dated 4-24-14 and that document is being produced along with these interrogatory answers.

The Plaintiff reserves the right to call as a witness any witness named by the Defendant. Furthermore, Plaintiff reserves the right to call any treating physician and/or healthcare provider as a witness. The names and contact information for these providers are found in responses to Defendants' Request for Production. Plaintiff reserves the right to supplement this response at a later date, if necessary.

2. Please provide the social security number and month, date and year of birth for the Plaintiff.

ANSWER: Plaintiff's date of birth is December 8, 1953. Plaintiff's counsel will provide defense counsel with the social security number orally and over the telephone with the express agreement and understanding that defense counsel will hold this information in strict confidence and will not release it in filing or other documents available to the general public.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in this case.

ANSWER: Please see enclosed medical records and traffic accident report.

4. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

ANSWER:

Providence Hospital
2435 Forest Drive
Columbia, SC 29204

\$1,118.20

Pitts Radiology

\$35.00

taken from such witnesses.

ANSWER: Please see response to interrogatory number one.

8. Please identify in complete detail each person whom the Plaintiff expects to call as an expert witness at the trial stating as to each such person:

(a) Name, occupation, title, business address, area of specialization, if any, and professional relationship to the Plaintiff.

(b) The manner in which such person became familiar with the facts of this case.

ANSWER: Plaintiff has not yet retained an expert witness at this time, but reserves the right to retain an expert and will identify him or her at that time. Moreover, Plaintiff reserves the right to call any treating medical provider as an expert witness. Further, Plaintiff reserves the right to call any law enforcement officer who investigated the wreck as an expert witness.

9. As to each person the Plaintiff has identified or intends to identify as an expert witness in this matter, state in full detail:

(a) The subject matter or area in which such person is to testify.

(b) The substance of the facts and opinions in which such person is to testify.

(c) A summary of the grounds or basis for each opinion and fact.

(d) A list of books, treatises, articles, and other works which such person regards as authoritative on the subject matter on which he is expected to testify.

ANSWER: Plaintiff has not yet retained an expert witness at this time, but reserves the right to retain an expert and will identify him or her at that time. Moreover, Plaintiff reserves the right to call any treating medical provider as an expert witness. Further, Plaintiff reserves the right to call any law enforcement officer who investigated the wreck

taken from such witnesses.

ANSWER: Please see response to interrogatory number one.

8. Please identify in complete detail each person whom the Plaintiff expects to call as an expert witness at the trial stating as to each such person:

(a) Name, occupation, title, business address, area of specialization, if any, and professional relationship to the Plaintiff.

(b) The manner in which such person became familiar with the facts of this case.

ANSWER: Plaintiff has not yet retained an expert witness at this time, but reserves the right to retain an expert and will identify him or her at that time. Moreover, Plaintiff reserves the right to call any treating medical provider as an expert witness. Further, Plaintiff reserves the right to call any law enforcement officer who investigated the wreck as an expert witness.

9. As to each person the Plaintiff has identified or intends to identify as an expert witness in this matter, state in full detail:

(a) The subject matter or area in which such person is to testify.

(b) The substance of the facts and opinions in which such person is to testify.

(c) A summary of the grounds or basis for each opinion and fact.

(d) A list of books, treatises, articles, and other works which such person regards as authoritative on the subject matter on which he is expected to testify.

ANSWER: Plaintiff has not yet retained an expert witness at this time, but reserves the right to retain an expert and will identify him or her at that time. Moreover, Plaintiff reserves the right to call any treating medical provider as an expert witness. Further, Plaintiff reserves the right to call any law enforcement officer who investigated the wreck

as an expert witness.

Respectfully submitted,

LAW OFFICE OF ROBERT DODSON, P.A.



