

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2010-CP-33-0941

Celeste Hemmingway as Personal Representative
for the Estate of Ronnie Earl Davis and David Brown.....Appellants

v.

Marion County and Marion County Prison Camp.....Respondents

RECORD ON APPEAL

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SC Court of Appeals

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 -CP- 33-941

Celeste Hemingway as Personal Representative
for the Estate of Ronnie Earl Davis and David Brown
PLAINTIFF(S)

Marion County and Marion County
Prison Camp
DEFENDANT(S)

Submitted by: D. Malloy McEachin, Jr.

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE 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)
N/A		\$
		\$
		\$

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.

2010
Circuit Court Judge

2157
Judge Code

Record on Appeal
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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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)
Celeste Hemingway as Personal)
Representative for the Estate of Ronnie)
Earl Davis and David Brown,)
Plaintiffs,)
vs.)
Marion County and Marion County)
Prison Camp,)
Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO.: 2010-CP-33-941

ORDER

This matter came before the Court in Marion, South Carolina on June 25, 2012 on competing Motions for Summary Judgment. The Plaintiff filed a Motion for Summary Judgment to strike several defenses raised by the Defendant. The Defendant filed a Motion for Summary Judgment seeking a dismissal of the action based on the exclusivity of the South Carolina Worker's Compensation Act and based on several exemptions from Waiver of Sovereign Immunity as found in the South Carolina Tort Claims Act. After hearing arguments of counsel, considering the exhibits and Depositions, Affidavits, and Pleadings filed with the Court, the Court dismisses the within action, with prejudice in its entirety.

The standard of review which applies is found in the Rules of Court and Case law under Rule 56(c), SCRCPP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319(2001). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).

Both Plaintiffs alleged in their Complaint that they were former inmates of the Marion County Prison Camp, and while incarcerated, the Plaintiff Ronnie Earl Davis drowned and that the Plaintiff David Brown suffered injuries as a result of swimming while working for the Marion County Prison Camp work detail.

The causes of action set forth in the Complaint are guided by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et. seq.

The Defendants moved to dismiss the Marion County Prison Camp as a named Defendant because it is a division of Marion County Government. It is a place or facility and not an individual entity. As the Marion County Prison Camp is not an entity with capacity to be sued, this action must be dismissed against it.

A review of the Complaint, the Affidavit of Charles McLain, and the Depositions of David Brown and John Reichardt reveal that the Plaintiff Brown and the Plaintiff's decedent Davis were inmates of the Marion County Prison Camp. The undisputed evidence further reveals that these two individuals were on a work detail at the time of the events and injuries alleged.

By the Affidavit of Charles McLain it is established that Marion County, South Carolina elected by resolution adopted on October 14, 1997 to cover its inmates with Worker's Compensation insurance and further that on the date and time of the acts complained of in the Complaint the inmates of the Marion County Prison Camp were covered under the South Carolina Worker's Compensation policy of Marion County.

S.C. Code Ann. § 42-1-500 provides that a County may elect by resolution to cover its prisoners under Worker's Compensation insurance. Under South Carolina law, the Worker's

Compensation Act is the exclusive remedy against an employer for an employee's work related accident or injury. Phillipp v. Blanchard, 358 S.C. 536, 595 S.E. 2nd 831, 833.

S.C. Code Ann. § 42-1-480 provides that Worker's Compensation does not apply to recreational activity of prisoners. Under the facts of this case, the Plaintiffs were working on a trash pickup detail on Highway 501 in Marion County, South Carolina. It was a hot day and the inmates asked if they could cool off in the Little Pee Dee River. This request by the inmates is the seeking of relief from the discomfort of heat. To relieve their discomfort, they entered the Little Pee Dee River. It is true that they were not engaged in picking up trash at the time that they went into the Little Pee Dee River; however, they were seeking relief from the discomfort of the heat. The Personal Comfort Doctrine has been adopted in South Carolina. This Doctrine provides that an employee who is seeking relief from discomfort, though not actually engaged in the scope of his employment, is still covered under the South Carolina Worker's Compensation Act. Mack v. Branch 12, Post Exchange, 207 S.C 258, 35 S.E. 2d 838 (S.C. 1945), Osteen v. Greenville County School District, 333 S.C 43, 508 S.E. 2d 21 (1998).

The South Carolina Tort Claims Act removed the Doctrine of Sovereign Immunity in certain instances. The Act also retains Sovereign Immunity in certain circumstances. One of which is S.C. Code Ann. § 15-78-60 (14) which provides that Sovereign Immunity is not waived as follows:

"Any claim covered by the South Carolina Worker's Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina Employees Grievance Act."

Under the above quoted language of the South Carolina Tort Claims Act, the Marion County retains Sovereign Immunity in regards to any South Carolina Worker's Compensation Act claim against it.

There is a pending Worker's Compensation Action involving Ronnie Earl Davis. I find that the injuries sustained by both Plaintiffs are subject to the South Carolina Worker's Compensation Act.

I further find that the Complaint must be, and is hereby dismissed with prejudice for the reasons set forth hereinabove.

Therefore, having heard the arguments of counsel, having reviewed the Pleadings, Motions, Affidavits, Exhibits, and Depositions of records with the Court, this Court hereby grants the Defendant's Motion based on the exclusivity of the South Carolina Worker's compensation Act and dismisses this action in its entirety with prejudice. As this is dispositive of the case, the remaining grounds raised by the Defendant in its' Motion for Summary Judgment are not reached.

AND IT IS SO ORDERED.

7/9, 2012



The Honorable William H. Seals, Jr.
Presiding Judge 12th Judicial Circuit

BEFORE THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

WCC FILE NO. 1009687

Ronnie Earl Davis (Deceased),
Employee
Claimant,
vs.
Marion County
Employer,
and
Companion Property & Casualty Company
Defendants.

DECISION & ORDER

This claim was scheduled for a hearing on January 4, 2011 at 11:00 A.M., in Beaufort, South Carolina. Prior to the scheduled hearing, the parties to this claim held a lengthy prehearing conference. In the prehearing conference, Daniel Beck, Esquire appeared on behalf of the Estate of Ronnie Davis with Akim Anastopoulos, Esquire. This was Mr. Beck's first appearance on his claim. Mr. Beck submitted a Motion to Postpone and Stay the Proceedings as a Summons and Complaint for the death of Ronnie Davis and now been filed against Marion County in Circuit Court. An answer has not been filed on behalf of Marion County at this time.

Counsel for the Estate of Ronnie Davis raised the issue of jurisdiction and asked that these proceedings be stayed until a determination can be made in the Circuit Court addressing whether this action is proper before the Circuit Court or should be remanded back to the South Carolina Worker's Compensation Commission.

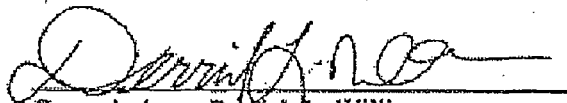
The Defendants objected to the Motion for Postponement and to Stay as it was not properly filed pursuant to the Administrative Procedures Act and furthermore was not filed ten days prior to the scheduled hearing. The Defendants further argued that a hearing was previously set on November 23, 2010, in Conway, South Carolina. However, prior to that date counsel for the estate of Ronnie Davis filed a Motion to Postpone and the case was reset for January 4, 2011, in Beaufort, South Carolina. The Defendants therefore objected to any additional postponement and also made a Motion for all attorney fees and costs, including mileage for the witness that traveled from Marion County. The Defendants further argued that they are required by the South Carolina Workers' Compensation Act to perform a Dependency Investigation subsequent to the death of Ronnie Davis during the course and scope of his employment. They therefore complied with the Workers' Compensation Act and performed the Dependency Investigation which resulted in the hearing request based on this investigation showing that the deceased Claimant has two dependent children.

Based on the prehearing conference, I am granting the Motion to Stay the Proceedings before the South Carolina Workers' Compensation Commission regarding the dependency hearing and hearing request filed by the Defendants until a determination is made in the Circuit Court as to whether it has jurisdiction. If the Circuit Court finds that the Workers' Compensation Act is applicable, this case will be reset upon proper application, by either party, under the Act. The Defendants' Motion for Attorney Fees and Costs is denied. However, the Defendants' Motion for Mileage to be paid to the witness for Marion County is granted.

NOW, THEREFORE, IT IS HEREBY ORDERED the Motion to Stay Proceedings is granted until such time as a determination has been made by the Circuit Court regarding whether the Workers' Compensation Act is applicable or barred by the exclusivity doctrine.

AND IT IS SO ORDERED.

South Carolina Workers'
Compensation Commission


Commissioner Derrick L. Williams

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
June 21, 2011

By: Renee Smith, Administrative Assistant to Commissioner Williams

COUNTY OF MARION

CELESTE HEMINGWAY as personal
representative for the ESTATE OF RONNIE EARL
DAVIS AND DAVID BROWN

Plaintiff(s)

vs.

MARION COUNTY AND MARION COUNTY
PRISON CAMP

Defendant(s)

2010-CP - 33- 941

(Please Print)

Submitted By: AKIM A. ANASTOPOULOS

SC Bar #:

Telephone #: 843-614-8888

Fax #: 800-313-2546

Other:

E-mail: akim@akimlawfirm.com

Address: 2850 Ashley Phosphate Rd.

North Charleston, SC 29418

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

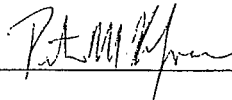
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| ☐ Contracts | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-__-__ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☒ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☒ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| ☐ Inmate Petitions | ☐ Judgments/Settlements | ☐ Administrative Law/Relief | ☐ Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstatement Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| ☐ Special/Complex /Other | | | ☐ Administrative Law Judge (980) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature: 

Date

Record on Appeal
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SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

Plaintiffs,

v.

MARION COUNTY, and
MARION COUNTY PRISON CAMP,

Defendants,

AMENDED SUMMONS
(Jury Trial Demanded)

v.

MARION COUNTY, and
MARION COUNTY PRISON CAMP,

Defendants,

YOU ARE HEREBY SUMMONED and required to Answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Amended Complaint upon the Plaintiff or his attorney, Akim A. Anastopoulos, at his office, 2850 Ashley Phosphate Rd., Suite B, North Charleston, South Carolina 29418, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Amended Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Amended Complaint.

ANASTOPOULO LAW FIRM, LLC

John D. Amanteford

Akim A. Anastopoulos, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
Attorneys for Plaintiff

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____

CLERK OF COURT,
SOUTH CA

Record on Appeal
- Page 14 -

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 12TH JUDICIAL CIRCUIT
COUNTY OF MARION	)	CASE NO.: 2010-CP-33-941
	)	
CELESTE HEMINGWAY AS	)	
PERSONAL REPRESENTATIVE	)	
FOR THE ESTATE OF RONNIE	)	
EARL DAVIS, AND DAVID BROWN,	)	
	)	
Plaintiffs,	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
v.	)	
	)	
MARION COUNTY, and	)	
MARION COUNTY PRISON CAMP,	)	
	)	
Defendants.	)	
	)	

TO THE COURT AND TO THE DEFENDANTS:

Subsequent to filing the original Complaint in the above-captioned matter, additional facts that existed at the time of the original filing but which were not known to Plaintiff have surfaced. As a result Plaintiff requests to amend the original Complaint to include the following facts, allegations and issues as follows:

The Plaintiffs, complaining of the Defendants, would allege and show unto this Court as follows:

1. That the Plaintiff, Celeste Hemingway (hereinafter referred to as "Plaintiff Hemingway") is a citizen and resident of Marion County, State of South Carolina.
2. That Plaintiff, Ronnie Earl Davis (hereinafter referred to as "Plaintiff Davis") was a citizen and resident of Marion County, State of South Carolina.
3. That Plaintiff, David Brown (hereinafter referred to as "Plaintiff Brown") is a citizen and resident of Marion County, State of South Carolina
4. That Plaintiff Hemingway was duly appointed as Personal Representative of the Estate of Ronnie Earl Davis on August 16, 2010.
5. That upon information and belief, Defendant Marion County, is a government entity of

South Carolina, and their agent to accept service is Charles L. McClain, 2141-D Hoffmeyer Rd., Florence, SC 29501.

6. That upon information and belief, Defendant Marion County Prison Camp, is a privately owned entity of South Carolina, and their agent to accept service is Donald Bryant, 2723 E Highway 76, Mullins, SC 29574.
7. That the acts and omissions, which are subject to this action, of Defendants that caused the catastrophic injuries resulting in the death of Plaintiff Davis and serious injury of Plaintiff Brown occurred in Marion County, State of South Carolina.
8. That this Court has jurisdiction over the parties and the subject matter of this action.

FOR A FIRST CAUSE OF ACTION
(Gross Negligence)

9. The allegations of paragraphs 1 through 7 of this Complaint are re-alleged and re-asserted as if set forth verbatim herein.
10. That on or about June 15, 2010, Plaintiff Davis and Plaintiff Brown were inmates in the custody and control of the Defendants.
11. That on or about June 15, 2010, the Defendants owed Plaintiff Davis and Plaintiff Brown a duty and responsibility of supervision, protection, control, confinement and custody, and Defendants exercised the responsibility or duty to Plaintiffs in a grossly negligent manner.
12. Upon information and belief, on or about June 15, 2010, Plaintiffs suffered a loss proximately caused by the gross negligence of Defendants.
13. Upon information and belief, due to the gross negligence of Defendants, Plaintiff Davis drowned in the Little Pee Dee River, in Marion, SC, on or about June 15, 2010.
14. Upon information and belief, due to the gross negligence of Defendants, Plaintiff Brown

nearly drowned in the Little Pee Dee River, in Marion, SC, on or about June 15, 2010.

15. That as a direct and proximate result of the gross negligence, carelessness, recklessness, willfulness, wantonness, and acts and/or omissions of the Defendants, as is set forth more fully above, Plaintiff Davis died, and endured pain and suffering, and consciously suffered mentally and emotionally immediately prior to his death.

16. Upon information and belief, due to the gross negligence of Defendants, Plaintiff Brown suffered serious injuries as a result of his near drowning in the Little Pee Dee River, in Marion SC, on or about June 15, 2010.

17. That as a direct and proximate result of the gross negligence, carelessness, recklessness, willfulness, wantonness, and acts and/or omissions of the Defendants, as is set forth more fully above, Plaintiff Brown suffered serious injuries, endured pain and suffering, and consciously suffered mentally and emotionally at the time of and following his near drowning and witnessing of the death of his cousin, Plaintiff Davis.

18. The drowning and resulting damages to Plaintiff Brown, and Plaintiff Davis and his Estate were caused directly and proximately by one or more of the following grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

As to Defendant Marion County:

- a. In grossly negligently entrusting the safety of inmates to someone they knew or should have known would supervise inmates without using due care and without regard for the safety and rights of the inmates;
- b. In grossly negligently entrusting someone they knew or should have known would supervise inmates in a grossly negligent, careless, reckless, willful, wanton

and unlawful manner as to create a dangerous situation and render an incident inevitable, in utter disregard of the laws of the State of South Carolina;

- c. In grossly negligently entrusting supervision to someone they knew or should have known would fail to exercise the 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 of the dangers and seriousness of having an unsafe, unqualified, incompetent officer supervising inmates;
- e. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
- f. In permitting their employee Defendant Reichardt to supervise inmates when he was not fully qualified to do so.
- g. In failing to properly hire, train and/or supervise their employee Defendant Reichardt
- h. In failing to enact policies that would ensure the safety of prisoners in the Defendant's custody on the river;
- i. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect these Plaintiffs from the dangers of the river on the occasion that the Plaintiffs were using same;
- j. In failing to ensure medical treatment for the Plaintiffs would arrive promptly;
- k. In failing to adequately warn the Plaintiffs as to any dangers that may be present in the river;
- l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;

- m. In causing the extreme pain and suffering of Plaintiffs;
- n. In causing the wrongful death of Plaintiff Davis;
- o. In causing the extreme pain and suffering and injuries of Plaintiff Brown;
- p. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;
- q. In causing Plaintiff Brown to incur mental anguish, emotional distress, grief, suffering, bereavement, loss of society;
- r. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- s. In any such manner the Plaintiffs may discover through the discovery process or trial.

As to Defendant John Reichardt:

- a. In failing to observe the dangerous condition of the river;
- b. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
- c. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect these Plaintiffs from the dangers of the river on the occasion that the Plaintiffs were using same;
- d. In failing to ensure medical treatment for the Plaintiffs would arrive promptly;
- e. In failing to adequately warn the Plaintiffs as to any dangers that may be present in the river;
- f. In failing to use due care;
- g. In failing to properly supervise Plaintiffs;

- h. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;
- i. In causing the extreme pain and suffering of Plaintiffs;
- j. In causing the wrongful death of Plaintiff Davis;
- k. In causing the extreme pain and suffering and injuries of Plaintiff Brown;
- l. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;
- m. In causing Plaintiff Brown to incur mental anguish, emotional distress, grief, suffering, bereavement, loss of society;
- n. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- o. In any such manner the Plaintiffs may discover through the discovery process or trial.

As to Defendant Marion County Prison Camp:

- a. In grossly negligently entrusting the safety of inmates to someone they knew or should have known would supervise inmates without using due care and without regard for the safety and rights of the inmates;
- b. In grossly negligently entrusting someone they knew or should have known would supervise inmates in a grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an incident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In grossly negligently entrusting supervision to someone they knew or should have known would fail to exercise the 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 of the dangers and seriousness of having an unsafe, unqualified, incompetent officer supervising inmates;
 - e. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
 - f. In permitting their employee Defendant Bryant to assign Defendant Reichardt to supervise inmates when he was not fully qualified to do so;
 - g. In failing to properly hire, train and/or supervise their employee Defendant Bryant;
 - h. In failing to enact policies that would ensure the safety of prisoners in the Defendants' custody on the river;
 - i. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect these Plaintiffs from the dangers of the river on the occasion that the Plaintiffs were using same;
 - j. In failing to ensure medical treatment for the Plaintiffs would arrive promptly;
 - k. In failing to adequately warn the Plaintiffs as to any dangers that may be present in the river;
 - l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;
 - m. In causing the extreme pain and suffering and injuries of Plaintiff Brown;
 - n. In causing the wrongful death of Plaintiff Davis;
 - o. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;

- p. In causing Plaintiff Brown to incur mental anguish, emotional distress, grief, suffering, bereavement, loss of society;
- q. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- r. In any such manner the Plaintiffs may discover through the discovery process or trial.

As to Defendant Donald Bryant:

- a. In grossly negligently entrusting the safety of inmates to someone he knew or should have known would supervise inmates without using due care and without regard for the safety and rights of the inmates;
- b. In grossly negligently entrusting someone he knew or should have known would supervise inmates in a grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an incident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In grossly negligently entrusting supervision to someone he knew or should have known would fail to exercise the 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 of the dangers and seriousness of having an unsafe, unqualified, incompetent officer supervising inmates;
- e. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
- f. In permitting their employee Defendant Reichardt to supervise inmates when he was not fully qualified to do so.

- g. In failing to properly hire, train and/or supervise their employee Defendant Reichardt
- h. In failing to enact policies that would ensure the safety of prisoners in the Defendants' custody on the river;
- i. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect these Plaintiffs from the dangers of the river on the occasion that the Plaintiffs were using same;
- j. In failing to ensure medical treatment for the Plaintiffs would arrive promptly;
- k. In failing to adequately warn the Plaintiffs as to any dangers that may be present in the river;
- l. In failing to use due care;
- m. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;
- n. In causing the extreme pain and suffering and injuries of Plaintiff Brown;
- o. In causing the extreme pain and suffering of Plaintiff Davis;
- p. In causing the wrongful death of Plaintiff Davis;
- q. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;
- r. In causing Plaintiff Brown to incur mental anguish, emotional distress, grief, suffering, bereavement, loss of society;
- s. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- t. In any such manner the Plaintiffs may discover through the discovery process or

trial.

19. That at all times material to the incident made the basis of this action, Plaintiff Davis and Plaintiff Brown were in the custody, possession and/or under the control of Defendants.
20. That at all times material to the incident made the basis of this action, Defendant John Reichardt was acting by and through its employer Defendants Marion County and Marion County Prison Camp as an employee/agent of Defendants Marion County and Marion County Prison Camp, 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 Defendants Marion County and Marion County Prison Camp.
21. That at all times material to the incident made the basis of this action, Defendant Donald Bryant was acting by and through its employer Defendant Marion County Prison Camp as an employee/agent of Defendant Marion County Prison Camp, 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 Marion County Prison Camp.
22. That Defendants Marion County and Marion County Prison Camp are 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 Plaintiffs, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.
23. At all times pertinent hereto, the Defendants Marion County and Marion County Prison Camp, were under a duty to exercise due and reasonable care in the selection, employment, and training of its agents, servants, and/or employees.
24. That Defendants Marion County and Marion County Prison Camp breached the above-mentioned duties in selecting an inmate supervisor, John Reichardt, who wrongfully and

grossly negligently exercised his duties to the Plaintiffs, and whose employees were incompetent and/or unfit and/or unqualified to perform the tasks assigned to them.

- a. Plaintiff has incurred catastrophic injuries resulting in his death;
- b. The injuries suffered caused Plaintiff to incur pain and suffering, mental and emotional distress, and has incurred various medical expenses, and has otherwise been damaged or injured; and
- c. The Estate and beneficiaries have incurred funeral expenses, mental anguish, grief, suffering, bereavement, loss of society, guidance and comfort.

25. As a direct and proximate result of the gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants, as is set forth more fully above, Plaintiff Brown has been damaged and injured in the following respects:

- a. Plaintiff has incurred catastrophic injuries including brain tumors, extreme and debilitating mental anguish, and other serious injuries;
- b. The injuries suffered cause Plaintiff to incur pain and suffering, mental and emotional distress, and has incurred various medical expenses, and has otherwise been damaged or injuries.

26. That Defendant acted with a reckless and wanton disregard for the life and safety of others.

27. That any negligence by the Plaintiffs did not cause or contribute to their injury.

FOR A SECOND CAUSE OF ACTION
(Wrongful Death of Ronnie Earl Davis)

28. That the allegations of paragraphs 1 through 27 of this Complaint are re-alleged and re-

asserted as if set forth verbatim herein.

29. That Defendants' acts and omissions as set forth above give rise to this action under South Carolina Code § 15-51-10.
30. That Defendants knew or should have known that Plaintiff Davis would suffer a foreseeable injury, including death, as a result of the Defendants' exercise of grossly negligent care as described more fully above.
31. The beneficiaries under the Wrongful Death Act are his children Jamar Robinson and Renita Robinson and his parents Roosevelt Davis and Fredrena Davis, for whom this action is brought, have experienced mental anguish, grief, suffering, and bereavement, loss of society, guidance and comfort.
32. As a direct and proximate cause of Defendants' conduct, as set forth above, Ronnie Earl Davis lost his life.
33. As a direct and proximate cause of Defendants' conduct, as set forth above, the beneficiaries and the Estate of Ronnie Earl Davis incurred funeral expenses and have been otherwise seriously damaged.
34. Due to Defendants' intentional, reckless, and/or wanton acts or omissions together with violations of South Carolina law and specifically South Carolina Code § 15-51-10, the Estate of Ronnie Earl Davis is entitled to such damages from the Defendants as this Court deems fit to award.

FOR A THIRD CAUSE OF ACTION
(Survival Action of Ronnie Earl Davis)

35. That the allegations of paragraphs 1 through 34 of this Complaint are re-alleged and re-asserted as if set forth verbatim herein.

36. That Defendants' acts and omissions as set forth above give rise to this action under South Carolina Code § 15-51-90.
37. As a direct and proximate cause of Defendants' conduct, as set forth above, Ronnie Earl Davis was caused to sustain severe pain and suffering prior to his death.
38. Due to Decedent Ronnie Earl Davis suffering extreme pain and injuries as a result of the gross negligence of the Defendants are compensable under South Carolina Code § 15-5-90.
39. Therefore, the Plaintiffs seek and is entitled to an Order of this Court awarding the Estate actual and consequential damages for the Decedent's injuries, pain and suffering, loss of enjoyment of life, for limitations to his ability to participate in and derive pleasure from the normal activities of daily life in an amount of damages from the Defendants as this Court deems fit to award.

FOR A FOURTH AND FIFTH CAUSE OF ACTION
(Negligent Training & Supervision as to Defendants Marion
County and Marion County Prison Camp)

40. That the allegations of paragraphs 1 through 39 of this Complaint are re-alleged and re-asserted as if set forth verbatim herein.
41. That on or about June 15, 2010, Defendant Reichardt was an employee of Defendants Marion County and Marion County Prison Camp.
42. That as of June 15, 2010, Defendant Reichardt had been an employee of Defendants Marion County and Marion County Prison Camp for a period exceeding one year.
43. That on or about June 15, 2010, and in the moments leading up to the accident Defendant Reichardt was on the premises Defendants Marion County and Marion County Prison Camp.

44. That on or about June 15, 2010, and in the moments leading up to the accident Defendant Reichardt was utilizing the chattel, including a motor vehicle, owned by Defendants Marion County and Marion County Prison Camp.
45. That on or about June 15, 2010, Defendants Marion County and Marion County Prison Camp had actual knowledge of their ability to control Defendant Reichardt's conduct as a result of their employee / employer relationship.
46. That on or about June 15, 2010, Defendants Marion County and Marion County Prison Camp had constructive knowledge of their ability to control Defendant Reichardt's conduct as a result of their employee / employer relationship.
47. That Defendants Marion County and Marion County Prison Camp had actual knowledge of the necessity and opportunity for exercising control of Defendant Reichardt as a result of his role, supervising inmates.
48. That Defendants Marion County and Marion County Prison Camp had constructive knowledge of the necessity and opportunity for exercising control of Defendant Reichardt as a result of his role, supervising inmates.
49. That Defendants Marion County and Marion County Prison Camp knew of Defendant Reichardt's lack of training with respect to inmate supervision.
50. That Defendants Marion County and Marion County Prison Camp should have known of Defendant Reichardt's lack of training with respect to inmate supervision.
51. That Defendants Marion County and Marion County Prison Camp employed Defendant Reichardt to supervise inmates.
52. That Defendant Reichardt, while under the employment of Defendants Marion County and Marion County Prison Camp was solely responsible for supervision of Ronnie Earl

Davis at the time of his drowning on or about June 15, 2010.

FOR A SIXTH CAUSE OF ACTION
(Negligent Retention as to Defendants Marion County
and Marion County Prison Camp)

53. That the allegations of paragraphs 1 through 52 of this Complaint are re-alleged and re-asserted as if set forth verbatim herein.
54. That Defendants Marion County and Marion County Prison Camp knew Defendant Reichardt was not trained to supervise inmates.
55. That Defendants Marion County and Marion County Prison Camp should have known that Defendant Reichardt was not trained to supervise inmates.
56. That Defendants Marion County and Marion County Prison Camp knew that while under Defendant Reichardt's care, inmates were solely supervised by him.
57. That Defendants Marion County and Marion County Prison Camp knew Defendant Reichardt permitted inmates to swim several times prior to June 15, 2010.
58. That Defendants Marion County and Marion County Prison Camp should have known that Defendant Reichardt permitted inmates to swim several times prior to June 15, 2010.
59. That Defendants Marion County and Marion County Prison Camp knew that Defendant Reichardt did not allow inmates to remove clothing including denim jeans prior to swimming.
60. That Defendants Marion County and Marion County Prison Camp did not reprimand, or discipline Defendant Reichardt for allowing inmates to swim while under his supervision.
61. That Defendants Marion County and Marion County Prison Camp did not reprimand, or discipline Defendant Reichardt for not permitting inmates to remove clothing including denim jeans prior to swimming.

62. That Defendants Marion County and Marion County Prison Camp knew swimming with clothing including denim jeans increased the likelihood of harm to inmates outside of their normal work shift duties.
63. That Defendants Marion County and Marion County Prison Camp should have known that swimming with clothing including denim jeans increased the likelihood of harm to inmates outside of their normal work shift duties.
64. That Defendants Marion County and Marion County Prison Camp knew Defendant Reichardt could not swim.
65. That Defendants Marion County and Marion County Prison Camp should have known Defendant Reichardt could not swim.
66. That Defendants Marion County and Marion County Prison Camp knew Defendant Reichardt did not have emergency training.
67. That Defendants Marion County and Marion County Prison Camp should have known Defendant Reichardt did not have emergency training.
68. That Defendants Marion County and Marion County Prison Camp foresaw the potential harm as a result of Defendant Reichardt's supervision of inmates.
69. That it was reasonably foreseeable to Defendants Marion County and Marion County Prison Camp that harm would result due to Defendant Reichardt's supervision of inmates.
70. That it was reasonably foreseeable to Defendants Marion County and Marion County Prison Camp that harm would result due to Defendant Reichardt's permitting inmates to swim while under his care.
71. That it was reasonably foreseeable to Defendants Marion County and Marion County

Prison Camp that harm would result due to Defendant Reichardt's forbidding inmates from removing their clothing including denim jeans prior to swimming.

72. That Defendants Marion County and Marion County Prison Camp did not reprimand or discipline Defendant Reichardt as a result of his allowing inmates to swim while under his care.
73. That Defendants Marion County and Marion County Prison Camp did not reprimand or discipline Defendant Reichardt as a result of his not allowing inmates to remove their clothing prior to swimming while under his care.
74. That Defendants Marion County and Marion County Prison Camp did not reprimand or discipline Defendant Reichardt subsequent to the drowning of Ronnie Earl Davis.
75. That Defendants Marion County and Marion County Prison Camp did not reprimand or discipline Defendant Reichardt subsequent to the near-drowning of David Brown.
76. That Defendants Marion County and Marion County Prison Camp would not normally condone actions that lead to inmates perishing under the care of prison authorities.
77. That Defendants Marion County and Marion County Prison Camp would not normally condone actions that lead to inmates becoming seriously injured under the care of prison authorities.
78. Defendant Reichardt's permitting Ronnie Earl Davis to swim while under his care led to his drowning.
79. Defendant Reichardt's permitting and encouraging David Brown to swim while under his care led to his severe injury and near drowning.
80. That the gravity of the harm suffered on or about June 15, 2010, by Ronnie Earl Davis and David Brown was great and of consequence.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action, for all damages, 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.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY Akim A. Anastopoulos
Akim A. Anastopoulos, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina

FEBRUARY 24, 2012

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE
BOOK _____ PAGE _____
Sherry R. Rhodes
CLERK OF COURT MARION COUNTY
SOU

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)
)
Celeste Hemingway as Personal)
Representative for the Estate of Ronnie)
Earl Davis and David Brown,)
)
Plaintiffs,)
)
vs.)
)
Marion County and Marion County)
Prison Camp,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO.: 2010-CP-33-941

ANSWER TO AMENDED
COMPLAINT

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BOOK PAGE

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The Defendants, answering the Amended Complaint of the Plaintiffs would show unto this Court as follows:

FOR A FIRST DEFENSE

1. The Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 1 of the Amended Complaint and therefore deny the same.
2. The Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 2 of the Amended Complaint and therefore deny the same.
3. The Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 3 of the Amended Complaint and therefore deny the same.
4. The Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 4 of the Amended Complaint and therefore deny the same.
5. The Defendants admit the allegations contained in Paragraph 5 of the Amended Complaint.
6. The Defendants deny the allegations contained in Paragraph 6 of the Amended Complaint in that the Defendant, Marion County Prison Camp is a division of Marion

County and its government.

7. The Defendants deny the allegations contained in Paragraph 7 of the Amended Complaint.

8. The Defendants admit the allegations contained in Paragraph 8 of the Amended Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Gross Negligence)

9. The Defendants replead and reiterate all of the foregoing Paragraphs as if set forth herein verbatim and deny any allegations in Paragraph 9 of the Amended Complaint inconsistent therewith.

10. The Defendants admit the allegations contained in Paragraph 10 of the Amended Complaint.

11. The Defendants deny the allegations contained in Paragraph 11 of the Amended Complaint.

12. The Defendants deny the allegations contained in Paragraph 12 of the Amended Complaint.

13. The Defendants deny the allegations contained in Paragraph 13 of the Amended Complaint.

14. The Defendants deny the allegations contained in Paragraph 14 of the Amended Complaint.

15. The Defendants deny the allegations contained in Paragraph 15 of the Amended Complaint.

16. The Defendants deny the allegations contained in Paragraph 16 of the Amended

Complaint.

