

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Alison Renee Lee, Circuit Court Judge

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OCT 31 2017

Appellate Case No. 2016-002168
Case No. 2014-CP-10-5663

SC Court of Appeals

Rene Hale Shelley, as Personal Representative of the
Estate of Michael Mann Lindler, Appellant-Respondent,

v.

South Carolina Highway Patrol, Respondent-Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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Certificate of Counsel

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1 Q. I will. I will. You agree with me that the danger
2 Michael Lindler faced was being struck by a vehicle on the
3 road?

4 A. Yes. Given his placement and condition, that was --
5 that was the specific danger that he faced.

6 Q. You also -- well, let's establish -- let's talk about
7 facts real quick. When Travis Blackwelder arrives on the
8 scene, where is Michael Lindler looking?

9 A. At the time he arrives on the scene, Mr. Lindler is
10 in a really dangerous condition. He is sitting -- he is
11 at his vehicle, which is sitting in the roadway, with no
12 flashers on and no illumination at all and so -- I said
13 earlier the trooper does immediately the correct thing,
14 which is we've got to get that vehicle off the roadway.

15 Q. That's step one?

16 A. Well, step -- actually, before we do that, step one
17 is turn on my emergency lights, my overhead lights,
18 position my vehicle so I've got a safety corridor so I,
19 Trooper Blackwelder, don't get hit and nobody else gets
20 hits so now I can go up there and try to help this person
21 figure out what's wrong with the car.

22 Q. Sure. And then you get him off the road?

23 A. And then get him off the road. Remember he was gonna
24 use the push bar, but they're able to get it started.

25 Q. That's right.

1 A. But either one of those would have been fine.

2 Q. Was Michael Lindler more or less in danger after he
3 was off the road?

4 A. He was in less danger after he was off the road and
5 that's due to Trooper Blackwelder's getting him off the
6 road and realizing that's square one.

7 Q. So Trooper Blackwelder took an affirmative action to
8 listen the danger that Michael Lindler faced?

9 A. That's correct. That's standard police procedure
10 in that kind of situation. I've done similar things, yes.

11 Q. Okay. Now do you recall on the side of the road in
12 this construction zone, you know, everybody's talked about
13 that --

14 A. Right.

15 Q. -- do you recall there being a guardrail on the
16 right-hand side when we first get on the scene -- when
17 Travis Blackwelder first comes on the scene?

18 A. That's correct. That's to the -- at least before
19 you -- before you get to the actual vehicle.

20 Q. And presumably that was why Michael Lindler didn't
21 get off the road because of the guardrail?

22 A. Well, he wouldn't be able to -- you know, the
23 guardrail would keep him from getting off there.

24 Q. That's a reasonable conclusion that Michael --

25 A. It is. It is.

1 regarded as gross insubordination that would result in
2 some severe disciplinary action. Absent that, the person
3 is embolden to continue doing, you know, whatever he --
4 whatever regulations he wants to follow, he'll follow,
5 the others he won't, and that doesn't seem to -- state
6 police organizations are in my experience very -- you
7 know, very militaristic and they're very tight -- run a
8 very taut way, and it would be a little unusual just to
9 -- to not do -- I mean, like -- like what happened? What
10 did they do to try to remedy all these problems other
11 than write him this letter?

12 Q. Okay. You talked with Mr. Elliott for a good length
13 of time about the environment, the hazardous environment.

14 A. Of the construction zone, yeah.

15 Q. The weather.

16 A. The weather, the darkness.

17 Q. The darkness.

18 A. The absence of an emergency lane, heavy traffic.

19 Q. Moderate to heavy traffic, absence of emergency lane.

20 You would agree with me that you can leave a disabled
21 motorist in that hazardous environment if they are not
22 impaired?

23 A. You could. You could, except, again, going back
24 to what I said earlier, that let's say we've got this
25 perfectly lucid guy and his family that are out there,

1 but you would have to -- and this guy's got a lot of
2 experience with traffic, a lot more than I ever had,
3 you'd have to realize wait a minute, wait a minute, this
4 vehicle is sitting inches from the white line, they're
5 gonna put gas in this thing without my presence here with
6 emergency lights, they're gonna have to -- as I said
7 before, they're gonna have to step out in the roadway, I
8 can't leave them like this, I can't, you know, somebody
9 could get hit. You'd have to see that.

