

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS
THE HONORABLE THOMAS A. RUSSO
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-000210
CIVIL ACTION NO. 2015-CP-33-140

RECEIVED
DEC 20 2017
SC Court of Appeals

Vanessa Blackwell, a/k/a
Jacqueline Blackwell,

RESPONDENT,

versus

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.

RECORD ON APPEAL

Douglas C. Baxter
RICHARDSON, PLOWDEN &
ROBINSON, PA
Post Office Drawer 3646
Myrtle Beach, South Carolina 29578
(843) 448-1008

Carmen V. Ganjehsani
RICHARDSON, PLOWDEN &
ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
**ATTORNEYS FOR APPELLANT
MARION COUNTY SHERIFF'S
DEPARTMENT**

Eric M. Poulin
Roy T. Willey, IV
ANASTOPOULO LAW FIRM, LLC
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
**ATTORNEYS FOR RESPONDENT
VANESSA BLACKWELL a/k/a
JACQUELINE BLACKWELL**

BLACKWELL V. MARION COUNTY SHERIFF'S DEPARTMENT

INDEX TO RECORD ON APPEAL

I.	ORDERS/JUDGMENTS	<u>PAGE</u>
	Form 4 Order and Order Denying Defendant's Post Trial Motions and Entering Judgment, filed January 18, 2017	1
	Verdict Form, filed September 14, 2016	9
	Consent Order Dismissing Andrew J. Herring, filed August 6, 2015	11
	Consent Order Striking Punitive Damages, filed August 6, 2015	13
II.	PLEADINGS	
	Complaint, filed February 19, 2015	15
	Answer, filed May 4, 2015	25
	Defendant's Motion to Dismiss Defendant Andrew J. Herring, filed May 4, 2015	29
	Defendant's Motion to Strike Punitive Damages, filed May 4, 2015	30
	Defendant's Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, for a New Trial, filed September 23, 2016	31
	Plaintiff's Response in Opposition to Defendant's Motion for JNOV and/or New Trial, filed September 28, 2016	33
III.	TRANSCRIPTS	
	Transcript of Trial held September 12-13, 2016	41
	Jury Voir Dire	44
	Pre-trial Arguments	63
	Plaintiff's Opening Statement	76
	Defendant's Opening Statement	90
	Examination of Wendy Arthur	95
	Direct Examination by Mr. Poulin	95

Cross-examination by Mr. Baxter.....	111
Redirect examination by Mr. Poulin.....	119
Examination of Jacqueline Blackwell	121
Direct Examination by Mr. Poulin.....	121
Cross-examination by Mr. Baxter.....	126
Defendant’s Motion for Directed Verdict	134
Proffer Examination of Rhiannon Herring.....	139
Direct Examination by Mr. Baxter	139
Cross-examination by Mr. Poulin.....	143
Examination of Andrew Herring.....	146
Direct Examination by Mr. Baxter	146
Cross-examination by Mr. Poulin.....	165
Examination of John Ellis, II	181
Direct Examination by Mr. Baxter	181
Cross-examination by Mr. Poulin.....	196
Examination of Kamadie Campbell	205
Direct Examination by Mr. Baxter	205
Cross-examination by Mr. Poulin.....	212
Stipulation	214
Plaintiff’s Motion for Directed Verdict	216
Defendant’s Renewed Motion for Directed Verdict	217
Plaintiff’s Closing Statement	220
Defendant’s Closing Statement.....	264

Plaintiff's Reply	287
Charge to the Jury	292
Verdict	324
IV. EXHIBITS	
Plaintiff's Exhibit No. 4 – Operative Report	331
Plaintiff's Exhibit No. 5 – History Physical	334
Plaintiff's Exhibit No. 6 – Medical Bills	337
Plaintiff's Exhibit No. 7 – Marion County EMS Patient Record	357
Defendant's Exhibit No. 1 – Medical Records	360
Defendant's Exhibit No. 3 – Photograph of Vehicle	373
Defendant's Exhibit No. 4 – Photograph of Vehicle	374
Defendant's Exhibit No. 5 – Photograph of Grass	375
Defendant's Exhibit No. 6 – Photograph of Vehicle	376
Defendant's Exhibit No. 7 – Photograph of Vehicle	377
Defendant's Exhibit No. 8 – Photograph of Road	378
Defendant's Exhibit No. 9 – Photograph of Vehicle	379
Court's Exhibit No. 1 - Defendant's Voir Dire Requests	380
V. CERTIFICATE OF COUNSEL	382

RECEIVED

FILED

FEB 06 2017

FORM 4

JUDGMENT IN A CIVIL CASE

SC Court of Appeals

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

CASE NO. 2015-CP-33-140

VANESSA BLACKWELL, a/k/a JACQUELINE BLACKWELL
PLAINTIFF(S)

MARION COUNTY SHERIFF'S DEPARTMENT
DEFENDANT(S)

Submitted by: Eric M. Poulin	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: Defendant's Post Trial Motions are denied and Judgment is entered in favor of Plaintiff. However, pursuant to the South Carolina Tort Claims Act, the Defendant shall not be liable for any amount of the verdict in excess of \$300,000.

ORDER INFORMATION

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

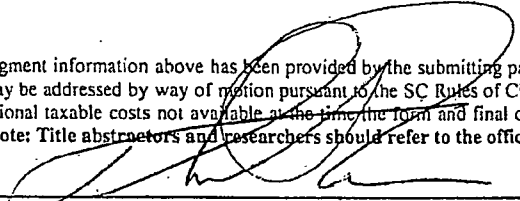
INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Vanessa Blackwell a/k/a Jacqueline Blackwell	Marion County Sheriff's Department	\$325,000.00
		\$
		\$

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

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


Circuit Court Judge

2141
Judge Code

12/01/16
Date

For Clerk of Court Office Use Only

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

Eric M. Poulin

62 Columbus Street

Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

Douglas C. Baxter

2103 Farlow Street

Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

VANESSA BLACKWELL, a/k/a
JACQUELINE BLACKWELL,

Plaintiff(s),

v.

ANDREW J. HERRING, Individually, and
as an employee/agent of MARION
COUNTY SHERIFF'S DEPARTMENT;
and MARION COUNTY SHERIFF'S
DEPARTMENT,

Defendant(s).

FILED
IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO. 2015-CP-33-0140
JAN 18 PM 1:54

ORDER DENYING DEFENDANT'S
POST TRIAL MOTIONS AND
ENTERING JUDGMENT

RECEIVED

FEB 06 2017

SC Court of Appeals

BACKGROUND

This matter is before the court following a jury trial in which the jury reached a verdict for the Plaintiff in the amount of \$500,000. The jury also found the Plaintiff to be 35% comparatively negligent. This case arises out of a motor vehicle/pedestrian collision in which the Plaintiff, a pedestrian, was struck by a Marion County Sheriff Department's reserve deputies while driving a Marion County vehicle. Plaintiff argued that Defendant left the roadway and struck her as she was walking in the grass. Conversely, Defendant argued that Plaintiff was walking in the road. Both Plaintiff and Defendant testified as to their recollection of the event.

Following the verdict, Defendant timely filed several post trial motions, including a Motion for Judgment Notwithstanding and a Motion for New Trial on several grounds. For the following reasons, these motions are respectfully denied.

JNOV

Defendant first moves for JNOV arguing that, because the jury found Plaintiff comparatively negligent, they necessarily believed she was in the road. As such, Defendant

argues that judgment should be directed in its favor. However, this argument is in error. Defendant argued that, even if Plaintiff was in the grass, she was nonetheless negligent for walking on the wrong side of the road, at night, in dark clothing. The jury found that Plaintiff was 35% comparatively negligent. This is perfectly consistent with the presumption that the jury believed Plaintiff was in the grass, but walking in the wrong direction and/or with dark colored clothing. As such, it is equally consistent to find that Defendant was 65% negligent in leaving the roadway and striking her. This is a classic factual dispute which was appropriately resolved by the jury, and which should not be disturbed by the Court.

NEW TRIAL

Defendant next moves for a new trial on numerous grounds. Specifically, Defendant argues that the Court erred in admitting or excluding certain evidence, including the refusal to ask certain voir dire questions, that Plaintiff made improper arguments during closing, and that the verdict evidences a basis in passion, capriciousness and/or prejudice.

1. Admission/Exclusion of Evidence/Testimony

Defendant argues that the Court erred in admitting Plaintiff's medical bills into evidence, and in excluding certain testimony of proposed witness Rhianna Herring. Defendant also argues that the Court erred in prohibiting the publication of certain portions of Plaintiff's deposition.

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, 426 S.E.2d 756, 757 (1993). "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, 638 S.E.2d 96, 101 (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, 118 S.E.2d 337, 340 (1961).

Here, it is clear, even to a lay person, that Plaintiff 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 mph 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 appropriate for Plaintiff’s medical bills to be admitted into evidence. See, e.g., Armstrong v. Weiland, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (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).

Next, 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.”

Defendant proffered testimony from Ms. Herring that she saw Plaintiff in the roadway five to ten minutes prior to the incident. However, Ms. Herring admitted that she did not witness the incident, and had no idea where Plaintiff had been walking in the five to ten minutes between

the time Ms. Herring claims to have seen her and the time of the incident. Thus, this testimony was appropriately excluded because it was not relevant. Even if true, the fact that Plaintiff was in the road ten minutes prior to the collision has no bearing on the question of whether Plaintiff was in the road at the time of the incident. The only testimony that would have bearing on the issue of whether or not Plaintiff was in the road *at the time of the incident* would be from those individuals who actually witnessed the incident.

The Court also has broad discretion to bar evidence that is cumulative. Defendant contends that the Court erred in not allowing it to publish certain portions of the Plaintiff's deposition during its case in chief. However, the Plaintiff was present and testified at trial. Moreover, Defendant had an opportunity to fully cross examine the Plaintiff and, in fact, did cross examine the Plaintiff. Moreover, the publication would have been duplicative and/or cumulative because the testimony Defendant sought to introduce through the publication of the deposition transcript was essentially identical to the testimony it had already elicited from her on the stand. As such, this is not sufficient ground for new trial.

Finally, Defendant next contends that the Court erred in refusing to ask all of Defendant's requested *voir dire* questions. "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 did ask the vast majority of the *voir dire* questions that were proposed by each party, and was well within its discretion to decline to ask the few remaining questions. As such, this is not a sufficient ground for new trial.

2. Closing Arguments

Defendant next argues that the Court erred in allowing Plaintiff to make improper arguments during closing in contradiction to the rulings on Motions in *limine*. However, Defendant does not specify which arguments it finds objectionable. Prior to the trial, in response to Defendant's Motions in *limine*, Plaintiff's counsel agreed that he would not make a "golden rule" argument and that he would not make a punitive argument (i.e. send a message and punish). 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.

Moreover, even if an objectionable argument had made, or if Defendant now has issue with other arguments, such objections were not preserved. A ruling on a motion in *limine* is not final. It is well settled that an objection not raised contemporaneously is waived. See, e.g., Young v. Warr, 252 S.C. 179, 200, 165 S.E.2d 797, 807 (1969) ("the proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of the statements or language complained of and to ask the court for a distinct ruling thereon"); Varnadore v. Nationwide Mut. Ins. Co., 289 S.C. 155, 345 S.E.2d 711 (1986) (holding objection not timely raised is waived and will not be reviewed).

3. Passion/Caprice/Prejudice

Finally, Defendant argues that the award of damages should be thrown out because it suggests a basis in passion, capriciousness and/or prejudice. However, this argument is in error. The jury deliberated for several hours. They ultimately assigned fairly precise percentages of negligence, demonstrating that they put honest effort and thought into the deliberation. Moreover, the award of \$500,000 (reduced to \$325,000) does not appear to be excessive or extreme given Plaintiff's injuries and damages.

JUDGMENT FILED

Having denied Defendant's post trial motions, the Court now enters judgment in favor of the Plaintiff. The jury's verdict of \$500,000 must be reduced to \$325,000 due to the finding of 35% comparative negligence. Moreover, because Defendant is a governmental entity subject to the South Carolina Tort Claims Act, they are not liable for any portion of this verdict in excess of the statutory cap of \$300,000, although the Plaintiff is not prohibited from collecting the balance of the verdict from other sources of private insurance, such as her personal UIM policy.

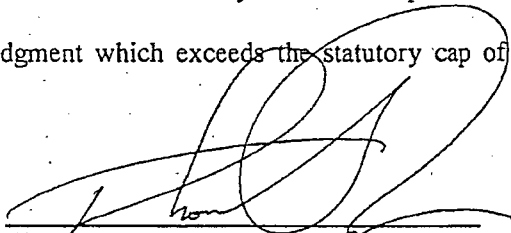
IT IS THEREFORE ORDERED that Defendant's Motions for JNOV and for New Trial are denied.

IT IS FURTHER ORDERED that judgment be entered in favor of Plaintiff in the amount of \$325,000.

IT IS FURTHER ORDERED that Defendant Marion County Sheriff's Department shall not be liable for any portion of the final judgment which exceeds the statutory cap of \$300,000.

IT IS SO ORDERED!

Dated this 10th day of JAN, 2017


The Honorable Thomas A. Russo
Presiding Judge, 12th Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
 VANESSA BLACKWELL, a/k/a)
 JACQUELINE BLACKWELL)
 PLAINTIFF)
 v.)
)
 MARION COUNTY SHERIFF'S)
 DEPARTMENT,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT
 CASE NO. 2015-CP-33-0140

VERDICT FORM

RECEIVED

FEB 06 2017

SC Court of Appeals

2016 SEP 14 AM 8:09
 MARION COUNTY SC
 SHERIFF K. KINDES
 CLERK OF COURT

FILED

1. Was the defendant negligent?

☒ YES - Go to Question 2

☐ NO - Stop deliberations

2. Was the defendant's negligence a proximate cause of the plaintiff's injuries?

☒ YES - Go to Question 3

☐ NO - Stop deliberations

3. Was the plaintiff negligent?

☒ YES - Go to Question 4

☐ NO - Go to Question 7

4. Was the plaintiff's negligence a proximate cause of the plaintiff's injuries?

☒ YES - Go to Question 5

☐ NO - Go to Question 7

5. Using the combined negligence that proximately caused the plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the plaintiff and what percentage is attributable to the defendant?

Plaintiff	<u>35</u> %
Defendant	<u>65</u> %
Total	<u>100</u> %

6. Was the plaintiff's negligence greater or more than Fifty Percent (50%)?

~~YES~~ - Stop deliberations

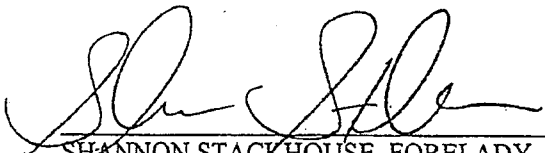
☒ NO - Go to Question 7

7. Please state the amount of damages, if any, sustained by the plaintiff.

[Do not reduce the plaintiff's total damages based on the percentage of negligence by any party. After you have answered these questions, the Judge will compute the amount of damages for which the defendant is responsible based on the percentage of the defendant's negligence which you have decided proximately caused the plaintiff's injuries. You are to determine ONLY the total amount of the plaintiff's damages and enter that amount below.]

\$ 500,000.00 Actual Damages

September 13, 2016
Date


SHANNON STACKHOUSE, FORELADY

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Vanessa Blackwell, a/k/a
Jacqueline Blackwell,

Plaintiff,

vs.

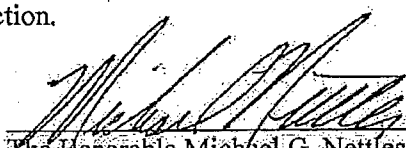
Andrew J. Herring, individually, and
as an employee/agent of Marion County
Sheriff's Department and Marion County
Sheriff's Department,

Defendants.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) C/A No. 2015-CP-33-140**CONSENT ORDER
DISMISSING ANDREW J. HERRING**

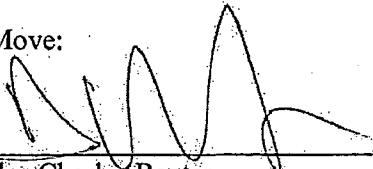
This matter is before me upon Motion of the Defendants requesting that Defendant, Andrew J. Herring, be dismissed from this action based upon the fact that he was acting within the course and scope of his official duties as a reserve officer with the Marion County Sheriff's Department at the time of the accident. This lawsuit is governed by the South Carolina Tort Claims Act and, as is provided in §15-78-70 of the Code of Laws of South Carolina, Andrew J. Herring cannot be held individually liable for the Plaintiff's damages. It further appears that the Plaintiff, by and through her attorney, has consented to this Motion. Based on the foregoing, it is therefore,

ORDERED that the action as against the Defendant, Andrew J. Herring, is hereby dismissed with prejudice from this action.


 The Honorable Michael G. Nettles
 Chief Administrative Judge, Twelfth Judicial Circuit

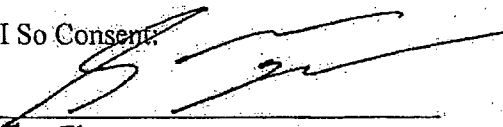
July 21, 2015
 Florence, SC

I So Move:



Douglas Charles Baxter
Attorney for the Defendants

I So Consent:



Sam Flynn
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Vanessa Blackwell, a/k/a
Jacqueline Blackwell,

Plaintiff,

vs.

Andrew J. Herring, individually, and
as an employee/agent of Marion County
Sheriff's Department and Marion County
Sheriff's Department,

Defendants.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) C/A No. 2015-CP-33-140**CONSENT ORDER
STRIKING PUNITIVE DAMAGES**

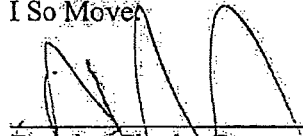
This matter is before me upon Motion of the Defendants to strike the Plaintiff's request for punitive damages. This lawsuit is governed by the South Carolina Tort Claims Act (15-78-10, et. seq.), §15-78-120(b) prohibits the recovery of punitive damages. It further appears that the Plaintiff, by and through her attorney, have consented to this Motion. Based on the foregoing, it is therefore,

ORDERED, ADJUDGED AND DECREED that the Plaintiff's request for an award of punitive damages is hereby stricken from the Complaint.


 The Honorable Michael G. Nettles
 Chief Administrative Judge, Twelfth Judicial Circuit

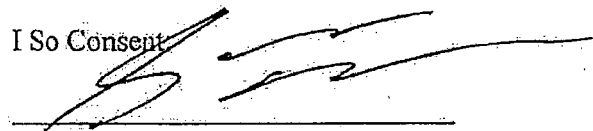
July 27, 2015
 Honorable JC

I So Move



Douglas Charles Baxter
Attorney for the Defendants

I So Consent



Sam Flynn
Attorney for the Plaintiff

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-33-140

VANESSA BLACKWELL, a/k/a
JACQUELINE BLACKWELL,

Plaintiff(s),

v.

ANDREW J. HERRING, individually, and
as an employee/ agent of MARION
COUNTY SHERIFF'S DEPARTMENT;
and MARION COUNTY SHERIFF'S
DEPARTMENT,

Defendant(s).

COMPLAINT
(Jury Trial Demanded)

The Plaintiff, complaining of the Defendants, alleges and says as follows:

CASE SYNOPSIS



The above photographs depict the Defendants' vehicle which collided with Plaintiff, who was lawfully walking on the side of the road. The photograph on the far left is a picture of the license plate of Defendants' vehicle. The photograph second from the left and photograph second from the right depict the points of impact where Defendants' vehicle hit the Plaintiff, who was lawfully walking on the side of the road. The photograph on the far right depicts the ditch where Plaintiff eventually landed after being violently hit, and hurled through the air.

A driver in South Carolina has a responsibility to watch the road and see what there is to be seen. A governmental agency that hires employees, who then drive for that governmental agency's purposes on the roads and highways of South Carolina, has a responsibility to properly train and supervise their employees. In this case, a named party, Defendant Andrew J. Herring,

BOOK PAGE

FILED

2015 FEB 19 A 10:56

an officer employed by a named party, Defendant Marion County Sheriff's Department, failed to keep a proper lookout for pedestrians, drove at an excessive rate of speed, and hit the Plaintiff, Ms. Vanessa Blackwell, whom friends and relatives call Jacqueline.

On May 17, 2014, Plaintiff was walking south along U.S. 501 Business Highway near Marion, South Carolina. Plaintiff was walking on the lawful side of the road, and was walking in a lawful manner. Defendant Herring was driving in his police cruiser in the Northbound lane. Defendant Herring was not paying attention to the road nor keeping a proper lookout. Defendant Herring was unable to stop as he was driving at an excessive rate of speed and hit Plaintiff on the side of the road.

The force of the impact was so great that it knocked Plaintiff into the ditch she was walking beside. Plaintiff's suffered a total body blunt force trauma that resulted in grievous injuries and excruciating pain including, but not limited to, both tibia and fibula fractures, a left ankle fracture and dislocation, multiple knee-ligament damage, severe lacerations, and poly trauma. Plaintiff has undergone many operations as a result of this incident, and will have difficulty walking for many years. Plaintiff can no longer take care of herself and provide the necessities of life as she is now in a state of total dependence on family members. She relies on a wheel chair for locomotion.

If Defendant MCSD had properly trained Defendant Herring, and if Defendant Herring thereafter had driven the MCSD cruiser in a safe manner, the incident would not have occurred. If Defendant Herring has kept a proper lookout, not drove the MCSD cruiser at an excessive rate of speed, and had followed basic traffic safety laws, Plaintiff would not have been injured. Defendant Herring and Defendant MCSD are responsible for this incident, and therefore are responsible to the harm caused to Plaintiff.

SPECIFIC AVERMENTS

1. That the Plaintiff, Vanessa Blackwell, a/k/a Jacqueline Blackwell, (herein referred to as "Plaintiff") is a citizen and resident of Marion County, State of South Carolina.
2. That upon information and belief, Defendant Andrew J. Herring (herein referred to as "Defendant Herring") is a citizen and resident of Marion County, State of South Carolina.
3. That upon information and belief, Defendant Marion County Sheriff's Department (herein referred to as "Defendant MCSD") is a governmental entity organized and existing under and pursuant to the laws of the State of South Carolina.
4. That at all times material to this action, Defendant Herring was employed by and conducting activity as an agent/employee for Defendant MCSD.
5. That the motor vehicle/pedestrian collision that is the subject of this action occurred in Marion County, State of South Carolina.
6. That upon information and belief, the parties and the subject matter herein are within the jurisdiction of this Honorable Court pursuant to South Carolina Code Ann. §15-78-10 et seq. (1976, as amended), commonly referred to as the South Carolina Tort Claims Act.
7. That this Court has jurisdiction over the parties and the subject matter of this action.
8. That on or about May 17, 2014, Plaintiff was walking South along U.S. 501 Business Highway near Marion, SC.
9. That on or about May 17, 2014, Plaintiff was walking on the left side of the road in a lawful manner.
10. That on or about May 17, 2014, Defendant Herring was traveling in the Northbound lane of U.S. 501 Business Highway, in a 2007 Dodge police cruiser, VIN #2B3KA43HX7H708391, and South Carolina license plate AYM894, owned by

Defendant MCSD.

11. That on or about May 17, 2014 Defendant Herring was driving at an excessive and dangerous rate of speed.
12. That on or about May 17, 2014, Defendant Herring did not keep a proper lookout for pedestrians, despite being a police officer and employee/agent of Defendant MCSD.
13. That on or about May 17, 2014, Defendant Herring neglected to follow basic traffic safety laws, endangering the lives or everyone in his path, especially pedestrians.
14. That on or about May 17, 2014, Defendant Herring's vehicle hit Plaintiff at a high rate of speed as she was walking along the side of the road.
15. That on or about May 17, 2014, the impact of Defendant Herring's vehicle was so great that it caused Plaintiff to come to a final resting place in a nearby ditch.
16. That at all times material hereto, Defendant Herring had a duty to operate his vehicle in a safe and prudent manner and to avoid injuring other motorists.
17. That the collision and the resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, grossly negligent, negligent *per se*, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendant in any one or more of the following respects:

As to Defendant Herring:

- a. In failing to keep a proper lookout while operating the vehicle;
- b. In failing to maintain control of the vehicle;
- c. In failing to stay in his lane of traffic;
- d. In failing to slow down to a controllable speed to stay in his lane of traffic;
- e. In failing to keep a safe distance from Plaintiff;

- f. In failing to use due care;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or use his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating the vehicle in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating the vehicle at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating the vehicle without using due care and without regard for safety and rights of Plaintiff;
- q. In operating the vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- s. In negligently and carelessly operating the vehicle in such a manner to cause the vehicle to strike Plaintiff and cause personal injuries;
- t. In driving while distracted;
- u. In failing to immediately report an accident involving personal injury;
- v. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- w. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

As to Defendant MCSD:

- a. In negligently entrusting the vehicle to someone they knew or should have known would operate the vehicle without using due care and without regard for the safety and rights of the public using the highway and the Plaintiff in particular;
- b. In negligently entrusting the vehicle to someone they knew or should have known would operate the vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an accident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In negligently entrusting the vehicle to someone they knew or should have known would fail to exercise that degree of care that a reasonable and prudent person would have exercised under the same or similar circumstances;
- d. In failing to appreciate the gravity and seriousness of having an unsafe, unqualified, incompetent driver use their vehicle;
- e. In failing to ensure that the driver of their vehicle would comply with all statutory codes and regulations;
- f. In failing to properly hire, train and/or supervise their employee driver Defendant Herring to ensure that the MCSD cruiser was driven/operated in a safe and proper manner;
- g. In failing to properly hire, train and/or supervise their employee driver Defendant Herring, and others involved with maintenance, regulatory compliance, and/or safety, to ensure that proper pre-trip, post-trip, periodic, quarterly and/or annual inspections were performed, including properly, on the MCSD cruiser, and its component parts;
- h. In failing to properly train and/or supervise their employee driver Defendant Herring and others as defined in the safe and appropriate operation and use of the MCSD cruiser;
- i. In failing, by and through their employee driver Defendant Herring to have the required driver knowledge necessary in order to safely operate the MCSD cruiser, including but not limited to the procedures to obey traffic laws;
- j. In failing, by and through their employee driver Defendant Herring to safely and properly operate the MCSD cruiser, including on the trip and up to the time of the occurrence alleged in this Complaint;

- k. In permitting their employee driver Defendant Herring to drive the MCSD cruiser when he was not fully qualified to do so,
 - l. In failing to create, maintain, and/or implement appropriate policies and procedures related to inspection and safety for its drivers, including their employee driver Defendant Herring, and for safety, regulatory compliance, and/or inspection, maintenance, and service of commercial motor vehicles;
 - m. In failing to properly and/or timely inspect, maintain, service and/or repair the MCSD cruiser, and its component parts, to ensure that the same could be utilized and operated safely;
 - n. In failing to use due care;
 - o. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina or the United States; and
 - p. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.
18. That at all times material to the collision made the basis of this action, the MCSD cruiser that was being driven by Defendant Herring was owned, possessed, and/or under the control of Defendant MCSD.
19. That at all times material to the collision made the basis of this action, Defendant Herring was acting by and through his employer, Defendant MCSD as an employee/agent of Defendant MCSD, and was at all times material, acting within the course and scope of his employment or agency in performing duties for, and on behalf of Defendant MCSD.
20. That Defendant MCSD is vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing injuries and/or damages to Plaintiff under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.
21. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant MCSD and Defendant Herring, as is set forth more fully

above, Defendants are jointly and severally liable to the Plaintiff for his injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of the Defendants.

22. That as a direct and proximate result of Defendants' negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of Defendants, as is set forth more fully above, Plaintiff was damaged and/or harmed by Defendants. Specifically, Defendants caused Plaintiff to sustain serious and painful personal injuries, including, but not limited to, pain and suffering, mentally and emotionally, as well as sustaining both tibia and fibula fractures, a left ankle fracture and dislocation, multiple knee-ligament damage, severe lacerations, and poly trauma.
23. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff was injured, has endured substantial pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, and has otherwise been damaged and injured.
24. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, and has otherwise been damaged and injured.
25. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment and attendant services in the future;
- c) Plaintiff has been unable to work and has been deprived of her income;
- d) Upon information and belief, the nature of Plaintiff's injuries will deprive her of employment opportunity and income in the future;
- e) The pain of her injuries has resulted in her loss of enjoyment of life and change in her personality, all to permanent detriment to her health and physical well-being; and
- f) Upon information and belief, the Plaintiff was required to expend money to replace and repair property damage caused in the accident.

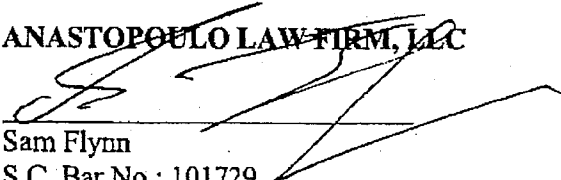
26. That Defendants' acts and omissions, as is set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

27. That because of the Defendants' acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.

28. That upon information and belief, Plaintiff is entitled to judgment against the Defendants for actual, compensatory and exemplary or punitive damages for her personal injuries and property damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC


Sam Flynn

S.C. Bar No.: 101729

Eric M. Poulin

S.C. Bar No.: 100209

Roy T. Willey, IV

S.C. Bar No.: 101010

Anastopoulos Law Firm, LLC

2557 Ashley Phosphate Road

North Charleston, SC 29418

(843) 614-8888

Dated at North Charleston, SC

This 16th day of February, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Vanessa Blackwell, a/k/a
Jacqueline Blackwell,

Plaintiff,

vs.

Andrew J. Herring, individually, and
as an employee/agent of Marion County
Sheriff's Department and Marion County
Sheriff's Department,

Defendants.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) C/A No. 2015-CP-33-140**ANSWER OF DEFENDANT**

(Jury Trial Requested)

The Defendants herein, subject to motions filed contemporaneously herewith, respond to the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. With regard to the "case synopsis," the Defendants specifically deny that Defendant, Andrew J. Herring failed to keep a proper lookout, drove at an excessive speed, was not paying attention, was not properly trained, or that the actions of Defendant Herring were the proximate cause of the incident; furthermore, it is denied that the Plaintiff was walking on the highway in a lawful manner.
3. Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 1 of the Complaint and, therefore, demand strict proof thereof.
4. Defendants admit the allegations as contained in Paragraphs 2, 3, 4 and 5 of the Complaint.
5. With regard to Paragraph 6 of the Complaint, Defendants specifically admit that this action is governed by the South Carolina Tort Claims Act.

BOOK
PAGE
FILED
2015 MAY -4 A 11:13

6. The Defendants admit the allegations as contained in Paragraph 7 of the Complaint.
7. With regard to Paragraphs 8 and 9 of the Complaint, Defendants admit that Plaintiff was in the road on U.S. 501; however, they have insufficient information to admit or deny the remaining allegations and, therefore, demand strict proof thereof.
8. The Defendants admit the allegations as contained in Paragraph 10 of the Complaint.
9. The Defendants deny the allegations as contained in Paragraphs 11, 12 and 13 of the Complaint.
10. With regard to Paragraphs 14 and 15 of the Complaint, the Defendants admit that impact occurred between the Plaintiff and the Defendants' vehicle, however, it is specifically denied that Defendants' vehicle was travelling at a high rate of speed.
11. With regard to Paragraph 16 of the Complaint, the Defendants admit that Defendant Herring had a duty to operate his vehicle in a safe manner, however, it is specifically denied that he was in any way in breach of that duty.
12. The Defendants deny the allegations as contained in Paragraph 17 of the Complaint.
13. The Defendants admit the allegations as contained in Paragraphs 18 and 19 of the Complaint.
14. With regard to Paragraph 20 of the Complaint, the Defendants admit that Defendant Herring was acting within the course and scope of his employment and liability, if any, is as established by the South Carolina Tort Claims Act.
15. The Defendants deny the allegations as contained in Paragraphs 21, 22, 23, 24, 25, 26, 27 and 28 of the Complaint and, therefore, demand strict proof thereof.

FOR A SECOND DEFENSE

16. The Defendants reiterate the allegations as contained in the first defense as if repeated verbatim within this the second defense.
17. This action is governed by the S.C. Tort Claims Act (§15-78-10 *et. seq.* Code of Laws of South Carolina, as amended) and the Defendants assert the applicable provisions, immunities and limitations on recovery, including the statutory cap and prohibition of punitive damages, as defenses to this claim.

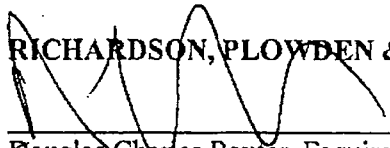
FOR A THIRD DEFENSE

18. The Defendants reiterate the allegations as contained in the first two defenses as if repeated verbatim within this the third defense.
19. The Defendants would show that the Plaintiff's alleged injuries were caused by or contributed to by her own acts or omissions and the Defendants assert comparative negligence as an affirmative defense.

Wherefore, having fully responded to the Complaint of the Plaintiff, the Defendants request that same be dismissed with prejudice together with the costs and disbursements in the defense of this matter and for such other and further relief as this Court deems just and proper.

--intentionally left blank--

Respectfully submitted,


RICHARDSON, PLOWDEN & ROBINSON, P.A.

Douglas Charles Baxter, Esquire
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
(843) 448-1008
(843) 448-1533 (fax)
dbaxter@richardsonplowden.com

Attorneys for the Defendants

 4/30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Vanessa Blackwell, a/k/a
Jacqueline Blackwell,

Plaintiff,

vs.

Andrew J. Herring, individually, and
as an employee/agent of Marion County
Sheriff's Department and Marion County
Sheriff's Department,

Defendants.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) C/A No. 2015-CP-33-140) **NOTICE OF MOTION AND**
) **MOTION TO DISMISS**
) **DEFENDANT ANDREW J. HERRING**

TO: THE PLAINTIFF AND HER ATTORNEY, SAM FLYNN:

YOU WILL PLEASE TAKE NOTICE, that the Defendants will move before this Honorable Court, upon ten (10) days' notice or as soon thereafter as possible, for an Order dismissing this action as against the Defendants. Said Motion is brought pursuant to The South Carolina Tort Claims Act (§15-78-10, *et. seq.*), and it is based upon the fact the Defendant Herring at the time in question was an employee of the Marion County Sheriff's Department and was acting within the scope of his official duties.

Respectfully,

RICHARDSON, FLOWDEN & ROBINSON, P.A.

Douglas Charles Baxter, Esquire
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
(843) 448-1008
(843) 448-1533 (fax)
dbaxter@richardsonplowden.com

Attorneys for the Defendants

4/30

, 2015

FILED

BOOK PAGE

2015 MAY 4 A 11:14

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Vanessa Blackwell, a/k/a
Jacqueline Blackwell,

Plaintiff,

vs.

Andrew J. Herring, individually, and
as an employee/agent of Marion County
Sheriff's Department and Marion County
Sheriff's Department,

Defendants.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) C/A No. 2015-CP-33-140**NOTICE OF MOTION AND
MOTION TO STRIKE
PUNITIVE DAMAGES**

TO: THE PLAINTIFF AND HER ATTORNEY, SAM FLYNN:

YOU WILL PLEASE TAKE NOTICE that the Defendants will move before this Honorable Court, upon ten days' notice of as soon thereafter as possible, for an Order striking punitive damages. Said Motion is made pursuant to the South Carolina Tort Claims Act (§15-78-10, et. seq.) which prohibits the recovery of punitive damages. Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, the undersigned has consulted with Plaintiff's counsel concerning the matters contained in this motion.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

Douglas Charles Baxter, Esquire
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
(843) 448-1008
(843) 448-1533 (fax)
dbaxter@richardsonplowden.com

Attorneys for the Defendants

4/30, 2015

FILED

BOOK

PAGE

2015 MAY -4 A 11:14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A No. 2015-CP-33-140
Vanessa Blackwell, a/k/a	)	
Jacqueline Blackwell,	)	DEFENDANT'S NOTICE OF MOTION
	)	AND MOTION FOR
Plaintiff,	)	JUDGMENT NOTWITHSTANDING
	)	THE VERDICT, OR, IN THE
vs.	)	ALTERNATIVE, FOR A NEW TRIAL
	)	
Marion County Sheriff's Department,	)	
	)	
Defendant.	)	

FILED
2016 SEP 23 AM 10:35
MARION COUNTY SC
SHERIFF R. HODGES
CLERK OF COURT

The Defendants hereby move for a judgment notwithstanding the verdict based upon the jury's finding of comparative negligence on the part of the Plaintiff presumes that she was in the roadway in violation of § 56-5-3160 of the Code of Laws of South Carolina, as amended, and, if the impact occurred in the roadway, there is no evidence of negligence on the part of the Defendant, which was a proximate cause of the accident. In the alternative, even if there was negligence on the part of the Defendant, viewing the evidence and all inferences in the light most favorable to the Plaintiff, the negligence of the Plaintiff exceeded 51 percent of the total amount.

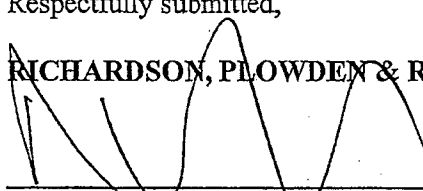
Pursuant to Rule 59 of the *South Carolina Rules of Civil Procedure*, the Defendant moves a new trial on the following grounds:

- 1) The Court erred in not allowing the testimony of Rhianna Herring that she saw the Plaintiff in the roadway 5 to 10 minutes before the accident occurred;
- 2) The Court erred in allowing the introduction of medical bills through the Plaintiff's sister without a proper foundation and without evidence that the bills were reasonable, necessary and related to injuries from the accident;

- 3) The Court erred in allowing the introduction of medical bills in that there was evidence that not all of the bills were related to injuries proximately caused by the accident; furthermore the bills did not contain sufficient detail to allow a jury to differentiate between what was related and what was not related;
- 4) The Court erred in allowing the Plaintiff to make improper arguments during closing in contradiction to the rulings on the motions in *limine*;
- 5) The Court erred in failing to ask all of the requested voir dire questions; and
- 6) The Judge erred in not allowing the introduction of designated portions of the Plaintiff's deposition;
- 7) The findings of the percentages of negligence and damage amount reflect that the jury's verdict was based upon passion, capriciousness and/or prejudice; and
- 8) Other grounds as may be revealed on the record.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.



Douglas Charles Baxter, Esquire
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
843-448-1008 Main; 843-443-3580 Direct
843-448-1533 Fax
dbaxter@richardsonplowden.com

Attorney for the Defendant

September 23, 2016

IN THE STATE OF SOUTH CAROLINA)
 COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS
 FOR THE 12TH JUDICIAL CIRCUIT
 CASE NO: 2015-CP-33-140

VANESSA BLACKWELL, a/k/a
 JACQUELINE BLACKWELL,

Plaintiff(s),

v.

MARION COUNTY SHERIFF'S
 DEPARTMENT,

Defendant(s).

**PLAINTIFF'S RESPONSE IN OPPOSITION
 TO DEFENDANT'S MOTION FOR JNOV
 and/or NEW TRIAL**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, VANESSA BLACKWELL, a/k/a JACQUELINE BLACKWELL, by and through undersigned counsel, and does submit this memorandum in opposition to Defendant's Motion for JNOV and/or New Trial.

I. Judgment Notwithstanding the Verdict

Defendant argues that, because the jury found Plaintiff comparatively negligent, they necessarily believed she was in the road. However, this argument is in error. The argument presumes that Plaintiff could not have been negligent had she been in the grass. Notwithstanding this presumption, Defendant argued exactly the opposite during trial. Defendant insisted upon an instruction concerning official sunset. All of Defendant's witnesses testified that Plaintiff was wearing dark clothing and Defendant requested a jury charge on S.C. Code Ann. § 56-5-3160 (Duty of Pedestrians on Highways).

With this, Defendant argued that, even if Plaintiff was in the grass, she was nonetheless negligent for walking on the wrong side of the road, at night, in dark clothing. The jury found that Plaintiff was 35% comparatively negligent. This is perfectly consistent with the

presumption that the jury believed Plaintiff was in the grass, but walking in the wrong direction and/or with dark colored clothing. As such, it is equally consistent to find that Defendant was 65% negligent in leaving the roadway and striking her. This is a classic factual dispute which was appropriately resolved by the jury, and which should not be disturbed by the Court.

II. Motion for New Trial

A. Testimony of Rhianna Herring

Defendant argues that the Court erred in excluding the testimony of Rhianna Herring. However, Ms. Herring's testimony was proffered outside the presence of the jury and, from that proffer, it is apparent that the testimony was properly excluded.

Evidence which is not relevant is not admissible. S.C. Evid. R. 402. 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, 426 S.E.2d 756, 757 (1993). Here, Defendant sought to introduce testimony from Ms. Herring that Ms. Herring saw Plaintiff in the roadway 5-10 minutes prior to the incident. However, Ms. Herring admitted that she did not witness the incident, and had no idea where Plaintiff had been walking in the 5-10 minutes between the time Ms. Herring claims to have seen her and the time of the incident.

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 Court properly excluded Ms. Herring's testimony because it was not relevant. Even if true, the fact that Plaintiff was in the road 10 minutes prior to the collision, has no bearing on the question of whether Plaintiff was in the road at the time of the incident. The only testimony that would have bearing

on the issue of whether or not Plaintiff 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 Court properly excluded her testimony.

B. Introduction of Medical Bills

Defendant next argues that the Court erred in admitting Plaintiff's medical bills because there was no foundation, and because Defendant alleges that not all of the bills were related to the injuries proximately caused by the collision. Specifically, although the argument is not set forth in Defendant's motion, it seems from the oral arguments during trial that Defendant's main issue is with the hospital bill and that, specifically, Plaintiff was treated for malnutrition during her time in the hospital, in addition to receiving treatment for her injuries. There does not seem to be any dispute as to the other bills which were submitted, such as the bills for EMS, Radiology, Anesthesia, and rehab, since those were clearly related.

In the present case, Plaintiff'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. 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. "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, 638 S.E.2d 96, 101 (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, 118 S.E.2d 337, 340 (1961).

Here, it is clear, even to a lay person, that Plaintiff 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 major damage, of course, was the surgical repair. On that issue, the doctor's surgical report was admitted into evidence by consent of the parties. Indeed, many of the medical records and reports were entered into evidence by consent. As such, the jury had all the information it needed to properly evaluate the bills. Moreover, the disputed bill, itself, was itemized. See Exhibit A. As such, the jury was able to review each line item of the bill and to see that most of the charges were clearly related to the broken ankle and resulting surgery. For example, there are line items for anesthesia, physical therapy, surgical implants, recovery room, etc. Our courts have held that the types of arguments Defendant now makes apply to the weight of the evidence and not its admissibility. See, e.g., Armstrong v. Weiland, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (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).

For all of these reasons, it was proper for the Court to admit Plaintiff's medical bills into evidence.

C. Closing Arguments

Defendant next argues that the Court erred in allowing Plaintiff to make improper arguments during closing in contradiction to the rulings on Motions in *limine*. However, Defendant does not specify which arguments it finds objectionable. Prior to the trial, in response to Defendant's Motions in *Limine*, the undersigned agreed that he would not make a golden rule argument and that he would not make a punitive argument (i.e. send a message and punish). To the best of the undersigned's recollection (without the benefit of a transcript for review), no such arguments were ever made.

Moreover, even if such arguments were made, or if Defendant now has issue with other arguments, such objections were not preserved. A ruling on a motion in *limine* is not final. It is well settled that an objection not raised contemporaneously is waived. See, e.g., Young v. Warr, 252 S.C. 179, 200, 165 S.E.2d 797, 807 (1969) ("the proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of the statements or language complained of and to ask the court for a distinct ruling thereon"); Varnadore v. Nationwide Mut. Ins. Co., 289 S.C. 155, 345 S.E.2d 711 (1986) (holding objection not timely raised is waived and will not be reviewed).

Again, without the benefit of reviewing the transcript, and with Defendant having not specified the argument(s) it found objectionable, the undersigned is forced to work of his best memory. It is his recollection that Defendant made only a limited number of objections during closing arguments, that most of these objections were made during the second closing, and that they concerned scope of rebuttal. The undersigned does not specifically recall any objections

that raised during his closing as to the nature of argument and, indeed, recalls that the Court sustained the few objections which were raised as to scope of rebuttal. Though none can be recalled, to the extent Defendant did raise an objection as to improper argument, which was sustained, the undersigned does not recall Defendant ever asking for and being denied a curative instruction or other remedy.

D. Voir Dire

Defendant next contends that the Court erred in refusing to ask all of Defendant's requested *voir dire* questions. "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 did ask the vast majority of the *voir dire* questions that were proposed by each party, and was well within its discretion to decline to ask the few remaining questions. As such, this is not a sufficient ground for new trial.

E. Publication of Plaintiff's Deposition

Next, Defendant contends that the Court erred in not allowing it to publish certain portions of the Plaintiff's deposition during its case in chief. However, the Plaintiff was present and testified at trial. Moreover, Defendant had opportunity to full cross examine the Plaintiff and, in fact, did cross examine the Plaintiff. As such, the Court did not err in allowing the later publication of Plaintiff's deposition.

Moreover, the publication would have been duplicative and/or if there was any error in failing to allow this publication, the error was harmless, because the testimony Defendant sought to introduce through the publication of the deposition transcript was essentially identical to the

testimony it had already elicited from her on the stand. As such, this is not sufficient ground for new trial.

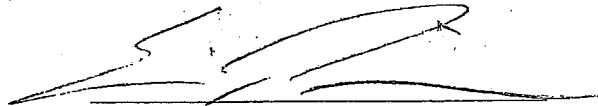
F. Passion, Caprice, Prejudice

Finally, Defendant argues that the award of damages should be thrown out because suggests a basis in passion, capriciousness and/or prejudice. However, this argument is in error. The jury deliberated for several hours. They ultimately assigned fairly precise percentages of negligence, demonstrating that they put honest effort and thought into the deliberation. Moreover, the award of \$500,000 (reduced to \$325,000) was surely not excessive or extreme, given Plaintiff's injuries.

For all the foregoing reasons, Plaintiff would respectfully show that Defendant's post trial motions should be denied.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



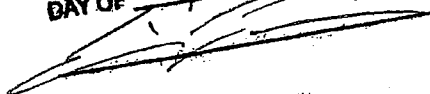
Eric M. Poulin, Esquire
SC Bar Number: 100209
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

Charleston, South Carolina

September 23, 2016

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 23
DAY OF September, 20 16



STATE OF SOUTH CAROLINA)
COUNTY OF MARION }

COURT OF COMMON PLEAS

VANESSA BLACKWELL, a/k/a)
JACQUELINE BLACKWELL }

PLAINTIFF, }

v. }

MARION COUNTY SHERIFF'S
DEPARTMENT

DEFENDANT.)

TRANSCRIPT OF RECORD
15-CP-33-140

September 12, 2016
Marion, South Carolina

BEFORE :

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

ERIC M. POULIN, ESQ.
Attorney for the Plaintiff

DOUGLAS C. BAXTER, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

INDEX

	Page
Qualify jury panel	3
Striking of jury	24
Pre-trial matters	29
Preliminary remarks by the Court	56
Opening remarks by Mr. Poulin	65
Opening remarks by Mr. Baxter	79
Wendy Arthur:	
Direct examination	84
Cross-examination	100
Redirect examination	108
Jacqueline Blackwell:	
Direct examination	110
Cross-examination	115
Directed verdict motion	125
Rhiannon Herring:	
Proffered examination	131
Andrew Herring:	
Direct examination	141
Cross-examination	160
John Ellis:	
Direct examination	180
Cross-examination	195
Kamadie Campbell:	
Direct examination	204
Cross-examination	211
Stipulation	223
Directed verdict	224
Closing remarks by Mr. Poulin	243
Closing remarks by Mr. Baxter	288
Reply by Mr. Poulin	310
Charge to the jury	321
Questions from the jury	349
Read back of testimony	352
Verdict	353
Polling of the jury	355

EXHIBITS

PLAINTIFF'S:

No.	Description	I.D./EVD.
1	Photo	53/55
2	Photo	53/55
3	Photo	53/55
4	Operative report	53/55
5	History physical	53/55
6	Medical bills	53/99
7	EMS report	53/55
8	Phone records	53

DEFENDANT'S:

1	CD medical chart	53/55
2	Photo	53/55
3	Photo	53/55
4	Photo	53/55
5	Photo	53/55
6	Photo	53/55
7	Photo	53/55
8	Photo	53/55
9	Photo	53/55

COURT'S:

1	Defendant's voir dire	
2	Deposition of Andrew Herring	219
3-A	Designations of portions of deposition	219
3-B	Deposition of Jacqueline Blackwell	219
4	Stipulation	224
5	Patient record	319
6	Note from jury	351

1 THE COURT: Ladies and gentlemen, folks,
2 the first case we have for this week is Vanessa
3 Blackwell, also known as Jacqueline Blackwell,
4 versus The Marion County Sheriff's Department. Now
5 that's case number 2015-CP-33-140 for the record.
6 Ladies and gentlemen, I'm just, I'm gonna give you
7 just a little bit of background about the
8 allegations in this Complaint. I'm not gonna give
9 you too much information 'cause that'll come out
10 during the course of the trial but just so that you
11 can answer my questions. This is a civil action
12 that Ms. Blackwell has brought against the Marion
13 County Sheriff's Department and it involves a
14 situation that occurred back on May the 17th of
15 2014. Those of you from this area are probably
16 familiar with the Foxtrot Festival. And that year
17 the allegations are that Ms. Blackwell is leaving
18 the Foxtrot Festival and that while walking home, or
19 at least walking to wherever she was headed, that
20 she was struck by a Marion County sheriff's deputy
21 while walking down the road and this case involves
22 that incident, okay, and the facts and circumstances
23 surrounding that which will come out more fully
24 during the course of the trial. I give you a little
25 bit of information to simply ask this, is there any

1 member of the jury panel who has heard of this case
2 or knows anything about this case, if so, please
3 stand.

4 (There was no response.)

5 THE COURT: Thank you, there are none.
6 Now folks, I'm gonna ask for the attorneys to stand
7 and to just introduce themselves and their clients
8 so, Mr. Poulin, if you would.

9 MR. POULIN: Thank you, Your Honor. Good
10 morning, my name is Eric Poulin, and I've got
11 Ms. Jackie Blackwell with me here this morning.
12 I've also got her sister Wendy Arthur here this
13 morning.

14 THE COURT: Folks, is there any member of
15 the jury panel who is related by blood, connected by
16 marriage, or who has any close business or personal
17 relationship with Mr. Poulin or who has ever been
18 represented by him or any member of his office, if
19 so, please stand.

20 (There was no response.)

21 THE COURT: Thank you, there are none.
22 Mr. Baxter.

23 MR. BAXTER: My name is Doug Baxter. I'm
24 with the law firm of Richardson Plowden, and I'm
25 representing the Marion County Sheriff's Department

1 and various personnel from the Sheriff's Department
2 including the sheriff during the course of the
3 trial.

4 THE COURT: All right. Folks, is there
5 any member of the jury panel who's related by blood,
6 connected by marriage, or who has any close
7 business, or personal relationship with or who has
8 ever been represented by either Mr. Baxter or any
9 member of his law firm, if so, please stand.

10 (There was no response.)

11 THE COURT: Thank you, there are none.

12 And even though she was introduced I didn't get her
13 to stand at that time, but Ms. Blackwell, could I
14 get you just to stand and face the members of the
15 jury for just a moment, ma'am, let them just get a
16 look at you there. You may have a seat. Thank you,
17 ma'am.

18 Folks, I always ask people to stand
19 because sometimes we know someone by sight but we
20 don't remember their name so you've — this is
21 Ms. Blackwell, you've met her just now. Is there
22 any member of the jury panel who is related by
23 blood, connected by marriage, or who has any close
24 business, or personal relationship with
25 Ms. Blackwell or any member of her family, if so,

1 please stand.

2 (There was no response.)

