THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas A. Russo Circuit Court Judge

Appellate Case No. 2017-000210
Civil Action No. 2010-CP-08-3732

Vanessa Blackwell a/k/a
Jacqueline Blackwell,... Respondent,

v.

Andrew J. Herring, Individually, and as an
Employee/agent of Marion County Sheriff's
Department; and Marion County Sheriff's
Department...Defendants,

Of which, Marion County Sheriff's Department is the..............................Appellant.

INITIAL BRIEF OF RESPONDENT

Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Attorneys for Respondent

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STATEMENT OF FACTS

This case presents the classic jury question. The Respondent, Jacqueline Vanessa Blackwell ("Respondent" or "Blackwell") alleges that she was struck by a motor vehicle being driven by Andrew Herring ("Herring"). [Complaint]. There were no eyewitnesses to the collision. Herring maintains that Blackwell was in the road at the time of the collision [Trial Tr. 164:25-165:1-8], while Blackwell maintains that she was in the grass. [Id. at 113:18-21].

Respondent is a 55 year old female. In the early 1990's, Respondent was diagnosed with schizophrenia. [Id. at 87:19-22]. Notwithstanding this diagnosis, Respondent is mentally competent and, for the most part, self sufficient. [Id. at 88:12-14]. However, because Respondent is unable to work or drive, she lives with her sister, Wendy Arthur, who helps her to manage her day to day affairs. [Id. at 87:3-10 ; 111:4-16]. In addition to providing housing and transportation to Respondent, Ms. Arthur also helps Respondent with Respondent's finances, reminds Respondent to take her medicine, and otherwise provides assistance where necessary. [Id. at 87:6-10].

Prior to the collision, one of Respondent's great joys was walking about town. [Id. at 88:15-89:9]. Because she could not work or drive, this was Respondent's way of getting out of the house and keeping herself busy and happy. It was her way of relieving stress and depression. [Id.]. She did this nearly every day. [Id. at 90:2-6]. On the morning of May 17, 2014, Respondent walked to the "Foxtrot Festival" in downtown Marion. [Id. at 89:10-21]. The collision happened as she was walking home.

Andrew Herring was a volunteer reserve officer with the Marion County Sheriff's Department in 2014. [Id. at 160:11-19]. On May 17, 2014, he was tasked with working crowd and traffic control at the Foxtrot Festival. [Id. at 146:14-17]. Herring left the festival around

9:00 p.m. to head home. [Id. at 163:16-164:1]. Herring was driving an unmarked silver Dodge Charger that had been assigned to him by the Sheriff's Department. [Id. at 47:8-13]. Herring testified that as he was driving, he noticed an unidentified object in the middle of the road, between 3-5 feet off the edge. [Id. at 165:9-21]. Herring claims that he tried to swerve to miss the object but could not leave his lane of travel because of oncoming traffic from the opposite direction. [Id. at 167:5-14]. Herring testified that he made contact with the object, turned around, and realized he had struck the Respondent, who was lying near the ditch off the side of the road. [Id. at 151:14-16].

Herring filled out an incident report shortly after the collision, noting the collision to have occurred at 9:10 p.m. [Id. at 164:19-21]. However, there is no record of a call being placed to emergency dispatch until 9:18 p.m. [Id. at 196:20-197:4]. Herring admits that the first call he made was to his wife [Id. at 168:19-22] who was also a Marion County Sheriff's deputy. [Id. at 147:3-5]. Herring also called his supervisor with the Sheriff's Department. [Id. at 169:2-4]. Finally, Herring admits that phone records show he was on a call at 9:10 p.m. (the time Herring stated the wreck happened), but claims that his estimation of the time of wreck was an approximation and that he was not actually on the phone at the time of the wreck. [Id. at 168:1-8].

Following the collision, South Carolina Highway Patrolman J. Ellis arrived on scene. Trooper Ellis questioned Herring and allowed Herring to leave the scene within 5 minutes of his arrival. [Id. at 197:22-25]. Trooper Ellis then went on to conduct a cursory evaluation of the scene, and took a limited number of photographs. Although Herring testified that Respondent was as much as 5 feet into the middle of the road, and that he was unable to swerve because of oncoming traffic, the photographs showed the damage to Herring's vehicle to be limited to the

far right corner panel, together with damage to the passenger side mirror. [Id. at 188:4-7]. There was no damage to the front middle portion of Herring's vehicle. [Id.]. Ellis did not observe any gouge mark or any trace of blood in the paved roadway. [Id. at 201:17-24]. Likewise, Ellis attempted to document the debris field. Ellis found only one piece of debris on the paved roadway, consisting of a tiny piece of broken glass. [Id. at 200:4-6]. Given the damage to Herring's vehicle, Trooper Ellis conceded there would have been much more debris, but that it all likely ended up in the tall grass where he was unable to locate it [Id. at 199:1-200:17].