10 Q. Could you turn to Page 158 for me in your deposition?

11 A. I'm sorry?

12 Q. Could you turn to Page 158 for me in your deposition?

13 A. All right.

14 Q. Starting on Line 9.

15 A. 158. Bear with me a second. I'm getting there.

16 Okay. 158, Line 9. I'm with you.

17 Q. And I'll take one on the chin here.

18 Question: Okay. Maybe I asked a misleading
19 question. I apologize for that. Can an individual who
20 is not impaired in any way be left on the side of the
21 road in the environment that Mr. Lindler was left in?
22 And your answer starts, certainly.

23 A. Yeah.

24 Q. And I'll be fair to you. You then say, a person who
25 is not displaying any signs that indicate something is

1 seriously wrong with them that could put them in harm's
2 way, you know, it's -- as we all know it's -- and it's a
3 good reminder to remember any time you break down on a --
4 you know, a rapidly travelled highway, it's an inherently
5 dangerous situation to anyone, but mindful of that a
6 person could -- could be broken down like that, have no
7 -- no visible signs of any kind of medical condition,
8 impairment, intoxication, drug involvement, anything, and
9 in that situation an officer would, indeed, be able to say
10 look, you've got help on the way, yes, I do, my cousin's
11 coming here with a can of gas or whatever, so it would be
12 -- so it would be very important, you need to just stay
13 over here on the side of the vehicle, don't get anywhere
14 near the line and if the relative doesn't show up in a
15 timely manner, give us a call back and then you'll be
16 able to get 10-8 --

17 A. It says 10-8, back in service, right.

18 Q. -- to get back in service?

19 A. Yeah.

20 Q. So you'd agree with me taking it a step further that
21 if -- and I know you disagree with what I'm gonna say,
22 but if Travis Blackwelder does, in fact, determine in his
23 mind that Mr. Lindler is not impaired, that it is not a
24 violation of any policy, any standard, any guideline to
25 leave him in those conditions?

1 know. You and I are not supposed to do that, but if
2 something is -- if a person is impaired in judgment with
3 drugs or mental illness or some other physical condition,
4 they might well do one of those things.

5 Q. Dr. Kirkham, regardless impaired, unimpaired,
6 disrepaired, you know, regardless if I violate one of
7 these traffic laws a law enforcement officer can give me
8 a ticket?

9 A. That's correct.

10 Q. So Michael Lindler would have violated this statute?

11 A. Yes, by getting out in -- by stepping out in the
12 traffic, yes.

13 Q. Tell me if in your opinion as a criminologist and a
14 police practice expert and someone that can hold their
15 expertise out in traffic situations, if this statute was
16 violated by Michael Lindler.

17 56-5-3150. Every pedestrian crossing a roadway at
18 any point other than within a marked crosswalk or within
19 an unmarked crosswalk at an intersection shall yield the
20 right-of-way to all vehicles upon the road.

21 A. That's very standard, too, yes.

22 Q. And did Michael Lindler violate that traffic statute?

23 A. That, by definition, in terms of the accident
24 situation he got out into traffic.

25 Q. Okay. There's another one, 56-5-3160, pedestrians

1 on highways. Where a sidewalk is not available, any
2 pedestrian walking along and upon a highway shall walk
3 only on a shoulder as far as practicable from the edge of
4 the roadway.

5 A. Again, very standard wording in the laws I've seen.

6 Q. And you're familiar with that statute or a statute
7 like that?

8 A. Yes.

9 Q. And Michael Lindler would have violated that statute?

10 A. Yes, that's correct.

11 Q. Dr. Kirkham, in your opinion, did Michael Lindler
12 act negligently on December 17th of 2012?

13 **MR. ELLIOTT:** Objection. He's asking for a legal
14 conclusion and that's --

15 **MR. HUGHES:** I'll withdraw it, Your Honor.

16 BY MR. HUGHES:

17 Q. Dr. Kirkham, in your opinion did Michael Lindler
18 exercise due care on the roadway?


19 A. No, he did not exercise due care on the roadway.
20 Again, the question is why, which is we don't -- you
21 know, the trooper did not know exactly what was going on
22 with him, just what he was doing, and he was not being
23 cautious, really cautious.

24 Q. Dr. Kirkham, you'd agree with me that Michael
25 Lindler's act, his very tragic act of walking into that

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Supplemental Record on Appeal contains all material proposed to be included by all parties and not any other material.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent-Appellant South Carolina Highway Patrol certifies that the Supplemental Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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