Robert D. Dodson, Esquire
Law Office of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: 803-252-2600
Facsimile: 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

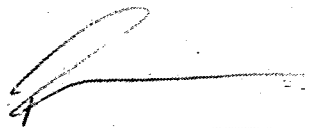
CASE NO.: 2014-CP-40-6297

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 Responses to Defendant's First Set of Interrogatories** 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

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 RESPONSES TO
DEFENDANT'S REQUEST FOR
PRODUCTION OF DOCUMENTS**

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

GENERAL OBJECTIONS

Plaintiff objects to any general instructions or definitions to the extent they impose obligations upon the Plaintiffs greater than those imposed by the applicable Rules of Civil Procedure. Plaintiff further objects to any general instructions or definitions as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence. Further, Plaintiff objects to any general instruction or definitions on the ground that they are worded so broadly as to encompass responses and documents protected by the attorney work product privilege and/or attorney client privilege. Notwithstanding these objections, Plaintiff responds as follows:

RESPONSES

Plaintiff, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby responds to Defendant's First Set of Requests for Production as follows:

1. Copies of any and all statements given by Plaintiff, Defendant, or any witness, whether written or recorded on a tape recorder or otherwise, which relate to the matters complained of in the Complaint.

ANSWER: Plaintiff believes Defendant is in possession of any and all statements.

2. Copies of any and all photographs or other visual aids in possession of the Plaintiff or Plaintiff's attorney.

RESPONSE: None.

3. Each medical record, report, or opinion that has been made in connection with a medical examination or treatment of the injuries in this action or in preparation of this action. "Report" includes but is not limited to reports of physical examination or evaluation, results of laboratory tests, doctors' notes, nurses' notes, prescriptions, memoranda, studies, graphs, charts, tabulations, analyses, summaries, data sheets, statistical or informational accumulations, computer-generated documents, and preliminary drafts or revisions of the above. "Reports" also includes writings to Plaintiff's attorneys on medical matters.

RESPONSE: Please see enclosed.

4. Each medical bill or statement for services rendered that has been made in connection with a medical examination or treatment of the injuries in this action.

RESPONSE: Please see enclosed.

5. Copies of Plaintiff's federal and state income tax returns for the years 2011, 2012, 2013, 2014, including W-2 forms, and any and all other documentation upon which Plaintiff relies in claiming lost wages or earnings.

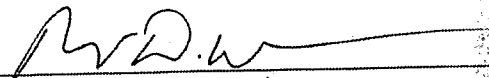
RESPONSE: Plaintiff is in the process of getting this information together and will supplement this response when available.

6. Any and all reports, opinions, correspondence, memoranda, or other documentation provided to Plaintiff or Plaintiff's attorneys from any expert consulted by or retained by Plaintiff in this litigation.

RESPONSE: None at this time.

Respectfully submitted,

LAW OFFICE OF ROBERT DODSON, P.A.



Robert D. Dodson, Esquire
Law Office of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: 803-252-2600
Facsimile: 803-771-2259
Email: rdodson@rdodsonlaw.com
Attorney for Plaintiff

Columbia, South Carolina
April 3, 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 3, 2015, I caused to be served a true, correct and accurate copy of **Plaintiff's Responses to Defendant's First Request for Production of Documents** 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

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


Brandi Newman, Paralegal

Civil Action Number: 14-CP-40-6297

Plaintiff,

V.

Defendants.

**RESPONSES TO PLAINTIFF'S
REQUEST TO PRODUCE ON
BEHALF OF DEFENDANTS**

Pursuant to Rule 34, SCRCP, the Defendants respond to Plaintiff's First Request for Production, as follows:

1. All repair bills, estimates, reports or other written or prepared documents relating to any claimed damages to personal or real property.