Marion County EMS also responded to the scene. One of the paramedics was good friends with Herring, as Herring also worked as a paramedic with Marion County when he was not volunteering with the Sheriff's Department. [Id. at 159:7-8 ; 160:11-16]. Although Herring testified that the object he hit did not fly up into the air or shoot off to the side following the collision [Id. at 171:11-19], but rather slid down the side and toward the back of his vehicle [Id. at 171:20-24], both Herring and EMS found Respondent's body in a ditch some 4 feet off the side of the road following the collision. [Id. at 173:3-14 ; 208:6-10]. This means that the collision would have had to knock Respondent to the side some 9 feet from the point of impact alleged by Herring, which he claimed was 5 feet into the middle of the road.

EMS personnel noted that Respondent had a severe injury (an open fracture) to her left leg [Id. at 207:1-18] and decided to transfer her to McLeod Regional Medical Center rather than a local hospital because of the severity of the injury. [Id. at 212:1-5]. The EMS report also noted a "smell of alcohol" on the Respondent [Trial Ex. Pl. 7], although hospital records later proved that Respondent had no drugs or alcohol in her system. [Trial Ex. Pl. 5]. This was consistent with Respondent's testimony that she did not ever consume alcohol and had consumed nothing but a soda on the day of the collision. [Trial Tr. 116:1-4].

Upon admission to the hospital, Respondent underwent surgery to have her shattered bone surgically repaired. [Trial Ex. Pl. 4]. All told, Respondent was in the hospital for 10 days, [Trial Ex. Def. 1], and incurred a hospital bill totaling $100,058.00. [Trial Ex. Pl. 6]. Respondent incurred additional bills including the EMS bill, anesthesia charges, radiology charges, and physical therapy charges. [Id.].

Respondent's treatment did not end when she left the hospital. Respondent's sister was required to clean and dress the surgical wound following discharge, a procedure which caused Respondent pain. [Trial Tr. 94:15-95:11]. Once the wound healed, Respondent was required to undergo physical therapy. [Trial Tr. 95:12-21]. It was several months before Respondent was even able to start bearing weight on her injured leg again. [Trial Tr. 95:22-96:3]. Likewise, Respondent still experiences pain to this day [Id., at 107:25-108:3 ; 115:8-10] and suffers from limited mobility due to the injury. [Id., at 114:10-14].

ARGUMENT

I. The Trial Court did not err by admitting into evidence the Respondent's medical bills because there was sufficient evidence as to proximate cause, and any defects complained of by Appellant go to the weight and not the admissibility of such bills.

Appellant first challenges the admission of Respondent's medical bills into evidence, arguing "the admitted medical bills lacked sufficient detail for a jury to determine what treatments and charges were related to the injuries caused by the accident." [Appellant Br. 14]. Respondent entered medical bills from the following providers as part of her Trial Exhibit number 6:

McLeod Regional Medical Center Florence
Advanced Medical Associates
Carolina's Hospital Marion
CNRA
DHEC Home Health Care Services
Florence Radiology
Marion County EMS
Medical Anesthesia Consultants
MRMC-CBO

In the present case, Respondent's main injury was a broken ankle, which required surgery. It is undisputed that the broken ankle was caused by the collision. Subject to the general foundation issues discussed in the next section, Appellant does not seem to take exception to the bills that are clearly, on their face, related to the ankle injury or resulting surgery and rehab. Such undisputed charges would necessarily include DHEC bills, which were entirely related to physical therapy, the radiology and anesthesia bills, which were entirely related to the fracture and surgery, and, naturally, the initial EMS bill. Likewise, the Carolina's Hospital Marion Bill states clearly on it's face that the charges are for "Therapeutic Exercises and PT

Evaluation." [Trial Ex. Pl. 6]. The CNRA and MRMC-CBO bills are physician charges related to the hospital bills.

This leaves the McLeod Florence and the Advance Medical Associates' bills as the only two in dispute. As to the McLeod Florence bill, Appellant's main contention seems to be that Respondent was treated for malnutrition during her time in the hospital, in addition to receiving treatment for her injuries sustained in the collision. The argument is, then, that the jury had no way of knowing how much of the bill was for malnutrition, and how much for the ankle injury.

As an initial matter, the admission or exclusion of evidence is left to the sound discretion of the trial court and should not be disturbed absent an abuse of discretion. Dunn v. Charleston Coca-Cola Bottling Co., 311 S.C. 43, 45 (1993). Here, the Trial Court held that, because the McLeod records were also made a part of the record, and because the McLeod bills were specifically itemized, the jury was capable of determining the precise costs without resorting to speculation or conjecture.