17. The Defendants deny the allegations contained in Paragraph 17 of the Amended Complaint.

18. The Defendants deny the allegations contained in Paragraph 18 of the Amended Complaint and all of the sub-paragraphs of Paragraph 18 of the Amended Complaint.

19. The Defendants admit the allegations contained in Paragraph 19 of the Amended Complaint as allege that on the dates in question the Plaintiffs were in the custody, possession and/or under the control of the Defendants but deny the remaining allegations contained in Paragraph 19 of the Amended Complaint:

20. The Defendants admit the allegations contained in Paragraph 20 of the Amended Complaint as allege that John Reichardt was an employee of the Defendants and was acting in the course and scope of his employment but deny the remaining allegations contained in Paragraph 20 of the Amended Complaint.

21. The Defendants admit the allegations contained in Paragraph 21 of the Amended Complaint as allege that Donald Bryant was an employee of the Defendants and was acting in the course and scope of his employment but deny the remaining allegations contained in Paragraph 21 of the Amended Complaint.

22. In response to the allegations contained in Paragraph 22 of the Amended Complaint, the Defendants plead their common law and statutory duties and deny any allegations set forth in Paragraph 22 of the Amended Complaint inconsistent therewith.

23. In response to the allegations contained in Paragraph 23 of the Amended Complaint, the Defendants plead their common law and statutory duties and deny any allegations set

forth in Paragraph 23 of the Amended Complaint inconsistent therewith.

24. The Defendants deny the allegations contained in Paragraph 24 of the Amended Complaint and all of its sub-paragraphs.

25. The Defendants deny the allegations contained in Paragraph 25 of the Amended Complaint and all of its sub-paragraphs.

26. The Defendants deny the allegations contained in Paragraph 26 of the Amended Complaint.

27. The Defendants deny the allegations contained in Paragraph 27 of the Amended Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Wrongful Death of Ronnie Earl Davis)

28. The Defendants replead and reiterate all of the foregoing Paragraphs as if set forth herein verbatim and deny any allegations in Paragraph 28 of the Amended Complaint inconsistent therewith.

29. The Defendants deny the allegations contained in Paragraph 29 of the Amended Complaint.

30. The Defendants deny the allegations contained in Paragraph 30 of the Amended Complaint.

31. The Defendants deny the allegations contained in Paragraph 31 of the Amended Complaint.

32. The Defendants deny the allegations contained in Paragraph 32 of the Amended Complaint.

33. The Defendants deny the allegations contained in Paragraph 33 of the Amended

Complaint.

34. The Defendants deny the allegations contained in Paragraph 34 of the Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Survival Action of Ronnie Earl Davis)

35. The Defendants replead and reiterate all of the foregoing Paragraphs as if set forth herein verbatim and deny any allegations in Paragraph 35 of the Amended Complaint inconsistent therewith.

36. The Defendants deny the allegations contained in Paragraph 36 of the Amended Complaint.

37. The Defendants deny the allegations contained in Paragraph 37 of the Amended Complaint.

38. The Defendants deny the allegations contained in Paragraph 38 of the Amended Complaint.

39. The Defendants deny the allegations contained in Paragraph 39 of the Amended Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Negligent Training & Supervision as the Defendants Marion County and Marion County Prison Camp)

40. The Defendants replead and reiterate all of the foregoing Paragraphs as if set forth herein verbatim and deny any allegations in Paragraph 40 of the Amended Complaint inconsistent therewith.

41. The Defendants admit that on or about June 15, 2010, John Reichardt was an

employee of the Defendants but deny the remaining allegations contained in Paragraph 41 of the Amended Complaint.

42. The Defendants admit the allegations contained in Paragraph 42 of the Amended Complaint with the exception that the Defendants deny that John Reichardt is a Defendant.

43. The Defendants deny the allegations contained in Paragraph 43 of the Amended Complaint.

44. The Defendants admit the allegations contained in Paragraph 44 of the Amended Complaint with the exception of the allegations that John Reichardt is a Defendant which the Defendants deny.

45. The Defendants admit the allegations contained in Paragraph 45 of the Amended Complaint with the exception of the allegations that John Reichardt is a Defendant which the Defendants deny.

46. The Defendants admit the allegations contained in Paragraph 46 of the Amended Complaint with the exception of the allegations that John Reichardt is a Defendant which the Defendants deny.

47. The Defendants admit the allegations contained in Paragraph 47 of the Amended Complaint with the exception of the allegations that John Reichardt is a Defendant which the Defendants deny.

48. The Defendants admit the allegations contained in Paragraph 48 of the Amended Complaint with the exception of that allegations that John Reichardt is a Defendant which the Defendants deny.

49. The Defendants deny the allegations contained in Paragraph 49 of the Amended

Complaint.

50. The Defendants deny the allegations contained in Paragraph 50 of the Amended Complaint.

51. The Defendants admit the allegations contained in Paragraph 51 of the Amended Complaint with the exception that they deny that John Reichardt is a Defendant.

52. The Defendants admit the allegations contained in Paragraph 52 of the Amended Complaint with the exception that they deny that John Reichardt is a Defendant.

AS TO THE SIXTH CAUSE OF ACTION

(Negligent Retention as to Defendants Marion County and Marion County Prison
Camp)

53. The Defendants replead and reiterate all of the foregoing Paragraphs as if set forth herein verbatim and deny any allegations in Paragraph 53 of the Amended Complaint inconsistent therewith.

54. The Defendants deny the allegations contained in Paragraph 54 of the Amended Complaint.

55. The Defendants deny the allegations contained in Paragraph 55 of the Amended Complaint.

56. The Defendants admit the allegations contained in Paragraph 56 of the Amended Complaint with the exception that they deny that John Reichardt is a Defendant in this case.

57. The Defendants admit the allegations contained in Paragraph 57 of the Amended Complaint with the exception that they deny that John Reichardt is a Defendant in this case.

58. The Defendants admit the allegations contained in Paragraph 58 of the Amended Complaint with the exception that they deny that John Reichardt is a Defendant in this case.
59. The Defendants deny the allegations contained in Paragraph 59 of the Amended Complaint.
60. The Defendants admit the allegations contained in Paragraph 60 of the Amended Complaint with the exception they deny he is a Defendant.
61. The Defendants deny the allegations contained in Paragraph 61 of the Amended Complaint.
62. The Defendants deny the allegations contained in Paragraph 62 of the Amended Complaint.
63. The Defendants deny the allegations contained in Paragraph 63 of the Amended Complaint.
64. The Defendants deny the allegations contained in Paragraph 64 of the Amended Complaint.
65. The Defendants deny the allegations contained in Paragraph 65 of the Amended Complaint.
66. The Defendants deny the allegations contained in Paragraph 66 of the Amended Complaint.
67. The Defendants deny the allegations contained in Paragraph 67 of the Amended Complaint.
68. The Defendants deny the allegations contained in Paragraph 68 of the Amended

Complaint.

69. The Defendants deny the allegations contained in Paragraph 69 of the Amended Complaint.

70. The Defendants deny the allegations contained in Paragraph 70 of the Amended Complaint.

71. The Defendants deny the allegations contained in Paragraph 71 of the Amended Complaint.

72. The Defendants admit the allegations contained in Paragraph 72 of the Amended Complaint.

73. The Defendants deny the allegations contained in Paragraph 73 of the Amended Complaint.

74. The Defendants admit the allegations contained in Paragraph 74 of the Amended Complaint with the exception they deny he is a Defendant.

75. The Defendants admit the allegations contained in Paragraph 75 of the Amended Complaint with the exception they deny he is a Defendant.

76. The Defendants deny the allegations contained in Paragraph 76 of the Amended Complaint in that these allegation intimate that improper conduct occurred by the employees of Marion County and the Defendants specifically deny any improper conduct.

77. The Defendants deny the allegations contained in Paragraph 77 of the Amended Complaint in that these allegation intimate that improper conduct occurred by the employees of Marion County and the Defendants specifically deny any improper conduct.

78. The Defendants deny the allegations contained in Paragraph 78 of the Amended

Complaint.

79. The Defendants deny the allegations contained in Paragraph 79 of the Amended Complaint.

80. The Defendants deny the allegations contained in Paragraph 80 of the Amended Complaint.

81. The Defendants deny each and every allegation contained in the Amended Complaint not herein specifically admitted.

FOR A SECOND DEFENSE

82. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

83. That the Amended Complaint fails to state facts sufficient to constitute a cause of action against these Defendants and they plead Rule 12(b)(6) of the South Carolina Rules of Court as a bar to the claims against them.

FOR A THIRD DEFENSE

83. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

84. That the Defendants plead the provisions of the South Carolina Tort Claims Act, S. C. Code Ann. §15-78-10, et. seq. as a bar to the Plaintiffs' causes of action against them.

FOR A FOURTH DEFENSE

85. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

86. That in addition to the other provisions of the South Carolina Tort Claims Act, the

Defendants plead the exceptions to waiver of immunity as found in §15-78-60 of the South Carolina Tort Claims Act.

87. In addition to the exceptions to waiver of immunity provisions found in the South Carolina Tort Claims Act, the Defendants plead §15-78-60(5) as a bar to the Plaintiffs' causes of action against them.

88. That in addition to the other provisions of the South Carolina Tort Claims Act, the Defendants plead S. C. Code Ann. §15-78-60(20) as a bar to the Plaintiffs' causes of action against them.

FOR A FIFTH DEFENSE

89. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

90. The Defendants plead the doctrine of assumption of risk on the part of the Plaintiffs' decedent, Ronnie Earl Davis as a bar to the Plaintiffs' causes of action against the Defendants.

FOR A SIXTH DEFENSE

91. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

92. In addition to the other provisions of the South Carolina Tort Claims Act, these Defendants specifically plead S. C. Code Ann. §15-78-70 as a bar to the Plaintiffs' causes of action against Marion County Prison Camp.

FOR A SEVENTH DEFENSE

93. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein

verbatim.

94. The Defendants plead as a bar to the Plaintiffs' causes of action against them, S. C. Code Anno. §42-1-10, et. seq. in that the Plaintiffs filed a Worker's Compensation claim which was admitted prior to the filing of this action.

FOR AN EIGHTH DEFENSE

95. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

96. That if any injuries or damages were sustained by the Plaintiffs as set forth in the Amended Complaint, they were due to and caused by their own negligence, gross negligence, recklessness, willfulness and wantonness in failing to take proper care, and in failing to exercise that degree of care and caution that a reasonably prudent person would have exercised under the circumstances, each of which acts contributed to causing the Plaintiffs' injuries; that the above mentioned negligent, reckless, willful and wanton actions and omissions on the part of the Plaintiffs were greater than any negligent, reckless, willful, or wanton acts on the part of the Defendants in causing the Plaintiffs' injuries and, therefore, the Plaintiffs' claim should be barred under the doctrine of comparative negligence and the Defendants plead the comparative negligence of the Plaintiffs as they bar as a bar to this action; alternatively, if the negligent, reckless, willful and wanton acts and omissions on the part of the Plaintiffs were less than the negligent, reckless, willful and wanton acts and omissions on the part of the Defendants then the Plaintiffs' recovery should be reduced in proportion to the extent of her negligence and causing her own injury. It is specifically denied by the Defendants that any negligent, reckless, willful or

wanton acts and omissions were committed by the Defendants.

FOR A NINTH DEFENSE

97. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

98. That the Defendants plead the public purpose doctrine as a defense and bar to the Plaintiffs' causes of action.

FOR A TENTH DEFENSE

99. The Defendants replead and reiterate the foregoing Paragraphs as if set forth herein verbatim.

100. That the Defendant plead the provisions of the Limitation on Liability of Landowner's Act, commonly known as the Recreational Use Statute, S. C. Code Ann. §27-3-10, et. seq. as a defense and bar to the Plaintiffs' causes of action set forth in their Amended Complaint.

WHEREFORE, having answered the Amended Complaint of the Plaintiffs, the Defendants pray that the same be dismissed and they be awarded cost and for such other and further relief as this Court may deem just and proper under these premises.


D. Malloy McEachin, Jr.
McEachin & McEachin, P.A.
2117-C West Palmetto St.
Florence, South Carolina 29501
(843) 665-0135 (o)
(843) 665-0716 (f)

Florence, South Carolina

March 16, 2012

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Celeste Hemingway as Personal
Representative for the Estate of Ronnie Earl
Davis

Plaintiff,

vs.

Marion County, et. al.

Defendant.

IN THE COURT OF COMMON PLEAS
12TH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-33-941

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

D. Malloy McEachin, Jr., Bar No. 03794

Address: _____

P. O. Box 5565, Florence, S. C. 29502

Phone: 843-665-0135 Fax 843-665-0716

E-mail: d239@bellsouth.net Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 30 mins.

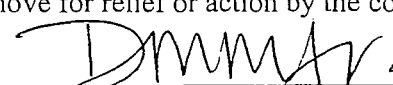
Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

May 18, 2012

Date submitted

☒ PAID - AMOUNT: \$ 25.00 SECTION III: Motion Fee

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

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

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Record on Appeal

- Page 46-

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

Celeste Hemingway as Personal)
Representative for the Estate of Ronnie)
Earl Davis and David Brown,)

Plaintiff,)

vs.)

Marion County and Marion County)
Prison Camp,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO.: 2010-CP-33-941

**MOTION FOR SUMMARY
JUDGMENT**

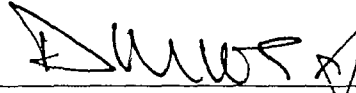
TO THE PLAINTIFFS NAMED ABOVE AND THEIR ATTORNEY, AKIM ANASTOPOULO:

Please take notice that the Defendant, Marion County, by and through its undersigned attorney, would move before the presiding Judge for the Court of Common Pleas for Marion County, in the Marion County Courthouse, at 10:00 a.m. on the tenth (10th) day after the service hereof, or at such other time and place as is convenient to the Court and Counsel, as follows:

That the Defendant be granted Summary Judgment as to the within action, for the reason that there is no material issue of fact which would entitle the Plaintiffs to a recovery against the Defendant, the Pleadings and Depositions taken regarding this matter reveal that at the time of the matters complained of in the Complaint, the Plaintiffs were swimming in a natural water course of their own volition, further that the Plaintiff, Ronnie Earl Davis, filed a Worker's Compensation Claim as a result of his death and the Worker's Compensation Statute, S.C. Code Ann. § 42-1-10, et. seq. as an exclusive remedy for the Plaintiff's loss. Further that the South Carolina Recreational Use Statute, S.C. Code Ann. § 27-3-10 et. Seq. bars the Plaintiffs' causes of actions. Additionally,

the Public Purpose Doctrine bars the Plaintiffs recovery. Additionally, the exceptions to the Waiver of Immunity Act found in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-6 (5), (16), (25) and (26) are a bar to the Plaintiffs' causes of action. Finally, the Plaintiffs' assumption of risk and comparative negligence bars the causes of action against the Defendant.

This Motion would be further based upon such Statutory Case Law as may be applicable.



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May 18, 2012

that they did (Dep. Brown; p. 29, ll. 12-16) (Dep. Reichardt; p. 39, ll. 7-25). Mr. Davis advised Mr. Reichardt that he was a good swimmer (Dep. Reichardt; p. 52, l. 25, p. 53, ll. 1-25, p. 54, ll. 1-5).

Mr. Davis swam out into the Little Pee Dee River which is a natural watercourse. Mr. Brown also swam out into the Little Pee Dee River. Mr. Davis drowned. Mr. Brown had some difficulty but was pulled back to the bank by Mr. Reichardt with a fishing line (Dep. Reichardt; p. 66, ll. 15-25).

A Worker's Compensation Action was initiated. Both Mr. Brown and Mr. Davis were statutory employees of Marion County (See Affidavit of Charles McLain attached as Exhibit "A"). This lawsuit followed.

STANDARD

[U]nder Rule 56(c), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Osborne v. Adams*, 346 S.C. 4, 550 S.E.2d 319(2001). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sumner v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997).

DISCUSSION

The Defendant has raised several issues for Summary Judgment.

1. Exclusivity of Worker's Compensation Statute. Pursuant to S.C. Code Ann § 42-1-10 et. seq., the exclusive remedy for a statutory employee's loss is under the South Carolina Worker's Compensation Act. Both Brown and Davis were statutory employees of Marion County. Marion County adopted by resolution a provision that any inmate at Marion County Prison Camp would be covered under Marion County Worker's Compensation coverage (See Affidavit of Charles McLain attached as Exhibit "A"). Both Davis and Brown were engaged in work that was part of the business of the Marion County Prison Camp (Dep. Brown; p. 8, ll. 15-25 and p. 9, ll. 1-25). S. C. Code Ann. §42-1-500 provides that a county may elect by resolution to cover its prisoners under workers' compensation insurance, in which case the

South Carolina Workers' Compensation Law is the exclusive remedy for injuries such as those complained of by the Plaintiffs. Likewise, S. C. Code Ann. §15-78-60(14) provides that the County is not liable for any injury governed by workers' compensation laws.

The Worker's Compensation Act is the exclusive remedy against an employer for an employees work related accident or injury. See *Phillip v. Blanchard*, 358 S.C. 536, 595 S.E. 2nd 831, 833. The exclusivity of the Worker's Compensation Act bars both Davis and Brown from maintaining a Court action against Marion County because both have work related injuries. See *Tatum v. Medical University of South Carolina*, 346 S.C. 194, 552 S.E. 2nd 18 (2001).

A Worker's Compensation Action was initiated involving Ronnie Earl Davis (See Exhibit "B"). The claim involving Ronnie Earl Davis was an admitted claim.

Though the Plaintiff's were not engaged in picking up trash at the time they went into the Little Pee Dee River, by David Brown's Deposition testimony, they were seeking relief from the heat. This is seeking relief from discomfort. The Personal Comfort Doctrine provides that an employee who is seeking relief from discomfort, though not actually engaged in the scope of his employment, is still covered under the Worker's Compensation Act. See *Mack v. Branch 12, Post Exchange*, 207 S.C. 258, 35 S.E. 2nd 838 (S.C. 1945). *Osteen v. Greenville County School District*, 333 S.C. 43 508 S.E. 2nd 21 (S.C. 1998).

Based on the exclusivity of the Worker's Compensation Act, the Plaintiff's Causes of Action in this matter should be dismissed.

2. The Plaintiffs' Assumption of Risk and Comparative Negligence of swimming in the Little Pee Dee River bars the Causes of Action Against the Defendant.

The Little Pee Dee River is a natural watercourse. The condition of the river is one which Marion County cannot guard against. Marion County does not control nor did it create or maintain the condition of the Little Pee Dee River. The Plaintiffs' voluntarily entered the Little Pee Dee River.

There is no duty owed to the Plaintiffs by the Defendant under the undisputed acts in this case.

There also is no standard of care established by the Plaintiffs.

If the City of Marion Rotary Club engaged in a Highway Beautiful Program of picking up trash on Highway 501 and several of its members decided to cool off in the Little Pee Dee River and one of them drowned, there would be no standard of care breached by the City of Marion Rotary Club. The activity of the Rotarians in picking up trash and going into the Little Pee Dee River would have been voluntary. The Rotarians would have assumed the risk of their engaging in this activity. The situation of Mr. Brown and Mr. Davis is analogous to the Rotarians. They volunteered to pick up trash and they voluntarily entered the Little Pee Dee River and assumed the risk of their activity. Both Plaintiffs assumed the risk of swimming in the river. They were not asked to swim in the river nor were they required to swim in the river by any employee of Marion County. Both Plaintiffs decided to swim in the river of their own volition. They expressed to all those present that they were experienced swimmers. There has been no set of facts in this case to establish a duty of Marion County to these Plaintiffs.

Assumption of the risk of swimming in the river by the Plaintiffs demonstrated as a matter of law that their Comparative Negligence exceeded by more than Fifty Percent (50%) any conceivable negligence of the Defendant.

3. The South Carolina Tort Claims Act S.C. Code Ann § 15-78-60 (5) and (25) are a bar to the Plaintiffs' Causes of Action.

The South Carolina Tort Claims Act provides that the State retains Sovereign Immunity in certain instances. S.C. Code Ann §15-78-60 (5) provides;

The governmental entity is not liable for loss resulting from... the exercise of discretion or judgment by the governmental entity or employee for the performance or failure of performance to perform any act of service which is in the discretion or judgment of the governmental entity or employee...

The governmental entity must establish that faced with alternatives, actually weighing competing considerations the governmental entity or its employee made a conscious choice. The governmental entity, Marion County in this instance, must also show that it utilized accepted professional standards

appropriate to resolve the issue. *Strange v. South Carolina Department of Highways and Public Transportation*, 314 S.C. 427, 455 S.E. 2nd 439 (S.C. 1994).

Mr. Reichardt was the Transport Officer for the Plaintiffs. He asked if the Plaintiffs could swim in the Little Pee Dee River. He was faced with the alternative of allowing the Plaintiffs to swim or disallowing their activity. He inquired if they knew how to swim and was informed by both Plaintiffs that they knew how to swim. Mr. Reichardt made a conscious choice based on the representations given to him by the Plaintiffs and allowed them to go into the river. This conclusively establishes the Exception to Waiver of Immunity and bars the Plaintiffs Causes of Action as found in S.C. Code Ann. §15-78-60(5).

A governmental entity is not liable for a loss resulting from the “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any... prisoner... except when the responsibility or duty is exercised in a grossly negligent manner. S. C. Code Ann. §15-78-60(25).

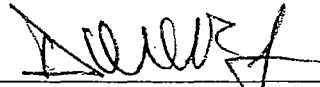
Gross negligence is the intentional, conscience failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. *Richardson v. Hambricht*, 296 S.C. 504, 374 S.E. 2d 296 (1998). Negligence is a failure to exercise due care, while gross negligence is the failure to exercise slight care. *Hollins v. Richland County School District*, 310 S.C. 486, 427 S.E. 2d 654 (1993).

In determining the appropriateness of summary judgment, the Court must construe inferences arising from the evidence against the moving party. *Byers v. Westinghouse Electric Corp.*, 310 S.C. 5, 425 S.E. 2d 23 (1992). Viewing all inferences of the facts in a light most favorable to the Plaintiffs, it is obvious that slight care was exercised in this case. Mr. Reichardt inquired of both Plaintiffs if they knew how to swim. He was told by both of them that they knew how to swim. The Plaintiffs then voluntarily entered the Little Pee Dee River. The undisputed facts establish that the Defendants are entitled to

summary judgment pursuant to S. C. Code Ann. §15-78-6(25).

CONCLUSION

The Defendant requests that this Court grant it summary judgment. In viewing all facts in a light most favorable to the Plaintiffs, their causes of action fail due to the exclusivity of the Worker's Compensation Act, the failure of establishing a duty owed to the Plaintiffs by the Defendant and based on the reservation of sovereign immunity as found in the South Carolina Tort Claims Act.



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June 25, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)
)
Celeste Hemingway as Personal)
Representative for the Estate of Ronnie)
Earl Davis and David Brown,)
)
Plaintiff)
)
v.)
)
Marion County, and)
Marion County Prison Camp,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-33-941

PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO SUMMARY
JUDGMENT

BOOK _____ PAGE _____

2012 JUN 21 PM 3:30

FILED

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

COMES NOW the Plaintiff, Celeste Hemingway as Personal Representative for the Estate of Ronnie Earl Davis, and David Brown, by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendant Marion County, and Marion County Prison Camp's Motion for Summary Judgment.

INTRODUCTION

Ronnie Earl Davis died on June 15, 2010 while in the custody of Defendants Marion County and Marion County Prison Camp. He was serving a minimal thirty-day sentence with just eleven days remaining. The Defendants had placed Mr. Davis on a work crew that was picking up litter along highway 501 in Marion County under the supervision of a former dump truck-driver, now prison bus-driver. It was 104 degrees on the day Mr. Davis drowned. During a break from their labor, the prison bus-driver agreed to take Mr. Davis and the other prisoners in his custody to the Galivant's Ferry boat landing to swim. Swimming during break was not required as a part of the prisoners' employment. Instead, swimming during break was a recreational activity that prisoners participated in only two or three times per year. Mr. Davis had never been swimming during work-break before.

Mr. Davis was told by his prison bus-driver that he could not remove his bluejeans before he swam. While swimming about fifty feet from shore Mr. Davis began to have trouble staying

afloat. Unfortunately, the prison bus-driver was not equipped to respond to his inmate's distress. The prison bus-driver did not know how to swim himself. He was not trained in water rescue. He had no life preservers. He had no life jackets. He had no CPR or first aid training. He did not enter the water to attempt to rescue Mr. Davis. He did not call 911. Only after Mr. Davis disappeared beneath the surface for the last time did the prison bus-driver call his boss to report the drowning. When asked during his deposition whether he carried any life saving equipment on the bus, the prison bus-driver responded that he had a rake.

Plaintiffs brought suit, and Defendants have filed a Motion seeking an Order for Summary Judgment. Plaintiff files this Memorandum of Law in Opposition.

ARGUMENT

Summary judgment is an "extreme remedy to be cautiously invoked." Holloman v. McAllister, 289 S.C. 183, 186 (1986). Since Summary judgment is adjudication on the merits of the case, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563 (2002); Shealy v. Doe, 370 S.C. 194 (Ct. App. 2006). Summary judgment is only appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRPC. The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact. Id. Furthermore, when the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330 (2009).

In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom, must be viewed in the light most favorable to the non-moving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493 (1994). Further, even "when there is no dispute as to evidentiary facts, but only as to conclusions or inferences to be drawn from them, summary judgment should be denied." S.C. Rules Civ. Proc., Rule 56(c); Koester v. Carolina Rental Ctr., 313 S.C. 490, 493 (1994) (citing Hamilton v. Miller, 301 S.C. 45, 47, 389 (1990)). "Where the evidentiary matter in support of [Summary Judgment] does not establish the absence of a genuine issue [of material fact], Summary Judgment must be denied, even if no opposing evidentiary matter is presented." Title Ins. Co. of Minnesota v. Christian, 267 S.C. 71,

76 (1976); Rule 56(c), SCRCF. The Defendants assert five grounds on which they allege that the Plaintiff's claims are barred. None are supported by statute or case law, and the Defendants are not entitled to judgment as a matter of law on any of them.

I. Plaintiff's claims are not barred by the Worker's Compensation Statute

The Defendants first argue that "the Plaintiff . . . filed a Worker's Compensation Claim as a result of his death and the Worker's Compensation Statute, S.C. Code Ann. § 41-1-10 et. Seq." provides the exclusive remedy for the Plaintiff's loss. (Def.'s Mot. Summ. J., p. 1). This argument is without merit for two reasons. First, the Plaintiff did not file a Worker's Compensation Claim. Instead, the *Defendants* opened the claim with the Worker's Compensation Commission by filing form 12A, First Report of Injury, on June 17, 2010. (See Exhibit A). This issue alone represents a genuine issue of material fact that compels denial of summary judgment. Rule 56(c) SCRCF.

Second, even if the Plaintiff had filed a Worker's Compensation Claim, Worker's Compensation is the exclusive remedy only for the "rights and remedies granted by [Title 42]." S.C. Code Ann. § 42-1-540. Here, Title 42 does not grant any rights or remedies for the death of the Decedent, because Title 42 only applies to workers injured "by accident arising out of and in the course of employment," and to prisoners "performing work assigned by officials of the county." S.C. Code Ann. §§ 42-1-160, -500. By contrast, Title 42 provides no remedy to an "inmate [like the decedent] injured in a . . . recreational activity or other incident[] not directly related to his work assignment." S.C. Code Ann. § 42-1-480.

Even if Workers' Compensation provides coverage to prisoners of Marion County in general, Title 42 provides no remedy (let alone the *exclusive* remedy) in this case to the inmate decedent's estate because the activity that led to the decedent's death, swimming in the Little Pee Dee River, was not "in the course of [the decedent's] employment." S.C. Code Ann. § 42-1-160. Where, as here, the cause of the decedent's death is outside the course of employment, the Plaintiff, on behalf of decedent's estate, may commence an action at law against the Defendants. S.C. Code Ann. § 42-1-650.

Recreational activities are within the course of employment only when they fall into one of the three categories adopted by the Supreme Court in Leopard v. Blackman-Uhler. Leopard v. Blackman-Uhler, 458 S.E.2d 41, 41 (1995). The activity is within the course of employment if it

occurs “on the premises of the employer during a lunch or recreation period as a regular incident of the employment; or the employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.” Id.

Here, swimming at a boat landing was not within the course of employment because it satisfies none of the three criteria. First, it did not occur on the Defendants’ premises as a regular incident of the employment. The decedent drowned in the Little Pee Dee River, which does not flow through the Marion Country Prison Camp. Further, by Defendant Reichardt’s own admission, he had taken prisoners swimming during breaks only “two or three times a year,” which hardly constitutes a regular incident of employment. (Dep. of Def. Reichardt, p. 40); Estate of William Robinson v. Planet Hollywood, Inc., WL 33223876 (S.C. Work. Comp. Comm. 1999) (two recreational events per year not regular incidents of employment). In addition, this was the first time that the Decedent swam while in the custody of the Defendants. Second, by the Defendant’s own admission, participation in swimming was not required or made a part of the services of the Plaintiff to the Defendants. (Dep. of Def. Reichardt, pp. 49, 57). Third, the Defendants have produced no evidence, nor can one readily imagine what such evidence might even be, that the Defendant derived substantial direct benefit from the decedent’s swimming at the boat landing. Because, under the standard adopted by the Supreme Court in Leopard, the decedent’s death is not within the jurisdiction of the Worker’s Compensation Commission, the Plaintiff may commence an action at law against the Defendants. S.C. Code Ann. § 42-1-650.

Because there is a genuine issue as to the material fact of whether the Plaintiff filed a Worker’s Compensation Claim, and because even absent said issue, the Defendant would not be entitled to judgment as a matter of law because the decedent’s death falls outside Title 42, summary judgment must not be granted. The Plaintiff therefore respectfully requests that this Court deny the Defendant’s motion.

II. Plaintiff’s claims are not barred by the Recreational Use Statute

Next, the Defendants argue that the Plaintiff’s claims are barred by the South Carolina

Recreational Use Statute, S.C. Code Ann. § 27-3-10 et. Seq. This argument is also without merit. It is axiomatic that government entities fulfill many different roles, and that liability may arise from each of them. Statutory immunity based on the entity fulfilling one role, does not confer immunity across the board. Section 27-3-30 provides generally that “an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for recreational purpose.” S.C. Code Ann. 27-3-30. This section is wholly inapposite to the instant case because the Plaintiff has not alleged that the Defendant has breached any duty arising from Defendants role as a land owner. Instead, the Plaintiff alleges, *inter alia*, that the Defendants were grossly negligent in their supervision of people, not of property.

The Defendants have a duty to take reasonable steps to safeguard the lives of prisoners in their custody wherever the Defendants may take them. (Exhibit B, Minimum Standards for Local Detention Facilities in South Carolina, Standard 4034, Appendix A). The Defendants are not relieved of their duty simply by taking prisoners to a boat landing, any more than a county school would be relieved of its duty to its students simply by taking them to a county park. The duty that the Defendants breached arose from its role as jail-keeper, not its role as an owner of land.

Further, because the statute is “is in derogation of the common law, it must be strictly construed . . . [to] . . . effectuate the legislative intent wherever possible.” Corbett v. City of Myrtle Beach, 521 S.E.2d 276, 279 (S.C. App. 1999). Immunity will not be granted where a “grant of immunity to the [Defendants] would not serve the underlying purpose of the . . . statute.” Id. at 280 (citing Ward v. State, 181 Ariz. 359 (1995)). The purpose of the Recreational Use Statute “is to prompt owners of land to make their land available for recreational use by the public.” Id. Here, the Defendants have offered nothing to show how granting immunity to the Marion County Prison Camp for negligence in the hiring and training of prison bus drivers would serve the underlying legislative purpose of prompting land owners to make their land available for recreational use by the public.

Because 1) the Recreational Use Statute only bars a cause of action which the Plaintiff has not alleged, and 2) conferring immunity on the Defendants does not serve the legislative intent of the statute, the Recreational Use Statute does not bar the Plaintiff's claim. Therefore, the Plaintiff respectfully requests that this Court deny the Defendants' motion for Summary Judgment.