ANSWER:

Please see the following documents furnished herewith:

- (a) Claims information regarding Plaintiff's vehicle
Bates nos. 9563-D-001 through 9563-D-015
- (b) Appraisal of 2010 Ford Crown Victoria Police Vehicle
Bates nos. 9563-F-001 through 9563-F-004

The following identified documents are not being produced and objections entered thereto:

- (a) RCSD County Vehicle Collision Report and Summary
Bates no. 9563-G-001 through 9563-G-004

Objection. These documents were generated, as a result of one or more internal affairs investigations and were a component of the Sheriff's

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peer review activities, quality assurance activities, and/or performance improvement activities. Moreover, any conclusions or subjective opinions which may have been formed by RCSD employees would not be subject to disclosure. Insofar as these documents were generated in anticipation of litigation, the Defendant submits that *Hickman v. Taylor*, 329 U.S. 495 (1947) would further preclude disclosure of same.

2. All photographs, diagrams, drawings or other similar material relating to any claim or defense.

ANSWER:

Please see the following documents furnished herewith:

- (a) Photographs of subject vehicles
Bates nos. 9563-B-001 through 9563-B-007
- (b) Sketches and mapping diagrams
Bates nos. 9563-E-001 through 9563-E-004

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.

ANSWER:

Recorded statements of the three Defendant deputies as identified in Response No. 1 to Plaintiff's Interrogatories and are produced herewith.

4. Copies of any and all documents referenced or listed in response to any interrogatory served by any party.

ANSWER:

Please see the following documents furnished herewith:

- (a) Richland County Accident and Incident Report
Bates no. 9563-A-001
- (b) DMV FR-10 Notice, dated April 24, 2014
Bates no. 9563-A-002

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- (c) Various pre-suit correspondence between the following individuals:
Robert Dodson, Esq. and Ruth Chewning
Bates nos. 9563-C-001 through 9563-C-006

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.

ANSWER:

Objection. Response to this inquiry would require the disclosure of the undersigned counsel's mental impressions, legal theories, and/or trial defense strategy. Subject to the foregoing objection and without waiving same, a list of exhibits will be provided prior to trial subject to the South Carolina Rules of Civil Procedure and the Rules of Evidence.

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.

ANSWER:

At the present time, no documents have been pursued in such manner.

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.

ANSWER:

See Response No. 2.

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

ANSWER:

The undersigned is not in possession of any such documentation.

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

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ANSWER:

Please see Response No. 1.

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.

ANSWER:

No such documents exist, upon information and belief.

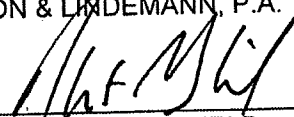
11. Provide the complete personnel file for the individual driving Defendant's vehicle at the time of the wreck.

ANSWER:

Objection. The Defendants assert that this Request is neither relevant, will not lead to relevant matter, and is not reasonably calculated to lead to the discovery of admissible evidence. By way of explanation, records in this deputy's employment and personnel file include but are not necessarily limited to his initial application, hiring, and employment. The Defendant asserts that such items constitute privileged, personal, and/or confidential information and would unreasonably invade Mr. Proffitt's personal privacy interests.

Moreover, since this file further contains sensitive and private identifying information such as, for example, Mr. Proffitt's social security and taxpayer-identification numbers, date of birth, home address, potential names of minor children, and financial account numbers, disclosure of same might place this deputy's physical well-being and/or property at unreasonable risk and is respectfully being withheld from disclosure.

DAVIDSON & LINDEMANN, P.A.

BY: 

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

Counsel for Defendants

Columbia, South Carolina
June 29, 2015

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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 **Answers to Plaintiff's First Set of Interrogatories on Behalf of Defendants and Responses to Plaintiff's Request to Produce 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 2nd day of July, 2015, 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, Ste 100
Elgin, South Carolina 29042

Shelley E. Stafford

) IN THE COURT OF COMMON PLEAS

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

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TO: ROBERT D. DODSON, ESQUIRE, ATTORNEY FOR PLAINTIFF

Pursuant to Rule 33, SCRPC, the Defendants responds to Plaintiff's First Set of Interrogatories, as follows:

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.