In support of its position, Appellant relies upon Carlyle v. Toumey Hospital, 305 S.C. 187 (1991). In Carlyle, the Plaintiff was admitted to Toumey for treatment of extensive bedsores. While at Toumey, the Plaintiff alleged that he suffered an injury to his penis as a result of an improperly placed catheter. The Plaintiff was transferred to Norfolk General Hospital where he continued to receive treatment for his bedsores, while also undergoing a penile reconstructive surgery. At issue was whether the jury had sufficient information to determine how much of the Norfolk bill was related to the penis injury, and how much was related to the continued treatment of the pre-existing bedsores. In refusing to uphold the admission of the

Norfolk bill, the Supreme Court noted "The aggregate Norfolk bill for penile reconstruction and treatment of the pre-existing decubitus showed no apportionment of the cost for either." Id. at 193. The only distinguishing evidence on the record was testimony by Plaintiff's expert who estimated that 60-70 percent of the care at Norfolk was a result of the penile injury, which the Court ruled was not sufficient to inform the jury.

The present case is markedly distinguishable from Carlyle in many respects. First, the underlying (non-related) medical issue in Carlyle – the bedsores – was a serious condition. Indeed, this was the reason for Carlyle's initial hospitalization at Toumey. Stated differently, Carlyle would have been and remained hospitalized for the bedsores even absent the penile injury. Conversely, the evidence reflected that the penile reconstructive surgery was comparatively less serious and, in fact, could have been performed partly on an outpatient basis had the patient been otherwise healthy. See, Id., at 192.

Respondent's situation in the present action was far different. It is undisputed that her main injury was the ankle fracture, and that the fracture required reconstructive surgery and extensive physical therapy. The malnutrition was a secondary and minor issue. There is no indication whatsoever that Plaintiff would have required any hospitalization at all absent the ankle fracture. In fact, various portions of the medical records were introduced into evidence. These records show that the only treatment Plaintiff received for her malnutrition consisted of an injection of 2g of calcium chloride, together with a magnesium and potassium supplement. [Trial Ex. Def. 1]. Indeed, the last page of Defendant's Exhibit 1 is the "final

diagnosis form" which lists the "principal diagnosis" as "left knee instability, car vs. pedestrian, ankle frx-dislocation, open wound leg 20 cm" and makes no mention whatsoever of any malnutrition or other treatment. Id.

The other significant distinguishing factor between the present case and Carlyle is the nature of the bills. Whereas in Carlyle, "the aggregate Norfolk bill for penile reconstruction and treatment of the pre-existing decubitus showed no apportionment of the cost for either" [Carlyle 305 S.C. at 193], Respondent's bill from McLeod specifically itemizes each charge, including entries for things such as "Med-Sur Supplies; Implants; X-Ray; CT-Scan; OR Service; Anesthesia; Blood; Physical Therapy; Recovery Room, etc." [Trial Ex. Pl. 6].

Based on the evidence, including the itemized bill, and Respondent's hospital records, the jury was able consider the appropriate medical specials without resorting to speculation or conjecture. It is clear from the evidence that Respondent would not have been admitted to the hospital at all absent the collision and ankle fracture. Moreover, to the extent Respondent received other minor and incidental care while in the hospital (which is likely true in every case), the Trial Court gave Appellant's counsel wide latitude in cross examining the witnesses about the issue and arguing the issue in his closing. Because the medical evidence was competent, complete, and did not invite speculation or conjecture, the Trial Court was well within its discretion to admit the McLeod bill into evidence, and did not commit reversible error.

The only remaining bill in dispute is the Advanced Medical Associates bill. It is true that this provider is Respondent's primary care physician, that Respondent was seeing this provider even before the collision, and that this provider also treated

Respondent for other issues, such as her schizophrenia. [Trial Tr. 102:4-13]. However, Respondent admitted only a small fraction of her bills from Advanced Medical Associates – those representing her visits for follow up treatment as a result of the ankle fracture. Indeed, these represent just 8 visits. Ms. Arthur testified that she took Respondent to each of these visits and that Respondent made these appointments for pain as a result to the injuries sustained in the wreck. [Trial Tr. 98:8-16 ; 107:25-108:3]. Appellant's counsel was given broad latitude to cross examine Ms. Arthur and Respondent regarding these visits. Likewise, these bills totaled just $1,704 or less than 1 percent of the total bills submitted by Respondent. Although the Trial Court noted a proper foundation to admit these bills, even if this ruling was in error, the error could not be said to prejudice Appellant where it is undisputed that Respondent suffered some amount in excess of $100,000 in clearly relatable bills, and there is no indication that the $1,704 bill from Advanced Medical Associates had any impact on the jury's final calculation of damages. See, e.g., Recco Tape & Label Co. v. Barfield, 312 S.C. 214, 216 (1994)(to warrant reversal, the appellant "must show both the error of the ruling and resulting prejudice.").

II. The Trial Court did not err by admitting into evidence the Respondent's medical bills through the testimony of Respondent's sister, because Respondent's sister had intimate and personal knowledge sufficient to establish a credible foundation.