III. Plaintiff's claims are not barred by the Public Purpose Doctrine.

Third, the Defendants argue that the "Public Purpose Doctrine bars the Plaintiffs [sic] recovery." (Def.'s Mot. Summ. J., p. 2). Plaintiff's attorneys fail to see how. The Public Purpose Doctrine, as construed by the South Carolina Supreme Court holds in part that "[a]s long as there exists a reasonable relationship between the public purpose to be achieved and the means chosen to effectuate that purpose, the legislation is not invalid because we may feel a different method would have been more effective." Bauer v. S.C. State Hous. Auth., 271 S.C. 219, 231 (1978). In addition, "[a]ll legislative action must serve a public rather than a private purpose. In general, a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division.... It is a fluid concept which changes with time, place, population, economy and countless other circumstances. It is a reflection of the changing needs of society." WDW Properties v. City of Sumter, 342 S.C. 6, 13 (2000). How the Public Purpose Doctrine might bar the Plaintiff's recovery escapes the understanding of the Plaintiff's attorneys.

IV. Plaintiff's claims are not barred by the Tort Claims Act

The Defendants next argue that sections 5, 16, 25 and 26 of the Tort Claims Act, S.C. Code Ann. § 15-78-60 bar the Plaintiff's causes of action. Once again, the Defendants' argument is without merit.

Section 15-78-60 (5) provides that a governmental entity, such as Defendant Marion County, is not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service *which is in the discretion or judgment* of the governmental entity or employee." S.C. Code Ann. § 15-78-60 (emphasis added). However, "Discretion" is construed narrowly. Foster v. S.C. Dept. of Highways & Pub. Transp., 306 S.C. 519, 525 (1992); Clark v. S.C. Dept. of Pub. Safety, 353 S.C. 291, 306 (Ct. App. 2002) aff'd, 362 S.C. 377 (2005). "The fact that the employees had to make decisions or exercise some judgment in their activities is not determinative." Id. at 305. Instead, the Defendants must prove that "the governmental employees faced with alternatives, actually weighed competing considerations and made a conscious choice." Id. "Further, the

governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. Foster, 306 S.C. at 525.

Here, the Defendants have failed to meet their burden because they have produced no evidence that they utilized any standards, let alone "accepted professional standards." Because the Defendants have failed to establish discretionary immunity as an affirmative defense, section 15-78-60 (5) does not, as a matter of law, bar the Plaintiff's cause of action. Because the Defendants are not entitled to judgment as a matter of law, summary judgment must be denied. Rule 56(c) SCRPC.

The Defendants' arguments as to sections 15-78-60 (16) and 15-78-60 (26) suffer from a single, fundamental misunderstanding of the intent of the Tort Claims Act. The intent of the Act is to shield a governmental entity from liability, under a limited set of circumstances, where the entity would have been liable had it been a private individual. Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 393 (1999). It is axiomatic that government entities fulfill many different roles, and that liability may arise from each of them. Statutory immunity based on the entity fulfilling one role, does not confer immunity across the board.

Although section 15-78-60 (16) of the act provides that a governmental entity is not liable for a loss resulting from "maintenance, security, or supervision of any public property, intended or permitted to be used as a park," this section is wholly inapposite to the instant case because the Plaintiff has not alleged any negligence based on the Defendants' duty to maintain, secure or supervise a park. Likewise, although section 15-78-60 (26) provides that a governmental entity is not liable for a loss resulting from "[f]ailure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps," the Plaintiff has not alleged any negligence based on the Defendants' duty to control, maintain or supervise boat ramps. Instead, the Plaintiff alleges, *inter alia*, that the defendants were grossly negligent in their supervision of people, not of property.

The Defendants have a duty to take reasonable steps to safeguard the lives of prisoners in their custody wherever the Defendants may take them. (Exhibit C, Minimum Standards for Local Detention Facilities in South Carolina, Standard 4034, Appendix A). As was the case with the Recreational Use Statute described above, the Defendants are not relieved of their duty to safeguard prisoners in their custody simply by taking them to a boat landing, any more than a

county school would be relieved of its duty to its students simply by taking them to a county park. The duty that the Defendants breached arose from their role as jail-keeper, not their role as maintainers of parks and boat landings. Because § 15-78-60(16) bars a cause of action that the Plaintiff has not alleged, it is not a bar to the Plaintiff's claims. Therefore, since the Defendants are not entitled to judgment as a matter of law, Summary Judgment must be denied. Rule 56(c) SCRPC.

Section 15-78-60 (25) provides that a governmental entity is not liable for a loss resulting from "supervision, protection, control, confinement, or custody of any . . . prisoner . . . except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60. "Gross negligence ordinarily is a mixed question of law and fact," Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 53 (1994). In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury. Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 332 (2002).

Here, Defendant Reichardt admits that he supervised prisoners as they swam even though he was not specially trained to drive prisoners let alone take them swimming. He did not have current CPR or first aid training. He could not swim himself. He was not trained in water rescue. He had no life preservers. He had no life jackets. In fact, he had no rescue equipment other than a rake. (Dep. of Defendant Reichardt, pp. 20, 49, 50, 75). Because the deposition of the Defendant supports the reasonable inference that he was grossly negligent as the Plaintiff alleges, the question is one of material fact for the trier of fact. Id.; Foster v. S.C. Dept. of Highways & Pub. Transp., 306 S.C. 519, 524 (1992). Section 15-78-60 (25) shields the Defendants from liability only when the trier of fact has found that the Defendants are not grossly negligent. Therefore, it cannot bar the Plaintiff's claim now, before the trier of fact has even heard the evidence. Because there is a genuine issue of material as to whether the Defendants were grossly negligent, Summary Judgment must be denied. Faile, 350 S.C. at 332.

V. Plaintiff's claims are not barred by the doctrines of Assumption of Risk and Comparative Negligence.

Finally, the Defendants argue that the Plaintiff's claims are barred by the doctrines of Assumption of Risk and Comparative Negligence. This argument is without merit as well. South Carolina recognizes both express and implied assumption of risk, though the latter has been

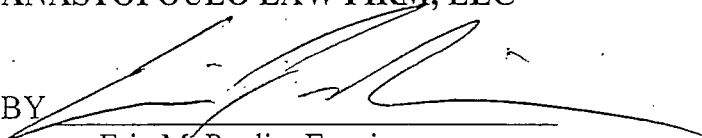
subsumed into the doctrine of Comparative Negligence. Davenport v. Cotton Hope Plantation Horizontal Property Regime, 333 S.C. 71, 88 (1998). Express assumption of risk does not apply here because the Defendants and the Plaintiff did not “agree in advance . . . that the plaintiff [would] relieve the defendant of his or her legal duty toward the plaintiff.” Id. at 79. Both the doctrine of Comparative Negligence and Implied Assumption of Risk would bar the Plaintiff’s claim only if “the degree of fault [of the Plaintiff] is greater than the negligence of the defendant.” Id. at 88. Where, as here, “there may be a fair difference of opinion as to whose act or whose acts produced or contributed to the injury” the question of whether or not the Plaintiff had the greater degree of fault is one of fact for the jury to decide. Wilson v. Marshall, 260 S.C. 271, 274 (1973). Because there is a genuine issue of material fact for the jury to decide, Summary Judgment is not appropriate here. Rule 56(c) SCRPC. Therefore, the Plaintiff respectfully requests that this Court deny the Defendants’ motion.

CONCLUSION

For all the foregoing reasons, Defendants’ Motion for Summary Judgment should be denied and this action set for a trial before jury.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY 

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ATTORNEY FOR PLAINTIFFS

Charleston, South Carolina

June 20, 2012

S.C. WORKER'S COMPENSATION COMMISSION - FIRST REPORT OF INJURY OR ILLNESS																
EMPLOYER (NAME & ADDRESS INCL ZIP) Marion County P.O. Box 744 Marion, S.C. 29571	<table border="1"> <tr> <td>CARRIER/ADMINISTRATOR CLAIM NUMBER</td> <td>OSHA LOG NUMBER</td> <td>REPORT PURPOSE CODE</td> </tr> <tr> <td>JURISDICTION</td> <td>JURISDICTION CLAIM NUMBER</td> <td></td> </tr> <tr> <td colspan="3">INSURED REPORT NUMBER</td> </tr> <tr> <td colspan="2">EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT) 5800000230360-0001</td> <td>LOCATION #</td> </tr> <tr> <td colspan="2"></td> <td>PHONE #</td> </tr> </table>	CARRIER/ADMINISTRATOR CLAIM NUMBER	OSHA LOG NUMBER	REPORT PURPOSE CODE	JURISDICTION	JURISDICTION CLAIM NUMBER		INSURED REPORT NUMBER			EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT) 5800000230360-0001		LOCATION #			PHONE #
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		PHONE #														
INDUSTRY CODE 13	EMPLOYER FEIN 67-6000384															

CARRIER/CLAIMS ADMINISTRATOR		
CARRIER (NAME, ADDRESS, & PHONE #) SC Counties Workers Compensation Trust P.O. Box 8207 Columbia, S.C. 29202	POLICY PERIOD TO CHECK IF APPROPRIATE ☐ SELF INSURANCE	CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO) Companion Property & Casualty Insurance Company P.O. Box 100159 Columbia, S.C. 29202 (800) 922-1282 Fax: 1-800-290-1858
CARRIER FEIN	POLICY/SELF-INSURED NUMBER	ADMINISTRATOR FEIN
AGENT NAME & CODE NUMBER		

EMPLOYEE/WAGE				
NAME (LAST, FIRST, MIDDLE) Davis, Ronnie Earl	DATE OF BIRTH 12/23/1967	SOCIAL SECURITY NUMBER 248-23-3502	DATE HIRED	STATE OF HIRE
ADDRESS (INCL ZIP) 2322 N Hwy 41 A Marion, S.C. 29571	SEX ☒ Male ☐ Female ☐ Unknown	MARITAL STATUS ☐ Unmarried/Single/Divorced ☐ Married ☐ Separated ☒ Unknown	OCCUPATION/JOB TITLE Inmate	EMPLOYMENT STATUS Inmate
PHONE 23-4907	# OF DEPENDENTS		NCCI CLASS CODE	
DATE ATE ER	☐ DAY ☐ MONTH ☐ WEEK ☐ OTHER	DAYS WORKED/WEEK 5	FULL PAY FOR DAY OF INJURY? DID SALARY CONTINUE?	☐ YES ☐ NO ☐ YES ☐ NO

OCCURRENCE/TREATMENT				
DATE EMPLOYEE CAN WORK ☐ AM ☐ PM	DATE OF INJURY/ILLNESS 6/15/2010	TIME OF OCCURRENCE () CANNOT BE DETERMINED	LAST WORK DATE 6/15/2010	DATE EMPLOYER NOTIFIED DATE DISABILITY BEGAN 6/15/2010
CONTACT NAME/PHONE NUMBER 23-4907	TYPE OF INJURY/ILLNESS death by drowning		PART OF BODY AFFECTED	
WAS INJURY/ILLNESS/EXPOSURE OCCURRED ON EMPLOYER'S PREMISES? ☐ YES ☒ NO	TYPE OF INJURY/ILLNESS CODE		PART OF BODY AFFECTED CODE	
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED Salivants ferry Boat Landing		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED None		
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED in water		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED None		
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL lumped in water				CAUSE OF INJURY CODE
DATE RETURNED TO WORK	IF FATAL, GIVE DATE OF DEATH 6/15/2010	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? WERE THEY USED?	☐ YES ☒ NO ☒ YES ☐ NO	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) Marion County Medical Center Hwy 76 Mullins, S.C. 29574		HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS) Marion County Medical Center Hwy 76 Mullins, S.C. 29574		INITIAL TREATMENT 0 ☐ NO MEDICAL TREATMENT 1 ☐ MINOR BY EMPLOYER 2 ☐ MINOR CLINIC/HOSP 3 ☒ EMERGENCY CARE 4 ☐ HOSPITALIZED > 24 HOURS 5 ☐ FUTURE MAJOR MEDICAL/LOST TIME ANTICIPATED

OTHER WITNESSES (NAME & PHONE #)	
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DATE ADMINISTRATOR NOTIFIED 6/15/2010	DATE PREPARED 6/17/2010	PREPARER'S NAME & TITLE Tina M Lewis Marion County Personnel	PHONE NUMBER 843-423-8201
VCC FORM 12A REV. DATE 04/08		SEE INSTRUCTIONS FOR IMPORTANT INFORMATION	
REPRINTED WITH PERMISSION OF IAABC			

4031 REGULATIONS FOR MANDATORY PROGRAMS

The governing body of a county or municipality may develop and prescribe regulations to clarify how inmate labor is to be managed. The Facility Administrator shall publish, and maintain for employees and inmates to see, written policies and procedures concerning how the work to be performed will be approved and by whom, and how the inmates will be supervised while performing such labor.

4032 CLOTHING FOR MANDATORY PROGRAMS

Inmates assigned to all work programs will have clothing issued and maintained in accordance with Standards 2070-2073. For inmates assigned to work outside the facility, statutory provisions dealing with clothing to be issued to inmates, such as Section 24-13-640, must be followed; or else documented, approved waivers of such requirements must be available for inspection at all times.

4033 ENFORCEMENT OF WORK REQUIREMENT

When an able-bodied sentenced adult inmate refuses to obey clear and repeated instructions to do work which conforms to Standard 4031, then the Facility Administrator or his/her designee may treat the refusal as a violation of rules and proceed to discipline the inmate. Standards 2000-2003 must be followed in carrying out disciplinary action. (Revised August 2005)

4034 SAFETY OF INMATE WORKERS

No inmates will be assigned to carry out job tasks which are considered to be extremely dangerous nor to work under conditions which are in violation of the Occupational Safety and Health Act. Clearly understood and documented instructions on how to obtain emergency medical care for inmates who are injured or seriously ill shall be made available to all persons who supervise inmate workers.

4035 EXCESS PROPERTY

Inmates should be discouraged from bringing any excess property into the facility. Inmates who work outside the facility should be searched upon their return and should not be allowed to keep unauthorized items which they have found or been given.

4036 SENTENCE COMPUTATION GUIDELINES

Inmates shall receive mandatory good time and work credits in accordance with the applicable South Carolina Statutes. (Refer to Appendix C)
(Revised August 2005)

APPENDIX A

SOUTH CAROLINA JAIL ADMINISTRATORS' ASSOCIATION'S CODE OF ETHICS

As an officer employed in a detention/correctional capacity, I swear (or affirm) to be a good citizen and a credit to my community, state, and nation at all times. I will abstain from questionable behavior which might bring disrepute to the agency for which I work, my family, my community, and my associates. My lifestyle will be above and beyond reproach and I will constantly strive to set an example of a professional who performs his/her duties according to the laws of our country, state, and community and the policies and procedures, written and verbal orders, and regulations of the agency for which I work.

On the job I promise to:

KEEP the institution secure so as to safeguard my community and the lives of the staff, inmates, and visitors on the premises.

WORK with each individual firmly and fairly without regard to rank, status, or condition.

MAINTAIN a positive demeanor when confronted with stressful situations of scorn, ridicule, danger, and/or chaos.

REPORT either in writing or by word of mouth to the proper authorities those things which should be reported, and keep silent about matters which are to remain confidential according to the laws and rules of the agency and government.

MANAGE and supervise the inmates in an evenhanded and courteous manner.

REFRAIN at all times from becoming personally involved in the lives of the inmates and their families.

TREAT all visitors to the jail with politeness and respect and do my utmost to ensure that they observe the jail regulations.

TAKE advantage of all education and training opportunities designed to assist me to become a more competent officer.

COMMUNICATE with people in or outside of the jail, whether by phone, written word, or by word of mouth, in such a way so as not to reflect in a negative manner upon my agency.

CONTRIBUTE to a jail environment which will keep the inmate involved in activities designed to improve his/her attitude and character.

SUPPORT all activities of a professional nature through membership and participation that will continue to elevate the status of those who operate our nation's jails. Do my best through word and deed to present an image to the public at large of a jail professional, committed to progress for an improved and enlightened criminal justice system.

The South Carolina Jail Administrators' Association has approved the AJA Code of Ethics as part of an integral program to achieve a high standard of professional conduct among those officers employed in our nation's jails.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	CASE NO. 2010-cp-33-941
	)	
CELESTE HEMINGWAY, AS PERSONAL	)	
REPRESENTATIVE FOR THE ESTATE	)	
OF RONNIE EARL DAVIS AND	)	
DAVID BROWN,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
MARION COUNTY,	)	
	)	
Defendant.	)	
	)	

June 25, 2012
Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, Judge

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

ERIC M. POULIN, Esquire
Attorney for the Plaintiffs

MALLOY McEACHIN, JR., Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Official Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C1	Deposition - Reichardt	23	
C2	Deposition - Brown	23	

1 JUNE 25, 2012

2 (WHEREAS this matter was scheduled for a summary judgment
3 motion hearing, the plaintiffs appeared along with their
4 counsel of record and the defendant appeared through
5 counsel of record. The hearing began at 12:02 p.m.)

6 THE COURT: I'll be glad to hear from whoever, whoever
7 has what.

8 MR. MCEACHIN: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. MCEACHIN: Your Honor, I'm Malloy McEachin and I'm
11 here representing Marion County. We filed a motion for
12 summary judgment. I think ours was filed first.

13 THE COURT: Okay.

14 MR. MCEACHIN: And the plaintiffs have also filed. Would
15 you like for me to go first, Your Honor?

16 THE COURT: Sure, whatever suits y'all is fine with me.

17 MR. MCEACHIN: Thank you.

18 OUTSIDE ATTORNEY IN COURTROOM: I apologize, Judge.

19 THE COURT: You can keep your stuff there. It's fine.

20 MR. MCEACHIN: Yeah, it's not in my way. Your Honor,
21 this case involves a drowning and a near drowning in the
22 Little Pee Dee River at Gallivants Ferry on June -- in June of
23 2010. The two plaintiffs were prisoners at the Marion County
24 Work Farm. The Marion County Work Farm provided a voluntary
25 program whereby an inmate could be on work detail or be on

1 kitchen detail. They had various details and as a result of
2 doing that volunteer work could work off time with their
3 sentence, in other words day for day pretty much is what it
4 involves.

5 The two plaintiffs in this case were in the facility on
6 fairly short sentence and they elected to work on the litter
7 patrol and on this particular day, the litter patrol was I
8 guess eastbound on 501 working towards the Little Pee Dee
9 River and the -- When they got to the -- to the -- to the
10 river or close to it, the inmates asked Mr. John Reichardt,
11 who was the transport officer for the litter detail, if they
12 could get in the river to cool off and Mr. Reichardt asked
13 them, "Can you swim?" and these two plaintiffs said not only
14 could they swim, they could swim well. The -- They went into
15 the water. One of them drowned and one of them got in
16 difficulty and was rescued.

17 There was a Workers' Comp action begun involving Mr.
18 Ronnie Earl Davis, Your Honor, and attached to our memorandum
19 in support of our motion for summary judgment there's an
20 affidavit from Charles McLain, who is the county attorney for
21 Marion County, and attached to that affidavit is a resolution
22 adopted by Marion County in 1997 whereby they elected to cover
23 any inmates at the prison farm under Workers' Compensation and
24 that was pursuant, Your Honor, to §42-1-500, which is part of
25 the Workers' Comp statute which says that a county may elect

1 to cover their inmates under Workers' Comp statute, which
2 Marion County did and as Mr. McLain's affidavit demonstrates,
3 that policy is still in force and effect and was so in June of
4 2010.

5 So it's our first position, Your Honor, that Workers'
6 Comp statute is an exclusive remedy. These fellows were, as
7 far as is concerned for our examination today, statutory
8 employees of the County of Marion and under -- I've cited
9 several cases in my brief, Your Honor, which establish the law
10 in this state that between employee and employer, Workers'
11 Comp is an exclusive remedy. That is our first position, Your
12 Honor.

13 Our second position, Your Honor, is that the -- We
14 declared assumption of risk and comparative negligence, which
15 our Supreme Court has said assumption of risk has pretty much
16 been subsumed into comparative negligence, but when you
17 examine the two together in this case, Your Honor, this was a
18 voluntary act on part -- from the part of the plaintiffs; not
19 only in being on the trash detail, but also in electing to
20 swim in the river.

21 And I would suggest to the Court that what was taking
22 place with these two plaintiffs would be no different than if
23 the Marion Rotary Club had adopted this portion of 501 in a
24 highway beautification project and had its members picking up
25 trash on any given day, say in June of 2010, and they decided

1 they wanted to take a dip in the river to cool off. What's
2 the difference, Your Honor? Both -- Both acts are purely
3 voluntary. There is no duty or -- or breach of a duty or
4 standard of care by the Marion Prison Farm in regards to these
5 fellows voluntarily deciding to go swimming in the river,
6 particularly when they advised Mr. Reichardt that they knew
7 how to swim and knew how to swim well.

8 The -- And I say on the Workers' Comp issue, Your Honor,
9 I failed to mention one point. The South Carolina Tort Claims
10 Act also provides in its retention of sovereign immunity
11 section, which is 15-78-60 subparagraph 14, that if there is a
12 Workers' Comp issue, Your Honor, then there is no liability on
13 the part of a governmental entity. So I meant to mention that
14 to the Court earlier.

15 But back to the assumption of risk and comparative
16 negligence issue, Your Honor, the -- the -- And in analyzing
17 comparative negligence, the first -- the first -- the issue to
18 be addressed is, is there a duty of care and in this case, it
19 was a voluntary act, it was a voluntary act by the fellows to
20 go into the river to go swimming. It was really under the --
21 Under the -- Under the facts, there would be no difference.

22 This is a natural waterway. It's not a swimming pool.
23 It's not a man-made pond. It's a natural watercourse in
24 between Florence -- I mean, I'm sorry, in between Marion and
25 Horry County. If they had gone down on another day, if they

1 had not -- It they had voluntarily gone down and not been part
2 of this work detail and unfortunately drowned, the same
3 analysis would apply, Your Honor.

4 Your Honor, the -- We've also pled under the Tort Claims
5 Act the discretionary immunity and again, that's under 15-78-
6 60 subparagraph 5, and under that retention of sovereign
7 immunity provision of the Tort Claims Act, that is the
8 discretionary immunity provision. Again, the -- the issue
9 here is faced with competing -- faced with the situation a
10 prisoner comes and says I'd like to cool off in the river, did
11 the employee of Marion County make a conscious choice between
12 competing alternatives? Yes, if you can swim and feel like
13 you want to go swimming or no, you can't go.

14 Based on the representations made, he made that conscious
15 choice and the -- the issue on whether or not the employee of
16 Marion County applied acceptable professional standards, I
17 don't know that this -- this type issue requires any
18 professional standards, Your Honor, but in -- in making his
19 choice, he used the reasonable analysis of inquiring if they
20 could swim, they advised him they could swim, and he -- he
21 said, well, if you want to, go ahead and go swimming.

22 Also, Your Honor, under the Tort Claims Act, 15-78-
23 60(25), that is the retention of sovereign immunity involving
24 the supervision of prisoners and that's gross negligence
25 occurs and in this case, Your Honor, we would submit there was

1 no gross negligence. The standard that the courts examine is
2 did the governmental entity or its employee exercise slight
3 care. Well, in this case, Mr. Reichardt, the transport
4 officer, inquired do you know how to swim and the fellows
5 said, yes, we swim well. I think under those circumstances,
6 Your Honor, there is no question of fact that slight care was
7 exercised.

8 So for those reasons, Your Honor, we would request the
9 Court grant summary judgment. One other issue that I haven't
10 really set forth in the pleadings and I can't recall -- There
11 have been several lawyers on the plaintiffs' side. When the
12 pleadings were amended, Your Honor, and the original pleadings
13 named individual employees, which under the Tort Claims Act is
14 -- is not allowed, Marion County Prison Camp is Marion County.
15 I would -- Depending on the Court's ruling, I would request
16 that the pleadings be conformed just that Marion County is the
17 -- is the named defendant. The prison camp is a division of
18 the county.

19 THE COURT: Any objections to that before we ---

20 MR. POULIN: No objection, Your Honor.

21 THE COURT: Okay. We'll stipulate to that.

22 MR. MCEACHIN: Thank you, Your Honor.

23 THE COURT: All right, I'll be glad to hear from you in
24 regards to your position.

25 MR. POULIN: Thank you, Your Honor, and thank you for

1 squeezing us in this afternoon. My name is Eric Poulin and I
2 represent the plaintiffs in this action. Ms. Hemingway is
3 here. She's the personal representative of Mr. Ronnie Earl
4 Davis's estate and Mr. Brown is here with us as well and Mr.
5 McEachin summarized the facts pretty well, Your Honor. They
6 were working as part of the work detail and they took a break
7 on a hot summer day and went down to the river to take a swim
8 with the permission or at the direction of the officer, Mr.
9 Reichardt, that was watching them.

10 Now, Your Honor, it's our position all along and Mr.
11 McEachin made some reference to the fact that a Workers'
12 Compensation claim was initially filed. That was not filed by
13 the plaintiffs. That was filed by Marion County. They did it
14 -- I cannot remember the form number, but they admitted work
15 injury or whatever. So it was initiated by Marion County when
16 the incident happened.

17 We went into the Workers' Comp. There was actually a
18 hearing on the issue before the Workers' Compensation Board.
19 We filed a motion to dismiss alleging that it was not Workers'
20 Compensation and we actually had a full hearing before the
21 Workers' Compensation panel and they basically said -- I mean
22 they didn't -- They deferred their ruling until the Circuit
23 Court could make a ruling on the subject matter jurisdiction
24 issue, but they basically -- I mean they looked at the issue
25 and clearly they did not find as a matter, you know, that --

1 that it was definitely within the gambit of Workers'
2 Compensation.

3 In addition to that, we submitted -- With our memorandum
4 in opposition to their motion, we submitted an affidavit of
5 Sherry Martschink, who spent a lot of time on the Workers'
6 Compensation Commission and she reviewed the facts of this
7 case and she also rendered an opinion for us in the form of an
8 affidavit that -- that this incident does not fall under the
9 Workers' Compensation statute and, Your Honor, we believe that
10 this is not Workers' Compensation for several reasons.

11 Mr. McEachin alluded to the fact that Marion County did
12 have a Workers' Compensation policy in force and effect at the
13 time and it's still in force and effect. That may be true.
14 We don't dispute that. I have -- I have no doubt that Mr.
15 Anastapoulo has a Workers' Compensation policy in force and
16 effect on me, but if I were to -- to go over to his house on
17 the weekend and drown in his pool, I don't think that it would
18 fall under Workers' Compensation because the fact that they
19 have an employee or statutory employee/employer relationship
20 and the fact that there is a Workers' Compensation policy in
21 force and effect is not the determinative issue because to
22 fall under Workers' Compensation the injury would still have
23 to occur within the course and scope of the employment.

24 And in the Workers' Compensation Code, you know, you look
25 at the Workers' Compensation Code and it does provide an

1 exclusive remedy for incidents that arise within the course
2 and scope of employment and specifically in 42-1-160, Workers'
3 Compensation statute that excludes coverage for inmates who
4 are involved in a recreational activity or other incident not
5 directly related to his work assignment and I apologize,
6 that's 42-1-480.

7 So if they're involved in a recreational activity, then
8 Workers' Compensation does not apply and there's actually a
9 test for what a recreational activity is and when the
10 recreational activity falls within the course and scope of
11 employment and that was set forth in the *Leopard v. Blackman-*
12 *Uhler* case, which is 458 S.E.2d 41, back in 1995 and the Court
13 looked at that statutory section and they looked at all the
14 law and they put forth the three prong test and under the
15 three prong test, a recreational activity falls within the
16 course of scope of employment only if it meets one of -- one
17 of the criteria and the criteria are either that it applies on
18 the premises of the employer during a lunch or recreational
19 period as a regular incident of the employment or that the
20 employer by expressly or impliedly requires participation in
21 the event or that the event that the employer gains some
22 monetary or other benefit -- derives a benefit from the event.

23 So looking at those three situations and the facts of
24 this case as they've been developed through discovery, we see
25 that they did not occur as a regular incident of the

1 employment. These gentlemen were out there. They were --
2 They were supposed to be picking up trash, picking up trash
3 from the side of the road. There's no testimony that they
4 were attempting to pick up any trash from the river or
5 anything like that. In fact, all the testimony indicates and
6 Mr. McEachin touched on it and the officer that was in charge
7 of kind of seeing everything said the same thing in his
8 deposition that they were actually on a break and so ---

9 THE COURT: Well, let me ask you this. If you have a UPS
10 driver and he's driving down the road and he's tired and he
11 pulls off to the side of the road to eat a sandwich and gets
12 hurt, is he on the job or not on the job?

13 MR. POULIN: Well, it's possible it could go either way,
14 Your Honor, because in that situation it may be a -- That may
15 be incident to the employment. The actual break may be an
16 incident to the employment probably depending on the length of
17 time, whether it's regularly taken or a regularly scheduled
18 break, for instance a lunch break may be an incident of
19 employment.

20 In this situation where possibly being on break, for
21 instance if they were on the side of the road eating a
22 sandwich and maybe a car veered off the road and hit them,
23 that may fall into the Workers' Compensation category, but the
24 testimony in this particular case and what we're alleging is
25 that the swimming goes above and beyond that and creates a

1 recreational activity and the bus driver testified and this
2 sort of goes into the second prong of the test as -- or really
3 still part of the first prong as to whether it's a sort of
4 regularly conducted thing. The bus driver testified that he
5 only took the prisoners swimming about two or three times a
6 year and we're talking about prisoners on a short stay. So
7 any given set of prisoners may or may not have even ever gone
8 swimming with this particular bus driver. So it's certainly
9 not a regular incidence of business.

10 We would also show that it wasn't mandated. It wasn't a
11 part of the job that they were required to swim either to pick
12 up the trash or because it was somehow mandated. So we feel
13 it fails the second prong of the test and, of course, the
14 third prong we fail to see how Marion County or the prison
15 camp would derive any financial benefit or any other type of
16 gain from allowing the swimmers to go swimming.

17 So for all those reasons and looking at -- And I think
18 for the reason that the Workers' Compensation Commission
19 looked at this and Ms. Martschink and everyone else looked at
20 it. I mean the precedent that Mr. McEachin wants us to set
21 today is that any recreational activity, if an injury occurs
22 in the prison, for instance a prisoner playing basketball in
23 the yard or lifting weights, if we set that precedent today
24 that just because maybe they do some work on the side, maybe
25 they pick up -- pick up stuff on the -- on the weekdays and on

1 the weekends they're playing basketball and they get hurt, all
2 of a sudden that becomes a Workers' Compensation claim and I
3 think that's a precedent that the Workers' Compensation board
4 did not want to set when they deferred this case to Your Honor
5 and I think that's a precedent that we don't want to set here
6 today either.

7 Moving on to some of the other -- other arguments that
8 Mr. McEachin referenced in the assumption of the risk and he
9 gave the analysis -- the analogy of the Rotary Club picking up
10 trash on the side of the road and just happening to go out
11 there in the middle of the day and he alleges that there's no
12 difference. We think that there is a difference, Your Honor,
13 and the difference is that the prisoners are not confined to a
14 space, but certainly confined under the control of the bus
15 driver and one of the key differences and this is one thing
16 that has been established through the testimony that's been
17 brought forth in the depositions is that some of the prisoners
18 asked to take their jeans off and their boots, their heavy
19 clothing, and the bus driver would not let them do that prior
20 to going into the water and that's I think a key difference.
21 If you or I were to just go out swimming, we wouldn't have
22 heavy blue jeans on. We wouldn't have our -- our boots on.
23 You know, we would -- we would be free to take the measures
24 that -- that we felt we needed to take to go safely into the
25 water.

1 Along the same lines of the discretionary immunity, all
2 the case law that looks at discretionary immunity defines it
3 very narrowly and discretion is construed and they look at it
4 in *Foster v. Department -- the Highway Department and Clark v.*
5 *Department of Public Safety* and the courts have said that the
6 fact that employees have to make decisions or exercise some
7 judgment in their activities is not determinative. Instead,
8 the defendants must prove and the burden is on the defendants
9 to prove that the governmental employees were faced with
10 alternatives and actually weighed competing considerations and
11 made a conscious choice and that's not can we go swimming, yes
12 or no.

13 I mean if we looked at the discretionary standard and the
14 reasons and the policy behind putting that in, we understand
15 that a government has competing resources, has to allocate
16 time, money, things to places, some places and not other
17 places, and our legislature looked at that and they put that
18 discretion in there for that type of serious consideration and
19 discretion.