ANSWER:

(a) Do Yeon Kim
Present address known to Plaintiff's counsel

Mr. Kim is the Plaintiff in the above-referenced matter. He is expected to testify consistent with the allegations as asserted in his Complaint.

No statement has been taken of the Plaintiff upon information and belief.

(b) Kenneth Proffitt
c/o Richland County Sheriff's Department

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#1

5623 Two Notch Rd.
Columbia, South Carolina 29223

A recorded statement has been taken of this deputy.

- (c) William Weaver
c/o Richland County Sheriff's Department
5623 Two Notch Rd.
Columbia, South Carolina 29223

A recorded statement has been taken of this deputy.

- (d) Kenneth Tucker
c/o Richland County Sheriff's Department
5623 Two Notch Rd.
Columbia, South Carolina 29223

A recorded statement has been taken of this deputy.

The Defendant reserves the right to call any and all witnesses listed by Plaintiff within his discovery responses. Additionally, the Defendant reserves the right to call any or all health care or medical providers who treated or cared for Plaintiff.

These interrogatory responses will be supplemented should additional witnesses be identified through the discovery process.

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.

ANSWER:

- (a) Richland County Accident and Incident Report
Bates no. 9563-A-001
- (b) DMV FR-10 Notice, dated April 24, 2014
Bates no. 9563-A-002
- (c) Photographs of subject vehicles
Bates nos. 9563-B-001 through 9563-B-007
- (d) Various pre-suit correspondence between the following individuals:
Robert Dodson, Esq. and Ruth Chewing
Bates nos. 9563-C-001 through 9563-C-006
- (e) Claims information regarding Plaintiff's vehicle
Bates nos. 9563-D-001 through 9563-D-015

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- (f) Sketches and mapping diagrams
Bates nos. 9563-E-001 through 9563-E-004
- (g) Appraisal of 2010 Ford Crown Victoria Police Vehicle
Bates nos. 9563-F-001 through 9563-F-004
- (h) RCSD County Vehicle Collision Report and Summary
Bates no. 9563-G-001 through 9563-G-004

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.

ANSWER:

This is not applicable since the Defendants are governmental entities.

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.

ANSWER:

This is not applicable. By way of explanation, Richland County is self-funded with no excess insurance. The County maintains coverage sufficient to cover the statutory caps on liability under the South Carolina Tort Claims Act.

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

ANSWER:

The Defendant County alleges that it incurred a loss in the amount of \$6,103.63 for actual and consequential damages representing the cost of repair as well as the loss of three (3) weeks' use of the patrol vehicle.

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

NO
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ANSWER:

To the extent this request seeks information relative to expert witnesses who have been formally retained, no expert has been retained at this time. Should an expert witness be retained, this interrogatory answer will be supplemented.

Further responding, the Defendant reserves the right to call any of the witnesses identified in the interrogatories or in any of the responses by Plaintiff as experts to the extent qualified.

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.

ANSWER:

Recorded statements of the three deputy witnesses are identified in Response No. 1 and are produced herewith.

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.

ANSWER:

Kenneth Edward Proffitt was born on April 11, 1976.

The Defendant objects with respect to producing Mr. Proffitt's social security number such identifying information is privileged, personal, and/or confidential and would unreasonably invade Mr. Proffitt's personal privacy interests.

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;

NO
#4

- d. Identify the names and addresses of any witness(es) to the alleged admission.

ANSWER:

Objection. Response to this inquiry would require the disclosure of the undersigned counsel's mental impressions, legal theories, and/or trial defense strategy. Subject to the foregoing objection and without waiving same, the existence of any such statement(s) are presently unknown to the undersigned counsel. To the extent any statement(s) are ascertained, this response may be supplemented.

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.

ANSWER:

The existence of any such statement(s) are presently unknown to the undersigned counsel. To the extent any statement(s) are ascertained, this response may be supplemented.

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
- c. Identify the date(s) of any alleged statement;

ADK
#5

- d. Identify the names and addresses of any witness(es) to the alleged statement.