Appellant next argues that Respondent's medical bills should not have been admitted because Respondent's sister, through whom the bills were admitted, "could not adequately testify as to the reasonableness and necessity of the bills." [Appellant Br. 22]. This argument is in error.

In the present case, Respondent's main injury was a broken ankle, which required surgery. It is undisputed that the broken ankle was caused by the collision, and the point was admitted by Mr. Herring. [Trial Tr. 174:16-19]. Both Mr. Herring and the EMS driver testified that the injury was severe and acknowledged that Ms. Blackwell obviously did not have the leg injury prior to the wreck, as she would not have been able to walk. [Id.] "Expert testimony is not required to prove proximate cause if the common knowledge or experience of a lay person is extensive enough." O'Leary-Payne v. R.R. Hilton Head II, Inc., 371 S.C. 340, 349 (Ct.App. 2006). Moreover, "where physical injury is coincident with or immediately follows an accident and is naturally and directly connected with it, lay testimony may be sufficient to carry to the triers of facts the issue of whether or not the accident proximately caused it..." Roscoe v. Grubb, 237 S.C. 590, 596 (1961).

Here, it is clear, even to a lay person, that Respondent did not have a compound fracture nor a large open wound on her leg prior to the collision. It is equally discernable to a lay person that a 55 m.p.h. collision between an automobile and a pedestrian could be reasonably expected to cause such an injury, and in this case that it did. Thus, it was proper for the jury to consider all damages stemming from the injury.

The bills for this injury were introduced through Respondent's sister, Ms. Arthur. Ms. Arthur testified that Respondent had been previously diagnosed with schizophrenia. [Trial Tr. 87:19-20]. Although Respondent was able to care for herself in many regards, and is not legally incompetent, she relied heavily on Ms. Arthur for support. [Id. at 88:12-14]. Respondent has lived with Ms. Arthur since the early 90's. [Id. at 87:3-5]. Likewise, Respondent does not drive, and when not walking, relies solely on Ms. Arthur for transportation. Ms. Arthur testified that, in addition to assisting Respondent with transportation, Ms. Arthur also helped Respondent

handle Respondent's finances. [Id. at 87:6-10 ; 97:10-19]. Finally, with the exception of Respondent's initial transport to the hospital via EMS, Ms. Arthur drove Respondent to every medical appointment, and sat with Respondent through every medical appointment, for which Respondent received the bills that were introduced at the trial. [Id. at 98:8-16].

Ms. Arthur testified that, as the person responsible for assisting Respondent with finances, Ms. Arthur received the bills on Respondent's behalf and could testify that the bills submitted at trial appeared to be accurate copies of the bills she received. [Id. at 98:8-16]. That Ms. Arthur could not testify as to the medical necessity or reasonableness of the bills was not fatal to their admission. Our courts have held that the types of arguments Appellant now makes apply to the weight of the evidence and not its admissibility. See, e.g., Armstrong v. Weiland, 267 S.C. 12, 16 (1976)("When the testimony of an expert witness is not relied upon to establish proximate cause, it is sufficient for the plaintiff to put forth some evidence which rises above mere speculation and conjecture"), Moultrie v. Checker Yellow Cab Co., Inc., 93-UP-048 (Unpublished Opinion)(A layperson's testimony is sufficient to lay a foundation for admitting medical bills redacted for insurance information because the layperson is competent to testify to the indebtedness. The absence of supporting medical testimony goes to the weight of the evidence, not admissibility), confirmed by the published opinion of Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 719 S.E.2d 703 (Ct.App. 2011).

In the instant case, Ms. Arthur was clearly competent to testify as to Respondent's indebtedness. The absence of supporting medical testimony relating to the necessity and reasonableness of the bills was an issue of weight and did not preclude the bills' admission into evidence. As such, the Trial Court did not abuse its discretion in admitting the same, and Appellant is not entitled to a new trial on that basis.

III. The Trial Court did not err in excluding the testimony of Rhiannon Herring because her testimony was not probative or relevant to any matter at issue in the trial, was speculative, and because any probative value the testimony may have carried was substantially outweighed by the danger of unfair prejudice.

Appellant next contends that the Trial Court erred in excluding the testimony of Rhiannon Herring. Ms. Herring did not witness the collision. Instead, she testified that she saw a "black female" in the roadway [Trial Tr. 132:13] at least 5-10 minutes prior to the wreck. [Trial Tr. 133:1-4]. Herring later learned that her husband was involved in a wreck with a "black female" along that same stretch of road. [Trial Tr. 133:13-15]. Importantly, in her proffered testimony, Herring never testifies that the "black female" she saw in the road was the same "black female" she observed at the scene of the collision, that being Respondent. Indeed, the Foxtrot Festival had just let out and many people were "walking and driving and getting home all different kinds of ways." [Trial Tr. 163:16-24]. Furthermore, even if the "black female" Herring had seen in the road 10 minutes prior to the collision was the Respondent, Herring testified that Herring had no idea what this individual had done between the time Herring allegedly spotted her in the road, and the time of the collision. [Trial Tr. 134:3-135:1]. Herring does not know whether this individual kept walking where she was walking, moved over and started walking in a different area, or even a different direction, or crossed the road entirely. [Id.].