20 That's not what we have here. We have a bus driver that
21 just allowed -- allowed these inmates to go swimming, but
22 didn't allow them to take any safety precautions whatsoever
23 and we would -- That kind of ties into the gross negligence.
24 We are alleging gross negligence here and we believe that
25 we've established gross negligence through the record.

1 One of the things in our causes of action if you look at
2 the -- the complaint is we're not just specifically suing the
3 bus driver. The action is also against Marion County for
4 negligent hire and negligent training and negligent
5 supervision and the uncontradicted evidence on the record, if
6 we look at this bus driver, this bus driver himself could not
7 swim. He could -- He admits in his deposition that he's
8 actually not in very good physical shape at all. He certainly
9 can't swim. I think he stated at one point he couldn't even
10 run back up to the bus to get any lifesaving equipment or
11 anything. He sent another prisoner.

12 But Mr. Reichardt, the gentleman who was driving the bus,
13 was prior to that assignment was driving a dump truck for the
14 city or the county driving around picking up limbs on the side
15 of the road. At some point, there was a shortage in prisoner
16 supervision and he was moved from driving a dump truck to
17 driving a bus. He states in his deposition that no additional
18 training was given. He wasn't trained in how to manage
19 prisoners. He had no first aid training whatsoever. He had
20 no first aid kit. There wasn't even a first aid kit on the
21 bus. Again, he couldn't swim.

22 He failed to -- to take into account the requiring the
23 prisoners to leave all their heavy, baggy clothing on, but
24 most importantly, the bus and the set-up, the crew as it was,
25 was not equipped to allow people to go swimming. There was

1 absolutely no lifesaving equipment on the bus and if you look
2 at his deposition and the way that this thing actually
3 transpired, what happens is Mr. Davis swims out there and
4 starts struggling a little bit and Mr. Reichardt, the bus
5 driver, he can't swim. He starts to panic a little bit. He
6 doesn't know what to do.

7 So Mr. Brown attempts to jump in and save -- He's
8 actually related to Mr. Davis distantly. I think they're
9 cousins or something. He jumps in to try to save his cousin.
10 Of course, the bus driver is yelling at him the whole time.
11 He was worried the bus driver might think he's trying to
12 escape, which brings into another question. What would the
13 bus driver have done in this situation had an inmate tried to
14 escape? He couldn't swim. He didn't have any back-up or
15 anything.

16 So Mr. Brown jumps in to try to save him and he has an
17 asthma attack himself. In the meantime, Mr. Reichardt sends
18 another inmate up to the bus to see what lifesaving equipment
19 might exist because, again, Mr. Reichardt can't -- He
20 testifies that he can't run up to the bus himself. I mean
21 he's just sitting here watching this happen.

22 He sends another inmate up to the bus and what they have
23 on the bus is not a life ring, not a life jacket. They have a
24 rake and I forget how long the rake was. It's in the
25 deposition, but it's a standard rake. It might have been six

1 or eight feet and Mr. Davis and Mr. Brown are flailing around
2 out there much farther out than the rake can reach.

3 It's un -- Looking at the testimony, when Mr. Reichardt
4 actually calls for help, calls his supervisor, calls 9-1-1,
5 that happens several minutes after the incident and everything
6 that happens and for all those reasons we feel that gross
7 negligence can not only be established, at least a scintilla
8 presented to a jury where a reasonable jury could find gross
9 negligence on the part of the bus driver for allowing these
10 gentlemen to go swimming with absolutely no precautions taken,
11 but certainly gross negligence on the part of Marion County in
12 allowing a truck driver to supervisor prisoners with no first
13 aid kit.

14 I mean they could have been out on the side of the road
15 and what if they got a heat stroke? What if somebody got bit
16 by a snake or something out there? There was no safety
17 precautions on this bus whatsoever.

18 And so for those reasons, Your Honor, we -- we would
19 argue that, you know, the Workers' Compensation issue I think
20 is a matter of law. It's a question of subject matter
21 jurisdiction and we would show that given all the case law and
22 the facts as they've been established that there may -- You
23 know, as a matter of law, it probably just falls outside the
24 scope of Workers' Compensation. If there's any question
25 whatsoever into the three factors that I cited earlier as to

1 when a recreational activity would become part of the course
2 and scope of employment, then of course those factual
3 questions themselves would have to be left to a jury..

4 But taking it out of Workers' Compensation and putting it
5 back within the normal scope of looking under the Tort Claims
6 Act, we've dealt with the assumption of risk and discretionary
7 immunity and we feel with all the evidence that's on the
8 record thus far and the evidence to come -- We've retained an
9 expert witness who has prepared to testify at the trial as to
10 the standard -- I don't know that I would use standard of
11 care, but the standard of operating procedures that would be
12 -- should be in place in a situation like this and to show
13 that that standard was breached. We feel that there's at
14 least a scintilla of evidence of a factual question as to
15 whether there's gross negligence and it's got to be put to the
16 jury.

17 THE COURT: All right. Let me hear your motion.

18 MR. POULIN: My motion, Your Honor, deals with a lot of
19 those same issues. I filed a motion for partial summary
20 judgment as to Mr. McEachin's -- many of the affirmative
21 defenses that he raised and many of the affirmative defenses
22 that he raised in his answer are many of the things that he
23 based his motion for summary judgment on. So we covered most
24 of those as far as the exclusions under the Tort Claims Act.

25 He also raised a couple issues in his memo that he didn't

1 touch on today and I don't know if he intends to touch on
2 them, but he raised the recreational use statute and we would
3 show that we did bring this action as ---

4 MR. MCEACHIN: I don't think that applies, Your Honor.

5 MR. POULIN: Okay.

6 MR. MCEACHIN: I raised that in the pleading, but I'm not

7 --

8 MR. POULIN: Okay.

9 MR. MCEACHIN: I don't have any objection to that being
10 stricken.

11 THE COURT: All right.

12 MR. POULIN: And so really that leaves as to my motion
13 for partial summary judgment the only -- The only remaining
14 issue is the statutory cap, which is one of the things that
15 was pled in the answer and, of course, the statutory cap just
16 in general is that no person shall recover in any action or
17 claim brought hereunder a sum exceeding \$300,000 because of a
18 loss arising out of a single occurrence, but the code goes on
19 to state that in the case law that -- that multiple claims
20 could arise out of the occurrence which would raise the cap
21 and I say that to say, Your Honor, our argument as to the
22 statutory cap at least as to Mr. Davis, who unfortunately
23 drowned in the incident, is that if his recovery is capped by
24 the Act at all, it is capped at 600,000, not at \$300,000
25 because we brought two very distinct claims under the law.

1 We brought a wrongful death claim and a survival action
2 and there is some case law to back us up on that. It looks
3 like a slightly different issue, but if we look at the case of
4 *Wright v. Colleton County School District* and I believe that's
5 391 S.E.2d 566, it dealt with a lawsuit by a parent. A child
6 was hurt I guess presumably at school and the lawsuit was
7 brought against the school district. The parent brought a
8 claim for the loss of services, the medical bills, things like
9 that, and then, of course, the minor child's claim was for the
10 pain and suffering and the things of that nature. The Supreme
11 Court looked at that and they held that the cap on liability
12 applied to each of the claims separately because the losses
13 that were claimed were separate and cognizable from each
14 other. They were separate claims and -- and one could have
15 been brought without the other and vice versa and we allege
16 that the -- the same thing happens here.

17 The wrongful death or -- The Tort Claims Act allows for a
18 claim of wrongful death and specifically allows for a wrongful
19 death claim and specifically allows for survival action claims
20 and as we know, a wrongful death claim is brought. They're
21 both typically brought by the personal representative, but the
22 wrongful death action is brought for the benefit of the
23 statutory beneficiaries, whereas the survival action would go
24 into the estate and be distributed either through a will, if
25 there was a will, or intestate and oftentimes the

1 beneficiaries of each action can be different people and the
2 courts have looked at that before and a number of cases we
3 cited in our brief where they say the persons who can recover
4 in the different actions are separate and distinct causes of
5 action.

6 The beneficiaries are different, the causes of action are
7 different, and the measure of damages are all different. The
8 Court says that in *Grainger v. Greenville*, 101 S.C. 399, and
9 just like in the *Colleton County* case, the mother and the
10 child, we would say that the wrongful death action could have
11 been brought on its own and the survival action could have
12 been brought on its own. So they are separate and distinct
13 causes of action under the law and for that reason, if damages
14 are capped at all for the estate of Mr. Davis, we would argue
15 that they must only be capped at 600,000.

16 THE COURT: All right. Do you want to address that
17 issue, Mr. McEachin?

18 MR. MCEACHIN: Your Honor, since we've been talking about
19 the depositions, I've got the original of Mr. Brown. I think
20 the plaintiffs have the original of Mr. Reichardt, but I could
21 ---

22 THE COURT: Sure.

23 MR. MCEACHIN: Have you got the original with you?

24 MR. POULIN: I do, Your Honor. It's back in -- in my
25 car.

1 MR. MCEACHIN: That's all right.

2 MR. POULIN: I can certainly get it for you.

3 MR. MCEACHIN: I can hand up -- If it's all right, I'll
4 hand up a copy of Mr. Reichardt's deposition. I'd like to
5 make those a part of the record, Your Honor.

6 THE COURT: All right.

7 (Whereupon, the depositions are marked as Court's
8 Exhibits 1 and 2.)

9 MR. POULIN: And, Your Honor, most of the -- the
10 deposition portions that I've discussed and cited in my memo,
11 I believe we actually copied and attached as exhibits to the
12 memo. So it should be ---

13 THE COURT: All right.

14 MR. POULIN: --- with our memo.

15 MR. MCEACHIN: Your Honor, the -- If I might just address
16 it. What I know of the cap, I don't disagree that the
17 survival and wrongful death are two separate actions that
18 could, could, not necessarily would, but could expose the
19 defendants to the \$600,000 cap. Your Honor, I think that
20 would apply. That \$600,000 cap though would apply to the
21 survival action, the wrongful death action, and Mr. Davis's
22 claim.

23 I don't agree that Mr. Davis would have a separate
24 \$300,000 avenue under the Tort Claims Act. I think the
25 \$600,000 cap applies because there's one occurrence here and

1 the 600 -- the -- The Tort Claims Act speaks in terms of
2 300,000 per claim up to 600,000 total claims. So I think
3 depending on how -- how a jury would rule, it could be exposed
4 to 600,000. I don't disagree with that.

5 Your Honor, on the -- I would -- I would object to Ms.
6 Martschink's affidavit, Your Honor, for several reasons, one
7 of which is it's being offered for an expert legal opinion.
8 I'd be glad to hand up *O'Quinn v. Beach Associates*, 272 S.C.
9 95, 249 S.E.2d 734. It's a 1978 Supreme Court decision that
10 says it's not -- Here, let me ---

11 THE COURT: I don't need it.

12 MR. MCEACHIN: It's not proper. In addition, if Your
13 Honor is going to consider her affidavit, I didn't get it
14 until I think the middle of last week. I've been involved in
15 this election mess in the Supreme Court and in Georgetown
16 County. If you are going to consider it, I tried going back
17 this past Friday to contact Ms. Lunen [sp.], who was the
18 lawyer handling the Workers' Comp case for Marion to submit a
19 competing affidavit from her if you are going to consider Ms.
20 Martschink's affidavit.

21 And finally, Your Honor, on the -- on the argument that
22 the -- there is no Workers' Comp coverage, number one, as
23 shown in the submittal with our memorandum, it's an admitted
24 case. Secondly, Your Honor, the personal comfort doctrine,
25 which is a recognized exception under the Workers' Comp

1 statute, I think is what the Court should consider in
2 determining if there is some issue about whether their
3 activity was in the course and scope of their employment.

4 I've cited in my brief *Osteen v. Greenville County*, as well as
5 I think one other case on the personal comfort doctrine issue.

6 It's our position it's a -- it was an admitted case.

7 There is no -- no -- no position taken in the work before the
8 Workers' Comp Commission it was not an admitted case.

9 THE COURT: All right.

10 MR. MCEACHIN: Thank you, Your Honor. That's all I have.

11 THE COURT: All right. I'm going to take it under
12 advisement and I'll rule on it shortly.

13 MR. POULIN: Thank you, Your Honor.

14 MR. MCEACHIN: Thank you, thank you.

15 MR. POULIN: And, Your Honor, do you have copies of all
16 of our memoranda that we e-mailed?

17 THE COURT: I do.

18 MR. POULIN: Thank you.

19 THE COURT: All right, thank you very much.

20 (Whereupon, the hearing ended at 12:35 p.m.)

21 --- END REQUESTED TRANSCRIPT ---

22

23

24

25

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF FLORENCE)

4
5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Marion County, South Carolina, on the 25th
12 day of June, 2012.

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

15
16 Krystal J. Smith

17 Court Reporter

18
19 Florence, South Carolina

20 July 5, 2012
21
22
23
24
25

1 STATE OF SOUTH CAROLINA

2 COUNTY OF MARION

3 IN THE COURT OF COMMON PLEAS

4 CELESTE HEMINGWAY, AS PERSONAL)
 5 REPRESENTATIVE FOR THE ESTATE OF)
 6 RONNIE EARL DAVIS,)

7 PLAINTIFF,)

8 VS.)

CIVIL ACTION #
2010-CP-33-941

9 MARION COUNTY, JOHN REICHARDT, AS)
 10 EMPLOYEE/AGENT OF MARION COUNTY PRISON)
 11 CAMP, AND DONALD BRYANT, AS EMPLOYEE/)
 12 AGENT OF MARION COUNTY PRISON CAMP,)

13 DEFENDANTS.)

14 -----X

15 THE DEPOSITION OF DAVID J. BROWN, TAKEN BY COUNSEL
 16 FOR THE DEFENDANTS, ON WEDNESDAY, DECEMBER 7, 2011, AT
 17 11:00 A.M., AT THE ANASTOPOULO LAW FIRM, 150 WEST EVANS
 18 STREET, FLORENCE, SOUTH CAROLINA.

19 APPEARANCES:

20 ANDREW R. HART, ESQ.
 21 PETER KAUFMAN, ESQ.
 22 150 WEST EVANS STREET
 23 FLORENCE, SOUTH CAROLINA 29501
 24 COUNSEL FOR PLAINTIFF.

25 D. MALLOY MCEACHIN, JR., ESQ.
 P. O. BOX 5565
 FLORENCE, SOUTH CAROLINA 29502
 COUNSEL FOR DEFENDANTS.

ALSO PRESENT: TEDDY HEMINGWAY

COURT REPORTER: VINCENT ROLLAND
 930 WRENWOOD ROAD
 FLORENCE, SOUTH CAROLINA 29505
 TELEPHONE: (843) 615-1654

1 THEREUPON,

2 DAVID J. BROWN

3 BEING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. MCEACHIN:

7 Q. MR. BROWN, MY NAME IS MALLOY MCEACHIN. I'M
8 DEFENDING MARION COUNTY IN A LAWSUIT BROUGHT BY THE
9 ESTATE OF RONNIE DAVIS INVOLVING HIS DROWNING ON JUNE 15,
10 2010. YOU'VE BEEN LISTED AS A WITNESS IN THE CASE, SO I
11 WANT TO ASK YOU A LITTLE BIT ABOUT YOUR BACKGROUND, AND
12 THEN WHAT YOU KNOW ABOUT THE EVENTS OF JUNE 15, 2010.

13 IF YOU DON'T UNDERSTAND ANY OF MY QUESTIONS,
14 PLEASE TELL ME AND I'LL ASK IT IN A DIFFERENT FASHION.
15 IF YOU WOULD, IN RESPONSE TO A QUESTION, PLEASE GIVE A
16 VERBAL ANSWER SO THE COURT REPORTER WILL MAKE AN ACCURATE
17 RECORD HERE TODAY.

18 THIS WILL NOT TAKE VERY LONG, BUT IF YOU WANT TO
19 TAKE A BREAK AT ANY TIME, YOU LET ME KNOW AND WE'LL DO
20 THAT.

21 A. YES, SIR.

22 Q. IF YOU, AT ANY POINT, IF YOU WANT TO GO BACK TO A
23 QUESTION AND ANSWER THAT WE'VE TALKED ABOUT, AND
24 SUPPLEMENT OR MODIFY YOUR ANSWER, YOU TELL ME AND WE'LL
25 DO THAT.

- 1 A. YES, SIR.
- 2 Q. IF YOU ANSWER A QUESTION THAT I ASK, I'LL ASSUME
- 3 YOU UNDERSTOOD IT, UNLESS YOU TELL ME YOU DON'T. IS THAT
- 4 FAIR ENOUGH?
- 5 A. YES, SIR.
- 6 Q. WHAT'S YOUR DATE OF BIRTH?
- 7 A. AUGUST 17, 1982.
- 8 Q. WERE YOU YOUNGER OR OLDER THAN RONNIE DAVIS?
- 9 A. YOUNGER.
- 10 Q. ABOUT 20 YEARS YOUNGER, 15?
- 11 A. I WOULD SAY AROUND ABOUT THAT TIME. HE'S IN MY
- 12 UNCLE'S AGE GROUP. MY UNCLE'S AGE GROUP IS 35 TO 40.
- 13 Q. WHAT'S YOUR UNCLE'S NAME?
- 14 A. MY UNCLE IS TYRONE DAVIS, CHAPPELL DAVIS.
- 15 Q. NOT TYRONE DAVIS THE SINGER?
- 16 A. NO.
- 17 Q. I'M SHOWING MY AGE THERE.
- 18 A. CHAPPELL DAVIS. ROOSEVELT DAVIS. CHAPPELL DAVIS,
- 19 JUNIOR. I HAVE FIVE UNCLES AND ALL OF THEM AROUND, THEY
- 20 ALL WENT TO SCHOOL TOGETHER, WITH RONNIE. MY UNCLES,
- 21 THEY ALL AROUND THE SAME AGE, THEY WENT TO THE SAME
- 22 SCHOOL.
- 23 Q. WHERE DID YOU GO TO SCHOOL?
- 24 A. I WENT TO TERRELL'S BAY HIGH SCHOOL.
- 25 Q. DID YOU PLAY ANY SPORTS?

1 A. NO, SIR.
2 Q. DID YOU GRADUATE?
3 A. NO, SIR.
4 Q. HAVE YOU BEEN TO TECH OR ANY SCHOOL AFTER HIGH
5 SCHOOL?
6 A. I WENT TO JOB CORPS IN PHILADELPHIA.
7 Q. WHAT DID YOU STUDY IN JOB CORPS?
8 A. BUILDING AND APARTMENT MAINTENANCE.
9 Q. WHERE ARE YOU WORKING NOW?
10 A. RIGHT NOW I'M UNEMPLOYED.
11 Q. WHERE WAS YOUR LAST JOB?
12 A. I WAS WORKING WITH MY UNCLE DOING BRICK MASON,
13 LABORER.
14 Q. ONE OF THE FIVE UNCLES?
15 A. NO, THIS IS ANOTHER UNCLE, WILLIE JOE PAGE.
16 Q. ARE YOU RELATED TO RONNIE DAVIS?
17 A. YES, IT'S MY COUSIN.
18 Q. WHAT DEGREE, FIRST OR SECOND?
19 A. TO ME, IT WOULD BE MY SECOND.
20 Q. SECOND. WHAT TYPE WORK DID YOUR UNCLE WILLIE JOE
21 PAGE DO?
22 A. BRICK MASON. I'M A LABORER. I WAS A LABORER ON
23 THAT.
24 Q. OTHER THAN PEOPLE THAT ARE RELATED TO RONNIE EARL
25 DAVIS, AND THE FIVE UNCLES WHOSE NAME YOU GAVE ME, DO YOU

1 HAVE ANY OTHER DIFFERENT RELATIVES IN MARION COUNTY?
2 A. YES, ABOUT HALF OF OUR COMMUNITY IS RELATED TO ME.
3 Q. I'M SORRY?
4 A. I'M RELATED TO HALF THE COMMUNITY WE LIVE IN, IN
5 FRIENDSHIP AND GRESHAM.
6 Q. THE FRIENDSHIP COMMUNITY?
7 A. THE MAILING ADDRESS IS GRESHAM, BUT THE COMMUNITY,
8 SOME PARTS ARE FRIENDSHIP, SOME PARTS ARE GRESHAM. THE
9 PART HE STAYS AT IN GRESHAM, IS MOSTLY ALL MY PEOPLE, ARE
10 RELATED IN SOME FORM OR FASHION FROM ROWELL, TO DAVIS, TO
11 AVANTS.
12 Q. I'M SORRY, RILEY?
13 A. ROWELL.
14 Q. ROWELL?
15 A. BECAUSE MY GRANDDADDY AND RONNIE'S BROTHER ARE --
16 Q. BROTHERS?
17 A. I THINK THEY ARE BROTHER.
18 Q. WHAT'S THAT YOU SAID, THE ROWELLS, DAVIS, WHAT WAS
19 THE OTHER?
20 A. AVANTS. IT'S A REAL, REAL SMALL COUNTY, ALMOST
21 EVERYBODY IN SOME FORM OR FASHION RELATED.
22 Q. DO YOU ATTEND A CHURCH?
23 A. NO, I'M A JEHOVAH WITNESS.
24 Q. ARE YOU MARRIED?
25 A. NO, SIR.

- 1 Q. ARE YOUR PARENTS STILL LIVING?
- 2 A. NO. MY MOTHER DIED IN 2000 AND MY DADDY, I THINK,
3 SHOULD BE DEAD RIGHT ABOUT NOW.
- 4 Q. WELL, I'M SORRY. WHAT'S YOUR ADDRESS?
- 5 A. RIGHT NOW, I'M STAYING WITH MY CHILD'S MOTHER,
6 1504 RACEPATH, CONWAY, SOUTH CAROLINA. 29526.
- 7 Q. THAT'S IN CONWAY?
- 8 A. YES, SIR.
- 9 Q. ON JUNE 15, 2010, YOU WERE AT THE MARION JAIL, IS
10 THAT RIGHT?
- 11 A. YES, SIR, I WAS AN INMATE THERE.
- 12 Q. WHAT WAS THE REASON FOR YOUR BEING THERE?
- 13 A. DRIVING UNDER SUSPENSION, SECOND OFFENSE, SERVING
14 A SIXTY DAY SENTENCE.
- 15 Q. HAD YOU EVER BEEN THERE BEFORE?
- 16 A. NO, SIR, NOT ON THE CHAIN GANG. I'VE BEEN IN THE
17 COUNTY JAIL BEFORE, BUT NOT TO SERVE NO TIME. JUST FOR
18 LIKE A BLUE TICKET.
- 19 Q. OKAY. SO THE ONLY TIME YOU'VE BEEN IN JAIL FOR
20 ANY LENGTH OF TIME WOULD BE FOR THE D.U.S.?
- 21 A. IN MARION COUNTY JAIL, YES, SIR.
- 22 Q. HOW ABOUT ANY OTHER JAIL?
- 23 A. I'VE BEEN AT J. RUBEN LONG FOR MY PAST CRIMINAL
24 RECORD.
- 25 Q. WHAT WAS THAT FOR?

1 A. IT WAS DISTRIBUTION OF CRACK COCAINE.
2 Q. HAS THAT CHARGE BEEN DISPOSED OF?
3 A. A LONG TIME AGO. SINCE 2005.
4 Q. WERE YOU PUT ON PROBATION FOR THAT?
5 A. I SERVED TIME.
6 Q. WHERE DID YOU GO?
7 A. PRISON?
8 Q. YEAH.
9 A. KERSHAW.
10 Q. DO YOU KNOW WHO JOHN REICHARDT IS?
11 A. JOHN REICHARDT?
12 Q. HE WAS THE FELLOW --
13 A. AN INMATE THERE?
14 Q. NO, HE WAS THE FELLOW DRIVING THE VAN OR BUS?
15 A. JOHNNIE.
16 Q. YEAH, ON JUNE 15, 2010?
17 A. YEAH, WITH THE BEARD, KIND OF CHUBBY.
18 Q. OLDER FELLOW?
19 A. YES, SIR.
20 Q. DO YOU KNOW ANY OF THE OTHER FOLKS AT THE MARION
21 JAIL?
22 A. LIKE PERSONALLY?
23 Q. OR BY NAME?
24 A. YEAH. I KNOW A COUPLE OTHER PEOPLE THAT WENT TO
25 SCHOOL WITH ME, THEY NO LONGER WORK THERE NO MORE.

- 1 Q. HOW ABOUT, WERE THEY WORKING THERE ON JUNE 15,
2 2010?
- 3 A. I CAN'T BE SO SURE IF THEY WAS ON THE CLOCK, BUT
4 THEY WAS WORKING.
- 5 Q. WHAT WERE THEIR NAMES?
- 6 A. LISA ROGERS.
- 7 Q. OKAY. ANYBODY ELSE?
- 8 A. I JUST KNOW HIS FIRST NAME IS LAY.
- 9 Q. SPELL THAT, PLEASE.
- 10 A. L-A-Y, I THINK, HE WAS A GUARD THERE, I THINK ON
11 THE OTHER SIDE, FROM THE BOOKING AND ALL THIS STUFF.
- 12 Q. RIGHT.
- 13 A. I THINK HE WAS WORKING, EITHER THAT DAY OR, BOTH
14 OF THEM WAS WORKING IN THAT PERIOD OF TIME.
- 15 Q. TELL ME HOW THE ARRANGEMENT AT THE JAIL WAS TO BE
16 FOR A PERSON WHO WAS AN INMATE TO QUALIFY FOR THE WORK
17 DETAIL?
- 18 A. ON THE BUS?
- 19 Q. RIGHT. HOW WOULD YOU GET ON THE BUS?
- 20 A. BASICALLY, WHEN YOU GET INTO THE CHAIN GANG, THAT
21 WAS MY FIRST TIME EVER GOING, BASICALLY WHEN YOU FIRST
22 GET INTO THE CHAIN GANG, IT DOESN'T REALLY HAVE LIKE
23 QUALIFICATIONS. YOU GO TO A DOCTOR, HE MAKES SURE THAT
24 YOU CAN BREATHE, WALK, TALK, YOU KNOW, PHYSICAL LABOR.
- 25 Q. RIGHT?

- 1 A. AND IF YOU CAN'T, YOU KNOW, HE'LL TELL YOU, YOU
2 HAVE TO DO YOUR TIME OVER AT THE BOOKING CENTER.
- 3 Q. I'M SORRY, IF HE SAYS YOU CAN'T?
- 4 A. THAT YOU CAN'T. YOU'RE NOT ABLE.
- 5 Q. OKAY.
- 6 A. YOU HAVE TO DO YOUR TIME OVER AT THE BOOKING CELL,
7 AND YOU WON'T GET NO GOOD TIME FOR IT. I HAVE ASTHMA. I
8 PASSED THE EXAM.
- 9 Q. OKAY.
- 10 A. AND --
- 11 Q. SO IF YOU PASS THE EXAM, WHERE DO YOU GO?
- 12 A. YOU, YOUR FIRST JOB IS THE BUS.
- 13 Q. OKAY.
- 14 A. DEPENDING HOW LONG YOU STAY THERE, LIKE FOR PEOPLE
15 THAT'S FOR CHILD SUPPORT, THEIR FIRST THING IS TO WORK ON
16 THE BUS, UNTIL ANOTHER JOB OPEN UP.
- 17 Q. WHAT OTHER JOBS ARE THERE OTHER THAN THE BUS?
- 18 A. I MEAN, IF YOU HAVE A LICENSE OR EXPERIENCE WITH
19 TRACTORS, YOU COULD DRIVE A BUSH HOG, OR YOU COULD RIDE
20 AROUND WITH THE DOG CATCHER. THERE'S OTHER JOBS BESIDES
21 JUST THE BUS.
- 22 Q. RIGHT. ANY OTHERS THAT COME TO MIND?
- 23 A. MECHANIC, SHARPENING TOOLS. WORKING IN THE BARN
24 OR WORKING INSIDE THE CHAIN GANG ITSELF, CLEANING UP.
- 25 Q. ARE THERE ANY -- IS THERE A FARMING OPERATION AT

1 THE MARION JAIL FACILITY?

2 A. NO, THERE'S NO LIKE, IN PRISON, LIKE YOU WOULD

3 HAVE LIKE PEOPLE ACTUALLY WORKING IN THE FIELD PICKING UP

4 GROCERIES AND STUFF.

5 Q. RIGHT.

6 A. THERE'S NO STUFF LIKE THAT. THE ONLY THING THAT

7 YOU WOULD CONSTANTLY WORK EVERY DAY WOULD BE IN THE

8 KITCHEN.

9 Q. OKAY.

10 A. THOSE ARE NORMALLY FOR INMATES, LIKE PEOPLE THAT

11 COME FROM PRISON.

12 Q. RIGHT.

13 A. YEAH, THOSE JOBS ARE SAVED FOR THEM.

14 Q. IS THERE ANY JOB THERE AT THE JAIL THAT GIVES MORE

15 GOOD TIME CREDITS THAN ANOTHER JOB?

16 A. YEAH, THAT WOULD BE THE KITCHEN.

17 Q. KITCHEN GIVES MORE?

18 A. KITCHEN WORK EVERY DAY.

19 Q. HOW ABOUT THE BUS?

20 A. THE BUS, YOU ONLY WORK FIVE, FIVE DAYS OUT OF THE

21 WEEK.

22 Q. IS YOUR GOOD TIME DAY FOR DAY THAT YOU WORK, DOES

23 THAT KNOCK A DAY OFF YOUR SENTENCE?

24 A. I KNOW IF YOU WORK ON THE BUS AND YOU HAVE SIXTY

25 DAYS, YOU WILL SERVE FORTY OFF OF THAT.

1 Q. DOES THE LENGTH OF THE SENTENCE THAT YOU HAVE WHEN
2 YOU GO TO THE MARION JAIL DICTATE OR CONTROL WHAT JOB
3 YOU'RE ASSIGNED? IN OTHER WORDS, IF YOU HAVE A SIXTY DAY
4 SENTENCE, ARE YOU MORE LIKELY TO BE ON THE BUS VERSUS --

5 A. MORE LIKELY YOU'RE GOING TO BE ON THE BUS, BECAUSE
6 IT'S LIKE A CERTAIN AMOUNT OF WAITING PERIOD, THE MORE
7 PEOPLE, THE MORE TIME YOU HAVE, THE MORE OF A JOB YOU
8 HAVE. BUS JOBS ARE BASICALLY TEMPORARY. IF YOU HAVE
9 LIKE SIXTY DAYS OR FORTY DAYS, THEN YEAH, YOUR TIME LIMIT
10 OF YOU BEING THERE WOULD BE ON THE BUS. BUT IF YOU HAVE
11 SIX MONTHS, THEY WILL PROBABLY PUT YOU SOMEWHERE ELSE.

12 Q. I GOT YOU. ALL RIGHT. WHO WAS THERE -- IN 2010,
13 DO YOU REMEMBER THE MONTH YOU ARRIVED AT THE JAIL?

14 A. YEAH, SOMETIME IN -- LET'S SEE. I SERVED FORTY
15 DAYS, IT WAS PROBABLY THAT MONTH BEFORE JUNE.

16 Q. SO MAY OF 2010?

17 A. YEAH, LIKE TOWARD THE END OF MAY, TOWARD LIKE THE
18 LAST TWO WEEKS OF MAY, I GOT TO JAIL.

19 Q. WAS RONNIE EARL DAVIS THERE BEFORE YOU OR DID HE
20 COME AFTER YOU?

21 A. RONNIE EARL CAME AFTER ME.

22 Q. HOW LONG HAD HE BEEN THERE BEFORE THIS SWIMMING
23 ACCIDENT?

24 A. HE HAD BEEN THERE, I WANT TO SAY LIKE TWO WEEKS,
25 BECAUSE I KNOW HE WAS SUPPOSED TO GET OUT THE DAY AFTER

1 ME. I GOT OUT ON THE 18TH, AND HE WAS SUPPOSED TO GET
2 OUT ON THE 19TH.

3 Q. THE 19TH OF JUNE?

4 A. YEAH. WE WAS LIKE, I KNOW I WAS LIKE THREE DAYS
5 OF BEING OUT ON THAT DAY, AND HE WAS LIKE FOUR DAYS AWAY
6 FROM BEING OUT.

7 Q. WHAT, TELL ME, ON JUNE 15, JUST TAKE ME THROUGH
8 THAT DAY, STARTING FROM, WHAT YOU DID WHEN YOU GOT UP
9 THAT MORNING?