ANSWER:

The existence of any such statement(s) are presently unknown to the undersigned counsel. To the extent any statement(s) are ascertained, this response may be supplemented.

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 Plaintiffs Complaint.

ANSWER:

Please see Response No. 1.

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.

ANSWER:

None, upon information and belief.

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.

ANSWER:

None other than the undersigned counsel.

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

ANSWER:

Approximately 10-15 miles per hour, upon information and belief.

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

ADL
#6

ANSWER:

Windsor Lake Boulevard in Richland County to assist a female officer of the motorcycle patrol who was summoning back-up assistance.

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

ANSWER:

This information is unknown to the undersigned counsel and a diligent investigation is underway so as to determine same. Once ascertained and to the extent discoverable, this response will be supplemented.

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

ANSWER:

None, upon information and belief.

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

ANSWER:

The Defendants submit 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. 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. That while Deputy Proffitt was within the intersection and despite the activation of emergency equipment, Plaintiff failed to yield the right of way to Deputy Proffitt and collided with Deputy Proffitt's patrol vehicle.

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.

ANSWER:

The Defendants submit that, at the relevant times, had the Plaintiff exercised due care and kept a proper lookout he would have yielded the right of way to

106
#7

Deputy Proffitt -- who was operating an authorized emergency vehicle -- there would have been no collision.

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.

ANSWER:

This information is unknown to the undersigned counsel and a diligent investigation is underway so as to determine same. Once ascertained and to the extent discoverable, this response will be supplemented.

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

ANSWER:

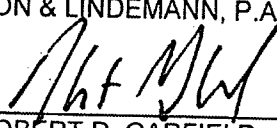
This information is unknown to the undersigned counsel and a diligent investigation is underway so as to determine same. Once ascertained and to the extent discoverable, this response will be supplemented.

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

ANSWER:

Further responding, pursuant to Rule 33(c), SCRCP, the Defendants produce herewith the recorded statements of the three deputies as identified in Response No. 1 and crave reference thereto.

DAVIDSON & LINDEMANN, P.A.

BY: 

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

Counsel for Defendants

Columbia, South Carolina
June 29, 2015

ADG
#8

COUNTY OF RICHLAND

Civil Action Number: 14-CP-40-6297

Plaintiff,

v.

Defendants.

**SUPPLEMENTAL ANSWERS
TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES ON BEHALF
OF DEFENDANTS**

TO: ROBERT D. DODSON, ESQUIRE, ATTORNEY FOR PLAINTIFF

Pursuant to Rule 33, SCRPC, the Defendants supplements its response to Plaintiff's First Set of Interrogatories, as follows:

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.

ANSWER:

(e) Deputy Kristin Boyles
Richland County Sheriff's Department
5623 Two Notch Rd.
Columbia, South Carolina 29223

Upon information and belief and at the relevant times, Deputy Boyles summoned for officer back-up assistance prior to the motor vehicle collision between Plaintiff and Deputy Kenneth Proffitt.

No statement has been taken of this witness.

- (f) Deputy Kelvin Ashe
Richland County Sheriff's Department
5623 Two Notch Rd.
Columbia, South Carolina 29223

Upon information and belief and at the relevant times, Deputy Ashe assisted with the reconstruction of the motor vehicle collision between Plaintiff and Deputy Kenneth Proffitt.

No statement has been taken of this witness.

- (g) Bill Peters
c/o Richland County
Columbia, South Carolina

This witness is the Fleet Manager for Richland County. He is expected to testify as to the nature and extent of property damage related to the patrol car operated by Deputy Kenneth Proffitt involved in the relevant events. Mr. Peters is also expected to provide testimony regarding the costs associated with the repair and damages arising from the loss of use of said vehicle.

No written or recorded statements have been taken of this witness.

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.