The Trial Court excluded the testimony as not probative to the question of whether Respondent was actually walking in the roadway at the time of the collision. In alleging error, Appellant points to three criminal cases: State v. Nathari, 303 S.C. 188 (Ct.App. 1990); State v. Jenkins, 249 S.C. 570 (1967); and DeLee v. Knight, 266

S.C. 103 (1975). Each of these cases, however, is distinguishable from the issue at hand. First, it is important to note that, in each case, the trial court allowed the testimony to come in. It is well settled that the admission or exclusion of evidence is left to the sound discretion of the trial court and should not be disturbed absent an abuse of discretion. See, e.g., Dunn v. Charleston Coca-Cola Bottling Co., 311 S.C. 43, 45 (1993). Thus, in each of these cases, the Court was not passing judgment on whether the testimony should have absolutely been admitted, but rather affirming only that the Trial Court did not abuse its discretion. In fact, at least as to Jenkins, the Court noted that Appellant had failed to preserve his objection altogether. Jenkins 249 S.C. at 576.

More fundamentally, the testimony offered in these cases was for a purpose other than proving how the collision occurred. In each case, the criminal defendant was fighting a charge of involuntary manslaughter, reckless homicide, or felony DUI. In the Jenkins and Knight cases, involving reckless homicide and involuntary manslaughter respectively, the Court noted that the crimes required proof of knowledge by the defendant that his actions were reckless. In each case, the testimony was admitted not as proof of what happened in the incident, but to show defendant's state of mind leading up to the incident. See, Jenkins, 249 S.C. at 576 ("we are inclined to agree, under all the circumstances reflected in the record, that the evidence was not too remote, in point of time, to be relevant as going to show the condition and mental attitude of appellant...); Knight, 266 S.C. at 109 (holding the testimony was relevant to show the condition and mental attitude of defendant).

Likewise, Nathari involved a charge of felony DUI. The defendant refused a urine test. Thus, admissibility of his bad driving prior to the incident was necessary not to prove what actually happened during the incident, but that the defendant was, in fact, under the influence. Nathari 303 S.C. at 194 ("[the admitted testimony] identified Nathari as the driver of the car that struck the two boys and it was circumstantial evidence from which the jury could infer Nathari was under the influence.").

Likely realizing this distinction, Appellant contends that Herring's testimony was not offered as proof that Respondent was in the roadway at the time of the collision, but rather, "weighed upon the reliability and credibility of [Respondent's] testimony..." [Appellant Br. 25-26]. It is true that evidence may be probative if it tends to impeach other admitted testimony. However, Respondent never testified that she was walking in the grass 5 or 10 minutes prior to the collision. Nor did she testify that she always walked in the grass or that she never walked in the road. Instead, the only evidence offered by Respondent is that she told her sister she was walking in the grass when the car swerved over and hit her [Trial Tr. 109:18-21] and that she was "100% sure she was walking in the grass when the car swerved over." [Id. at 113:18-21].

Clearly, then, the proffered testimony held no impeachment value. It's only use could have been to suggest to the jury that because some unidentified "black female" was allegedly in the road 10 minutes prior to the collision, that necessarily, because Respondent is a "black female" she must have been in the road at the time of the collision.

Moreover, where the actions cited in Appellant's cases (i.e. the poor driving witnessed prior to the event) were both illegal and unusual in and of themselves, as the Trial Court noted, there was nothing abnormal about Respondent walking in the roadway at any point prior to the collision. See, Trial Tr. 39:2-12 ("But for example, you know, I told the jury earlier, I grew up in Edgefield County. We didn't have stoplights. I always walked in the road if there was not traffic, but when I would see a car coming I'd move off the side of the road. I don't know what the testimony is gonna be from these folks...I just don't know how that's relevant to whether or not she was in the road when the incident occurred."). Indeed, as the Trial Court went on to note, Respondent was prepared to put up a number of witnesses of her own that would testify to the fact that she was seen walking in the grass earlier in the day. The entire trial would have devolved into a parade of witnesses testifying to facts that had no bearing on the ultimate incident.

Evidence which is not relevant is not admissible. S.C. Evid. R. 402. Evidence Rule 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Here, the Trial Court properly excluded Ms. Herring's testimony because it was not relevant. Even if true, the fact that some unidentified "black female" was in the road 10 minutes prior to the collision, has no bearing on the question of whether Respondent was in the road at the time of the incident. The only testimony that would have bearing on the issue of whether or not Respondent was in the road at the time of the incident would be from those individuals who actually witnessed the incident. Ms. Herring admittedly did not, thus the Trial Court properly excluded her testimony.