10 A. ALL RIGHT. WHEN I GOT UP THAT MORNING --

11 Q. WHAT TIME?

12 A. EARLY, SIX O'CLOCK IN THE MORNING. GOT UP AND
13 CLEANED, WE CLEANED UP OUR LITTLE STATION, SO YOU'LL BE
14 ABLE, BE ABLE TO HAVE OUTSIDE REC OR WHATEVER. AND WE
15 ALREADY KNEW IT WAS GOING TO BE HOT THAT DAY.

16 Q. RIGHT.

17 A. SO EITHER YOU WORE YOUR TANK TOP OR YOU WORE YOUR
18 T-SHIRT.

19 Q. OKAY.

20 A. WE ATE, FILL UP THE COOLER OF WATER, AND WE
21 STARTED OFF. WE STARTED PICKING UP TRASH ON 501 --

22 Q. HANG ON ONE SECOND. THERE'S SOMETHING I FORGOT TO
23 ASK YOU. DID YOU HAVE TO GO ON THE DETAIL?

24 A. OH, YEAH, YOU HAVE TO GO. IF YOU REFUSE, THEN YOU
25 GO BACK TO JAIL, AND THEN ALL YOUR GOOD TIME WOULD BE

1 TAKEN FROM YOU.

2 Q. THE GOOD TIME YOU HAD ALREADY EARNED?

3 A. YEAH. AND THE BUS DRIVER WOULD TELL YOU THAT

4 EVERY TIME THAT YOU FAIL NOT TO WORK, YOU WOULD BE, YOU

5 WOULD BE SENT BACK.

6 Q. OKAY. I'M SORRY. YOU SAID YOU ATE BREAKFAST,

7 FILLED UP THE COOLER AND THEN WHAT HAPPENED?

8 A. WE STARTED ON OUR LITTLE TRASH DETAIL.

9 Q. ON 501?

10 A. UH-HUH, WE STARTED ON 501, WHERE THE BRIDGE STARTS

11 AT, GOING TOWARDS GALIVANT'S FERRY, WHERE THE OVERPASS

12 BRIDGE IS. I GUESS IT'S CENTENARY RAINS.

13 Q. RAINS. YOU STARTED AT THE RIVER AND WENT BACK

14 TOWARD MARION?

15 A. NO, WE WENT FROM RAINS.

16 Q. TOWARD THE RIVER?

17 A. YEAH, TOWARD THE RIVER, AND WE WAS PICKING UP

18 TRASH ON THE SIDE OF THE ROAD. BY THE TIME WE GOT TO THE

19 SECOND LITTLE BRIDGE --

20 Q. THE PEE DEE RIVER SWAMP?

21 A. YEAH, THE COOLER WAS DEAD, ICE IS OVER WITH,

22 THERE'S NO MORE WATER IN THE COOLER.

23 Q. OKAY.

24 A. AND WE SWEATING LIKE RUNAWAY SLAVES. IT WAS HOT.

25 SO WHEN WE GOT TO THE GALIVANT'S FERRY PARKWAY, WE HAD A

1 LITTLE BREAK. WE SAT THERE, SMOKED A LITTLE CIGARETTE,
2 SAT IN THE SHADE FOR ABOUT TEN, FIFTEEN MINUTES, THEN WE
3 GET BACK INTO THE BUS.. NOW WE GOT TO PICK UP TRASH ON
4 THE WAY BACK.

5 Q. I'M SORRY. WHERE WAS THE PARK WHERE YOU STOPPED?

6 A. IT'S AT GALIVANT'S FERRY, WHERE THE BOAT LANDING
7 IS.

8 Q. SO YOU STOPPED THERE?

9 A. YEAH, THAT'S WHERE WE STOPPED AND TAKE OUR BREAK
10 AT.

11 Q. DO YOU REMEMBER WHAT TIME THAT WOULD HAVE BEEN?

12 A. IT HAD TO BE PROBABLY AROUND THAT AFTERNOON,
13 BECAUSE WE HAD, ABOUT READY TO GO EAT, ABOUT READY TO GO
14 GET OUR LUNCH.

15 Q. SO WHAT TIME WOULD YOU NORMALLY EAT DINNER OR
16 LUNCH?

17 A. WE HAD TO STOP EARLY, BECAUSE LUNCH IS SERVED AT
18 THE CAMP AT 12.

19 Q. SO YOU GO BACK TO THE CAMP?

20 A. YEAH, WE HAD TO GO BACK TO THE CAMP TO EAT.

21 Q. OKAY.

22 A. BUT BEFORE WE DO THAT, WE HAVE TO PICK UP TRASH ON
23 THE WAY BACK TOWARD THE CAMP. SO WHEN WE HAD ALL GOTTEN
24 INTO THE BUS, ONE INMATE ASKED THE BUS DRIVER, COULD WE
25 JUMP IN THE WATER, COOL OFF.

1 Q. DO YOU REMEMBER WHO THAT WAS?

2 A. WADE, MIKE, HE WAS IN THERE FOR CHILD SUPPORT, SIX
3 OR NINE MONTHS. BUT SHORT, WHITE, BROWN HAIR TYPE
4 FELLOW. HE ASKED THE BUS DRIVER COULD WE JUMP IN THE
5 WATER. THE BUS DRIVER SAID YEAH, YOU CAN GO IN THERE AND
6 COOL OFF, IF YOU KNOW HOW TO SWIM. THE GUYS THAT DIDN'T
7 KNOW HOW TO SWIM, THEY WADED IN THE WATER. AND THEY
8 SPLASHED WATER ON THEMSELVES. I KNOW HOW TO SWIM.

9 Q. YOU KNOW HOW TO SWIM?

10 A. I KNOW HOW TO SWIM. RONNIE EARL KNOW HOW TO SWIM.
11 ONE OF THE GUYS THAT ASKED COULD WE GO IN THERE JUMPED IN
12 THE WATER, AND ANOTHER ONE THAT WE CALL BOBBY HILL --

13 Q. I'M SORRY, YOU CALL HIM WHAT?

14 A. WE CALL HIM BOBBY HILL, BECAUSE HE WAS SHORT, HAD
15 A LITTLE BALD HEAD, AND HE WAS KIND OF CHUBBY.

16 Q. CALLED HIM BOB HILL?

17 A. BOBBY HILL, IT'S A CARTOON CALLED KING OF THE
18 HILL, THAT'S WHO WE CALLED HIM, BOBBY HILL. AND WHEN I
19 JUMPED IN THE WATER, I JUMPED IN THE WATER FROM THE
20 BOARDWALK, AND I WAS STILL IN BETWEEN LIKE THE BOARDWALK
21 AND THE RIVER. SO THE BOARDWALK WAS COVERING MOST OF THE
22 CURRENT FOR ME. IT STILL TOOK A LITTLE BIT OF TIME FOR
23 ME TO GET BACK TO THE SIDE. BY THE TIME I GOT BACK TO
24 THE SIDE, I TURNED AROUND AND EVERYBODY WAS STILL IN THE
25 WATER. RONNIE EARL HAD AT THIS TIME, HAD ALREADY JUMPED

1 IN AFTER I JUMPED IN, AND WHEN HE SURFACED IS ABOUT THE
2 TIME I GOT BACK TO THE SIDE. WHEN HE SURFACED HE WAS
3 LOOKING KIND OF SCARED, LIKE PANICKING, AND HE CALLED FOR
4 MY NAME. WHEN HE CALLED FOR MY NAME, I JUMPED BACK IN
5 THE WATER. THE OTHER, THE OTHER LITTLE SHORT DUDE, THE
6 ONE THAT ASKED CAN WE GO IN THERE, I THINK HIS NAME WAS
7 WADE OR MIKE OR WHATEVER HIS NAME WAS, HE JUMPED IN THERE
8 AND HE GOT TO RONNIE EARL BEFORE ME, QUICKER.

9 Q. OKAY.

10 A. SO WHEN HE GOT TO HIM, RONNIE EARL IS ABOUT SIX
11 THREE.

12 Q. RONNIE EARL WAS?

13 A. YEAH, HE'S ABOUT SIX THREE. HE'S WAY TALLER THAN
14 ME. I HAVE TO LOOK UP TO HIM. I'M ABOUT FIVE ELEVEN.

15 Q. DID YOU KNOW RONNIE EARL'S NICKNAME?

16 A. BIG.

17 Q. WHY DID THEY CALL HIM BIG?

18 A. IF YOU SEEN HIM, YOU KNOW WHY THEY CALLED HIM BIG,
19 HE'S TALL.

20 Q. BIG?

21 A. HE'S TALL AND SKINNY. SO WHEN RONNIE EARL, WHEN
22 WADE, OR THE LITTLE WHITE BOY, I'M GOING TO CALL HIM --

23 Q. RIGHT.

24 A. WHEN HE GOT TO HIM, RONNIE EARL GOT SO BIG, WHEN
25 HE PUT HIS ARMS ON HIM --

1 Q. RIGHT.

2 A. -- HE BROUGHT HIM DOWN.

3 Q. OKAY.

4 A. SO THE BOY HAD TO BACK OFF A LITTLE BIT AND WAIT

5 FOR RONNIE EARL TO GET TIRED. HE TOLD ME, DON'T GRAB HIM

6 BECAUSE HE MIGHT PULL ME DOWN WITH HIM. SO I HAD TO WAIT

7 UNTIL HE GOT A LITTLE BIT TIRED. I WAITED ABOUT ONE

8 MINUTE.

9 Q. WHERE, WHAT WAS HAPPENING TO Y'ALL WHILE YOU WERE

10 IN THE WATER, HOW FAR WERE YOU FROM RONNIE EARL?

11 A. I'LL SAY PROBABLY ABOUT FROM THAT, ARM LENGTH.

12 Q. ARMS LENGTH AWAY?

13 A. YEAH.

14 Q. WERE YOU SPEAKING TO HIM?

15 A. YEAH, I WAS TELLING HIM TO CALM. BANNER, HELP ME,

16 BANNER.

17 Q. WHY DID HE CALL YOU THAT?

18 A. MY FIRST NAME IS DAVID, AND I LIKE THE INCREDIBLE

19 HULK. THEY CALL ME DAVID BANNER. BANNER. HE SAID, HELP

20 ME, BANNER. HELP ME, BANNER. I SAID CALM DOWN. ME AND

21 WADE, WE'RE GOING TO GET YOU OUT OF HERE. JUST CALM DOWN

22 YOU'RE MOVING TO FAST.

23 SO HE JUST, I SEEN IT IN HIS EYES, HE GAVE UP AND

24 WHEN HE GAVE UP, HE JUST WENT DOWN. SO WHEN HE WENT

25 DOWN -- SO WHEN HE WENT DOWN, I WENT DOWN AFTER HIM AND I

1 TRIED TO GRAB HIM UNDERNEATH THE WATER. AND I COULDN'T.
2 BECAUSE THE CURRENT WAS SO STRONG, I GUESS IT SWEEPED HIM
3 ALL THE WAY DOWN.

4 Q. OKAY.

5 A. ONCE THAT HAPPENED, I REALIZE I COULDN'T GET TO
6 HIM. I TRIED LIKE TWO OR THREE TIMES TO GO BACK DOWN
7 THERE AGAIN. I GET BACK UP. I HAD AN ASTHMA ATTACK. SO
8 NOW, I NEED TO GET OUT OF THE WATER.

9 Q. RIGHT.

10 A. WHEN I GET TO THE SIDE, I DIDN'T GET CAUGHT IN THE
11 CURRENT, I GOT CAUGHT IN A SINK HOLE. SO INSTEAD OF IT
12 PUSHING ME DOWN THE RIVER, IT'S PULLING ME UNDER.

13 Q. OKAY.

14 A. SO I BEEN IN THERE FOR ABOUT 15 MINUTES. ONLY
15 THING I KEPT SEEING WAS THE BUS DRIVER LOOKING AT ME.

16 Q. RIGHT.

17 A. AND I'M SITTING HERE THINKING, WHY WON'T SOMEBODY
18 CUT A TREE DOWN, WHY WON'T SOMEBODY THROW A CHAIN, WHY
19 WON'T SOMEBODY DO SOMETHING. THE LITTLE WHITE BOY I CALL
20 WADE OR WHATEVER YOU WANT TO CALL HIM, HE CAME IN THERE,
21 AND WHEN HE CAME TO ME, HE REALIZED THAT, THE TYPE OF
22 SITUATION I WAS IN. HE SAID, I CAN'T GET TO HIM.
23 SOMETHING IS PULLING ON ME. I CAN'T GET TO HIM. SO
24 SOMEBODY WAS OUT THERE AT THE TIME, THANK GOD, WAS
25 FISHING. I GAVE UP TWICE IN THE WATER.

1 Q. RIGHT.

2 A. WHEN I WENT DOWN MY SECOND TIME, I FELT A LINE AND
3 I PULLED MYSELF TO THE EDGE OF THE WATER. AFTER I THROWN
4 UP AND HAD AN ASTHMA ATTACK, HAD TO GET AN INHALER FROM
5 OFF THE BUS, I KEPT COMPLAINING ABOUT MY HEAD BEING HURT,
6 THEY ASKED ME WAS I ALL RIGHT. I SAID MY HEAD IS REALLY
7 POUNDING RIGHT NOW, IT'S REALLY REALLY POUNDING. I GOT
8 IN THE AMBULANCE, I TRIED TO GO TO SLEEP. AMBULANCE MAN
9 SMACKED ME, TOLD ME I COULDN'T GO TO SLEEP RIGHT NOW, AND
10 ONCE I GOT TO THE HOSPITAL, I FINALLY WENT TO SLEEP. AND
11 THAT'S WHEN SOMEBODY, THE CORONER TOLD ME THAT MY COUSIN
12 HAD PASSED AWAY.

13 Q. I'M SORRY. YOU MENTIONED A MINUTE AGO YOU WERE IN
14 THE WATER 15 MINUTES. WERE YOU IN THE WATER THAT LONG
15 WITH RONNIE EARL DAVIS?

16 A. THE WHOLE TIME OF US TRYING TO SAVE HIM AND FROM
17 ME TRYING TO GET OUT OF THE WATER?

18 Q. RIGHT?

19 A. THEY SAID WAS ABOUT 15 MINUTES. THEY SAID I WAS
20 IN THERE 15 MINUTES GOING UP AND DOWN, UP AND DOWN,
21 BOBBING.

22 Q. HOW FAR WAS RONNIE EARL DAVIS FROM THE LANDING
23 WHEN YOU REALIZED HE NEEDED HELP?

24 A. RONNIE EARL WAS IN THE MIDDLE. THE CURRENT HAD
25 DONE SWEPT HIM FROM WHERE HE JUMPED OFF AT UNTIL THE

1 MIDDLE OF THE RIVER.

2 Q. HOW WIDE IS THE RIVER THERE AT THE GALIVANT'S
3 FERRY LANDING?

4 A. ON THAT SIDE, WE WAS OH, IT WASN'T THAT WIDE. IT
5 WAS KIND OF NARROW, SO KIND OF WHERE WE MADE IT KIND OF
6 STRONG. ON THE OTHER SIDE, IT'S REAL WIDE.

7 Q. SO THE LANDING IS ON THE SOUTHBOUND SIDE OF 501
8 GOING TOWARD CONWAY?

9 A. GOING TOWARD CONWAY.

10 Q. SO HOW FAR WOULD YOU ESTIMATE HE WAS FROM THE
11 LANDING?

12 A. FROM THE BOARDWALK.

13 Q. FROM THE BOARDWALK?

14 A. HE WAS DIRECTLY IN FRONT OF THE BOARDWALK. HE WAS
15 DIRECTLY IN THE MIDDLE. FROM WHERE HE JUMPED OFF AT WAS
16 RIGHT IN FRONT OF THE BOARDWALK, AND THE CURRENT SWEEPED
17 HIM UP ABOUT FIVE FEET, AND THEN STARTED BRINGING HIM
18 DOWN THE RIVER. AND THAT'S WHEN I GUESS HE WAS TRYING TO
19 FIGHT THE CURRENT, BECAUSE THE MORE HE KEPT SWIMMING AND
20 KICKING HIS FEET, HE REALIZED HE WASN'T GOING NOWHERE.

21 Q. HAD HE BEEN IN THE WATER MORE THAN ONE TIME THAT
22 DAY?

23 A. NO, I WAS THE ONLY PERSON THAT HAD BEEN IN THE
24 WATER THAT HAD GOT OUT AND GOT BACK IN THE WATER.

25 Q. WHEN YOU JUMPED IN THE FIRST TIME, DID YOU JUMP IN

- 1 OFF THE BOARDWALK OR WALK IN FROM THE LANDING?
- 2 A. I JUMPED IN OFF THE BOARDWALK.
- 3 Q. HOW FAR DID YOU GO THE FIRST TIME FROM THE
- 4 BOARDWALK?
- 5 A. WHEN I JUMP IN, I JUMPED OFF THE SIDE OF THE
- 6 BOARDWALK, AND WHEN I GOT IN THE WATER, I REALIZED HOW
- 7 STRONG THE CURRENT WAS, SO I SAID, I'M FIXING TO GET TO
- 8 THE SIDE, THE LANDING, TO THE GROUND, BECAUSE I REALLY
- 9 CAN'T FIGHT WATER THAT BAD.
- 10 Q. THAT WAS THE FIRST TIME YOU JUMPED IN?
- 11 A. THAT WAS THE FIRST TIME I JUMPED IN.
- 12 Q. WHEN YOU JUMPED IN THE SECOND TIME, WHERE DID YOU
- 13 GO IN?
- 14 A. WHEN I JUMPED IN THE SECOND TIME, I JUMPED IN
- 15 DIRECTLY WHERE RONNIE EARL WAS AT. I DIDN'T CARE ABOUT
- 16 HOW STRONG THE WATER WAS, I JUST WANTED TO PULL HIM TO
- 17 THE SIDE, AT LEAST STOP HIM FROM KICKING, HOLLERING.
- 18 Q. AND THE SHORT WHITE FELLOW WAS THE FIRST PERSON IN
- 19 THE WATER?
- 20 A. HE WAS THE FIRST PERSON TO GET TO HIM.
- 21 Q. YOU WERE THE FIRST PERSON IN THE WATER?
- 22 A. I WAS THE FIRST PERSON IN THE WATER.
- 23 Q. DID ANYONE ELSE GO IN THE WATER AFTER YOU DID,
- 24 OTHER THAN RONNIE EARL, OTHER THAN --
- 25 A. THE LITTLE, THE LITTLE WHITE BOY IS THE ONLY ONE

1 THAT ACTUALLY HELPED HIM.

2 Q. RIGHT. WAS THERE ANYBODY SWIMMING IN THE WATER

3 BEFORE YOU REALIZED RONNIE EARL WAS IN TROUBLE?

4 A. I MEAN, EVERYBODY WAS IN THE WATER AT THE TIME,

5 WHEN RONNIE EARL WAS HOLLERING FOR MY NAME.

6 Q. RIGHT.

7 A. BECAUSE THE ONES I WAS TELLING YOU, THE ONES THAT

8 COULDN'T SWIM, THEY WERE WADING IN THE WATER, SPLASHING

9 WATER ON THEMSELVES TRYING TO COOL OFF.

10 Q. OKAY.

11 A. THE ONES THAT COULD, EXPERIENCED SWIMMERS, I GUESS

12 THAT'S ME, THE OTHER TWO WHITE BOYS AND MY COUSIN.

13 Q. WHO WAS RONNIE EARL?

14 A. RONNIE EARL. WE JUMPED IN. THERE WAS ONLY FOUR

15 OF US THAT JUMPED IN THE WATER.

16 Q. OKAY. BEFORE RONNIE EARL JUMPED IN THE WATER, YOU

17 HAD BEEN IN THE WATER, HAD ANYBODY ELSE BEEN IN THE

18 WATER, SWIMMING, NOT SPLASHING, BUT SWIMMING?

19 A. IT WAS ONLY US FOUR, WE ALL JUMPED IN THERE.

20 Q. I GUESS WHAT I'M TRYING TO FIGURE OUT, BEFORE YOU

21 REALIZED RONNIE EARL HAD A PROBLEM, HAD ANYONE ELSE BEEN

22 SWIMMING BESIDES YOU?

23 A. NO. LIKE, OKAY, WHEN WE ALL JUMPED IN, EVERYBODY

24 WAS GETTING OUT. RONNIE EARL WAS THE LAST ONE TO JUMP IN

25 THERE.

- 1 Q. OKAY. SO YOU JUMPED IN FIRST AND GOT OUT?
- 2 A. YEAH.
- 3 Q. WHO ELSE JUMPED IN AND GOT OUT BEFORE RONNIE EARL
- 4 WENT IN?
- 5 A. THE OTHER TWO WHITE BOYS.
- 6 Q. THAT WAS LITTLE WADE, AND WHO WAS THE OTHER ONE?
- 7 A. BOBBY HILL, THE ONE WE CALL BOBBY HILL.
- 8 Q. THAT'S RIGHT. BOBBY HILL?
- 9 A. AND WE HAD ALL JUMPED IN THERE TOGETHER, AND THEN
- 10 RONNIE EARL WAS THE LAST ONE TO JUMP IN. AFTER I GOT
- 11 OUT, THE REST OF, EVERYBODY ELSE WAS GETTING OUT, AND
- 12 THAT'S WHEN I TURNED AROUND, AND I REALIZED OKAY, FOUR OF
- 13 US JUMP IN, ONLY THREE OF US ON THE SIDE, WHERE IS RONNIE
- 14 EARL? AND WHEN HE GOT UP, THAT'S WHEN HE STARTED
- 15 PANICKING, THAT'S WHEN HE START HOLLERING MY NAME.
- 16 Q. HAD YOU EVER SEEN HIM SWIM, OR BEEN SWIMMING WITH
- 17 HIM?
- 18 A. NO, BUT I SEEN HIM SWIMMING IN THE WRECK, SO I
- 19 KNOW HE COULD SWIM. ALSO, I ASKED HIM, MAN, YOU CAN SWIM
- 20 OUT HERE IN THE WATER. I GUESS I WOULD CONSTANTLY GIVE
- 21 HIM A PICKING, BECAUSE HE WAS OLD. ALL RIGHT, OLD MAN, I
- 22 DON'T WANT TO HAVE TO GO IN THERE AND CATCH YOU. HE WAS
- 23 LIKE, MAN, I'M GOOD. I GUESS THE CURRENT WAS TOO STRONG
- 24 FOR HIM.
- 25 Q. WHEN YOU WERE YOUNG -- YOU'RE YOUNG NOW, COMPARED

1 TO ME -- BUT WHEN YOU WERE VERY YOUNG, A CHILD, DID YOU
2 GROW UP WITH RONNIE EARL?

3 A. NO, ME AND RONNIE EARL MET WHEN I FIRST CAME TO
4 SOUTH CAROLINA WHEN I WAS 13. EVER SINCE I WAS THERE,
5 I'VE BEEN STAYING IN SOUTH CAROLINA, I'VE KNOWN RONNIE
6 EARL. RONNIE EARL STAYED DOWN THE STREET FROM WHERE I
7 STAYED AT.

8 Q. WHAT WERE THINGS Y'ALL DID TOGETHER?

9 A. WHAT?

10 Q. WHAT WERE THINGS Y'ALL AND RONNIE EARL DID
11 TOGETHER?

12 A. SAD TO SAY, WAS HANG AT THE CLUB AND GET DRUNK.

13 Q. AND WOULD THAT BE, WHAT WAS THE NAME OF THE CLUB?

14 A. SWEET DADDY SUGAR SHACK.

15 Q. SWEET DADDY SUGAR SHACK?

16 A. NEIGHBORHOOD CLUB.

17 Q. WOULD Y'ALL DO ANYTHING OUTDOORS TOGETHER,
18 FISHING, CAMPING?

19 A. I AIN'T TOO MUCH OF, YOU KNOW, AN OUTDOORSMAN.

20 Q. WHAT?

21 A. I SAID, I AIN'T TOO MUCH OF AN OUTDOORSMAN, LIKE
22 PLAYING SPORTS AND STUFF LIKE THAT. BUT RONNIE EARL, I
23 THINK, USED TO PLAY SOFTBALL. BESIDES THAT, JUST RIDING
24 UP AND DOWN IN THAT LITTLE GREEN THUNDERBIRD OR PONTIAC,
25 WHATEVER IT WAS. I THINK HE PLAYED BALL SOMETIMES.

1 Q. BASKETBALL?

2 A. YEAH, LIKE OUTSIDE, AT THE CLUB HE HAD A LITTLE

3 BASKETBALL, AND IN HIS NEIGHBORHOOD, HIS PART OF THE

4 COMMUNITY, THEY HAVE A PARK OUT THERE, BASKETBALL PARK.

5 Q. WOULD HE HAVE BEEN PLAYING SOFTBALL AND BASKETBALL

6 IN 2010?

7 A. YEAH, TODAY, I MEAN --

8 Q. BEFORE THIS HAPPENED --

9 A. YEAH.

10 Q. -- WAS HE DOING THOSE KIND OF ACTIVITIES?

11 A. YEAH, HE WAS STILL ACTIVE, HE STILL HANG OUT LATE,

12 DANCE, AND ALL THAT OTHER GOOD STUFF. I MEAN, IT WASN'T

13 LIKE HE WAS LIKE SICK OR ANYTHING, OR LIKE HE WAS WEAK.

14 HE STILL DID THE SAME STUFF AS HE DID WHEN HE WAS 20,

15 JUST A LITTLE BIT OLDER.

16 Q. I GOT YOU. DO YOU KNOW HIS CHILDREN? DO YOU SEE

17 HIS CHILDREN?

18 A. I SEEN, I SEEN HIS GRANDDAUGHTER, HIS NEW

19 GRANDCHILD THAT HE NOT TOO LONG AGO HAD.

20 Q. DID YOU SEE HIM WITH EITHER HIS CHILDREN, RENITA

21 ROBINSON OR JAMAR ROBINSON, DID YOU EVER SEE HIM WITH

22 THEM?

23 A. I KNOW RENITA, I KNOW RENITA AND JAMAR, BUT AS FAR

24 AS SEEING, AFTER A CERTAIN AMOUNT OF TIME, FROM LIKE 13,

25 I'LL SAY FROM 13 TO 21, I HAD MOVED FROM MARION TO

1 CONWAY.

2 Q. OKAY.

3 A. SO NOW, WHEN I SEE THEM, IT'S LIKE SPURTS AND

4 STUFF LIKE THAT. BUT LIKE ANYTIME I USED TO COME TO

5 MARION AND GRESHAM, AND I SEE RONNIE EARL, IT'S RIGHT

6 BACK TO THE SAME OLD THING.

7 Q. SAME OLD THING. DID YOU GO TO THE FUNERAL?

8 A. I COULDN'T GO TO THE FUNERAL. IT WAS IN THE

9 COMMUNITY, EVERYBODY WAS LOOKING AT ME LIKE, I DON'T KNOW

10 IF THEY WERE LOOKING AT ME LIKE I COULD HAVE DONE BETTER.

11 Q. YOU DID ALL YOU COULD.

12 A. BUT I SEE, I TALKED TO MY UNCLE, ROOSEVELT, I TALK

13 TO MY UNCLE EVERY TIME I COME TO MARION, GRESHAM, LIKE

14 THAT. HE HAS NO BAD FEELINGS. I'M NOT SAYING ANYBODY IN

15 THE FAMILY HAS BAD FEELINGS AGAINST ME.

16 Q. I UNDERSTAND.

17 A. I JUST GOT MY OWN LITTLE FEELINGS.

18 Q. HAVE YOU TALKED TO ANYONE ABOUT WHAT HAPPENED

19 SINCE JUNE 15, 2010?

20 A. I MEAN, YEAH, I MEAN, WHEN I CAME HOME, EVERYBODY

21 KEPT ASKING ME WHAT HAPPENED, AND YOU KNOW, I JUST PRETTY

22 MUCH JUST TELL THE TRUTH, YOU KNOW, WHAT HAPPENED, HOW IT

23 JUST WENT FROM, EXCUSE MY FRENCH, FROM SUGAR TO SHIT. IT

24 JUST WENT FROM EVERYTHING WAS ALL HAPPY AND JUST WENT TO

25 TRAUMATIZED, REAL QUICK.

1 Q. DID YOU TALK TO ANYONE THAT WAS THERE THAT DAY
2 ABOUT WHAT HAPPENED, AFTER IT HAPPENED?

3 A. AFTER I GOT OUT OF THE HOSPITAL, AND THEY PUT ME
4 BACK TO WORK, YOU KNOW, SOME OF THE GUYS THAT WAS STILL
5 THERE, THEY WAS ASKING ME LIKE, YOU KNOW, DID I SEE
6 RONNIE.

7 Q. RIGHT.

8 A. AND WHAT HAPPENED TO ME, AND STUFF LIKE THAT. AND
9 IT WAS JUST ALL SAYING THE SAME THING, LIKE WOW, IT
10 HAPPENED SO FAST.

11 Q. ON JUNE 15, 2010, DID RONNIE DAVIS ASK JOHN
12 REICHARDT, THAT WAS THE DRIVER OF THE BUS, TO TAKE HIM
13 BACK TO THE JAIL FOR ANY REASON?

14 A. NUH-UH, BECAUSE WE WERE ALL SORT OF, SHORT OF
15 GOING HOME, BECAUSE WE ALL KNOW, IF YOU GO BACK TO THAT
16 JAIL, YOUR GOOD TIME IS OVER WITH. NOBODY WANTS TO GO IN
17 MARION COUNTY JAIL TOO LONG.

18 Q. WHY IS THAT?

19 A. I CAN TELL YOU'VE NEVER BEEN TO THE MARION COUNTY
20 JAIL.

21 Q. THANK GOODNESS I HAVEN'T, I RECKON.

22 A. THE FOOD IS TERRIBLE, THE LIVING CONDITIONS IS NOT
23 WHAT YOU WOULD WANT TO BE IN, FROM THE SPIDERS AND YOUR
24 ROOMMATES, YOU KNOW, YOU DON'T KNOW WHAT YOUR ROOMMATE IS
25 THERE FOR, YOU'RE AROUND THERE IN GENERAL POPULATION, AND

1 NURSES, ONLY ONE NURSE, AND IF YOU GET SICK, YOU'RE
2 PRETTY MUCH SICK. SO YOU TRY TO PRETTY MUCH ROUGH IT
3 OUT. I HAVE TOLD THE BUS DRIVER MYSELF TO TAKE ME BACK,
4 WHEN HE TRIED TO MAKE ME GO IN THERE TO A DITCH WITH
5 SNAKES IN IT, BUT BESIDES THAT, YOU KNOW, YOU GOT TO
6 WORK. IF I CAN WORK WITH IT, I'LL DO IT, BUT AS FAR AS
7 ME ENDANGERING MY HEALTH --

8 Q. RIGHT.

9 A. -- I'LL TELL HIM QUICK TAKE ME BACK. RONNIE EARL,
10 HE SAID, FOR ONE, HE WAS IN THERE A LITTLE BIT OF DAYS,
11 HE WAS JUST GOING TO ROUGH IT OUT.

12 Q. IS THERE ANYBODY THERE ON JUNE 15, 2010 WE HAVEN'T
13 TALKED ABOUT THIS MORNING?

14 A. NO. NO. EVERYTHING ELSE I TOLD YOU, FROM US
15 WALKING DOWN THERE, I MEAN, BESIDES THAT WE DRUNK ALL THE
16 WATER UP, AND I FELT LIKE WE SHOULD HAVE AT LEAST MORE
17 THAN ONE LITTLE COOLER FOR ALL THE PEOPLE. I FIGURE ONCE
18 WE DRINK ALL THE WATER UP, AND WE HAD TO GO BACK AND FILL
19 IT UP, BUT WE STILL HAD TO DO THE OTHER SIDE. ACTUALLY,
20 WE END UP DIDN'T HAVE TO DO THE OTHER SIDE, BECAUSE THE
21 ACCIDENT HAPPENED.

22 Q. DO YOU REMEMBER WHAT TIME Y'ALL WENT SWIMMING?

23 A. NO, NOT EXACTLY. I CAN'T TELL YOU THE EXACT TIME,
24 BUT I KNOW IT WAS BEFORE LUNCH, BECAUSE I DIDN'T EAT
25 LUNCH OR DINNER THAT DAY.