3 THE COURT: Thank you, there are none.

4 Now that question that I just asked you as relates
5 to Ms. Blackwell, that is, related by blood,
6 connected by marriage, or have any close, business,
7 or personal relationship, that's the question I'm
8 gonna be asking as it relates to these names that
9 I'm about to call out. The names I'm gonna call out
10 here are names of possible or potential witnesses,
11 folks who may appear as witnesses during the course
12 of trial. Keeping that question in mind as I go
13 through these names, please listen carefully. If
14 you hear a name and that question applies to that
15 person for you, go ahead and stand; but if you do
16 stand, keep listening because it may be that you
17 know more than one person on this list. These folks
18 are possible or potential witnesses that may appear
19 during the course of this trial. And if any of them
20 are in the courtroom I would ask them to stand
21 briefly.

22 Andrew Herring, Wendy Arthur, Rhiannon
23 Herring, Darien Miles, Joey Price, Trooper JW Ellis,
24 Kamadie Campbell, Jackie Scott. Any member of the
25 panel related by blood, connected by marriage, or

1 have any close business, or personal relationship
2 with any of those folks?

3 All right, let me start here. Sir, your
4 name please.

5 POTENTIAL JUROR: Daniel S. Herring.

6 THE COURT: All right. And Mr. Herring,
7 what's your — you have a relationship with —

8 POTENTIAL JUROR: Connection by marriage.

9 THE COURT: All right, and who is that
10 you're married to?

11 POTENTIAL JUROR: My wife's kin.

12 THE COURT: Okay. The fact that you have
13 that relationship, that you have that family
14 relationship, would that in any way affect your
15 ability to be fair and impartial?

16 POTENTIAL JUROR: No, sir.

17 THE COURT: All right, thank you, sir.

18 You may have a seat.

19 Ma'am, your name please.

20 POTENTIAL JUROR: Kaitlin Estes.

21 THE CLERK: 52.

22 THE COURT: 52. Ms. Estes, who do you
23 know on that list?

24 POTENTIAL JUROR: Andrew Herring and Joey
25 Price.

1 THE COURT: Are you related or you just
2 know him?

3 POTENTIAL JUROR: My father works for Joey
4 Price.

5 THE COURT: Okay, so you know him through
6 your dad working with him? Would that, ma'am, in
7 any way affect your ability to be fair and impartial
8 giving both the plaintiff and the defense a fair
9 trial?

10 POTENTIAL JUROR: No, sir.

11 THE COURT: Thank you very much, ma'am.
12 You may have a seat.

13 All right, folks, y'all may have a seat.
14 Thank you.

15 Is there any member of the jury panel who
16 has either, who has been involved in a civil lawsuit
17 that you were either the plaintiff, the person
18 bringing the lawsuit, or the defendant, the person
19 who the lawsuit was brought against? Is there any
20 member of the jury panel who has been either a
21 plaintiff or a defendant in a civil lawsuit, if so,
22 please stand. All right, I'll start here at the
23 front.

24 Ma'am, your name please.

25 POTENTIAL JUROR: Christine Gerald.

1 THE COURT: All right, you're juror 65.

2 And Ms. Gerald, plaintiff or defendant?

3 POTENTIAL JUROR: Plaintiff.

4 THE COURT: Okay. And ma'am, the fact
5 that you've had that experience and been through
6 that process, would that in any way affect your
7 ability to give both the plaintiff in this case or
8 the defendant in this case a fair and impartial
9 trial?

10 POTENTIAL JUROR: No.

11 THE COURT: Thank you very much, ma'am.

12 You may have a seat.

13 Sir, your name please.

14 POTENTIAL JUROR: Ralph Morgan, and I was
15 with the Department of Transportation over property
16 in Myrtle Beach.

17 THE COURT: All right. Mr. Morgan, would
18 that experience in any way affect your ability to
19 give both the plaintiff and the defendant in this
20 case a fair and impartial trial?

21 POTENTIAL JUROR: No, sir.

22 THE COURT: Thank you very much, sir. You
23 may have a seat.

24 Is there any member of the jury panel who
25 has been involved in a motor vehicle accident where

1 someone was injured, whether it be yourself or
2 someone else involved in the incident, if so, please
3 stand.

4 POTENTIAL JUROR: Excuse me, Your Honor,
5 how far back are you talking about, just any time?

6 THE COURT: At any time, yes, sir. Okay.
7 I'm gonna start here at the front.

8 Ma'am, your name please.

9 POTENTIAL JUROR: Valerie Reed.

10 THE COURT: All right, this is juror 121.
11 Ms. Reed, was it yourself or someone else injured in
12 the incident?

13 POTENTIAL JUROR: It was someone else
14 injured in the incident.

15 THE COURT: Okay. Ma'am, the fact that
16 that you've had that experience, would that in any
17 way affect your ability to be fair and impartial?

18 POTENTIAL JUROR: No.

19 THE COURT: Thank you, Ms. Reed, you may
20 have a seat.

21 Yes, sir, your name please.

22 POTENTIAL JUROR: Cory Robinson.

23 THE COURT: Mr. Robinson, this is juror
24 126. Was it yourself or someone else in the
25 accident that was injured?

1 POTENTIAL JUROR: Myself, and the driver.

2 THE COURT: Okay. Sir, the fact that
3 you've had that experience, would that in any way
4 affect your ability to be fair and impartial?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: Thank you, Mr. Robinson,
7 appreciate it, sir.

8 POTENTIAL JUROR: Leverne Cusack.

9 THE COURT: All right, sir, this is juror
10 46. Was it yourself or someone else in the incident
11 or both?

12 POTENTIAL JUROR: Someone else.

13 THE COURT: And sir, would that in any way
14 affect your ability to give both the plaintiff and
15 the defendant a fair and impartial trial?

16 POTENTIAL JUROR: No, sir.

17 THE COURT: Thank you very much. You may
18 have a seat.

19 Yes, ma'am.

20 POTENTIAL JUROR: Juanita Washington.

21 THE COURT: All right. Juror 154, Ms.
22 Washington. Were you injured or someone else?

23 POTENTIAL JUROR: Someone else.

24 THE COURT: All right. Ma'am, would that
25 in any way affect your ability to be fair and

1 impartial in this case?

2 POTENTIAL JUROR: No.

3 THE COURT: Thank you, ma'am. You may
4 have a seat.

5 Yes, Ms. Gerald, ma'am, the fact that
6 you've had that experience, would that in any way
7 affect your ability to be fair and impartial?

8 POTENTIAL JUROR: No.

9 THE COURT: Thank you, Ms. Gerald. You
10 may have a seat.

11 Yes, ma'am.

12 POTENTIAL JUROR: Paula Causey.

13 THE COURT: Ms. Causey, number 43.
14 Yourself or?

15 POTENTIAL JUROR: Myself.

16 THE COURT: All right. And ma'am, would
17 that experience in any way adversely or in any way
18 affect your ability to be fair and impartial in this
19 case?

20 POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you, ma'am. You may
22 have a seat.

23 And Mr. Herring, was it yourself injured
24 or someone else?

25 POTENTIAL JUROR: My wife and I.

1 THE COURT: All right. And sir, would
2 that in any way affect your ability to be fair and
3 impartial?

4 POTENTIAL JUROR: No, sir.

5 THE COURT: Thank you, sir.

6 Yes, ma'am.

7 POTENTIAL JUROR: Melaine Pease.

8 THE COURT: Juror 115. Ms. Pease,
9 yourself or —

10 POTENTIAL JUROR: Both.

11 THE COURT: All right. Would that —

12 POTENTIAL JUROR: And no.

13 THE COURT: It wouldn't affect?

14 POTENTIAL JUROR: No, sir.

15 THE COURT: All right, thank you very
16 much, ma'am.

17 Is there any member of the jury panel or
18 any member of your family employed in any way with
19 law enforcement, if so, please stand.

20 Ma'am, your name please.

21 POTENTIAL JUROR: Cynthia Turner.

22 THE COURT: All right, Ms. Turner, this is
23 juror 149. Ms. Turner, yourself or a member of your
24 family?

25 POTENTIAL JUROR: My son is a member of

1 Mullins Police Department and my nephew is a member
2 of Mullins Police Department.

3 THE COURT: All right, Ms. Turner, would
4 that in any way affect your ability to be fair and
5 impartial giving both the plaintiff and the defense
6 a fair trial?

7 POTENTIAL JUROR: No, sir.

8 THE COURT: Thank you very much, ma'am.
9 You may have a seat.

10 Sir, your name please.

11 POTENTIAL JUROR: Bruce Anderson.

12 THE COURT: All right. This is juror
13 number 8. Mr. Anderson, yourself or a member of
14 your family?

15 POTENTIAL JUROR: I'm related to Chief
16 Tenny.

17 THE COURT: All right, Chief Tenny here?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Would that relationship in any
20 way affect your ability to be fair and impartial?

21 POTENTIAL JUROR: No, sir.

22 THE COURT: Thank you, sir. You may have
23 a seat.

24 Yes, ma'am, your name please.

25 POTENTIAL JUROR: Teresa Thompson.

1 THE COURT: Ms. Thompson, juror 147.

2 Member of your family, ma'am?

3 POTENTIAL JUROR: Yes, sir. His name is
4 Donald McClain, he's a judge.

5 THE COURT: Ma'am, would that relationship
6 in any way affect your ability to be fair and
7 impartial in this case?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: Thank you very much, ma'am.
10 You may have a seat.

11 POTENTIAL JUROR: Jessie Sumpter, Sr. My
12 nephew Donald Flynn is a judge and I have several
13 nephews that's policemen.

14 THE COURT: All right. And ma'am, would
15 that in any way have any affect on your ability to
16 give both the plaintiff and the defendant a fair
17 trial in this case?

18 POTENTIAL JUROR: No, it wouldn't, Your
19 Honor.

20 THE COURT: Thank you very much, ma'am.
21 You may have a seat.

22 And Ms. Pease I think it was.

23 POTENTIAL JUROR: Yes. I don't, I don't
24 know whether or not, mother-in-law works for the
25 sheriff department and nephew works for Mullins

1 Police Department.

2 THE COURT: Would that have any affect on
3 your ability to be fair and impartial, ma'am?

4 POTENTIAL JUROR: No, sir.

5 THE COURT: Thank you. Is there any
6 member of the jury panel know or close, have a close
7 relationship with any member of the Marion County
8 Sheriff's Department, if so, please stand.

9 All right, and Ms. Pease.

10 POTENTIAL JUROR: Same one.

11 THE COURT: Would that in any way affect
12 your ability to be fair and impartial, ma'am?

13 POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you. All right, I'm
15 thinking I'm gonna get a response here. Is there
16 any member of the jury panel who has ever attended
17 the Marion County Foxtrot Festival, if so, please
18 stand. And I'm standing as well, I've been there
19 myself. Folks, let me, I'm gonna get you to have a
20 seat if you would. I'm gonna ask the question this
21 way, and Mr. Poulin or Mr. Baxter, if you need more
22 information let me know, okay. I'd say 95 percent
23 of y'all stood. Let me ask the question this way.
24 Obviously this case involves a situation where folks
25 were attending that festival and leaving from that

1 festival. And I don't know if it has any bearing,
2 but the fact that you have all, those of you who you
3 stood have attended that festival and are familiar
4 with it, would that in any way have any affect on
5 your ability to give both Ms. Blackwell and the
6 Sheriff's Department a fair and a just trial? If
7 your ability to give both sides a fair trial would
8 somehow be affected I would ask that you stand.

9 (There was no response.)

10 THE COURT: Thank you. No one has stood.
11 Does that suffice, gentlemen, as far as
12 your question?

13 MR. POULIN: Yes.

14 MR. BAXTER: Yes, sir.

15 THE COURT: Okay. Is there any member of
16 the jury panel or a member of your immediate family
17 who has ever suffered from a broken leg or broken
18 ankle which required surgical repair, if so, please
19 stand.

20 All right, ma'am, your name please.

21 POTENTIAL JUROR: Anne Stackhouse.

22 THE COURT: Juror 135, Ms. Stackhouse.
23 Yourself or a member of your family?

24 POTENTIAL JUROR: Several family members.

25 THE COURT: The fact that you had that

1 experience, ma'am, would that in any way affect your
2 ability to give both the plaintiff and the defendant
3 a fair trial?

4 POTENTIAL JUROR: No.

5 THE COURT: Thank you, ma'am. And sir, I
6 think it's Mr. Morgan, is that correct?

7 POTENTIAL JUROR: Ralph Morgan, correct.

8 THE COURT: Mr. Morgan, yourself or a
9 member of your family, sir?

10 POTENTIAL JUROR: Son-in-law and
11 brother-in-law, separate incidents.

12 THE COURT: Would that in any way affect
13 your ability to be fair and impartial, sir?

14 POTENTIAL JUROR: No, sir.

15 THE COURT: Thank you. Is there any
16 member or anyone in your immediate family — I'm
17 gonna ask the question, I'm, I don't want to expound
18 on it or anything, I just want to ask the question
19 and have you respond to the question. We're not
20 gonna go into any details about anything but, is
21 there any member of the panel who, or anyone in your
22 immediate family who suffers from a mental illness
23 which requires either medical or psychological
24 treatment, if so, please stand.

25 (There was no response.)

1 THE COURT: Thank you. There are none.
2 Folks, I've asked you a lot of questions and we have
3 a case that involves Ms. Blackwell, we have a case
4 that involves the Marion County Sheriff's
5 Department. And I've asked you about those two
6 entities as to whether or not you're related by
7 blood, connected by marriage, or have any business
8 or personal relationships. If you — let me just
9 say it this way, any time we select a jury in civil
10 court our whole purpose, our whole meaning behind
11 doing that is that we can impanel a jury that can
12 put aside or set aside any outside factors and
13 listen carefully to the evidence that is presented
14 during the course of this trial and give both the
15 plaintiff and the defendant a fair and impartial
16 hearing. That's the goal every time we draw a jury
17 in this courtroom whether it be for a civil case or
18 whether it be for a criminal case; that's our goal.

19 Now I've asked you several questions and
20 those of you who have responded to these questions
21 you've all noticed that my followup question is
22 always this, would that in any way affect your
23 ability to be fair and impartial to the plaintiff
24 and fair and impartial to the defendant 'cause
25 that's what we're looking to do. So that's always

1 been my followup question. Well, I could probably
2 ask questions the balance of the day to try to
3 figure out if there's anyone out there that has some
4 issue that would prevent you from being fair and
5 impartial or would prevent you from not being able
6 to give both sides a fair trial so instead of
7 continuing to explore those questions, maybe the
8 easiest thing to do is for me to simply ask, whether
9 I have asked the question or not, is there any
10 member of the jury panel who knows of any reason why
11 you would not be able to give both the plaintiff and
12 the defendant a fair and impartial trial, if so,
13 please stand.

14 (There was no response.)

15 THE COURT: Thank you, there are none.
16 Are there any additional questions or voir dire from
17 the Plaintiff?

18 MR. POULIN: No, sir, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. BAXTER: Just the one we had
21 submitted. I marked those.

22 THE COURT: Okay. Well, we'll mark those.
23 All right. Ladies and gentlemen, let me tell you
24 how we go about selecting a jury in common pleas
25 court. Your names all appear on this jury list and

1 that Mr. Woodberry was let go from the sheriff's
2 department. And I shared that with counsel
3 beforehand based upon that situation, and my
4 understanding is that it was not a consensual
5 departure. I think he was let go. And I didn't
6 think it was appropriate to have Mr. Woodberry sit
7 on this panel regardless of his answers to any
8 questions I might would ask, and I think I speak for
9 both plaintiff and defense counsel that both sides
10 were in agreement with that and so I excused
11 Mr. Woodberry before we even got to jury selection.
12 I just wanted the record to reflect that. And is
13 that correct from the plaintiff's standpoint, no
14 objection to that?

15 MR. POULIN: That's correct, Your Honor.

16 THE COURT: From the Defense?

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

18 THE COURT: Okay. The other thing I want
19 to mention is this is, that there were several voir
20 dire questions on the defendant's request to voir
21 dire, specifically 8 through 12 that the Court did
22 not ask that the plaintiff had requested, and I
23 wanted to note your exceptions to that and I've made
24 your requests for voir dire, I made that a Court's
25 exhibit for the record and I have circled the ones 8

1 through 12 that the Court did not ask. I believe I
2 asked everything else or it was asked with regards
3 to the other.

4 MR. POULIN: That's correct.

5 MR. BAXTER: That's correct, Your Honor.

6 THE COURT: And so that is a part of the
7 record. So I think those are just a couple of
8 matters I needed to resolve on the record; and we're
9 ready now, I think, to proceed to any pretrial
10 matters, any motions that we need to take up from
11 the plaintiff first.

12 MR. POULIN: Thank you, Your Honor. May
13 it please the Court, I thought I just had one motion
14 but as I was reading through the testimony from the
15 trial last time I stumbled upon a couple of other
16 issues that maybe we can touch on real fast. The
17 first two issues just came up during Ms. Arthur's
18 testimony on the stand the last time, one of them I
19 think we can just clear up right away. She
20 erroneously said in the middle of her testimony last
21 time she was Ms. Blackwell's guardian and then we
22 were trying to figure out whether there had been a
23 court declaration of incompetence and an appointment
24 of guardian and that is not the case as far as I
25 know, as far as anyone knows. She testified last

1 time that she was, she meant to say power of
2 attorney so that came up in the middle of the
3 testimony last time, it shouldn't come up this time.

4 MR. BAXTER: I'm gonna agree with that,
5 that creates some trepidation.

6 THE COURT: Yeah, sure.

7 MR. POULIN: The other thing that came up
8 in her testimony the last time, and I'm not —
9 Mr. Willie was asked during the direct examination
10 last time and after it was asked and there was
11 objection there was a side bar. I don't recall what
12 was discussed at the side bar. I'm not even sure if
13 I was up there and I'm not exactly sure why it came
14 up, but I believe that you asked Ms. Arthur at one
15 point about the fact that Mrs. Blackwell was drawing
16 disability and I'm not sure the context in which
17 that came up; but I would argue that, if he intends
18 to bring that up again, that would be irrelevant to
19 the case, the fact she's drawing disability or SSI.

20 THE COURT: I don't recall it but...

21 MR. BAXTER: Well, Your Honor, the —
22 actually the, what my intended line of question,
23 during the deposition Ms. Blackwell testified that
24 she was at one point in time disabled, but she had
25 taken some treatment and was no longer disabled and

1 was no longer receiving disability benefits when, in
2 fact, she's continued to be disabled and continued
3 to receive disability benefits. And kind of what,
4 it goes to the credibility when she gave the
5 statement in her deposition it turns out not to be
6 truth. What I'd be willing to do as long as we kind
7 of, you know, witnesses, ask the question that she
8 was determined to be disabled 'cause that also goes
9 to damages and inability to do work. Maybe instead
10 of saying disability but she was determined to be
11 disabled back in the '80s or '90s and has continued
12 to be disabled would be my question for Ms. Arthur
13 in lieu of the, her testimony that she is no longer
14 disabled.

15 MR. POULIN: Yeah, I think I'm okay with
16 that. I think Ms. Arthur will testify that she's
17 been unable to work since the '90s, and she'll be
18 able to clarify it's a mental disability and not a
19 physical one. I just don't want to go into the fact
20 that she's, if she is or is not receiving benefits
21 from the government.

22 THE COURT: Yeah, I don't think there's
23 any need to go into any financial benefit as to the
24 disability other than she is currently considered
25 under, that she's currently disabled.

1 MR. BAXTER: And Your Honor, one other,
2 during either in opening or some point in time the,
3 it was suggested that the, you know, bill collectors
4 would be coming around and —

5 THE COURT: Right.

6 MR. BAXTER: And it was our position that
7 that kind of opened the door because that suggests
8 to the jury that, you know, somebody is writing and
9 threatening her, going to sue her, etc., etc. And
10 there is no, the fact that the bills were paid by
11 Medicaid, she has no obligation to reimburse them
12 unless there's a recovery against lawsuit which is
13 different from somebody who hasn't paid their bills
14 and they're coming around knocking on your door
15 saying —

16 THE COURT: I don't, and I'm not gonna
17 even try to act like I remember a whole lot but, and
18 if that were said I'm not aware that that's ever
19 relevant to discuss about — you know, in a civil
20 action like this it, or any civil action, is the
21 issue is whether or not the plaintiff was injured
22 and whether or not those injuries were result of
23 defendant's negligence and, if so, was there a
24 proximate cause and if they were, what are those
25 damages. Not the fact that someone can't pay their

1 bills and try to encourage the jury to give somebody
2 money to put them — now there's always the argument
3 that obviously, you know, a jury's verdict is to put
4 the person back in the place they were in prior to
5 the accident and that kind of stuff; but I don't
6 know that there should be any argument or testimony
7 with regards to bill collectors or anything of that
8 nature.

9 MR. POULIN: And I don't think there will
10 be, Your Honor. I'm not planning to bring that up.
11 I think it's something that happened. I think
12 Mr. Willie might have brought it up sort of in
13 passing in his direct examination that kind of
14 realizing that he was opening the door to all this,
15 and I don't intend to do that.

16 MR. BAXTER: And any kind of, and actually
17 it kind of snowballed 'cause then I said, well,
18 you've not received any letters or phone calls and
19 she said, oh, I got a letter from Medicaid.

20 THE COURT: Yeah.

21 MR. BAXTER: And then it went, you know.

22 THE COURT: We'll stay clear of all that.
23 All right.

24 MR. POULIN: So then, Your Honor, I guess
25 my big one and main one is with respect to any

1 testimony about Ms. Blackwell having been in, seen
2 in the road prior to this incident. And where this
3 comes from, comes from two places, Mr. Herring's
4 deposition. Mr. Herring was the driver of the
5 vehicle that struck Ms. Blackwell. At one point
6 during his deposition he had testified to the effect
7 of he had seen her in the road in the past, that she
8 was perhaps, you know, known among the sheriff's
9 department as someone who was likely to be on and
10 about the road, that type of thing. Obviously I
11 don't think that he could testify as to other people
12 who claimed to have seen her.

13 THE COURT: Right.

14 MR. POULIN: That would be hearsay. But
15 even as to his own testimony that he had seen her on
16 the road days prior or months or weeks prior, I
17 think he may have only said he only personally might
18 have seen her one or two other times, didn't write
19 her a ticket for that. Our argument would be, (a)
20 that it has no relevance in this case. It doesn't
21 tend to prove she was in the road, you know, a week
22 or two weeks or a month ago, she was in the road at
23 the time of the wreck. Even if there was some
24 relevance there the probative value would be
25 outweighed by prejudice in suggesting that, you

1 know, here's somebody in the road all the time when,
2 in fact, he's only seen her maybe once before. So
3 that's to him. As then as to his wife at the time,
4 she I believe is going to testify that she was on
5 the road that night so earlier -- she did not
6 witness the wreck, but that she was traveling in
7 front of her husband on the way home but I don't
8 think directly in front of him. I think she said
9 she was a good five or ten minutes in front of him
10 on the way home, and she had left the festival
11 before him, they were working together, and that she
12 witnessed the plaintiff in the road. We would make
13 the same argument on that. Even if Ms. Blackwell
14 were in the road five or ten minutes prior to the
15 wreck, that just, it has absolutely no probative
16 value as to whether or not she was in the road at
17 the time of the wreck. There were no witnesses to
18 the wreck other than Ms. Blackwell and Mr. Herring.
19 Of course, they'll testify as to what they remember
20 and saw, but that's the time frame I think that we
21 should be focused on is what happened at the time of
22 the wreck. So we would move to exclude any
23 reference to her having been seen in the road at any
24 time other than at the crucial moments leading up to
25 the collision.

1 THE COURT: Okay. Mr. Baxter.

2 MR. BAXTER: Your Honor, we just, and
3 actually we could present multiple witnesses that
4 would say that they had seen her in the road in the
5 past including other sheriff's deputies, including
6 Mike Campbell who is the EMS worker, would say he
7 had seen her in the road and his wife had seen her
8 in the road. And so we think that it's more just an
9 isolated one person had seen her in the road at some
10 point in time. It developed a pattern. It showed
11 her characteristic habits, etc., etc., which under
12 rule evidence — well, we understand the rule. We
13 think it would be probative from that standpoint.

14 THE COURT: What I'm not connecting is, I
15 don't know why that's relevant as to whether or not
16 she was in the road at the time of this incident.
17 How is that —

18 MR. BAXTER: Well, Your Honor, it's more,
19 like I said, it's more than just an isolated
20 incident. It shows her character habits, etc., etc.
21 which the, under the rules of evidence we are able
22 to establish that it'd be like speeding. If
23 somebody had one ticket probably not. If you got 20
24 speeding tickets, then you get to a point where you
25 can say, well, this is evidence of a propensity to

1 drive in this manner and —

2 THE COURT: But for example, you know, I
3 told the jury earlier, I grew up in Edgefield
4 County. We didn't have stoplights. I always walked
5 in the road if there was no traffic, but when I
6 would see a car coming I'd move off the side of the
7 road. I don't know what the testimony is gonna be
8 from these folks that they had to swerve out the
9 road to avoid hitting her or they'd just seen her in
10 the road. I just don't know how that's relevant to
11 whether or not she was in the road at the time this
12 incident occurred. 'Cause here's what you end up
13 with, then you end up with plaintiff being allowed
14 to put up testimony from people who say we've seen
15 Ms. Blackwell a thousand times walking down the road
16 in the grass, always in the grass. I mean, that
17 doesn't — I'm confident you would object if they
18 wanted to put up witnesses that said every time I
19 ever seen her walking down the road she'd be over in
20 the grass in the grassy area. I mean, you would
21 object to that type of evidence.

22 MR. BAXTER: Yes, Your Honor.

23 THE COURT: I think rightfully so. How
24 does it change because we're gonna put her in the
25 road this time?

1 MR. BAXTER: Again, we just, it would be
2 our position that it's more than just an isolated
3 incident.

4 THE COURT: I agree. I mean, I agree
5 that, I agree that you have witnesses on numerous
6 occasions, not only one. I'm —

7 MR. BAXTER: And as far as Rhiannon
8 Herring's testimony the, previously the testimony by
9 the plaintiff is that she was returning home, she
10 was never in the road. When, in fact, we have a
11 witness who would contradict that testimony so I
12 think her testimony becomes relevant from the
13 standpoint —

14 THE COURT: I, now Mr. Poulin, I tend to
15 agree if the testimony from the plaintiff is that
16 she denied ever being in the road and that minutes,
17 five minutes whatever, before this incident a
18 witness saw her in the road, that's relevant.

19 MR. POULIN: Well, I think I agree with
20 that, Your Honor, but I would state this and then I
21 think perhaps this is —

22 THE COURT: I agree with you on all the
23 other stuff.

24 MR. POULIN: And this is something, you
25 know, we can probably take up again before

1 Ms. Herring takes the stand. This is what happened
2 last time I believe, is that I'm quite confident
3 that everything was excluded and then we took the
4 stand and we basically opened the door by saying
5 that we were walking, that we were not in the road.
6 They were allowed to call Ms. Herring to say she was
7 in the road, and of course, we found multiple
8 rebuttal witnesses; we only called one that came in
9 on rebuttal. Said they'd seen her that same night
10 five minutes before, she was not in the road. My
11 hope and my intention in Ms. Blackwell's testimony
12 is not to open the door.

13 THE COURT: Now understanding this, yeah,
14 and I see what you're saying, clearly, Ms. Blackwell
15 can testify that at the time the incident she was
16 not in the road. She can make that statement. She
17 can make that testimony. I think what opened the
18 door on the earlier case was that she had said that
19 at no time that night was she in the roadway.

20 MR. POULIN: That's right. What I'm
21 saying I'm hoping that that —

22 THE COURT: But if she doesn't testify —

23 MR. POULIN: Does not happen again. My
24 plan is not to open that door again.

25 THE COURT: If that door —

1 MR. POULIN: If it does —

2 THE COURT: If that door does not open
3 then I will agree that none of that is relevant, but
4 I do, I think that's something we'll just have to
5 cross that, I don't want to say road, cross that
6 bridge when we get to it.

7 MR. BAXTER: And we'll, I understand your
8 ruling. We won't make mention of that, but we do, I
9 do want to revisit that because I, again, I think
10 we're talking minutes versus, you know, weeks and
11 months and years earlier. And obviously Ms. Scott,
12 we think her testimony was even more remote than
13 Ms. Herring's testimony 'cause she saw her sometime
14 earlier that day and then saw her sometime depending
15 upon — she wasn't sure when, but we're thinking she
16 saw her maybe 30 or 40 minutes earlier versus 5
17 minutes earlier.

18 MR. POULIN: That was my rebuttal witness,
19 and again, I don't intend to call her unless I need,
20 again, unless the door is opened, then I need to
21 rebut so she, hopefully I won't have to call her.

22 THE COURT: All right.

23 MR. POULIN: That's it.

24 THE COURT: At this time with regards to
25 any testimony as to other dates and times that

1 someone allegedly saw Ms. Blackwell in the road, I'm
2 not gonna allow that testimony. As to whether or
3 not Ms. Herring's testimony about when she was ahead
4 of this incident and what she saw, that will be just
5 based upon testimony and we'll address it at that
6 time, okay.

7 MR. POULIN: That's it for the plaintiff,
8 Your Honor.

9 MR. BAXTER: Your Honor, I'm gonna go in
10 reverse order.

11 MR. POULIN: I'm sorry, I might be able to
12 save — I think I can agree to the laughing on the
13 video. I can agree to that and I can agree to that.
14 I'm not gonna make you go through the argument or
15 sending messaging so if you want to read that in.

16 THE COURT: So in regards to two and three
17 of plaintiff's — excuse me, of defendant's motion
18 in limine you would agree, Mr. Poulin, that you
19 don't intend to make any of those arguments in 2 and
20 you don't have any — well, let's see, any reference
21 to laughing and showing on the video.

22 MR. BAXTER: Your Honor, actually the, we
23 would, previously we had some conversations about —
24 the video is the highway patrolman comes in, turns
25 on his in-dash camera, videos, he goes over and

1 Now before I turn it over to the attorneys
2 let me first inquire from the plaintiff, are there
3 any objections or exceptions to the Court's opening
4 remarks?

5 MR. POULIN: No, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. BAXTER: Nothing, Your Honor.

8 THE COURT: All right, thank you, folks.
9 Ladies and gentlemen, I'm gonna now turn it over to
10 the attorneys and let them address you with their
11 opening remarks.

12 Mr. Poulin.

13 MR. POULIN: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 MR. POULIN: May it please the Court.
16 Good afternoon. A driver is never allowed to create
17 a big mistake. He's required to keep his eyes and
18 his car on the road to see what there is to be seen
19 and avoid striking other motorists or pedestrians.
20 If a driver chooses to create a needless danger by
21 driving while distracted and as a result he injures
22 somebody, then the driver's responsible for that
23 harm. Now let me tell you the story of what
24 happened in this case. Mr. Herring, Andrew Herring,
25 is a reserve officer with the Marion County

1 Sheriff's Department. It's May 17th, 2014, Foxtrot
2 Festival. He's assigned by the County in his role
3 as a volunteer reserve deputy to work crowd control
4 at the Foxtrot festival. Mr. Herring goes in to
5 work at the festival around 3 or 4:00 in the
6 afternoon. And the department has policy that you
7 can't have your personal cell phones, make personal
8 calls while you're on duty so he turns his phone
9 off, leaves it in the car, and he works his shift.
10 Now it's about 9:00, the festival is starting to
11 wind down. Mr. Herring is released from duty. He
12 heads back to his car to go home. A lot of other
13 people leaving the festival too at the same time.
14 Many people leaving by car, a lot of people leaving
15 by foot. People who have walked there are walking
16 home. Mr. Herring gets in his car and turns on his
17 phone and sees that he's got some missed calls and
18 some other things from the day, starts driving home.
19 Now it's about 9, 10 p.m. Mr. Herring is on Highway
20 501 headed back into town and he dials a number on
21 his phone looking down. And as he's distracted by
22 his phone, his car veers off to the right into the
23 grass shoulder and strikes a pedestrian going
24 55 miles an hour before he can ever get back on the
25 road. It's too late. The pedestrian's leg is

1 crushed under the weight of the car and her leg is
2 broke immediately, and her life is changed pretty
3 much forever in that moment.

4 Now that pedestrian was Ms. Blackwell,
5 Ms. Jackie, who is here with me today. My name is
6 Eric Poulin. I talked to you a little bit earlier.
7 But I represent Ms. Jackie and we had to bring this
8 case because Mr. Herring chose to violate the most
9 basic and important safety rule that says you got to
10 keep your car on the road. You can't be distracted
11 while you're driving. And the evidence will show
12 and we know that it's dangerous to drive when you're
13 distracted, we know it's dangerous to look at your
14 phone especially in a situation when there's a lot
15 of pedestrians on the road. For instance, on
16 Halloween night when there's trickier treaters all
17 throughout the streets we can't drive around with
18 our heads down on our phones because one split
19 second can take down a whole group of kids.

20 MR. BAXTER: Your Honor, I'm gonna object
21 to the, suggesting this has anything to do with
22 Halloween and children on the road.

23 THE COURT: All right, let's keep it to
24 the facts.

25 MR. POULIN: Yes, sir. Now instead of

1 paying attention and keeping his vehicle on the road
2 Mr. Herring chose to be distracted by his cell
3 phone, and when he did that he endangered everybody
4 in his path. And he did this even though he knew
5 the festival had just ended and that a lot of people
6 were walking home. Now instead of using his cell
7 phone while driving and Mr. Herring is just caught
8 up with his phone calls before he left the festival
9 or waited five more minutes until he got home from
10 the festival, none of this would have happened.

11 Before coming to trial there was a lot
12 that we had to look into, and the most important
13 thing we had to determine was whether or not
14 something else could have caused this wreck because
15 after all, if Mr. Herring didn't do anything wrong,
16 if he was just driving down the road, didn't do
17 anything wrong, then it wouldn't be right for us to
18 come in here and ask you to hold him responsible.
19 And you're gonna hear from Ms. Jackie and Ms. Jackie
20 is gonna tell us, she's been very clear all long,
21 she was in the grass. She was just walking home in
22 the grass when this car came off the road and ran
23 her over. That's not enough for me. I'm not gonna
24 come in here and ask you just to listen to what
25 Ms. Jackie said. I want to know more. I want to

1 see what the evidence shows, what the pictures and
2 the video shows.

3 So the next thing you're gonna learn
4 during the course of this trial, we're gonna here
5 Mr. Herring was driving a police vehicle, a police
6 cruiser. And we're gonna ask whether or not the
7 police cruiser was equipped with video equipment,
8 and we're gonna hear testimony throughout the trial,
9 we have these video recorders working in these
10 cruisers that they're always constantly recording
11 and that when you turn your lights on you turn the
12 blue lights on that, the video starts saving that
13 recording and it goes back a couple of seconds. And
14 we're gonna find out from the testimony in this case
15 that Mr. Herring's had video camera in it; it should
16 have caught the whole wreck. Well, we're going to
17 find out his car was equipped with a video recorded
18 camera, but it just so happened on this one
19 particular night we're gonna find out the camera
20 wasn't operational so we had to look at the next
21 best thing, which is the photographs. And you're
22 gonna see the photographs in this case. We're gonna
23 see that all of the damage to Mr. Herring's car was
24 on the extreme far right hand portion of the car and
25 the right fender. In other words, not in the middle

1 of the car, on the left side way off to the right.
2 We're gonna hear that after the collision when
3 Ms. Jackie was run over by the car and first
4 responders found her and Mr. Herring turned on and
5 came back and found her, that she ended up in a
6 ditch about at least three feet off the road off to
7 the side. And we're gonna see the pictures. And
8 we're going to see that there's no possible way she
9 could have end up in that ditch unless she was
10 already off the road in the grass when the car hit
11 her. And you're gonna be able to see that because
12 you're gonna be able to see from the pictures that
13 when she hit the front, when the front quarter panel
14 of the car hit her, her foot got trapped under the
15 tire as the car continued to move forward. And
16 you'll see that she stayed in one place while the
17 car moved forward and she ended up actually knocking
18 the mirror off the car and fell down right where
19 they hit her. So for her to end up in the grass
20 you'll see she would have had to be in the grass to
21 start with. You'll see other pictures of the debris
22 from the mirror and the glass and these kind of
23 things, and almost all of the debris from the wreck
24 is in the grass.

25 You will hear testimony from a highway

1 patrolman, one of the gentlemen's trooper I think
2 Ellis, who went out to the scene. He'll tell us
3 that he was able to locate any impact mark in the
4 asphalt, that he can't pinpoint anywhere in the road
5 where the wreck occurred.

6 So once we realized that Mr. Herring drove
7 off the road and struck Ms. Jackie, we had to ask
8 ourselves why, why would an otherwise probably good
9 driver drive off the road and strike somebody.
10 That's when we looked at the cell phone records.
11 You're gonna get to hear him testify. You'll get to
12 see the cell phone records. You'll see this wreck
13 happened at 9, 10 p.m. We'll see he was on the
14 phone at 9, 10 p.m. when this wreck happened. So
15 that's why we had to have this trial. And the last
16 reason we had to have this trial is because Mr.
17 Herring refused to accept responsibility and offer
18 full and fair compensation. And in fact, what we'll
19 see with the evidence will show during the course of
20 this trial is that Mr. Herring actually tried to
21 cover up his actions and hide what happened that
22 night.

23 Now at the end of the case when Judge
24 Russo sends you back to the jury room after charging
25 you on the law, he's gonna send you back with the

1 verdict form. And the verdict form is gonna have
2 some questions on there that y'all are gonna have to
3 answer, and the biggest question you're gonna have
4 to answer is how much money you're gonna allow in
5 your verdict for Ms. Jackie. So that's gonna be
6 what a lot of this trial is about. And there's only
7 a couple of things you can consider when you're
8 trying to decide how much money to allow in your
9 verdict, and that's the level of harms and losses
10 that Mr. Herring caused. So treat it like a box.
11 You put the harms and losses in the box. That's the
12 medical bills, that's the pain and suffering, that's
13 the surgeries, spent I think over two weeks in the
14 hospital. Medical bills over 110, \$110,000 by the
15 time all is said and done. Those go in the box.
16 Everything else is outside of the box. So sympathy,
17 for instance, is outside the box. You can't award
18 Ms. Jackie more money just because you like her and
19 feel sympathy. You may feel sympathy, that's human,
20 but you can't consider that when you're rendering
21 your verdict. You can't consider anything other
22 than harms and losses. So it's gonna be my job over
23 the course of this trial to show you what those
24 harms and losses are. I'm not doing that to get
25 your sympathy. I'm not doing that to get you to

1 feel bad for Ms. Jackie. But I'm doing that because
2 you're gonna need to know that to be able to fill
3 out the answers that the judge gives you at the end
4 of the trial.

5 So here's what you're gonna hear about
6 harms and losses in this case. When Mr. Herring ran
7 off the road and ran Jackie over, her leg got pinned
8 under the car and she was knocked down in the grass
9 in the ditch and her ankle immediately broke. Now
10 she suffered what they call an open fracture. What
11 that means is that when the bones broke, some of the
12 bone fragment which are part of the bone from the
13 fragment was actually sticking out through her skin,
14 caused a wound, open area. She was rushed to the
15 hospital and the good doctors at McLeod did
16 everything they could for her. She was there,
17 emergency surgery, in the hospital for days and days
18 and weeks, hundreds of thousands, hundred thousand
19 dollars in medical bills even after she goes home.
20 She had rehab. She has to pack the wound every day.
21 She had wound care specialists. Those are the harms
22 and losses that she suffered in the case. But in
23 order for you all and us to really figure out how
24 this has affected Jackie and how properly to answer
25 that question that Judge Russo gives you of how much

1 to allow in your verdict form, it's gonna be
2 important for us to know what Jackie was like before
3 the wreck because after all, that's what this whole
4 thing is about. It is what is Jackie like now, what
5 was she like before the wreck. So we're gonna hear
6 a lot about Ms. Jackie. You're gonna get to hear
7 her. She's gonna be up on the stand and she's here
8 with her sister, Ms. Wendy. Ms. Wendy is a saint,
9 really gonna get to meet Ms. Wendy. What we're
10 gonna find out is that Ms. Jackie is a really
11 special person. She's got a touch of the mental
12 illness and, you know, we always hear that god will
13 never give one person more than they can handle, and
14 that's even true of Ms. Jackie. She's got a touch
15 of mental illness, but man, she was, she is
16 something. We're gonna hear that she lives with
17 Ms. Wendy or lived with Ms. Wendy, still does at her
18 house. And that even though Ms. Wendy was kind of
19 there to watch over her, take care of her, that
20 Ms. Jackie was independent. In fact, we're gonna
21 here she was a social butterfly. She was basically
22 able to do everything for herself. And one of the
23 things that she really, really loved to do was walk.
24 She wasn't able to drive. She never had a driver's
25 license, but she was able to walk and she did. And

1 she had so many friends. She had friends at Dollar
2 General. She had friends downtown. She had friends
3 in the community. That's what she did during the
4 day. Ms. Wendy would go to work. Ms. Jackie would
5 go walk around, see all her friends. She was very
6 well liked and very well known in the neighborhood.
7 And that's, that's what gave her the most joy in
8 life was to be able to get out the house, be
9 independent, and do her own thing.

10 What we're gonna hear that after the wreck
11 Ms. Jackie wasn't able to walk at all for a while.

12 She was bedridden, then she was in a wheelchair and
13 then she had a walker. They had to put a toilet
14 right next to the bed because she couldn't get from
15 her bed to her toilet. You're gonna hear that even
16 as she started to get better with physical therapy
17 that it was a very long and painful road. And here
18 even now, even as we sit here today more than two
19 years after the wreck she still has problems with
20 the leg as you would expect. And she's able to get
21 around now and you'll see her walk up to the stand
22 and you'll probably see her this week or you will
23 walking around the courthouse a little bit, and
24 she's not gonna come up here and she's not a whiner.
25 She's not a complainer. In fact, she's — I'm

1 probably gonna have to drag it out of her to get her
2 to tell you how this is affecting her. But what we
3 are going to find out, she's not able to walk like
4 she used to, not able to really go with it. She's
5 not able get out of the house. She can walk a
6 couple of minutes, then she's got to sit down, walk
7 a couple of minutes. And we're gonna hear probably
8 mostly from Ms. Arthur because she's the one that's
9 just known her since her whole life, has seen her,
10 can see what's going on. We're gonna hear about how
11 this has affected Ms. Jackie, you know, kind of
12 emotional, just the isolation of someone who really
13 their whole life was contained and ability to get
14 out and walk around and see things, now is basically
15 relegated to sitting in the house. So that's what
16 we're gonna hear about that.

17 Now that means we're all around for three
18 reasons which is to fix, help, and make up for these
19 harms that Mr. Herring caused when he chose to
20 violate the safety rule and drive while distracted.
21 So the first thing we can do is fix the things that
22 we need fixed. For example, the medical bills,
23 medical bills are 110 something thousand dollars.
24 If you allow money in your verdict for medical bills
25 you put Ms. Jackie back in the same position she was

1 before the wreck. You fix that, you make it go
2 away. That's the smallest part of it. That's all
3 money that goes to fix to other people to do other
4 things. The next thing we can do is we can help the
5 things that can't be completely fixed but can be
6 helped. If you allow money in your verdict to make
7 sure that Jackie is, you know, cared for. These
8 types of things, gets proper medical treatment, able
9 to rehab herself and get herself maybe better. You
10 can't completely fix that. No amount of money you
11 allow in your verdict will put her back to normal,
12 that you can't help this.

13 But the last thing we're here for and the
14 biggest part of the harm are the things that can't
15 be fixed and can't be helped that we have to try to
16 make up. And we'll know that's the biggest part of
17 the harm because, one, when Judge Russo is
18 instructing you on the law he's gonna spend the most
19 time talking to you about those damages and any
20 other damages. Those are the things like the pain
21 she went through with all the surgeries. Those are
22 the things like mental anguish she feels when she's
23 isolated in her house. Those are the things that we
24 can't fix, you know, things we really can't even
25 help. And unfortunately, the only thing that we're

1 able to do under our system of justice is to allow
2 money to make up for this, and so we'll have to
3 figure out together how to do that and that's all we
4 can do. And yes, we can put a dollar amount on
5 those things. It's hard, not everybody is gonna
6 agree on the particulars. It's one of the things
7 y'all are gonna have to go back and work at, but I'm
8 gonna help you through the course of this trial to
9 see what those harms and losses and to see that Mr
10 Herring caused these harms and losses so that at the
11 end of the case when you go back and answer those
12 questions Judge Russo gave you, your job will be a
13 lot easier.

14 The good news is we're not gonna be here a
15 long time this week. I think this is a pretty
16 straight forward case. We're not gonna drag in a
17 bunch of needless witnesses and hammer you with all
18 kind of stuff. I'm gonna let you hear from Ms.
19 Jackie and I'm gonna let you hear from Ms. Wendy.
20 We'll probably hear from Mr. Herring and might hear
21 from a couple of other people, and you're gonna have
22 all the evidence you need to go back there and make
23 the right decision. I know you'll do a great job in
24 that and thank you for listening to me and for
25 giving us your attention. I'm gonna work with you

1 to make sure that we get the right answer on that
2 verdict. Thank you.

3 THE COURT: Thank you, sir.

4 Mr. Baxter.

5 MR. BAXTER: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. BAXTER: Ladies and gentlemen of the
8 jury, like Mr. Poulin, I also want to thank y'all
9 for being here and appreciate your attention to
10 everything we're gonna be talking about and I'm
11 gonna try to be as brief as possible because I know
12 y'all want to get into the importance of, important
13 stuff of the testimony of the witnesses and the
14 facts and the evidence so I am gonna touch on a few
15 things. But the — just so you know who is here,
16 we've got Sheriff Mark Richardson who in three or
17 four months will be the retired former Sheriff Mark
18 Richardson. He's got a few more months of working.
19 Rhiannon Herring who is actually Andrew Herring's
20 ex-wife, and we've got some other witnesses. But as
21 Mr. Poulin indicated we're gonna try to streamline
22 this case as much as possible. Instead of putting
23 up two or three witnesses that are gonna say the
24 same thing, we're probably going to tear it down as
25 much as we can so that we can get to the important

1 decision you need to make.

2 Now Andrew Herring is employed with
3 Florence County EMS. He's originally from Mullins.
4 He's actually living in Florence now. At the time
5 of this accident he was employed with Florence
6 County EMS. As his job is, he'll go into more
7 detail about this, but he has one day on, three days
8 off. One day on he works 24 hours, kind of standard
9 with EMS workers, which means that, you know, in a
10 seven day period he may only work one day and have
11 three days off. So back in this time one thing he
12 enjoyed doing, liked doing, was volunteering with
13 the Marion County Sheriff's Department. And on the
14 night of this accident he was working at capacity as
15 a reserve officer. A reserve officer is a
16 volunteer, not paid. They do receive some training,
17 they go through certain qualification; but he was a
18 volunteer worker and he had volunteered to be kind
19 of be security at the Foxtrot Festival. You know,
20 everybody's been there. You see police officers
21 walking around. That's what he was doing. Rhiannon
22 Herring was also working there. They were in
23 different vehicles. She had a golf cart, was
24 driving a truck. He was driving a patrol car. And
25 so they got off around 9:00, not exactly sure,

1 sometime around 9:00, and so he left to go home.
2 And actually, he lives out, he lives out 501.
3 Actually if you were to leave here, take a left on
4 Main Street and you go out about two miles and if
5 you've gone out that direction, eventually you'll
6 get to a Dollar General, eventually you'll get back
7 into 501 bypass. But the accident occurred before
8 you get to Dollar General, and there's a little,
9 it's called Gaston Cemetery Loop Road which is
10 really not even a road. Now it's a dirt road, I
11 think, may be closed but somewhere in between there
12 it's where the accident occurred. In that area
13 there is, there's a couple of houses but there's no
14 street lights and no lights. This is a little bit
15 closeup. We agree the accident happened generally
16 in this area right here. And this is a, this is not
17 taken from the date of. We got it off Google Earth
18 or something. This shows the road in a section
19 where the accident occurred. Now Mr. Herring will
20 testify that he left the festival, made a phone call
21 to his wife or talked to her, let him know she
22 already left a few minutes before him, let her know
23 he was on his way. He's traveling down this section
24 of the road. We think the accident happened around
25 9, 9:10, give or take a minute or two, which is dark

1 at the time, sunset, and we'll go into that but it
2 was dark at the time. He'll testify that he was
3 traveling with, out of town on 501. There was a car
4 coming towards him. He suddenly realized there was
5 something in the road in the paved asphalt and, you
6 know, just had a split second kind of swerved a
7 little bit but having to avoid hitting the other car
8 and he hit something. Initially he wasn't sure what
9 it was. He turned around, went back, turned his
10 blue lights on; and during that time period he
11 called his wife and started calling his
12 supervisor — not supervisor, called EMS, called
13 back in, when he realized that it was Ms. Blackwell.
14 And EMS came and transported her.

15 Now our position is that she was in the
16 road at the time the accident occurred. Now I, I'm
17 not gonna spend a lot of time going through
18 everything Mr. Poulin mentioned about the photos and
19 how it happened and, you know, angles and all those
20 things 'cause you will hear all that testimony. You
21 will see all those photographs, and you will see
22 that the physical evidence shows that Ms. Blackwell
23 was in the road on the impact. We can't — the
24 impact occurred in the road. You'll have all that
25 information; you'll see all that information. We'll

1 also show you that the — yes, he made a phone call
2 but he made a phone call after the accident
3 occurred. You heard them talk about the video.
4 Well, you know, they'll explain why there was no
5 video. But irregardless, he was not traveling with
6 his blue lights on. He was just driving home going
7 the speed limit when this accident occurred. Now in
8 order for you to make a decision I'm gonna — you
9 know, the Judge talked about you're gonna be the
10 finder of facts. He's gonna give you the law and
11 you're gonna apply the law, and I'm gonna throw one
12 other thing in there that's very important and I
13 hope all y'all brought today, and that's your common
14 sense. You're gonna hear the testimony. You're
15 gonna see the photographs. You're gonna see the
16 evidence. You're going to apply your common sense
17 and say, okay, we have to decide what happened, what
18 the facts are. In order for you to make the right
19 decision you got to have the right information. If
20 you don't hear the testimony, if you don't see the
21 photos, you're just guessing, okay. We don't want
22 anyone to guess. We want you to make a decision.
23 Informed decision. In order for you to do that you
24 need to see and hear everything that's available for
25 you to consider.

1 Now the judge talked about a ping pong
2 match. Trials are like that as well. You know,
3 it's gonna be back and forth. Well, I think this,
4 and they will think that, and you're gonna be back
5 and forth so it's important that you don't make a
6 decision until you've heard everything. And I'm not
7 talking just about the sheriff's department
8 witnesses, but also Ms. Blackwell, Ms. Arthur,
9 everybody. And if you hear nothing I say, just
10 remember, please listen, please consider, please
11 take the information you're given and apply your
12 common sense and you'll be able to make a good, fair
13 decision for everyone. Thank you.