IV. The Trial Court did not err by refusing to inquire the jury panel on *voir dire* examination as to whether any juror had certain encounters with the Sheriff's Department or held any strong opinions about the Sheriff's Department or certain practices of law enforcement.

Appellant contends that the Trial Court committed reversible error by refusing to inquire the jury panel as whether they held any biases or strong opinions against the Sheriff's Department. [Appellant Br. 31-34]. However, this contention is inaccurate. As an initial matter, the Court identified the parties to the action. [Trial Tr. 4:11-13]. The Court further identified the potential witnesses in the case (such witnesses including Officer Herring and Highway Patrol Trooper Ellis) and asked whether any potential juror had any close relationship with said witnesses. [Trial Tr. 7:22-8:2]. The Court also inquired as to whether any potential juror was or had family employed by law enforcement [Trial Tr. 14:17-19] and, more specifically, whether any potential juror or their family had any close relationship with the Marion County Sheriff's Department. [Trial Tr. 17:5-8]. Finally, after once again stressing the fact that the case involved the Marion County Sheriff's Department [Trial Tr. 20:3-5], the Court stated, "whether I have asked the question or not, is there any member of the jury panel who knows of any reason why you would not be able to give both the plaintiff and the defendant a fair and impartial trial..." [Trial Tr. 21:9-12].

It is clear from the record that the Trial Court did, to the extent practical and necessary, seek to elicit any potential bias that any potential juror might harbor against either side. The Court made it explicitly clear that the Complaint alleged wrongdoing against the Marion County Sheriff's Department. That the Court did not

word its questions in the exact manner requested by Appelleant does not rise to the level of reversible error. "After the statutory questions have been asked and answered, any further examination of a juror on *voir dire* must be left to the discretion of the trial Judge, which is subject to review only for abuse thereof." State v. Bethune, 93 S.C. 195, 75 S.E. 281 (1912). Here, the Court asked all the necessary and appropriate questions required to elicit evidence of juror bias, and did not abuse its discretion by refusing to ask Appellant's additional and cumulative questions. As such, Appellant is not entitled to a new trial on these grounds.

V. Appellant is not entitled to a new trial as a result of Respondent's alleged improper arguments during closing both because said arguments were not improper, and because the issue was not properly preserved for appeal.

Appellant now seeks a new trial based upon the alleged impropriety of Respondent's counsel's closing argument, specifically, the following passage:

> One thing we do know is that this is the greatest civil justice system in the world that we have because this is probably one of the only countries where little miss somebody like little Ms. Jackie can come in here in front of the twelve of you and go up against with a Marion County reserve sheriff deputy, the guy who as we heard after the wreck was able to call his wife to come to the scene, his boss to come out to the scene. He was able to get the favorable highway patrolman who came out to the scene and said after five minutes you're free to go, you're fine. He was able to get in the medical records, you know, and EMS thing that, oh, she must have been drunk, even though she wasn't' drunk. He's able to do all those things after the wreck and leading up to the trial, but none of that matters now.
>
> None of that matters in here because in our civil justice system the twelve of you have the final decision. The twelve of you are the only ones that can help Ms. Jackie get justice in this case. It doesn't matter about all the strings he was able to pull and about all those things he was able to do. The twelve of you get to look at this evidence and you get to decide whether this is gonna be the type of community where people can go around

> look, driving, looking on their cell phones, running people over, covering it up and getting away with it.
> [Trial Tr. 313:4-314:6].

Appellant argues that this statement "was calculated to arouse the jury's passions or prejudices, and went beyond the outer boundaries of proper closing argument." [Appellant Br. 36]. However, this argument was not preserved. During the trial, Appellant's counsel objected merely on the grounds that the argument went beyond or alleged facts not in evidence. [Trial Tr. 314:8-11]. Appellant attempted to broaden the scope of the objection in post trial motions, arguing "The Court erred in allowing the Plaintiff to make improper arguments during closing in contradiction to the rulings on the motions *in limine.*" [Post-Trial Mtn. ¶ 4]. However, in neither objection did Appellant suggest that the argument was calculated to arouse prejudice or set forth for an improper motive. Instead, the motion *in limine* argument has been abandoned on appeal and the remaining objection alleged impropriety by arguing facts not in evidence. Further, Appellant's post trial motion failed to set forth the arguments, with any specificity whatsoever, that it found objectionable. Indeed, in denying the motions, the Trial Court stated, "Defendant does not specify which arguments it finds objectionable... To the best of the Court's recollection, and with Defendant having not pointed out any such arguments in its motion, no such arguments were ever made." [Order Denying Post-Trial Mtn.].

It is well settled that an objection must be sufficiently specific to inform the trial court of the point being urged by the objector. Broom v. Southeastern Highway Contracting Co., 291 S.C. 93, 352 (Ct. App. 1986). In the instant case, the Trial Court intentionally noted that Respondent's post trial motion was not specific enough to allow for a proper consideration of the

issue where it failed to state the arguments it found objectionable, or to indicate why it felt such arguments were objectionable. Thus, this issue has not been preserved.