1 Q. AND YOU WOULD HAVE BEEN BACK -- HOW FAR WERE YOU
2 FROM THE MARION JAIL WHEN YOU STOPPED AT THE LITTLE PEE
3 DEE RIVER?

4 A. WE WERE RIGHT THERE AT THE EDGE OF MARION COUNTY
5 LINE.

6 Q. RIGHT.

7 A. RIGHT THERE WHERE RAINS AND GALIVANT'S FERRY,
8 PROBABLY ABOUT, THE RIDE ON THE BUS RIDE, PROBABLY ABOUT
9 FIVE, TEN, FIFTEEN MINUTES, DEPENDING HOW FAST YOU'RE
10 GOING. IN THAT BUS, HE REALLY COULDN'T GO THAT FAST, SO
11 I'LL PROBABLY SAY ABOUT FIFTEEN.

12 Q. DID YOU TELL MR. REICHARDT THAT YOU KNEW HOW TO
13 SWIM?

14 A. UH-HUH.

15 Q. DID RONNIE EARL DAVIS TELL HIM THAT?

16 A. DID HE TELL HIM HE KNEW HOW TO SWIM? YEAH.

17 Q. HOW ABOUT LITTLE WADE, DID HE TELL HIM HE KNEW HOW
18 TO SWIM?

19 A. EVERYBODY THAT JUMPED IN THERE.

20 Q. BOBBY HILL TOLD HIM?

21 A. BOBBY HILL TOLD HIM HE WAS A DAMN GOOD SWIMMER,
22 AND HE GOT IN THERE IN AND OUT, NO PROBLEMS. EVEN WADE
23 HAD PROBLEMS GETTING IN AND OUT. BOBBY HILL WAS FAT.
24 WADE WAS SKINNY.

25 Q. HAD YOU EVER BEEN SWIMMING BEFORE THIS DAY WHILE

1 AT THE MARION JAIL?

2 A. HAVE WE EVER WENT SWIMMING?

3 Q. WHILE YOU WERE AT THE JAIL.

4 A. AT GALIVANT'S FERRY.

5 Q. RIGHT?

6 A. NO. NO. THAT'S PAST THE LINE. THAT'S LIKE US

7 GOING TO DILLON, WE CAN'T GO TO DILLON.

8 Q. HAD YOU EVER BEEN SWIMMING ANYWHERE ELSE?

9 A. NO, AS FAR AS LIKE, NOT THE SWIMMING WE WERE

10 DOING. ONLY TIME WE GOT IN THE WATER WAS LIKE TO CLEAN

11 OUT A BEAVER DAM.

12 Q. HAD YOU DONE THAT IN JUNE OF 2010?

13 A. TO TELL YOU THE TRUTH, WE ONLY DONE ONE BEAVER

14 DAM. FROM THEN ON, DIGGING HOLES AND CUTTING DOWN

15 DITCHES AND STUFF LIKE THAT.

16 Q. DO YOU REMEMBER WHEN IT WAS YOU CLEANED OUT THE

17 BEAVER DAM?

18 A. THAT PROBABLY BEEN EARLIER THAT WEEK, IT WAS IN

19 THAT SAME WEEK WHEN WE DID THAT, BECAUSE IT WAS ALL IN

20 THE SAME AREA. ONE WEEK WE MIGHT WORK THE MULLINS AREA,

21 AND THEN THE NEXT WEEK WE MIGHT WORK GRESHAM, BRITTONS

22 NECK AREA.

23 Q. DO YOU KNOW WHO CALLED 911 OR THE AMBULANCE OR

24 E.M.S.?

25 A. I WAS IN THE WATER.

1 Q. HOW LONG AFTER YOU GOT OUT OF THE WATER WAS IT
2 BEFORE E.M.S. SHOWED UP?

3 A. PROBABLY ABOUT, I WANT TO SAY PROBABLY TEN
4 MINUTES, BECAUSE SOMEBODY HAD TO WENT UP THERE AND GET MY
5 ASTHMA INHALER, AND FOR ME TRYING TO GET MY WIND BACK AND
6 THROWING UP, BY THE TIME THEY GOT THERE, I WAS LIKE
7 HALFWAY GETTING BACK, BESIDES MY HEAD AND MY LEGS IS
8 WEAK, AND ARMS WAS WEAK.

9 Q. HAVE YOU UNDERSTOOD ALL MY QUESTIONS?

10 A. YES, SIR.

11 Q. ANY ANSWER OR ANY QUESTION YOU WANT TO REVISIT OR
12 SAY ANYTHING ELSE ABOUT?

13 A. NO, SIR.

14 MR. MCEACHIN: THANK YOU VERY MUCH. THAT'S ALL I
15 HAVE.

16 CROSS EXAMINATION

17 BY MR. HART:

18 Q. JUST A COUPLE QUICK THOUGHTS FOR YOU. HAD LONG
19 HAD YOU BEEN ON THE BUS, HOW LONG HAD YOU BEEN DOING
20 THAT?

21 A. I BEEN ON THE BUS SINCE I FIRST GOT THERE, SINCE I
22 WAS SENTENCED.

23 Q. WAS THAT EVERY DAY YOU WOULD GO OUT AND DO THAT?

24 A. EVERY WEEKDAY, FIVE DAYS A WEEK, WHAT WE CALL WE
25 WORKING FOR OUR FOOD.

1 Q. HAVE YOU BEEN ON ANY SIMILAR WORK PROGRAM WHEN YOU
2 WERE IN PRISON BEFORE?

3 A. NO. NOT LIKE THE CHAIN GANG. CHAIN GANG IS LIKE
4 WAY BACK IN THE DAY TYPE SLAVERY TYPE, LIKE THE BALL AND
5 CHAIN STUFF. NOT TOO MANY -- I'VE BEEN TO OTHER COUNTY
6 JAILS, AND THEY ARE THE ONLY COUNTY JAIL THAT STILL HAS A
7 CHAIN GANG.

8 Q. HAD THEY EVER LET YOU SWIM BEFORE THIS DAY?

9 A. NO.

10 Q. THE GUARD WHO WAS WITH YOU, THE ONE WHO WAS
11 DRIVING THE BUS, WHAT WAS HE LIKE?

12 A. CERTAIN PEOPLE, HE WAS ALL RIGHT, AND THEN, YOU
13 KNOW, I GUESS YOU GOT YOUR CERTAIN PEOPLE YOU DON'T LIKE
14 AND CERTAIN PEOPLE YOU DO LIKE. HE WAS ALL RIGHT
15 SOMETIMES WITH ME. LIKE THE ONLY FALLING OUT I HAD WITH
16 HIM, WHEN HE TRIED TO TELL ME TO GET INTO A DITCH, AND I
17 KNEW IT HAD A BUNCH OF SNAKES IN IT. OTHER THAN THAT, HE
18 LIKED TO, I'LL SAY, EXPRESS HIS SENIORITY, BECAUSE HE
19 KNOW IF I SEND YOU BACK, YOU'LL LOSE YOUR GOOD TIME. BUT
20 BESIDES THAT, HE WAS -- SOMETIMES HE WAS AN ASSHOLE,
21 SOMETIMES HE WAS ALL RIGHT.

22 Q. YOU SAID EARLIER, JUST SO I'M CLEAR ON THIS, IF
23 YOU WERE SENT BACK OR LEFT THE BUS AND WENT BACK TO
24 PRISON, YOU LOST ALL YOUR GOOD TIME, IS THAT RIGHT?

25 A. YEAH. HE SAY HE'LL TAKE YOUR GOOD TIME. SO

1 BASICALLY, THE ONLY DAYS YOU GET THERE IS THE DAY FOR DAY
2 YOU'VE BEEN THERE. SO IF YOU GET TEN DAYS OFF THIRTY
3 DAYS AND YOU HAD THIRTY DAYS, INSTEAD OF YOU DOING
4 TWENTY, YOU WOULD HAVE TO DO THIRTY, IN WHAT WE CALL THE
5 HELL HOLE, WHERE THERE'S SPIDERS, SICK PEOPLE AND ALL
6 THAT OTHER KIND OF STUFF.

7 Q. SO IF YOU DIDN'T DO SOMETHING THE BUS DRIVER
8 WANTED YOU TO DO, YOU'D GET SENT BACK?

9 A. IF YOU REFUSED TO DO HIS ORDER, YEAH, HE WAS,
10 THREATEN TO SEND YOU BACK.

11 Q. IF YOU GOT BACK, YOU WOULD LOSE YOUR GOOD TIME?

12 A. AUTOMATICALLY, JUST GET DAY FOR DAY, HAVE TO SERVE
13 ALL THE DAYS YOU HAD TO SERVE.

14 Q. YOU SAID WHEN YOU WERE TRAPPED IN THE WATER, YOU
15 SAW THE GUARD ON THE SHORE, IS THAT RIGHT?

16 A. I NEVER SEEN THE BUS DRIVER TAKE ONE STEP OR FOOT
17 INTO THE WATER.

18 Q. WHAT WAS HE DOING WHEN YOU SAW HIM?

19 A. LOOKING.

20 Q. DID YOU SEE HIM REACHING OUT WITH ANYTHING?

21 A. CELL PHONE. IT WASN'T, I KNOW IT COULDN'T HAVE
22 BEEN THE AMBULANCE, BECAUSE, BECAUSE I HEARD HIM SAY
23 YEAH, THEY JUMPED IN THE WATER, ONE IS GONE. SO I DON'T
24 KNOW IF HE WAS TALKING TO THE GUY AT THE JAIL HOUSE, OR
25 THE MAN THAT OWNS THE CHAIN GANG, BUT I KNOW IT WASN'T

1 LIKE THE AMBULANCE OR FIREMAN OR ANYTHING LIKE THAT.

2 Q. IT WASN'T 911?

3 A. NO, IT WASN'T NO 911 CALL. THAT WAS WHAT WE CALL
4 IN THE HOOD, PROTECTING MY BUTT CALL.

5 MR. HART: I THINK THAT'S ALL THE QUESTIONS I HAVE
6 FOR YOU. THANKS.

7 MR. MCEACHIN: I DO HAVE ANOTHER QUESTION.

8 REDIRECT EXAMINATION

9 BY MR. MCEACHIN:

10 Q. WERE YOU PAID ANY MONEY FOR, OR GETTING ANY TYPE
11 OF PAYMENT FOR THE WORK YOU DID ON THE BUS?

12 A. ONLY, ONLY PAYMENT YOU GET IS GOOD TIME. YOU
13 DIDN'T GET NO CASH OR NOTHING FREE, NOTHING EXTRA. I
14 WISH YOU DID, AS BAD AS YOU WORKED, BUT YOU DIDN'T GET,
15 YOU KNOW, CASH OR NOTHING LIKE THAT.

16 Q. ANY CANTEEN PRIVILEGES?

17 A. NO. THERE IS NO CANTEEN, BECAUSE IF YOU HAVE CASH
18 MONEY, THAT PEOPLE BRING FROM YOUR HOUSE OR WHATEVER CASH
19 MONEY THAT YOU HAVE ON YOU --

20 Q. RIGHT.

21 A. -- YOU GOT TO PAY FOR YOUR OWN PHONE CALLS, SODAS,
22 THERE'S A VENDING MACHINE OUT THERE, THERE'S CHIPS AND
23 STUFF LIKE THAT, YOU HAVE TO PAY FOR EVERYTHING.

24 Q. RIGHT.

25 A. MARION COUNTY PRISON FARM DOESN'T HAVE THAT.

1 Q. DOESN'T WHAT?

2 A. THEY DON'T DO THAT. THEY DON'T GIVE YOU CASH TO
3 BUY STUFF. ONLY THING THEY DO IS JUST GIVE YOU UNIFORMS.

4 Q. AND YOU DON'T GET ANY SORT OF CREDIT AT THE
5 CANTEEN OR VENDING MACHINES OR ANYTHING LIKE THAT?

6 A. NOTHING.

7 MR. MCEACHIN: THANK YOU. THAT'S ALL.

8 MR. HART: NOTHING.

9 (WHEREUPON, THE WITNESS WAIVED THE READING AND
10 SIGNING OF THE DEPOSITION, AND THE DEPOSITION WAS
11 CONCLUDED AT 11:45 A.M.)

12 - - -

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA)

3 COUNTY OF FLORENCE.)

4 I, VINCENT ROLLAND, COURT REPORTER AND NOTARY
5 PUBLIC FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY
6 THAT THE AFOREMENTIONED WITNESS PERSONALLY APPEARED
7 BEFORE ME AT THE PLACE AND TIME STATED ABOVE; THAT THE
8 WITNESS WAS FIRST DULY SWORN TO TELL THE WHOLE TRUTH BY
9 ME; AND THAT THE FOREGOING PAGES, NUMBERED FROM 1 TO 35,
10 INCLUSIVE, CONTAIN A TRUE AND ACCURATE TRANSCRIPTION OF
11 THE COMPLETE SWORN TESTIMONY OF SAID WITNESS.

12 I FURTHER CERTIFY THE WITNESS WAIVED THE READING
13 AND SIGNING OF THE DEPOSITION, AND THAT I AM NEITHER KIN
14 NOR COUNSEL TO ANY OF THE PARTIES TO THE PROCEEDINGS, OR
15 OTHERWISE INTERESTED IN THE OUTCOME OF THE CAUSE OF
16 ACTION.

17 IN WITNESS WHEREOF, I HAVE ATTACHED MY SIGNATURE
18 THE 20TH DAY OF DECEMBER, 2011, AT FLORENCE, SOUTH
19 CAROLINA.

20 
21

22 VINCENT ROLLAND

23 NOTARY PUBLIC

24 STATE OF SOUTH CAROLINA

25 MY COMMISSION EXPIRES ON JULY 12, 2021

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 MARION COUNTY

4 DEPOSITION OF JOHN REICHARDT

5 CELESTE HEMMINGWAY, AS PERSONAL REPRESENTATIVE FOR THE
6 ESTATE OF RONNIE EARL DAVIS AND DAVID BROWN,

7 Plaintiff,

8 vs. CASE NO. 2010-CP-33-941

9 MARION COUNTY, JOHN REICHARDT, AS EMPLOYEE/AGENT OF
MARION COUNTY, ET AL.,

10 Defendants.
11
12
13
14

15 DEPONENT: JOHN REICHARDT

16 DATE: August 3, 2011

17 TIME: 11:00 AM

18 LOCATION: LAW OFFICE OF D. MALLOY McEACHIN
2117-C West Palmetto Street
19 Florence, SC 29401
20
21
22

23 REPORTED BY: NANCY ENNIS TIERNEY, CSR (IL)
CLARK & ASSOCIATES
24 P.O. Box 73129
North Charleston, SC 29415
25 (843) 762-6294

Deposition of John Reichardt

A P P E A R A N C E S

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ALSO PRESENT: Celeste Hemmingway

I N D E X

Page

Witness Sworn

4

EXAMINATION

By Mr. Hart

4

Certificate of Reporter

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E X H I B I T S

Page

Plaintiff's Exhibit No. 1

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Deposition of John Reichardt

1 JOHN REICHARDT, having been first duly
2 sworn, testified as hereinafter set forth.

3 EXAMINATION

4 BY MR. HART:

5 Q. Good afternoon, sir. We met very briefly today
6 before the deposition. I just need to introduce myself.
7 My name is Andrew Hart. I represent the plaintiff in
8 this action, and that's Ronnie Earl Davis. This action
9 arose out of an incident where Mr. Davis drowned on
10 June 15, 2010.

11 Do you remember this incident?

12 A. Yes.

13 Q. Do you mind saying and spelling your name for the
14 record, please?

15 A. Excuse me?

16 Q. Do you mind saying and spelling your name for the
17 record, please?

18 A. John Reichardt, R-e-i-c-h-a-r-d-t.

19 Q. Have you ever been deposed before?

20 A. No.

21 Q. I just ask that you give affirmative answers to
22 questions rather than head nods or uh-huhs. The court
23 reporter is here taking down every word that you say,
24 and the record would better reflect if you give yes or
25 no answers.

1 Do you understand?

2 A. Yes.

3 Q. If you don't understand a question I ask, just
4 let me know and I will be happy to rephrase it for you.
5 If you answer a question, I will assume that you
6 understood it.

7 Do you understand?

8 A. Yes.

9 Q. If you need a break at any time during the
10 deposition, feel free to let me know. I will be happy
11 to accommodate you.

12 A. Yes.

13 Q. Again, since there is a court reporter here,
14 let's try not to speak over each other. I will do the
15 exact same for you, just to make sure we don't have
16 statements mixed up in the record, all right?

17 A. Right.

18 Q. During the deposition I ask that you direct all
19 questions to myself rather than your attorney.

20 Now, without getting into anything you
21 discussed with your attorney, did you review any
22 documents in preparation for today?

23 A. I didn't understand that.

24 Q. Did you review any documents in preparing for the
25 deposition today?

Deposition of John Reichardt

1 A. No.

2 Q. A few background questions for you. What is your
3 date of birth?

4 A. 9-4-52.

5 Q. And where were you born?

6 A. Queens Village, New York.

7 Q. And where do you currently reside? What is your
8 address?

9 A. Excuse me?

10 Q. Where do you currently live? Sorry about that.

11 A. Right now?

12 Q. Uh-huh.

13 A. 4344 South Highway 41, Mullins.

14 Q. And how long have you lived there?

15 A. 17 years.

16 Q. Are you married?

17 A. Yes.

18 Q. How long have you been married for?

19 A. Ten-year anniversary and I don't even know.

20 37 years, 38 years.

21 Q. What is the name of your spouse?

22 A. Carmen Reichardt.

23 Q. Any children?

24 A. Yes.

25 Q. How many?

1 A. Three boys.

2 Q. And how old are they?

3 A. They are 30, 32 and 40.

4 Q. Now, I ask this only because of the possibility
5 of trial and jury selection in Marion County.

6 In Marion County do you have relatives over
7 the age of 18 living in the area?

8 A. Just my son, my two sons.

9 Q. They have the same last name as you do?

10 A. Yes.

11 Q. Are you a member of any community organizations
12 or do you attend church in Mullins?

13 A. No.

14 Q. What is the highest level of education you have
15 completed?

16 A. Say that again.

17 Q. Highest level of education you have completed.

18 A. High school.

19 Q. What high school did you go to?

20 A. Northport High School.

21 Q. Is that in New York?

22 A. Yes.

23 Q. What year did you graduate?

24 A. '72. I went to Suffolk University but I never
25 finished it.

Deposition of John Reichardt

1 Q. And Suffolk University is located in New York as
2 well?

3 A. Yeah, New York.

4 Q. How long did you attend school there?

5 A. Six months, and then I got drafted.

6 Q. What service were you in?

7 A. I was -- they never took me. I didn't pass the
8 physical.

9 Q. Was there a specific reason why you didn't pass
10 the physical?

11 A. No. They had -- it was at the end of the term,
12 and they had their quota for the month and they only
13 took enlisted people that wanted to enlist.

14 Q. What did you study in your six months at Suffolk
15 University?

16 A. Police science.

17 Q. Was it your intent to become a police officer?

18 A. I thought about it, yeah.

19 Q. After that six months at Suffolk, what did you do
20 after that?

21 A. Say that again.

22 Q. After that six months at Suffolk, what did you do
23 after that?

24 A. Worked for the sanitation department.

25 Q. This is still in New York, correct?

1 A. Yes.

2 Q. How long were you with the sanitation department?

3 A. 13 years.

4 Q. After that what was your next job?

5 A. I went out on my own and had my own business.

6 Q. What was your business?

7 A. Road service business, fixing trucks.

8 Q. You say road service. Do you mean like disabled
9 vehicles?

10 A. Right.

11 Q. Do you have any training in mechanics, auto
12 mechanics?

13 A. No. I went to Michelin school, that's it, the
14 tire school. I did strictly truck tires, heavy
15 equipment.

16 Q. How long did you own that business for?

17 A. 15 years.

18 Q. After you got out of that business where did you
19 go?

20 A. Moved here.

21 Q. And what brought you to South Carolina?

22 A. I got hurt. I had a tire explode in my face, and
23 the doctor told me I had to go to a warmer climate. We
24 stopped here on the way to Florida and have been here
25 ever since.

Deposition of John Reichardt

1 Q. I think that is the way it happens with a lot of
2 new South Carolina residents, actually.

3 So you moved here for a warmer climate. Did
4 you start working immediately?

5 A. No. I took a year off from work, and then fixed
6 the house the way I wanted it, and then I went and got a
7 job.

8 Q. What was your first job in South Carolina?

9 A. I was fixing tires for Sam's Club.

10 Q. And how long did you do that for?

11 A. Two weeks.

12 Q. Didn't like it very much?

13 A. No. I am not an inside person.

14 Q. After that two weeks at Sam's Club, what was your
15 next employment after that?

16 A. I went to work for the City of Marion.

17 Q. What were you doing for the City of Marion?

18 A. Working on the street department.

19 Q. And what sort of things would you do with the
20 street department?

21 A. We did everything, clean debris off the streets,
22 cut up trees. And I was there for two years.

23 Q. You got to get outside with that job at least,
24 right?

25 A. Excuse me?

1 Q. You got to get outside with that job at least,
2 right?

3 A. Yes.

4 Q. So you spent two years with the City of Marion.
5 Why did you leave that job?

6 A. I went -- from that job I went to the rock yard.
7 It was owned by Bobby Gerald, who was the mayor. He
8 took me from the street department and put me over there
9 to run that.

10 Q. You said it was a rock yard, is that correct?

11 A. Yes, Vulcan Materials.

12 Q. When you say you were hired to run that, what do
13 you mean?

14 A. I ran it, drove the train, unloaded the rail
15 cars, drove the bulldozers, loaded trucks, worked the
16 scales.

17 Q. Did you ever see any employees?

18 A. Excuse me?

19 Q. Did you ever see any employees in that position?

20 A. Yeah. They were part-time employees, Mexicans
21 and part-time employees.

22 Q. How many other employees besides yourself were
23 there?

24 A. About three or four.

25 Q. How long were you there for?

Deposition of John Reichardt

1 A. Five years.

2 Q. And what made you leave that job?

3 A. They sold out to Vulcan. Bryce Woods and Bobby
4 Gerald who owned it sold it to Vulcan, and that is when
5 I left.

6 Q. So they sold that, and what was your next job
7 after that?

8 A. I went to the street department in Mullins
9 driving -- working in the street department for Mullins.
10 And I was there approximately six months, and that is
11 when the County came and told me to come over there.
12 Then I went to the County, and I have been with the
13 County for 12 years now.

14 Q. So the County approached you directly while you
15 were working for the City?

16 A. Yes.

17 Q. And what did they approach you for?

18 A. To come drive a dump truck for them.

19 Q. And you have been doing that for 12 years?

20 A. No. I did that for five years.

21 Q. You have been employed by the City for 12 years?

22 A. County.

23 Q. County. Sorry about that. So you did that for
24 five years, and then what did you do after that?

25 A. Then the job came open for the bus driver for the

1 chain gang, and I took that job, that position, and have
2 been there ever since.

3 Q. So you are employed by the County, is that
4 correct?

5 A. Yes.

6 Q. So what year did you start driving a bus?

7 A. Excuse me?

8 Q. What year did you start driving a bus for the
9 County?

10 A. It was about six years ago, six years back.

11 Q. Since the time you spent at Suffolk College,
12 Suffolk University, have you ever obtained any licenses
13 or certifications for any of your jobs or anything like
14 that?

15 A. Say that again.

16 Q. Did you ever obtain any licenses or
17 certifications for any of the jobs you performed after
18 college?

19 A. No.

20 Q. I ask this question in every deposition, so don't
21 take it personally. Do you have any sort of criminal
22 record in the past?

23 A. No.

24 Q. Was your exclusive function with Marion County
25 driving the bus for the chain gang? Is that what you

Deposition of John Reichardt

1 said?

2 A. Right.

3 Q. And were you employed full time or part time?

4 A. Full time.

5 Q. What was your official title with the County?

6 A. It don't have no official title. It's just bus
7 driver. I take the men out and tell them what I want
8 them to do and I stand there and watch them.

9 Q. What facility do you pick up prisoners from?

10 A. Marion County Prison Farm.

11 Q. Is this five-day-a-week job?

12 A. Five days.

13 Q. What are your hours like?

14 A. From 7:30 until 4:30.

15 Q. Do you usually just take one trip per day, or do
16 you do numerous trips with the prisoners?

17 A. I go there and pick them up in the morning at
18 7:30. I take them out until 11:30 and then bring them
19 back in for dinner, and then I take them back out at
20 12:30 and then we come back in at 4:00. But if I'm too
21 far away they will bring me dinner.

22 Q. How far out do you normally go from the prison?

23 A. All over Marion County.

24 Q. What is the furthest distance you usually drive
25 to get to a site?

1 A. Excuse me?

2 Q. What is the furthest distance you usually drive
3 to get to a site?

4 A. In Marion County?

5 Q. Yes.

6 A. I never check the mileage. All the way to 378 to
7 the property line.

8 Q. How large of a bus do you drive?

9 A. I don't know how long it is. It holds about 27
10 people I have had on there.

11 Q. 27? Okay. Is that usually the amount of
12 prisoners you take out for a trip, is 27?

13 A. No, anywhere from 2 on up to 27.

14 Q. Just depends on the day?

15 A. No. It depends on their releases, when they go
16 home. And they have court every two weeks, child
17 support court, and we had it -- last weekend I got three
18 new men off that. They get 10, 20, 30 days, and if they
19 get good time they can go home. So it averages all
20 different. They have men going home every day.

21 Q. Who is your immediate supervisor?

22 A. Donald Bryant.

23 Q. And what is Mr. Bryant's official title?

24 A. He's the head of the -- well, he's third in
25 charge of Marion County.

Deposition of John Reichardt

1 Q. Third in charge?

2 A. Third.

3 Q. Who is above him?

4 A. Ken Williams and then Tim Harper.

5 Q. What is Mr. Williams' position, Ken Williams?

6 A. Assistant administrator.

7 Q. That is assistant administrator for all of Marion
8 County?

9 A. Yes.

10 Q. And then Tim Harper?

11 A. He's administrator.

12 Q. Are these officials associated with the prison
13 facility at all?

14 A. They come out there and keep a check on it, yeah.

15 Q. Are their offices located at the prison or are
16 they elsewhere?

17 A. No, off the -- in town. Donald Bryant's office
18 is on Prison Farm.

19 Q. When you take prisoners out for work during the
20 day, are you the only one there besides the prisoners?

21 A. Yes, sir.

22 Q. Are you armed?

23 A. No, sir.

24 Q. What types of criminals do you usually have?

25 A. Child support, driving under suspension, DWIs,

1 trespassing.

2 Q. Is there ever a time where another officer is
3 with you during these trips?

4 A. No.

5 Q. Do you ever spend time inside the actual prison
6 or just in and out?

7 A. I am a prison guard when somebody is sick. I
8 will go in on a Saturday or a Sunday.

9 Q. And how often would you estimate you have to do
10 that, fill in for guards?

11 A. About three or four times a year.

12 Q. When you are filling in for a guard, what type of
13 duties do you normally perform?

14 A. Making sure that they eat breakfast and lunch,
15 and nobody comes up to the camp to bring them stuff,
16 contraband.

17 Q. How large is the farm? How many prisoners are
18 there, do you know?

19 A. 48. Half of them are county boys and half of
20 them are state boys, men.

21 Q. Are there any other county employees that perform
22 the same job as you do? Any other bus drivers besides
23 yourself?

24 A. No.

25 Q. Since you have been employed with Marion County

Deposition of John Reichardt

1 have you ever received any sort of formal discipline for
2 anything?

3 A. No.

4 Q. Any complaints lodged against you by prisoners?

5 A. I never get them. If there is, I never get them.
6 They never tell me about them.

7 Q. So if we look in your personnel file, is there
8 anything you are aware of that we would find in there?

9 A. No. I don't look through their files.

10 Q. No, in your file would there be anything?

11 A. I don't have no files. I get a sheet of paper
12 with all of the men's names on it and their release
13 dates and that's it. That is all I have.

14 Q. You wouldn't have any sort of complaints,
15 disciplinary actions or anything like that against you?

16 A. Not that I know of.

17 Q. Jobs you had in the past, were you ever fired
18 from any of those jobs?

19 A. Say that again.

20 Q. Jobs you have had in the past before working for
21 Marion County, were you ever fired from any of those
22 jobs?

23 A. Fired somebody from them?

24 Q. Were you ever fired from any of those jobs?

25 A. No. I always quit.

1 Q. So the County asked you to start driving a bus,
2 is that correct?

3 A. No. They asked me to drive a dump truck.

4 Q. And then how did you move into --

5 A. After five years that job came open for the bus
6 driver and I applied for that. It was more money.

7 Q. More money?

8 A. Yes.

9 Q. Were you worried at all about driving around
10 prisoners?

11 A. No.

12 Q. Why not?

13 A. They are men just like me and you. They didn't
14 do nothing wrong.

15 Q. But they are in prison.

16 A. If you want to call it that.

17 Q. Describe what the interview process was like.

18 A. What process?

19 Q. The interview process.

20 A. Interview for what?

21 Q. Interviewing for the position you have with the
22 County, driving the bus.

23 A. I don't understand that question.

24 Q. Did you have to sit down for an interview with
25 someone?

Deposition of John Reichardt

1 A. No.

2 Q. They just hired you no questions asked?

3 A. To drive the dump truck.

4 Q. And then when you moved from the dump truck job
5 to driving a bus for the prison --

6 A. Right.

7 Q. -- did you have to sit down for an interview for
8 that?

9 A. No.

10 Q. What sort of interview process did you go through
11 when you were hired for driving the dump truck?

12 A. Be there at 7:30 tomorrow morning.

13 Q. Any sort of paperwork you had to fill out for
14 that job?

15 A. You had to fill out an application, that's all.

16 Q. I assume like any normal application it would
17 include name, address?

18 A. Yes.

19 Q. Beyond that, what else did it include?

20 A. The jobs you worked before and a little history
21 about you, you know, where you have been.

22 Q. Did they perform a background check that you know
23 of?

24 A. Not that I know of, no.

25 Q. Did they make you take any tests before you

1 started working for the County?

2 A. I had to go for a drug test.

3 Q. Just a drug test?

4 A. Yes. When we are pulled in by the computer, two
5 to three times a year we have to go.

6 Q. Any sort of written exams you had to take?

7 A. No.

8 Q. Any sort of physical exam you had to take?

9 A. No. Well, now we do. We have to go for a CDL
10 physical.

11 Q. What does CDL stand for?

12 A. Commercial driver's license.

13 Q. How often do you have to go for those?

14 A. Every two years. That all depends on the doctor
15 that you go see. If you have high blood pressure, they
16 will give you a physical for six months and then you
17 have to go back, but most of the times it's two years.

18 Q. So you passed the normal application process for
19 driving a dump truck for the County?

20 A. I passed everything.

21 Q. And you didn't have to do anything else
22 additional before you started driving the bus?

23 A. No.

24 Q. Were those two jobs different to you?

25 A. Excuse me?

Deposition of John Reichardt

1 Q. Did you consider those two jobs to be different
2 at all?

3 A. No.

4 Q. What were you normally carrying when you drove a
5 dump truck?

6 A. What do I carry?

7 Q. What were you normally carrying when you drove a
8 dump truck?

9 A. What was I normally carrying?

10 Q. Yes.

11 A. A cooler full of water. That's it.

12 Q. What were you carrying in your truck itself? I
13 mean, a dump truck obviously has --

14 A. Nothing.

15 Q. Nothing?

16 A. Not a thing. Cooler of water.

17 Q. The dump truck carries material from one place to
18 another, correct?

19 A. Yes.

20 Q. What sort of materials did you carry in the dump
21 truck?

22 A. Rocks, dirt, building materials, debris, trees.

23 Q. And the cargo is a little bit different with
24 driving a prison bus, isn't it?

25 A. Yes, sir.

1 Q. Did you feel comfortable making the transition to
2 transporting prisoners from the dump truck?

3 A. No, sir.

4 Q. You didn't feel comfortable?

5 A. I did. I am comfortable, 100 percent
6 comfortable.

7 Q. So there was no additional training they made you
8 go through before driving a prison bus?

9 A. No.

10 Q. Did they train you at all in First Aid or CPR?

11 A. We went for CPR class.

12 Q. Where did you go for CPR class?

13 A. One of the county buildings there.

14 Q. This is still in Marion County, correct?

15 A. Yes, sir.

16 Q. Did you have to complete that before you started
17 working?

18 A. No.

19 Q. When did you complete that?

20 A. We all did it -- it came up that all of the
21 county employees did it, took it.

22 Q. So if you were employed by Marion County you had
23 to know CPR?

24 A. You didn't have to, but it was put out there for
25 our own benefits.

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1 Q. So you could do it if you wanted to?