14 THE COURT: You may call your first
15 witness.

16 MR. POULIN: Thank you, Your Honor. We're
17 gonna call Ms. Wendy Arthur.

18 THE COURT: Ms. Arthur, if you'd please
19 come around to be sworn, ma'am.

20 WHEREUPON,

21 **WENDY ARTHUR,**
22 having been duly sworn by the Clerk, testified
23 as follows:

24 **DIRECT EXAMINATION**

25 BY MR. POULIN:

1 Q Ms. Wendy, how are you?

2 A I'm doing good.

3 Q Tell us where you live.

4 A , Marion, South Carolina.

5 Q How long have you lived in Marion?

6 A All my life.

7 Q And Ms. Jackie, how are you related to Ms.
8 Jackie?

9 A That's my sister.

10 Q And where does she live?

11 A

12 Q So y'all live together?

13 A Yes.

14 Q Have y'all lived together pretty much your whole
15 life?

16 A Yes.

17 Q I want everyone to get to know you a little
18 better. Would you — tell us where you work.

19 A I work at Pee Dee Community Action Agency,
20 preschool teacher.

21 Q Okay. And how long have you worked there?

22 A Working in the school system about 18 years.

23 Q About 18 years with the school system? Okay.

24 And tell us about your children, you got any
25 children?

1 A I have two boys, two sons.

2 Q Now old are they?

3 A 24 and 29.

4 Q Okay. And they went to Marion High School here
5 in town?

6 A Yes.

7 Q Did they play any sports or do anything there?

8 A Football, basketball.

9 Q What about church, you go to any church around
10 here?

11 A Yes, The Door of Hope Christian Church. Mr.

12 Michael is my pastor.

13 Q How long you been going there?

14 A Oh, since '94. About 20 years.

15 Q Does anybody go there with you?

16 A Yes, my whole family.

17 Q Including Ms. Jackie?

18 A She goes sometimes, but she's a member of Greater
19 Singletary.

20 Q Tell us how was it that Ms. Jackie ended up
21 coming to live with you.

22 A My grandmother, she raised us and she died so
23 then I had to take responsibility of taking care of
24 my sister.

25 Q And so I guess you're mostly responsible for

1 taking care of her now?

2 A Yes.

3 Q Okay. About how long have you been primarily
4 responsible for her?

5 A Ever since early '90s.

6 Q Okay. And as part of those responsibilities what
7 types of things do you help her out with?

8 A Finances, taking her to the doctor, just
9 assisting in everything I can with her, giving her
10 medicines and stuff like that.

11 Q And even though you do those kind of things for
12 her are there a lot of things that she's able to do
13 on her own?

14 A Yes.

15 Q Okay. Tell us, we heard a little bit from
16 opening statements that she's got a little bit of
17 some mental health issues. Tell us a little bit
18 about her mental health issues.

19 A Back in the early '90s she was diagnosed with
20 schizophrenia. She had a nervous breakdown. Around
21 about that same, about it was early '90s, and that's
22 when they diagnosed her with that. Because of that
23 she's not able to work so, therefore, she just stays
24 home. She gets disability and she just goes out,
25 you know, walking, visit friends, and stuff like

1 that. As far as like working she's not able to work
2 right now.

3 Q Okay. The, her mental condition, just try to
4 describe for us a little more sort of how that
5 affects her on a daily basis.

6 A She has some good days and she have bad days.
7 Her good days, you know, she's laughing and talking,
8 likes to go walking, and likes talking to people.
9 Then there's other days that, I guess, depression
10 come on and she's more withdrawn and stays to
11 herself, just be alone.

12 Q Now even with those issues is she pretty
13 self-sufficient for the most part?

14 A Yes.

15 Q Okay. Tell us about back before this wreck, did
16 she have any friends outside the house?

17 A Yes, she had some. She has a lot of friends.

18 Q Okay. And tell us about, I guess, you've been
19 working for 18 something years. Is that a full-time
20 job?

21 A Yes.

22 Q Okay. What does she do when you go off to work,
23 or what did she do before the wreck?

24 A She'd get up in the morning, eat her breakfast,
25 get dressed. Her specialty was walking. She'll

1 walk into Marion on 501; and she'll walk into Marion
2 and she'll walk to the library. She loved going to
3 the track field and she sits in the park, and
4 sometimes she'll walk around the track and then
5 sometimes she'll just sit there and talk to
6 different people and a lot of people know her that
7 goes out to the track field. And that was a way of
8 her, you know, relieving stress and depression and
9 stuff; that's what she would do.

10 Q Do you remember the day of the wreck?

11 A Yes.

12 Q That was day of the Foxtrot Festival back in
13 2014?

14 A Yes.

15 Q Tell us what did you do that day?

16 A I went grocery shopping that morning, and I came
17 back, went back home, and Jackie was on her way to
18 the Foxtrot. I told her, I said, I said where are
19 you going. She say on the way to Foxtrot. I said,
20 all right, be careful; she said okay. And I went
21 back home.

22 Q Was that a regular occurrence for her to go out
23 and do things on her own?

24 A Yeah.

25 Q And you didn't have any concerns about her being

1 out on her own or anything like that?

2 A No, 'cause she does that on daily basis. About
3 every day she'd go walking. Sometimes people offer
4 her a ride. People have offered a ride and she'd
5 say, no, that's all right, I'll walk. That just
6 what she does.

7 Q How did you first find out that there had been a
8 wreck?

9 A She didn't come home. And she walks, but at a
10 certain time she's back in the house. So when it
11 was going on about 10 I said this don't seem right.
12 I said, well maybe she's still talking, 'cause she
13 liked to talk. But then when it was going on 11 I
14 said, let me make phone calls. So I called around
15 to family house and they said they did not see her.
16 So I had my cousin, she was calling around also and
17 they, people was telling her the same thing, she's
18 not here, she's not here. So we wound up, we called
19 the Sheriff's Department and they said they had
20 nobody by that name. We called the Marion Police
21 Department, and they said they didn't have nobody by
22 that name, they said they didn't have nobody by that
23 name. We called to all the hospitals. They said
24 they didn't have anybody by that name. I'm like,
25 Lord, what in the world. So we did this throughout

1 the night. And so I got up early that morning
2 around about, probably about five, and start to look
3 for her. Then I just went on out to the police
4 station to the city and I forgot the police
5 officer's name but I had wrote it down. And he was
6 on his way taking a female to the — on 76, the
7 Sheriff's Department. And I asked him, I said, I'm
8 looking for my sister, she didn't show up last night
9 and that's not like her. And he said, what's her
10 name? And I said, her name is Jacqueline Blackwell,
11 and he said hold up for a minute. So he got on his,
12 he called someone and then he told me, excuse me for
13 a minute. He went around to the front of his car,
14 and he was talking, you know, do you know who
15 someone — I don't know who it was, you know. And
16 he said, oh, okay, okay, yeah, okay. He came back
17 to where I was standing at the front of his car
18 where the driver part at. He said that I think I
19 know where your sister at, he said, but she's all
20 right, she been in a accident. And I said, she's
21 all right? And he said, yes, but she's at
22 McLeod —

23 MR. BAXTER: Your Honor, going a little
24 bit far field as far as the hearsay goes.

25 THE COURT: All right.

1 MR. POULIN: We can move on.

2 THE COURT: Try to stay away from the
3 hearsay.

4 BY MR. POULIN:

5 Q Okay. So you found out she was at McLeod?

6 A She was at McLeod.

7 Q Okay, this is when? This is how late up into the
8 next morning?

9 A It was about probably about 9:00. And when I got
10 to McLeod I went to the ER, and they said that they
11 didn't have no one in the ER but there's someone by
12 the name of Vanessa Blackwell that's at the Women's
13 Pavilion so I went over to the Women's Pavilion.
14 The nurse told me, she said go — she told me the
15 room number, I forgot, that was two years ago. But
16 I went, I set in the room. She said to go in the
17 room, they're getting ready to bring her back after
18 a while. So when I walked into the room I seen a
19 small Bible on the sink along with a leg brace and I
20 went over there, I looked at the little Bible. I
21 felt a little relief after I seen the small Bible
22 'cause she always toting her a small Bible. And I
23 looked at it, it had her name and our address on it,
24 so I said this is her. And it was laying by a leg
25 brace, some blood and grass on it.

1 Q Okay. And so in all the time from when the wreck
2 happened when you found out she was at McLeod nobody
3 ever called you to notify you she'd been in a wreck
4 or anything like that?

5 A No, sir, but I was calling 9-1-1. They said they
6 had nobody by the name of Jacqueline Blackwell,
7 nobody.

8 Q Okay. And tell us more about this Bible. This
9 was a Bible that she carried with her all the time?

10 A Yeah, the little miniature little Bibles. They
11 got green, red, and blues, just a little miniature
12 Bible.

13 Q And she, I guess she had had that with her this
14 night as well?

15 A Yes.

16 Q And that had her name and address in it?

17 A Yes.

18 Q Okay. When were you first actually able to see
19 Ms. Jackie?

20 A When they wheeled her back in the room. She was
21 in the bed. She had just got out of surgery. I
22 think they said about three or four hour surgery.
23 She came, they wheeled her back in. She, she
24 recognized who I was. She had tubes throughout her
25 legs and like suction tubes. Her ankle was crushed.

1 She had like a lots of bands on it. On the back of
2 her leg was like a big, big hunk of meat pulled out
3 of it. They had it packed and they also had tubes
4 running around the back as well.

5 Q And how long did she have to stay in the
6 hospital?

7 A She was there about three-and-a-half weeks.

8 Q Where did she go when she was finally released?

9 A She came back to, with me.

10 Q Back to your house?

11 A Uh-huh.

12 Q And when they released her from the hospital and
13 sent her back to your house was she fully recovered
14 at that point?

15 A Oh, no, sir. When they release her back to me we
16 had — before she went back to my house to make sure
17 that a bed side commode was given to us, a walker, a
18 wheelchair. DHEC came in and brought pads for her
19 to keep the leg going and then we got boxes of
20 supplies for the wounds where I had to help take
21 care of. They had to train me to take care of the
22 wound.

23 Q How would you take care of a wound like that?

24 What did that involve?

25 A Just keeping it clean, keeping it packed, and

1 making sure that I stay clean, my hands stay clean,
2 make sure that you keep gloves because it can get
3 reinfected and, you know, she could lose her whole
4 leg.

5 Q How do you pack the wound? What does that mean?

6 A We actually put some solution on some gauze and
7 we just stuff the back of the leg.

8 Q And did she appear to be in pain when you were
9 doing all that to the leg and stuff with the gauze
10 in there?

11 A She would, you know, squirm some, yeah.

12 Q Okay. Tell us about her journey of being able to
13 walk again. Did she have to do any type of physical
14 therapy or see any doctors for that?

15 A Yes. Physical therapy came in for a good little
16 while. They had to teach her how to walk again.
17 They did some range and motion exercises, just
18 enough that they did not want a lot of pressure on
19 her ankle because it wasn't really, really stable
20 yet. So she did like little light stuff just to
21 keep her muscles to going.

22 Q Okay. How long was it after all this happened
23 that she was able to even start bearing weight on
24 that leg again?

25 A It was a couple of months because this happened

1 in May. Then she started going to, after rehab
2 stopped from the house she had to continue rehab to
3 Marion Carolina Hospital to the rehab out there.

4 Q Okay. And then when she was able to start
5 walking on her own again was she back in full
6 strength? Was she back to her regular old self?

7 A She wasn't back to full strength. She'll never
8 be back to full strength.

9 MR. BAXTER: Your Honor, I object to the
10 testimony as to, I mean, that would be improper
11 medical testimony, medical record.

12 THE COURT: Sustained as to any medical
13 diagnosis.

14 BY MR. POULIN:

15 Q Let me ask you this, from what you've been able
16 to observe was she, even as we sit here today two
17 days after the wreck, was she able to walk as far as
18 she was —

19 A No, sir.

20 Q —before the wreck?

21 A No.

22 Q Okay.

23 A She —

24 Q Go ahead.

25 A I say where she would walk to town, now she can

1 just only walk, the store is like four minutes from
2 my house, it's not far. She can walk there and then
3 she'll walk back home and she would have to sit down
4 and rest because of the pain in her leg as of today.

5 Q Were you noticing she was spending a lot more
6 time in the house than she used to?

7 A Oh, yeah. She have nowhere to go unless I take
8 her, other than her extracurricular activities that
9 she used to. She can't do it anymore.

10 Q Okay. And when she does need to go somewhere by
11 car are you generally the one who takes her?

12 A Yes, sir.

13 Q Okay. And I think you said earlier part of what
14 you help her out with is you help her manage her
15 finances?

16 A Yes.

17 Q And who drives her to back and forth to the
18 doctors and those kinds of things?

19 A I do.

20 MR. POULIN: May I approach the witness,
21 Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. POULIN:

24 Q I'm gonna show you what we've marked for
25 identification as Plaintiff's Exhibit Number 6. Can

1 you look through that and without telling us what's
2 in there, tell me if you recognize that.

3 A Yes, sir.

4 Q Okay. And what does that appear to be?

5 A A copy of her bills, her medical bills.

6 Q Copies of her medical bills?

7 A Uh-huh.

8 Q And these are bills that you would have, would
9 those have come to your house?

10 A Yes.

11 Q You would have brought her back and forth to
12 those appointments and those types of things?

13 A Yeah.

14 Q And do those appear to be accurate copies of the
15 bills that you're aware she sustained?

16 A Yes.

17 MR. POULIN: Your Honor, at this time we
18 would move exhibit 6 into evidence.

19 MR. BAXTER: Your Honor, we would object
20 to this based upon foundation and the necessary
21 testimony medical-wise as to the necessary
22 reasonableness of the treatment.

23 THE COURT: All right.

24 MR. BAXTER: And whether it was
25 proximately caused by the accident.

1 THE COURT: All right, I'm gonna overrule
2 the objection on those bases. Certainly
3 cross-examine her as to those issues but I think she
4 did, Ms. Arthur, did testify that those are bills
5 that were received and that she's the one who
6 received those on behalf of Ms. Blackwell so I'm
7 gonna allow it in.

8 (WHEREUPON, Plaintiff Exhibit No. 6 was
9 admitted into evidence.)

10 BY MR. POULIN:

11 Q If you would turn to that front page there and
12 let's get the total. What are the total of the
13 bills that you got in front of you?

14 A 110,000 —

15 Q Okay.

16 A —249-dollars.

17 Q And is that all the bills? Are there any
18 prescriptions on there?

19 A No.

20 Q Okay. Was she required to take some
21 prescriptions and some other stuff or?

22 A Yes.

23 Q Okay. So that's not even all of the bills in
24 there?

25 A No, sir.

1 Q All right. Ms. Wendy, before I sit down, you've
2 known Ms. Jackie your whole life, you've seen her
3 before the wreck and after the wreck. I want you to
4 tell us how you noticed, what changes have you
5 noticed in your sister since the wreck emotionally,
6 physically, anything?

7 A Emotionally she's just, she talks and everything
8 but you can tell that, you know, she's kind of
9 depressed about sitting home when she used to going.
10 Sometimes she just look out the window and just go
11 back and sit on her bed or I guess I go back out
12 there and sit on the porch again. She can't walk
13 very far. She do go up to the stop sign and come
14 right back.

15 Q Okay. That's all the questions I have for you,
16 but Mr. Baxter is going to have a couple, okay.

17 A Okay.

18 Q Please answer those.

19 **CROSS-EXAMINATION**

20 BY MR. BAXTER:

21 Q And I'm gonna try not to get too much testimony,
22 but I do want to touch on a few things. Your sister
23 is, has schizophrenia and is disabled and has been
24 unable to work since sometime in the 1990's I think
25 you testified.

1 A Yes, sir.

2 Q And we, you recall we took her deposition back on
3 March 14th of 2016, you recall that date?

4 A Yes, sir.

5 Q You were present during her deposition, correct?

6 A Yes, sir.

7 Q And we placed her under oath and I asked her
8 questions and did the same thing, correct?

9 A Yes, sir.

10 Q And you recall that during the deposition some of
11 the answers she gave were not necessarily correct?

12 A Right.

13 Q Okay. And for example, she said she worked I
14 think 30 given places over the years, and I think
15 she may have had one job and that was many years
16 ago?

17 A Yes.

18 Q And she also testified that recently she went
19 through some treatment and that she was no longer
20 disabled but she's still disabled, correct?

21 A Right.

22 Q And the, so there are times that the, I mean,
23 that she doesn't quite get her story straight or
24 what happened straight?

25 A Sometimes.

1 Q Okay. Now the, you have, you testified that you
2 take her to the doctor?

3 A Yes, sir.

4 Q And one of the doctors you take her to is
5 Advanced Medical Care?

6 A Yes, sir.

7 Q And she was going there before this accident?

8 A Yes, sir.

9 Q And she continues to go there?

10 A Yes, sir.

11 Q And one of the things they prescribe is
12 medication for the schizophrenia?

13 A Yes.

14 Q And she does not always take her medication,
15 correct?

16 A Back then, no.

17 Q Okay. Hopefully she's —

18 A But now she on it now.

19 Q Okay, good. But there were times where she did
20 not like taking medication because she didn't like
21 the way it made her feel?

22 A Yeah, it makes her sleepy, and she don't like
23 sleeping like during the daytime a whole lot 'cause
24 that's her time, that's her time. She likes to go
25 walking and stuff. Nobody wants to sleep day and

1 night.

2 Q Okay. And the, you testified earlier you take
3 her to the doctor. You're kind of in charge of her
4 finances. You take care of her money for her,
5 correct?

6 A Yes.

7 Q And on the date of the accident, which is May
8 17th of 2014, she did not take her medication that
9 day, did she?

10 A No, sir.

11 Q And the, when she left about what time did she
12 leave to go to the Foxtrot Festival?

13 A I'd say around about 11, between 10:30 and 11:00.

14 Q So —

15 A That morning, you know.

16 Q So you saw her going that morning?

17 A Yes, sir.

18 Q And I think the only thing that she would have
19 had with her was the Bible that she carried?

20 A Yes, sir.

21 Q And she didn't have any money?

22 A If she did it was probably in her pocket.

23 Q But —

24 A I can tell what I seen. When I got back in the
25 room was, it was a little small Bible. She keep her

1 Bible on her.

2 Q You don't know if she took any money or not?

3 A No, I don't.

4 Q And the, you realized sometime later that night
5 when she didn't come home you became concerned?

6 A Yes, sir.

7 Q And you rattled off who all you called. Did you
8 call 9-1-1?

9 A Yes.

10 Q Okay. So you didn't call the various police
11 departments, you called 9-1-1?

12 A Yes, I did.

13 Q And said I'm looking for Vanessa Blackwell, or
14 you said I'm looking for —

15 A She don't go by Vanessa. She go by Jacqueline
16 Blackwell. I don't know where Vanessa — her middle
17 name is Vanessa, but she go Jacqueline Blackwell.
18 That's in the doctor records too.

19 Q But you didn't say I'm calling to see if she was
20 in an accident. You called and said I'm looking for
21 Jacqueline Blackwell.

22 A Yeah, she didn't show up home. I want to know
23 was she a patient or was she in jail, or I didn't
24 know what was going on.

25 Q But they told you they didn't have any

1 information on somebody by that name.

2 A Right.

3 Q And now I just want to make sure, the next
4 morning did you talk with sheriff's deputy or did
5 you talk with a city of Marion police officer?

6 A It was a city of Marion police officer.

7 Q So the individual that was telling you that he
8 thought he might have some information was a city of
9 Marion police officer, not a sheriff's deputy?

10 A Right, it was a police officer.

11 Q And so you went to McLeod Hospital, correct?

12 A Yes, sir.

13 Q And at some point in time she came out and she
14 was there for a couple of weeks?

15 A Yes, sir.

16 Q And I would imagine you went on a fairly regular
17 basis visit with her and see her?

18 A Yeah, I stayed out of work too. I stayed there
19 with her a couple of days also.

20 Q Now she never told you what happened?

21 A No.

22 Q And you never asked her what happened?

23 A Well, the only thing that she said was that she
24 was walking and a car veered off the road and hit
25 her.

1 Q Let me, you recall in your deposition I said, did
2 she ever tell you what happened and you said, no,
3 she never told me what happened. Let me ask you
4 this, before you talked to the lawyers did she ever
5 tell you what happened, was that the first time you
6 heard what happened?

7 A That was the first time.

8 Q Okay. Now the, you also were asked about the
9 medical bills and you said that the, something about
10 they came to your house. These were not mailed to
11 your house, were they?

12 A Yeah, there was something that did come to the
13 house.

14 Q But these, the bills from the hospital did not
15 come, the bills and stuff information was not mailed
16 to you. It was given to you by your lawyer,
17 correct?

18 A Uh-huh.

19 Q And Ms. Blackwell can walk to the, I think you
20 said, no more than three or four minutes.

21 A It's, she goes no further than Dollar General.
22 That's by our house. It's like, it's like five
23 minutes so it's about three or four minutes.

24 Q But she can walk from there. Total, how far?
25 That half a mile or a mile from your house, Dollar

1 General?

2 A No. I stay on Wesley Court and Dollar General is
3 just, you can see Dollar General standing in our
4 backyard.

5 Q And there's also you're talking about she'd go
6 visit friends. Y'all got some friends and family in
7 that area she can still walk to and see, correct?

8 A Most of them stay further in town. She don't
9 really go out there.

10 Q And do you ever take her into Marion and to the
11 track or to friends when she asks?

12 A Yeah, when she asks, yeah, but most of the time
13 I'm working. When I come in I got to take care of
14 home too.

15 Q And the, and she's slowly, gradually getting a
16 little bit better as time goes; but I mean, I
17 know she's nowhere near where she was.

18 A No. At once, she better that what she was but
19 it's not one hundred percent. It's not going to get
20 one hundred percent.

21 Q But it is, but she's improving?

22 A From the time of the accident.

23 Q Right. Well, even from month to month to month
24 she —

25 A When she's complaining I had to take her back to

1 the doctor a couple of months ago 'cause she was
2 complaining about some pain around that where the
3 ankle got crushed at.

4 MR. BAXTER: Your Honor, that's all we
5 have.

6 THE COURT: Anything on redirect?

7 MR. POULIN: Thank you, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. POULIN:

10 Q Ms. Jackie talks about working and working a lot;
11 doesn't she?

12 A She do. That's one of her, our grandmother raise
13 us to work for what you want, and that's just one of
14 the things that stick with her, all of us. And
15 that's one thing that really just tore her down
16 'cause she wants to work. So sometimes she'll tell
17 people, yeah, I work, I'll work and like, you know,
18 I guess that's just to build herself up to make her
19 feel good. Everybody feel good about working for
20 themselves.

21 Q Is that one of the things that she talks about a
22 lot is work?

23 A She do.

24 Q Okay.

25 A She talked about that today so.

1 Q Okay. And then you said earlier she has good
2 days and bad days?

3 A She do.

4 Q Okay. And you said that sometimes she gets
5 confused about like dates and times and those types
6 of things?

7 A She do. That's the nature of that disease.

8 Q Okay. Now what about, Mr. Baxter was asking you
9 about her deposition. You sat in on her deposition?

10 A Yes, sir.

11 Q Okay. And then she had another — Mr. Baxter had
12 another chance to talk to her under oath after that.
13 Remember that?

14 A Yes.

15 Q Okay. And has she ever been confused about how
16 the wreck happened?

17 A No, not about the wreck.

18 Q Has she ever said anything other than that she
19 was walking in the grass and the car swerved over
20 and ran her over?

21 A No.

22 Q Has she ever said she was in the road?

23 A No.

24 Q Has she ever been confused about that at all?

25 A No, sir, stayed stuck on the same story.

1 Q That's all I have. Thank you.

2 THE COURT: Anything further?

3 MR. BAXTER: Nothing, Your Honor.

4 THE COURT: Thank you very much, ma'am.
5 You may step down.

6 MR. POULIN: Your Honor, we're gonna call
7 Ms. Blackwell to the stand.

8 THE COURT: All right. Ms. Blackwell,
9 would you please come around and take the stand,
10 ma'am.

11 WHEREUPON,

12 **JACQUELINE BLACKWELL,**
13 having been duly sworn by the Clerk, testified
14 as follows:

15 **DIRECT EXAMINATION**

16 BY MR. POULIN:

17 Q All right now, Ms. Blackwell, you can be kind of
18 quiet sometimes so I need you to talk right into
19 that microphone, okay?

20 A Okay.

21 Q How are you doing this afternoon?

22 A I'm doing real well.

23 Q You got to talk louder than that.

24 A I'm doing real well.

25 Q Ms. Jackie, if you would introduce yourself to

1 the jury a little bit please.

2 A My name is Jacqueline Vanessa Blackwell. I stay
3 at , Marion, and I'm single.

4 Q Who do you stay with there at Wesley Court?

5 A I stay with my sister, Wendy Arthur.

6 Q And how long have you lived with your sister?

7 A It's been a while. It's been about 20 years or
8 something like. It's been a while.

9 Q And she a good sister?

10 A Yes.

11 Q She help you with things?

12 A Yes.

13 Q Okay. She help take care of you a little bit?

14 A Yes.

15 Q Okay. Drives you around where you need to go?

16 A Yes.

17 Q Now do you remember the day of the wreck when all
18 this happened?

19 A Yes.

20 Q Okay. And what did you do that day? Do you
21 remember what you were doing that day?

22 A That day I got up about 10 and got dressed. I
23 had breakfast and then I went downtown Marion.

24 Q Okay.

25 A I was waiting on the Foxtrot to start.

1 Q How do you, when you go downtown how did you used
2 to get downtown?

3 A Walk.

4 Q Is that something you used to do a lot?

5 A Yes.

6 Q All right. So you went to the Foxtrot Festival
7 that day?

8 A Yes, sir.

9 Q Okay. And do you remember how long you were
10 there?

11 A I was there about maybe about two hours, two
12 hours or something like that.

13 Q Okay. And are dates and times, is that something
14 you're real good at, getting dates and times right?

15 A No, but I was there, I don't think, it had to be
16 about two hours, two hours. It wasn't that long.

17 Q And then when — you left at some point, right?

18 A Yes.

19 Q Where were you going when you left?

20 A I was heading next home.

21 Q And how were you going to be getting home, were
22 you walking back?

23 A Walking back.

24 Q Okay. And where were you walking? Were you
25 walking in the road or on the grass when this

1 happened?

2 A On the grass.

3 Q Okay. And do you actually remember getting hit?

4 Do you remember when the wreck happened?

5 A Yes. When I was walking on the grass I just, I
6 glimpse around and I saw the cop car, then I kept on
7 walking. But when I looked back again it was, the
8 car was straight on me so I just turned to the side
9 and fell backwards.

10 Q Okay. And then did it make contact with you?

11 A Yes, it ran over my leg.

12 Q And do you remember where you ended up after the
13 car hit you?

14 A In the ditch.

15 Q All right. And you were in the grass when the
16 car hit you?

17 A Yes, and I drug myself back into the ditch.

18 Q Okay. Can you look at this jury and tell them
19 you're a hundred percent sure that you were walking
20 in the grass when that car swerved over?

21 A Yes.

22 Q Okay. Now you hurt your leg pretty bad in this
23 wreck, huh?

24 A I did.

25 Q Tell us a little bit about how it's feeling now.

- 1 How is your leg feeling now?
- 2 A It's just a little, it's sore but it's stiff.
- 3 Q What was it like after the wreck trying to get
- 4 back to normal? Was there a period of time where
- 5 you weren't able to walk?
- 6 A Yes, it — the leg will give, give on me when I
- 7 walk.
- 8 Q What about pain, was it painful?
- 9 A Yes, a little bit.
- 10 Q And how, how has it affected you? Is there
- 11 anything you're not able to do anymore that you used
- 12 to like to do?
- 13 A I can't walk a long period of time. It'll, my
- 14 foot will give out. It weak, right.
- 15 Q How does that make you feel when you're not able
- 16 to walk as much?
- 17 A Well, I get tired, tired of sitting around the
- 18 house so sometimes I walk out to the road and I turn
- 19 back around and sit on the porch.
- 20 Q Okay. Do you wish that you were able to walk as
- 21 much as you used to be able to?
- 22 A Yes.
- 23 Q Are you able to see as many of your friends as
- 24 you were able to see before?
- 25 A No.

1 Q Do you wish you were able to see your friends as
2 much as you used to?

3 A Yes.

4 Q Do you get lonely now?

5 A Yes.

6 Q Do you get like bored sitting around the house?

7 A Yes.

8 Q Okay. And does your leg still hurt you even to
9 this day?

10 A Yes.

11 Q Okay. All right, Ms. Jackie, that's all the
12 questions I've got for you right now, okay, but Mr.
13 Baxter might have a couple of questions for you, if
14 you'd answer them for him.

15 A Okay.

16 **CROSS-EXAMINATION**

17 BY MR. BAXTER:

18 Q How are you doing today?

19 A I'm doing good.

20 Q Taking your medication, right?

21 A Yes.

22 Q Good. The, going back to the date of the
23 accident, you did not take your medication that day,
24 did you?

25 A No, I didn't.

1 Q And you did not buy any, you didn't have any food
2 or anything to drink when you were at the Foxtrot
3 Festival?

4 A A soda and that was it.

5 Q So you had breakfast that morning and then a
6 soda?

7 A Yes.

8 Q Now the, what time did you leave the Foxtrot
9 Festival?

10 A It was around about, I'd say about 4:30 going on
11 5.

12 Q So you left about 4:30, right?

13 A Yes.

14 Q And it takes you about an hour back then to walk
15 to your house?

16 A Yes.

17 Q And so it was the, it was light out, cars didn't
18 have lights on?

19 A No.

20 Q Okay. And you were walking and there was a car,
21 you saw cars coming in the opposite direction in the
22 same direction?

23 A Uh-huh.

24 Q And you were walking away from town and you would
25 have had your back to the traffic, correct?

1 A Yes.

2 Q Okay. And I think you said you saw the police
3 car at a distance?

4 A Yes.

5 Q Okay. Now how did you know it was a police car?

6 A I saw, I saw him blink the light one time, but
7 he — I thought he had kept on going, but he swerved
8 in behind me.

9 Q Now, and the, you saw him actually, you turned
10 around and you saw him coming at you in the grass?

11 A Yes.

12 Q So he didn't just swerve off the road, he was
13 actually driving up in the grass towards you?

14 A Yes.

15 Q Okay. And you then kind of jumped out of the way
16 —

17 A Yes.

18 Q —and kind of fell over. So you would have
19 jumped back to your right, correct?

20 A Yes, sir.

21 Q And it would have caught your leg?

22 A Yes, right.

23 Q And it would have knocked you further over to the
24 right after the impact?

25 A No, it didn't knock me too much further over

1 because I turned to my side and I fell back.

2 Q Okay. But you moved over to your right?

3 A Yes.

4 Q And then you hit and actually rolled a little bit
5 once you went?

6 A Uh-huh.

7 Q So you went —you kind of jumped over and you
8 fell over —

9 A Yes.

10 Q —and leaned over and then you rolled over?

11 A Yes.

12 Q And then you — actually after it happened you
13 actually stood up and walked a little bit —

14 A Yes.

15 Q —before you fell over?

16 A Yes, I did.

17 Q So when the police officer came to you, you had
18 physically stood up and tried to walk some?

19 A Yes, but I thought I could walk but I couldn't.

20 Q So when he got there you were not in the same
21 location as where you came to rest because you
22 actually stood up and walked some?

23 A Yes.

24 Q How far do you think the police car would have
25 traveled in the grass? You said he swerved over you

1 said traveled in the grass a distance?

2 A He traveled straight up toward me.

3 Q Okay. And the only part of your body that hit
4 the vehicle was your leg?

5 A Yes.

6 Q Okay. Your arms, your side, your — nothing
7 else?

8 A My hand, when I fell back I hit, I hit that, the
9 rear, the mirror, his mirror on the side and knocked
10 it off.

11 Q Are you sure about that?

12 A Yes.

13 Q And plus, I think you were kind of turning when
14 you got hit?

15 A Yes.

16 Q Okay. So actually your body was away from the
17 vehicle and your hand went back and hit the mirror?

18 A I was turning this way and just hit the mirror.

19 Q So you were away from, you were turning and your
20 hand kind of went back and hit it?

21 A Hit it.

22 Q Okay. Now you were taken to the McLeod Hospital?

23 A Yes.

24 Q And you had been there before?

25 A Yes.

1 Q And they — you went in and the nurse when you
2 first went in — let me back up. There would have
3 been — the police officer got out and asked you how
4 you were doing and you're calling and notifying your
5 people and asking if you were hurt.

6 A (No verbal response.)

7 Q Is that a yes?

8 A Yes.

9 Q Okay. We, for the record I've got to get a yes
10 or no. You can nod your head but...

11 A Yes, sir.

12 Q Court reporters give me nasty looks so I got to
13 get your answer. The, and you were transported to
14 the hospital?

15 A Yes.

16 Q And you got to the hospital and they asked you
17 questions when you got there?

18 A Yes.

19 Q They asked you what happened?

20 A Yes.

21 Q And you kind of told them what happened?

22 A Yes.

23 Q And then you were in the hospital for a while,
24 got out the hospital, and you have — you're better
25 today than you were two or three months after the

- 1 accident?
- 2 A Yes.
- 3 Q And you've been able to walk a little bit further
- 4 as time has gone on, correct?
- 5 A Yes.
- 6 Q Now you were — you had your Bible?
- 7 A Yes.
- 8 Q Did you have anything else?
- 9 A No, it was just, it was in my pocket.
- 10 Q Do you remember at your deposition you said you
- 11 might have had a bottle. I just assume it was a
- 12 water bottle. Did you have anything like that?
- 13 A No.
- 14 Q Now do you walk at night or just try to walk
- 15 during the day?
- 16 A I try to walk during the day and come back about
- 17 6:30, 7:00.
- 18 Q Okay. And so you can get home before it gets
- 19 dark?
- 20 A Dark.
- 21 Q Okay. And I want to show you — and you've been,
- 22 that road you've been on for years you've been there
- 23 and walked on and ridden with people. You're
- 24 familiar with that?
- 25 A Yes.

1 Q I'm showing you, and I'm not saying it's the same
2 day but this is kind of, is this generally where you
3 think the accident occurred?

4 A Yes.

5 Q Okay. One second, ma'am. That's all I have.

6 THE COURT: All right. Anything on
7 redirect?

8 MR. POULIN: Nothing, Your Honor.

9 THE COURT: All right, thank you,
10 Ms. Blackwell. You may step down, ma'am.

11 MR. POULIN: Can we approach briefly.

12 THE COURT: Yeah.

13 (WHEREUPON, counsel approached the
14 Bench for an off-the-record discussion.)

15 MR. POULIN: Your Honor, at this time the
16 plaintiff is going to rest our case.

17 THE COURT: All right, sir, thank you.
18 Ladies and gentlemen, the plaintiff has rested their
19 case at this time and what occurs at the close of
20 the plaintiff's case is I have to take up some legal
21 matters with the attorneys. That's in all cases at
22 the close. In criminal cases it's at the close of
23 the State's case and in civil case it's at the close
24 of the plaintiff's case, and those are legal issues
25 that I have to take up. And rather than send you

1 not well rested. I think there are countless
2 studies that show that our minds operate much better
3 and more efficiently when we're well rested so if
4 you can get a good night's rest, try to do that.
5 I'm gonna ask you, if you would, be back here in the
6 morning at 9:30. When you come just like you did
7 after lunch, if you will come up to the courtroom
8 and the bailiff will take you back to the jury room.
9 I think that's pretty much it.

10 Again, I ask your family, friends, be
11 patient with you and just not ask any questions, and
12 I hope everyone has a great evening. We'll see you
13 back here at 9:30. Everyone else please remain
14 seated. Members of the jury, you're excused till
15 tomorrow morning.

16 (WHEREUPON, the jury was removed from the
17 courtroom at 4:15 p.m.)

18 THE COURT: At this time I'll take up any
19 motions at the close of the plaintiff's case.

20 MR. BAXTER: Your Honor, on behalf of the
21 Defendant we would move for a directed verdict based
22 upon the fact that the, concerning the light and the
23 evidence in a light most favorable to the Plaintiff
24 the, in the answer we did admit that Andrew Herring
25 was driving the vehicle and that a collision

1 occurred but it's our position that the collision
2 occurred in the roadway. The testimony of
3 Ms. Blackwell is that she was walking with her back
4 to traffic and the law requires that you walk facing
5 traffic and walk as far off the road as possible.
6 So it would be our position that the, and we just
7 believe that the evidence had is not credible as far
8 as the accident occurring in the grass, we think it
9 occurred on the road. And if it occurred in the
10 road, then you have various statutes that dictate
11 pedestrians, how they're supposed to maneuver and
12 operate. We think that she was in violation of
13 those statutes. Also, the evidence on the medical
14 records, there is, the records that go in, she was
15 being seen for a number of different things while
16 she was in the hospital. Yes, she was being seen
17 for a broken leg and all this. She was also seen
18 for malnutrition and some chemical imbalances and
19 things like that. We just think it's incumbent upon
20 the plaintiff to separate those bills out, rather
21 than just give it to the jury and say, okay, here's
22 110,000-dollars including treatment that may or may
23 not be related, advanced medical, was a doctor she
24 was seeing anyway. There's bills for them in there
25 so we just think that they fail to meet their burden

1 of proof with regards to the reasonableness, where
2 the treatment's necessary and reasonable, and more
3 importantly, whether the treatment was as a
4 proximate cause of the injuries from the accident.

5 THE COURT: All right, sir. I'm gonna
6 respectfully deny the motion for directed verdict.
7 I think it's a factual issue and that is a question
8 that the jury is gonna have to answer as to whether
9 or not the evidence puts forth the plaintiff's
10 contention that she was on the side of the road or
11 the defendant's position that she was in the middle.
12 I think that's clearly a factual issue that the jury
13 is gonna have to decide based upon how they view the
14 evidence and how they weigh it.

15 Now as far as the medical records go, and
16 let me just say this, I was under the impression
17 that the medical records submitted under that
18 exhibit were all medical records related to this
19 accident in the treatment for this accident. Is
20 that not the case?

21 MR. POULIN: Well, that is the case, Your
22 Honor. I believe what Mr. Baxter is saying, which
23 is I guess true to some extent, while she was in the
24 hospital — and the records are in as well, not just
25 the bills, what we stipulated to is the records,

1 especially the surgical report and that type of
2 thing so. There's no question, at least I don't
3 think there's a question that the main reason she
4 was in the hospital was because she had a bone
5 sticking out of her ankle.

6 THE COURT: Right.

7 MR. POULIN: She had emergency
8 reconstructive surgery. Now when they ran her blood
9 panel I think they found that she had some
10 malnourishment issues and that type of thing. You
11 know, any time you're in the hospital.

12 THE COURT: Yeah.

13 MR. POULIN: I think she got some
14 potassium, a potassium shot or something, but I
15 mean, that was very — there were no followup, there
16 are, there are no other doctor visits in here. In
17 other words, where she went to a doctor at any other
18 time to be treated for anything or anything like
19 that. They looked at some stuff where she was in
20 the hospital but she was in the hospital because of
21 the wreck. And the surgery records are in, and I
22 mean, that was the main crux of her...

23 THE COURT: Right. And again, you know, I
24 note your exception to the medical records coming in
25 as I did when you first made your objections; but I

1 think the medical bills are what was testified that
2 were received. I mean, if there was any you're
3 certainly welcome to cross-examine anyone with
4 regards to those bills and what's applicable, what
5 may not be applicable. Again, I think all that goes
6 to the weight of that evidence and so I'm going to
7 deny the motion to those as well. Anything further?

8 MR. BAXTER: Your Honor, just, and to kind
9 of speed things up, we are, may or may not call
10 Rhiannon Herring tomorrow. It's my understanding,
11 irregardless, have you — we're to the point where
12 we would put her up and would ask her whether she
13 saw — we would elicit the testimony that she saw
14 Ms. Blackwell in the road just minutes before the
15 accident occurred. You'd indicated earlier you were
16 not going to allow that testimony in. If that's
17 still the case —

18 THE COURT: Well, I was inclined not to.

19 MR. BAXTER: You were inclined not to. If
20 that's still the case, then what we would like to do
21 is just so we don't put her up and then take a break
22 and put her up and just do this, just go ahead and
23 put on the record her testimony as to what occurred
24 in the —

25 THE COURT: To proffer that.

1 MR. BAXTER: —minutes before, proffer
2 that —

3 THE COURT: Sure.

4 MR. BAXTER: —Now rather than during the
5 middle of her testimony if we were to call her.

6 THE COURT: Let's do that. Let's proffer
7 that and then based upon that proffer testimony then
8 I can give you a more definitive ruling as to what I
9 would allow in or not, okay.

10 So if you would come around, ma'am, to be
11 sworn.

12 WHEREUPON,

13 **RHIANNON HERRING,**

14 having been duly sworn by the Clerk, testified
15 as follows:

16 MR. BAXTER: And I've got a thought, I've
17 got a copy of the transcript from the previous
18 deposition, or I can question her, whatever your
19 preference is. If you're — you think it may be
20 good for you to hear it.

21 THE COURT: I think you'll probably just
22 go ahead and question her and we'll listen to it.

23 **DIRECT EXAMINATION**

24 BY MR. BAXTER:

25 Q Would you state your full name for the record

1 please?

2 A Rhianon Gerald Herring.

3 Q And where are you employed?

4 A Marion County Sheriff's Department.

5 Q And how long have you been employed with the
6 Marion County Sheriff's Department?

7 A This month makes 13 years.

8 Q And going back to the date of this accident which
9 was May 17th of 2014, where were you, were you
10 employed with the Sheriff's Department?

11 A I was.

12 Q And at that point in time you were also married
13 to Andrew Herring?

14 A I was.

15 Q And y'all are divorced now?

16 A We are.

17 Q But at the time you were married and living at
18 the same residence?

19 A Yes, we were.

20 Q And you worked the Foxtrot Festival that day?

21 A Yes, sir, I did.

22 Q And, but you and Andrew went in different
23 vehicles, correct?

24 A That is correct.

25 Q And why did you go in different vehicles?

1 A I was driving my personal truck at the time
2 pulling my golf cart. I'd taken my golf cart to the
3 festival to patrol the city in.

4 Q And after you left —and we've got a photograph
5 that shows, you've seen the photograph that shows
6 the area about two miles outside of town or
7 traveling from here on 501 leaving Marion, correct?

8 A Yes, sir.

9 Q And did you encounter anyone in the road at that
10 time?

11 A Yes, sir, I did.

12 Q And what did you see?

13 A I observed a black female walking in the roadway.

14 Q Okay. And then you drove on in, correct?

15 A That is correct.

16 Q And you got to your, back to your house, and did
17 you receive a phone call from Andrew?

18 A I did.

19 Q Okay. And I think he might have tried to call
20 you once and you didn't answer, or you were back in

21 —

22 A That's correct.

23 Q Yeah. But you received a phone call from him and
24 then you did talk to him and what did he tell you?

25 A He advised me that he had been in an accident.

1 Q Okay. And how soon after when you would have saw
2 the black female in the roadway was that telephone
3 call?

4 A Approximately five to ten minutes.

5 Q Okay. So when you observed the person it was
6 about five or ten minutes before Andrew called you
7 back and said he had been involved in an accident?

8 A That is correct.

9 Q And I think you might have had some more phone
10 conferences, but eventually you went out to the
11 scene, correct?

12 A I did.

13 Q And you at some point in time determined that the
14 accident involved a black female who was hit?

15 A Yes, sir.

16 Q And the — what direction was the female walking?

17 A Northbound which would be towards Dillon, the
18 same direction I was headed in.

19 Q So her back would have been to you?

20 A That is correct.

21 Q And was she — Your Honor, that's all we have as
22 far as her proffer goes.

23 THE COURT: All right. Any
24 cross-examination?

25 MR. POULIN: Briefly, Your Honor.

1 **CROSS-EXAMINATION**

2 BY MR. POULIN:

3 Q Now Ms. Herring, do you still go by Ms. Herring?

4 A I do.

5 Q Ms. Herring, you did not see the collision, did
6 you?

7 A I did not.

8 Q Okay. And you do not know exactly when the
9 collision happened with respect to how long it
10 happened after you saw her in the roadway?

11 A I do not, only knew it happened when Andrew
12 called and told me.

13 Q Okay. And you do not know what happened to this
14 subject in the roadway between the time you saw her
15 and the time that the wreck happened; is that
16 correct?

17 A I do not.

18 Q You don't know if she crossed the road?

19 A I do not.

20 Q You don't know if she kept walking where she was
21 walking?

22 A I don't.

23 Q You don't know if she moved over and started
24 walking in a different area or in a different
25 direction even?

1 A I don't.

2 Q That's all I have. Thank you.

3 THE COURT: All right. I'm going to stand
4 by my initial ruling, my initial thought, with
5 regards to I don't think that this testimony, I
6 don't think it's relevant to the issue here as to
7 where Ms. Blackwell was in the road prior to the
8 accident. I find that the accident occurred, and I
9 just think that the — 'cause what, basically what
10 we'd be asking the jury to do is that even if she
11 was in the roadway, Mr. Herring, that's not to say
12 that she was in the roadway at the time the accident
13 occurred. The only purpose for this testimony would
14 be to ask the jury to believe what, well, if she's
15 in the roadway five or ten minutes before
16 Mr. Herring came along, she must have been in the
17 roadway when Mr. Herring came along and I don't
18 think that that testimony, I don't think that would
19 be appropriate, that would be appropriate use of
20 that testimony. I think the prejudice, the
21 prejudicial effect outweighs any probative value,
22 and I think the probative is vague and ambiguous, is
23 extremely weak as to conduct of either Mr. Herring
24 or Ms. Blackwell at the time the accident occurred
25 so I will not allow that testimony so. But you have

1 proffered it and certainly note your objection to
2 that ruling so that testimony is in the record
3 should it be, need to be reviewed at a later date.

4 Okay, thank you, Ms. Herring, you may step
5 down.

6 Doug, how many witnesses do you intend to
7 call?

8 MR. BAXTER: Three or four. And I don't
9 think any of them are going to be terribly long to
10 be honest with you.

11 THE COURT: And I'm not trying to limit
12 anybody concerning that. You can have as much time
13 as you need. I'm just trying to get some idea. I
14 don't think I was out of line telling the jury that
15 they'll get this case tomorrow for their
16 consideration.

17 MR. POULIN: I certainly hope that that's
18 correct.

19 MR. BAXTER: Unless something terrible has
20 happened, if any.

21 THE COURT: Exactly. So, okay, is there
22 anything we need to take up then before we adjourn?

23 MR. POULIN: No, Your Honor, but I was
24 just thinking, actually in preparation for, you
25 know, and just getting everything ready and

1 Mr. Baxter on behalf of the Defense.

2 MR. BAXTER: Thank you, Your Honor. The
3 defendant would call Andrew Herring.

4 THE COURT: Mr. Herring, if you would
5 please come around to be sworn, sir.

6 WHEREUPON,

7 **ANDREW HERRING,**

8 having been duly sworn by the Clerk, testified
9 as follows:

10 **DIRECT EXAMINATION**

11 BY MR. POULIN:

12 Q Would you state your full name for the record.

13 A Andrew Junior Herring.

14 Q Mr. Herring, where do you currently live?

15 A I currently live with my mom, between my mom and
16 roommate in Florence. I still remain down the road
17 in Marion.

18 Q Now where are you originally from?

19 A Marion — well, actually I'm from Mullins, South
20 Carolina and Marion.

21 Q And where did you go to high school?

22 A Mullins High School.

23 Q And did you receive any training beyond going to
24 high school?

25 A Yes, sir. I went to EMT school. I obtained my

1 fire fighter certifications, and then I went to
2 paramedic school and I obtained my associates in
3 applied science.

4 Q Where are you currently employed?

5 A I'm currently assistant supervisor at Florence
6 EMS. I'm also a paramedic.

7 Q Slow down just a little bit. So you work at,
8 with Florence County EMS, correct?

9 A Yes, sir.

10 Q And what are your job responsibilities, what do
11 you do?

12 A My primary job is I'm a paramedic. I provide
13 patient care to anybody that calls 9-1-1. I'm also
14 the assistant supervisor which means I fill in when
15 my currently supervisor is not there to manage
16 day-to-day activity for the services.

17 Q Now where else have you been employed as EMS fire
18 fighter?

19 A I worked at Marion County EMS for over ten years
20 since the age of 18 years old. There was a brief
21 period I worked for North Myrtle Beach Public
22 Safety, and I came back home due to my father's
23 illness in the past so I came back to Marion and I
24 furthered my education. And I also worked at the
25 City of Marion Fire Department along with Marion

1 County EMS.

2 Q Okay. Now Florence County EMS, what is your
3 schedule as far as work hours or days?

4 A We over the past four years we transitioned to a
5 24 on 72 hour off rotation.

6 Q And what does that means?

7 A I work one day, then I'm off three.

8 Q So you work, say you work on Wednesday, you're
9 off Thursday, Friday, Saturday, work Sunday, then
10 you're off Monday, Tuesday, Wednesday?

11 A Yes, sir.

12 Q And so you were — you have any other part-time
13 jobs?

14 A For about five years I worked as a reserve
15 officer with Marion County Sheriff's Office and
16 served on the canine team and SWAT.

17 Q Do you have any other part-time paying positions?

18 A Oh, yeah. I worked for the first two or three
19 years at Florence — I stayed part-time with Marion
20 County EMS. Now I currently work for Sumter County
21 EMS and Florence County, and I also teach through
22 the Pee Dee region.

23 Q Now you mentioned you were a reserve officer?

24 A Yes, sir.

25 Q Are you currently a reserve officer?

1 A Yes, sir, I am.

2 Q And who are you with?

3 A With the Florence County Sheriff's Office.

4 Q And as a reserve officer with Florence County
5 what do you do?

6 A As a reserve officer with Florence County
7 Sheriff's Office I'm tasked to special events and
8 also assigned to the canine team and the SWAT team.

9 Q Now that is an unpaid position, correct?

10 A It is for the canine team and for special events,
11 yes, sir.

12 Q And so those you are a volunteer?

13 A Yes, sir.

14 Q Okay. Now back on May 17th of 2014 which was the
15 day of this accident, were you a, you were a reserve
16 officer with the Marion County Sheriff's Office?

17 A Sheriff's Office, yes, sir.

18 Q And what were your job responsibilities? What
19 did you do with them?

20 A I worked at the discretion of the sheriff,
21 whatever he felt necessary, what assignment for
22 special details with events such as Foxtrot.
23 Occasionally I would help with the SWAT team. I was
24 also tasked with the canine teams. I also worked
25 some traffic as needed.

1 Q Now that position was purely voluntary. You were
2 not paid as a reserve officer with Marion County?

3 A That's correct.

4 Q Now the, so you were, in some weeks you will work
5 one day and have six days off and is that when you
6 would do your reserve on your days off?

7 A Yes, sir.

8 Q And how long have you been doing reserve work
9 with either Marion County Sheriff's Department or
10 Florence County Sheriff's Department?

11 A For about five years.

12 Q Now in order to be a reserve officer you — is
13 there any training required?

14 A Yes, sir. We have a class that's put together by
15 the South Carolina Criminal Justice Academy that
16 usually lasts about six months; and we obtain our
17 legal certification, our defense of tactics, and
18 whatever the academy feels necessary to certify you
19 as a reserve officer.

20 Q So you have to go through some training, take a
21 test, correct?

22 A We still have certification each year that we
23 have to achieve through certain amount of hours of
24 training through the South Carolina Criminal Justice
25 Academy.

1 Q Now Rhiannon Herring, back on May 17th, 2014, you
2 were married to her?

3 A Yes, sir.

4 Q And you're divorced now?

5 A Yes, sir.

6 Q Now going to that date had you worked that day as
7 a reserve officer?

8 A Yes, sir, I was at home. Oh, that day, yes, sir,
9 yes, sir. I thought you meant —

10 Q You hadn't worked as a EMS officer but you had
11 worked as a reserve officer?

12 A Yes, sir.

13 Q And what had you done that day?

14 A We came up to the Foxtrot. We were assigned by
15 the sheriff and the captain of investigations. Our
16 daily task, or the task that day was traffic control
17 and maintain order throughout the Foxtrot Festival.

18 Q And about what time would you have arrived that
19 date?

20 A Approximately 3 or 4, something in there..

21 Q And just in general what did you do?

22 A We — me and her were on separate teams so we
23 were assigned to certain teams, certain groups, and
24 we would walk throughout the city making sure there
25 wasn't anything, you know, going on or shouldn't

1 have been going on, making sure there was order
2 during the festival.