Nonetheless, assuming this Court considers the merits of this issue, Respondent would show that this argument was, in fact, supported at all times by evidence on the record. Mr. Herring testified that his first call was to his wife. [Trial Tr. 168:19-22]. He also admitted that his next call was to his boss in the Sheriff's Department. [Id. at 169:2-4]. Both Herring and Trooper Ellis agree that the collision happened at approximately 9:10 p.m. [Id. at 164:19-24], and Trooper Ellis testified that the first call to outside authorities to report the incident occurred at 9:18 p.m., some 8 minutes later. [Id. 196:20-197:4]. Indeed, Trooper Ellis was surprised by the length of the delay and initially though "is that right?." [Id. at 183:18]. Trooper Ellis further testified that he questioned Herring for no longer than 5 minutes and then allowed Herring to leave the scene of the wreck. [Id. at 197:22-25]. Herring admitted that, while not volunteering with the Sheriff's Department, he worked a paid position with Marion County EMS. [Id. at 160:11-16]. The EMS report was entered into evidence and stated "PT also had the smell of alcohol on her." [Trial Ex. Pl. 7]. Nonetheless, Respondent's medical records proved that she tested negative for any drugs or alcohol in the hospital. [Trial Ex. Pl. 5]. Finally, Herring admitted his phone records indicated he was on a phone call at 9:10 p.m. – the time of the collision. [Trial Tr. 168:4-8]. Accordingly, every piece of evidence cited by Respondent's counsel in the objectionable argument was supported by evidence already on the record.

More importantly, Appellant mischaracterizes the tone and nature of counsel's argument, which must be read as a whole. Whereas Appellant contends that the argument urged the jury to believe that the Sheriff's Department itself was engaged in a cover up, such is not true. In fact, Respondent's counsel did not allege any wrongdoing on behalf of the Sheriff's Department, who

was, in fact, the named Defendant. Instead, counsel noted, correctly so, the disparity in power between Herring and Respondent. Counsel noted that, as a reserve officer, Herring had many advantages that Respondent did not have. Counsel pointed out how Herring attempted to use these advantages to his advantage, but never suggested that the Defendant was complicit. Instead, counsel urged the jury to forget about whatever power either party had or did not have, and to simply look at the evidence. Indeed, the theme of the argument was, "only the jury is the finder of fact in this case, and it is the jury's job to review the evidence as it sees fit." Counsel did not ask the jury to punish the Sheriff's Department for being in a position of power, but simply asked the jury not to punish Respondent for not being in a position of power. As counsel noted, the goal of the civil justice system is not to punish anybody, but to give everybody access to civil redress so that harms can be made right and injured parties made whole.

VI. Appellant is not entitled to a new trial based upon the amount of the verdict, because the verdict was reasonable and not clearly the result of passion, caprice, prejudice, or some other influence outside the evidence.

Finally, Appellant argues that the pre-reduction verdict of $500,000 was grossly excessive. However, this verdict was clearly supported by the evidence. It is undisputed that Respondent suffered a severe injury as a result of the collision. Mr. Campbell, the paramedic who tended to Respondent, testified that she suffered an open fracture. [Trial Tr. 207:16]. He further testified that she was in pain [Trial Tr. 211:21-22] and that the injury was so severe they decided to transfer her to McLeod Regional Medical Center instead of keeping her in Marion. [Trial Tr. 212:1-5]. Mr. Herring also admitted that the injury was significant [Trial Tr. 173:15-17], and that Respondent appeared to be in pain. [Trial Tr. 174:9-10].

Respondent was transferred to McLeod Regional Medical Center where she underwent extensive reconstructive surgery. [Trial Ex. Pl. 4]. All told, Respondent was in the hospital for 10 days, [Trial Ex. Def. 1], and incurred a hospital bill totaling $100,058.00. [Trial Ex. Pl. 6]. Respondent incurred additional bills including the EMS bill, Anesthesia charges, radiology charges, and physical therapy charges. [Id.].

Respondent's treatment did not end when she left the hospital. Respondent's sister was required to clean and dress the surgical wound following discharge, a procedure which caused Respondent pain. [Trial Tr. 94:15-95:11]. Once the wound healed, Respondent was required to undergo physical therapy. [Trial Tr. 95:12-21]. It was several months before Respondent was even able to start bearing weight on her injured leg again. [Trial Tr. 95:22-96:3].

There was also evidence on the record of permanency. During the trial, which took place almost 28 months after the injury, Respondent's sister testified that Respondent was still not able to walk as far as she had been able to walk prior to the injury. [Trial Tr. 96:15-21]. Respondent and her sister further testified that Respondent was still in pain. [Trial Tr. 107:25-108:3 ; 115:8-10]. For her part, Respondent testified that she could no longer walk for long periods of time without her foot "giving out" on her and feeling weak. [Trial Tr. 114:10-14].