2 A. Yes, sir.

3 Q. And you chose to do it?

4 A. Yes, sir.

5 Q. When did you complete that training?

6 A. Same day I went there. It was --

7 Q. Do you remember about what year it was?

8 A. No. It was back -- I was on the dump truck at
9 that time.

10 Q. You have to renew your certification for that,
11 don't you, for CPR?

12 A. No. You are supposed to, but I never did.

13 Q. Did you just take that one class and that was
14 all?

15 A. That was it, yes, sir.

16 Q. How many years ago would you estimate that was
17 from 2010 that you completed that course?

18 A. Probably back in 2000.

19 Q. Any other courses like that that you completed
20 through the County, whether they were mandatory or just
21 like the CPR course was, you could do it if you wanted
22 to?

23 A. We all had to go to a sexual harassment class.

24 Q. Besides that, any other training programs you
25 remember going to?

1 A. No.

2 Q. Were you ever trained in how to respond to a
3 medical emergency?

4 A. No.

5 Q. Did you receive any sort of training in swimming?

6 A. No.

7 Q. Any sort of training in swimming rescue?

8 A. No.

9 Q. The County didn't have you renew your
10 certification for CPR when you started driving a prison
11 bus?

12 A. No.

13 Q. Are you familiar with the training process that
14 goes through being a correctional officer?

15 A. I am familiar with it. I read the books, but I
16 never went to --

17 Q. What books did you read?

18 A. All the -- they are training books from their
19 classes that the men went to, you know, the prison
20 guards went to when they got certified. They brought
21 the books back with them.

22 Q. You didn't have to go through any of those same
23 sort of training processes they did?

24 A. No, sir.

25 Q. What sort of books did they bring back that you

1 read?

2 A. What sort of what?

3 Q. What type of books did they bring back that you
4 read?

5 A. Books. They were like loose-leaf books with all
6 the typed out information on contraband, and what they
7 could do and what they couldn't do and --

8 Q. Were they just -- were they rules and
9 regulations?

10 A. Yeah, rules and regulations.

11 Q. And why did you read those books?

12 A. I wanted to go get certified. I wanted to be
13 a --

14 Q. You wanted to be a correctional officer?

15 A. Yes.

16 Q. Do you have any sort of plan on becoming a
17 correctional officer any time soon?

18 A. They said I don't have to.

19 Q. I'm sorry?

20 A. They said I don't have to go to school.

21 Q. What school is normally required for that, do you
22 know?

23 A. What what?

24 Q. What school is normally required for that, do you
25 know?

1 A. The school is in Columbia. I don't know the name
2 of it.

3 Q. And they told you you didn't have to go to those
4 schools to become one?

5 A. Right.

6 Q. Did they tell you why?

7 A. They said they never had -- the bus driver never
8 did it before and it ain't necessary.

9 Q. Did you feel like you needed training like that?

10 A. No.

11 Q. You are essentially supervising prisoners,
12 though. Did you feel comfortable doing that, not having
13 any training?

14 A. Say that again.

15 Q. I mean, you are essentially supervising
16 prisoners. Did you feel comfortable doing that without
17 any training?

18 A. Yes, sir.

19 Q. Even though correctional officers that do that on
20 a daily basis, just like you do, have much more training
21 than you did?

22 A. Yes.

23 Q. Did they give you any sort of instruction when
24 you began driving a prison bus?

25 A. No.

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1 Q. Was there any handbook or manual they had for you
2 to read?

3 A. No. I learned by -- the man that drove the bus
4 before me, I used to go out with him and he's the one
5 that taught me.

6 Q. What was his name?

7 A. Joe Williams. He passed away.

8 Q. How long had he been doing that job before you
9 did?

10 A. How long had he been doing that job?

11 Q. Yes.

12 A. Before I got there. I never asked him.

13 Q. And what sort of things did he teach you when
14 you-all were riding together?

15 A. He taught me not to accept stuff off the street
16 from strangers, from people, and make sure they are
17 working.

18 Q. What sort of jobs do the prisoners normally
19 perform on trips like this?

20 A. We go anywhere from picking up paper off the
21 roads to taking out beaver dams, cleaning ditches,
22 cutting up trees, cleaning off the property lines,
23 painting, moving furniture, moving schools from building
24 to building.

25 Q. And at the start of a day or start of a week, do

1 you just get a list of sites you are going to go out to?

2 A. My boss, Donald Bryant, he tells me what he wants
3 done every morning and that is what I do.

4 Q. How long did you train with Joe Williams for?

5 A. I had been there three years before he left.

6 Q. Were you driving the bus on your own during that
7 period as well?

8 A. When he was sick, I used to drive the bus.

9 Q. Then when he wasn't sick were you on the bus with
10 him?

11 A. No. I was driving a dump truck.

12 Q. So there were three years there when you were
13 driving a dump truck, and then when Joe was sick you
14 would fill in and drive the prison bus?

15 A. Yes, but I also drove the truck and followed the
16 bus to pick up the debris that they were picking up.
17 That was like once a week we did that.

18 Q. How did you start filling in for Joe initially?

19 A. Donald Bryant asked me if I could handle the bus
20 and I said yeah.

21 Q. When you started filling in, were you given any
22 sort of education at all on what you were doing?

23 A. No.

24 Q. No sort of training that went along with that?

25 A. No.

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1 Q. Were there any sort of physical standards you had
2 to meet with respect to your job? Were there any sort
3 of physical standards you had to meet in your job of
4 driving the bus?

5 A. No.

6 Q. They didn't require you to be able to lift a
7 certain amount of weight?

8 A. No, not me. But if the inmates come over and
9 they are on a whole bunch of medications, I refuse to
10 take them out and they go back to jail.

11 Q. So you have made the decision before about
12 whether prisoners were fit or not to go out with you?

13 A. Mitchell Joye (phonetic), he's the -- he's like
14 the doctor of the camp. He makes sure what the boys eat
15 and gives them their medication. And he's the one that
16 is supposed to make the decision whether the boys -- the
17 men could come with us.

18 Q. Have you been in situations before when you made
19 a decision that someone is not fit to go out with you?

20 A. Yes, sir.

21 Q. How has that come up before?

22 A. When the men come -- when the men come to me and
23 tell me they have new men in, and they will tell me that
24 he's on medication, and I will take him out the first
25 day and if I see that I'm going to have a problem I go

1 back in and tell Donald Bryant and we send him back to
2 jail.

3 Q. Any other decisions like that you make during the
4 course of a day at your job?

5 A. I make decisions of who is to handle chain saws
6 and things like that.

7 Q. So you divide up the work amongst the prisoners
8 when you are out on a job?

9 A. We all do the same thing. I just supervise them,
10 make sure it's done right. But basically they all do
11 the same thing except for the chain saw operator. He
12 has to wear special equipment.

13 Q. And when you say you supervise prisoners out on
14 the job, where are you normally when prisoners are
15 working?

16 A. Right there with them.

17 Q. And when you say right there with them, what do
18 you mean?

19 A. If we are in a ditch, I am in the ditch, on top
20 of the ditch walking back and forth.

21 Q. Making sure they are getting their work done?

22 A. Making sure they are getting their work done,
23 they don't get overheated.

24 Q. How do you ensure whether or not they are getting
25 overheated?

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1 A. The men, they come and tell me when they get hot,
2 and I will tell them to go sit on the bus or go get some
3 water.

4 Q. And there are no type of written procedures that
5 govern your conduct during these work excursions you
6 take, correct?

7 A. No.

8 Q. And you would have just learned everything you
9 know from Joe, is that correct?

10 A. Yeah, Joe, Joe and the other bus drivers that
11 retired from years ago. When we have our Christmas
12 parties and stuff like that, all the retirees come and
13 we sit down and talk.

14 Q. Before this incident that brings us here today,
15 had you ever let inmates swim before?

16 A. Yes, sir.

17 Q. How often did you let them do that?

18 A. Whenever we are by water they will ask me if they
19 can go swimming, and I will let them go swimming on
20 their break. They get a ten-minute break in the morning
21 and a ten-minute break in the afternoon.

22 Q. And do you stay on the shore when they are
23 swimming?

24 A. Excuse me?

25 Q. Do you stay on the shore normally when they are

1 swimming?

2 A. Right there with them, yes, sir.

3 Q. Right there with them. I mean, they are out in
4 the water, right?

5 A. Yes.

6 Q. And you are on the shore?

7 A. Right.

8 Q. Do you know how to swim?

9 A. No.

10 Q. Have you ever had an incident where someone tried
11 to swim away from you?

12 A. No.

13 Q. What would you do if they did?

14 A. Goodbye.

15 Q. You would let them go?

16 A. Yes, sir.

17 Q. Do you feel it's your responsibility to make sure
18 prisoners don't flee?

19 A. Nope. If they want to walk off, that's more
20 than -- I'm not going to stop them. They are facing a
21 15-year charge if they do walk off.

22 Q. Have you ever had a situation where a prisoner
23 has run off from a chain gang?

24 A. No.

25 Q. What are the procedures if you have someone leave

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1 the chain gang?

2 A. They are counted before they get put on the bus.

3 They are counted -- after we do our job and they go back
4 on the bus, they are counted, patted down.

5 Q. So it wouldn't be until after they board back on
6 the bus that you would notice someone is gone?

7 A. Well, as they are getting on the bus.

8 Q. And if you notice someone was gone, what would
9 you do?

10 A. Call my supervisor.

11 Q. You are comfortable with letting inmates swim
12 when you yourself can't swim?

13 A. Yes. They are grown men. They ask me if they
14 can swim. I ask them if they know how and they say yes.

15 Q. Would you agree that you are supervising the
16 prisoners when you are out on the chain gang trips?

17 A. Right.

18 Q. Do you feel any responsibility for ensuring their
19 safety during those trips?

20 A. I'm in danger for eight hours a day with them.
21 They are in danger if they go into ditches with
22 cottonmouths, water moccasins. Ain't no different than
23 what happened that day. If they take out beaver dams
24 they are in water over their heads. There is no
25 difference.

1 Q. You don't feel like it's careless to let inmates
2 swim when their one supervisor there can't swim himself?

3 A. No.

4 Q. Are you concerned about the safety of the
5 prisoners that you have under your care?

6 A. I look out for the men.

7 Q. What do you do to look out for them?

8 A. If they come to me and they are hot and they
9 can't work, I let them sit on the bus and cool off. I
10 have fans on the bus.

11 Q. Besides heat, what else do you do to look out for
12 them?

13 A. I let them talk to people if it's their family,
14 and take cigarettes from their family and stuff like
15 that where they are not supposed to, you know. I have
16 respect for them and they have respect for me.

17 Q. Do you consider it respectful to put them in a
18 position where they might drown when you can't swim
19 yourself?

20 A. No.

21 Q. You don't consider that respectful?

22 A. Whether they are swimming or taking out a beaver
23 dam, they are still in water over their heads. If I am
24 told to take out a beaver dam, we have to take it out.

25 Q. And there are no written procedures or anything

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1 that govern how you are supposed to conduct any sort of
2 recreational activities that you allow during --

3 A. No. I tell my boss that we went to the river
4 swimming and he said that's fine.

5 Q. Which boss are you talking about?

6 A. Donald Bryant. Everything I do, they know about
7 it. I tell them about it.

8 Q. They didn't ever ask you to become trained again
9 in CPR knowing that there are prisoners in the river?

10 A. No.

11 Q. Did they ever ask you if you can swim?

12 A. My boss?

13 Q. Yes.

14 A. No.

15 Q. When you were out with Joe, the person that
16 worked the job before you did, did he allow prisoners to
17 go out and swim any time you were with him?

18 A. Yes, sir. And I talked to the bus man before
19 Joe, who was retired, and he said he used to do the same
20 thing.

21 Q. Did any of them know how to swim?

22 A. Excuse me?

23 Q. Do you know if any of them knew how to swim?

24 A. I couldn't tell you that.

25 MR. HART: Do you mind if I take a quick

1 break? Is that all right?

2 MR. McEACHIN: Fine.

3 (A recess was taken.)

4 Q. I appreciate you letting me take a break there.
5 I was just kind of asking about the sort of training you
6 had and backgrounds.

7 Now, again, you said you weren't required to
8 take any swimming classes?

9 A. No.

10 Q. And, again, there are no physical tests that you
11 had to pass in order to supervise?

12 A. No.

13 Q. And do you remember when your boss told you that
14 it was okay to let inmates swim?

15 A. Usually it's -- every time we went swimming, when
16 I came in I would tell him and he said that's fine and
17 that would be the end of it. When I come in each day I
18 tell them what I did, how far I got and what I did,
19 where we were.

20 Q. Was this written down, or you just tell him this
21 when you walked in?

22 A. No, just -- I have to tell him how far I got.

23 Q. Were there any written reports or logs you were
24 required to keep as a part of your job?

25 A. No. He keeps a log of what we do that day, but I

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1 don't.

2 Q. So he will make a report based on what you tell
3 him?

4 A. Right. He normally comes out and checks up
5 behind me.

6 Q. Has anyone ever come out and checked up on you
7 when you are out on a site?

8 A. S.L.E.D.

9 Q. How often do they come out and check?

10 A. Once or twice a year. They would come out and do
11 a drug bust, that's all.

12 Q. Do they search the inmates?

13 A. Yes.

14 Q. Other than looking for drugs on the prisoners,
15 anything else? Is there any other purpose they serve
16 out there?

17 A. Drugs, knives, alcohol.

18 Q. Any sort of oversight or review as to how you are
19 performing your job?

20 A. No.

21 Q. Any sort of performance reviews you go through?

22 A. No.

23 Q. Ever been given any performance grades or written
24 reports on your progress on your job?

25 A. No. I tell them what we done, and he says that's

1 good and that is the end of it.

2 Q. Mr. Davis drowned in the Little Pee Dee River, is
3 that correct?

4 A. Excuse me?

5 Q. What was the river where Mr. Davis drowned?

6 A. Pee Dee River.

7 Q. And had you let inmates swim at that location
8 before?

9 A. Yes, sir. It's a swimming hole. There is a
10 swing there on a tree.

11 Q. What was the water flow like that day on the
12 river?

13 A. What was the water flow?

14 Q. Yes. I understand from an inmate standing there
15 that it looked like it was rough.

16 A. No. It was calm. It was 104 degrees out.

17 Q. Had it rained a couple of days before? Do you
18 remember?

19 A. No.

20 Q. It hadn't or you don't remember?

21 A. No, it didn't. Not that I remember, no.

22 Q. So if there was a statement from someone saying
23 it was rough that day, you think that would be
24 incorrect?

25 A. No, it was not rough, no.

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1 Q. Had you ever been out in that water yourself?

2 A. Up to my knees.

3 Q. Never any deeper than that?

4 A. No.

5 Q. What made you go out to your knees?

6 A. To cool off.

7 Q. Would you do that often?

8 A. Whenever we go down to the river or to the ponds,
9 wherever we go.

10 Q. How often would you say you went out to the Pee
11 Dee River?

12 A. How often?

13 Q. Yes.

14 A. Probably about two or three times a year.

15 Q. Two or three times a year for all the years you
16 have driven a bus?

17 A. Right.

18 Q. And you said you read some of the correctional
19 officers' manuals, is that right?

20 A. Yes, sir.

21 Q. Do you remember reading anything about how they
22 are expected to act when they are supervising prisoners?

23 A. No.

24 Q. You are never armed, like you said, is that
25 right?

1 A. No.

2 Q. Was it your understanding from those manuals that
3 they were in charge of supervising and controlling the
4 inmates that were with them?

5 A. The manuals will tell you what they can do and
6 cannot do.

7 Q. When you say they, do you mean the prisoners?

8 A. The men.

9 Q. The men, the prisoners?

10 A. Right.

11 Q. So you never completed any of the training
12 required for being an actual correctional officer, is
13 that right?

14 A. No.

15 Q. But they had you fill in as a correctional
16 officer?

17 A. Yes.

18 Q. Did you feel comfortable acting as a correctional
19 officer when you hadn't been through any of the
20 training?

21 A. Yes, I was comfortable.

22 Q. Are you aware of the sort of training that
23 correctional officers have to go through to become a
24 correctional officer?

25 A. Right.

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1 Q. They have to be certified in CPR, is that right?

2 A. That I don't know.

3 Q. You are not aware of any of those qualifications?

4 A. No.

5 Q. So, to your knowledge, you could have not met the
6 qualifications for being a correctional officer but you
7 filled in as one?

8 A. No.

9 Q. Were there other employees that you know of with
10 the County that did the same sort of thing you did, sort
11 of floated between jobs and filled in when they needed
12 to be?

13 A. When I didn't take the bus out, other truck
14 drivers took the bus out and did the same thing I did.

15 Q. They had the same sort of training that you did
16 before you started that job?

17 A. Same as me.

18 Q. Do you think the inmates understood that you were
19 in charge of them when they were out on a job, is that
20 right?

21 A. They know I'm in charge of them.

22 Q. Any procedures for disciplining an inmate if they
23 were not up to your normal standards?

24 A. I put them on restriction.

25 Q. What do you do when you put them on restriction?

1 A. I carry a little book and I will write their name
2 down, and on the weekends they don't get no visit, no
3 canteen, no using the phone, no TV.

4 Q. You are more or the less the leader of a job when
5 you are out there, right?

6 A. Right.

7 Q. So you will give them instructions or orders of
8 what to do?

9 A. Right. And if they don't work, I will call the
10 office and they will come out and get them and bring
11 them back to jail.

12 Q. So if someone is not complying with what you are
13 ordering them to do, then they will be taken back to
14 jail?

15 A. Right. They lose their good time.

16 Q. Lose their good time, you said?

17 A. Yes, sir.

18 Q. What do you mean by good time?

19 A. If the judge gives them 90 days, they come out
20 and work for me and they do 60 days and then go home.

21 Q. So there are certainly consequences -- you agree
22 that there are certain consequences to not complying
23 with an order you give?

24 A. Right. I don't give them something to do that I
25 won't do.

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1 Q. Before you started your job with Marion County,
2 you obviously never had any experience with inmates or
3 prisoners before?

4 A. No.

5 Q. Before June 15th, the day that Mr. Davis drowned,
6 had you met him before that day?

7 A. Yes. I had him on the bus before, yes.

8 Q. How often did you have him on the bus before
9 that?

10 A. I don't keep track of that.

11 Q. You just know you met him before?

12 A. Right.

13 Q. Had he complied with all of the work requirements
14 before that?

15 A. Never had no problems with him.

16 Q. Never had to write his name down or send him back
17 to prison?

18 A. No, sir.

19 Q. Do you recall what the weather was like that day
20 on June 15th?

21 A. 104 degrees and sunny.

22 What time did you start work that day?

23 A. Same time every day, 7:30.

24 Q. Are you aware of any heat restrictions on inmates
25 working outside?

1 A. I give them salt tablets and that's it. The boss
2 says if you have to give them more than one break, give
3 them more than one break, and that's the way it is.

4 Q. Are you aware of any procedural guidelines that
5 dictate when inmates can be out in hot weather like that
6 and when they can't?

7 A. No.

8 Q. Were you ever provided with any sort of
9 instructional guidelines or written manuals by your
10 supervisors at all?

11 A. No.

12 Q. More or less all of your training comes from
13 verbal communications with other people, is that
14 correct?

15 A. My boss will take me out and show me what he
16 wants done. I go back and get the bus and the men and
17 go do it.

18 Q. You say you go out there with your boss. Would
19 that be before a job is done?

20 A. Before a job is done, yes.

21 Q. Do you go and visit the site of the job before --
22 with your boss before the job gets done?

23 A. No. He will come and check it after I have done
24 it to make sure it was done right.

25 Q. Does he go out there with you to the site before

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1 the job is done?

2 A. He will come out on the job while we are working.

3 Q. So he will periodically check up on you then?

4 A. Yes, sir.

5 Q. So work started at 7:30 that day, right?

6 A. Right.

7 Q. And where was the job site that day?

8 A. That day it was a hot day, and he told me, being
9 that it was so hot, just to pick up paper off the sides
10 of the roads, and that is what we did all day.

11 Q. What locations did you go to?

12 A. We started at Ellis Crossroads.

13 Q. What crossroads was that again? I'm sorry.

14 A. Ellis Crossroads and only worked to Pee Dee
15 River.

16 Q. How many prisoners were you supervising that day?

17 A. Seven or eight.

18 Q. So the bus certainly wasn't up to capacity that
19 day?

20 A. I don't understand that.

21 Q. The bus wasn't full that day?

22 A. No.

23 Q. There were no other officers with you that day?

24 A. No.

25 Q. Did your boss come out and check on you at all

1 that day?

2 A. No.

3 Q. So work started at 7:30, and you said you
4 normally take a break in the middle of the day, right?

5 A. We take a break at 9:30, quarter to ten.

6 Q. Do you recall when you took the break that day?

7 A. At that time.

8 Q. Somewhere in between that time?

9 A. Yes, sir.

10 Q. You don't recall specifically when?

11 A. No.

12 Q. When you took a break that day, where did you go?

13 A. We stayed right there on the job site. We don't
14 go nowhere.

15 Q. What do you and the prisoners do on breaks?

16 A. Sit around, drink water, talk, joke.

17 Q. Do you recall speaking to Mr. Davis that day
18 before he drowned?

19 A. Oh, yeah.

20 Q. What did you-all talk about.

21 A. Just talked, nothing specific.

22 Q. Do you remember in particular what?

23 A. No.

24 Q. How long does that break last around 9:30 or
25 10:00?

Deposition of John Reichardt

1 A. 10, 15 minutes.

2 Q. So you would have taken a break sometime between
3 9:30 and 10:00 for 15 minutes, and then work started up
4 again after that?

5 A. Then we work until 11:30, and then we load up and
6 go back to the camp for dinner.

7 Q. You think you followed that same procedure that
8 day?

9 A. Yes.

10 Q. So you worked up until about 11:30 and did you go
11 back to the camp?

12 A. Yes, sir.

13 Q. How far of a drive was it from the location you
14 were at back to the camp?

15 A. Probably about ten miles.

16 Q. And how long does lunch last?

17 A. 25 minutes.

18 Q. And what spot did you return to after?

19 A. Went back to the same spot.

20 Q. And when did work continue to that day?

21 A. Just picking up paper going to the Pee Dee River.

22 Q. What time did you stop working that day?

23 A. Approximately somewhere between 2:00 and 3:00.

24 We ended up at Pee Dee River.

25 Q. At that time was work completed for the day or

1 were you on a break?

2 A. No, we were on a break.

3 Q. Was this the one afternoon break you take?

4 A. Right, the afternoon break.

5 Q. Did you have to drive the prisoners to Pee Dee
6 River or is that where they ended up?

7 A. That is where we ended up. When we pick up
8 paper, I stay behind them in the bus with the flashers
9 going so no cars get close to them.

10 Q. So you ended up at the Pee Dee River, and that
11 was just on the afternoon break?

12 A. Right.

13 Q. Did you have any life preservers in the van?

14 A. No.

15 Q. Life jackets?

16 A. No.

17 Q. Any sort of devices to rescue someone from the
18 water if they were caught out there alone and couldn't
19 swim?

20 A. No, but I have a 20-foot long pull rake, they
21 call it, for taking out beaver dams, and we tried to
22 save Ronnie with that and we couldn't reach him.

23 Q. And that is a piece of work equipment, right?

24 A. Yes, sir.

25 Q. This is for beaver dams, you said?

Deposition of John Reichardt

1 A. Pulling out beaver dams. It's called a pull
2 rake.

3 Q. To your knowledge, there was no one on the bus
4 that day trained in CPR?

5 A. No.

6 Q. No one trained in First Aid?

7 A. No.

8 Q. Any sort of First Aid equipment that is on the
9 bus with you.

10 A. I have a First Aid kit. That's it.

11 Q. What is in your First Aid kit?

12 A. Nothing.

13 Q. Nothing?

14 A. Band-Aids. Nothing for -- just Band-Aids and
15 gauze pads and tape and alcohol pads, that's it.

16 Q. Just things to treat a cut maybe?

17 A. Yes.

18 Q. Would you agree that it's careless to go out on
19 the bus away from the prison like that with people under
20 your control without any sort of medical equipment with
21 you?

22 A. No.

23 Q. Not in 104-degree heat even?

24 A. No. I have 30 gallons of ice water on the bus.

25 Q. So you end up at the Pee Dee River. What happens.

1 from there?

2 A. We picked up paper. We picked up all the trash
3 around the dock there, the boat ramp. And I said, we
4 will take our break while we are here, and they said,
5 okay.

6 And they asked if they could go swimming,
7 and I asked them if they knew how to go swimming -- did
8 they know how to swim, and they said yeah. They took
9 off their boots and their socks and jumped in, three or
10 four of them. They just jumped in, came back to where I
11 was standing, jumped back in again, and that is when
12 trouble started.

13 Q. When you say trouble started, what do you mean?

14 A. When Ronnie Davis couldn't get out, couldn't get
15 back. His cousin jumped in to get him and he couldn't
16 hold on to him.

17 Then Ronnie -- his cousin ended up having an
18 asthma attack. We had to pull him in with the man that
19 was fishing there with the fishing line or else he would
20 have drowned, too.

21 And another white man that was with me, he
22 jumped in and he couldn't do anything. Ronnie Davis was
23 just fighting everybody.

24 Q. What other inmates were with you on the bus that
25 day?

Deposition of John Reichardt

1 A. I don't have their names.

2 Q. You said the cousin of Ronnie Davis?

3 A. Right.

4 Q. How do you know it was his cousin?

5 A. Just knew it was his cousin. Everybody is
6 related out there.

7 Q. Did you accompany the men down to the shore
8 there?

9 A. Excuse me?

10 Q. Did you accompany the men down to the shore, the
11 water?

12 A. They didn't go to the store.

13 Q. The shore.

14 A. The shore?

15 Q. Yes.

16 A. Oh, the shore. Yes, I was standing in the water.

17 Q. And did you lead them down there? Were you in
18 front?

19 A. No.

20 Q. Where were you when you were walking down?

21 A. Just all walking. I was probably in the middle
22 of them. Some of them were in front of me and some were
23 behind me. The ones that couldn't swim were behind me.
24 They were standing right on the side of me.

25 Q. How did you make the transition from being up on

1 the road to walking down to the shore? Who was the
2 first one that said something about swimming?

3 A. Probably Ronnie Davis.

4 Q. You remember that?

5 A. He was probably the first one to ask me if he
6 could go swimming.

7 Q. You remember that he asked?

8 A. Yeah. He told me he knew how to swim, he was a
9 good swimmer.

10 Q. Describe that conversation for me, how that
11 started.

12 A. He just -- when we got to the river he asked me
13 if he could go swimming and that was the end of it.

14 Q. At what point do you think he said I'm a good
15 swimmer?

16 A. I said, are you sure you know how to swim, and he
17 said, yeah.

18 Q. And where was he when this conversation took
19 place?

20 A. Standing right on the side of me.

21 Q. Do you remember -- what location were you at?
22 Were you down by the water already?

23 A. Standing right by the water.

24 Q. So you think Ronnie was the first person to ask
25 to go swimming?

1 A. Yeah.

2 Q. And you specifically remember him saying that,
3 being the first one, or you are not sure?

4 A. No, I don't remember that, if he was the first
5 one, but I remember him asking me.

6 Q. So all the men walk down to the shore?

7 A. Everybody was all together.

8 Q. How big is the shore area there by the river?

9 A. Probably about -- where we were, the area was
10 probably about 100 feet wide.

11 Q. So someone suggested you go swimming. You don't
12 remember who it was?

13 A. No.

14 Q. And so you walk down there. And do you allow the
15 men to undress whenever they get in the water?

16 A. No. They take off their shoes and socks, that's
17 it.

18 Q. That's it?

19 A. Well, their shirts. They will take their shirts
20 off, but the pants have to stay on them.

21 Q. Is that a requirement?

22 A. I ain't going to let anybody walk around in their
23 underwear.

24 Q. Is that just for -- because you don't want men
25 walking around in their underwear, or is there some

1 other reason you don't want their pants off?

2 A. No.

3 Q. Have you ever known how to swim?

4 A. Yeah.

5 Q. What leads you not to be able to swim now or swim
6 at the time when this happened?

7 A. I am over 300 pounds.

8 Q. You just lose the ability after awhile?

9 A. Right.

10 Q. You said a group of men jumped in first and then
11 came back out, is that right?

12 A. Yes.

13 Q. What do you mean by that? What did they do?

14 A. They jumped in the water, and swam out there and
15 turned around and came back and then did it again.

16 Q. How many men did that?

17 A. Four.

18 Q. And how far out did they swim the first time they
19 swam out there?

20 A. About 50 feet.

21 Q. How wide would you estimate the river to be?

22 A. 300 feet, 400 feet.

23 Q. And you say you have never been out past your
24 knees in that river?

25 A. Excuse me?

1 Q. You have never gone out past your knees in going
2 out?

3 A. Right.

4 Q. Any sort of rocks in the middle of the river or
5 anything like that?

6 A. No. Where we were it was sand. It was a
7 sandbar.

8 Q. There is a sandbar on the side, is that right?

9 A. As far as I know. As far as I could see it was
10 sand.

11 Q. So four men swam out about 50 feet and came back.
12 Did they get out of the water completely?

13 A. Excuse me?

14 Q. Did they get out of the water completely when
15 they came back?

16 A. No.

17 Q. How deep were they in when they came back?

18 A. About up to their knees.

19 Q. And was Ronnie one of the first ones that went
20 out there?

21 A. Yeah.

22 Q. So Ronnie was one of the first ones to swim out
23 there and then swim back?

24 A. Right.

25 Q. And they came back up to about their knees and

1 then went back out?

2 A. Yes.

3 Q. Now, do you usually have to give them permission
4 to go swimming?

5 A. Never told them to go swimming. I never told
6 them they couldn't go swimming.

7 Q. Do you remember saying -- what did you say that
8 allowed them to go swimming?

9 A. I asked them if they knew how to swim and they
10 said yes, and that was the end of it.

11 Q. Was everyone within earshot when you said that?

12 A. Everybody was there together.

13 Q. Were you addressing them as a whole?

14 A. I was addressing everybody at one time.

15 Q. How did that conversation go?

16 A. Some of them jumped right in the water, and the
17 ones that didn't just sat on the dock and walked around.
18 That's it.

19 Q. But how did the conversation go where you asked
20 them all if they could swim?

21 A. What do you mean how did it go?

22 Q. Did you address them as a whole and say --

23 A. They asked me if they could go swimming. I said,
24 do you know how to swim, and they said, yeah, and that
25 was the end of it.

Deposition of John Reichardt

1 Q. Everyone said yes?

2 A. The ones that did know how to swim said yes. The
3 ones that didn't said they didn't and sat on the dock.

4 Q. Do you remember individual people saying yes to
5 that question?

6 A. I don't know nobody's names.

7 Q. So you are not sure who said yes and who didn't?

8 A. No. The ones that said yes went swimming, and it
9 was four of them.

10 Q. You are sure? Because the guys are standing in a
11 group here, and some said yes to that question and
12 some -- did they say no or they didn't answer?

13 A. The ones that did went swimming, and the ones
14 that didn't went about their way.

15 Q. Are you just assuming they said yes because they
16 went swimming, or do you actually remember them saying
17 yes?

18 A. I don't understand what you are getting at.

19 Q. I am asking if you specifically remember each
20 individual person saying yes to that question, or are
21 you just assuming that they said yes because they went
22 swimming?

23 A. I asked them if they knew how to swim and they
24 said yes. And the ones that said yes jumped in the
25 water. The ones that didn't didn't go in the water. Do

1 you understand that?