3 Q And you said we, Rhiannon was also, she was
4 actually working as a shift that day?

5 A Yes, sir.

6 Q But you were working separate teams?

7 A Yes, sir.

8 Q And how you did you get to the festival?

9 A I drove my patrol car.

10 Q Okay.

11 A Which was an unmarked Charger, silver Charger.

12 Q And were you assigned a vehicle to drive?

13 A Yes, sir.

14 Q And did Rhiannon drive a different vehicle?

15 A Yes, sir, she drove our truck to bring the golf
16 cart here to use it to help with patrol.

17 Q Okay. So she rode around in a golf cart?

18 A Yes, sir.

19 Q Now do you remember anything happening that day,
20 anything out of the ordinary?

21 A No, sir.

22 Q So you just basically walked around all day?

23 A Yes, sir.

24 Q Now about what time would you have gotten off?

25 A We were released somewhere in the area of 9:00.

1 Q Now, and after you got off what would you have
2 done?

3 A Left here and go straight home.

4 Q Now where do you live?

5 A At that point in time I lived at Road.

6 Q And tell the jury, how do you get from here to
7 Butler?

8 A We were parked, actually we were parked right
9 back here behind the courthouse and I would go to
10 the stop sign here, take a left and go straight out
11 to the Catholic church area on 501 north and make a
12 right on Bullet Road, so straight shot.

13 Q So you would go past the Dollar General on your
14 left —

15 A Yes, sir.

16 Q —and then the Catholic store [sic] is on the
17 right?

18 A Catholic church, that's correct.

19 Q Catholic church is on your right?

20 A Yes, sir.

21 Q And just passed the area where you live?

22 A Yes, sir.

23 Q And so you would have gotten off around 9:00,
24 gone to your car, you got in. Now the, did you have
25 a cell phone with you that day?

1 A Yes, sir, I did.

2 Q And would you have made any phone calls during
3 the, while you were working at the Foxtrot?

4 A Yes, sir.

5 Q Would you have made any phone calls around the
6 time you left?

7 A As soon as I was leaving my wife left in front of
8 me so I called her and tell her I'm leaving. I was
9 a little bit behind her. We loaded up the golf cart
10 and she left. And I made it to my vehicle, I said,
11 look, I'm coming right behind you, I'll be home in
12 just a few minutes. And then I hung up.

13 Q Okay. So you made that phone call right when you
14 got in?

15 A Yeah.

16 Q Now tell the jury, you left here — well, first
17 of all, were there people walking around when you
18 left here?

19 A There was a few, yes, sir.

20 Q Had it kind of —

21 A It had started to clear up. It was a few
22 stragglers here and there. We try to make sure the
23 streets were clear before we left.

24 Q And so you left here and tell the jury — we'll
25 start right here up at this stop sign here. You

1 took a left. Tell the jury what happened.
2 A I took a left at the stop sign and was traveling
3 north bound to my residence. Made it out of town.
4 And when I was heading out of town I probably, the
5 cemetery was on the left-hand side. I saw a very
6 lowly area, very dark area. There was a vehicle
7 coming towards me with bright lights on, you know,
8 and in the patrol car the windows are dark and you
9 can't see as well. I had my headlights on, and I
10 was traveling at a normal rate of speed. When the
11 car was coming to me at that point in time there was
12 something in the, I couldn't tell what it was, I
13 couldn't tell. It was a dark, whatever it was I
14 couldn't see. I went to swerve to the left to avoid
15 missing whatever was in the road almost hitting an
16 oncoming car, and I tried to maneuver between what I
17 was unsure what it was and this car without hitting
18 that car head on. Well, when I was struck, at that
19 point in time I didn't know what it was, whether it
20 was a deer or anything, I didn't have a clue. And I
21 went past it. As soon as it hit my car I couldn't
22 tell what it was and I heard a noise on the side of
23 my car so I drove, immediately slowed down at that
24 point in time, and went up to the next driveway to
25 turn around to come back to see what it was. When I

1 come back around I immediately called my wife, look,
2 I hit something, I'm not sure what it was, I'll call
3 you back in a little bit because I was right behind
4 my wife. And I turned around and I come back. When
5 I pulled up to the area, didn't drive off the
6 roadway, pulled up to the area, then I turned my
7 blue lights on. And when I turned my blue lights on
8 in the area I thought whatever it was may be -- I
9 got out and that's when I noticed that there was a
10 pedestrian right there laying on the side of the
11 road.

12 Q Now was she in the road or on the grass?

13 A When I seen her, when I seen whatever it was in
14 the road, that's why I couldn't pull over. Now when
15 I got to her she was on the edge of the grass off
16 the road.

17 Q And you also said you called her. Was that
18 Rhiannon you called?

19 A Yeah.

20 Q And --

21 A The phone call lasted maybe 15 seconds. It was
22 to let her know why I wasn't pulling up a few
23 minutes behind her like anybody would do.

24 Q And you also, when you realized it was someone
25 what did you, what did you do?

1 A As soon as I got out the car and I realized it
2 was somebody, at that point in time my whole, you
3 know, I'm a paramedic. The first thing I went down
4 and looked and said, ma'am, are you okay. Then I
5 went back to my car and got on my radio and I called
6 and I started calling on the phone. I went back and
7 I was calling people that I knew. At that point in
8 time I needed my supervisor. I called her back and
9 said, look, I hit somebody, you know, you may need
10 to come down here. At that point then I knew what I
11 had struck and I called her back and said, look, you
12 need to come down here 'cause I hit somebody, they
13 were in the road. And she said, okay, I'll be there
14 in just a minute. The first time I called her she
15 didn't answer. Then I started calling my
16 supervisor, started calling the people that I work,
17 you know, the fire chief, said look, this is the
18 situation, it's me. 'Cause any of our officers that
19 we're involved we try to call and say, look, I need
20 you here. So I called four or five people at that
21 point in time to let them know what was going on.

22 Q And you also radioed?

23 A Yes, sir.

24 Q Radioed in?

25 A Yes, sir.

1 Q Now you, sitting here today you remember the
2 exact sequence of events of who you called, who you
3 radioed first and all that?

4 A Yes, I do. I mean, it all happened fast. I
5 remember radioing, I remember being on the phone and
6 talking to people that I needed to talk to. You
7 know, I called dispatch first, you know, I called
8 them, then I was talking to the radio.

9 Q Now you said the first time you called Rhiannon
10 and you didn't get her and you called her
11 immediately right back?

12 A Yes, sir.

13 Q Now the — Ms. Blackwell —

14 A Yes, sir.

15 Q Describe — you went up to her?

16 A Yes, sir.

17 Q Tell the jury what you did.

18 A As soon as I pulled over to the side of the road,
19 you know, your law enforcement instincts go out the
20 window. My full time job is a paramedic so I went
21 straight to her. When I got to her she was trying
22 to get up as she said. And I said, Ms. Blackwell,
23 sit down. I said, ma'am, sit down. And I said
24 you're hurt. And I noticed she had a big gash in
25 the back of her leg, and I said sit down. You don't

1 have anything on you, any I.D.? She said, and she
2 was mumbling words out at that point and I couldn't
3 understand so I was feeling her pockets to see if I
4 could figure out who she was. She did have a Bible
5 in her presence. I strolled through it briefly to
6 see if I see any, and I didn't see any I.D. or
7 anything when she said, she said she was headed to
8 the Foxtrot. And I was like, ma'am, why were you in
9 the road and she -- I don't remember what she said
10 after that, but at that point in time I was more
11 worried about her care, getting her to lay down and
12 try to provide her the care she needs. And I called
13 EMS and all the appropriate people and even made the
14 recommendation she needed to go to Florence because
15 she had a pretty significant injury.

16 Q Now were you at that point in time as an EMS were
17 you able to render any aid or is that just --

18 A Basically just keep her down and keep her still,
19 keeping her position and comfort her, try to
20 maintain, and keep her from further injuring
21 herself.

22 Q Now who all came to the scene that you recall
23 coming to the scene?

24 A The EMS unit came, the EMS director came. My
25 supervisor at that point in time which was Terry

1 Miles came. Mr., Trooper Ellis came and my wife
2 came. And there were some other deputies there, but
3 I'm not sure exactly who. There was a lot going on
4 so I'm not sure.

5 Q And you know how long it took them to start
6 arriving?

7 A The EMS unit probably six to ten minutes away. I
8 mean, I really don't know the exact time.

9 Q But within a relatively short —

10 A Oh, yeah.

11 Q —period of time —

12 A Yeah.

13 Q —people started showing up?

14 A Yes, sir.

15 Q Now did you — you indicated Trooper Ellis, who
16 is this gentlemen sitting back here, did you speak
17 with him?

18 A Yes, sir.

19 Q Okay. And did you, what did you do with regards
20 to him?

21 A Sir?

22 Q Okay—

23 A As soon as he got there, I mean, he asked me what
24 happened, and I told him. I said I was traveling
25 down the road, normal rate of speed, you know, there

1 was an object in the road. At that point in time it
2 happened in a split second. There was no lighting.
3 I couldn't see what it was. The lights from the car
4 coming towards me rendered, I mean, hindered that
5 even more so I went and swerved to the left without
6 trying to hit that, I didn't know what it was. And
7 I wasn't able to miss whatever it was at that point.
8 I told him, I said, at that point in time I didn't
9 know what it was, didn't have a clue. I said when I
10 turned back around and came and parked to see what
11 it was, then I realized it was a pedestrian.

12 Q So you told him the same thing you just testified
13 to here today?

14 A Yes, sir.

15 Q Now the, what is the speed limit in that area?

16 A 55-miles an hour.

17 Q And how fast do you think you were going?

18 A 55, maybe 56, somewhere in that area.

19 Q You were basically going right at the speed
20 limit?

21 A Yes, sir.

22 Q And the, was that, was that a new car or older
23 car or?

24 A It was in reference to law enforcement vehicles.
25 It was an older car.

1 Q And as a reserve officer did you — that car was
2 assigned to you?

3 A Yes, sir.

4 Q Okay. And was that car equipped with an in-dash
5 video camera?

6 A It did have a camera, yes, sir.

7 Q Was there any video from that?

8 A No, sir.

9 Q Now how is that video — first of all, how is
10 that video activated?

11 A With any patrol car you have the option of
12 turning the camera on without blue lights. They're
13 act— all cameras are activated by blue lights which
14 means as soon as you turn your blue lights on the
15 camera activates. Well, that was an older car. I
16 had to have an SD card for that camera to work. I
17 wasn't working in traffic; I was just going home.
18 And I worked Foxtrot. So if, even if it was working
19 when I struck her it wouldn't have come on. When I
20 turn around and turn my blue lights on the camera
21 activate, but it won't record without an SD card in
22 it. There was no reason for me to have an SD card
23 because I didn't work traffic much anyway, and I
24 didn't have it because I wasn't able to use it at
25 that point in time. There was no reason — most

1 cars in that situation don't have cameras. You're
2 not using them unless you work traffic.

3 Q So, but as far as the blue lights you actually
4 drove up the road and turned into another road and
5 then turned around —

6 A Yes, sir.

7 Q —and came back and turned your blue lights on?

8 A Yes, sir.

9 Q Now you also — on occasion you're given a body
10 camera?

11 A That — at that point in time there wasn't any.

12 Q You didn't have —

13 A Nobody had body cameras. That was before the
14 popularity came into play.

15 Q So you, after the accident you kind of stayed
16 with Ms. Blackwell until other people started
17 arriving?

18 A Yes, sir.

19 Q And once the EMS came up what did you do?

20 A As soon as the EMS unit arrived I spoke with the
21 paramedic that was there and advised him of what I
22 thought was going on. You know, I told him what
23 happened and I told him the injuries that I had
24 found. And I was like, you know, that she's got an
25 injured leg and she's got another wound on her back.

1 And then she was trying to get up. When I
2 approached her I made her lay down and stay still.

3 Q And you recall who EMS —

4 A I don't remember the actual crew. I think Joey
5 Price was there. It was two years ago; I don't
6 remember.

7 Q How about, you know Mike Campbell?

8 A Yeah, I know him.

9 Q Is it possible he was one of the —

10 A He might, yes, sir.

11 Q Did you ever drive off?

12 A No, sir.

13 Q Were you on your phone when this accident
14 happened?

15 A Not at all.

16 Q One second. Mr. Herring, the — Mr. Poulin in
17 his opening said something about there was a policy
18 you couldn't use your cell phone, the Sheriff's
19 Department couldn't use cell phone. You don't think
20 —

21 A There is no such policy with the Sheriff's.
22 Office, no, sir.

23 Q And you would have had your cell phone on you?

24 A I did have my cell phone on me all day, and I did
25 not go back to my car and check it. My car log

1 shows where I talked to several people that day.

2 Q Thank you, sir.

3 A Yes, sir.

4 **CROSS-EXAMINATION**

5 BY MR. POULIN:

6 Q Mr. Herring, good morning.

7 A Good morning, sir.

8 Q Now you currently still work with Florence County
9 EMS?

10 A Yes, sir.

11 Q And back in May of 2014 you were working
12 full-time with Florence County EMS?

13 A Yes, sir.

14 Q And you were also working part-time with Marion
15 County EMS?

16 A Yes, sir.

17 Q And you were a reserve officer with the Marion
18 Sheriff's Department?

19 A Yes, sir.

20 Q And that's a volunteer position?

21 A Yes, sir.

22 Q That didn't pay you for your time?

23 A That's correct.

24 Q Okay. And during this period back in May of
25 2014, even though you had the job, the paying job

1 with Florence County EMS and the paying job with
2 Marion County EMS, —

3 A Yes, sir.

4 Q —isn't it true that you were working up to 60
5 hours a week volunteering for the sheriff's
6 department?

7 A I was, I would work a few occasions that I would
8 work 60 hours. If I took a day off that would put
9 me off six or seven days in a row. If I only work
10 one day I was three; so some weeks if I didn't have
11 hunting season, I wasn't fishing and it was, you

12 know, I may work two 12 hour shifts, four 12 hour
13 shifts that week because it was a hot week.

14 Q So there were weeks that you would volunteer up
15 to 60 hours?

16 A There were about two weeks I did that. That was
17 very, very frequent.

18 Q Okay. And isn't it true you were actually
19 intentionally scheduling less time at your paying
20 job so you could spend more time with the sheriff's
21 department?

22 A If I would take off the day I would work more
23 that weekend that I would normally work for my
24 regular job. That's because of something I did.

25 Q All right. But you could have picked up more

1 hours with Marion EMS, right?

2 A Yes. I'm not sure at that point in time. It
3 depends on whether the time was open or not. That
4 varies from week to week.

5 Q Okay. They had no prohibition on how many hours
6 you were allowed to work per week; is that right?

7 A The sheriff's office? Which office?

8 Q Marion County EMS?

9 A Yes, sir. They wouldn't allow any overtime at
10 one time.

11 Q Okay. You remember the last time I talked to you
12 under oath?

13 A Yes, sir.

14 Q And do you remember —

15 A Are you talking about my full-time job in
16 Florence or Marion?

17 Q Well, either one. If you picked up additional
18 time —

19 A I could have picked up probably some more time in
20 Marion if I had worked.

21 Q Okay. And they would have paid you for that
22 time?

23 A Yes, sir.

24 Q Okay. And the sheriff wasn't paying for your
25 time?

1 A No, sir.

2 Q So you were just working 60 hours a week for free
3 when you had a paying job, you could have gone to—

4 A 60 hours a week was very, very, very rare, but
5 yes, when I did work I worked.

6 Q You just loved driving around with that badge on
7 your chest; didn't you?

8 A I enjoyed serving my community as an officer.

9 Q Well, you were serving your community as an EMS
10 driver too; weren't you?

11 A You're right.

12 Q But you didn't have a badge on your chest?

13 A It was like a hobby. When you're hunting and
14 fish, that's what I enjoyed doing. I enjoyed being
15 able to assist.

16 Q Okay, all right. Let's transition to the wreck.
17 So you got off around 9:00 from the Foxtrot
18 Festival?

19 A Yes, sir.

20 Q And you saw people leaving the festival?

21 A Yes, sir.

22 Q And people were working and driving and getting
23 home all different kinds of ways?

24 A Yes, sir.

25 Q Okay. And you were headed home down 501?

1 A Yes.

2 Q And then the wreck happened. Now can we agree
3 the wreck happened at 9:10 p.m.?

4 A That's the approximate time. I mean, I don't
5 know how to pinpoint the time, exactly when it
6 happened.

7 Q Okay. But you actually write, sometime very
8 shortly after the wreck happened you tried to write
9 down your recollection of things so that you can —

10 A Approximate time, yes, sir. That's the time
11 that, I mean, I don't really know exactly what time.

12 That was the guestimated time area where I thought
13 it happened.

14 Q You said the wreck happened at 9:10 on that
15 report.

16 A Tell me — you know, you don't really look at a
17 clock exactly time you strike something. That's the
18 assuming time that I thought it happened.

19 Q So you filled out a report that said the wreck
20 happened at 9:10 p.m.; is that correct?

21 A Yes, sir.

22 Q Okay. And Trooper Ellis also said the wreck
23 happened at 9:10 p.m.?

24 A Yes, sir, that's what — yes, sir.

25 Q Okay, all right. Now if I understand your

1 testimony correctly, you said that you were driving
2 down the road and Ms. Blackwell, or some object even
3 though you didn't know what it was at that time, was
4 right in the middle of the road; is that right?

5 A Yep. I don't really know exactly whether it was
6 in the middle of the road. I was traveling 55 miles
7 an hour. I mean, it was, it's hard to tell exactly
8 where she was at, she was in the road.

9 Q I mean, was she right on the edge of the roadway
10 or was she —

11 A She was off the edge of the roadway inside the
12 white line. I'm not sure exactly how many feet.
13 You could guess three or four, something in that
14 area, I'm not exactly sure.

15 Q Okay. Do you remember telling us the last time I
16 had you under oath that it was, she was 5 feet off
17 the white line into the middle of the road?

18 A That's just a, that's just a guess. I don't
19 really know. I mean, it could have been five, it
20 could have been three, could have been four. I, you
21 know, you can guess. I know she was in the roadway.

22 Q All right, let's look at your deposition. Do you
23 remember when we took your deposition?

24 A Yes, sir.

25 Q I'm gonna direct you to page 63.

1 MR. POULIN: May I approach the witness
2 Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. POULIN:

5 Q If you would, I'm gonna start up here at the top
6 there, actually starting at line 2. And the
7 question was: This thing that you saw in the middle
8 of the road was in the middle of the roadway; is
9 that correct? And what was your answer?

10 A Yes, sir, within 4 or 5 feet off the white line.

11 Q Okay. So it wasn't right on the edge of the
12 road. It was at least 4 or 5 feet —

13 A That's about what I just said, yeah. Three to 5
14 feet, somewhere, it's the same thing.

15 Q Okay. Well, you said 4 to 5 feet.

16 A I said I guess, I mean, could have been 5 feet,
17 it could have been 3.

18 Q Okay, all right. So she's in the roadway?

19 A Yes, sir.

20 Q Significantly in the roadway, can we at least
21 agree on that?

22 A She was in the roadway.

23 Q Okay. I mean, the road is not that....

24 A She was in the roadway.

25 Q The road is not that wide, is it?

1 A She was in the roadway, sir.

2 Q So we can agree she was pretty significantly in
3 the roadway?

4 A She was in the roadway, sir.

5 Q Okay, all right. So then there's a car coming
6 the opposite direction, right?

7 A Yes, sir.

8 Q And you try to swerve to miss this thing that's
9 in the road?

10 A Swerved to the left, yes, sir.

11 Q But you're not able to swerve as far as you would
12 liked to have swerve because this car is coming,
13 right?

14 A That's correct, sir.

15 Q If you had swerved all the way over to the other
16 lane you would have hit that car head-on?

17 A Probably so, yes, sir.

18 Q Okay. And you didn't — all right. You
19 testified earlier that you were not on your phone at
20 the time of the wreck; is that correct?

21 A Yes, sir.

22 Q And we've had a chance, you had a chance to
23 review your phone records in this case; is that
24 right?

25 A Yes, sir.

1 Q And we can agree your cell phone number ended in
2 6865 at the time of this wreck?

3 A Yes, sir.

4 Q And the last time we looked at your phone records
5 and we're looking at them again, your phone records
6 indicate that you were on the phone at 9:10 p.m.; is
7 that correct?

8 A Yes, sir.

9 Q Okay, all right.

10 THE COURT: I don't mean to interrupt you.
11 Let me just have a side bar.

12 (WHEREUPON, counsel approached the
13 Bench for an off-the-record discussion.)

14 BY MR. POULIN:

15 Q Okay. And so after the impact you turned around
16 and came back and you turned your blue lights on; is
17 that right?

18 A Yes, sir.

19 Q Okay. And then I think you testified earlier
20 that the very first phone call you made was to your
21 wife.

22 A That's correct, yes, sir.

23 Q Okay. And then I guess you made some other phone
24 calls. You told us during that time one of the
25 people you called was the fire chief?

1 A Yes, sir.

2 Q One of the people you called I think you said was
3 your supervisor?

4 A That's correct.

5 Q And we talked about the dashboard camera. Now
6 isn't it true that that dashboard camera, the
7 dashboard cameras in those cars, even though the
8 recording is not saving they're currently running
9 when the car is on; isn't that true?

10 A That's not. What do you mean on? Are you saying
11 when the camera powers up?

12 Q Yes, sir.

13 A Yeah, it powers up.

14 Q And it's continually recording even though it's
15 not saving on anything?

16 A That's not correct, no, sir.

17 Q Okay.

18 A It only records until you, until the blue light,
19 when the blue lights are activated when you manually
20 push to record the button.

21 Q Well, isn't it actually true that once you've
22 activated your blue lights it saves up to a minute
23 of what it recorded prior to when the blue lights
24 come on?

25 A If you have — I'm not sure how long all that, I

1 know it has to have an SD card in place for it to
2 store memory.

3 Q Okay. You didn't have an SD card—

4 A I wasn't working — a lot of patrol cars don't
5 have cameras or SD cards if they're not assigned to
6 traffic.

7 Q Okay. And those cameras, the cars that are
8 assigned to traffic, they all have the cameras,
9 right?

10 A When you're working traffic the camera has to be
11 in place.

12 Q So those cameras are pretty important when you
13 work traffic?

14 A Yes, sir, absolutely.

15 Q And those cameras are pretty expensive to install
16 and maintain on those cars?

17 A I'm not sure of the cost.

18 Q Okay. But they're so important that we put them
19 in the cars that are doing traffic?

20 A Traffic, yes, sir.

21 Q Okay, all right. So Plaintiff's Exhibit 1
22 picture I'll hand you, that's a picture of the car
23 you were driving that night?

24 A Uh-huh, yes, sir.

25 Q Okay. And that dent, I guess the front right

1 part of the car, is that where the first impact
2 occurred?

3 A Yes, sir.

4 Q And when the collision happened Ms. Blackwell
5 didn't go flying up into the air or anything like
6 that; is that correct?

7 A I don't — all I know is I hit something. I
8 don't know where it went, what happened, I mean.

9 Q Okay. If you would, let's go back to your
10 deposition testimony here.

11 A Okay.

12 Q I'm gonna bring you to page 64. All right, so
13 starting on line 17 we asked you the question: When
14 you impacted my client did you see her go up in the
15 air? What was your answer?

16 A No, sir, I did not see her go up in the air.

17 Q Okay. And then our next question was: Did you
18 see her go to the side? And what was your answer?

19 A Did not see her.

20 Q Okay. And then you went on to tell that you
21 heard the object go down the side of your car and
22 take off the mirror; is that right?

23 A Uh-huh. I heard something go down the side of
24 the car, yes, sir.

25 Q Okay. Now once you came to find Ms. Blackwell,

1 turned around and came back after the wreck, she was
2 lying in the grass; wasn't she?

3 A Yes, sir, just off the edge of the road.

4 Q Was she just off the edge of the road —

5 A Just off the edge of the road, yes, sir.

6 Q There's a ditch that runs along the side of that
7 road; isn't there?

8 A Yes, sir, it's small.

9 Q Not very deep, just maybe a foot deep or so?

10 A Yes, sir.

11 Q Maybe less. And that ditch is at least, what, 4
12 feet off the road, 4, 5 feet off the road?

13 A I don't know exactly know how far, maybe, maybe a
14 good guess, I'm not sure.

15 Q In fact, when you found Ms. Blackwell she was
16 almost in the ditch; wasn't she?

17 A Close to it, yes, sir.

18 Q Okay. And in fact, you told us in your last
19 deposition that part of her body—

20 A She was laying, I mean, the average human
21 person's body — she was laying sideways, and she
22 said she drug herself in the ditch so she was around
23 in the ditch and she was moving around when I got to
24 do her. She was trying to stand up like she said,
25 trying to walk. So the actual position of where she

- 1 was, I mean, was not pinpointed.
- 2 Q Okay. But when you came up to Ms. Blackwell you
- 3 told us before under oath that she was almost in the
- 4 ditch, that part of her body was in the ditch.
- 5 A Yes, sir.
- 6 Q That's your testimony?
- 7 A Yes, sir.
- 8 Q She was in the ditch or close to the ditch when
- 9 you—
- 10 A Almost in the ditch. Just like you said, it was
- 11 4 feet away. She was laying sideways. She was
- 12 almost in the ditch.
- 13 Q And the ditch is at least 4 feet off the road?
- 14 A Yes, sir.
- 15 Q Okay. And you came up on Ms. Blackwell I think
- 16 you said earlier, she appeared to have a pretty
- 17 significant injury?
- 18 A Yes, sir.
- 19 Q And she was bleeding?
- 20 A A little — the bleeding was pretty much
- 21 controlled but it wasn't, it wasn't profusely
- 22 bleeding; otherwise, I would have put a tourniquet
- 23 on. She was —
- 24 Q But I mean, she had a gash in her leg.
- 25 A She had a gash in her leg, yes, sir.

1 Q And you said her injuries were actually so bad
2 you suggested they take her to—

3 A I felt like she had a leg fracture. I know that
4 Marion County can't, you know, accommodate those
5 injuries so I felt, that was just my thinking on
6 that.

7 Q To send up to McLeod?

8 A Uh-huh.

9 Q And she appeared to be in pain? Yes?

10 A Yeah, for the most, yes, sir.

11 Q Okay. And I guess as a paramedic you see a lot
12 of these types of injuries?

13 A Absolutely.

14 Q And work a lot of wrecks and that type of thing?

15 A Yes, sir.

16 Q Okay. And can we agree that this injury, that
17 this open wound and this leg fracture, was caused by
18 the collision by your car hitting her?

19 A Absolutely.

20 Q Okay. And as we sit here today you no longer
21 work or volunteer for the Marion County Sheriff's
22 Department; is that correct?

23 A No, sir, no.

24 Q That's all I have for you. Thank you.

25 A Uh-huh.

1 THE COURT: Any redirect?

2 MR. BAXTER: No, we don't have any
3 questions for this witness.

4 THE WITNESS: Thank you, sir.

5 THE COURT: You may step down. Call your
6 next witness.

7 MR. BAXTER: Your Honor, at this time we
8 would call Detective Ellis.

9 THE COURT: Trooper, if you'd please come
10 around to be sworn, sir.

11 MR. BAXTER: Your Honor, can we take about
12 five minutes? I've got to set up a few things.

13 THE COURT: Okay. Folks, step back into
14 the jury room. We'll take a short break and please
15 have no conversation about the case and we'll bring
16 you back out after we get some things set up.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 10:51 p.m. and a recess was
19 taken from the proceedings.)

20 MR. POULIN: I get some trial transcripts,
21 and I just call that deposition. I said, do you
22 remember your deposition, we were talking about —

23 THE COURT: Right.

24 MR. POULIN: And I apologize, I, midway
25 through when I asked him about his deposition a

1 we're ready to proceed.

2 MR. BAXTER: Thank you, Your Honor. We'll
3 call Trooper John Ellis.

4 THE COURT: Trooper Ellis, if you would
5 please come around to be sworn, sir.

6 WHEREUPON,

7 JOHN ELLIS, II,

8 having been duly sworn by the Clerk, testified
9 as follows:

10 THE CLERK: Thank you. Have a seat in the
11 witness box.

12 **DIRECT EXAMINATION**

13 BY MR. BAXTER:

14 Q Would you state your full name please, sir.

15 A John Wayne Ellis, II.

16 Q Okay. And you are employed with who?

17 A South Carolina Highway Patrol.

18 Q And how long have you been employed with the
19 South Carolina Highway Patrol?

20 A Sixteen years.

21 Q And where are you currently assigned?

22 A I work for Dillon, Florence, and Marion counties.

23 Q And are you — where do you live?

24 A I live in Dillon.

25 Q Okay. Is that your primary location you work is

1 Dillon, or do you work all over?

2 A I work all over, mostly Dillon and Marion. I
3 went to Marion High school so, therefore, I know
4 Marion very well.

5 Q Now if you would, just briefly tell the jury what
6 training do you have in order, in conjunction with
7 being a highway patrolman?

8 A Okay. We all go through the Criminal Justice
9 Academy, become a certified law enforcement officer.
10 Every officer in the state does. Once we're done as
11 a patrol class, when I came through one we were done
12 with the Criminal Justice Academy we stay there for
13 action investigation. That's our primary role here
14 in South Carolina, enforce the traffic laws of the
15 State of South Carolina, and to investigate wrecks
16 or traffic collisions. I've also been back to
17 become a MATE associate which is a Multidisciplinary
18 Action Team Associate which is more in depth.
19 Basically it's a, you go and you learn how to read
20 skid marks and all kind of different evidence and
21 reconstruct the scene.

22 Q Now were you working back on May 17th of 2014?

23 A Yes, sir, I was.

24 Q And did you receive a call concerning an accident
25 which occurred just outside the city of Marion?

1 A Yes, sir.

2 Q Now where would you have been when you received
3 the call?

4 A One of those three counties. I think I may have
5 been in Florence at that time.

6 Q Now the, at some point in time you made aware of
7 the fact that involved a Marion County sheriff's
8 deputy reserve officer?

9 A Not a reserve officer. It involved a Marion
10 County Sheriff deputy.

11 Q Okay. So you were just told it involved a Marion
12 County sheriff's deputy?

13 A Yes, sir.

14 Q Now the, if you would, the — if a law
15 enforcement officer or a law enforcement agency is
16 involved in an accident, what does that entail as
17 far as who investigates and why and —

18 A We investigate all law enforcement accidents —

19 Q Okay.

20 A —here in the State of South Carolina.

21 Q And why is that?

22 A That's what the law says.

23 Q Okay.

24 A Unless we're in a wreck and then the sheriff's
25 department will investigate.

1 Q But the law provides that if a law enforcement
2 agency is involved in an accident you as the highway
3 patrol are brought in to investigate the accident?

4 A Yes, sir.

5 Q And in this case the sheriff's department would
6 not conduct investigation, that would be left solely
7 to you?

8 A That is correct.

9 Q Now do you know about what time you would have
10 received a call that would have been notified of
11 this accident?

12 A It would be on the wreck report. If...

13 Q Okay.

14 A I'm not exactly sure what time it was.

15 (Document was tendered to the witness.)

16 THE WITNESS: I'm getting old, forgive me.

17 I was notified, I think it says 21:18, thereabouts.

18 Is that right? Yes, sir. I can't read the writing.

19 I can't read that to be honest with you.

20 BY MR. BAXTER:

21 Q Here, let me see if I've got it.

22 A Yeah, if you would.

23 (Document tendered to the witness.)

24 THE WITNESS: Yeah, about 21:18 or 21:19.

25 BY MR. BAXTER:

1 Q Okay. Now in layman's term what time is 21:18 or
2 19?

3 A In 9:10, 9:18 and 9:20.

4 Q Okay. So —

5 A P.m.

6 Q So you, the call came in and you were notified to
7 respond to the accident?

8 A Yes, sir.

9 Q About what time you think you got there, got to
10 the accident?

11 A I was on scene at 21:47, 9:47 p.m.

12 Q And so you were, it took you a while to get from
13 the time that the highway patrol received the call
14 until you got there?

15 A Yes, sir.

16 Q Now if you would, tell the jury when you got to
17 the scene what you observed.

18 A Okay. It was on 501 business on the north end
19 just north of I think Harper Road. When I arrived
20 on scene I came from the south to the north, and I
21 observed a silver Charger sitting in the road with
22 its blue lights on and a bunch of other cars on with
23 their blue lights on. That's what I saw.

24 Q Now Ms. Blackwell who is the pedestrian involved
25 in the accident, was she there or she'd been

1 transported?

2 A No, sir, she was not there. She'd been
3 transported.

4 Q Okay. So you get to the scene and just tell the
5 jury what you did.

6 A Okay. Of course, I get to the scene. As was
7 stated earlier when we turn our blue lights on the
8 video activates. I notified my dispatch I was on
9 scene. I got out, got my notebook, and went up,
10 asked who was involved. Deputy Herring was seated
11 right over there and he was identified as the
12 individual involved. I asked where the other party
13 was at. Ms. Blackwell, they stated had been
14 transported to a medical facility in Florence. At
15 that time I asked Deputy Herring what had occurred.
16 He said he was traveling north going home from the
17 Foxtrot Festival. There was a vehicle coming south,
18 had its lights on. He couldn't see and he struck
19 something in the road. I can't recall if he told
20 me, told me he turned around — yeah, I think he
21 told me he turned around, came back, and was there
22 and found Ms. Blackwell. The evidence that was on
23 the scene there, it was a —
24 Q Let me interrupt you there. So you talked with
25 him and asked him what happened.

1 A Yes, sir.

2 Q And you then began looking at the evidence and
3 seeing what was on the scene; is that correct?

4 A Yes, sir.

5 Q Okay. And I'm gonna show you what has been
6 marked as Defendant's Exhibit Number 3, 4, 5, 6, 7,
7 8 and 9 and ask you if you could identify those
8 pictures.

9 A You want me to do it based on numbers?

10 Q Just in general what is that?

11 A It's a silver Dodge Charger. This is Deputy

12 Herring's patrol car that was involved in the —

13 Q Are those photographs you took at the scene?

14 A Yes, sir, I took these photos.

15 Q And my understanding those are already admitted,
16 those are in the evidence. Now, and I'm gonna start
17 off with the most obvious question. You took those
18 photographs, correct?

19 A Yes, sir.

20 Q And to put it bluntly, you agree those are very
21 poor quality photographs?

22 A Yes, sir.

23 Q Very blurry?

24 A Yes, sir.

25 Q Okay. Tell the jury why that is.

- 1 A Because they don't — no, I work for the State.
2 We have the best equipment that there is. Basically
3 this is a Koolpix camera you buy at Wal-Mart now for
4 probably 30-dollars so that's what I'm taking
5 pictures with. They won't — it's not like CSI on
6 TV where you got the, we don't have that kind.
7 Q Okay. So it wasn't operator, it was the
8 equipment?
9 A Absolutely. And I know this, ladies and
10 gentlemen, 'cause I was a photographer on my annual
11 staff and my father was a photographer here in
12 Marion for years and years so I know how to take
13 pictures with the proper equipment.
14 Q So you went and took a series of photographs?
15 A Yes, sir.
16 Q And I'm going to try to get these up on the
17 screen. If you could, can you see this particular
18 photograph?
19 A Yes, sir.
20 Q And is that the one you, you started talking
21 about a silver Dodge Charger?
22 A Yes, sir.
23 Q Okay. And is that — whose vehicle was that?
24 A It actually belonged to Marion County.
25 Q Who was driving that vehicle?

1 A Deputy Herring.

2 Q And you took this photograph?

3 A Yes, sir.

4 Q Now if you would, what does this photograph show?

5 A It shows the impact point right before the
6 passenger side rear tire. It also shows that the
7 passenger side mirror is gone. It also shows a
8 rough mark of some type on the window and the door.
9 You also have some dried mud down here below the
10 wheel well that was dry, but there's no mud on the
11 tire or the rim which indicates to me that he didn't
12 run through a hole or anything.

13 Q So you observed this, this was dry?

14 A Yes, sir.

15 Q And it, did that appeared something that'd been
16 there for a while or?

17 A Yes, sir.

18 Q And you also mentioned that the tire was clean?

19 A Yes, sir.

20 Q There's another photograph. What's the
21 significance of the tire being clean?

22 A That means that he did not run through a mud hole
23 anywhere such as on the side of the road or
24 somewhere else.

25 Q Okay. Now —

1 A And it was dry at that particular point in time
2 meaning it was dry, it wasn't raining or anything.

3 Q And did you see any grass or anything in the
4 wheel well or anything of that nature?

5 A No, sir, I didn't observe any grass in the car
6 whatsoever.

7 Q And so the next, what did you start looking at?
8 Looking at the vehicle what did you start looking
9 at?

10 A Then I started looking at the scene overall,
11 where the debris from the car was located. I asked

12 Deputy Herring where Ms. Blackwell had come to a
13 final rest, and he pointed it out. It was off the
14 road semi in the ditch and semi out the ditch 'cause
15 it's one of those little just drainage ditches. The
16 only debris I found was the part of the lens cover,
17 or it was part of the mirror, one of those two, in
18 the road in a small piece approximately, I don't
19 know, let me see. Here, I took a picture of it.

20 Yeah. I think number 5 is a piece of small debris
21 from the vehicle. And I found the, I think it was
22 Ms. Blackwell's shoe, it was near the ditch. And
23 what that would indicate to me —

24 MR. POULIN: Your Honor, can we approach
25 briefly.

1 (WHEREUPON, counsel approached the
2 Bench for an off-the-record discussion.)
3 BY MR. BAXTER:
4 Q Okay. Let's, this — do you have this
5 photograph?
6 A Yes, sir, I think I have it.
7 Q Okay.
8 A No, I don't have that one. No, sir, I don't have
9 that one.
10 Q Okay, let me — you have this one?
11 A Yes, sir, that one is in here. Yes, sir, it's
12 number 7.
13 Q And what does this photograph show?
14 A If you notice right near the fog line there's a
15 small piece of lens cover. That indicates that came
16 from his car.
17 Q Now the photograph you just showed us, is that
18 the same photograph as is, just make it a little bit
19 closer, different angle?
20 A The previous one?
21 Q Yes, sir.
22 A It's the opposite side.
23 Q Okay.
24 A I was trying to do the best I could with the
25 lighting so I was using headlights.

1 Q Now what does this photograph show?
2 A That's upclose shot of the clear lens cover.
3 Q Okay. Do you have that photograph?
4 A Yes, sir. That's number 5.
5 Q And what does this photograph show?
6 A That's a piece of the vehicle also. I can't say
7 exactly what it is but...
8 Q This is on the fog line just off —
9 A Yes, sir, probably about 6 inches, 8 inches,
10 thereabouts.
11 Q Now did you, you looked at the road, got
12 photographs that shows what you found in the road.
13 Did you do anything else as far as the scene?
14 A Yes, sir, I, you know, I looked at based on what
15 he told me I wanted to try to establish where
16 Ms. Blackwell was at the impact point when they hit.
17 And what I did, I wanted to see if he, she was off
18 the road or in the road, if he had possibly ran off
19 the road and hit her or, you know, was in the road.
20 And so what I did, I backed up and I looked, I
21 looked northbound and then I turned around and
22 walked and looked southbound. What it is, I looked
23 at the side of the road. And I'm sure that y'all
24 here understand when I say like during the
25 summertime when grass gets up high or whatever, you

1 notice out here on the roads in the median whatever,
2 your grass gets high and you drive across the grass
3 you leave tire marks across your grass. Luckily
4 this instant there was no tire marks 'cause normally
5 EMS and everybody else, fire department, they'll
6 park on the side of the road; but in this case there
7 were zero tracks on the side of the road, which
8 indicated to me that Trooper Herring was, didn't run
9 off the road, entered it. The only way it could
10 have happened she was actually in the road.

11 Q And so you found — now you talked about that you
12 found debris in the road and photographed part of
13 the car that was just off the road. Does that, does
14 that in any way change what you observed, I mean,
15 the fact you got debris all over so to speak?
16 A No, sir, it's in one general pattern. If a
17 vehicle is headed this way —

18 MR. POULIN: Your Honor.

19 THE WITNESS: If a vehicle is, you know,
20 headed this way and it gets hit on the side.

21 MR. POULIN: Your Honor, I'm gonna object
22 to this testimony. He's going into expert realm.

23 THE COURT: Okay. Unless he's qualified
24 as an expert he's not gonna be allowed to testify
25 to...

1 BY MR. BAXTER:

2 Q You found debris in the road and some off the
3 road, correct?

4 A Yes, sir.

5 Q And that —

6 A Well, it's kind of like this, if you throw water
7 —

8 MR. POULIN: Your Honor, again, he can
9 testify to what he saw, but he can't tell us what
10 his interpretation of it is.

11 MR. BAXTER: Okay.

12 THE COURT: Sustained.

13 BY MR. BAXTER:

14 Q Anything else you observed at the scene?

15 A No, sir.

16 Q Okay. Do you know about how long you were at the
17 scene?

18 A I think about 45 minutes.

19 Q Okay. Now what did you do after that?

20 A After that I left the scene and went to Florence
21 to McLeod to ER; and I went and talked to
22 Ms. Blackwell, found her in the hospital.

23 Q Okay. Now when you were at the scene did you
24 know who she was or have any information on her?

25 A No, sir.

1 Q Okay. And so no one at the scene knew her name
2 or her?

3 A I don't recall.

4 Q Okay. So you went to the hospital and talked
5 with her, correct?

6 A Yes, sir.

7 Q Now approximately how long do you think you were
8 at the hospital?

9 A Probably about 30 minutes.

10 Q Okay. Now what was her condition when you went
11 into the hospital?

12 A It was odd. I go in through the ER entrance;
13 that's where we go in. And you go over to the
14 nurse's station. I asked where she was at, and she
15 was either in CAT scan or CT or x-ray, one of those
16 rooms in the back. They told me where she was at so
17 I went down the hallway and I found her. I asked
18 the technician if I could talk with her and they
19 said, yeah, that's fine. So I asked, I went in and
20 started talking to Ms. Blackwell. I said,
21 Ms. Blackwell, I'm Trooper Ellis, highway patrolman,
22 can you tell me what happened. And she said that
23 she wasn't the police, she was trying to find that
24 man to give her the badge back. I said, excuse me.
25 And it struck me odd, I mean, I remember 'cause it

1 was odd. She said, I ain't the police, I was trying
2 to find that man to give him his badge back. I
3 said, okay. I said, well, were you in the road?
4 She said yes. And I said, okay. Then based on what
5 she said I asked the technician if they had known
6 that she had been given any kind of medication or
7 anything. They said, no, she hadn't been giving
8 anything that she knew of at that time.

9 Q And did you have any further conversations with
10 her?

11 A No, sir.

12 Q Do you know what clothes she was wearing that
13 evening or —

14 A No, sir, I can't recall.

15 Q —by the time you got there?

16 A She was under a sheet when I got there. You
17 know, it was cold like it is here in the hospital.
18 They give you warming blankets so.

19 Q One second. Thank you, Trooper Ellis.

20 A Yes, sir.

21 **CROSS-EXAMINATION**

22 BY MR. POULIN:

23 Q Trooper, good afternoon. How are you?

24 A I'm fine, thank you.

25 Q All right, Trooper. Let's go back to when you

1 were first notified of the case again. I know you
2 had this document in front of you. It was kind of
3 hard for you to read.

4 A It was hard for me to read the MATE report.

5 Q Let's look at, let's look at this document here.
6 Is that a little — that's a little clearer; isn't
7 it?

8 A Oh, yeah.

9 Q Do you recognize that document?

10 A Yes, it's —

11 Q Just a general.

12 A Dispatch or there's — yeah, I do.

13 Q So from that document, I guess it does have the
14 time in there that you were notified of the wreck
15 which is about 9, let's see, it was dispatched
16 21:19?

17 A Yes, sir.

18 Q About 9:19 p.m.?

19 A Yes, sir.

20 Q But we can also tell from this document when the
21 first call came to the dispatch center, right, when
22 they were —

23 A When they received it?

24 Q Yes.

25 A Yes, sir.

1 Q And what time was that?

2 A 21:18.

3 Q So 9:18 p.m.?

4 A Correct.

5 Q All right.

6 A Is that it?

7 Q Yes, sir, thank you. Now when you got to the
8 scene I think the first thing you did was talk to
9 Mr. Herring; is that correct?

10 A No, I mean, I — as far as my actions?

11 Q Yes, sir.

12 A Are you —

13 Q Well, let me back up. Let me ask you this, you
14 took a series of pictures and you told us you went
15 up and down the road and that kind of thing.

16 A Right.

17 Q You also told us that you interviewed Mr.
18 Herring.

19 A Right.

20 Q Which one did you do first?

21 A I talked to him first.

22 Q And isn't it true that within as little as five
23 to six minutes on scene you told Mr. Herring it was
24 okay for him to leave and go home?

25 A Yes, sir.

1 Q Okay. And then so you did all this investigation
2 after he left?

3 A No. Some of it he was there with the car.

4 Q Sure, okay. But I mean, when you were walking up
5 and down the side of the road taking pictures —

6 A I don't know where he was. I told him he could
7 leave. Where he went, I don't know.

8 Q Sure, okay. All right. So what is the point of
9 taking pictures when you're at an accident scene?

10 A To preserve evidence.

11 Q Okay. To document —

12 A Document scene.

13 Q —kind of the scene. So you were taking
14 pictures of every single thing out there that you
15 deemed important to the wreck?

16 A That I thought had something to do with the
17 wreck, yes, sir.

18 Q Okay. So in other words, any debris that you
19 would have found you would have snapped a picture of
20 that?

21 A No, sir, if it wasn't debris from his car I
22 wouldn't have taken a picture of it.

23 Q So any debris you found that would have been
24 related to the wreck?

25 A Yes, I would have.

1 Q And so you've only got -- there were only two
2 pieces of debris that you were able to find; is that
3 right?

4 A That's all I found that I can document.

5 Q Okay. And we know that the light on the front of
6 the car was shattered out, right?

7 A Not the light. No, the light's working
8 perfectly.

9 Q The light cover on the side?

10 A Yes, that's right.

11 Q So we know the whole thing was shattered just by
12 looking at the car?

13 A Part of it shattered. I can't tell about the
14 whole thing. There's parts of it missing.

15 Q Okay. And we know that, in fact, the whole
16 mirror fell off, right?

17 A It didn't fall off, but it's missing, yes, sir.

18 Q Okay. And there was glass and stuff in the
19 mirror, I would guess?

20 A I suppose.

21 Q All right. So we got all this stuff and you
22 found one, you found this one tiny little piece of
23 glass in the road?

24 A No, sir, there's another picture right there
25 also.

1 Q No, this is off the road, right?

2 A Correct, just those two pieces only from the
3 impact.

4 Q So there's one tiny little piece of glass is the
5 only piece of debris you found on the road anywhere?

6 A Yes, sir.

7 Q And that was dark out there, right?

8 A Yes, sir.

9 Q Okay. And I guess it would be easier to find
10 debris on the road than it would be to find on the
11 grass?

12 A Probably, yes, sir.

13 Q So you're able to find one piece of debris in the
14 grass?

15 A Correct.

16 Q And you didn't see any other debris anywhere?

17 A No, sir.

18 Q Okay. Now you take any kind of measurements or
19 anything while you're out there?

20 A No, sir, there was nothing to measure.

21 Q Okay. Are you able to tell us from these
22 pictures, from any of those pictures, and I'll give
23 them all back to you. You can have them all. I
24 think probably the best picture to look at is this
25 one, number 7, that shows that little piece of glass

1 in the rear.

2 A Yes, sir.

3 Q From looking at that picture are you able to
4 point to us where Ms. Blackwell ended up? In other
5 words, is that visible in that picture?

6 A You objected to that earlier as far as what I
7 saw. I can't —

8 Q No, sir, just where, where you understand that
9 she was in the ditch.

10 A She was — no, she was half in the ditch, outside
11 of the ditch from what I was told.

12 Q Right, I understand that. And what I'm asking is
13 do we have any pictures that have that piece of
14 glass in the same frame of where you understand
15 Ms. Blackwell ended up where we can —

16 A No.

17 Q Okay. All right. And you weren't able to find
18 any gouge marks on the road; is that correct?

19 A No, sir.

20 Q And blood, you didn't find any blood in the road?

21 A No, sir.

22 Q If you had found any blood in the road you would
23 have took a picture of that, right?

24 A Yes, sir.

25 Q And then you said it was a dry night?

1 A Yes, sir.

2 Q Clear?

3 A It was clear, yes, sir.

4 Q Hadn't been raining at all that day as far as you
5 know?

6 A I can't recall that day. I mean, this is at
7 night. I don't know what happened previously during
8 the day.

9 Q Let me ask you this, you were walking through the
10 grass taking pictures, that kind of thing, you
11 didn't notice any mud puddles or anything like that?

12 A No, sir.

13 Q So now then you said you left the scene and you
14 went to the hospital to talk to Ms. Blackwell?

15 A Yes, sir.

16 Q Okay. And I guess as part of just what you do as
17 officers, you take notes on things and that type of
18 thing, isn't that right usually?

19 A Yes, sir, if it — yes, sir, we do.

20 Q Okay. And so you went to see Ms. Blackwell in
21 the hospital?

22 A I did.

23 Q And she told you she was standing in the middle
24 of the road?

25 A No, she said she was in the road.

1 Q Okay. And you didn't document that in writing
2 anywhere ever, did you, in your conversation with
3 her?

4 A No, sir.

5 Q All right. And this was in the hospital that you
6 talked to her?

7 A Yes, sir.

8 Q Okay. And you never had another conversation
9 with her after that?

10 A No, sir.

11 Q And you never took down any notes or any summary
12 of your conversation anywhere in writing?

13 A That's what this right here, this MATE report
14 indicates. After I talked to her I took what she
15 told me, based on what Mr. Herring told me, and
16 based on the evidence at the scene —

17 Q And you filled out a report?

18 A —I write a summary for it which is in the wreck
19 report, yes, sir.

20 Q And the summary never mentions the fact that you
21 had any conversation with Ms. Blackwell, does it?

22 A No, sir. It doesn't mention I had any
23 conversation with him either.

24 Q Okay. All right, sir. That's all the questions
25 I have for you. Thank you.

1 A Thank you.

2 THE COURT: Any redirect?

3 MR. BAXTER: No further questions for this
4 witness.

5 THE COURT: You may step down.

6 MR. BAXTER: Your Honor, at this time we
7 call Kamadie Campbell.

8 THE COURT: Sir, if you'd please come
9 around to be sworn.

10 WHEREUPON,

11 **KAMADIE CAMPELL,**

12 having been duly sworn by the Clerk, testified
13 as follows:

14 **DIRECT EXAMINATION**

15 BY MR. POULIN:

16 Q Would you state your full name for the record.

17 A Kamadie Campbell.

18 Q Mr. Campbell, where do you live?

19 A Right now in Marion.

20 Q And where do you work?

21 A Marion County EMS.

22 Q And how long have you been employed with Marion
23 County EMS?

24 A Five plus years.

25 Q And were you working with Marion County EMS back

1 on May 17th of 2014?

2 A Yes, sir.

3 Q And do you recall responding to — well, let me
4 ask you, I'm gonna show you what has been marked as
5 Plaintiff's Exhibit Number 17 [sic] and ask you if
6 you have — are you familiar with that document?

7 A Yes, sir.

8 Q Is that the same document you have in your hand
9 here?

10 A Yes, sir.

11 Q I'm gonna let you look at that but I'm gonna use
12 this one. But, if you were — on that evening where
13 would you have been stationed?

14 A On that evening I would have been stationed on
15 right here at Marion, Marion base.

16 Q Okay. And would you have received or been
17 notified of a call concerning an accident?

18 A Yes, sir.

19 Q Okay. And about what time would the, had you
20 received the call?

21 A I know it was around 9 something, but I know it's
22 kind of dark at the time.

23 Q Okay. And where were you — where was the
24 accident?

25 A It was right up here on Main Street not too far

1 from, what is that, Family Dollar, Dollar General,
2 right there on the right side of the road.