ANSWER:

- (i) Post-collision photographs of incident location
Bates nos. 9563-H-001 through 9563-H-032

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

ANSWER:

To the extent this request seeks information relative to expert witnesses who have been formally retained, no expert has been retained at this time. Should an expert witness be retained, this interrogatory answer will be supplemented.

Further responding, the Defendants reserve the right to call any of the witnesses identified in the interrogatories or in any of the responses by Plaintiff as experts to the extent qualified.

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

NO
#2

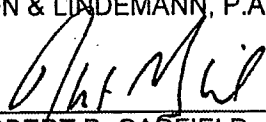
party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

Please see Response No. 1.

DAVIDSON & LINDEMANN, P.A.

BY:


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

Counsel for Defendants

Columbia, South Carolina

December 3, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Do Yeon Kim,

Plaintiff,

vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

**PLAINTIFF'S ANSWERS TO
DEFENDANT'S INTERROGATORIES
FIRST SUPPLEMENTAL RESPONSES**

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

Plaintiff, by and through the undersigned attorney, hereby responds to Defendant's First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure. In setting forth his responses, Plaintiff does not waive the attorney-client, work-product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the interrogatories. Plaintiff does not concede the relevance or materiality of the interrogatories or the subject matters to which the interrogatories refer. These answers are submitted by the plaintiff subject to and without waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege, and admissibility of evidence for any purpose of any of the documents referred to or responses given or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the interrogatories; and,

C. The right at any time to revise, correct, add to, or clarify any of the responses set forth or documents referred to.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties 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.

ANSWER:

**Do Yeon Kim
c/o Robert D. Dodson, Esquire
Law Office of Robert Dodson, PA
1722 Main Street, Suite 200
Columbia, South Carolina 29201**

Do Yeon Kim is the Plaintiff in this matter and is expected to testify as to the facts and circumstances giving rise to the Complaint. He is also expected to testify about his injuries, his knowledge of Defendant's condition immediately following the wreck and damages sustained as the result of Defendant's negligence. No written or recorded statements have been taken.

**Richland County Sheriff's Department
5623 Two Notch Road
Columbia, SC 29223**

Richland County Sheriff's Department is a Defendant in this matter and is expected to testify as to the facts and circumstances surrounding the wreck they caused. No written or recorded statements are in Plaintiff's possession.

**County of Richland
2020 Hampton Street, 4th Floor
Columbia, SC 29204**

County of Richland is a Defendant in this matter and is expected to testify as to the facts and circumstances surrounding the wreck they caused. No written or recorded statements are in Plaintiff's possession.

Officer J. Altman

Officer Altman was the investigating officer in this accident and he/she is expected to testify as to his/her investigation. While a formal recorded statement has not been made, it is

believed Officer Altman completed a SC Uniform Traffic Collision Report dated 4-24-14 and that document is being produced along with these interrogatory answers.

The Plaintiff reserves the right to call as a witness any witness named by the Defendant. Furthermore, Plaintiff reserves the right to call any treating physician and/or healthcare provider as a witness. The names and contact information for these providers are found in responses to Defendants' Request for Production. Plaintiff reserves the right to supplement this response at a later date, if necessary.

SUPPLEMENTAL ANSWER:

"Sunny" indentified by the Plaintiff in his Deposition. Plaintiff and his counsel are attempting to locate more complete information to identify this individual and when located will provide same to Defendant and its attorney.

2. Please provide the social security number and month, date and year of birth for the Plaintiff.

ANSWER: Plaintiffs date of birth is December 8, 1953. Plaintiff's counsel will provide defense counsel with the social security number orally and over the telephone with the express agreement and understanding that defense counsel will hold this information in strict confidence and will not release it in filing or other documents available to the general public.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in this case.

ANSWER: Please see enclosed medical records and traffic accident report.

4. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

ANSWER:

Providence Hospital
2435 Forest Drive
Columbia, SC 29204

\$1,118.20

Pitts Radiology
PO Box 602728
Charlotte, NC 28260-2728

\$35.00

SUPPLEMENTAL ANSWER:

Richland County EMS
PO Box 863
Lewisville, NC 27023-0863

\$51.50

Providence ER Services
PO Box 96088
Oklahoma City, OK 73143-6088

\$624.00

Richland Chiropractic Center
8502 B Two Notch Road
Columbia, SC 29223

\$60.00

Prescription Costs

\$18.69

Property Damage to Vehicle

\$8,152.76

Rental Car Charges

\$1,102.49

Towing from scene of wreck

\$205.00

Actual bills for the above referenced damages were provided with Plaintiff's original discovery responses but the tabulation above was inadvertently omitted.

Carolina Physical Therapy
141 Atrium Way
Columbia, SC 29223

\$901.00

Sentinel Primary Care Elgin
2689 U.S. Hwy 1
Columbia, SC 29223

Requested and will be supplemented upon receipt.

Richland Chiropractic Center
8502 B Two Notch Road
Columbia, SC 29223

In addition to the \$60.00 charge above there may be additional charges. Records and bills have been requested and this response may

be supplemented if additional charges were incurred.

TOTAL

\$12,268.64 (to be supplemented once updated bills are received from Sentinel and Richland Chiropractic)

5. 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 of amounts of liability coverage provided in each policy.

ANSWER: Plaintiff believes Defendant is already privy to this information.

6. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: Please see response to interrogatory number three. Plaintiff is also claiming \$333.31 in rental car expenses and he is also seeking reimbursement of his \$500 deductible (see enclosed).

SUPPLEMENTAL ANSWER: See response to interrogatory number 4.

7. For each person known to the parties or counsel to be a witness 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.

ANSWER: Please see response to interrogatory number one.

8. Please identify in complete detail each person whom the Plaintiff expects to call as an expert witness at the trial stating as to each such person:

(a) Name, occupation, title, business address, area of specialization, if any, and professional relationship to the Plaintiff.

(b) The manner in which such person became familiar with the facts of this case.

ANSWER: Plaintiff has not yet retained an expert witness at this time, but reserves the right to retain an expert and will identify him or her at that time. Moreover, Plaintiff reserves the right to call any treating medical provider as an expert witness. Further, Plaintiff reserves the right to call any law enforcement officer who investigated the wreck as an expert witness.

9. As to each person the Plaintiff has identified or intends to identify as an expert witness in this matter, state in full detail:

- (a) The subject matter or area in which such person is to testify.
- (b) The substance of the facts and opinions in which such person is to testify.
- (c) A summary of the grounds or basis for each opinion and fact.
- (d) A list of books, treatises, articles, and other works which such person regards as authoritative on the subject matter on which he is expected to testify.

ANSWER: Plaintiff has not yet retained an expert witness at this time, but reserves the right to retain an expert and will identify him or her at that time. Moreover, Plaintiff reserves the right to call any treating medical provider as an expert witness. Further, Plaintiff reserves the right to call any law enforcement officer who investigated the wreck as an expert witness.

Respectfully submitted,

LAW OFFICE OF ROBERT DODSON, P.A.



Robert D. Dodson, Esquire
Law Office of Robert Dodson, P.A.
1722-Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: 803-252-2600

Facsimile: 803-771-2259
Email: rdodson@rdodsonlaw.com
Attorney for Plaintiff

Columbia, South Carolina
December 31, 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

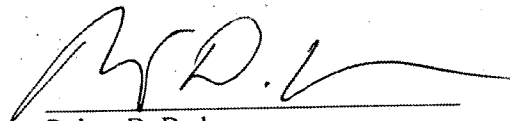
CERTIFICATE OF SERVICE

I, Robert Dodson, do hereby certify that on December 31, 2015, I caused to be served a true, correct and accurate copy of **Plaintiff's Responses to Defendant's First Set of Interrogatories First Supplemental Responses** 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

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

In addition, courtesy copies of same were faxed to Mr. Garfield at the following facsimile number: 803-806-8855


Robert D. Dodson

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Do Yeon Kim,

Plaintiff,

vs.