Further, there was ample testimony regarding the emotional effect these injuries have had on Respondent. As somebody who couldn't drive and didn't work, Respondent spent most of her time – and derived most of her enjoyment – from walking about town. [See, Trial Tr. 90:2-6 ; 112:1-5]. Respondent's sister testified that Respondent's limited ability to walk after the injury caused her to become

depressed and lonely. [Trial Tr. 100:7-14]. Respondent testified that she is not able to see as many of her friends as she did before, that she gets lonely now, and is generally bored on a daily basis. [Trial Tr. 114:23-115:7].

Finally, it is important to note that the jury deliberated for 3 hours and 40 minutes. [Trial Tr. 347:17 ; 353:11]. They assigned fairly precise percentages of negligence, demonstrating that they put honest effort and thought into the deliberation. Given the evidence on the record regarding Respondent's injuries and damages, together with the fact that the jury found Respondent 35% comparatively negligent, it cannot be said that the verdict was motivated by passion, prejudice, caprice, or some other improper motive. Nor can it be said that the verdict was grossly excessive. As such, Appellant's request for a new trial on these grounds should be denied and the verdict sustained.

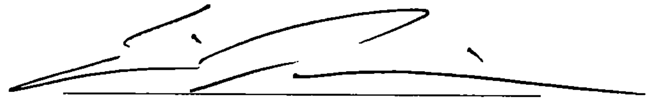
CONCLUSION

For the foregoing reasons, Respondent respectfully requests that verdict and rulings of the Trial Court be affirmed and that the judgment against Appellant stand.

[signature on following page]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Attorneys for Respondent

October 17, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas A. Russo Circuit Court Judge

RECEIVED
OCT 19 2017
SC Court of Appeals

Appellate Case No. 2017-000210
Civil Action No. 2010-CP-08-3732

Vanessa Blackwell a/k/a
Jacqueline Blackwell,... Respondent,

v.

Andrew J. Herring, Individually, and as an
Employee/agent of Marion County Sheriff's
Department; and Marion County Sheriff's
Department..Defendants,

Of which, Marion County Sheriff's Department is the..............................Appellant.

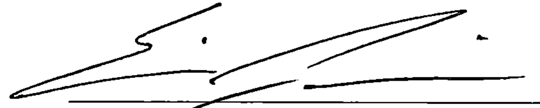
CERTIFICATE OF SERVICE

I certify that on October 6, 2017, I placed Respondent's Initial Brief and Designation of Matter in the United States First Class Mail with sufficient postage and addressed to the Court and opposing counsel. I subsequently learned that the Court did not receive my package. However, opposing counsel confirmed that she did receive the package addressed to her. Accordingly, I certify that I have placed a second copy of the documents in the mail this 17th day of October, 2017, again addressed to the Court and opposing counsel.

[signature on following page]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Attorneys for Respondent

October ~~6~~ 17, 2017

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO COLUMBUS STREET OFFICE
ERIC@AKIMLAWFIRM.COM

ANASTOPOULO LAW FIRM

AKIM A. ANASTOPOULO (SC)

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
NADIA S. BAIG (SC)(FL)
GARRETT L. BROWN (SC)
BRITTANY A. DUNNE (CT)
STEFAN B. FEIDLER (SC)
HERB F. GLASS (SC)
J. CAMDEN HODGE (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
SEAN M. TROPEA (SC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
CRAYTON WILLIAMS (SC)

*OF COUNSEL

October 17, 2017

RECEIVED
OCT 19 2017
SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *Jacqueline Blackwell v. Marion County Sheriff's Department*
Appellate Case No.: 2017-000210

Dear Ms. Kitchings:

I am in receipt of your letter dated October 12, 2017 indicating that the Court did not receive Respondent's Initial Brief or Designation of Matter. The purpose of this letter is to inform the Court that the same was placed in the mail with sufficient postage and addressed to both the Court and opposing counsel on October 6, 2017. I am not sure why the copy to the Court was never delivered. However, I have enclosed an e-mail from opposing counsel indicating that she received the copy that was addressed to her.

I am enclosing again for filing an original and one copy each of Respondent's Initial Brief and Respondent's Designation of Matter to be Included in the Record on Appeal. <u>I have also generated a new Certificate of Service attesting to the facts set forth above</u>. We would appreciate it if you would file the originals and return the stamped copies through the provided envelope.

Please do not hesitate to contact me should you require anything further.

Sincerely,

Eric M. Poulin

Enclosure

Cc: Carmen Ganjehsani
Cc: Douglas C. Baxter

Eric M. Poulin
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403

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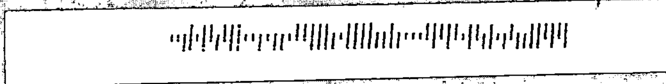

RECEIVED
OCT 19 2017
SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211