3 Q Okay. And if you would, just tell the jury —
4 well, first of all, you work on teams, correct?

5 A Yes, sir.

6 Q And who else were you working with?

7 A Lisa Revell.

8 Q Okay. And the report, you were shown as the
9 primary caregiver, okay. What is the difference
10 between — who is the primary caregiver and what's
11 the significance of that?

12 A Primary caregiver means I took control of the
13 patient, had all vitals, assessed them in route to
14 the hospital. I had more contact than my partner
15 did.

16 Q Okay. And Melissa would have actually, she would
17 have been the driver?

18 A Yes.

19 Q So when you got to the scene as far as
20 Ms. Blackwell, you were kind of the person in
21 charge, correct?

22 A Yes, sir.

23 Q So if you would, tell the jury when you got to
24 the scene what you observed.

25 A Okay. I got on the scene. I noticed a car on

1 the side of the road. I noticed a patient. The
2 first thing I zeroed on was my patient and
3 everything. She was laying down. She was kind of
4 talk, she was talking in and out. And I asked her a
5 few questions, assessed her. I notice she a
6 bilateral fracture, left leg tibia fracture. And I
7 would ask her questions to see where she's at and
8 basically I see how that border, got on the truck
9 and did vitals, did IV, did monitor, ran fluid, and
10 basically reassess the vital till I got to the
11 hospital.

12 Q Now did — she had a left leg injury, correct?

13 A Yes, sir.

14 Q Okay. And you determined that it was a, it was
15 broken bone in her leg.

16 A Yes, sir, open fracture.

17 Q Was there also a wound?

18 A Yes, sir.

19 Q Now in other words, do you recall did you have to
20 like cut any of the pants or —

21 A Yes, sir.

22 Q —remove the shoe and do things like that?

23 A Yes, sir. Any time with trama, especially car
24 accidents, I cut everything off like she was.

25 Q So the, you would cut back the pants and you had

1 taken her shoe off, socks, y'all then take that
2 stuff back with you to the hospital for the patient,
3 or do you know what would have been done with that?

4 A Usually we would transport it along with the
5 patient usually.

6 Q Now do you recall where she was located when you
7 got there?

8 A She was right there on the side of the road like
9 right there at the ditch, not in the ditch, like
10 right there.

11 Q Okay. And in relationship to the asphalt where
12 was she located?

13 A Asphalt she was lying on, like I'm going to say
14 wide as the desk right here, be about wide as this
15 desk maybe from the asphalt.

16 Q Now the, and so she was transported to McLeod
17 Hospital?

18 A Yes, sir.

19 Q Now do you recall Andrew Herring being there?

20 A Yes, sir.

21 Q Okay. And did you talk with him at all?

22 A No, sir, I was working on my patient.

23 Q Okay. Now if you would just, this report which
24 has been marked as Plaintiff's Exhibit Number 17,
25 when would that have been filled out?

1 A It would have been done that night within 24
2 hours.

3 Q And you kind of put down everything you observed
4 and observations and things of that nature. Did you
5 talk with Ms. Blackwell?

6 A Yeah, I talked to her but she wasn't talking
7 like — only thing I was able to get from her like
8 what's her name and last name. The rest of the
9 information I got from the hospital.

10 Q Okay. Now what else did you observe about this
11 patient?

12 A She, other than that she was conscious times 2.
13 While I was talking to her kind of close trying to
14 see where she was at I smelled alcohol, you know, so
15 to make sure I get a BTF 'cause a lot of times
16 you're gonna have high sugar, BKA (ph), so I said
17 I'll check to see what she was, so she was at 113 so
18 I know that wasn't her sugar so.

19 Q Okay. And I'm —

20 A JUROR: I can't hear him.

21 BY MR. BAXTER:

22 Q And some of the jurors can't hear you and I'm not
23 sure — okay, you keep using like BKA and things of
24 that nature. What are you talking about?

25 A BKA means they got a high sugar. Sugar used to

1 be right at five hundred or above and usually have
2 like a smell to them, like a smell that's kind of
3 smell like alcohol so basically I did, I checked her
4 sugar just to make sure.

5 Q Okay, and her sugar was not high?

6 A No, it was at 113. It's at normal.

7 Q It has to do with if somebody is like in diabetic
8 shock or diabetes?

9 A Yeah, yes, sir.

10 Q And do you recall anything else about this
11 patient or the care y'all rendered?

12 A Not I can think of right now. Only thing I can
13 think of right this second for five minutes; but
14 like I said, she wasn't there when I was talking to
15 her.

16 Q Okay. And you say she wasn't there?

17 A She was it was like more incomplete sentences so
18 we basically, as long as she was talking to me I was
19 good, I was good to go.

20 Q So you weren't concerned about what she was
21 saying as much as the fact she was alert and talking
22 to you, things of that nature?

23 A Yes, sir.

24 Q Do you remember what clothes she had on?

25 A If I can remember, I want to say it was dark

1 because I remember I — it was like, I mean, it was
2 like black spot right there right there on the side
3 of the road. I'm not trying to be funny.

4 Q When you came up you had a hard time seeing her
5 because of what she had on?

6 A Yes, sir.

7 MR. BAXTER: One second. That's all we
8 have of this witness.

9 THE COURT: Cross.

10 **CROSS-EXAMINATION**

11 BY MR. POULIN:

12 Q Now Mr. Campbell, as far as injuries go, I mean,
13 this was a pretty bad injury she had; wasn't it?

14 A Uh-huh, yes, sir.

15 Q And I think one of the things that was noted in
16 the report is that she might have been in a little
17 bit of shock?

18 A She kind of, I mean, blood pressure first went
19 down like 90 over 60 so i gave her some fluid to
20 bring it up. Other than that, you know, good to go.

21 Q Did she appear to be in some pain I guess?

22 A Oh, yes.

23 Q And she had, in addition to the broken leg that
24 you noticed, she actually had an open wound?

25 A Yes, sir.

1 Q Okay. And then, I guess, whenever y'all picked
2 her up, due to the severity of her injuries you
3 transferred her up to McLeod instead of just keeping
4 her here in town?

5 A Yes, sir.

6 Q Okay, all right. Sir, that's all I have for you.
7 Thank you.

8 THE COURT: Anything further?

9 MR. BAXTER: No, that's all we have of
10 this witness.

11 THE COURT: Thank you.

12 MR. BAXTER: Can we take a quick break?
13 We may be finished.

14 THE COURT: All right. Folks, I need you
15 to step back to the jury room. Please have no
16 conversation about the case. I'll bring you back
17 out shortly.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 11:47 a.m.)

20 THE COURT: Y'all have anything in reply?

21 MR. POULIN: No, sir.

22 MR. BAXTER: Your Honor, I have to, I've
23 got one thing. We're gonna read in some portions of
24 Ms. Blackwell's deposition, we submit that. I do
25 intend to do that. We'd like to do that. I'm

1 THE COURT: What document are you reading
2 from so I can tell them where it's coming from? Is
3 it like a national weather service or something?

4 MR. BAXTER: Yes, sir, it's the United
5 States Naval Observatory.

6 THE COURT: That's what I need. All
7 right, let's bring the jury in.

8 (WHEREUPON, the jury was returned to the
9 courtroom at approximately 12:05 p.m, and
10 the following proceedings commenced in
11 open court.)

12 THE COURT: Thank you. Mr. Baxter, I
13 recognize you for your next witness.

14 MR. BAXTER: Your Honor, the defendant
15 Marion County Sheriff's Department rests at this
16 time.

17 THE COURT: All right, thank you, sir.

18 Folks, the defendants have rested their
19 case, and so again, at the close of the plaintiff's
20 case — at the close of defense's case I have to
21 take up other matters before we proceed. I'm going
22 to excuse you in just a moment and let you go to
23 lunch while I can take up those legal matters, and
24 then when you get back we'll continue at that point.
25 Before I, before we leave though, the parties have

1 stipulated — and a stipulation is just simply, a
2 stipulation is an agreement. The parties have
3 agreed to a piece of factual evidence that I'm going
4 to give to you at this point.

5 The United States Naval Observatory for
6 astronomical applications department is a function
7 of that government branch which basically gives the
8 exact time and date of sunset and what is called
9 civil twilight for everywhere on the globe at a
10 particular longitude and latitude. The parties have
11 agreed in reviewing the department's report that on
12 the day in question here on May the 17th of 2014 in
13 this area of Marion County where this occurred, that
14 sunset for Marion County was at 8:14 p.m. and the
15 end of civil twilight was at 8:42 p.m. Both sides
16 agree that that's accurate for purposes of that date
17 of the May 17th, 2014, the date of this incident.

18 Now the same instructions you had
19 yesterday when you went to lunch, and even more so
20 now that you've heard everything that you heard,
21 please do not allow anyone to talk with you about
22 this case, do not discuss the case with anyone. We
23 will — I'm gonna ask you if you would be back at
24 2:00 and when you return we will proceed then at
25 that point, okay. So if everyone else would please

1 remain seated. Ladies and gentlemen, we'll see you
2 back here at 2:00.

3 (Court's Exhibit Number 4 was marked
4 and made a part of the record.)
5 (WHEREUPON, the jury was removed from the
6 courtroom at 12:09 p.m.)

7 THE COURT: At this time I'll take up
8 motions at the close of all the evidence.

9 MR. POULIN: Thank you, Your Honor. At
10 this time the Plaintiff would move for a directed
11 verdict I guess both as to the case in its entirety,
12 or at the very least as to Defendant's affirmative
13 defense of comparative negligence. Even viewing the
14 evidence in a light most favorable to the defendant
15 there's no way that a reasonable jury can look at
16 the evidence and find Ms. Blackwell was anything
17 other than on the grass side off the side of the
18 road, that Mr. Herring was on the cell phone at the
19 time of the wreck. So based on that we would ask
20 the Court to direct a verdict in favor of
21 Ms. Blackwell on the issues of liability. Of course
22 I think damages still would need to go to the jury,
23 but that's what we would ask for.

24 THE COURT: All right. I respectfully
25 deny that request, that motion. Mr. Poulin, I think

1 it's a jury question, the factual issue that is
2 necessary for the jury to resolve.

3 MR. BAXTER: Your Honor, we would renew
4 our motions for direct, I mean, for directed verdict
5 as well based upon the fact that the, you know, the
6 overwhelming evidence would indicate that
7 Ms. Blackwell was in the road at the time. The —
8 and so we would just move for directed verdict, and
9 I think the evidence is that if she was in the road
10 at the time that her negligence would exceed any
11 possible negligence of hindering the operation of
12 the vehicle. And additionally, we renew our motion
13 as to the plaintiff's failure to kind of separate
14 out what medical treatment and what specifically
15 what medical bills were related to the injuries from
16 the accident versus treatment she received related
17 to malpractice and some other chemical imbalance she
18 was experiencing at the time.

19 THE COURT: All right. Mr. Baxter, and
20 I'm gonna respectfully deny those motions. Again,
21 as I stated earlier yesterday I think it was, that I
22 think these are all fact issues that are necessary
23 for the jury to resolve and it's gonna be dependent
24 upon how the jury views the testimony given that's
25 in the record on what weight and credibility they

1 give it. I think it would be, it's appropriate for
2 them to make that decision.

3 I'm going to ask now, I think the only
4 issue with regards to the charge was whether or not
5 I think, Mr. Baxter, you had requested a charge
6 regarding sudden emergency.

7 And Mr. Poulin, I think you've objected to
8 that charge being given and so I'd like to hear from
9 y'all with regards to that at this point.

10 MR. BAXTER: Your Honor, the — at this
11 point in time the testimony, or at least there is
12 testimony by Ellis —

13 THE COURT: Any objection to them being
14 excused?

15 MR. POULIN: No.

16 THE COURT: Folks, y'all are welcome to
17 remain with us if you'd like, but—

18 TROOPER ELLIS: I'm listening.

19 THE COURT: You're also welcome to leave
20 if you need to.

21 MR. BAXTER: Your Honor, the testimony of
22 Mr. Herring is that he was traveling, that there was
23 a oncoming vehicle with its lights on and that just
24 for an instant he saw an object in the roadway, had
25 a split second decision, do I swerve over and hit

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 2:29 p.m., and
3 the following proceedings commenced in
4 open court.)

5 THE COURT: Folks, welcome back. If you
6 recall, when we broke for lunch the Defense had
7 rested their case and I had matters of law to take
8 up and I've done that so we have reached the portion
9 of this trial where the attorneys are gonna have an
10 opportunity to address you with what we typically
11 call closing arguments. It's their opportunity to
12 argue to you what they believe the evidence in this
13 case has shown. Now the evidentiary portion of the
14 trial is closed so the evidence in this case will be
15 the testimony that you heard from the witnesses who
16 they took the witness stand and then the exhibits
17 which came in during the course of the trial which
18 you'll have in the jury room with you when you go
19 back to your deliberations. That's the evidence in
20 the case and it's now closed. Also, the stipulation
21 that we read to you about the sunset being at
22 8:14 p.m. and the end of civil twilight is I think
23 it was 8:46 so —

24 MR. BAXTER: 8:42.

25 THE COURT: 8:42, okay. So that's in.

1 evidence as well. But, and just as I told you with
2 regards to their opening statements, what they are
3 gonna share with you in their closing arguments is
4 not evidence; but it's important that you listen
5 carefully to what they have to share with you
6 because in civil cases, because the plaintiff bears
7 the burden of proof, Mr. Poulin will open with his
8 closing remarks and then Mr. Baxter will present the
9 Defense's closing remarks and then if he chooses to
10 Mr. Poulin can reserve a short period of time to,
11 for a short rebuttal.

12 Once the lawyers have completed their
13 closing arguments I'm going to charge you the law
14 that's applicable in this case, and then once you
15 have that you will then be in a position to go back
16 into the jury room and then for the first time be
17 able to talk about the case and discuss the case and
18 arrive at a verdict. So if you would, please give
19 the attorneys your close and undivided attention as
20 they address you with their closing arguments.

21 Mr. Poulin.

22 MR. POULIN: Thank you, Your Honor.

23 Good afternoon, we made it to the end. It
24 wasn't that long. Like I said, we were able to kind
25 of power through it for you, but we're almost at the

1 close of the case. And so I'm just a little while
2 after we do our closing arguments and Judge Russo
3 charges you on the law, he's gonna send you back to
4 the jury room and you're gonna have three jobs. The
5 first job is to answer the questions that Judge
6 Russo gives you on the verdict form. And the second
7 job is to follow the law as Judge Russo gives it to
8 you. And then the third job that y'all are gonna
9 have back there when you're back there is to discuss
10 the facts with each other and be able to talk to
11 each other about why you feel the way you do about
12 the questions that are asked on the verdict form.
13 So for the next little while I want to take some
14 time to talk to you about the facts of the case and
15 about the verdict form and the questions you're
16 gonna be answering so that you'll be able to have
17 those discussions with each other.

18 Now before I go into anything too deep I
19 want to talk to you about the burden of proof
20 because one of the things that Judge Russo is gonna
21 tell you is that this side has the burden of proof.
22 I've got the burden and Ms. Jackie, we have the
23 burden of proving this because we're the plaintiff.
24 And Judge Russo is gonna tell you what the burden of
25 proof is. He's gonna read it to you. And in fact,

1 one of the things that Judge Russo does when he
2 gives the jury his instructions, he's gonna package
3 them up in a binder and he's going to send them back
4 to you so you'll have them with you.

5 The burden of proof in a civil case is not
6 like the burden of proof in a criminal case. And
7 we've seen on TV beyond a reasonable doubt, beyond a
8 shadow of a doubt and all that kind of thing. In a
9 civil case we just call it what we call
10 preponderance of the evidence, and that's a fancy
11 legal term which just means slightly more likely
12 than not. So as we talk about each issue here, as
13 we talk about who was on the road and who was off
14 the road, all I've got to do and all y'all have to
15 talk about back there is it more likely or not. And
16 if it's more likely, even slightly more likely than
17 what I'm saying is more believable to you than what
18 they're saying, then we've met our burden of proof.
19 So that's really all the preponderance of the
20 evidence is.

21 Now I told you — all right, now I told
22 you at the, just a minute ago, that one of your
23 three jobs and probably your main job when you go
24 back there is gonna be to answer the questions that
25 Judge Russo gives you. And these are what the

1 questions are gonna look like. Can everybody see
2 it? You're the one that's gonna have to fill out
3 the form so. So this is what your verdict form is
4 gonna look like. And it can look kind of
5 complicated and you thought there might be just one
6 question on there, right, guilty or not guilty; but
7 this is a civil case and so this is what your form
8 is gonna look like. It's gonna have about seven
9 questions. And there's different instructions on
10 there, and sometimes depending on how you answer one
11 of the questions you may move on to the next one or
12 you may skip one and I'm gonna go through it all
13 with you. We'll go through it just little by
14 little.

15 One thing that you'll notice right off the
16 bat and you probably heard throughout the course of
17 this case is that the defendant in this case is
18 actually the Marion County Sheriff's Department and
19 so all these questions, some of these questions talk
20 about the defendant, was the defendant negligent,
21 was the defendant this, was the defendant that.
22 Don't get confused about that because when we're
23 talking about was the defendant negligent, that type
24 of thing, we're gonna be talking about Mr. Herring's
25 driving, whether he was driving properly or not.

1 And when Judge Russo instructs you on the law
2 there's gonna be instructions. He's gonna tell you
3 that that's just the way that the law works when
4 you're dealing with a business or a government
5 entity is that they can only act through their
6 employees or their volunteers in this case. So when
7 we talk about the defendant in this, the defendant,
8 we're talking about Mr. Herring. We're not talking
9 about the Marion County Sheriff's Department, okay.
10 So the first question and I think the second
11 question are gonna be I think fairly easy questions
12 for you to answer if you go back there and you
13 understand that. And believe me, there's gonna be a
14 lot for y'all to talk about when you go back there
15 and, you know, there's gonna be, there might be some
16 disagreement; but I don't think that that
17 disagreement is gonna start in these first
18 questions.

19 The first question you have to answer is
20 was the defendant negligent. And Judge Russo is
21 gonna give you a nice long instructions on the law
22 and what negligence means. Basically it just means
23 did he do something that an ordinary person wouldn't
24 do, that a careful person wouldn't do? Or did he
25 fail to do something that a careful or an ordinary

1 person would do? If he didn't act as an ordinary,
2 reasonable safe person, then he was negligent.
3 That's all negligence means, and that's all we're
4 talking about on line number one.

5 Now, what's important about line number 1
6 is that we're only talking about the defendant, or
7 Mr. Herring, okay. We're not talking about
8 Ms. Jackie. We're gonna have a chance to talk about
9 Ms. Jackie down there on line 3 'cause I know y'all
10 are gonna want to get back there and you'll be
11 wanting to talk about, you know, where, what's the
12 biggest question in the case. Was Ms. Jackie in the
13 road or was she in the grass. We're gonna talk
14 about Ms. Jackie in question number 3. But on
15 question number 1 we're just talking about Mr.
16 Herring.

17 And so the sole question that you have to
18 answer in question 1 is, did Mr. Herring do anything
19 that a reasonable person wouldn't or did he fail to
20 do anything that a reasonable person wouldn't? It
21 doesn't mean that he was the only cause of the
22 wreck. It doesn't mean that Jackie was in the grass
23 or in the road, okay. All it's asking is did he
24 have any negligence in this case. And I think, I
25 think even, you know, understand he kind of admitted

1 to this. He said, you know, he hit her. There's no
2 question that he hit her, that he, you know, he hit
3 her. Then he said the wreck was at 9, 10 p.m. He
4 was on his cell phone at 9, 10 p.m. Cell phone
5 records show that. I know you're not supposed to be
6 driving down the road and answer your cell phone and
7 that type of thing. And we all know, you know,
8 you're not supposed to be driving down the road and
9 just run somebody over, okay. Even if they're in
10 the middle of the road, this is a long, straight
11 road, we know that, no hills, no curves. Judge
12 Russo is gonna instruct us on the law that you got
13 to be driving at a safe speed and all these types of
14 things. So we know he wasn't doing all that stuff.
15 We know he wasn't doing everything right because if
16 he was doing everything right there wouldn't have
17 been a runover, okay. So I think the simple
18 question for number 1, simple answer is yes. So if
19 you mark yes on number 1 you're gonna move on to
20 number 2.

21 But now if you don't answer yes on number
22 1 you're supposed to stop. If you mark no on number
23 1 what you're saying is that you don't think that
24 it's even important to talk about what happened to
25 Ms. Jackie or to talk about her medical bills or her

1 injuries, or anything like that. You're saying that
2 that's it. You say no on number 1, that's it,
3 you're done. But I think when y'all get back there
4 and talk about it a little bit you're gonna say yes
5 on number 1 'cause there's really not a lot to argue
6 about that.

7 And number 2 is even easier because Mr.
8 Herring just admitted that on the stand. Question
9 for number 1 is, was the defendant's negligence a
10 proximate cause of the plaintiff's injuries. In
11 other words Ms. Jackie says — and you'll have some
12 of the medical records and stuff. She said she
13 broke her ankle as a result of the car hit. And you
14 heard Mr. Herring on the stand, and he said — well,
15 I said, can we all agree her ankle was broken as a
16 result of the wreck. In other words, she wasn't
17 walking around with a broken ankle beforehand. She
18 didn't fall out of bed or anything like that. She
19 had a broken ankle as a result of the wreck. So
20 we're gonna say yes to number 2 and we're gonna go
21 on to number 3.

22 Now here's where y'all are gonna have to
23 do some talking, and you should, that's your job.
24 One of your three jobs is to talk to each other
25 about why you feel the way you do about these

1 questions. And it's really gonna be part of the
2 argument. What's the big question in this case and
3 really the most important question in the case? Was
4 Ms. Jackie walking in the grass or was she walking
5 in the road? So that's the question you're gonna be
6 answering when you get to number 3. Did Ms. Jackie
7 do anything wrong, that's basically what it's
8 asking, was Ms. Jackie negligent. So if someone in
9 the room says I think Ms. Jackie was walking in the
10 road, I think she was negligent, if somebody, one of
11 you the twelve says that, I would start by saying
12 why, tell me everything, every reason you believe
13 that Ms. Jackie was walking in the road and have
14 that conversation. So you're gonna say, okay, you
15 think Ma. Jackie was walking in the road, tell me
16 what evidence you're basing that on, why do you
17 think Ms. Jackie was walking in the road. And if
18 that person says, well, I think Ms. Jackie was
19 walking in the road because Mr. Herring got up on
20 the stand and said that she was in the road and I
21 believe his testimony. Okay. Stop there and you
22 discuss that. You believe Mr. Herring's testimony.
23 Why? If somebody says they believe Mr. Herring's
24 testimony remind them that his testimony doesn't
25 even really make sense.

1 Now the first thing Mr. Herring said, if
2 you'll remember, is that as he was going down the
3 road, that there was this object in the road in the
4 middle of the road but he didn't know what it was at
5 first. It could have been a deer, it could have
6 been a person. We've all seen a deer in the road.
7 Some of us probably hit deer before. I mean,
8 everyone knows what a deer looks like and everybody
9 knows what Ms. Jackie looks like. You're telling me
10 she's standing in the middle of the road and you're
11 driving down the road at a safe speed, paying
12 attention, all this stuff, and you can't tell the
13 difference between Ms. Jackie and a deer? Yeah,
14 that's the first thing that doesn't really make
15 sense. So if somebody says I believe Mr. Herring
16 just say, well, how do you explain that, why
17 couldn't he tell that it was a person. So then if
18 somebody says, well, I still, I still believe Mr.
19 Herring. I believe, you know, maybe he got confused
20 or whatever and maybe they have an explanation for
21 it. Well, here's the next problem with what
22 Mr. Herring said that doesn't really make sense.
23 And this is, this is kind of an important part of
24 the questioning that I was doing when he was on the
25 stand and that's why you'll recall in his deposition

1 he was pretty clear on that she was in the middle of
2 road or 4 or 5 feet into the road. And then on the
3 stand he kind of started waffling a little bit
4 because he probably realized after he gave his
5 deposition that that's actually kind of an important
6 fact because what he's been telling us all along
7 what happened doesn't really make sense.

8 This is exhibit 2. Y'all are probably
9 familiar with this road anyway. It's right down the
10 road. Y'all have probably driven it before. But
11 this is the road we're talking about, right?

12 Everyone is kind of familiar with it. If not, we've
13 got the picture here. This road is not that wide.
14 It's a country back road. You know, I don't know
15 how wide this one lane is that you're driving in;
16 but it ain't that wide of lane, right? So Ms.
17 Jackie, as the defendant Herring has said all along,
18 is walking in the middle of this lane or even, you
19 know, 4 or 5 feet out from the white line, it's
20 basically in the middle of the road. I mean, you
21 know, this road is probably not much wider than 10
22 or so feet. So she's walking in the middle of the
23 lane and Mr. Herring says, I'm driving down the road
24 and I see this object in the middle of the lane and
25 I try to swerve to miss it, but there's a car coming

1 in the opposite direction so I can't swerve. In
2 other words, he was never able to leave his lane,
3 right, because if he was able to swerve all the way
4 out of his lane he would have hit the car coming in
5 the opposite direction. That's what he told us.
6 Does that lane look like it's wide enough to y'all
7 to fit a whole car in half of a lane all the way on
8 the left side? I don't think so. In other words,
9 if she's walking down the middle of the road and
10 he's not able to swerve in the other lane, he has to
11 stay in his lane, how does the contact happen on the
12 very far right side of the car. There's not even
13 that much room in the lane. Even if his car was all
14 the way as far as he could go on the left side of
15 his lane, if Mr. Jackie is walking in the middle of
16 the road that contact is gonna be in the middle of
17 the car, maybe just slightly right in the middle of
18 the car. It ain't gonna be all the way over by the
19 mirror on the fender; the lane is just not that
20 wide. So if somebody says, well, I believe that it
21 happened like Mr. Herring said it happened, just
22 look at the picture of the road and say how on earth
23 could he have not been able to swerve all the way to
24 the left, another car is coming, he had to stay in
25 his lane; but the impact happened over where it did

1 on the car. It just, it can't happen that way, it's
2 physically impossible.

3 So if somebody still says, well, I believe
4 Mr. Herring's story on, you know, on how everything
5 happened, well remind them that she ends up in the
6 ditch. And we, we had to talk about this a little
7 bit too, but remember, the ditch — and this isn't
8 a great picture but it's not that deep of a ditch,
9 it's not that hard to see, but everyone admitted in
10 the case that the ditch is another 4 to 5 feet off
11 the side of the road. In other words, you know, and
12 I think I, Mr. Campbell or one of the witnesses
13 said, you know, it was at least this far from the
14 edge of the asphalt to the ditch. Well, we know,
15 and everyone said that Ms. Jackie ended up in the
16 ditch. That's where her body was when we found her.
17 So the next question you have to ask if somebody
18 says I believe she was walking in the road 'cause
19 you got to say, well, how does she wind up in the
20 ditch. Well, I guess presumably there's a few ways
21 that she, you know, there's one way that she could
22 wind up in the ditch is if she's in the road and the
23 car hits her. Maybe she just bounces off the car
24 and flies into the ditch. I guess that's a
25 possibility. I'm not sure that that's really how it

1 works when you hit a person. It's not like hitting
2 a ball with a racket, you know, people are kind of
3 soft and flimsy. I don't think a person is gonna
4 fly from the middle of the road all the way into the
5 ditch. I mean, that's like 10 or 12 feet that she
6 would have had to fly to get from the middle of the
7 road to end up in the ditch. But let's just assume
8 for a minute that it's even a possibility that it
9 might be possible for a car to bump somebody and
10 propel them into the air and off to the side 10 or
11 12 feet. Mr. Herring already admitted that that's
12 not what happened here. If you'll remember what he
13 told us in his deposition and what he testified to
14 again on the stand is that when he hit her he never
15 saw her go into the air; and in fact, he heard her
16 slide sort of backwards down the car. And we know
17 that that's what happened because we know that she
18 hit the front of the car. And then we know that she
19 took the mirror off. And we know we have a better
20 picture of the car. You know, there's a fair,
21 there's a fair distance between the mirror or the
22 bumper and the front of the car where she was
23 originally hit, and the mirror. So if she hits this
24 bumper and then she takes the mirror out, the only
25 way that can happen is if she's going backward, not

1 off to the side. Or, if Ms. Jackie says that the
2 car actually ran over her leg, what most likely
3 happened is that when the car hit her off in the
4 grass and ran over her leg she was actually a
5 hundred percent stationary. But as the car
6 continued to travel by after she hit the front of
7 it, that's where the mirror got knocked off. So
8 just talk about that when you go back there. If
9 somebody says I think she was in the road, say how
10 could she have ended up in the ditch that far off
11 the road if she never flew off, if she never went up
12 in the air. So those are some of the reasons why
13 somebody says, well, I think she's in the road
14 because I believe Mr. Herring. Y'all need to talk
15 about that because what Mr. Herring said just really
16 doesn't make that much sense.

17 So let's put Mr. Herring's testimony
18 aside. Let's say a long time ago, confused, doesn't
19 really remember. Somebody says I believe Ms. Jackie
20 was walking in the road because there was that piece
21 of glass in the road, and they say obviously she was
22 in the road when the car hit her 'cause that's where
23 the piece of glass fell down. Well, remember, a
24 couple of problems. Trooper Ellis, he had no idea
25 when that piece of glass actually fell off the car.

1 As we know, the mirror was hanging off the car for
2 obviously there's a string there or wire. We don't
3 know if the mirror came right off. We don't know
4 if, you know, there was shards of glass in the light
5 here that were hanging off or anything like that.
6 But obviously, all the debris came off on exactly
7 the same fashion. Some of it would be hanging on
8 the mirror on the light. And obviously, as you
9 continue to drive down the road, if you hit a bump
10 or something like that, little pieces are gonna fall
11 off here and there, okay. You swerve off the road
12 and you hit somebody and all your stuff gets cracked
13 up and then you swerve back on the road and you hit
14 the bump, you know, you bump back on the road, it's
15 not, it's really not that inconceivable that one
16 little piece of glass would fall, okay. So maybe
17 that's how the glass hit. But let's talk about
18 something else.

19 There's also debris in the grass,
20 remember? A lot of debris in the grass. Now we
21 know that the car is supposed to be on the road so
22 it's not that inconceivable that a piece of debris
23 at one point or another along the way would end up
24 in the road. The car is supposed to be in the road.
25 If debris gets there the car is back where it's

1 supposed to be. That car ain't never supposed to be
2 in the grass so how does all this debris end up in
3 the grass? The only way the debris can end up in
4 the grass is if the car is over in the grass. But,
5 so somebody says, well, I think she was walking in
6 the road because there's this one little piece of
7 debris on the road, you say what about all the
8 debris that was in the grass. And when I say all
9 the debris let's talk about that for a minute
10 because we only got this one little picture, right,
11 this little bit of and we know there's more debris,
12 right. I mean, we got a whole mirror that's
13 missing. We got a whole front glass piece that's
14 busted out. We got a dented up thing. I mean, the
15 mirror has got to be somewhere, right? It ain't
16 just the mirror when it come off and it just turned
17 into this one little piece of glass and when we know
18 there was debris. And we know there's debris. And
19 we heard Trooper Ellis say he walked up and down the
20 road. This was the only piece of debris he found on
21 the road and obviously they weren't gonna find
22 debris in the grass. It's nighttime, the grass is
23 tall. We know there's more debris. We know that it
24 isn't on the road so that means it's all on the
25 grass. Why is all that debris on the grass in this

1 one little tiny piece of debris on the road? Now if
2 after discussing that there's still a difference of
3 opinion as to where the impact happened, somebody
4 says, I still think it happened on the road, ask
5 them why they're not considering all the other stuff
6 that's not on the road. There's no blood on the
7 road. Her leg got crushed under the tire. And in
8 fact, you're gonna have the operative report when
9 you go back there from McLeod, the medical records
10 that are gonna talk a little bit about the wreck and
11 that type of thing. All the witnesses said she was
12 bleeding, you know, she had this open wound. I
13 think Ms. Wendy said a gash, a hunk of meat was
14 missing the size of a fist, size of a fist. If she
15 gets run over in the road and her bone pops out and
16 she's got all this blood, why is there no blood in
17 the road? Why wasn't Trooper Ellis able to find a
18 gouge mark anywhere in the road? There's nothing in
19 the road except for this one tiny little piece of
20 glass. Everything else is over in the grass. So
21 somebody says, I think she was in the road, say why
22 aren't you considering all this other evidence.
23 That's why this one little piece of glass doesn't
24 really tell us anything, just one little piece of
25 glass, it's in the road where it's supposed to be.

1 His car is supposed to be in the road. The car was
2 in the road presumably before he ran her over. He
3 got back in the road after he ran her over. That
4 glass could have fallen off at any point in time.
5 So then the discussion might shift and somebody
6 might say, well I don't think he ran off into the
7 grass 'cause there was no tire tracks in the grass.
8 Remember Trooper Ellis came up and said, well, you
9 know, I walked up and down and I didn't see any tire
10 tracks in the grass. And so, you know, Mr. Herring
11 says, well, that proves I was never in the grass.
12 Well, if somebody says that just remind them it was
13 totally dry. It was completely dry, it wasn't
14 muddy, it wasn't wet. Also remind them that
15 Mr. Herring never hit his brakes. In fact, he said
16 he didn't even see, he just tried to swerve, came up
17 on them at the last minute. So he's not hitting his
18 brakes, he's not locking his tires up. I'm not so
19 sure that just driving through a thing of grass that
20 one time was completely utterly dry without hitting
21 the brakes and locking up is gonna cause any marks
22 in the grass. We've all driven on tall grass
23 before. I've got some grass on the side of my
24 driveway there. I'm terrible at parking in the
25 driveway. I drove on the grass all the time; it's

1 matted down. But if you drive through the thing,
2 grass at one time, the grass is dry, it's not
3 necessarily gonna leave marks. And in fact, if
4 y'all picked up on this, if y'all heard this,
5 Trooper Ellis actually said something pretty
6 interesting. He said sometimes or all the time in
7 these types of wrecks which happen is you get all
8 kinds of other people that come to the scene after
9 the wreck, right. You get the fire truck, you get
10 the ambulance. In this case we know Mr. Herring
11 said his wife came back to the scene in the pickup
12 truck. We know, he said the supervisor came out
13 there. So on any accident scene you got all kinds
14 of vehicles out there. And what's one of the things
15 that Trooper Ellis said. He said, well, sometimes
16 they all make tracks in the grass and it's really
17 difficult for us to determine which tracks are from
18 the emergency vehicles and the people stopping by,
19 there's tracks from the car. But what he said in
20 this case is that there were no tracks in the grass
21 anywhere. Now that could mean, I guess, that
22 Mr. Herring was never in the grass, that everything
23 happened in the road like he said it did. But what
24 is that more likely to you? This is the road. This
25 is where it happened, okay. You're telling me that

1 the fire truck and Trooper Ellis and the ambulance
2 and Ms. Herring and Mr. Herring's supervisor and
3 everybody that was at the scene, none of them drove
4 on the grass? Did they all park right on the side
5 of the little road? That's preposterous. Of
6 course, there were people in the grass. There's
7 fire truck in the grass, the ambulance in the grass.
8 If none of those big heavy vehicles made any tracks
9 in the grass, how can we conclude that Mr. Herring's
10 vehicle couldn't have gone off the road 'cause
11 there's no tracks in the grass. So if somebody says
12 there's no tracks in the grass, say somebody was in
13 the grass, we know somebody was in the grass. If
14 there's no tracks in the grass it just means the
15 grass was dry. That means nobody made tracks in the
16 grass.

17 All right. So after you discuss all of
18 that somebody might say, still, well, I just think
19 she was in the road, I think she was in the road.
20 Well, you're gonna have records back there and this
21 is one of the things we didn't really discuss during
22 the trial. It's evidence in the case so you're
23 gonna have it back there. It's the operative
24 report. And you know it's got a bunch of medical
25 mumbo jumbo, just a lot stuff that we didn't really

1 need to go into about the technical details and how
2 they do the surgery, that kind of thing. You can
3 read it if you want to; it will be back there with
4 you. We wanted you to kind of know what the surgery
5 was like if you were curious. So one of the
6 interesting things in here is where the doctor is
7 talking, talking about the procedure. It's a little
8 ways down if you're looking at this, it will be
9 exhibit 4. It's on the second page. It's a little
10 ways down. The doctor is kind of giving a narrative
11 of what's going on when he's doing this surgery.
12 And one of the things he says is, there were small
13 amounts of dirt and grass that were present in the
14 wound. He goes on to say, the majority of this was
15 washed out at the ER at the initial evaluation, some
16 of it is still present up in there. Okay. So she
17 goes to the ER and they wash out this wound really
18 good, clean it all out. They wash it on out. And
19 then she goes into the operating room and she's
20 still got bits of dirt and grass lodged up in her
21 leg. It's got to be lodged in there pretty good.
22 It's not common for an ER doctor who's scrubbing you
23 down, but it's still in there when the surgeons go
24 in. There's only one way that grass and dirt can
25 get jammed up in your bone that far, and that's if

1 you're standing in the dirt and when the car runs
2 you over and the tire basically jams your leg into
3 the ground and breaks your ankle. There's no
4 mention in here anywhere of any asphalt or any
5 pebbles or anything that might be in the road being
6 in her leg. If your leg got run over on the road,
7 the tire ran over your leg, and pushed it down into
8 the asphalt and ground it into the road, you
9 wouldn't have asphalt in your leg; you'd have little
10 pebbles and that kind of thing. That wasn't there;
11 it was dirt and grass. So after you discuss all of
12 that, then you can just ask, well, was there
13 anything else? You know, and I don't know, I don't
14 know what y'all are gonna discuss back there but I
15 don't think the defendants have even put forth any
16 other evidence that would suggest maybe, you know,
17 maybe this all happened in the road. I think this
18 is all the evidence that y'all have, everything to
19 look at. Everything points to happening in the
20 grass. But if somebody still says, well, I think it
21 happened in the road, ask them about Mr. Herring's
22 actions after the wreck. And I know it's hard to
23 sit there and take in the information as it's
24 coming, especially when we weren't allowed to take
25 notes in this case and, you know, you may not

1 remember all the times and everything; but that's
2 the good thing about this last part is I get to
3 stand up and kind of try to help you put it all
4 together. All right.

5 Let's remember, the very first call that
6 Mr. Herring made after he ran Ms. Jackie over was
7 not to the hospital or to the EMS or get help for
8 Ms. Jackie. He called his wife, told her come on
9 back up to the scene, we got to get our story
10 straight on this thing 'cause I just ran off the
11 road and hit somebody. First call. While she's
12 laying in the ditch. He hasn't even gone to check
13 on her yet. She could be dying. She could be
14 bleeding out. He's calling his wife so they can get
15 their stories straight so she can come back up to
16 the scene.

17 Now here's the other interesting part that
18 you may or may not have picked up on. The wreck
19 happened at 9:10 p.m. The first call to any kind of
20 emergency personnel, to EMS, to anything like that,
21 you heard Trooper Ellis say it was 9:08 or 9:18 p.m.

22 And you'll see the same thing in the ambulance
23 records that no call went to the ambulance either
24 until 9:18 p.m. That means eight minutes went by
25 between the time that he ran Ms. Jackie over to the

1 time that he actually called emergency personnel.
2 And I don't know if you picked up on this or not,
3 but when Trooper Ellis was first looking at — you
4 know, first he couldn't read it and then he was
5 looking at it. And I don't know if anyone heard him
6 say it, but when he looked at it he said, that's not
7 right. And then he says, oh, oh, yeah, 21:18 which
8 is 9:18. He was pretty surprised because he had, we
9 had just got done talking about how the wreck
10 happened at 9:10 and then he says the first call
11 came in at 9:18, naw, that can't be right. Well, it
12 is right, it was right. He waited eight whole
13 minutes to even call anybody. And as we're sitting
14 here today and as I'm blabbering on, I've been up
15 here probably for 15 or 20 minutes now. And you
16 might be thinking, well, eight minutes isn't that
17 long. But if somebody says eight minutes isn't that
18 long when you're back there deliberating, I guess
19 someone is probably gonna take the cell phones from
20 you and you don't have a cell phone, but I'm sure
21 one of you has a watch. Try just sitting there in
22 silence for eight minutes. Say nobody talk for
23 eight minutes, time that. Eight minutes is a long
24 time especially when it's somebody that could be
25 dying in a ditch, and he's calling all these people

1 to come help him out.

2 Now, another thing that Mr. Herring said
3 when he was on the stand, and I wrote this down, I
4 think it's a direct quote. Y'all have to get it off
5 your own memory of course, but if you remember when
6 he was testifying and he was talking about all the
7 people that he called after the wreck, none of which
8 apparently was emergency personnel. It was his
9 wife, it was his supervisor, it was this, it was
10 that, it was the other thing. He said we all try to
11 look out, he said we're all in law enforcement, I
12 called all the people I needed to call. And then he
13 said, we all try to look, and then he stopped. And
14 said I called other people I needed. He basically,
15 he basically just stood up there and told you
16 exactly what was happening. He said, we all try to
17 look out for each other, I was covering my butt, I
18 called all the people that I needed to call. I
19 called my wife so she could come up to the scene and
20 help me come up with my story. I called my
21 supervisor so he could come up to the scene and help
22 me cover up my story. I called — I didn't call
23 9-1-1 just to have them send any ambulance. I
24 called — who did he call? He called the fire chief
25 directly, his boss, at the Marion County EMS, and

1 then he sent out a paramedic. This is another thing
2 that we didn't really get into too much in the
3 course of the thing, but this is another interesting
4 little thing that you wouldn't even pick up on if
5 you didn't kind of know, if you couldn't picture how
6 this whole thing went down.

7 Remember they talked about just a little
8 bit about the smell of alcohol and had the EMT guy
9 up here. He wasn't the only EMT on the scene. They
10 had a couple of EMTs out there I think. Joey Price
11 I think is one of the names Mr. Herring said was a
12 very close friend of his he said. They put in their
13 report that there was a strong odor of alcohol on
14 Ms. Jackie, and you'll see that in the report. And,
15 you know, that's a pretty good defense in this type
16 of thing if we come in here and we're trying a case
17 and they're trying to convince you that Ms. Jackie
18 was a fault, to get up and say she was drunk, she
19 was hammered, she was on drugs, and she was just
20 wobbling around in the middle of the road, right?
21 That would be a great defense. If they were saying
22 that I wouldn't even be standing up. I'd be like,
23 you know, this jury is pretty smart. They ain't
24 gonna, they ain't gonna do, you know. But one thing
25 they didn't count on when they were writing this

1 report is, you know, they wrote this report right as
2 the wreck happened and they probably didn't count on
3 the fact that once Ms. Jackie got to McLeod and
4 McLeod is actually gonna do blood and urine test
5 because that's part of their protocol. Well, you're
6 gonna have the report of McLeod in there. And one
7 of the things it's gonna say is right there on the
8 second page, your drug screen and alcohol screen are
9 negative. So of course, by that point it was too
10 late for them to go back and erase it out of this;
11 but that's why you didn't hear about drugs or
12 alcohol throughout the whole case because believe
13 me, if McLeod hadn't run that test, if we didn't
14 have proof, if I couldn't prove to you that she had
15 never had a drop of alcohol or a drug in her life,
16 they would have been in here saying she reeked of
17 alcohol, she was a drunk, she was in the middle of
18 the road. They were setting this thing up from the
19 beginning.

20 Now what about the dash cam. The car's
21 got a video camera in it, and he says it doesn't
22 have the SD card in it that day even though he said
23 this camera was very important in patrol cars for
24 running traffic and that they're very expensive and
25 even they're expensive the city puts them in anyway.

1 Didn't have a card that day. So, you know, I think
2 when y'all talk about all of that you're gonna mark
3 yes. You're gonna just mark no to number 3 'cause
4 number 3 is just asking, was Ms. Jackie in the grass
5 or was she in the road. If you think she was in the
6 road, then you're gonna mark yes to number 3. But
7 if you think she was in the grass, then you're gonna
8 mark no to number 3. So if you mark no to number 3
9 like I think you will after you discuss all those
10 things I just talked to you about, you get to skip
11 all the way to question 7. You don't have to worry
12 about any of this other stuff. You just skip to
13 question 7 and you start talking about damages. I
14 think that's what you're gonna do after you talk to
15 each other about everything.

16 But let's go back just in case for some
17 reason you decide to mark yes to question 4 which is
18 basically to say Ms. Jackie was in the road or --
19 and I probably should mention this, once y'all get
20 done talking about all of that that you were just
21 talking about, somebody might say, well, you know
22 what, I think, I think we're right, I think Ms.
23 Jackie was in the grass, she was walking in the
24 grass, she wasn't in the road; but I still think she
25 was negligent 'cause she was walking on the wrong

1 side of the road, right? We've heard before you're
2 supposed to walk on the left side of the road,
3 you're supposed to walk facing traffic, that kind of
4 thing, we've all heard that. Well, Judge Russo is
5 when he's charging you on the law, he's actually
6 gonna give you the law on that and that will be in
7 the little packet you get, and it's the law of the
8 State. And what the law actually says about that
9 is, and it will be in a little section called duty
10 of pedestrians on a highway. And basically it has
11 three parts. What it says, is if there's a sidewalk
12 on the road you got to walk on the sidewalk. If
13 there's no sidewalk, if there's a paved shoulder,
14 you got to walk on the paved shoulder. And if
15 there's no sidewalk or paved shoulder where either a
16 sidewalk nor a shoulder is available and the
17 pedestrian chooses to walk along and upon the
18 highway, say any pedestrian walking along and upon
19 the highway, should walk as near as practicable to
20 the outside edge of the roadway; and if on a two way
21 roadway she would walk on left side of the road,
22 right? So what's this saying? This is saying if
23 you're not on the sidewalk and you're not on the
24 shoulder, you're allowed to walk actually on the
25 road. You can walk on that white line. You know,

1 so we don't force people to walk through the grass
2 if they don't want to. If there's no sidewalk, no
3 shoulder, you can walk on the white line or even in
4 the roadway. You can walk as long as you're as near
5 as practicable to the edge. But if you're gonna do
6 that you got to walk facing traffic. Why? Because
7 if you're walking on the white line and the car is
8 coming in the opposite direction and starts coming
9 at you, you're gonna want to see it so you step
10 aside to get back on the road, right? That makes
11 sense; it's perfectly reasonable. But she wasn't
12 walking anywhere on the road. She wasn't walking on
13 the white line. She wasn't walking as near as
14 practicable to the edge. She chose to just walk in
15 the grass, which is just like walking on the
16 shoulder or walking on the sidewalk. And you're
17 gonna have this whole law. It doesn't say anything
18 about walking on the left side of the road if you're
19 on a shoulder. You're not required to walk on the
20 left side of the road if you're on a shoulder. You
21 know why? 'Cause if you're walking on a shoulder
22 you're entitled to assume that car is not gonna run
23 off the road and hit you. It doesn't say anything
24 about you have to walk on the left side of the road
25 if there's a sidewalk. You know why, because if

1 you're walking along the sidewalk you're entitled to
2 assume that the car is not gonna run off the road
3 and hit you. What it says is if you're walking on
4 or in the road you got to be able to see the traffic
5 so you can step out of the way. Ms. Jackie wasn't
6 walking on the road. She was walking almost in the
7 ditch the testimony says, 4 or 5 feet off the road.
8 We know that's where she ended up. She isn't
9 required to walk on the left hand side of the road.
10 So if somebody says I still think she was negligent
11 even though she was not in the middle of the road
12 because she was walking her own way, just look at
13 the law together. You'll have it back there.
14 Remember, one of the, one of your duties, one of the
15 oaths that you swore when you swore an oath was to
16 follow the law as the judge gave it to you, and
17 that's the law. So yes, I think we're gonna answer
18 no to number 3 and just gonna go straight to number
19 7. But if you answer yes to number 3, then we get
20 to number 2. This is the same question as number 3
21 was, plaintiff's negligence proximate cause to
22 injuries. Again, you know, I think you're gonna
23 find Mr. Herring, you know, was driving the car,
24 that the car running her over was the proximate
25 cause of the injuries exactly. So I think if you

1 answer yes to number 3 you're gonna answer no to
2 question 4, and you're still gonna skip straight to
3 question 7, okay. And I know it sounds confusing,
4 but it has — we'll tell you what to do, just go to
5 this question, go to that. I think you're gonna
6 answer no to question 3. You can go straight to
7 question 7. Even if you answer yes to question 3 I
8 think you're gonna answer no to question 4. You're
9 still gonna skip to question 7. That means the only
10 way you're gonna get to question 5 is if you say yes
11 to 3 and yes to 4, which I don't think you're gonna
12 go.

13 But let's say you get to question 5. What
14 have you said if you've gotten to question 5, if
15 you've answered yes and yes and gotten to question
16 5, what does that mean about where you are in your
17 deliberations. Well, that means that you said that
18 both Ms. Jackie and Mr. Herring are at fault for the
19 wreck. Again, I don't think you're gonna get there
20 because I, either she was in the grass or she was in
21 the road. Well, let's say you did, you said both of
22 them are at fault for the wreck. This is where you
23 have to determine who was more at fault, okay. Now
24 again, I don't think you're gonna get there because
25 I think Mr. Herring was a hundred percent at fault.

1 But let's just say that as you're back there
2 deliberating and reviewing everything you decide
3 that Ms. Jackie was walking down the middle of the
4 road and she was at fault and that was the proximate
5 cause and you get to question 5. That still doesn't
6 mean that Mr. Herring gets off scot free 'cause even
7 if he was walking in the middle of the road and you
8 get to question to 5, you got to allocate
9 percentages.

10 And the judge is gonna instruct you on
11 some of the other law in this case. One of the
12 those laws being the duty of a driver of a vehicle
13 on a public highway. And he's gonna tell us that a
14 driver on a public road owes a duty to keep a proper
15 lookout for persons or objects upon the highway.
16 And he's more gonna say that this duty is not merely
17 one of looking, it's not just enough to say, oh, I
18 was looking; but it's a duty of seeing. A driver
19 must look in such an intelligent and careful manner
20 as to enable him to see a person or object on the
21 roadway. So even if she is in the road, even if
22 she's in the middle of the road — I don't think
23 you're gonna get there — but even if she is, he's
24 still somewhat at fault for this wreck. He's
25 driving too fast and he's not paying attention, he's

1 not looking. So even if you get to question 5, that
2 number for defendant Mr. Herring, that percentage
3 should be a lot higher than it is for Ms. Blackwell.
4 Even if you find Ms. Blackwell five percent at fault
5 for, you know, I don't know, walking after dark,
6 there's nothing with walking after dark. There's no
7 law against that. But let's say someone says she,
8 well, should have left while it still light, she's
9 five percent at fault, whatever. That number should
10 always be smaller for Ms. Blackwell than it is for
11 Mr. Herring. You should never, never give more than
12 fifty percent for Ms. Blackwell because if you put a
13 number of greater than fifty percent for
14 Ms. Blackwell, that means that you think she was the
15 most at fault for the wreck, that she's the one that
16 did everything wrong. And I don't think y'all are
17 gonna find that. So one way or another, 'cause
18 actually if you put the plaintiff at more than fifty
19 percent you sought in deliberations that's the end
20 of it. You know you don't even get to talk about
21 compensating her, putting her back to where she was.
22 I don't think you're gonna get to question 5 or 6.
23 If you do I think you're gonna put a very small
24 number for the plaintiff. But one way or another
25 we're gonna get her around to question 7. But when

1 you get to question 7 just as, you think the other
2 part is the hard part 'cause you're gonna have to go
3 through all this evidence. But that was actually
4 the easy part 'cause you got a road map for you.
5 You've got all the evidence and you know what to do
6 with that, you just apply your common sense. It's a
7 little harder when you get to question 7 'cause you
8 don't have a road map. There's nothing in here that
9 says, well, here's, how you figure how to allow a
10 damages verdict, it's just a line. Y'all just have
11 to come up with a number, pluck out a number out of
12 thin air.