County of Richland and Richland County
Sheriff's Department,

Defendants.

**PLAINTIFF'S FIRST AMENDED
SUPPLEMENTAL ANSWER TO
DEFENDANT'S INTERROGATORIES**

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

Plaintiff, by and through the undersigned attorney, hereby responds to Defendant's First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure. In setting forth his responses, Plaintiff does not waive the attorney-client, work-product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the interrogatories. Plaintiff does not concede the relevance or materiality of the interrogatories or the subject matters to which the interrogatories refer. These answers are submitted by the plaintiff subject to and without waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege, and admissibility of evidence for any purpose of any of the documents referred to or responses given or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the interrogatories; and,

C. The right at any time to revise, correct, add to, or clarify any of the responses set forth or documents referred to.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties 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.

AMENDED SUPPLEMENTAL ANSWER:

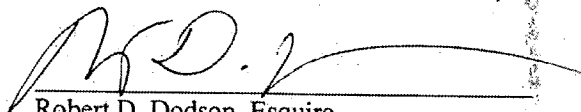
"Sunny" indentified by the Plaintiff in his Deposition.

Sunny Fain

803.250.8009

Respectfully submitted,

LAW OFFICE OF ROBERT DODSON, P.A.



Robert D. Dodson, Esquire
Law Office of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: 803-252-2600
Facsimile: 803-771-2259
Email: rdodson@rdodsonlaw.com

Attorney for Plaintiff

Columbia, South Carolina
January 6, 2016

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

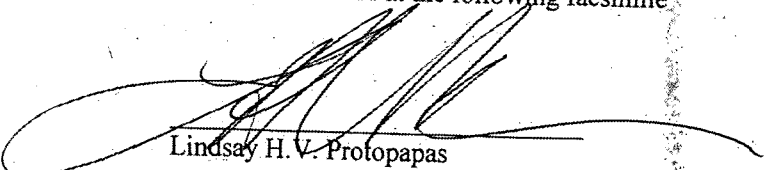
CERTIFICATE OF SERVICE

I, Lindsay H.V. Protopapas, do hereby certify that on January 6, 2016, I caused to be served a true, correct and accurate copy of **Plaintiff's Responses to Defendant's First Set of Interrogatories First Supplemental Responses** 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

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

In addition, courtesy copies of same were faxed to Mr. Garfield at the following facsimile number: 803.806.8855



Lindsay H.V. Protopapas

This 6th Day of January, 2016

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP- 40-6297

Do Yeon Kim

County of Richland
Richland Co. Sheriff

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), 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: Verdict for the plaintiff in the amount of \$1,500.00
actual damages. ORDER INFORMATION On the counterclaim 0 dollars.
This order ☐ ends ☐ does not end the case. 10 days to file any motions.
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 (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.


 Court Judge

0136

1-21-1, 4

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of Jan, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of Jan, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Dodson

Robert Garfield
Thomas McDougall

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Francine W. Grude
 CLERK OF COURT

Court Reporter:

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

2016 JAN 29 PM 2:28
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

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. Ponder
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.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2014-CP-40-6297

Do Yeon Kim,

v. Appellant,

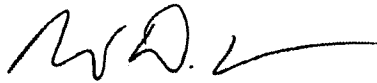
County of Richland, Richland
County Sheriff's Department
and Leon Lott in his Official
Capacity as Richland County
Sheriff,

Respondents,

CERTIFICATION

Pursuant to Rule 210(g), Appellant certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 27, 2016



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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

Case No. 2014-CP-40-6297

Do Yeon Kim,

v. Appellant,

County of Richland, Richland
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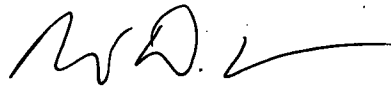
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DEC 28 2016
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