13 So the Court and Judge Russo is gonna try
14 to help you with that a little bit and it ain't
15 gonna be much help. One thing he's gonna do when
16 he's giving you your jury instructions, he's gonna
17 tell you about every different kind of damage that
18 you can consider. 'Cause remember, I told you at
19 the beginning of the case you got to think of a box
20 and you got to find some losses, you got damages
21 inside the box. And those are the only things you
22 can consider. You can't consider anything else.
23 Judge Russo is gonna help us by telling us what
24 those things are that you can consider. He's gonna
25 tell you you can consider out-of-pocket expenses,

1 medical expenses including, you know, hospital bills
2 and rehab bills, psychological trauma, mental
3 anguish, mental distress, anxiety, psychological
4 injuries, depression, pain and suffering,
5 disfigurement, and loss of enjoyment of life.
6 That's a lot of things. That's like eleven
7 different things. And those may sound like all the
8 same things. Like a lot of times people think, oh,
9 pain and suffering and mental anguish is the same
10 thing, but it's actually not the same thing. Pain
11 and suffering is actual physical pain. It's the
12 compensation you get for having to endure the pain.
13 The mental anguish is the mental suffering you feel
14 as a result of that pain keeping you, you know, from
15 doing the types of things you do and that type of
16 thing so they're different things. And Judge Russo,
17 you know, his instructions are a lot more thorough
18 than this and he's gonna kind of define every one of
19 these categories for you. But it's important for
20 you to know that there's a lot of different
21 categories of damages that you're allowed to
22 consider in that box. The most obvious one is the
23 medical bills and that, you know, that's an easy one
24 'cause you're gonna have the medical bills with you.
25 You're gonna see that they're about 110,000 and

1 Ms. Wendy told you that suddenly you're gonna maybe
2 have everything in there. It doesn't have
3 prescriptions and everything like that; but you
4 know, it's a good place to start.

5 Obviously if Mr. Herring drove off the
6 road and ran her over he should pay for her
7 medicals. Like I told you at the beginning of the
8 case that's the smallest part of the harm. This is
9 actually the smallest part of the harm 'cause this
10 just puts her back where she was. All this money
11 goes to somewhere, somewhere else. It's all these
12 other things that help fix the things that can be
13 fixed.

14 MR. BAXTER: Object to that last statement
15 he made, it's improper argument.

16 THE COURT: It's overruled. He — step
17 over here.

18 (WHEREUPON, counsel approached the
19 Bench for an off-the-record discussion.)

20 THE COURT: I'm gonna sustain the
21 objection.

22 MR. POULIN: All right, so that's the
23 medical bills. That's the one thing in all the
24 different kinds of harms and losses Judge Russo will
25 talk to you about. But he's gonna talk to you about

1 future damages too, and all these damages that she's
2 suffered already she may also suffer in the future.
3 And he'll talk to you about how to decide whether or
4 not to award future damages. But one thing that you
5 need to know that Judge Russo I think will tell you
6 is that in our civil justice system plaintiff only
7 gets one bite at the apple. She doesn't get to come
8 back in front of another jury later on if she has
9 more complications or anything like that so when
10 you're considering medical expenses you're also
11 entitled to consider future medical expenses, if
12 she's gonna have future surgeries, future problems,
13 that type of thing, future doctor visits, okay. So
14 that's just the medical bills.

15 Then you got all these other kind of
16 damages that you need to try to figure out how to
17 assign a value. There's no right way to it.
18 There's no way to do it a hundred percent. There's,
19 you know, every jury, you can do it. You're the
20 jury; it's totally within your province. One way to
21 do it is to try to break it down in smaller parts.
22 That's a good way to try to do it. You try to break
23 it down into smaller parts and you look at each
24 individual element, and you have to consider them
25 separately. You don't necessarily have to, you

1 know, award a value to everything but you have to
2 talk about every element separately and maybe break
3 it down into maybe days or weeks. I did the math
4 just for your benefit because it's a lot easier to
5 do it online than to count it out, but you're
6 allowed to count it out when you go back there if
7 you want to. It's been 850 days since this wreck.
8 May, and you know, do the math for yourself. It's
9 been 850 days. And just in case you were curious
10 that's 1,224,000 minutes. And I'll talk about
11 minutes in a minute that that might be important
12 but. You may want to assign a dollar value to each
13 figure for each day. You just have to go through
14 this. Or for each week or for each week or for each
15 minute and go through each one; that's one way to do
16 it. There's a number of ways to do it. You may
17 assign different dollar amounts for different
18 periods. So for example, we know that she was
19 bedridden for the first couple of months. Well, we
20 knew she was in the hospital for a couple of weeks
21 first of all. You might give more per day for pain
22 and suffering, you know, for those reasons. And
23 then while she's bedridden maybe you give her a
24 little bit less but still more than you would give
25 her now for future pain and suffering. Same thing,

1 mental anguish might be the opposite. Mental
2 anguish, that might be up as time progresses because
3 she's spending more and more time in the house, more
4 and more depressed, can't go out and do the things
5 she wants to do. You can work it out however you
6 want. But there's only one thing that you have to
7 keep in mind when you get to the end of this, is
8 that just like I told you, you can't increase that
9 verdict for things outside the box. You can't
10 increase the verdict because you feel sympathy for
11 her or because you don't like Mr. Herring or you're
12 mad at him or whatever. You can't do it, you can't
13 increase it. But you also can't decrease that
14 verdict. Once you add it all up and get to what is
15 the right number, to what is the fair number, you
16 can't decrease the verdict just because it seems too
17 high or it seems like too much for anyone to pay.
18 'Cause once you got all this stuff up and you start
19 talking about all these damages, you're gonna end up
20 with a big number. You might be up in the millions
21 and someone might stand up and say, whoo, wait a
22 minute, we ended up in a place that number just
23 seems too high. Well, if you got there the right
24 way, if you considered everything, if you got to the
25 right number, you can't reduce the number just

1 because it seems too high.

2 Now before I move on I want to talk a
3 little bit about those eight minutes because I
4 think, I just think, you know, and Trooper Ellis was
5 surprised. When I first saw this I was surprised
6 about this eight minute lapse between the time he
7 ran her over and the time he called EMS. I want
8 y'all to think about when you're thinking about
9 mental anguish and pain and suffering and that type
10 of thing. I want you to think about Ms. Jackie and
11 that eight minutes and, again, eight minutes is a
12 long time. This guy has just run her over, her leg
13 shattered, and she's lying in a ditch. He's on the
14 phone talking to his wife trying to get his story
15 straight, calling the supervisor, trying to get a
16 friendly investigator out there, a friendly EMS crew
17 to put things in the thing. She doesn't know what's
18 going on out there. She's lying in a ditch. She
19 doesn't know if this guy is coming back for her.
20 She doesn't know if this guy just ran her over and
21 kept driving. It's the middle of the night. It's
22 not the middle of the night, it's dark. She's in a,
23 you know, fairly desolate, there's no houses around.
24 She can't move. She doesn't have a cell phone on
25 her. She's lying there in extreme pain for eight

1 minutes. While he's trying to cover his behind
2 she's lying there wondering if anyone is ever gonna
3 find her before, you know, before it's too late.
4 She's bleeding. Am I gonna bleed out, am I gonna
5 starve to death, am I gonna freeze to death tonight.
6 It's like being on ship wreck. It's like being on a
7 deserted island for eight minutes she's laying there
8 not knowing what's gonna happen to her while he's
9 covering his behind. So if you do write this thing
10 up and you decide that you're gonna try to figure
11 out how to award some of these damages by a minute
12 or by hour or however you do it, I want you to put,
13 I want you to put some emphasis on that eight
14 minutes 'cause I venture to say that was the worse
15 eight minutes of her life. I venture to say that
16 would be the worst eight minutes of anybody's life.
17 So once you do that you're gonna add all
18 that up and then you're basically gonna be there,
19 okay. But there's one other really important thing
20 that I want to tell you and then I'll sit down. You
21 do not reduce the plaintiff's total damages based on
22 percentages up here if you even calculate
23 percentages. And remember, you may not even get to
24 percentages. If you answer no to question 3 or no
25 to question 4 you go straight to question 6. But

1 let's say you're up here and you say that Ms. Jackie
2 is 5 percent at fault and Mr. Herring is 95 percent
3 at fault for whatever reason that you would come up
4 with for her being 5 percent at fault. And let's
5 say that you run all the numbers and you talked
6 about the damages — and I haven't dwelled on
7 damages 'cause, you know, I think that's a part of
8 the case that y'all just know from your experience
9 and your common sense about the isolation that she's
10 gone through, about how the joy of her life walking
11 around, how that was taken from her. There's no way
12 I can stand up here and put into words how that's
13 affected her. I just have to count on y'all to be
14 able to process it, you know. But let's say that
15 you've done all that, had all your discussions about
16 it, and you come up saying that five million dollars
17 is the right amount after you've done all that.
18 Five percent of five million dollars is what?
19 \$250,000. You said the plaintiff was five percent
20 at fault so you might be attempted to subtract that
21 \$250,000 and only write what would be \$4,750,000 on
22 this line because you're subtracting out that five
23 percent. If he tells you you're not supposed to do
24 that, you don't do that. If there's any math or any
25 addition or subtraction that needs to be done, the

1 Court handles that after, okay. So if you get to
2 number 5 and if you even assign percentages, just
3 forget about it after you're done. You know, once
4 you move on to 6, once you move on to 7, just put
5 your hand over it, block it out of your mind. That
6 shouldn't factor into your discussion again 'cause
7 when you're writing your number on this line, the
8 five million, whatever number you come up with on
9 that line, you don't factor percentages into it.
10 You don't subtract anything from it.

11 Once you figure out what you think the
12 right amount of the verdict is you just write it on
13 that line. Then you knock on the door and you're
14 done. And I really appreciate the time that you've
15 given us this week case. The case is very important
16 to Ms. Jackie. And I really appreciate the fact
17 that everybody has been alert, paying attention, and
18 I know that that y'all are gonna go back there and
19 do the right thing and let Ms. Jackie get the
20 justice she deserves. Thank you.

21 THE COURT: Mr. Baxter.

22 MR. BAXTER: May it please the Court.

23 THE COURT: Yes, sir.

24 MR. BAXTER: Again, I'll start off the
25 same way I started before by thanking y'all for

1 being here. I thank y'all for listening carefully.
2 I think probably more the judge telling you this
3 than me, but I do believe everyone listened, paid
4 attention, considered everything. You know, we as
5 attorneys and judges, we'll tell you horror stories
6 of peopling sleeping, clearly not paying attention;
7 but I think this is a case where everyone paid
8 attention, looked, listened, and gave everyone the
9 proper consideration you need to in this case. And
10 I'm going to — it was a short trial and it's
11 tempting to get up here and spend an hour going over
12 it and talking about everything. But I know
13 probably the smartest person I know, my wife, and
14 she says, you know, when you do these closing
15 arguments be as brief as possible, let the jury do
16 their job, don't bore them to death, don't raise
17 issues you don't need to raise. So if I jump over
18 something or skip something or don't talk about
19 something, it doesn't mean it's any less important.
20 It just means that for whatever reason I don't talk
21 about it 'cause you're still gonna go back and
22 consider all that and talk about it and look. And
23 you're gonna have photos and you're gonna have
24 medical records, and you're gonna talk about those
25 things.

1 And I'm gonna start off with just, you
2 know, the judge is gonna charge you and Mr. Poulin
3 talked about the burden of proof and the burden of
4 proof is the preponderance of the evidence. And a
5 lot of times judges talk about the scales and
6 weighing. And actually, with the burden of proof in
7 this case there are three different scenarios that
8 you will be considering. The first one is if you
9 feel that the plaintiff met the burden of proof and
10 proved that more likely than not it happened the way
11 she said it was, which was off the road, then that
12 you may find accordingly. On the other hand you
13 find that the second one is if you find that, no, I
14 think it happened in the road the way Mr. Herring
15 talked about, the way the photos, whatever show,
16 then you find for the defendant. The third one is
17 if you go back there and say, I'm just not sure,
18 I've been sitting here, I've looked at it, I don't
19 know what happened that day. Well, in that case the
20 plaintiff failed to meet her burden of proof. The
21 plaintiff comes in here asking you as a jury to do
22 something, therefore, the plaintiff has the burden
23 of proving so it's not just a either/or. It's
24 either/or, or I'm not sure, so consider that.
25 The other thing is the evidence — we've

1 got rules, you know. You may have heard me object,
2 Mr. Poulin object, and the judge say a different
3 thing. And I'll give you an example. Hearsay.
4 Hearsay is if we're not gonna bring someone in to
5 the courtroom to testify, we don't want someone else
6 coming in saying, well, they said this and they said
7 that. We want the opportunity for you as the jury
8 to see them, hear them, you know, cross-examine
9 them, and all that. So we, sometimes there's some
10 things, you know, well, why didn't they come in,
11 curious about this. The same thing with evidence.
12 There's gonna be some things you heard about going,
13 I would like to see that, you know, I want to see
14 that. And the reason we all have the same thing.
15 Plaintiff and I have, we've got everything the same,
16 share everything. There's no secrets as to what
17 there is. So we all have the information, and
18 there's some things that they're not gonna put in or
19 I'm not gonna put in that because the law says, no,
20 we don't, you know, we don't, it's proper, that's
21 coming in. Or we — they always talk about the best
22 evidence being, you know, if somebody writes
23 something out, maybe they don't put it, let them
24 come testify. The best evidence is to hear them,
25 see them testify. So just because something didn't

1 come in doesn't mean that it's not important, that
2 it hurts one side or the other. It just means that
3 the law, rulings, whatever, does not allow us to put
4 it in.

5 The same way with witnesses. We could
6 have expended, we could have spread this trial out
7 for another day or two by bringing in witnesses to
8 say the same thing over and over and over. You had
9 Kamadie Campbell came up and say this is what I saw
10 when I got there. I could have brought up Ronnie
11 Joey Price to say, this is what I saw when I got
12 there which would be the same as Kamadie Campbell so
13 we tried to boil it down to just the important
14 witnesses. And again, because someone didn't
15 testify doesn't mean anyone's hiding anything
16 because, again, we all know, we all have that
17 information but we're trying to present the best
18 case to you so that you can make the best decision.

19 Now one thing that we didn't talk about a
20 lot in the trial were the medical records. And you
21 will have a number of medical records. Mr. Poulin
22 talked about some of them. And this is one of those
23 exceptions where we said, okay, we're dealing with
24 people, nurses in ER room, that are seeing hundreds
25 of people a day. And if we brought a nurse in to

1 say, do you remember this, they're gonna say, well,
2 let me read my records. So this is a situation
3 where we have agreed that we're just going to let
4 you have the medical records and let you look at the
5 medical records and decide. And I'm gonna just
6 spend — because we've not had a chance to do this,
7 I'm gonna spend just a couple of minutes talking
8 about these. Everybody, I realize, it's at a
9 distance; I'll try to blow some of the things up.
10 But the, you will have in there, one of the things
11 you're gonna have is what is known as the ER or the
12 ED medical chart which is actually the first
13 document that was put together when she was taken
14 into the emergency room; and it goes through, you
15 know, some general information, what time she
16 arrived. Then down at the bottom it talks about the
17 nurse's assessment which is when the nurse talks to
18 her, gets information, makes observations about
19 what's going on.

20 Now, in there it talks about secondary,
21 history sort, patient, 51 year old female brought by
22 EMS, alert, slightly confused, states that she was
23 walking across the street and was struck by a motor
24 vehicle. So she told the nurse on that morning
25 that — I guess it's still late night, not early

1 morning yet. She says, I was walking across the
2 street and got hit by a car. It goes on and it
3 talks about leg pain. It also talks about — and
4 you're gonna see this throughout — the only injury
5 that she had was to her left leg. And there's other
6 records you'll see there was no injury to her hand,
7 to her arm, to her chest, to her abdomen. They ran
8 a number of different tests. There were no other
9 injuries or no bruising, there was nothing, just the
10 left leg. And I bring that up because we know the
11 mirror got broke off, and I'm still not sure how or
12 why because there was no corresponding, you know,
13 your hand hits a mirror at 55 miles an hour, you're
14 gonna break some bones. If you hit your side you're
15 gonna break mirrors. I mean, it's just things for
16 you to consider.

17 The other thing is, and Mr. Poulin got up
18 here and talked about, you know, he described this
19 injury of the wheel or the tire crushing her foot
20 causing this wound and you would expect there to be
21 blood in the road from running over a foot. That's
22 not the injury she had. The injury she had was a,
23 she had a broken ankle, left ankle, and then there
24 was a open wound to the posterior knee area. This
25 open wound that was bleeding and all that was kind

1 of in this area up around the knee so it wasn't a
2 situation where he ran over her foot and crushed it;
3 and you're gonna find all this inflammation, this
4 evidence in the road. It didn't happen that way,
5 and that's why you need to looking at these records
6 look at this. And again, we're gonna talk about
7 common sense. You know, here's the injury we know
8 occurred. It doesn't matter how I describe the
9 injury or Mr. Poulin describes the injury. We have
10 the records showing how the injury occurred.

11 The next thing is we then get a doctor who
12 comes in who is, who talks to her. And it's my
13 understanding this is the first medical doctor that
14 talked to her and he starts off with, it says,
15 female struck by vehicle while walking down the
16 street. She presented to the emergency room with
17 obvious deformity to the left leg. And again, it
18 was, you know, she's telling the medical personnel
19 that she was either crossing the street or she's
20 walking down the street.

21 And we then have another document where
22 we're getting doctors coming in checking on her.
23 And at this point in time there was concern because
24 the, as everybody said she was not acting quite
25 right at the time. The doctors were concerned that,

1 okay, she's got a broken leg and, you know, that's a
2 serious injury and you're gonna be in pain but it
3 doesn't explain her behavior. So at that point in
4 time they brought in a doctor to address the
5 delusional. And you'll see, and one thing first I
6 thought is, okay, maybe she hit her head. No head
7 injuries, okay. You'll see that in there. There
8 was no head injury. There was no injuries other
9 than to the leg. And again, we have her walking
10 down the street. You'll have those records, and it
11 goes through some of the things she said while she
12 was in there.

13 Next we have a, another consultation with
14 another doctor. In this one she says, hit by a car,
15 bent down to check her shoe, car came around and hit
16 her in the head. No evidence she was hit in the
17 head by anything, no lacerations or bruise or
18 anything. Given this I do not put much stock in her
19 history. Again, the injuries were isolated just to
20 the leg. And then the 5:18 we get — I think this
21 may have actually been after the surgery. But one
22 thing he talked, Mr. Poulin talked about is, you go
23 into the hospital, you get a lot of blood work done,
24 they check everything; and in doing this, they
25 determined that not only did she have a leg injury,

1 she had significant malnutrition, claims she's not
2 eating well. Her albumin is low, her calcium is
3 low, so she is suffering on that evening from
4 malnutrition. And later on they talk about protein
5 malnutrition. This is not a condition that occurs
6 in a few hours. This is a condition that occurs
7 over a period of time. And in fact, the hospital,
8 when they do these records, you'll see they kind of
9 rank down in importance. And you got one that
10 initially the records were, broken angle, need
11 surgery, chemical imbalance, concerned possible
12 nutrition. But by May 18th they noticed that she
13 had severe protein calorie malnutrition and this was
14 the biggest concern of the hospital. This continued
15 to be the biggest concern of the hospital even more
16 so than a broken leg. And this is the, again, this
17 is just the history consult that Mr. Poulin talked
18 about. And in this one she just indicates that
19 walking with traffic. Now why is that important? I
20 mean, I know it sounds like we're in here trying to
21 beat up Ms. Blackwell and say she said some stuff
22 that doesn't make any sense and she's in the
23 hospital. No. The reason we're pointing that out
24 is the judge is gonna talk to you about credibility.
25 And when I say credibility the first thing comes to

1 my mind is was this person telling the truth or not.
2 That's just one aspect of credibility. Another
3 aspect of credibility is, okay, this person is
4 telling me something. Are they in a position to be
5 able to tell me something, are they in a position to
6 explain something. If somebody says, you know, I
7 saw an accident but it was two miles away and
8 somebody else said, I saw an accident and I was
9 fifty yards away, the person who was closer is gonna
10 be more credible because they have better
11 information, you know, you can kind of believe what
12 they I said. The reason for this is the, you know,
13 we're dealing with Ms. Blackwell who is a super nice
14 person, okay. She, you know, just I wish I could
15 say bad, I can't, she's a nice person. But she gets
16 on the witness stand and they're telling you this is
17 what occurred. She was walking in the grass,
18 Mr. Herring drove off the grass and hit her.
19 Judging credibility you need to go back and look at
20 all these things. Look at what was she telling
21 people at the hospital. What was she telling the
22 highway patrolman who went to the hospital and
23 talked with her. Those are things you can look at
24 and say, is it credible? And again, I am not in any
25 way suggesting I think she's lying with. I think,

1 if anything, you know, I think they keep saying
2 she's confused about some things and I think the
3 situation here is that maybe there's some confusion
4 about what happened that evening. And the other
5 thing is, in her testimony — well, on top of that,
6 she suffers from mental illness which if you have
7 family members, I have family members with mental
8 illness, and I know people don't like medication but
9 you can control it with medication. People can live
10 normal lives with medication. You know, things
11 don't happen when you're taking your medication. On
12 the day of the accident she did not take her
13 medication. On the day of the accident she didn't
14 eat anything. She ate breakfast. Didn't — drank a
15 soda. On the date of the accident she was suffering
16 from severe malnutrition. Those are all things you
17 look at and say, okay, is this person in their right
18 mind, is this person able to relate to me what
19 happened this day. Those are things you're gonna
20 look at in making your decision.

21 And a couple of things that she said. She
22 talked about she left around 4:30, maybe 5. The
23 accident happened two miles out. If you're walking
24 really slow, it's not gonna take you an hour to walk
25 out there. So we have — assume it's five, assume

1 it's an hour. We've got over three hours that we
2 don't know where she was, what she was doing. The
3 other thing is she testified that, yes, when this
4 accident occurred the sun was out, it was light, I'm
5 walking in the grass, I look back and I see this car
6 come. Now not, the car swerved off the road, it hit
7 me, the car was driving along the, in the grass,
8 coming straight at me. I think she said it even
9 blinked its lights at me or something. Those are
10 things you can look at and consider and say, okay,
11 you know, you know, it's easy to say, well, maybe
12 she was confused about this or confused about that.
13 Those are things you need to look at and consider.
14 You know, where was she for three hours, what was
15 going on. Was it a situation where she got to, you
16 know, yes, started walking back, was in the grass,
17 all the problems of medication, malnutrition, the
18 not eating, did that catch up with her at some point
19 in time while she was walking home. The other thing
20 she — and this is Mr. — Mr. Poulin talked about
21 the, you know, I guess he talks about you have an
22 accident and you got a vehicle going 55 miles an
23 hour and you hit somebody, they're gonna drop
24 straight down. The debris is gonna drop straight
25 down, the mirror is gonna, you know, that doesn't

1 tell you anything. If you have an impact like that
2 you're gonna have stuff spraying out going away from
3 the vehicle. You have Ms. Blackwell told you she
4 was actually kind of leaning or falling over. She
5 testified that when she hit the ground she rolled
6 which makes perfect sense. She testified that when
7 she got up she stood up and tried to walk. And the
8 reason that's important is, is they're saying, oh,
9 well, everyone testified that she was in the ditch
10 and Mr. Poulin would have you believe that the only
11 way she could get there is if she flew to the ditch.
12 No, it is perfectly reasonable, it makes common
13 sense, if you have an impact like that things are
14 moving. Things are, you know, it may be that, you
15 know, for the first instance her foot was planted
16 and she got hit by the car and got the wound, then
17 she describes she kind of fell backwards and rolled.
18 So you can't say, well, because she was in the
19 ditch. And the same thing, the photograph and
20 I'll — in the grass. Y'all can decide what it is
21 and we've had this ongoing debate about what it is.
22 I think it's a mirror, okay, that's, you know,
23 that's just, may be a wild guess; but again, if a
24 mirror comes off a vehicle going 55 miles an hour
25 it's gonna roll, it's gonna bounce, it's gonna end

1 up no telling where. So you know, really in one
2 sense you can look at it and say, well, there's
3 debris in the road, there's debris off the road,
4 does that necessarily say if the accident happened
5 right here and because of, you know, these issues
6 that it had to happen off the road. I would suggest
7 to you that when you look at this and consider it,
8 it does not.

9 The other thing, Trooper Ellis talked
10 about he went and walked the grass looking for
11 tracks in the grass. And I agree with Mr. Poulin
12 that, you know, I drive off the grass with my, at my
13 house, and if my grass is not cut at least for a
14 period of time when I drive on it there's gonna be a
15 trail. And you're gonna see this is not, this grass
16 is kind of high, and Trooper Ellis is looking for
17 these kind of things. He didn't just look in one
18 area. He walked up and down, did not see any tracks
19 like you would expect to find in the grass at that
20 time.

21 Now you heard Mr. Herring's testimony.
22 The testimony was, he's driving down the road going
23 the speed limit, realized there's something in the
24 road. There's an oncoming vehicle, make a decision
25 to try to kind of swerve. And of course, you know,

1 I find this interesting that, you know, place
2 somebody in the road and they say, you know, I was
3 this many feet over, okay, that means it had to
4 happen that way. No. Unless somebody went out and
5 measured and took measurements and, you know, you're
6 guessing, okay. And you know, when you ask somebody
7 distance like that, at best you're guessing. Maybe
8 it was 5 feet, maybe it was three; but irregardless
9 he testified that she was in the road, period. And
10 he told you what happened. There was an oncoming
11 vehicle. It was dark. There was no lights in that
12 area. Ms. Blackwell, as Kamadie Campbell talked
13 about, was wearing dark clothing. You know, all the
14 things that, you know, you look at and it's kind of
15 a recipe for disaster. And then a lot of time he
16 spent talking about the time, eight minutes, eight
17 minutes, eight minutes, eight minutes. He testified
18 I think at around 9:10, I'm not sure. You know, if
19 something like this happens, unless you look at your
20 clock you're not gonna know when it happened. He
21 said, okay, I wasn't sure so I drive up to the road,
22 turn around, came back. He's making phone calls. I
23 think he may have called his wife first saying I
24 think I hit something. Actually tried to call her
25 or couldn't get her, called her back later, got her.

1 But he also testified that he said, I radioed into
2 dispatch and I called into dispatch. You know, it
3 wasn't just calling my friends. He was radioing
4 dispatch, calling dispatch which, you know, we watch
5 enough TV, dispatch is the radio operator or the
6 Sheriff's Department. Now the Sheriff's Department
7 dispatcher, it's then their duty to notify who else
8 needs to come. In this case, you know, he goes up,
9 turns around, comes back, notifies dispatch. Until
10 you know that there's someone injured you're not
11 necessarily gonna call an ambulance immediately.
12 Comes back, he calls back to dispatch and says you
13 need to send an ambulance. Dispatch then would
14 contact the EMS and say we need someone out here.
15 The other thing that's happened during all this is,
16 okay, because he was affiliated with the Sheriff's
17 Department we need to get the highway patrol
18 involved, let them come investigate the accident.
19 So it's not a situation as Mr. Poulin would suggest
20 that this accident occurs and he waits eight minutes
21 to get in touch with people he needs to get in touch
22 with. Yes, I mean, I, maybe things could have been
23 before maybe a minute or two sooner; but it's not a
24 situation where he did nothing for eight minutes
25 when he just called his wife, he just called his

1 friends. He called, did what you're supposed to do,
2 contact dispatcher; they in turn get in touch with
3 whoever needs to go. He called them back and said,
4 look, you need to send an ambulance. He did these
5 things. And there's no, you know, even if you buy
6 into the 9:10 and 9:18, that eight minutes is
7 comprised of him going up, turning around, coming
8 back, seeing what it is, calling dispatch, dispatch
9 then calling him and also contacting the highway
10 patrol.

11 Now I'm — the judge is also gonna talk
12 about the law and it's kind of — I just want to
13 make sure y'all understand this issue. This lawsuit
14 is against the Marion County Sheriff's Department.
15 No question but that Mr. Herring was a reserve
16 officer. He was a volunteer and the judge will
17 instruct you on the law and the law talks about that
18 a governmental entity such as the Sheriff's
19 Department is liable for the negligent acts of its
20 employees who are acting in course and scope of
21 their employment doing what they're supposed to be
22 doing. But it's liable only in the same manner and
23 to the same extent as a private individual. And
24 basically that's just saying — and the judge is
25 gonna spend a lot of time charging you on that.

1 Just because this accident happened doesn't mean
2 that the plaintiff is entitled to a verdict. You
3 have to show that Andrew Herring acting in the
4 course and scope of his employment did something
5 negligent just like anyone else driving down the
6 road; and therefore, that is when you look at the,
7 his negligence, or you look at Marion County as
8 being responsible for his action.

9 And the other thing that I do want to
10 address is because Mr. Poulin talked about it is
11 that there are — you know, there's laws on the
12 road. The speed limit, speed limit is 55. You got
13 red lights you stop. Green light, go. There's
14 also, you know, the law he's talking about that when
15 you're driving you keep a proper lookout. But
16 there's also a law that talks about pedestrians on
17 the roadway, and I'm gonna spend a little bit more
18 time on this because I think it's important. The
19 first one is, if there's a sidewalk you walk on the
20 sidewalk. If there's no sidewalk, okay. Don't
21 worry about that. The other one is that where a
22 sidewalk is not available, any pedestrian walking
23 along on a part of a road or a highway shall walk
24 only on a shoulder. He said paved shoulder. It's
25 not paved shoulder. It's any shoulder which we

1 include a grass shoulder. So if you're walking on
2 the road and there's a shoulder you can walk on, you
3 walk as far as practical from the edge of the
4 highway if you can. Now in this case, and you'll
5 see photographs, and I know that the shoulder is not
6 that wide. I mean, it's wide and it's probably, I
7 don't know maybe 4, 5 feet the entire shoulder which
8 I think Mr. Herring said that, you know, your head
9 could be in the ditch and your feet could still be
10 in the road. It's a relatively narrow grass area.
11 But the law talks about that you will walk upon it
12 if you can. Now, it then says where neither a
13 sidewalk nor a shoulder is available, any pedestrian
14 walking along upon a highway should walk as near or
15 as practical to an outside edge of the roadway. If
16 on a two way roadway shall walk only on the left
17 side of the roadway. Now you know, that's a fancy
18 way of saying if you can't walk on a sidewalk, you
19 can't walk off the road, you walk as close to the
20 edge of the road and you walk to basic traffic
21 which, you know, again, some laws make common sense
22 and this is one of them. And then the last part of
23 it says that any pedestrian upon a roadway shall
24 yield the right of way to all vehicles upon a
25 roadway. This is one of a few times where it

1 actually says if you're walking on the road, you as
2 a pedestrian are obligated to get off the road, to
3 step off the road. In order for you to do that you
4 need to be walking facing traffic so when you see
5 something coming you have a chance to step off and
6 get off the road.

7 And I'm just gonna talk a second about
8 damages. Mr. Poulin got up here talking about
9 damages and the judge will charge you on damages.
10 And medical bills, for example, we — you got to
11 decide what's related and what's not related. And
12 one issue I kind of have is the medical bills is
13 that at some point in time they were treating her
14 for malnutrition more than they were for an ankle
15 which is not related to the accident so you've got
16 to go and you've got to make a determination. The
17 other thing I'm gonna point out is that sometimes
18 lawyers will get up here and will throw out a number
19 so high and so crazy that it gets you to thinking
20 crazy, okay. Don't do that, don't fall for that,
21 okay. Whatever you do, use your common sense and
22 think about these things and do what you — don't,
23 just because some lawyer suggested it doesn't mean
24 you have to do it. And the other thing, I mentioned
25 before about common sense. And when I first learned

1 about this case I said, okay, you know, the accident
2 happens at night. What does common sense tell me
3 about this? And I'm thinking if you're, you know,
4 Ms. Blackwell walking on the road at night, it's
5 dark. The grass is not, you know, it's not waist
6 high, but it's kind of high, what are you gonna do?
7 What does common sense say you're gonna do in that
8 situation? You're gonna walk on the road, okay.
9 And just because I can't see what's in the grass,
10 it's kind of high, I'm gonna walk in the road. When
11 I see a car coming I'm gonna get out of there, I'm
12 gonna get back out of it. In this case, because she
13 was not walking in the right direction, she was
14 walking with her back to the traffic for whatever
15 reason she did not see the car. She did not get out
16 of the way and this accident occurs.

17 Now, and I'm — I got about thirty more
18 minutes of stuff here, but you know, I'll throw it
19 in the garbage. Y'all have seen it, y'all heard it.
20 I'm gonna kind of close with one thing. And we like
21 to, lawyers, we like to, you know, say this is your
22 role and this is your task, and we ask you to do
23 stuff to make a decision. It sounds easy. But the
24 judge is gonna charge you and you're gonna be, you
25 know, required to do this, is when you go back and

1 you're gonna make your decision based upon the
2 evidence from the witness stand, based upon the
3 photos, based upon the medical records. It's not
4 gonna be decided based on outside things, I don't
5 like the Sheriff's Department, I don't like Ms.
6 Blackwell, I don't like this person. Fortunately
7 for me it's not a beauty contest; certainly I'd
8 probably lose. But you're gonna make your decision
9 based upon the evidence, just the evidence. And I'm
10 gonna tell you, the most difficult part of about
11 that is that we, don't be sympathetic, don't feel
12 sorry for anyone. Ms. Blackwell is a super nice
13 person. Ms. Blackwell is the kind of person that
14 you're gonna want go back and say, irregardless of
15 the facts, you know, we got to do this for her. And
16 that's hard. And that is extremely hard and I
17 recognize that, and I'll tell you, human nature is
18 hard but you got to do it, okay. You took an oath
19 as a juror to come in here and make a decision not
20 based upon any type of likes or dislikes or biases,
21 whatever, but based upon the evidence. You heard
22 it, you saw it. You're gonna see it more when you
23 get back there. Just go back there, do your job.
24 Whatever your decision is, base it upon the evidence
25 that you heard. Thank you.

1 THE COURT: All right. Mr. Poulin.

2 MR. POULIN: Very briefly, Your Honor.

3 Thank you.

4 This is supposed to be my opportunity to
5 get up and rebut what Mr. Baxter said and say, well,
6 when he argued this, it really isn't because it's
7 this. But I don't even know what I'm supposed to
8 rebut. I don't know, I don't know what just
9 happened because Mr. Baxter first stood up and said,
10 oh, she was, she told someone she was crossing the
11 road, maybe she was crossing the road, even though
12 everybody said, no, she was walking on the thing.
13 Then he said that she had malnourishment and
14 malnutrition and that she had been out all day and
15 who knows, maybe it just caught up with her. What,
16 did she just faint in the middle of the road, is
17 that the theory now? I mean, I don't, a lot of
18 things have been said, a lot of different things
19 have been done. Ms. Blackwell we know has a touch
20 of mental illness. We talked about that. You're
21 gonna see her medical records; and one of the things
22 she said at the hospital is that she was sprayed by
23 something and had eight babies and then she told the
24 nurse that she'd had a baby right there the night
25 she was in the hospital, okay. That didn't happen.

1 She wasn't sprayed with something and had eight
2 babies. She didn't have a baby that night at the
3 hospital, okay. She wasn't crossing the road. She
4 wasn't doing this, she wasn't doing that, she was
5 walking in the grass. Which, one thing I that was
6 good about that is Mr. Baxter I guess agreed with me
7 that even the shoulder, it can be grass. You're on
8 the grass you don't have to be walking on the left
9 side of the road. That's what the law says.

10 Talk about calling in and all this stuff,
11 I mean, Mr. Baxter stood up here for quite a long
12 time to try to explain away that eight minutes.
13 Even with all that talking and everything he did,
14 I'm not even sure that he used that eight minutes
15 with all his explanations. But honestly, if you
16 have any doubt about it just go back in there, set a
17 watch, wait eight minutes and think, think about how
18 it happened to yourself. Think about, okay, I'm
19 going up the road, okay, I'm turning around, okay,
20 I'm calling. Does that take eight minutes? That
21 doesn't take anywhere near eight minutes. So you
22 have to say, oh, well, the times are a little
23 different, whatever. Yeah, there's different times.
24 Remember we asked Trooper Ellis. We said you can
25 tell not only the time that it was dispatched to

1 from the dispatch, but you can tell the time when
2 the very first call came in; can't you? He said,
3 yeah, the first call came in at 9:18, it got to me
4 at 9:19. So this insinuation that, oh, he's calling
5 dispatch and everything right away, it took him ten
6 minutes to get to the cop. Trooper Ellis didn't say
7 that. You can say the same thing on the EMS report
8 which you are gonna have back there. The call was
9 received at 21:18, which is 9:18. It was dispatched
10 almost immediately to the people, but that's when
11 the first call was made.

12 Now just before I sit down, I mean, we all
13 have somebody like Mr. Herring, somebody you work
14 with, maybe back in school. Remember back in school
15 the kid that gets elected to be the line leader and
16 all of a sudden thinks he's the boss?

17 MR. BAXTER: He's way outside his
18 rebutting what I had to say.

19 THE COURT: Rebuttal has to be directly
20 to —

21 MR. POULIN: Well, he brought up the
22 credibility of Mr. Herring.

23 MR. BAXTER: I didn't say anything about
24 —

25 MR. POULIN: I'll move, I'll just move on

1 'cause we need to move along. Mr. Baxter talked
2 about the evidence; I talked about the evidence. He
3 tried to explain some of the stuff that happened
4 after the wreck and that type of thing. One thing
5 that we do know is that this is the greatest civil
6 justice system in the world that we have because
7 this is probably one of the only countries where
8 little miss somebody like little Ms. Jackie can come
9 in here in front of the twelve of you and go up
10 against with a Marion County reserve sheriff deputy,
11 the guy who as we heard after the wreck was able to
12 call his wife to come out to the scene, his boss to
13 come out to the scene. He was able to get the
14 favorable highway patrolman who came out to the
15 scene and said after five minutes you're free to go,
16 you're fine. He was able to get in the medical
17 records, you know, and EMS thing that, oh, she must
18 have been drunk, even though she wasn't drunk. He's
19 able to do all those things after the wreck and
20 leading up to the trial, but none of that matters
21 now. None of that matters in here because in our
22 civil justice system the twelve of you have the
23 final decision. The twelve of you are the only ones
24 that can help Ms. Jackie get justice in this case.
25 It doesn't matter about all the strings he was able

1 to pull and about all those things he was able to
2 do. The twelve of you get to look at this evidence
3 and you get to decide whether this is gonna be the
4 type of community where people can go around look,
5 driving, looking on their cell phones, running
6 people over, covering it up and getting away with it

7 —

8 MR. BAXTER: Objection. I mean, he's
9 supposed to address the facts of the case, not stand
10 up and tell the jury that somehow the event — I
11 object, it's an improper argument for the jury.

12 THE COURT: I'm gonna overrule and —

13 MR. POULIN: And I'm done, I'm almost
14 done. And this, that's your job when you go back
15 there. You got a long verdict form. You got a lot
16 of stuff to look at. But the very simple question
17 is, are the twelve of you gonna allow this man to
18 cover everything up and go on his way and get away
19 with it, or are y'all gonna get justice for
20 Ms. Jackie. I know that y'all are gonna do the
21 right thing. I know that y'all are gonna get
22 justice for Ms. Jackie and she thanks you for it and
23 I thank you for it.

24 THE COURT: Ladies and gentlemen, my
25 charge is about 15 minutes. You want to take a

1 would have been 21, 22, 23, which would be I believe
2 either Mr. Bryson maybe.

3 THE COURT: No.

4 MR. POULIN: I think it would be
5 Ms. Washington I believe.

6 THE COURT: The two alternates are Valerie
7 Reed — it's not Valerie Reed.

8 MR. POULIN: I struck Ms. Reed, Your
9 Honor.

10 THE COURT: It's not —

11 MR. POULIN: Ms. Washington I believe.

12 THE COURT: Ms. Washington, I'm sorry.

13 MR. BAXTER: Yeah. 21, 22, 23.

14 THE COURT: I did give the wrong name.
15 Thank you. I would have called her Ms. Reed. Thank
16 you. Doug, yeah, you're correct, it is Juanita
17 Washington. And we'll substitute Ms. Washington.
18 All right, let's bring the jury in please.

19 (WHEREUPON, the jury was returned to the
20 courtroom at approximately 4:30 p.m., and
21 the following proceedings commenced in
22 open court.)

23 THE COURT: Ladies and gentlemen, we're
24 ready to proceed to the portion of the trial where I
25 charge you the law. Before I do that one of your

1 colleagues, Mr. Robinson, needed to be excused from
2 any further service and so that wasn't a big issue.
3 That's the whole reason that we select alternate
4 jurors in case we have this problem.

5 So Ms. Washington, congratulations, you,
6 the coach has just promoted you to first string so
7 you will no longer be in a alternate capacity,
8 you're on the main panel. It doesn't change your
9 role. You've been here the whole time. You heard
10 everything everyone else has heard so. In civil
11 cases we substitute the alternates in the order
12 which they were selected and so you were the first
13 alternate so you're the first one to be placed on
14 the panel. In criminal cases if you had more than
15 one alternate you have to put their names in a hat
16 and juggle it around and draw them out but, so
17 you're the first alternate and so you'll replace Mr.
18 Robinson for purposes of the deliberations. Okay?

19 Now ladies and gentlemen, we've now
20 reached the portion of this trial where you and I
21 are in this together, you as the judges of the facts
22 and me as the judge of the law and so I'm gonna give
23 you the law that applies to this action. Madam
24 Forelady and members of the jury, I'm going to
25 explain to you now the rules of law that you must

1 follow and apply in deciding this case. When I have
2 finished you will go to the jury room, and you will
3 begin your discussions which we sometimes call
4 deliberations. Your decision must be based only
5 upon the evidence presented here in this courtroom.
6 You must not be influenced in any way by either
7 sympathy for or prejudice against anyone. Now I'm
8 gonna give you a copy of these instructions to have
9 with you in written form in the jury room. During
10 your deliberations you may refer to these
11 instructions to guide you in your decision making.

12 You must, however, follow the law as I explain it
13 even if you do not agree with it, and you must
14 follow all of my instructions as a whole. You're
15 not allowed to single out or disregard any of the
16 instructions on the law.

17 Now, as I said before, you must consider
18 only the evidence that I have admitted into this
19 case. Evidence includes the testimony of witnesses
20 and the exhibits that were admitted. But anything
21 that the lawyers have said to you is not evidence
22 and it's not binding on you. You shouldn't assume
23 from anything that I have said that I have any
24 opinion about any factual issue in this case.
25 Except for my instructions to you on the law, you

1 should disregard anything that I may have said
2 during this trial in arriving at your decision about
3 the facts. Your own recollection and interpretation
4 of the evidence is what matters. In considering the
5 evidence you may use reasoning and common sense to
6 make deductions and to reach conclusions.

7 Now the fact that the defendant in this
8 case is a corporation or a business entity must not
9 enter into or affect your verdict. A corporation or
10 a business entity is entitled to the same fair trial
11 at your hands as a private individual. All parties
12 are equal under the law and each should be given the
13 same fair and equal treatment by you. A
14 governmental entity, such as the Sheriff's
15 Department, is liable for the negligent acts of its
16 employees who are acting in the course and scope of
17 their employment; but it is liable only in the same
18 manner and to the same extent as a private
19 individual under like circumstances.

20 Now there are two types of evidence that
21 are generally presented during a trial. There's
22 direct evidence and there's circumstantial evidence.
23 Direct evidence is the testimony of a person who
24 claims to have actual knowledge of a fact such as an
25 eyewitness. Circumstantial evidence is proof of a

1 chain of facts and circumstances indicating the
2 existence of a fact. The law makes absolutely no
3 distinction between the weight or the value to be
4 given to either direct or circumstantial evidence,
5 nor is there a greater degree of certainty required
6 of circumstantial evidence than of direct evidence.
7 You should weigh all of the evidence in this case.
8 Now when I say that you must consider all of the
9 evidence, I don't mean that you must accept all the
10 evidence as true or accurate. You should decide
11 whether to believe what each witness had to say and
12 how important that testimony. In making that
13 decision you may believe or disbelieve any witness
14 in whole or in part. The number of witnesses
15 testifying concerning a particular point doesn't
16 necessarily matter. To decide whether to believe a
17 witness I suggest that you ask yourself a few
18 questions. Did the witness impress you as one who
19 was telling the truth? Did the witness have any
20 particular reason not to tell the truth? Did the
21 witness have a personal interest in the outcome of
22 the case? Did the witness seem to have a good
23 memory or did the witness have the opportunity and
24 the ability to accurately observe the things he or
25 she testified about? Did the witness appear to

1 understand the questions clearly and answer them
2 directly? Or did the witness' testimony differ from
3 other evidence? Keep in mind that a simple mistake
4 doesn't mean that a witness wasn't telling the truth
5 as he or she remembers it. People naturally tend to
6 forget some things or to remember them inaccurately
7 so if a witness misstated something, you must decide
8 whether it was because of an innocent lapse of
9 memory or an intentional deception. The
10 significance of your decision may depend upon the
11 misstatement was about an important fact or an
12 unimportant detail.

13 Now in this case the plaintiff has the
14 responsibility to prove every essential part of her
15 claim by a preponderance of the evidence. This is
16 sometimes called the burden of proof or the burden
17 of persuasion. A preponderance of the evidence
18 simply means an amount of evidence which is enough
19 to persuade you that a claim or a contention is more
20 likely true than not true, such as by the greater
21 weight of the evidence. In deciding whether any
22 fact has been proved by a preponderance of the
23 evidence, you may consider the testimony of the
24 witnesses regardless of who may have called them and
25 all of the exhibits received into evidence

1 regardless of who may have produced them. If the
2 proof fails to establish any essential part of a
3 claim or contention by a preponderance of the
4 evidence, you should find against the party making
5 the claim or the contention.

6 Now to state a cause of action against the
7 defendant the law requires that the plaintiff set
8 out in her complaint three essential claims. These
9 essential claims are, first, that the defendant was
10 negligent in one or more ways stated in the
11 complaint. And later in this instruction I will

12 explain to you what is meant by negligence. Two,
13 that the plaintiff was personally injured. And
14 three, that the negligence of the defendant was the
15 proximate cause of the plaintiff's injuries and
16 damages. And later I will also explain proximate
17 cause more fully.

18 Now in her complaint Ms. Blackwell has in
19 this action set forth these three essential claims.
20 The plaintiff claims that the defendant was
21 negligent and should compensate her for the injuries
22 that she suffered as a result of that negligence.
23 In order to prove that the defendant was negligent
24 the plaintiff must prove by a preponderance or
25 greater weight of the evidence four things. First,

1 that the defendant owed the plaintiff the duty of
2 care. A duty of care requires an actor to protect
3 others against the risk of harm from his actions.
4 The existence of a duty of care is an essential
5 element in a cause of action for negligence.
6 Second, that the defendant breached that duty by a
7 negligent act or omission. A breach of duty exists
8 when it is reasonably foreseeable that an actor's
9 conduct may likely result in an injury to the person
10 to whom a duty of care is owed. In other words,
11 negligence means that a person has done something
12 that a reasonable person would not have done or has
13 failed to do something that a reasonable person
14 would have done in the same situation. Third, the
15 plaintiff must prove that the plaintiff suffered
16 damages as a result of the defendant's breach of
17 duty. And fourth, she must show that her damages
18 were proximately caused by the defendant's breach of
19 doubt. In other words, even if the defendant had
20 been negligent the plaintiff would not be entitled
21 to a verdict unless you further find that the
22 defendant's negligence was the proximate cause of
23 the plaintiff's injuries and damages. Now the law
24 defines proximate cause of an injury to be something
25 that produces a natural chain of events which in the

1 end brings about the injury. In other words,
2 proximate cause is the direct cause without which
3 the injury would not have occurred.

4 To prove that the defendant's negligence
5 proximately caused the plaintiff's injuries, the
6 plaintiff must first prove causation in fact. This
7 is proved by showing that the injuries would not
8 have occurred but for the defendant's negligence.
9 The plaintiff must also prove legal cause. Now
10 legal cause is proven by showing that the injuries
11 were foreseeable. This means that the injury
12 occurred as a natural and probable consequence of
13 the defendant's negligence. The plaintiff must
14 prove that some injury from the defendant's
15 negligence was foreseeable, but she does not have to
16 prove that the particular injury that occurred was
17 foreseeable. Proximate cause does not mean the only
18 cause. Where several causes have combined to
19 produce injuries a defendant is not relieved from
20 liability because it is responsible for only one of
21 them. Simply put, the defendant's acts can be a
22 proximate cause of the plaintiff's injuries if they
23 are at least one of the direct concurring causes of
24 the injuries. You may not award damages for any
25 injury or condition from which the plaintiff may be

1 suffering or has suffered or may now be suffering
2 unless it has been established by the greater weight
3 of evidence that such injury or condition was
4 proximate caused by the accident or the incident in
5 question.

6 Now I charge you that in South Carolina a
7 person using the public roads of this state owes a
8 duty to exercise ordinary care at all times to avoid
9 placing him or herself or others in danger and to
10 use like care to avoid an accident. A driver on a
11 public road owes a duty to keep a proper lookout for
12 other persons or objects upon the highway. This
13 duty is not merely one of looking, but one of
14 seeing. A driver must look in such an intelligent
15 and careful manner as to enable him to see a person
16 or object on the highway which may be reasonably
17 expected. A person operating a motor vehicle is
18 under a duty to keep it under proper control so as
19 to be able to slow down, stop, or turn such vehicle
20 in order to avoid colliding with other vehicles,
21 pedestrians, and obstructions that are lawfully on
22 the roadway.

23 Where a motorist is suddenly placed in an
24 emergency situation through no fault of his own and
25 is compelled to act instantly to avoid a collision,

1 he is not negligent if he makes a choice that a
2 person of ordinary judgment might make if placed in
3 the same emergency situation. Now according to
4 South Carolina code 56-5-3160 it holds as follows.
5 That where a sidewalk is provided and its use is
6 practical it shall be unlawful for any pedestrian to
7 walk along and upon an adjacent roadway. That's
8 subsection A. Subsection B holds that where a
9 sidewalk is not available any pedestrian walking
10 along and upon the highway shall walk only on the
11 shoulder as far as practicable from the edge of the
12 roadway. Subsection C holds that where neither a
13 sidewalk nor a shoulder is available, any pedestrian
14 walking along on the highway shall walk as near as
15 practicable to an outside edge of the roadway. And
16 if on a two way road shall walk only on the left
17 side of the roadway. Subsection B provides that
18 except as otherwise provided, any pedestrian upon a
19 roadway shall yield the right of way to all
20 vehicles upon that roadway.

21 Now the plaintiff must prove that the
22 expenses that she claims that she incurred as a
23 result of her injuries were necessary and
24 reasonable. Actual damages, which are also called
25 compensatory damages, are designed to make the

1 injured party whole. This means that the damages
2 are an attempt to put the injured party in the same
3 position that she was in prior to the accident to
4 the extent this is monetarily possible. Actual
5 damages include compensation for all injuries that
6 are the proximate result of the wrongful conduct of
7 the defendant. The existence, causation, or amount
8 of damages cannot be left to conjecture, guesswork,
9 or speculation; however, the law does not require
10 proof of the amount of the loss to an absolute or
11 mathematical certainty. It is sufficient that
12 damages be proved to a reasonable degree of
13 certainty. The evidence presented by the plaintiff
14 must enable you, the jury, to determine what amount
15 is fair, just, and reasonable.

16 The plaintiff bears the burden of proving
17 by the preponderance of the evidence that she is
18 entitled to compensatory damages. In determining
19 the amount of compensatory — excuse me, in
20 determining the amount of compensation for injuries
21 suffered by the plaintiff as a result of the
22 defendant's actions, it is proper for you to
23 consider and to award past, present, and future
24 damages for either such as out of pocket expenses,
25 medical expenses including physicians, hospitals,

1 medicines, physical therapy, rehabilitation, and
2 transportation expenses connected with that medical
3 treatment, psychological trauma, mental anguish,
4 psychological injury, depression, pain and
5 suffering, disfigurement, and loss of enjoyment of
6 life. Plaintiff bears the burden of proving these
7 elements by a preponderance or greater weight of the
8 evidence.

9 Now in personal injury actions the general
10 rule is that the plaintiff may recover for the
11 necessary and reasonable expenses caused by the
12 injury such as amount necessarily incurred for
13 medicine, medical services, hospital expenses and
14 care, nursing care. A person who suffers personal
15 injuries because of the negligence of another is
16 entitled to recover the reasonable value of the
17 medical care and expenses incurred for the treatment
18 of the injuries up to the time of trial.
19 Accordingly, the plaintiff may recover amounts
20 incurred for past medical and other out-of-pocket
21 expenses and anticipated expenses such as
22 vocational, physical, and other rehabilitation
23 efforts. Recovery for medical expenses is
24 controlled by what the services rendered were
25 reasonably worth and not by what was actually paid

1 or contracted to be paid. If you determine from the
2 evidence and under the law as I have instructed you,
3 that the plaintiff is entitled to recover damages
4 including medical and other health care costs, then
5 the plaintiff can only recover such sums as you
6 determine from the evidence to be both reasonable
7 and necessary. While the amount actually charged
8 and incurred may be considered by you, you are not
9 bound by that amount. You must find only such sum
10 as is reasonable and necessary.

11 If the evidence supports it the plaintiff
12 may recover for mental anguish brought about by
13 bodily injury and suffering. Where a party's
14 negligence is directly responsible for physical
15 injury to another, the injured party may recover
16 both for actual physical injury sustained and for
17 related mental and physical suffering which flow a
18 natural consequence of the wrongful act. When
19 connected to a physical injury the term mental
20 anguish includes both result of mental sensation of
21 pain and also the accompany feelings of distress,
22 fright, and anxiety. Mental anguish is more than
23 mere disappointment, anger, worry, or resentment of
24 embarrassment, although it may include all of these
25 things. You may award damages for mental anguish

1 where the evidence shows, for example, that the
2 plaintiff suffered fright, shock, emotional upset,
3 or humiliation as a result of the defendant's
4 conduct. Now pain and suffering is a material
5 element of damages upon which a recovery may be
6 based. The plaintiff is entitled to compensation
7 for her pain and suffering which she proves directly
8 resulted from the wrongful act of the defendant. An
9 award for pain and suffering compensates the injured
10 person for the physical discomfort and the emotional
11 response to the sensation of pain caused by the
12 injury itself. In making an estimate of damages to
13 be awarded for pain and suffering, you may consider
14 how bad the injuries were, whether they caused the
15 plaintiff to suffer, how long the pain and suffering
16 lasted or is expected to last. You may also
17 consider the plaintiff's age, health, and habits or
18 condition before the injury compared to her
19 condition afterwards.

20 Pain and suffering, ladies and gentlemen,
21 have no market price. Pain and suffering is not
22 capable of exact measurement, nor is there a fixed
23 rule or a standard by which it can be measured. The
24 amount of damages to be awarded for pain and
25 suffering, if any, must be left up to the judgment

1 of you and the members of the jury. Now loss of the
2 capacity to enjoy life resulting from personal
3 injury is a proper element of damages. Damages for
4 loss of enjoyment of life compensate for the
5 limitations resulting from the defendant's
6 negligence on the injured person's ability to
7 participate in and to derive pleasure from the
8 normal activities of daily life or the individual's
9 inability to pursue her talents, recreational
10 interests, or hobbies.

11 Now a plaintiff cannot recover conjectural
12 or speculative damages. However, if you find that
13 the plaintiff is entitled to a verdict for actual
14 damages, your verdict should include an amount to
15 cover any damages that the evidence shows will be
16 reasonably certain to occur in the future. Future
17 damages need not be proved to a mathematical
18 certainty and oftentimes must be approximated.
19 These future damages, if any, must be the result of
20 the defendant's negligence. Any future damages that
21 you award must be reduced to their present day
22 value.

23 Now in this case the defendant claims that
24 the plaintiff's own negligence proximately caused
25 the plaintiff's injuries. If you find that the

1 defendant was negligent you must then decide whether
2 or not the plaintiff was negligent. The defendant
3 must prove by a preponderance or greater weight of
4 evidence that the plaintiff breached a duty of care
5 which proximately caused the plaintiff's own
6 injuries. The same law which I have told you to use
7 in deciding whether or not the defendant is
8 negligent, should also be used in deciding whether
9 the plaintiff is negligent. If you find that the
10 negligence of both the plaintiff and the defendant
11 proximately caused the plaintiff's injuries, then
12 you must decide how much of, how much the negligence
13 of the plaintiff contributed to her injuries and how
14 much the defendant's negligence contributed to her
15 injuries. In deciding the percentages of negligence
16 of the plaintiff and the defendant you may consider
17 many things.

18 I will give you written instructions on
19 special verdict form for you to reach your verdict.
20 And you saw that verdict form, I think, Mr. Poulin
21 used it in his presentation. Now Madam Forelady and
22 ladies and gentlemen of the jury, as you retire to
23 begin your deliberations I wish to express the hope
24 that each of you will be mindful of the importance
25 of your responsibility. You're not called upon to

1 serve as jurors very often. And the proper
2 performance of the duty requires each of you to
3 reach the point of freeing your mind of all improper
4 influences. As the presiding officer of this court
5 I am vitally concerned that whatever verdict you may
6 find will be the result of your going into the jury
7 room, confining your consideration to the evidence
8 and to the law that you've heard in this courtroom
9 weighing fairly and impartially as I have every
10 confidence you will do. Your verdict in this case
11 cannot be based on sympathy, compassion, prejudice,
12 or emotion, or some other consideration that's not
13 found in the evidence. Remember as I told you
14 earlier, your verdict in this case must be
15 unanimous. You must all agree on the verdict
16 whatever it may be.

17 Now Ms. Stackhouse, in the front — this
18 notebook will go back into the jury room with you.
19 You'll have it back there. In the front cover is
20 the verdict form. I'm assuming it's the same Mr.
21 Poulin showed you, and so you'll carry on your
22 deliberations, folks. And then when you get ready
23 to address the verdict form you'll answer the
24 questions just in the order they are. And if you
25 will just follow it, I think they're very

1 self-explanatory. If you just follow them they kind
2 of tell you what to do. The first question, was
3 defendant negligent? If you say yes go to question
4 2. If you say no then you stop your deliberations
5 and you let the bailiff know you have a verdict. If
6 you go to question 2 you just follow those
7 instructions. Was the defendant's negligence the
8 proximate cause of the plaintiff's injuries? If
9 yes, go to 3. If no, stop and let the bailiff know
10 you have a verdict. Was the plaintiff negligent is
11 question 3. You answer yes or no. If the answer is
12 yes, you go to question 4 and it tells you what to
13 do. So you'll just follow those. The same with the
14 plaintiff's negligence being proximate cause of her
15 injuries. If you say yes you go to 5. Now if you
16 get to question 5, that is where, if you get to
17 question 5 as a jury you decided that both the
18 plaintiff and the defendant contributed to this
19 accident, that they were both negligent. This is
20 where you would have to place a value upon the
21 percentage of their negligence, percentage of
22 plaintiff's, the percentage of the defendant's. All
23 I can tell you is that your percentages, that
24 whatever you decide, they must total one hundred
25 percent. So whatever you decide on that you'll just

1 assign those numbers and you just fill it in, and
2 it's self-explanatory. If you — and then question
3 6, if you get to 5, then you'll go to 6. It says
4 was plaintiff's negligence greater or more than
5 fifty percent? If yes, stop your deliberations and
6 let the bailiff know you have a verdict. If no, it
7 asks you to go to question seven and that's where
8 it's asking you to give an amount of damages or
9 actual damages that you find that the plaintiff has
10 proven.

11 Now let me explain, I think Mr. Poulin
12 explained it but let me explain it to you as well.
13 If you get to question 7, what you're being asked to
14 do is to put whatever as a jury you believe her
15 actual damages are. Forget the percentages, okay.
16 You just put what you think the actual damages are.
17 If anything needs to be adjusted because of the
18 percentages, the Court will do that. All you need
19 to do is if you get to question 7 put the total
20 amount of damages you feel the plaintiff has proven
21 in the case, okay, if you get there. So that's it.
22 If you have any questions about anything I'll be
23 more than happy to answer them.

24 What I'm going to do is I'm gonna ask you
25 be step back into your jury room. Do not begin your

1 deliberations, Ms. Stackhouse. And you're right
2 there. But give me literally a minute or two. I
3 just want to confer with the lawyers to make sure
4 that I covered everything here. If I need to bring
5 you back out and charge you anything additional I'll
6 do that. If I need to correct anything I'll do
7 that. If everything is good we'll collect these
8 exhibits and this notebook. Once you receive the
9 exhibits and the notebook, that will be your cue to
10 begin your deliberations, okay. So if you would
11 step back into your jury room and wait for guidance.

12 (WHEREUPON, the jury was removed from the
13 courtroom at 5:04 p.m.)

14 THE COURT: All right, folks. Any
15 objections or exceptions to the charge as the
16 Court's given it from the plaintiff?

17 MR. POULIN: Well, Your Honor,
18 unfortunately as I was listening to that, and I know
19 it's a minor issue for us and it's not even
20 disputed; but the charge that Mr. Baxter added about
21 the extent in which the municipality is liable, the
22 way that I guess we worded it was employee and in
23 the scope of employment. And I would just hate for
24 them to get back there since it's not in dispute and
25 everything say, well, he's a volunteer, they can't

1 be liable for him because he was a volunteer. I
2 think that could be easily be corrected by just
3 saying employee or volunteer within the scope of
4 their employment or assignment. I mean, I hate for
5 them to go back there and be arguing about that for
6 two hours and that's not ---

7 THE COURT: It was, it was brought out and
8 emphasized that he didn't get paid for his time so.
9 I don't mind making that correction.

10 Mr. Baxter, your thoughts.

11 MR. BAXTER: Your Honor, the --- my only
12 thought is the, I've not looked at it, but I guess
13 if you're gonna do that it would be appropriate to
14 charge the definition of employee. Just, I mean,
15 that's what the law, I mean, it sets it out. I
16 mean, I think we can ---

17 THE COURT: The other thing we can do is,
18 I mean, if we don't want to expand this thing out
19 and make it some lengthy charge on employment law,
20 you can stipulate that at the time of the incident
21 Deputy Herring would be considered an employee under
22 South Carolina law of the Marion County Sheriff's
23 Department. You don't stipulate to anything other
24 than that he would fit under that criteria or
25 definition of employee.

1 MR. BAXTER: I mean, my thought would be
2 to maybe say that under the law, you know, employee
3 is treated the same as a volunteer so as long as
4 they are in course and scope of their employment,
5 something along those lines.

6 THE COURT: It would be the other way
7 around.

8 MR. BAXTER: Or, yes —

9 THE COURT: A volunteer.

10 MR. POULIN: I can't sit here and say
11 we're gonna stipulate to this because I understand
12 the purpose of that is to take that issue out, but
13 at the same time that's also not correct because
14 they are —

15 THE COURT: Do y'all contend that he was
16 not?

17 MR. BAXTER: No. What my suggestion is
18 that under the law that a volunteer who's acting in
19 the course and scope of his duties is considered the
20 same as an employee, would be my suggestion as far
21 as the charge.

22 MR. POULIN: And I'm okay with that. I
23 mean, I think they, I just don't want them to harp
24 on that issue because it's not an issue in the case.

25 THE COURT: I agree, they're fine,

1 craziest thing.

2 MR. BAXTER: Like I said, I understand the
3 purpose.

4 THE COURT: I'll do that.

5 MR. BAXTER: But at the same time that's
6 not necessarily the correct law I think we can cover
7 this. And also, the — and I guess I misunderstood
8 the, you still charged that the fact that the
9 defendant is a corporation business entity it is to
10 the, it's governmentality. You gave the charge we
11 wanted, but you also kind of compounded by the fact
12 that it wasn't, it wasn't just a charge on that.
13 You instructed the jury that the defendant is a
14 corporation business entity.

15 THE COURT: You want me to just tell them
16 that it's a governmental agency.

17 MR. BAXTER: Yes.

18 THE COURT: Which is under the same, I
19 mean, held the same standard.

20 MR. BAXTER: Well, I mean, the standard
21 you gave them the standard of governmental entity
22 right after that, but if you — before that you said
23 they're a business corporation entity. I think just
24 for, just want to make, I'm just saying for
25 clarification, you know, the Sheriff's Department is

1 a governmental entity and I gave you, I instructed
2 you as to the law with regards to governmental
3 entities and your responsibility for employees and
4 also just want to make sure it's clear that a
5 volunteer who is acting in the course and scope of
6 employment is treated the same as an employee and
7 that would cover everything.

8 THE COURT: But you agree, am I correct,
9 that the governmental entity that you must not
10 consider it in your verdict, that it was
11 governmental entity.

12 MR. BAXTER: Right.

13 THE COURT: And it is entitled to the same
14 fair trial at your hands as any private individual.

15 MR. BAXTER: Right, I agree with that.

16 THE COURT: So the correction would be
17 that I told you that, ladies and gentlemen, I think
18 I told you in my charge that the fact that the
19 defendant is a corporation, business entity must not
20 enter into or affect your verdict. What I meant to
21 say or should have said was the fact that the
22 defendant is a governmental entity should not.

23 MR. BAXTER: Yes, perfect.

24 THE COURT: And that, and then the fact
25 that — and then I further charged you that an

1 entity such as the Sheriff's Department is liable
2 for the negligent acts of its employees who are
3 acting in scope, the course and scope of their
4 employment or assignments. And you further should
5 understand that under the law a volunteer, a
6 volunteer of the governmental entity who is acting
7 within the scope and within the course and scope of
8 their assignment is considered an employee or —

9 MR. BAXTER: Treated the same as.

10 THE COURT: Treated the same as an
11 employee, okay. All right, bring them back out.

12 Ask them to step out.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 5:11 p.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: Folks, when I charged you
18 earlier in the charge I misstated something. I
19 think I said to you that now that the fact — excuse
20 me, now the fact that the defendant is a corporation
21 or business entity must not enter into or affect
22 your verdict. What I should have said was, now that
23 the, now the fact that the defendant is a
24 governmental entity must not enter into or affect
25 your verdict and that a governmental entity is

1 entitled to the same fair trial at your hands as a
2 private individual. I think I in error called the
3 defendant, which is the Marion County Sheriff's
4 Department, a business or a corporation, and it's
5 not; it's a governmental entity. But that law still
6 applies. And just for clarification, a governmental
7 entity such as the Sheriff's Department is liable
8 for the negligent acts of its employees who are
9 acting in the course and scope of their employment
10 and that for purposes of South Carolina law, a
11 volunteer to that organization who is acting within
12 the course and scope of their assignment is given
13 the same treatment and treated the same as an
14 employee. And so that's the correction I needed to
15 make with regards to that, okay. So if you would
16 step back into the jury room and await these items.
17 When you get these items that will be your cue to
18 begin your deliberations.

19 (WHEREUPON, the jury was removed from the
20 courtroom.)

21 THE COURT: All right. Now anything
22 further from the plaintiff with regards to the
23 charge?

24 MR. POULIN: Nothing from the plaintiff,
25 Your Honor, other than of course to preserve my

1 objection to the sudden emergency.

2 THE COURT: We will note your previous
3 objections to that.

4 How about from the Defense?

5 MR. BAXTER: Nothing further, Your Honor.

6 THE COURT: We will certainly note any
7 exceptions you made earlier. Folks, if y'all will
8 get with Frances to make sure that the items that
9 should be going back go back.

10 (Attorneys review exhibits.)

11 MR. BAXTER: Looks good.

12 MR. POULIN: Looks right to me.

13 THE COURT: All right, get the alternate
14 on the road, then we'll be at ease. Tell them they
15 can begin.

16 (Alternate is excused.)

17 (Jury was instructed to begin deliberations at 5:16
18 p.m. and court was in recess.)

19 THE COURT: I have two questions.
20 Question one, at what point did the officer see,
21 quote, something, end quote in the road. Then
22 there's a subpart and it says what distance. I
23 don't know that there was ever testimony with
24 regards to the distance.

25 MR. BAXTER: His only testimony is that he

1 saw, he saw her just an instant before. I don't
2 think there was no specific distance. It was just I
3 saw her an instant before in only, my understanding
4 of the testimony, something along those lines.

5 MR. POULIN: It may be something along
6 those lines. It certainly wasn't like, you know,
7 20 feet or —

8 THE COURT: Yeah, and I didn't, I think
9 the only thing I can do, there's only one of two
10 things I can tell them. And at the risk of
11 upsetting my good friend here, I can either tell
12 them that they have to just basically go off their
13 collective memory and of the testimony or that I can
14 re-play. We can play it for them. But I don't know
15 at what point, I mean, do y'all recall at what
16 point? Was it during direct exam or cross?

17 MR. BAXTER: I just, that's in my mind,
18 and again, we can go back and play it, it may not
19 be, I'm just thinking he said —

20 THE COURT: 'Cause his testimony
21 was somewhat lengthy. Frances is one of the best
22 court reporters in South Carolina and she actually
23 has realtime on there so she can look at it instead
24 of having her listen to it. But we won't do that
25 right this second 'cause there is the second)

1 question here which is the question that I have for
2 y'all that — I asked Frances earlier. Question two
3 is, it just says cell phone records, question mark.
4 Did y'all not put those into evidence?

5 MR. BAXTER: We didn't put them in.

6 THE COURT: All I can tell them is that
7 the evidence, that they have the evidence, what is
8 in evidence. And that's — so there are no cell
9 phone records admitted into evidence, therefore —
10 okay. All right, I'll, let's go ahead and bring
11 them back in.

12 (WHEREUPON, the jury was returned to the
13 courtroom at approximately 6:03 p.m., and
14 the following proceedings commenced in
15 open court.)

16 THE COURT: All right, folks, I got your
17 questions. The first one was, "At what point did
18 the officer see something in the road, at what
19 distance?" Here's the only thing I can tell you.
20 Obviously I think I shared this with you early in
21 the trial. As the judge I'm not to have any
22 influence over you at all with regards to the
23 testimony and the evidence so I can't just answer
24 your question. What I can tell you is one of two
25 things. Either you can confer with each other and

1 your collective memory come up with the answer that
2 you can recall, or I can have the court reporter
3 Ms. Ray go back through that, the officer's
4 testimony, and we can re-play a portion of that
5 testimony if you want to us to do that, okay? So
6 that's with regards to your first question.

7 The second question is the cell phone
8 records and a question mark. The exhibits that you
9 have in the jury room with you are all the exhibits
10 that were admitted in evidence so I don't believe
11 there were any cell phone records that were admitted
12 into evidence. So you can certainly, again, through
13 your collective recollection of the testimony
14 consider whatever testimony there was with regards
15 to cell phone records; but the actual records
16 themselves were not admitted into evidence and so
17 you would not have those at your disposal, okay. So
18 what I'll do is, I'll let you step back into the
19 jury room. If you want to re-hear that testimony
20 with regards to the issue as to when the officer saw
21 something in the road, we can work on pulling that
22 up, you can just let me know. Or if you want to go
23 off your collective recollections you can let me
24 know that you're gonna do that, okay. So if you
25 would, retire back in the jury room and let me know

1 what you want us to do. If you want to hear the
2 testimony we'll pull it up. If you want to go off
3 your recollection we'll allow you to do that.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 6:07 p.m.)

6 THE COURT: All right, any objections or
7 exceptions for the Court's response to the jury
8 questions?

9 MR. POULIN: Not from the Plaintiff.

10 THE COURT: From the Defendant?

11 MR. BAXTER: Nothing, Your Honor.

12 THE COURT: I'm gonna have Frances mark
13 this as a Court's exhibit.

14 (Court's Exhibit Number 6 was marked
15 and made a part of the record.)

16 THE COURT: Read it back.

17 MR. POULIN: Read the whole thing.

18 THE COURT: Read the question and the
19 response, and then I'll let them know that's the
20 only place in the testimony where he refers to what
21 he saw, okay. Okay, let' go ahead and bring the
22 jury out.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 6:28 p.m., and
25 the following proceedings commenced in

1 that?

2 MR. POULIN: We are, Your Honor.

3 MR. BAXTER: Yes, sir.

4 THE COURT: All right. Well, usually I
5 give some little speech about receiving the verdict
6 and the proper decorum, but I think we heard that at
7 the last trial so that all applies to this one so.
8 If you will, let's ask the members of the jury to
9 join us please.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 8:56 p.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: Ms. Stackhouse, it's my
15 understanding that the jury has reached a unanimous
16 verdict.

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right, if you would please
19 pass that up this way.

20 (Verdict form tendered to the Court.)

21 THE COURT: Madam Clerk, if you would
22 please publish the verdict of the jury for me,
23 ma'am.

24 THE CLERK: State of South Carolina,
25 County of Marion, in the Court of Common Pleas,

1 Twelfth Judicial Circuit, case number
2 2015-CP-33-0140. Vanessa Blackwell a/k/a Jacqueline
3 Blackwell, plaintiff, versus Marion County Sheriff's
4 Department, defendant. Number one: Was the
5 defendant negligent? Yes. Number two: Was the
6 defendant's negligence a proximate cause of the
7 plaintiff's injuries? Yes. Number three: Was the
8 plaintiff negligent? Yes. Number four: Was the
9 plaintiff's negligence a proximate cause of the
10 plaintiff's injuries? Yes. Number five: Using the
11 combined negligence that proximately caused the
12 plaintiff's injuries as one hundred percent, what
13 percentage of that negligence is attributable to the
14 plaintiff and what percentage is attributable to the
15 defendant? Plaintiff 35 percent; defendant
16 65 percent, for a total of 100 percent. Number six:
17 Was the plaintiff's negligence greater or more than
18 fifty percent? No. Please state the amount of
19 damages, if any, sustained by the plaintiff.
20 \$500,000 actual damages. Dated September 13th,
21 2016, Shannon Stackhouse, forelady. Is this your
22 verdict, say you one say you all.

23 (Jurors replied.)

24 THE CLERK: Thank you.

25 THE COURT: All right. Ladies and

1 THE COURT: Ms. Washington, was this your
2 verdict?

3 JUROR WASHINGTON: Yes, sir.

4 THE COURT: Is it still your verdict?

5 JUROR WASHINGTON: Yes, sir.

6 THE COURT: Thank you very much, ma'am.

7 All right, let the record reflect that all
8 the jurors have been polled. Anything further from
9 the State or—

10 MR. POULIN: Nothing from the plaintiff,
11 Your Honor.

12 THE COURT: —from the plaintiff?

13 MR. POULIN: No, sir.

14 MR. BAXTER: Nothing.

15 THE COURT: From the Defense, okay.

16 Ladies and gentlemen, thank you for your
17 service and you're free to go. Thank you very much.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 9:06 p.m.)

20 THE COURT: All right. Mr. Baxter.

21 MR. BAXTER: Can we have ten days for
22 post-trial motions?

23 THE COURT: I was going to ask you if
24 you'd like.

25 MR. BAXTER: Are you gonna be here a

1 while?

2 THE COURT: No. Yeah, I'm more than happy
3 to do that but you — and there's no objection—

4 MR. POULIN: No.

5 MR. BAXTER: I think the rules, they used
6 to, it was at the Court's discretion. Now I think
7 the rules say it's automatic.

8 THE COURT: You're certainly entitled to
9 do it, yes, sir.

10 MR. BAXTER: And I would, and I'm not sure
11 the, as to the Sheriff's Department this action is
12 governed by the South Carolina Tort Claims Act.

13 THE COURT: Yes, sir.

14 MR. BAXTER: There's actually orders in
15 the file finding that subject to the South Carolina
16 Tort Claims Act, and we would ask that as to the
17 recovery against the County that pursuant to
18 15-78-120 — and I'm not sure that's a post-trial
19 motion. I think that's something that Your Honor is
20 tasked with doing, that the, as to the amount
21 against the County it should be reduced to 300,000.

22 THE COURT: Okay. Now here's the question
23 that I have. Based upon the verdict, I think, if
24 I'm not mistaken I think the law precludes a verdict
25 beyond the 300,000-dollars. Is that not correct?

1 MR. POULIN: I don't think that's correct,
2 Your Honor, because I have either an uninsured or an
3 underinsured carrier over here to beg the
4 difference. I think the law precludes the City or
5 the State or the Sheriff's Department from having to
6 pay more than 300,000, but I think all the court
7 would do is reduce the verdict —

8 THE COURT: I mean, —

9 MR. POULIN: —but my understanding is—

10 THE COURT: It's 325,000 when you reduce
11 it by the percentages.

12 MR. POULIN: Right.

13 THE COURT: So your position would be that
14 the 325,000 would stand, but that the County would
15 want to be subject to the cap of 300,000.

16 MR. POULIN: I believe that's how it works
17 and then I think that's where — and I'm not sure
18 whether it's considered uninsured or underinsured,
19 but that where's Mr. Sly steps in I believe.

20 MR. BAXTER: And Your Honor, just the,
21 actually the Tort Claims Act 15-78-190 kind of talks
22 about that. I mean, it is, we're just saying they
23 can't seek to recover more than 300 if there was no,
24 any additional underinsured coverage, I think it
25 would just reduce it; but I just want to make it

1 clear that that is, you know, if you apply
2 15-78-190, you just kind of use that as a guideline
3 and say, okay, you can't get more than 300 but this
4 allows you to seek an amount over 300 so you can
5 potentially collect —

6 THE COURT: Well, what I want to make,
7 what I want the record to be clear about is that
8 before you do the percentages, in other words, I
9 don't think the law is that you reduce the verdict
10 to 300,000, then do the percentage.

11 MR. POULIN: Correct, I don't think that's
12 the law.

13 THE COURT: That you do the percentage and
14 you then, you restrict that recovery as far as the
15 County is concerned to the \$300,000.

16 MR. POULIN: That's correct. I believe
17 the proper way to do it would be to reduce and enter
18 a verdict in the amount of \$325,000 with an order
19 that we can never collect more than 300,000 from the
20 County.

21 THE COURT: Correct. And that's after the
22 percentages having been done.

23 MR. POULIN: Correct.

24 THE COURT: So the percentages, so the
25 record is clear, the percentages are taken from the

1 \$500,000 verdict; and then with the understanding
2 that he cannot recover more than 300,000 from the
3 County government. Okay? And then, of course,
4 obviously I'll entertain any post-trial motions when
5 that's submitted, okay. Anything further?

6 MR. POULIN: Not from plaintiff, Your
7 Honor.

8 MR. BAXTER: Nothing, Your Honor.

9 THE COURT: Folks, thank y'all. I know
10 we've been here before and it's been a long road;
11 but again, just like the other trial, I appreciate
12 very much everybody's courtesies and the
13 professionalism.

14
15 (WHEREUPON, the proceedings were adjourned.)
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Operative Report (Interfaced) 5/29/2014 O'Dell,
Jason Benjamin MD 1 OP0014

Operative Report

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: O'Dell, Jason Benjamin MD
PATIENT NO.: 000126498443
DATE OF SURGERY/PROCED: 05/18/2014

NAME: Blackwell, Vanessa 11ST110501
MED. REC. NO.: 01-49-31-79
DR. DICTATING: Jason Benjamin O'Dell, MD
PATIENT NO.: 000126498443
DATE OF SURGERY: 05/18/2014

SURGEON: Jason B. O'Dell, M.D.

ASSISTANT: None.

DATE OF SURGERY: This is her 1st surgery of this admission. Date of the surgery was Sunday May 18, 2014.

PREOP DIAGNOSES: Left lower extremity ankle trimalleolar fracture, dislocation which was unreducible in the emergency department. She also had a syndesmosis disruption, left knee multi ligament injury and laceration, 20 cm of the left posterior leg.

POSTOP DIAGNOSES: Left lower extremity ankle trimalleolar fracture, dislocation which was unreducible in the emergency department. She also had a syndesmosis disruption, left knee multi ligament injury and laceration, 20 cm of the left posterior leg.

OPERATION PERFORMED: 1. Incision and debridement of open wounds on the posterior aspect of the left knee, simple closure of a 20-cm wound of the posterior aspect of the left knee.
2. Left knee examination under anesthesia with application of long-leg splint.
3. Open treatment of trimalleolar ankle fracture with internal fixation.
4. Open treatment of syndesmosis disruption with internal fixation.
5. Application of incisional wound VACs, large.

COMPLICATIONS: None.

BLOOD LOSS: 100.

DISPOSITION: Stable to PACU.

INDICATIONS FOR PROCEDURE: Mrs. Blackwell is a patient who was brought to the emergency department after being hit by a car on the left lower extremity while apparently walking with traffic. She was struck on the leg and unable to walk with the large open wound that was initially evaluated, splinted and initially irrigated in the emergency department. She was then brought to the operating room several
PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.



LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Operative Report (Interfaced) 5/29/2014 O'Dell,
Jason Benjamin MD 1 OF0014

Operative Report

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: O'Dell, Jason Benjamin MD
PATIENT NO.: 000126498443
DATE OF SURGERY/PROCED: 05/18/2014

hours later, the following morning, to allow for further definitive treatment. Understanding the risks, benefits, of that treatment.

DETAILS OF THE PROCEDURE: After informed consent and surgical site were confirmed, she was brought to the operating room and placed under general anesthesia. The left leg had all of its dressings removed, and it was prepped and draped up to the groin where a tourniquet was placed on the upper thigh. Once the initial drape was put into position we held the leg in externally rotated position and thoroughly irrigated the lateral upper leg and knee laceration. Had a transverse component followed by a longitudinal component that was medial and a transverse component that exited right around the biceps femoris tendon. Fortunately, this was superficial. It did not track deep to the fascia. There were small amounts of dirt and grass that were present. The majority of this was washed out in the ER at the initial evaluation. Once that wound had been thoroughly irrigated and all foreign matters removed, it was closed with interrupted mattress and retention style PDS suture, which was a 2-0 PDS suture that was pigmented. The closure itself was relatively loose to try to prevent any excessive seroma or fluid build up behind the area of the flap. We did not place a drain given the fact that we utilized an incisional wound VAC at the conclusion of the procedure. After simple closure of the posterior left knee laceration with the technique as mentioned above, we applied an incisional wound VAC with counter-masking of the skin edges. Once that was completed, our attention then turned to the ankle. We elevated the tourniquet. At that point, after exsanguinating the extremity, made a longitudinal incision over the medial aspect of the medial malleolus and identified the medial tibia and the medial malleolar fragment. With blunt dissection down to the joint surface we could see there was chondral scuffing but no evidence of foreign body or significant osteochondral fracture of the talus. The patient had the anterior tibial tendon, noted to be posterior to the tibia consistent with a dislocation in which I would assume the patient's left foot was planted. She had the injury to the left knee. This then internally rotated the leg, effectively externally rotating the ankle, and her anterior tibial tendon then dislocated through the syndesmosis to the posterior aspect and then as the foot came back to a front to back normal position, the anterior tibial tendon came to rest posterior to the tibia and was there for a blocking and dislocation. Quite an interesting injury. After that evaluation, I could see that this was the deformity. We then externally rotated the foot by about 100 degrees, allow the anterior tibial tendon to thread back through the syndesmosis, and then this easily allowed the ankle joint itself to reduce. I thoroughly irrigated the wound at that point, and then irrigated the joint surface. Assessment of the other tendons found them to be intact. There was a small posterior rim fracture of the posterior malleolus that had the flexor hallucis longus tendon attached to it and seemed to reduce relatively easily. There was no obvious disruption of the distal tibial plafond. I irrigated that medial wound thoroughly and stabilized the medial malleolus initially with a K-wire and later with a definitive fixation utilizing screws. After that was completed, a 2nd incision was made laterally. Dissection was carried down through skin and subcutaneous tissues, and the superficial peroneal nerve was protected. We exposed the distal fibula, applied a plate and then irrigated the syndesmosis, reduced the syndesmosis with a large clamp and then placed a ligament reconstruction device across that syndesmosis to maintain the proper tibiofibular relationship and the ankle joint was taken through a range of motion and found to be stable. All wounds were thoroughly irrigated and closed in layered fashion, and then a 2nd incision, a wound VAC was placed over the incisions of the ankle which were closed, and a long leg splint was then applied. There were no complications. The patient tolerated the procedure well, and prior to the application of the splint was noted to have significant varus laxity of the knee, indicating at least a lateral collateral ligament injury, possible ACL injury for which an MRI will be obtained at some

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOOX BLACKWELL, VANESSA Enc #126498443 5/16/2014 - 5/28/2014 Operative Report (Interfaced) 5/29/2014 O'Dell,
Jason Benjamin MD 1 OP0014

Operative Report

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: O'Dell, Jason Benjamin MD
PATIENT NO.: 000126498443
DATE OF SURGERY/PROCED: 05/16/2014

point, during hospitalization. She otherwise went to recovery room in stable condition. There was good
return of capillary refill. The tourniquet was deflated.

Jason Benjamin O'Dell, MD

maq
DD : 05/28/2014 05:51 P
DT : 05/29/2014 04:24 P

Job #: 1268412
cc: Jason Benjamin O'Dell, MD

Electronically signed by O'DELL MD, JASON on: 04-Jun-2014 12:27:44 -04:00

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 History and Physical two sigs
(Interfaced) 5/19/2014 Crisp, Brian PA 1 HP0002

History Physical

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Crisp, Brian PA
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014
DISCHARGE DATE:

NAME: Blackwell, Vanessa 11ST110501
MED. REC. NO.: 01-49-31-79
DR. DICTATING: Brian Crisp, PA
DOB:
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014 12:40 A

Dictating for Dr. O'Dell

HISTORY: This is a 51-year-old female who was struck by a vehicle while walking down the street. She presented to the Emergency Department with obvious deformity to the left leg. Emergency Room staff was unable to palpate a pulse but was able to document one using a Doppler. Patient complained mostly of left leg pain. No headache. No neck pain. No back pain. No chest pain. No abdominal pain. No difficulty with breathing. All other extremities were without discomfort. Trauma scan was performed revealing no obvious internal injuries to the head, neck, chest, abdomen or pelvis.

NO KNOWN DRUG ALLERGIES.

CURRENT MEDICATIONS:
Aspirin 81 mg daily

PAST MEDICAL HISTORY: Patient denies past medical history.

PAST SURGICAL HISTORY: Patient denies.

SOCIAL HISTORY: The patient is currently unemployed. She denies any smoking or alcohol consumption.

REVIEW OF SYSTEMS: Ten systems reviewed and negative aside was listed in the HPI.

On exam this is a well developed, 51-year-old female in no acute distress. She is alert and oriented x 3.

VITAL SIGNS: Blood pressure 124/73, pulse 77, respirations 16, temperature 98.6.

HEENT EXAM: Extraocular motions intact. Pupils are equal, round, and reactive to light. Head is atraumatic, normocephalic.

NECK: Supple, nontender. Full range of motion.

CHEST EXAM: Nonlabored breathing. No use of accessory muscles. Nontender to palpation.

ABDOMEN: Soft, nontender throughout.

CARDIAC EXAM: Regular rate and rhythm. No JVD or peripheral edema.

EXTREMITY EXAM: Upper extremities move without apparent pain discomfort. No obvious injuries are

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

Page 1 of 3 pages

Page 1 of 3



McLeod Medst _0089

LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 History and Physical: two sigs
(Interfaced) 5/19/2014 Crisp, Brian PA 1 HP0002

History Physical

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Crisp, Brian PA
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014
DISCHARGE DATE:

noted. Lower extremity: The left ankle has obvious deformity. There is a large soft tissue wound to the posterior aspect of the lower leg. This is deep to the muscle. There is no active bleeding currently. Unable to palpate a dorsalis pedis or posterior tibialis pulse but is obtainable with Doppler. Patient has weak dorsiflexion to the left foot. Sensation is grossly intact throughout the lower extremity. Right lower extremity is without apparent pain or discomfort. No obvious injuries.

CT scans were performed of the head, neck, chest, abdomen and pelvis which are negative for acute injury. Pictures were taken of the left knee, left femur, left tibia/fibula and left ankle revealing a left distal third-fibula fracture with angulation-displacement and a dislocation of the tibiotalar joint and medial malleolus fracture.

SIGNIFICANT LABORATORY DATA: White blood cell count 22.73, hemoglobin 10.8, hematocrit 32.3, PT 12.9, INR 0.95, sodium 144, potassium 2.1, chloride 121, carbon dioxide 14, glucose 98, BUN 7, creatinine 0.54, calcium 4.3, total protein 3.1, albumin 1.3, alk phos 33, magnesium 0.9, urine drug screen and alcohol are negative.

ASSESSMENT AND PLAN:

1. Status post-pedestrian struck.
2. Left leg wound.
3. Left ankle fracture with dislocation.
4. Hypokalemia.
5. Hypocalcemia.
6. Hypoalbuminemia with questionable malnutrition.

PLAN: Patient will be admitted to the Orthopedic Nursing Floor pending formal irrigation and debridement and fixation of her fracture by Dr. O'Dell in the morning. We have consulted Dr. Kerley, Hospitalist for management of patient's metabolic abnormalities and for medical assessment. Ancef has been started every 8 hours pending surgery.

Jason Benjamin O'Dell, MD

Brian Crisp, PA

tj

DD : 05/18/2014 10:15 A

DT : 05/19/2014 08:50 A

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOQX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 History and Physical two sigs
(Interfaced) 5/19/2014 Crisp, Brian PA 1 HP0002

History Physical

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Crisp, Brian PA
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014
DISCHARGE DATE:

ET: Edited by TJ 05/19/2014 09:02
Job #: 1265149
cc: Brian Crisp, PA
Jason Benjamin O'Dell, MD

Electronically signed by CRISP PA, BRIAN on 20-May-2014 09:56:01 -04:00
Electronically signed by O'DELL MD, JASON on 26-May-2014 20:05:44 -04:00

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

**Jacqueline
Blackwell**

Medical Bills



Medical Bills Summary

McLeod Florence	\$100,058.00
Advanced Medical Associates	\$1,704.00
Carolina's Hospital- Marion	\$3,469.92
Florence Radiology	\$1,943.00
Marion County EMS	\$875.00
Medical Anesthesia Consultants, LLC	\$2,800.00
TOTAL:	\$110,849.92

McLeod- Florence

McLeod- Florence

Dates of Service:

5/18/2014-5/28/2014

Total: \$100,058.00

100X BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 UB-04 6/1/2014 1 UB04

[illegible]

01 PX	8246	2624	85221	2851	2762	8910	84503	8442	8440	M
9	2768	27541	27651	2738	2989					
01 PX	8246	2624	85221	2623	85221	0218	84147	88495		79
1	OFFICIAL PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE
1	7936	051814	9356	051814	9356	051814	LASTD	DEL	NPI1174733125	LASTJASON
2	OFFICIAL PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE	OTHER PROCEDURE CODE	DATE
2	7936	051814	9356	052914	9357	052914	LASTD	DEL	NPI1174733125	LASTJASON
3	2N000000X						LASTD	DEL	NPI1922004498	LASTJASON
4							LASTD	DEL	NPI1922004498	LASTJASON
5							LASTD	DEL	NPI1922004498	LASTJASON
6							LASTD	DEL	NPI1922004498	LASTJASON
7							LASTD	DEL	NPI1922004498	LASTJASON
8							LASTD	DEL	NPI1922004498	LASTJASON
9							LASTD	DEL	NPI1922004498	LASTJASON

Advanced Medical Associates

Dates of Service:

6/12/2014-12/11/2014

Total: \$1,704.00

Billing Summary: BLACKWELL, JACQUELINE #187343 (E#187343)**MARION PHYSICIAN
SERVICES, LLC**

printed 12/18/2014 11:49 AM

MARION PHYSICIAN SERVICES, LLC
PO BOX 7872
BELFAST, ME 04915-7800
billing phone: (866) 949-1433

JACQUELINE BLACKWELL

MARION, SC 29571

PATIENT #	PATIENT NAME
187343	JACQUELINE BLACKWELL
DOB	HOME TELEPHONE

Billing Summary

Procedure	Date of Service	Post Date	Type	Reason	Supervising Provider			
218739	99214	06/12/2014	06/12/2014	CHARGE	99214	GANGATHARAN MATHISUTHAN	\$255.00	

221583	93970,26	05/18/2014	08/24/2014	CHARGE	93970,26	GANGATHARAN MATHISUTHAN	\$85.00	

223728	99214	07/03/2014	07/03/2014	CHARGE	99214	GANGATHARAN MATHISUTHAN	\$255.00		

231768	99214	08/07/2014	08/07/2014	CHARGE	99214	GANGATHARAN MATHISUTHAN	\$255.00		

240317	99213	09/11/2014	09/11/2014	CHARGE	99213	GANGATHARAN MATHISUTHAN	\$172.00		

248719	99214	10/14/2014	10/14/2014	CHARGE	99214	GANGATHARAN	\$255.00		
						MATHISUTHAN			

257603	99213	11/17/2014	11/17/2014	CHARGE	99213	GANGATHARAN	\$172.00		
						MATHISUTHAN			

263666	99214	12/11/2014	12/11/2014	CHARGE	99214	GANGATHARAN MATHISUTHAN	\$255.00		

Carolina's Hospital- Marion

Dates of Service:

6/5/2014-12/11/2014

Total: \$4,678.36

From: CHS PFS

843 674 6999

08/06/2015 16:43

#777 P.004/009

1 MARION REGIONAL HOSPITAL 2829 E HIGHWAY 76 MULLINS SC 295746035 8434312000 8434312465				2 MARION REGIONAL HOSPITAL PO BOX 277631 ATLANTA GA 30384-7631				3 PAF 534756601 MED 300028154 510 TAX NO. 0000 621587267 100214 102214				4 131			
5 PATIENT NAME 6 BLACKWELL JACQUELINE V															
10 BIRTHDATE		11 SEX		12 DATE		13 TIME		14 HRT		15 HR		16 MIN		17 SEC	
08/06/2015		F		08/06/2015		12:00		01							
31 OCCURRENCE				32 OCCURRENCE				33 OCCURRENCE				34 OCCURRENCE			
11 100114				29 101014				35 100214							
38 VALUE CODES				39 VALUE CODES				40 VALUE CODES				41 VALUE CODES			
42 REV CD				43 DESCRIPTION				44 HCPCS/RATE/MPPS CODE				45 SERV. DATE			
0420				THERAPEUTIC EXERCISES				97110GP				100214			
0420				THERAPEUTIC EXERCISES				97110GP				100214			
0424				PT EVALUATION				97001GP				100214			
46 SERV. UNITS				47 TOTAL CHARGES				48 NON-COVERED CHARGES				49			
2				38105				0				0			
1				23281				0				0			
0001				PAGE 1 OF 1				CREATION DATE				102414			
TOTALS				99228				000							
50 V571 8371															
51 9															
52 PRINCIPAL PROCEDURE DATE 53 OTHER PROCEDURE DATE 54 OTHER PROCEDURE DATE 55 OTHER PROCEDURE DATE															
56 ATTENDING NPI 1174733125															
57 LAST ODELL FIRST JASON B															
58 ATTENDING NPI															
59 LAST FIRST															
60 ATTENDING NPI															
61 LAST FIRST															
62 ATTENDING NPI															
63 LAST FIRST															
64 ATTENDING NPI															
65 LAST FIRST															

From: CHS PFS

843 874 8999

08/06/2015 16:45

#777 P.005/009

1 MARION REGIONAL HOSPITAL 2029 E HIGHWAY 76 MULINS SC 295746035 8434312000 8434312465		2 MARION REGIONAL HOSPITAL PO BOX 277631 ATLANTA GA 30384-7631		3 PO# 533249901 4 000024854 5 000000000 6 621587267 061814 061814		7 131

8 PATIENT NAME 9 BLACKWELL JACQUELINE V		10 BIRTHDATE 11 SEX 12 DATE OF BIRTH 13 MONTH 14 DAY 15 YEAR		16 OCCURRENCE 17 DATE 18 MONTH 19 DAY 20 YEAR		21 OCCURRENCE 22 DATE 23 MONTH 24 DAY 25 YEAR		26 OCCURRENCE 27 DATE 28 MONTH 29 DAY 30 YEAR		31 OCCURRENCE 32 DATE 33 MONTH 34 DAY 35 YEAR	
36 061614											

36 061614											

42 REV. CD.	43 DESCRIPTION	44 HCPCS RATE/PPS CODE	45 SERV. DATE	46 SERV. UNITS	47 TOTAL CHARGE	48 NON-PAID CHARGE	49
0921	EXTREMITY STUDY	93970	061814	1	200943		1
							2
							3
							4
							5
							6
							7
							8
							9
							10
							11
							12
							13
							14
							15
							16
							17
							18
							19
							20
							21
							22
0001	PAGE 1 OF 1	CREATION DATE	062014	TOTALS	200943	000	23

50 72981		51		52		53		54		55		56		57		58		59		60	
61 72981		62		63		64		65		66		67		68		69		70		71	
72 72981		73		74		75		76		77		78		79		80		81		82	
83 72981		84		85		86		87		88		89		90		91		92		93	
94 72981		95		96		97		98		99		100		101		102		103		104	
105 72981		106		107		108		109		110		111		112		113		114		115	
116 72981		117		118		119		120		121		122		123		124		125		126	
127 72981		128		129		130		131		132		133		134		135		136		137	
138 72981		139		140		141		142		143		144		145		146		147		148	
149 72981		150		151		152		153		154		155		156		157		158		159	
160 72981		161		162		163		164		165		166		167		168		169		170	
171 72981		172		173		174		175		176		177		178		179		180		181	
182 72981		183		184		185		186		187		188		189		190		191		192	
193 72981		194		195		196		197		198		199		200		201		202		203	
204 72981		205		206		207		208		209		210		211		212		213		214	
215 72981		216		217		218		219		220		221		222		223		224		225	
226 72981		227		228		229		230		231		232		233		234		235		236	
237 72981		238		239		240		241		242		243		244		245		246		247	
248 72981		249		250		251		252		253		254		255		256		257		258	
259 72981		260		261		262		263		264		265		266		267		268		269	
270 72981		271		272		273		274		275		276		277		278		279		280	
281 72981		282		283		284		285		286		287		288		289		290		291	
292 72981		293		294		295		296		297		298		299		300		301		302	
303 72981		304		305		306		307		308		309		310		311		312		313	
314 72981		315		316		317		318		319		320		321		322		323		324	
325 72981		326		327		328		329		330		331		332		333		334		335	
336 72981		337		338		339		340		341		342		343		344		345		346	
347 72981		348		349		350		351		352		353		354		355		356		357	
358 72981		359		360		361		362		363		364		365		366		367		368	
369 72981		370		371		372		373		374		375		376		377		378		379	
380 72981		381		382		383		384		385		386		387		388		389		390	
391 72981		392		393		394		395		396		397		398		399		400		401	
402 72981		403		404		405		406		407		408		409		410		411		412	
413 72981		414		415		416		417		418		419		420		421		422		423	
424 72981		425		426		427		428		429		430		431		432		433		434	
435 72981		436		437		438		439		440		441		442		443		444		445	
446 72981		447		448		449		450		451		452		453		454		455		456	
457 72981		458		459		460		461		462		463		464		465		466		467	
468 72981		469		470		471		472		473		474		475		476		477		478	
479 72981		480		481		482		483		484		485		486		487		488		489	
490 72981		491		492		493		494		495		496		497		498		499		500	
501 72981		502		503		504		505		506		507		508		509		510		511	
512 72981		513		514		515		516		517		518		519		520		521		522	
523 72981		524		525		526		527		528		529		530		531		532		533	
534 72981		535		536		537		538		539		540		541		542		543		544	
545 72981		546		547		548		549		550		551		552		553		554		555	
556 72981		557		558		559		560		561		562		563		564		565		566	
567 72981		568		569		570		571		572		573		574		575		576		577	
578 72981		579		580		581		582		583		584		585		586		587		588	
589 72981		590		591		592		593		594		595		596		597		598		599	
600 72981		601		602		603		604		605		606		607		608		609		610	
611 72981		612		613		614		615		616		617		618		619		620		621	
622 72981		623		624		625		626		627		628		629		630		631		632	
633 72981		634		635		636		637		638		639		640		641		642		643	
644 72981		645		646		647		648		649		650		651		652		653		654	
655 72981		656		657		658		659		660		661		662		663		664		665	
666 72981		667		668		669		670		671		672		673		674		675		676	
677 72981		678		679		680		681		682		683		684		685		686		687	
688 72981		689		690		691		692		693		694		695		696		697		698	
699 72981		700		701		702		703		704		705		706		707		708		709	
710 72981		711		712		713		714		715		716		717		718		719		720	
721 72981		722		723		724		725		726		727		728		729		730		731	
732 72981		733		734		735		736		737		738		739		740		741		742	
743 72981		744		745		746		747		748		749		750		751		752		753	
754 72981		755		756		757		758		759		760		761		762		763		764	
765 72981		766		767		768		769		770		771		772		773		774		775	
776 72981		777		778		779		780		781		782		783		784		785		786	
787 72981		788		789		790		791		792		793		794		795		796		797	
798 72981		799		800		801		802		803		804		805		806		807		808	
809 72981		810		811		812		813		814		815		816		817		818		819	
820 72981		821		822		823		824		825		826		827		828		829		830	
831 72981		832		833		834		835		836		837		838		839		840			

A
 B
 C
 A
 B
 C
 A
 B
 C

[illegible]

CNRA

Dates of Service:

5/18/14-5/23/14

Total: \$2,760.00

Florence Radiology

Dates of Service:

5/17/2014-5/23/2014

Total: \$1,943.00

FLORENCE RADIOLOGICAL ASSOCIATES, PA
P O BOX 51330
MYRTLE BEACH SC 295790023
(800) 841-4236

Patient:

Acct #: 242607
BLACKWELL, VANESSA
MARION, SC 29571

Responsible party:

BLACKWELL, VANESSA
MARION, SC 29571

Srvd. Date	CPT	Proc. Description	Charge	Physician
05/17/2014	73550	RADEX FEMUR 2 VIEWS	\$37.00	ALLEN, SCOTT H
05/17/2014	73590	RADEX TIBFIB 2 VIEWS	\$37.00	ALLEN, SCOTT H
05/17/2014	72125	CT CRV SPI C-MATRL	\$255.00	SMITH, MARVIN M
05/17/2014	70450	CT HEAD/BRN C-MATRL	\$188.00	SMITH, MARVIN M
05/17/2014	74177	CT, ABD AND PEL; W/ CONT	\$536.00	SMITH, MARVIN M
05/17/2014	71260	CT THORAX C+ MATRL	\$273.00	SMITH, MARVIN M
05/18/2014	71020	RADEX CH 2 VIEWS FANTLA	\$48.00	LEWIS, MARY BETH
05/18/2014	73610	RADEX ANKLE COMPL MINIMU	\$37.00	LEWIS, MARY BETH
05/19/2014	73721	MRI ANY JT LXXR C-MATRL	\$296.00	PHIPPS, NOEL L

This report has been Reproduced from the Original
Reproduced Tuesday, July, 15, 2014 10:29:06 AM (CRAVIS)
Page 1 of 2

Marion County EMS

Dates of Service:

5/17/2014

Total: \$875.00

**Medical Anesthesia
Consultants, LLC**

Dates of Service:

5/20/2014-5/31/2014

Total: \$2,800.00



Medical Anesthesia Consultants LLC

Patient Journal

Section IV - Case Information:

Case#:	17474096	Doctor (D):	HAMRICK, GERALD		Surgeon:	O Dell, Jason		Start Time:	08:05
Service Date:	2014/05/18	Assistant (A):	Not Employed By Group		B / T / Mins:	3 / 21 / 205		Stop Time:	11:30
Location:	McLeod Regional Medical Center				Type:	Inpatient Hospital			
Date		D/A	Diagnosis Codes				CPT Code	Modifiers	Amount
			1	2	3	4			
2014/05/20		D	824.4				27814	QK	\$1,920.00
2014/06/02		D	824.4				27814	QK	
2014/06/02		D	824.4				27814	QK	
2014/05/20		D	824.4				99140		
2014/06/02		D	824.4				99140		
2014/06/02		D	824.4				99140		

Medac 2015-11-13 10:47:38 (GMT -05:00) Page 4/14

November 13, 2015
10:01:57AM

MRMC-CBO

Dates of Service:

5/18/2014-5/23/2014

Total: \$1,232.00

PRID: 301,5049

Trip #: 142280

Service: Marion County EMS

Date: May 17, 2014

Base: Brittons Neck / Gresham Substation

Team: ALS

Unit: 12707

Crew 1: Primary Caregiver

*Campbell, Kamadie

Dispatched As: Traffic Accident

Vehc. Grid: Zone 1

EMT-I

Vehc. Disp. Loc: MARION

Crew 2: Driver

Type of Svc: Scene Unscheduled

Revell, Melissa

Response Code: Lights and Siren

EMT-B

Mode to Ref: Lights / Sirens

Moved Via: Stretcher

* designates an ALS Provider

Position: Sitting

Mode to Rec: Lights / Sirens

Outcome: Treated, Transported by EMS

Moved From: Stretcher

Amb. Transport Code: Initial Trip

Pt. Condition: Unchanged

Ref Other Type: Residence

Receiving: Hospital

Location: 501 N /HARPER RD

McLeod Regional Medical Center

Marion, SC 29571

United States

Emergency Department

Requester: E-911

555 East Cheves St

Scene Grid: Zone 1

PO Box 100551

Florence, SC 29506-2617

(843) 777-2000

Dest. Grid: Zone 1

Last Name: BLACKWELL First: JACQUELINE

Address:

City: Marion ST: SC Zip: 29571

County: Marion

Country: United States

Citizenship: United States

DOB: SSN:

Age: 51y Sex: F Weight: 160 lb

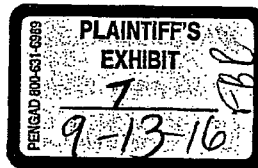
Height:

Subscriber: No

Race: Black, non-Hispanic

DNR Orders: None

Odometer	Times
Start: 10100.0	Received: 21:18
At Ref: 10104.0	Dispatch: 21:18
At Rec: 10130.0	EnRoute: 21:19
End: 10130.0	At Ref: 21:26
Ld Miles: 26.0	At Patient: 21:27
Tot Miles: 30.0	Leave Ref: 21:41
	At Rec: 22:07
	Available: 22:07
	In Qtrs: 22:07
	Call Completed: 22:07



Scene Information

Description: SAFE

Num. Patients On Scene: 1

Patient Belongings: PT

Chief Complaint (Category: Traffic Accident)

Pain, Bleeding, Swelling, Wound. Traumatic injury, Hypovolemia / shock

Duration: 30 Minutes

Anatomic Location: Extremity - Lower

ALS Assessment: Completed for Suspected Illness

History of Present Illness

51 Y/O F MVA. PT WAS FOUND ON 501 N /HARPER RD LAYING ON THE GROUND IN THE GRASS. PT HAD BEEN HIT BY A CAR. PT WAS SURROUNDED BY EMS AND FIRE RESCUE. PT WAS CHECKED FOR DECAPS-BTLS PT ONLY C/C PAIN TO THE LT LEG WHICH WAS A OPENED BILATERAL FRACTURE TO THE LT LOWER LEG. PT WAS PLACED ON A BACK BOARD X3, C-COLLAR AND LEFT LEG WAS SPLINTED. PT HAD GOOD PMS IN ALL LIMBS EXCEPT THE LT LOWER LEG. PT WAS CHECKED FOR DECAPS-BTLS NONE FOUND BUT THE LT LEG. PT ALSO HAD THE SMELL OF ALCOHOL ON HER. PT WAS TREATED AND TX AND LEFT IN CARE WITH MCLEOD ER STAFF

Medical History	Current Medications	Allergies
Asthma	None Listed	None - Reported By Patient

Neurological Exam

Neurological Exam

Level of Consciousness: Alert Loss of Consciousness: No
 Chemically Paralyzed: No
 Neurological Present: Normal
 Mental Present: Normal

Glasgow Coma Scale

E	V	M	Tot
Int: 4	5	6	= 15

Pupils

	Left	Right
Size:	Normal	Normal
React:	Reactive	Reactive

Motor Sensory

LA:	Normal	Normal
RA:	Normal	Normal
LL:	Normal	Normal
RL:	Normal	Normal

Airway

Status: Patent

Respiratory

Effort: Normal

Sounds: L: Clear R: Clear

Cardiovascular

JVD: Not Appreciated Cap. Refill: Less than 2 Seconds
 Edema: Not Appreciated

Pulses

	Left	Right
Carotid:		
Radial:	Normal	Normal
Femoral:		

Injury Details

Reason for Encounter: Injury/Trauma
 Drugs/Alcohol?: Alcohol
 Drug/Alcohol Indicators Present: Smell of Alcohol on Breath

Initial Physical Findings

Injuries

Lower Extremities: Bleeding-Controlled, Dislocation/Fracture,
 Laceration, Soft Tissue Swelling/Bruising, Deformity,
 Pain/tenderness

Pregnant: Possible, Unconfirmed

Assessment

Left Leg: Edema

Impression / Diagnosis

System: Musculoskeletal
 Symptoms: Pain, Bleeding, Swelling, Wound
 Impression: Traumatic injury, Hypovolemia / shock
 Initial Patient Acuity: Emergent (Yellow)

Activity

Time	H.R.	B.P.	SaO2	Resp	Rhythm	GCS	ECG Method	Glu	Prtcl	Pain	CRW*
	H.R. Method	Method	LOC	Resp Effort							
Action	Comment										
21:30	73	90 / 60	97	18		5/6		113	Universal Care	5	#1
Initiate IV Palpated Auto. Cuff Alert Normal Peripheral IV initiated by Kamadie Campbell with 16ga. at Right Hand. Attempts: 1, successful. Authorization: Via Protocol. Pt. Response: Unchanged.											
21:32									Universal Care		#1
Immob. Patient immobilized with LBB, CID, Splint, Collar, Manual C-Spine Stabilization at Left Lower, Left Upper, Right Lower, Right Upper. Assessment: Good pulse, motor, sensation. Authorization: Via Protocol. Pt. Response: Unchanged.											
21:35									Universal Care		#1
Airway Oxygen initiated at 4 lpm via NC by Kamadie Campbell. Authorization: Via Protocol. Pt. Response: Unchanged.											
21:38									Universal Care		#1
Cardiac Cardiac Monitor performed by Kamadie Campbell. Successful. Authorization: Via Protocol. Pt. Response: Worse.											
21:50	70	130 / 100	98	18		4/5/			Universal	7	#1

Patient Record 30165049

Activity												
Time	H.R.	B.P.	SaO ₂		Resp	Rhythm	GCS	ECG Method	Glu	Prtcl	Pain	CRW*
	H.R. Method	Method	LOC		Resp Effort							
Action	Comment											
Care												
	Palpated	Art. Line	Alert		Normal							

* Assessment made by

Response Factors Affecting Care: None

Scene Factors Affecting Care: None

Transportation Factors Affecting Care: None

Dispatch Factors: None

Turn-Around Factors: None

Addendums			
Date/Time	CrewID	Comment	
05/20/2014 22:08 EST	Kamadie Campbell	...	
05/20/2014 22:09 EST	Kamadie Campbell	...	

Campbell, Kamadie: _____

Revell, Melisa: Electronically Signed on 05/19/2014 16:31:01 EST

LOQX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 E D Medical Record 5/18/2014 1 ER0001

McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: VANESSA BLACKWELL
Reg Date/Time: 5/18/14 0:40
Account #: 126498443
MRN: 000001493179

AGE: 51 yr
SEX: F
Priority: 2 - Emergent

DOB:
ED #: 311110

ED Medical Chart

Demograph	Address: 100 MACNAIR ROAD MARION, SC 29571	Phone # (843)423-4941 SS#:
Triage	Priority: 2 - Emergent Chief Complaint: MVA Stated Complaint: EMS MVA Arrival Date: 05/17/14 22:18 Triage Date: 05/17/14 22:24 To Room: 05/17/14 22:25 Mode of Arrival: Ambulance	WC: N Language: English
Bed	Z138 In: 05/17 22:25 Out: 05/18 03:36	05/17 22:25 KOT 05/18 03:36 KOT
Providers	KRISTEN TINDAL RN THOMAS LEWIS MD	Start: 05/17 22:25 End: Start: 05/17 22:25 End:
Allergies	Allergic To: No Known Allergies	05/17 22:40 CC
Current Meds	asa 81 mg daily Freq:	05/17 22:40 CC
Past Med Hist	**Blood Transfusion in the past** - no **Blood Transfusion reaction in the past** - no **Pulmonary Disease: Self, asthma	05/17 22:40 CC 05/17 22:40 CC 05/17 22:40 CC
Past Surgery Hist	*No other significant history.	05/17 22:40 CC
Past Social Hist	**Accompanied to Hospital by: Self **Lives with family or significant other **Needs transportation home: no **Patient can read/write: YES **Suspected or alleged abuse/neglect/exploitation: no **Valuables: Pt./ Family informed that hospital is not responsible for valuables *No other significant history.	05/17 22:40 CC 05/17 22:40 CC 05/17 22:40 CC 05/17 22:40 CC 05/17 22:40 CC 05/17 22:40 CC 05/17 22:40 CC
Immunizations	*Immunizations current	05/17 22:40 CC

NURSING ASSESSMENT

05/17 22:30

DG: Secondary General Trauma

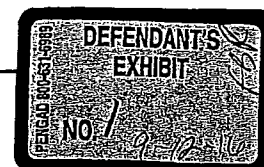
05/17 22:39 CC

History Source: patient EMS. note: 51 year old female brought by ems awake alert and slightly confused states that she was walking across the street and was struck by a motorvehicle pt was found on the ground awake alert complaining of left leg pain. pt survey shows head negative for injury pupils 4 mm rb no blood in nares or ear canals no loose teeth noted. trachea midline chest appears intact lung sounds clear equal bilat no resp distress noted abd soft non-tender pos bowel sounds noted to all 4 quads pelvis intact no grating when rocked. upper ext neg for injury lower ext noted to have deformity to ankle area and open wound to the posterior knee area also noted some pain what appears to be fx to femur area pt arrived on longboard c-collar applied dr lewis at bedside pedal pulse noted to left lower ext confirmed by doppler

Printed: 5/20/14 15:56

Page 1 of 21

Page 1 of 21



McLeod Medst__0065

LOOX BLACKWELL, VANESSA Bnc #126498443 5/18/2014 - 5/28/2014 E D Medical Record 5/18/2014 1 ER0001
 McLeod Emergency Department
 555 East Cheves Street, PO Box 100551
 Florence, SC 29501-0551
 843-777-2000

Patient Name: VANESSA BLACKWELL
 Reg Date/Time: 5/18/14 0:40
 Account #: 126498443
 MRN: 000001493179

AGE: 51 yr
 SEX: F
 Priority: 2 - Emergent
 DOB:
 ED #: 319660

ED Medical Chart

Mechanism of Injury, Motor Vehicle Accident Type: versus vehicle.
 Mechanism of Injury, Motor Vehicle Accident Forces: frontal impact forces.
 MVA Position in vehicle: . note: *pedestrian*
 Circumstance: street
 Occurred: 1 hour(s) ago.
 Location: location: left anterior upper leg location: anterior left knee location: anterior left knee location: left anterior foot.
 Pain Quality: sharp.
 Pain Severity Scale 1-10: now: now: 10 Pain Scale Type Verbal Scale.
 Pain Duration: onset: onset: 1 hour(s) ago.
 Timing: continuous.
 Appearance: recent injury.
 Circulation: normal.
 Learning/Communication Barriers: NONE.
 Abuse/Neglect/Exploitation Observations: Observed Signs and Symptoms of abuse/neglect : no..
 Latex Allergy Screen: reaction to use or handling of latex products such as rubber products : no..
 Latex Allergy Band Applied? : no..
 Triage Fall Assessment: Fall within last 3 months? : no. Appropriate armband applied? : no. Was falls prevention education provided to patient/family? : no..
 Stroke Screening: Patient Over 18 years of age.
 Sepsis/Infection Screening: Temp greater than 100.4 : no. Temp less than 98.8 : no. HR: greater than 90bpm : no. Resp Rate greater than 20 : no..
 Sepsis Screening - SIRS: No SIRS criteria Present.
 Sepsis Screening - Infection : No Infection criteria Present.
 Sepsis Screening - Organ Dysfunction: No Organ Dysfunction criteria present.
 Pneumonia Screening: Fever : no. Cough : no. Chills : no. Shortness of breath/Tachypnea : no. SpO2 less than 94% : no..
 Cough Screening: Persistent cough of at least 2 - 3 weeks. Continue evaluation if positive. : no..
 Significant weight loss, more than 10 lbs : no. Compromised status (alcoholism, transplant, chemotherapy) : no. Sputum production/Hemoptysis : no. Foreign born : no..
 Travel History: contact with a person who has traveled outside the country within the last 30 days: no..
 Suicide Screening: Pt expresses feelings of Helpless : no. Hopeless : no. Plan for Suicide : no. Initiate Suicide Precautions? : no..
 Chronic Condition(s) None..
 Associated Sign(s)/Symptoms(s) none..
 Neurologic Assessment: affect: appropriate behavior: appropriate level of consciousness: Alert and oriented to person, place and time. motor response: obeys commands motor strength: moves all extremities pupillary reaction: PERRLA speech: clear.
 Cardiovascular Assessment: calf tenderness: Normal capillary refill: Capillary refill less than 2 seconds cardiac rate: Cardiac rate within normal range cardiac rhythm: Cardiac rhythm normal cardiac sounds: Cardiac sounds normal, no gallop, murmur or rub noted edema: No edema noted pulses: Pulses palpable.
 Respiratory Assessment: airway: Airway is patent breath sounds: Normal chest wall: Normal cough productivity: Normal respirations: Normal respiratory effort: Normal.
 Gastrointestinal Assessment: appearance: Abdomen is soft, non-distended. bowel sounds: Bowel sounds present to all quadrants with normal frequency. complaints: Denies complaints of nausea, vomiting or diarrhea. guarding: No pain to palpation. Intake of liquids and solids: Tolerates solids and liquids without difficulty. palpation: Normal. tenderness: Abdomen is nontender..

LOQX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 E D Medical Record 5/18/2014 1 ER0001
McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: VANESSA BLACKWELL
Reg Date/Time: 5/18/14 0:40
Account #: 126498443
MRN: 000001493179

AGE: 51 yr
SEX: F
DOB: 3/15/60
ED #: 315060
Priority: 2 - Emergent

ED Medical Chart

Genitourinary Assessment: genital complaints: Denies genital complaints flow of last period: Normal pregnancy History: Normal urinary complaints: Denies complaints of burning, frequency, hematuria, urgency, nocturia and retention. urinary characteristics: Denies complaints of burning, frequency, hematuria, urgency, nocturia and retention. urine odor: Denies urine odor. urinary catheter: No urinary catheter..

Musculoskeletal Assessment: abnormalities: No deformity, swelling, tenderness, muscle wasting or amputation noted gait: Gait steady movement of extremities: Moves all extremities without difficulty ROM: Range of motion intact to affected area.

Integumentary Assessment: fingernails and toenails: Fingernails and toenails normal skin abnormalities:(Required for Present on Admission) No skin abnormalities noted skin color: Skin color is within patient's normal skin moisture: Skin is dry skin temperature: Skin is warm skin turgor: Skin intact-with normal turgor.

EENT Assessment: eyes: No drainage, discharge, or foreign body. ears: No drainage, discharge, or foreign body. nose: No drainage, discharge, or foreign body. throat/mouth: No pain or difficulty swallowing..

LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 History and Physical two sigs
(Interfaced) 5/19/2014 Crisp, Brian PA. 1 HP0002

History Physical

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Crisp, Brian PA
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014
DISCHARGE DATE:

NAME: Blackwell, Vanessa 11ST110501
MED. REC. NO.: 01-49-31-79
DR. DICTATING: Brian Crisp, PA
DOB:
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014 12:40 A

Dictating for Dr. O'Dell

HISTORY: This is a 51-year-old female who was struck by a vehicle while walking down the street. She presented to the Emergency Department with obvious deformity to the left leg. Emergency Room staff was unable to palpate a pulse but was able to document one using a Doppler. Patient complained mostly of left leg pain. No headache. No neck pain. No back pain. No chest pain. No abdominal pain. No difficulty with breathing. All other extremities were without discomfort. Trauma scan was performed revealing no obvious internal injuries to the head, neck, chest, abdomen or pelvis.

NO KNOWN DRUG ALLERGIES.

CURRENT MEDICATIONS:
Aspirin 81 mg daily

PAST MEDICAL HISTORY: Patient denies past medical history.

PAST SURGICAL HISTORY: Patient denies.

SOCIAL HISTORY: The patient is currently unemployed. She denies any smoking or alcohol consumption.

REVIEW OF SYSTEMS: Ten systems reviewed and negative aside was listed in the HPI.

On exam this is a well developed, 51 -year-old female in no acute distress. She is alert and oriented x 3.

VITAL SIGNS: Blood pressure 124/73, pulse 77, respirations 16, temperature 98.6.

HEENT EXAM: Extraocular motions intact. Pupils are equal, round, and reactive to light. Head is atraumatic, normocephalic.

NECK: Supple, nontender. Full range of motion.

CHEST EXAM: Nonlabored breathing. No use of accessory muscles. Nontender to palpation.

ABDOMEN: Soft, nontender throughout.

CARDIAC EXAM: Regular rate and rhythm. No JVD or peripheral edema.

EXTREMITY EXAM: Upper extremities move without apparent pain discomfort. No obvious injuries are
PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOQX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 History and Physical two sigs
(Interfaced) 5/19/2014 Crisp, Brian PA 1 HP0002

History Physical

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Crisp, Brian PA
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014
DISCHARGE DATE:

noted. Lower extremity: The left ankle has obvious deformity. There is a large soft tissue wound to the posterior aspect of the lower leg. This is deep to the muscle. There is no active bleeding currently. Unable to palpate a dorsalis pedis or posterior tibialis pulse but is obtainable with Doppler. Patient has weak dorsiflexion to the left foot. Sensation is grossly intact throughout the lower extremity. Right lower extremity is without apparent pain or discomfort. No obvious injuries.

CT scans were performed of the head, neck, chest, abdomen and pelvis which are negative for acute injury. Pictures were taken of the left knee, left femur, left tibia/fibula and left ankle revealing a left distal third fibula fracture with angulation displacement and a dislocation of the tibiotalar joint and medial malleolus fracture.

SIGNIFICANT LABORATORY DATA: White blood cell count 22.73, hemoglobin 10.8, hematocrit 32.3, PT 12.9, INR 0.95, sodium 144, potassium 2.1, chloride 121, carbon dioxide 14, glucose 98, BUN 7, creatinine 0.54, calcium 4.3, total protein 3.1, albumin 1.3, alk phos 33, magnesium 0.9, urine drug screen and alcohol are negative.

ASSESSMENT AND PLAN:

1. Status post-pedestrian struck.
2. Left leg wound.
3. Left ankle fracture with dislocation.
4. Hypokalemia.
5. Hypocalcemia.
6. Hypoalbuminemia with questionable malnutrition.

PLAN: Patient will be admitted to the Orthopedic Nursing Floor pending formal irrigation and debridement and fixation of her fracture by Dr. O'Dell in the morning. We have consulted Dr. Kerley, Hospitalist for management of patient's metabolic abnormalities and for medical assessment. Ancef has been started every 8 hours pending surgery.

Jason Benjamin O'Dell, MD

Brian Crisp, PA

tj
DD : 05/18/2014 10:15 A
DT : 05/19/2014 08:50 A

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 History and Physical two sigs
(Interfaced) 5/19/2014 Crisp, Brian PA 1 HP0002

History Physical

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Crisp, Brian PA
PATIENT NO.: 000126498443
ADMIT DATE: 05/18/2014
DISCHARGE DATE:

ET: Edited by TJ 05/19/2014 09:02
Job #: 1265149
cc: Brian Crisp, PA
Jason Benjamin O'Dell, MD

Electronically signed by CRISP PA, BRIAN on 20-May-2014 09:56:01 -04:00
Electronically signed by O'DELL MD, JASON on 26-May-2014 20:05:44 -04:00

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOOK BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Consultation (Interfaced) 5/22/2014 Woolery, Janet D, MD 1 CN0003

Consultation

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
 11ST110501
 MED. REC. NO.: 01493179
 DR. DICTATING: Woolery, Janet D. MD
 PATIENT NO.: 000126498443
 DATE OF CONSULT: 05/21/2014

NAME: Blackwell, Vanessa 11ST110501
 MED. REC. NO.: 01-49-31-79
 DR. DICTATING: Janet D. Woolery, MD
 DOB:
 PATIENT NO.: 000126498443
 DATE OF CONSULT: 05/21/2014

Requesting Physician: Dr. Kerley.

Time spent in consult 45 minutes.

REASON FOR CONSULTATION: Delusional behavior.

HISTORY OF PRESENT ILLNESS: Ms. Blackwell is a 51-year-old African/American female who was walking down the street in Marion and was hit by a car. Patient injured her left leg but otherwise did fairly well. Patient really does not recall what was happening that day, just states she was walking down the street, the car hit her. She reports to me that she actually stood up and got into the ambulance herself, although this is not clear that that is what really happened. She says she did pass out but then woke up and got up and stood up. When I tried to ask her about the injury she says that she just has a very bad sprain, although I think she has a cast on her leg. We were asked to see this patient secondary to delusional behavior. She has been somewhat odd while here, although not a management problem. Example of her odd behavior was this morning she urinated in an apple juice cup and also in her beverage container by the side of her bed. When I asked her why she did that she stated that they asked her for an urine sample and that is what she did. Nursing staff questioned her about that, she really could not explain why she had done something so odd. When I tried to talk to her she denies any psychiatric history. She says she did go to Mental Health several years ago but they told her that they made a mistake and that she really did not need to come back. Patient denies any hospitalizations. She denies all neurovegetative symptoms of depression. States she sleeps well, eats well. She told me that she works at Amtrak, does the scheduling, lives in the Amtrak dorms while she is working and then lives with her sister in Marion when she is not. She went into great detail about working at Amtrak but then, again, her story was kind of odd, some of the things that she was saying did not quite make sense. At this time patient is denying all psychotic symptoms, she denied all delusional beliefs, states that she feels like she is doing fine. Did attempt to call her sister to verify some of this history. Call her sister twice but really was not able to contact her to verify some of this history.

PAST PSYCHIATRIC HISTORY: She reports she went to Mental Health briefly. She denies any hospitalizations. She denies any suicide attempts.

HOME MEDICATIONS:
 Aspirin.

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOOK BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Consultation (Interfaced) 5/22/2014 Woolery, Janet
D. MD 1 CNO003

Consultation

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Woolery, Janet D. MD
PATIENT NO.: 000126498443
DATE OF CONSULT: 05/21/2014

HOSPITAL MEDICATIONS:

Morphine, prn.
Seroquel 25, bid.
Multivitamin.
Percocet, prn.

PSYCHOSOCIAL HISTORY: Born and raised in the area. She is single, she lives with her sister. She says she has 8 daughters, that she works at Amtrak in Scheduling, she is a high school graduate, she also reported being in the Navy, the Marines and the National Guard. Denies any alcohol or drug use.

FAMILY PSYCHIATRIC HISTORY: Denies any family psychiatric history or substance use.

LABS: Urine drug screen negative. White count 22,000, hemoglobin 10, hematocrit 32.3, platelets 406. Sodium 142, potassium 4.2, chloride 106, bicarb 20, glucose 147, blood urea nitrogen 8, creatinine 0.92, serum glutamic oxaloacetic transaminase 87, serum glutamic pyruvic transaminase 22.

MENTAL STATUS EXAMINATION: Thin African/American female lying in bed, alert, cooperative on presentation, appears somewhat disheveled, is quite concrete in her thought processes, gave a very odd history did not quite match up. Reports her mood is fine. Has a somewhat flat affect, not actively hallucinating, alert, oriented. Insight fair. Judgment fair.

ASSESSMENT:

51 -year-old African/American female who was a pedestrian hit by a car. I was asked to see her for delusional behavior. Patient is very odd in presentation but we need further history to verify what is going on.

DIAGNOSES:

AXIS I Psychotic disorder, not otherwise specified - rule out schizophrenia. 1) This patient is on Seroquel 25 bid, I believe that was started here. She seems to need that. She has not been a management issue here, although she does have some odd behavior. 2) do need to verify her history. It does not seem that she works at Amtrak but need to verify with her sister that she is, indeed, employed. I have tried to call her sister twice, we will continue to try to contact her. I believe this patient would probably benefit from referral to Mental Health, we need to talk with the system more about the history.

Thank you very much for this interesting consultation.

Janet D. Woolery, MD

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Consultation (Interfaced) 5/22/2014 Woolery, Janet
D. MD 1 CN0003

Consultation

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Woolery, Janet D. MD
PATIENT NO.: 000126498443
DATE OF CONSULT: 05/21/2014

bir
DD : 05/21/2014 09:39 A
DT : 05/22/2014 10:22 A

Job #: 1266133
cc: Jason Benjamin O'Dell, MD
Janet D. Woolery, MD

Electronically signed by WOOLERY MD, JANET on 27-May-2014 08:46:59-04:00

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOQX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Consultation (Interfaced) 5/18/2014 Kerley, Eric L.
MD 1 CN0003

Consultation

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Kerley, Eric L. MD
PATIENT NO.: 000126498443
DATE OF CONSULT: 05/18/2014

NAME: Blackwell, Vanessa 11ST110501
MED. REC. NO.: 01-49-31-79
DR. DICTATING: Eric L. Kerley, MD
DOB:
PATIENT NO.: 000126498443
DATE OF CONSULT: 05/18/2014

TIME: 0210

TIME OF CONSULTATION: I spent 40 minutes.

CHIEF COMPLAINT: The patient was a pedestrian versus motor vehicle with a resultant left tib-fib fracture.

HISTORY OF PRESENTING ILLNESS: Ms. Blackwell is a 51-year-old, African American female who is a questionable historian. She clearly is of delusional mental status. I do not think this is new, however. For example, she relates to me that she was sprayed by something and had 8 babies, and then she also tells me that she had a baby since she has been here tonight. She talks about all sorts of bizarre things going on in her life. She claims that when she was hit tonight, the car hit her, she bent down to check her shoe and the car came around and hit her in the head. There is no evidence she has been hit in the head by anything. There is no laceration or bruise or anything. Given this, I do not put much stock in her history. The history supplied to us by EMS is that the patient was struck by a car resulting in a tib-fib fracture.

PRIMARY CARE PROVIDER: Dr. Kitchens.

PAST MEDICAL HISTORY: She denies any history.

PAST SURGICAL HISTORY: Tonsillectomy.

MEDICATIONS: She takes aspirin daily.

ALLERGIES: To tomatoes.

FAMILY HISTORY: Both mother and father died of whiskey cancer, her words.

SOCIAL HISTORY: She does not smoke, drink, or use drugs. She lives with her sister. Apparently, the situation there is not altogether positive and she claims that her sister's friends make fun of her.

Computerized records have been reviewed, but there is really not much there. I had heard from the
PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOQX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Consultation (Interfaced) 5/18/2014 Kerley, Eric L.
MD 1 CN0003

Consultation

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Kerley, Eric L. MD
PATIENT NO.: 000126498443
DATE OF CONSULT: 05/18/2014

nurse that she reported being pregnant. I asked her about the pregnancy. She told me she had just had the baby in the last few minutes in the room.

REVIEW OF SYSTEMS: A 12-system review of systems is really largely unrevealing. She said she had a fever but she got rid of it. She has joint pain at the injured limb, and she says she has had blood transfusions in the past. Other than that, all negative.

PHYSICAL EXAMINATION: VITAL SIGNS: Temperature is 98.4, pulse 81, respirations 18, blood pressure 132/71.

GENERAL: She is alert and I believe oriented to person and place, African American female, but she is completely delusional saying things that just make very little sense.

HEENT: She is normocephalic, atraumatic. I can see no trauma to her head. Pupils appear to be equal, round, and react to light. Gaze conjugate. Sclerae not icteric. TMs not examined. Oropharynx grossly normal.

NECK: Supple. She is in a C-collar.

CARDIAC: Heart tones regular rate and rhythm, without murmur, gallop or rub.

PULMONARY: Lungs clear to auscultation bilaterally.

GI: Abdomen is soft, nontender, nondistended. There is no organomegaly or mass.

GENITOURINARY: Deferred.

MUSCULOSKELETAL: Limbs are warm and well perfused until we get to the left lower extremity which is quite injured. Her toes appear to be warm, but I did not investigate it further, but on x-ray that limb is quite traumatized.

NEUROLOGIC: Cranial nerves 2-12 intact. Somatic nerves intact as well.

PSYCH: The patient is bizarre.

LAB/STUDIES: White count is 27,000, hemoglobin 11, hematocrit 32.3, and platelets 406. UDS is negative. Urinalysis is negative. Alcohol is negative. PT 12.9, PTT 26. Sodium is 144, potassium is 2.1, chloride is 121, and bicarb is 14, this gives an anion gap of 9, BUN 7, creatinine 0.54, with a very impressive calcium of 4.3, but that is metered against an albumin of 1.3. Total protein 3.1. LFTs are otherwise okay, and her lipase is 68. Her femur film on the left is negative for fracture, but the tib-fib shows a displaced fracture. CT chest, abdomen and pelvis does not have any effects of trauma. CT of the head shows a small subdural hematoma that is at the right cerebellum which is intact, miniscule and only seen on 1 view.

ASSESSMENT: This is a 51-year-old female who is probably a psychiatrically rich patient with I suspect schizophreniform tendencies. I am not certain about this, but that is my suspicion. She has significant malnutrition and claims she is not eating well. Her albumin is dangerously low and her calcium is still low even when corrected for the low albumin. She has low potassium as well.

PLAN: 1. Severe protein calorie malnutrition: Will have Nutrition see her. Will plan for supplements, but she is currently n.p.o. for surgery.

2. Left ankle fracture and left leg injury from the motor vehicle versus pedestrian accident. Plan is for repair tomorrow.

3. Hypocalcemia: We will give 2 g of calcium chloride and follow for correction. Will also order an ionized

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOOX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Consultation (Interfaced) 5/18/2014 Kerley, Eric L.
MD 1 CN0003

Consultation

MCLEOD REGIONAL MEDICAL CENTER
555 East Cheves Street
Florence, SC 29501-0551

NAME: BLACKWELL, VANESSA
11ST110501
MED. REC. NO.: 01493179
DR. DICTATING: Kerley, Eric L. MD
PATIENT NO.: 000126498443
DATE OF CONSULT: 05/18/2014

calcium. The correct value for calcium is 6.5, so it is still markedly low.

4. Hypokalemia: Will check magnesium and replace her potassium. Also, replace the magnesium as needed.

5. Possible very small subdural hematoma: Dr. Lewis has spoken with Dr. Paramore. There is nothing really to do surgically, although might consider a re-CT before discharge.

6. Anion gap metabolic acidosis: I believe this is likely primarily due to dehydration and the fact they may have reconstituted her with normal saline causing some hyperchloremia. Will adjust her IV fluids, and try to improve her electrolyte panel.

7. Psych: The patient is delusional as noted before. I am asking psych to come see her and I am going to start her on Seroquel.

Eric L. Kerley, MD

meq

DD : 05/18/2014 02:16 A

DT : 05/18/2014 10:08 A

ET: Edited by GAN 05/20/2014 13:53

Job #: 1265117

cc: Eric L. Kerley, MD

Jason Benjamin O'Dell, MD

Electronically signed by KERLEY MD, ERIC on 27-May-2014 07:05:40 -04:00

PRIVILEGED AND CONFIDENTIAL: This facsimile contains privileged and confidential information. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone.

IF PATIENT INFORMATION HAS BEEN DISCLOSED TO YOU, IT CAME FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE AND FEDERAL LAW. ANY FURTHER DISCLOSURE OF THIS PATIENT INFORMATION WITHOUT PRIOR CONSENT OF THE PERSON TO WHOM IT PERTAINS MAY BE PROHIBITED.

LOQX BLACKWELL, VANESSA Enc #126498443 5/18/2014 - 5/28/2014 Diagnosis Procedure Form 6/4/2014 1 FS0010

McLeod Health
Final Diagnosis Form

Patient Name- BLACKWELL, VANESSA
Discharge Date- 2014-05-28T00:00:00
Encounter number- 126498443
Medical Record Number- 1493179

Physician, Please document all Final Diagnoses and Procedures:

PRINCIPAL DIAGNOSIS:

left knee instability, car vs pedestrian, ankle frx-dislocation, open wound leg 20 cm

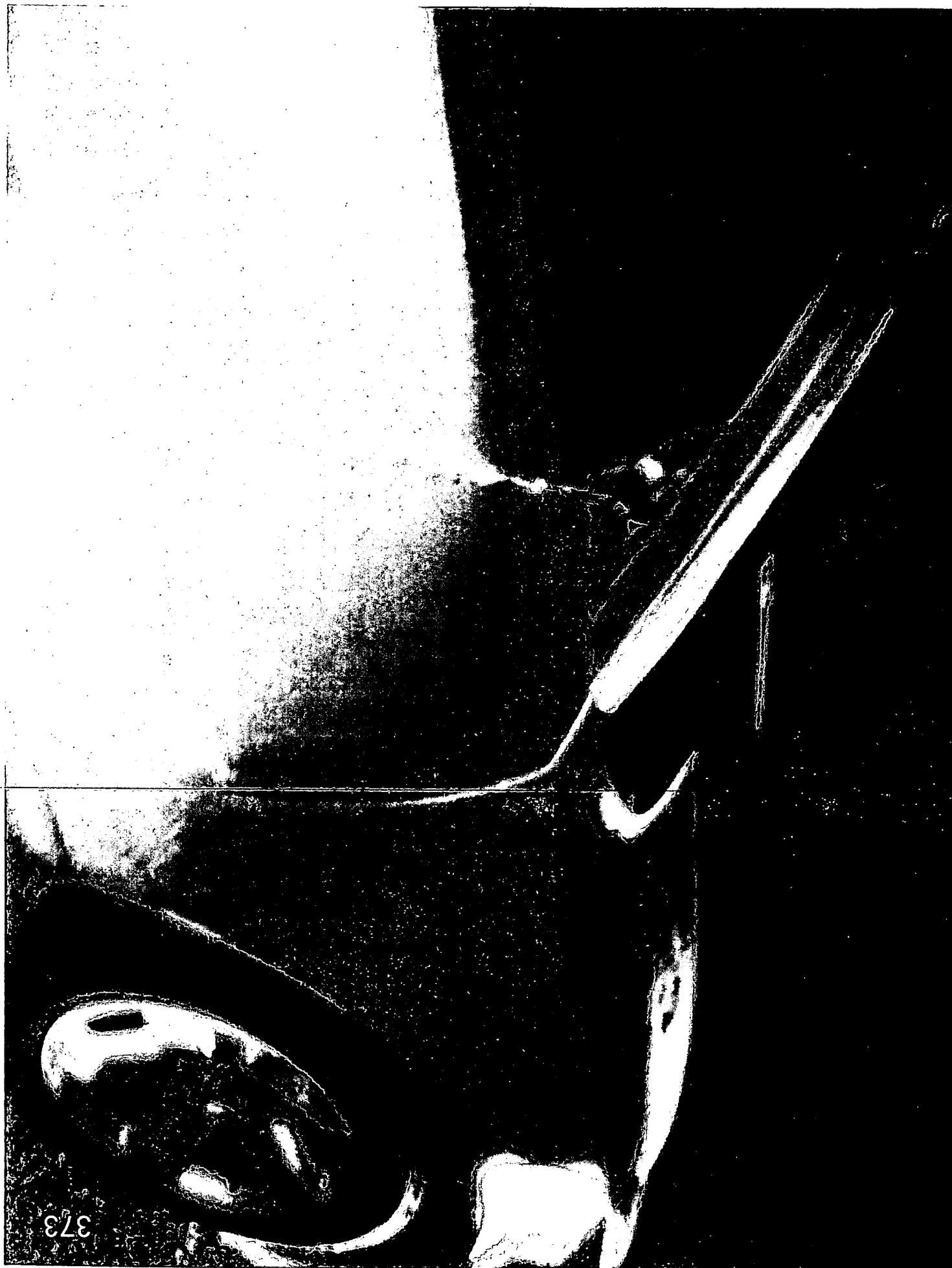
SECONDARY DIAGNOSIS/ COMPLICATIONS:

schizo

OPERATIONS/PROCEDURES:

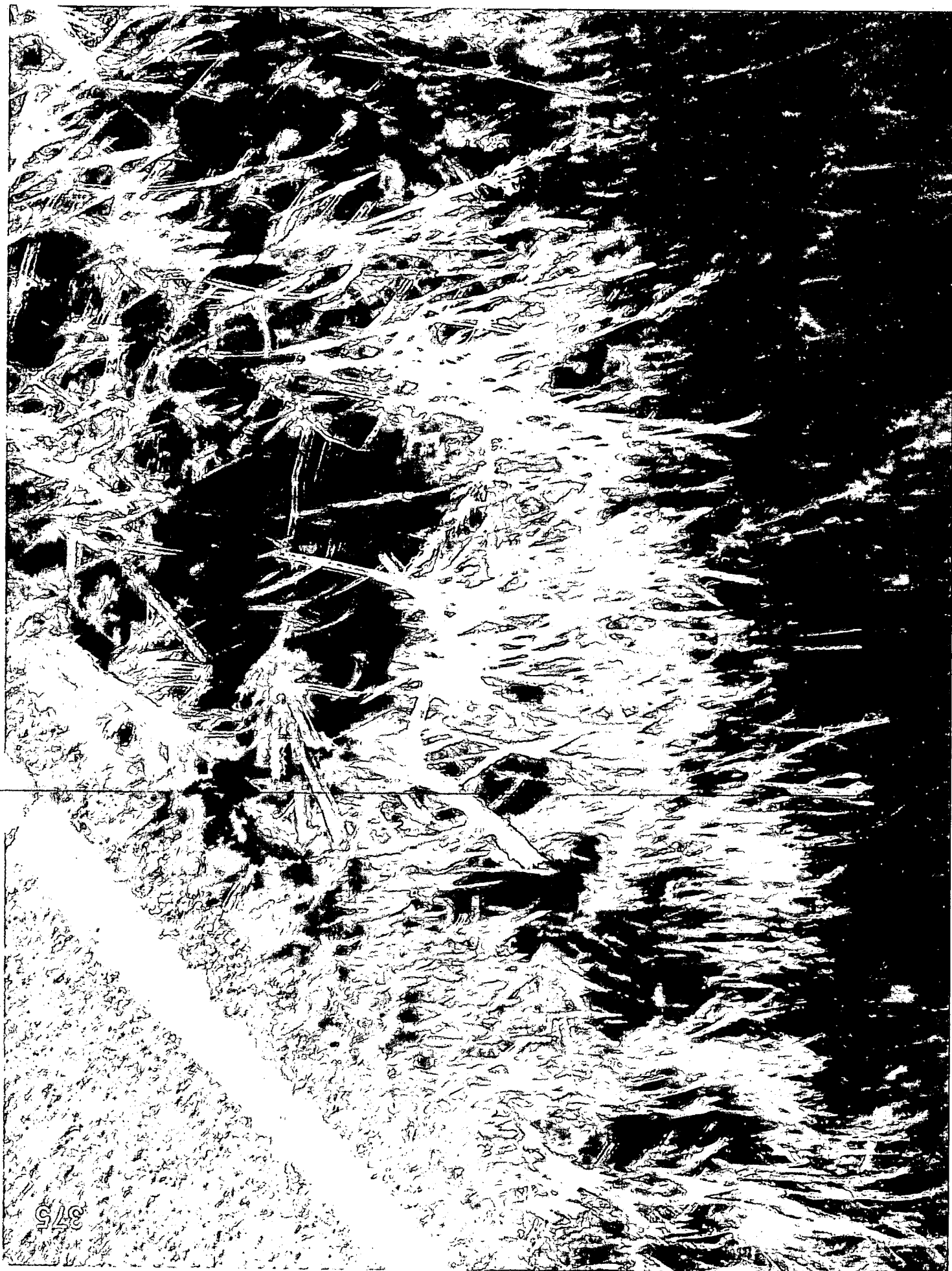
staged: 1) ankle ORIF, knee wound closure, wound vac
2) dressing change and knee exam under anesthesia, long leg splint placement.

Electronically signed by O'DELL MD, JASON on 04-Jun-2014
12:30:35 -0400

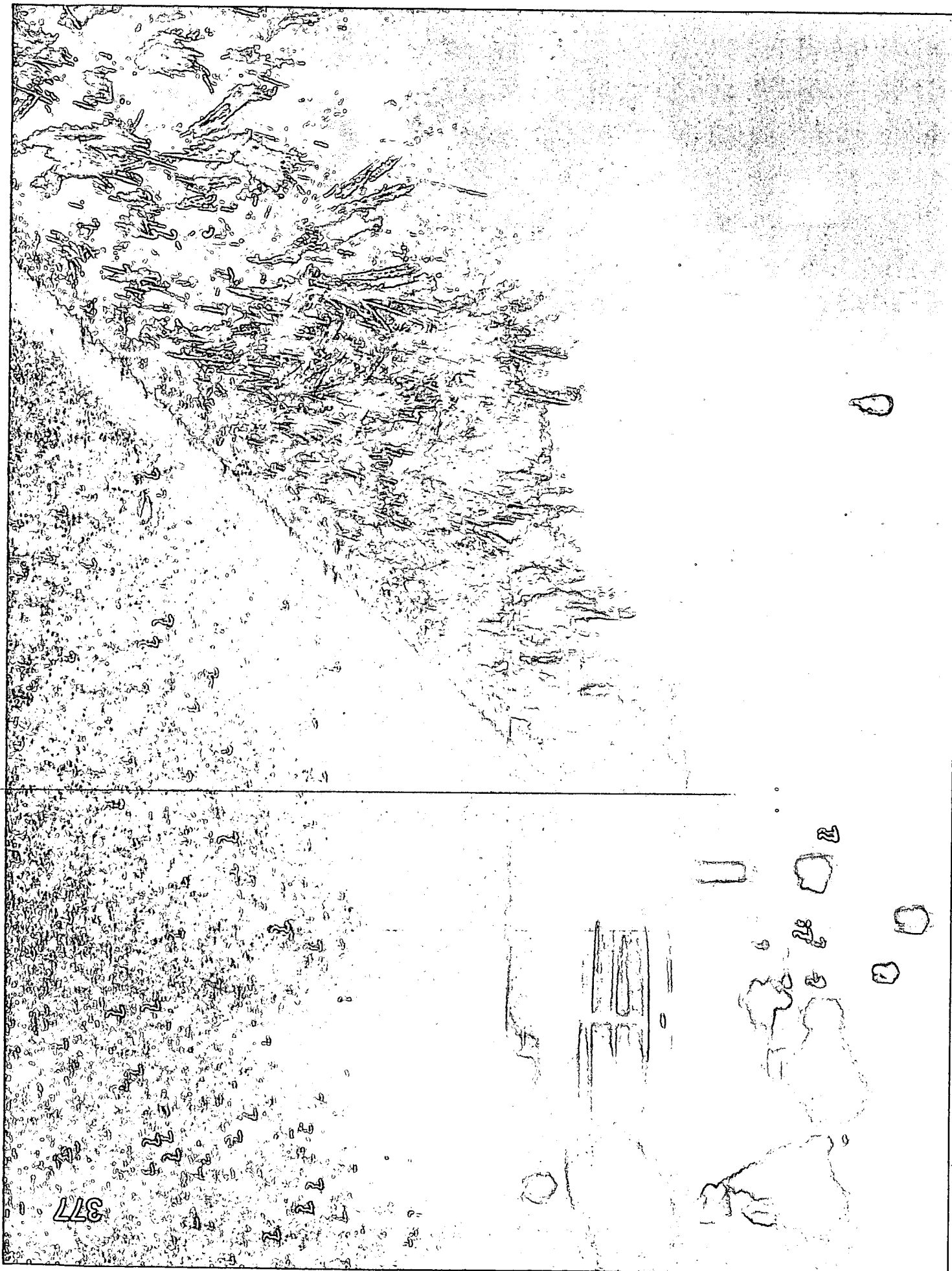


373





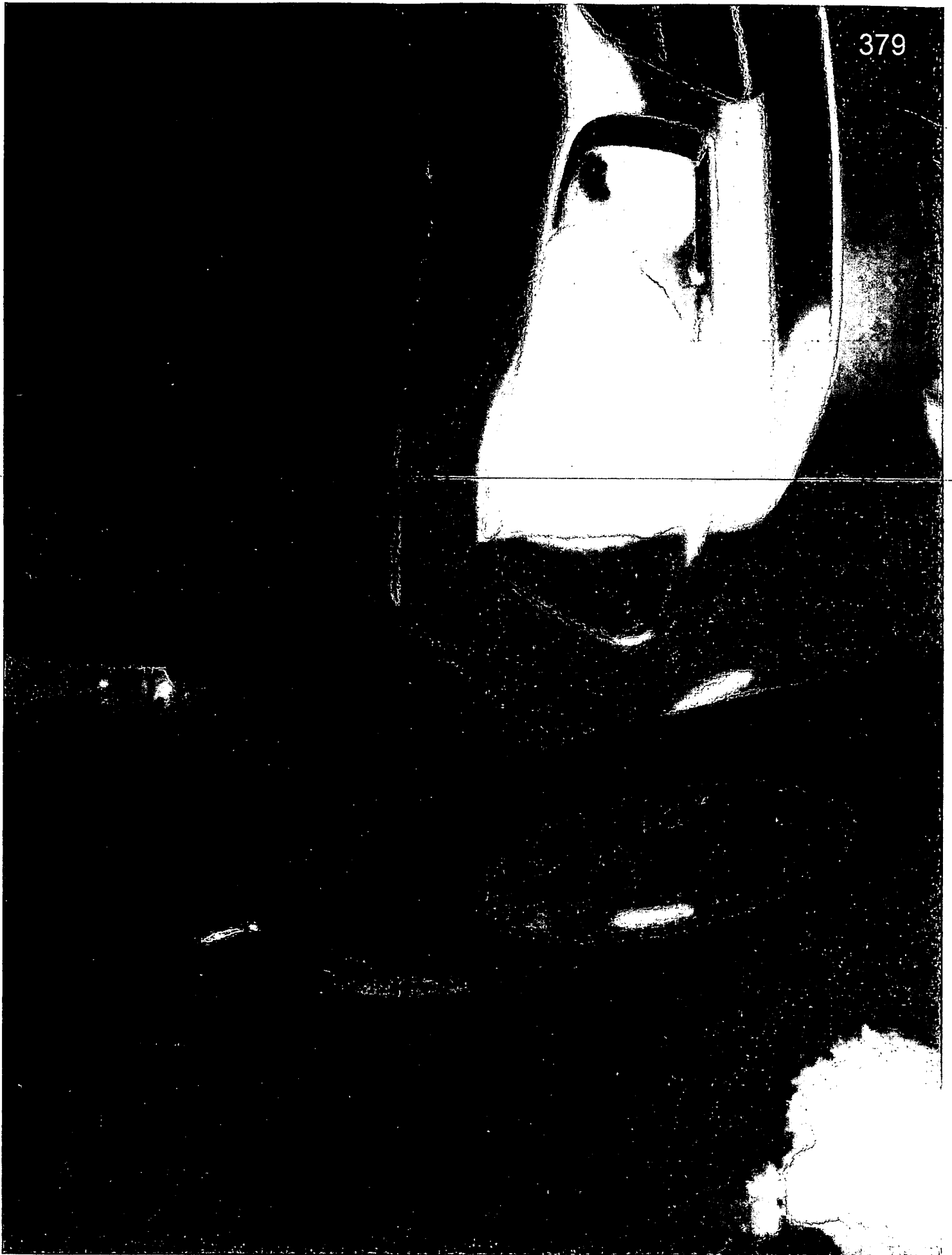




377



87C



STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF MARION

) TWELFTH JUDICIAL CIRCUIT

) C/A No. 2015-CP-33-140

Vanessa Blackwell, a/k/a

Jacqueline Blackwell,

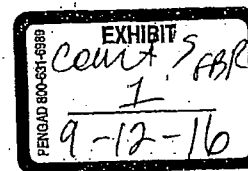
Plaintiff,

vs.

DEFENDANT'S VOIR DIRE

Marion County Sheriff's Department,

Defendants.

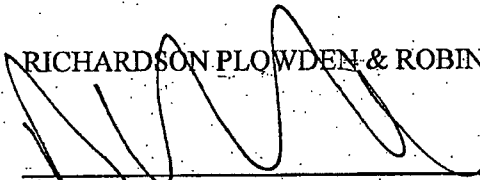


The Defendant requests the following voir dire:

1. Does anyone on the jury panel know of, are you related to by blood or marriage, an acquaintance of, had any dealings with or ever heard of the Plaintiff in this action? If yes, what is your relationship with the plaintiff or what knowledge do you have of the plaintiff?
2. Have any of you heard about the accident, which is the subject matter of this lawsuit?
3. Has anyone on the jury panel or their immediate family been represented by, known of or had any dealings with the Akim Anastopoulo Law Firm, including Attorney Matthew L. Nall or Eric Poulin or Roy Willey?
4. Do you know of any of the witnesses to be called by either party (see list)?
5. Has anyone on the jury panel or their immediate family ever been involved in a lawsuit? If yes, were you a plaintiff or defendant and what was the nature of the case?
6. Have any of you ever been injured in an accident, which you believe was someone else's fault? If yes describe the accident and your injuries.
7. Have any of you or a close family member ever suffered a broken leg or ankle, which required surgery?

8. Have you or anyone in your immediate family ever had a dispute with the Marion County Sheriff's Department? If yes, then describe dispute.
9. Do any of you have strong opinions concerning law enforcement officers (police) operation of their vehicles? If yes describe that opinion.
10. Do any of you have any strong opinions either for or against the Marion County Sheriff's Department? If yes describe that opinion.
11. Have any of you or a family member ever been arrested by the Marion County Sheriff's Department?
12. Do any of you regularly walk on the road or shoulder of a road?
13. Do you or anyone in your immediate family suffer from a mental illness, which requires medical or psychological treatment.
14. Is there anyone on the jury panel who for any reason feel that they cannot give the Defendant a fair trial?

RICHARDSON PLOWDEN & ROBINSON, P.A.


Douglas Charles Baxter, Esquire
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
(843) 448-1008
(843) 448-1533 (fax)
dbaxter@richardsonplowden.com

Attorney for the Defendant

September 11, 2016

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Douglas C. Baxter

RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 3646
Myrtle Beach, South Carolina 29578
(843) 448-1008

Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
**ATTORNEYS FOR APPELLANT
MARION COUNTY SHERIFF'S
DEPARTMENT**

December 6, 2017.

RECEIVED
DEC 20 2017
SC Court of Appeals