2 Q. Sir, I am just trying --

3 A. I don't understand what you are getting at.

4 Q. You remember the men that said yes then?

5 A. The ones that went swimming.

6 Q. But you don't know their names?

7 A. Ronnie Davis, Brown, one boy named Brown, and I
8 don't know the other man's name.

9 Q. I thought you -- you said before you didn't know
10 the name of the cousin?

11 A. That is Brown.

12 Q. Brown is his name?

13 A. Right.

14 Q. Do you remember the names of any other inmates
15 now?

16 A. I have had enough.

17 MR. MCEACHIN: Well, you have to answer the
18 questions. If you know the names of any others --

19 THE WITNESS: No, I don't know their names.

20 MR. MCEACHIN: -- tell him. If you don't,
21 tell him you don't.

22 A. I don't know their names.

23 Q. So the only names you know are Brown and then
24 Ronnie Earl Davis?

25 A. Ronnie Davis.

Deposition of John Reichardt

1 Q. Do you think they both said yes when you asked?

2 A. Yes.

3 Q. Do you think all the men could hear the question
4 when you asked that?

5 MR. McEACHIN: That has been asked and
6 answered multiple times.

7 Q. You still have to answer.

8 A. What is that?

9 Q. You still have to answer.

10 MR. McEACHIN: I think he has answered. I
11 don't think he needs to answer again. If you want to
12 get a judge to rule on that, we can do that.

13 Q. So they came back in to their knees and went back
14 out. How far out did they go that second time?

15 A. About 50 feet.

16 Q. So about the same place they went to before?

17 A. Yes, sir.

18 Q. And when did you first notice Ronnie was having
19 problems out there?

20 A. I don't know.

21 Q. How did you become aware that something was wrong
22 out in the water?

23 A. When one of the other boys said that the man is
24 in trouble.

25 Q. And the person that said that there was a man in

1 trouble, was he out in the water or was he on the shore?

2 A. He was in the water about knee high.

3 Q. Was he one of the group of four that went out?

4 A. Right.

5 Q. So he had come back already onto the shore?

6 A. Yes.

7 Q. Where were you the second time they went out?

8 A. Same place I was the first time.

9 Q. And where were you looking when they went back
10 out?

11 A. Just looking at all the men swimming.

12 Q. Did you notice there was a problem in the water?

13 A. When they told me.

14 Q. Before you were told, did you notice anything was
15 wrong?

16 A. No.

17 Q. How far away were you from the person who was up
18 to their knees?

19 A. About 10, 15 feet.

20 Q. And do you know what tipped them off that
21 something was wrong?

22 A. No.

23 Q. So once you were told that something was wrong,
24 what did you notice out in the water?

25 A. I seen Ronnie waving his arms.

1 Q. What parts of his body could you see at that
2 time?

3 A. I seen Ronnie waving his arms.

4 Q. So you just saw his arms and that was all?

5 A. Yeah.

6 Q. After you saw Mr. Davis' arms in the water, what
7 did you do?

8 A. His cousin jumped in and tried to help him.

9 Q. What actions did you take after you noticed --

10 A. I went down to where I was closer to him, and
11 Ronnie's cousin swam back and said he couldn't -- that
12 is when he started with the asthma.

13 Q. Did you call for help when you realized that he
14 was in trouble?

15 A. What is that?

16 Q. Did you call for help when you realized he was in
17 trouble?

18 A. Did who call for help?

19 Q. Did you call for help when you realized he was in
20 trouble in the water?

21 A. Call who? I don't know what you are saying.

22 Q. Did you take any immediate --

23 A. I tried to help the man that was in the water. I
24 didn't call for help, no.

25 Q. How did you try to help the man that was in the

1 water?

2 A. I tried to get him with that pull rake, like I
3 said before.

4 Q. So his cousin went out and tried to save him and
5 swam back to the shore?

6 A. Right.

7 Q. And by the time that his cousin swam back to the
8 shore, could you still see him out in the water?

9 A. Yeah.

10 Q. What could you see of him out in the water after
11 the cousin swam back?

12 A. His arms.

13 Q. And when you first noticed that something was
14 wrong out there, when you first saw his arms to when his
15 cousin had swam back to the shore, how much time had
16 elapsed do you think?

17 A. I don't know.

18 Q. Did it look like he was still alive at that
19 point?

20 A. Yes.

21 Q. Did you see his arms still moving in the water?
22 What did you do after that, after the cousin had gotten
23 back to the shore?

24 A. We tried to reach him with that pull rake and we
25 couldn't, and then the cousin went back in again to get

Deposition of John Reichardt

1 him, and that is when he had the complete asthma attack
2 and I had to get him with the fishing line.

3 Q. Where was the pull rake?

4 A. What do you mean where was it? Where did I get
5 it from?

6 Q. Yes.

7 A. One of the men took it off the bus.

8 Q. How far away was the bus parked?

9 A. 100 feet, 150 feet.

10 Q. The guys that walked down to the shore initially,
11 how long did it take you to walk down there?

12 A. From where the bus was parked?

13 Q. Yes.

14 A. A minute.

15 Q. Do you think it took the man about the same
16 amount time to get back there and get the rake and come
17 back down?

18 A. It probably took him about five minutes.

19 Q. And he would have gotten that after noticing
20 something was wrong out in the water?

21 A. When I knew we couldn't get him.

22 Q. By the time the rake came down, was he still
23 alive? Could you still see his arms moving out in the
24 water?

25 A. I couldn't tell you that.

1 Q. You stated earlier that the cousin came back out
2 of the water after trying to save him and you could
3 still see the arms in the water?

4 A. Yes, at that time. The second time, no.

5 Q. Before you said it was after the first time you
6 tried to fish him out with the rake. Was that not
7 correct?

8 A. After I tried to reach him with the rake, I
9 couldn't, and that was -- that is when the cousin jumped
10 back in to try to get him, and then that is when I paid
11 more attention to saving his cousin.

12 Q. Now, the first time you tried to fish him out
13 with the rake, the first time the cousin swam back in,
14 did you still see his arms moving?

15 A. I couldn't tell you that.

16 Q. Did you still see his arm moving?

17 A. I ain't answering that.

18 Q. You don't remember if you saw any part of his
19 body still in the water the first time you were trying
20 to fish him out? Are you simply refusing to answer?

21 A. I ain't answering that. I answered it twice
22 already, the same question.

23 MR. McEACHIN: If you know the answer, give
24 it one more time and we will move on.

25 A. What was it?

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1 Q. The first time you tried to fish him out with the
2 rake, that was the first time that the cousin had come
3 back on the shore, you said?

4 A. The first time I seen his arms.

5 Q. How close were you to his arms with the rake?

6 A. 50 feet.

7 Q. So it wasn't really close to reaching him?

8 A. No.

9 Q. It was after you were unsuccessful with the rake
10 that his cousin jumped back in, is that right?

11 A. Right.

12 Q. And how long was his cousin out there a second
13 time?

14 A. I couldn't tell you that either. I don't know.

15 Q. You say his cousin began having an asthma attack.
16 Was he still out in the water when he started to have
17 asthma?

18 A. Right.

19 Q. What happened after that?

20 A. He couldn't get back. That is when I grabbed the
21 man's fishing line and ran towards where he was so he
22 could grab the fishing line and I pulled him in.

23 Q. Do you remember who it was that had the fishing
24 line?

25 A. No.

1 Q. And his cousin got to shore all right?

2 A. Well, with the fishing line, yeah.

3 Q. At that point that you fished the cousin out with
4 the line, could you still see Mr. Davis' body out in the
5 water?

6 A. No.

7 Q. Do you know how much time elapsed from when you
8 first noticed there was a problem to when his cousin was
9 first fished out?

10 A. No. I didn't keep track of no time.

11 Q. After the cousin was fished out, what did you do
12 next?

13 A. We brought him up to the bus. I called my boss.
14 My boss called 911.

15 Q. Did your boss tell you to take any action in the
16 meantime until 911, the paramedics, got there?

17 A. Say that again.

18 Q. Did your boss tell you to take any action in the
19 meantime until anyone got there?

20 A. No.

21 Q. Did he advise you to do anything?

22 A. He came down there.

23 Q. Whenever you called, did he tell you to do
24 anything at that time?

25 A. No.

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1 Q. Who was the first to arrive on the scene?

2 A. Marion County Rescue Squad.

3 Q. When you were waiting for someone to arrive,
4 where did you stay?

5 A. Right there on the shore.

6 Q. Were the prisoners right there with you?

7 A. Yes, sir.

8 Q. How long did you stay around the scene?

9 A. Until my boss got there and Tim Harper, and Tim
10 told me to take the inmates in.

11 Q. By the time you took the inmates in had they
12 found Ronnie yet?

13 A. No.

14 Q. Do you remember what time you took the inmates
15 back?

16 A. No.

17 Q. Did you have to write any sort of report or
18 statement after the incident happened?

19 A. Say that again.

20 Q. Did you have to give any report or statement
21 after the incident happened?

22 A. I had to give a deputy a statement of what
23 happened.

24 Q. A deputy statement?

25 A. I gave the statement to the deputy and then he

1 gave it to the DNR man. I had to give a statement to
2 them at 5:00.

3 Q. What do you remember telling them about the
4 incident?

5 A. What is that?

6 Q. What do you remember telling them about the
7 incident?

8 A. Exactly what happened.

9 Q. Did you receive any sort of discipline for the
10 action that happened out there?

11 A. No.

12 Q. Were you allowed to go back and drive the bus
13 after that?

14 A. Yes.

15 Q. Did you go back to work that next day?

16 A. Yes.

17 Q. Did you have any sort of plan about what you
18 would do if this sort of situation arose?

19 A. No.

20 Q. Do you feel like it was your duty to have a plan
21 if something like that ever happened again?

22 A. It won't happen again, no.

23 Q. Why do you say it won't happen again?

24 A. They ain't going in the water again.

25 Q. Do you feel like it was a breach of your duty

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1 supervising prisoners to let them swim or --

2 A. What is that?

3 Q. Do you feel like it was a breach of your duty as
4 a supervisor of the prisoners letting them swim when you
5 didn't know if they could swim or not?

6 MR. McEACHIN: Objection. Compound. That
7 was two questions. Ask him one.

8 Q. Do you feel like it was a breach of your duty to
9 let the prisoners swim?

10 THE WITNESS: I don't know what he's getting
11 at.

12 MR. McEACHIN: If you know the answer, give
13 him an answer. If you don't understand it, tell him.

14 A. I don't understand.

15 Q. You felt Mr. Davis was safe going out swimming?

16 A. Yes.

17 Q. And you were the supervisor of Mr. Davis that
18 day?

19 A. Yes.

20 Q. And you couldn't swim and save him if he needed
21 to be saved?

22 A. No.

23 Q. Do you feel like the County was careless in
24 allowing you to supervise prisoners like that when you,
25 yourself, couldn't rescue him? _____

1 A. No. They were doing it before then, and it will
2 keep on being that way right on.

3 Q. Even though you said you wouldn't allow prisoners
4 to swim again?

5 A. That is me.

6 Q. Do you feel like people in your position should
7 know how to swim if they are letting prisoners swim?

8 A. I answered that.

9 Q. When you noticed Mr. Davis was drowning in the
10 water did you instruct anyone to take any action?

11 A. His cousin.

12 Q. What did you tell him?

13 A. Go help your cousin.

14 Q. Is that the first time he went out or the second?
15 You said the cousin went out twice.

16 A. Yes, the first time.

17 Q. And did you give anyone else any orders, anything
18 else to do?

19 A. Say that again.

20 Q. Did you give anyone else any orders or anything
21 to do?

22 A. There was another white man there. I told him to
23 see if he could help him, and he went out there and he
24 couldn't help him.

25 Q. You said you had spoken to Mr. Davis just a

Deposition of John Reichardt

1 little bit?

2 A. Right.

3 Q. And you had spoken with him on a couple of
4 occasions before that day?

5 A. Uh-huh.

6 Q. Do you know why he was in custody?

7 A. No.

8 Q. Do you remember anything about his performance on
9 the job that day?

10 A. It was good.

11 Q. 104 degrees, was that the high that day?

12 A. Right.

13 MR. HART: If you don't mind, I want to take
14 a quick break and go to the bathroom again.

15 MR. McEACHIN: That's fine.

16 (A recess was taken.)

17 Q. Do you remember making a statement to the
18 Department of Natural Resources on the day of the
19 incident?

20 A. Right.

21 Q. And do you remember telling them that Mr. Davis
22 said that he could swim?

23 A. Yes.

24 Q. I am going to show you a document from the
25 Department of Natural Resources. —

1 MR. HART: Can we mark this as Exhibit 1,
2 please?

3 (Plaintiff's Exhibit No. 1 was marked for
4 identification.)

5 Q. Did you hand write this statement?

6 A. Yes.

7 Q. Feel free to take a second to look it over,
8 however long you need.

9 A. All right.

10 Q. Do you say anything in there about Mr. Davis
11 saying he knew how to swim?

12 A. No.

13 Q. Is there a reason why you didn't include that in
14 your statement that day if that is what happened?

15 A. No.

16 Q. Now --

17 A. What happened on the statement, they didn't ask
18 me if the man knew how to swim. You put down what they
19 told me to put down.

20 Q. Who told you to --

21 A. DNR.

22 Q. What did they tell you to put down?

23 A. What I wrote down. They didn't ask me if I had a
24 conversation with the boss.

25 Q. You say in here that they asked you if they could

1 go in.

2 So you admit that you include conversations you
3 had with some of the inmates that day?

4 A. Right.

5 Q. Why would you not include a statement from Mr.
6 Davis?

7 A. I didn't pinpoint anybody. Why would I pinpoint
8 him?

9 Q. Because he had drowned that day. I would
10 assume --

11 A. So why would I pinpoint him?

12 Q. I assume --

13 A. When I talked to the men I talked to them in a
14 group. I don't talk to an individual.

15 Q. Did anyone in the group say that they couldn't
16 swim?

17 A. I answered that already.

18 MR. McEACHIN: He has answered that multiple
19 times.

20 Q. So you were in a group then when Mr. Davis said
21 that?

22 A. Right. We were all together.

23 Q. You chose not to include his response in your
24 statement to DNR that day?

25 A. No.

1 Q. You said that taking an inmate swimming is a
2 normal occurrence, right?

3 A. Right.

4 Q. Do you always ask if they can swim before you let
5 them go in?

6 A. Yes.

7 Q. And why do you always ask that?

8 A. Because I wouldn't let them go in the water if
9 they didn't know how to swim.

10 Q. Do you ever let them know you can't swim
11 yourself?

12 A. No.

13 Q. Do you feel like that is something that they
14 would need to know if they needed to be rescued?

15 A. I don't have an answer for that. They are grown
16 men.

17 Q. So you don't feel it's your responsibility as a
18 supervisor to save their life if need be?

19 A. No. I'm not required for that.

20 Q. Do you recall Mr. Davis swimming before the
21 incident on June 15th?

22 A. Have I ever took him swimming before that?

23 Q. Yes.

24 A. No.

25 Q. Do you recall where you had worked previously

Deposition of John Reichardt

1 with Mr. Davis, what sites you had worked on?

2 A. Say that again.

3 Q. Do you recall what sites you had worked on with
4 Mr. Davis before June 15th?

5 A. I don't understand what you are saying.

6 Q. He had been on your bus before, is that right?

7 A. Yes.

8 Q. Do you recall where you went on those trips?

9 A. No.

10 Q. But neither involved --

11 A. I don't keep track where I go.

12 Q. None of them involved swimming?

13 A. No, unless we have to take out a beaver dam. And
14 the boys that don't know how to swim don't go in, and
15 the boys that do go in, and he had been in. He had done
16 that before.

17 Q. He had been doing beaver dam work before?

18 A. Yes, sir.

19 Q. And doing beaver dam work, are you required to
20 get anywhere where you can't stand in the water?

21 A. When the beaver dam breaks and the water comes
22 out of the pipe it will blow you away, blow you into the
23 water.

24 Q. And do you recall Mr. Davis doing this?

25 A. Excuse me?

1 Q. Do you recall Mr. Davis doing this?

2 A. He was in the beaver dams with me, yes.

3 Q. Do you recall seeing him swim?

4 A. No.

5 Q. You said you have general permission from your
6 boss to let people swim in the river, is that correct?

7 A. No, that is not correct.

8 Q. What is incorrect about that?

9 A. He never gave me permission to let them swim.
10 After we went swimming, I told him we went swimming and
11 he would say that is fine.

12 Q. But you understood that letting prisoners swim is
13 okay?

14 A. What?

15 Q. You understood letting prisoners swim is okay,
16 though?

17 A. That is the way I understood it.

18 Q. Had your boss told you specifically it was okay?

19 A. At the end of the day when I came in and told him
20 that, yes.

21 Q. So he specifically said it's okay for you to let
22 prisoners swim?

23 A. I answered that already.

24 Q. I am just asking if there was a verbal response.

25 A. I told you. I gave that to you already. I told

Deposition of John Reichardt

1 you when we come in I told him we went swimming and he
2 said that's all right.

3 Q. And you were aware on the day of the incident
4 that drowning is a risk of swimming, correct?

5 A. Right. You can drown in the bathtub, too.

6 Q. That is true. Did you ever receive specific
7 permission to let Mr. Davis swim?

8 A. I never got any permission for them to swim.
9 They asked if they could go swimming, and I asked them
10 if they knew how to swim, and they said yes and they
11 jumped in the water.

12 Q. You don't think letting them do it is permission
13 on your end?

14 A. Yes. It's permission from me, yes.

15 Q. You had never been given specific permission from
16 your boss to let Mr. Davis as an individual swim before?

17 A. I can't answer that. I answered that already.

18 Q. I did not ask that question before.

19 A. That is the same question as before. You just
20 put it in different words.

21 MR. McEACHIN: Give it your best shot. We
22 have been here --

23 A. No, my boss didn't give me permission to swim.

24 Q. That is all I was asking.

25 You said that the first time you noticed Mr.

1 Davis was having problems is when someone said something
2 was wrong in the water?

3 A. Yes.

4 Q. Did you not notice Mr. Davis before that?

5 A. No.

6 Q. Were all the prisoners that were swimming in the
7 water swimming in the same area or were they spread out?

8 A. They were all in the same area.

9 Q. And you said you were watching them as they were
10 swimming, right?

11 A. Yes.

12 Q. Did you notice anything out of the ordinary with
13 anything that was happening with Mr. Davis?

14 A. No.

15 Q. Did you see his head out of the water?

16 A. I thought they were horseplaying, that's all.

17 Q. How were they horseplaying in the water?

18 A. Jumping in the water and having a good time,
19 that's all.

20 Q. Were they in contact with one another?

21 A. What do you mean?

22 Q. Were the prisoners touching each other?

23 A. No.

24 Q. So they were in a smaller group, not spread out?

25 A. Right.

Deposition of John Reichardt

1 Q. And the first time you noticed Mr. Davis he
2 had -- you could just see his arms out of the water and
3 that is all?

4 A. Right.

5 Q. You didn't notice that before, it was just his
6 arms?

7 A. No.

8 Q. Were you aware of how deep the water was out
9 there?

10 A. No.

11 Q. Did you consider going out into the water
12 yourself and trying to rescue him?

13 A. No.

14 Q. Why not?

15 A. Because I don't know how to swim.

16 Q. So Mr. Davis was within your sight at all
17 times --

18 A. Yes.

19 Q. -- after he got in the water?

20 You stated earlier that the prisoners that
21 weren't swimming were behind you?

22 A. Right, sitting on the dock behind me.

23 Q. Is it normal procedure to let inmates out of your
24 sight supervising them on a job like this?

25 A. What do you mean out of my sight

1 Q. Do you try to keep track of where the inmates are
2 on the job?

3 A. Right.

4 Q. And do you try to keep them within sight?

5 A. Right.

6 Q. But these inmates were obviously behind you?

7 A. Right.

8 Q. Were you concerned at all that they were going to
9 run away or flee?

10 A. I told you before, they could run as far as they
11 want.

12 Q. Now, if you were in that same situation again,
13 how would you do things differently? Would you do
14 things differently?

15 A. I wouldn't do it again.

16 Q. Because you won't let inmates swim anymore?

17 A. That is what I said.

18 Q. How did you feel when you realized that Mr. Davis
19 was out of sight in the water?

20 A. What do you mean how did I feel?

21 Q. How did you feel when you realized Mr. Davis was
22 out of your sight in the water?

23 A. I can't answer that.

24 Q. Why are you unable to answer that?

25 A. I can't answer it because you can't answer it.

Deposition of John Reichardt

1 Q. I am not answering. I am not answering
2 questions.

3 A. I can't answer that. You have no feelings. You
4 can't answer something like that.

5 Q. Did you feel remorse for Mr. Davis and their
6 family?

7 A. Yes, I feel sorry for them.

8 Q. Why do you feel sorry for them?

9 A. I feel sorry for anybody that drowns.

10 Q. Do you feel responsible at all for putting him in
11 that situation?

12 A. No. I didn't put him in it. He put himself in
13 it. I didn't tell that man to get in the water.

14 Q. So you don't feel like it's your duty to help
15 these prisoners out if they need help?

16 A. What is that?

17 Q. You don't feel you have a duty to help these
18 prisoners out if they need help?

19 A. I don't understand what you are saying.

20 Q. You don't feel like it's your duty as a
21 supervisor to save a life if need be?

22 A. I will do as much as I can, I will tell you that.

23 Q. Do you think the County or the prison should have
24 done something different to help you prepare for a
25 situation like this?

1 A. No. They didn't do anything wrong.

2 Q. Do you feel like the situation would have been
3 different if you would have known how to swim?

4 A. No.

5 Q. Do you think that --

6 A. Have you ever tried to save someone drowning?
7 Did you ever try to save someone drowning?

8 MR. McEACHIN: He has to ask questions and
9 you have to answer them.

10 Q. Do you think that people in your position now
11 should be trained in how to swim?

12 A. No, I don't think so.

13 Q. Do you think they should be trained in CPR or
14 First Aid?

15 A. CPR, yes; First Aid, yes.

16 Q. You said you personally were not going to allow
17 inmates back in the water. And do you feel like the
18 State shouldn't allow that?

19 A. They are not going swimming anymore. I can't
20 stop them from going in the water. I said they are not
21 going swimming anymore.

22 Q. Do you feel like the State or County should not
23 allow that anymore, should not allow inmates to swim
24 anymore?

25 A. That's right, they shouldn't.

Deposition of John Reichardt

1 Q. If you had known that Mr. Davis was at a risk for
2 drowning, would you have done something different?

3 A. He wouldn't have been in the water. He would
4 have been sitting with the other boys.

5 Q. Do you tell prisoners who can't swim not to get
6 in the water?

7 A. Uh-huh.

8 Q. Did you tell the prisoners that couldn't swim
9 that day not to get in the water?

10 A. I said, if you don't know how to swim, don't go
11 in the water, and they didn't. They sat on the dock.

12 Q. You realize you are in a position of authority
13 with these prisoners, correct?

14 A. Right.

15 Q. You don't feel at all like these prisoners were
16 forced to go in the water?

17 A. No.

18 Q. You in no way ordered them to get in the water?

19 A. No.

20 Q. You stated earlier there were penalties when
21 someone doesn't follow orders that you give, correct?

22 A. What is that?

23 Q. You stated there were penalties --

24 A. I never ordered them to go swimming.

25 Q. You don't think they could have been worried if

1 they didn't follow --

2 A. I never gave them orders to go swimming.

3 Q. You don't feel like you implied that if they
4 don't go swimming something would happen?

5 A. You keep that up and we will be here another
6 hour.

7 Q. Outside of the statement you gave to DNR, any
8 other statements you made?

9 A. Right.

10 Q. Were there any other statements you made besides
11 this?

12 A. No.

13 Q. Did you ever have any conversations with any of
14 your bosses about the incident that happened that day?

15 A. Yes.

16 Q. Were these formal conversations? Were there
17 reports written or was it just between --

18 A. Just between us.

19 Q. And what do you remember discussing?

20 A. What is that?

21 Q. What do you remember discussing?

22 A. What do you mean discussing?

23 Q. What do you remember discussing?

24 A. Just what happened.

25 Q. Did anyone give you any indication of what they

Deposition of John Reichardt

1 thought went wrong?

2 A. No.

3 Q. To your knowledge, has anyone in the County spoke
4 to Mr. Davis' family about what happened?

5 A. I have no idea. That is none of my business.

6 Q. Do you feel that the County or prison system
7 should at least apologize to Mr. Davis' family for what
8 happened?

9 A. I believe they should.

10 Q. Why? Why do you think they should apologize?

11 A. Because I just believe they should because it was
12 a tragedy and it shouldn't have happened, but it did.

13 Q. Why do you think it shouldn't have happened?

14 A. Because things like that just don't happen, you
15 know. There is something more to it than just drowning.

16 Q. What more to it do you think there was in that
17 situation?

18 A. There has to be a reason. He had to have cramps
19 or something. There had to be a reason why. The man
20 told me he knew how to swim and all of a sudden he
21 drowned. Something is wrong.

22 Q. How much water were the prisoners given to drink
23 during a day?

24 A. 30 gallons of water.

25 Q. That is how much is on the bus?

1 A. On the bus.

2 Q. How often do prisoners have access to water
3 during the day?

4 A. All day long.

5 Q. At any time they can take a break from work and
6 get water?

7 A. Get water, yes, sir.

8 Q. Where is the water kept?

9 A. Right on the front of the bus with me.

10 Q. So on this day when you said you were trailing
11 the prisoners as they were going along, anyone could
12 have taken a break and gotten water?

13 A. Yes, sir, any time. You have to fill that cooler
14 up twice during the day.

15 Q. Do you recall Ronnie drinking any water that day?

16 A. What?

17 Q. Do you recall Ronnie drinking any water that day?

18 A. He drank water that day.

19 MR. HART: Just a second. Those are all the
20 questions I have. Your attorney may have some follow-up
21 questions.

22 MR. MCEACHIN: No questions.

23 (The deposition was concluded at 1:45 p.m.)

24 - - -

25

Deposition of John Reichardt

1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF CHARLESTON)

4 I, Nancy Ennis Tierney, Certified Shorthand Reporter
5 and Notary Public for the State of South Carolina at
6 Large, do hereby certify that the witness in the
7 foregoing deposition was by me duly sworn to testify to
8 the truth, the whole truth and nothing but the truth in
9 the within-entitled cause; that said deposition was
10 taken at the time and location therein stated; that the
11 testimony of the witness and all objections made at the
12 time of the examination were recorded stenographically
13 by me and were thereafter transcribed by computer-aided
14 transcription; that the foregoing is a full, complete
15 and true record of the testimony of the witness and of
16 all objections made at the time of the examination; and
17 that the witness was given an opportunity to read and
18 correct said deposition and to subscribe the same.

19 Should the signature of the witness not be affixed to
20 the deposition, the witness shall not have availed
21 himself/herself of the opportunity to sign or the
22 signature has been waived.

23 I further certify that I am neither related to nor
24 counsel for any party to the cause pending or interested
25 in the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 9th day of August, 2011, at Charleston,
Charleston County, South Carolina.

Nancy E. Tierney

Nancy Ennis Tierney
CSR (IL)
My Commission expires
April 6, 2014

South Carolina Department of Natural Resources
Statement

Case / Summons Number: 10-06-0361

County(s): MARZON

JOHN REICHARDT, make the following voluntary statement to, T. KELLEY, W. HUGGINS
who has identified themselves as an official of the South Carolina Department of Natural Resources.

WE PICKING UP TRASH WORKING DOWN
SO1 TO DEE DEE RIVER WE GOT THERE
ABOUT 2:20 PM AND WE TOOK A 10-MIN
BOAT WE WENT DOWN THE BOAT RAMP
THEY ASK ME THEY CAN GO IN
ASK THEM IF THEY CAN SWIM THE
2 WHITE BOY JUMP IN. THE OTHER
BOY WERE SITTING ON THE RAMP
WITH FEET THEN THEY GOT IN
THE WATER. RONNIE DAVIS TURN
AND JUMP IN GO TO THE MIDDLE
THEN DAVID BROWN JUMP IN WENT
WITH HIM AND THEN THEY COME BACK
BACK THE WHITE BOY WENT AFTER THEM
BUT COUND. DO ANYTHING SO HE CAME
BACK. THERE WAS MEN FISHING THERE
HIS LINE WENT DOWN THE SIDE
SO I COULD HOOK HIM AND BRING HIM

I have read this statement consisting of 2 page(s) and have initialed all corrections. I fully understand its entire contents and affirm
at it is true and correct to the best of my knowledge and belief. I have received a copy of this statement. No threats or promises have been
made to obtain this statement.

Subscribed this 15 day of June, 20 10

Signature: [Signature]

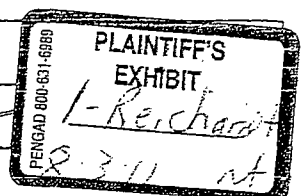
Address: 4344 S. Hwy 41

Mullins SC 29574

Phone: 843-431-9506

Witness:

Thomas W. Kelley
William K



Record on Appeal

Continuation of page 2

South Carolina Department of Natural Resources
Statement

Case / Summons Number: 10-06-0361

County(s): Marion

John Reitzel, make the following voluntary statement to, T. Kelley, B. Hession
who has identified themselves as an official of the South Carolina Department of Natural Resources.

(Continuation sheet)

I WENT DOWN THE RIVER WITH
FISH AND RAAP AROUND THE RONNIE DAVIS
AND PULL HIM IN GOT HIM ON THE
BANK THEN CALL MY BOSS DONALD BROWN
I WAS ON THE SIDE OF THE RIVER
BANK WERE I SAW THE TWO BOY
GO DOWN BUT THE ONE NEVER CAME
BACK UP. DAVID BROWN

[Signature]

[Signature]

I have read this statement consisting of 2 page(s) and have initialed all corrections. I fully understand its entire contents and affirm
it is true and correct to the best of my knowledge and belief. I have received a copy of this statement. No threats or promises have been
made to obtain this statement.

I subscribed this 15 day of June, 20 10

Signature: <u>X John Reitzel</u>	Witness: <u>Thomas Kelley</u>
Address: <u>47/44 S. Hwy 41</u>	
Phone: <u>254 2974</u>	
Phone: <u>254 431 9506</u>	

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)
)
ESTATE OF RONNIE EARL DAVIS)
Plaintiff,)
)
)
v.)
)
MARION COUNTY,)
)
)
Defendants.)
_____)

IN THE WORKERS COMPENSATION
COMMISSION BEFORE COMMISSIONER
DERRICK L. WILLIAMS
WCC FILE #: 1009687
Injury Location: Marion, South Carolina
Injury Date: June 15, 2010

MOTION FOR POSTPONEMENT

YOU WILL PLEASE TAKE NOTICE the Plaintiff, by and through undersigned counsel, will move before Commissioner Williams for a Postponement on the hearing scheduled in the above-captioned case. This motion is based on the following grounds:

1. A hearing is set for the above captioned case on January 4, 2011.
2. Defendant Requested this Hearing.
3. Plaintiff has filed a Summons and Complaint against Defendant in the Court of Common Pleas for the 12th Judicial Circuit on November 19, 2010. (See attached affidavit "Exhibit 1")
4. Plaintiff asserts Celeste Hemmingway, the decedent's sister, has been duly appointed Personal Representative of the Estate.
5. Pursuant to S.C. Code § 15-51-20, only the Personal Representative may bring a wrongful death action. Furthermore, such action must be brought for the benefit of the decedent's statutory beneficiaries as set forth in § 15-51-20. These are the same beneficiaries Defendant is attempting to compensate through Workers Compensation.
5. Plaintiff further asserts good cause exists to postpone the Hearing as additional discovery is necessary and, prior to a determination on subject

matter jurisdiction, it is premature for the commission to hear this case.

5. Specifically, Plaintiff asserts that this incident did not arise out of or within the course and scope of Plaintiff's employment with Defendant.
6. Plaintiff further asserts that this claim can only be maintained in the Circuit Court as a wrongful death action.
7. Plaintiff would assert that it is premature for the Commission to hear this case prior to a determination on subject matter jurisdiction.

[signature on next page]

Respectfully submitted,



Akim Anastopoulo
Anastopoulo & Clore, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
Telephone: 843-614-8888
Fax: 800-313-2546
ATTORNEY FOR PETITIONER

North Charleston, South Carolina

4 day of January, 2011

Exhibit

1

COUNTY OF MARION

IN THE COURT OF COMMON PLEAS

CELESTE HEMINGWAY as Personal
Representative for the ESTATE OF RONNIE
EARL DAVIS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

MARION COUNTY, JOHN REICHARDT as
employee/agent of Marion County and Marion
County Prison Camp, MARION COUNTY
PRISON CAMP, and DONALD BRYANT as
employee/agent of MARION COUNTY PRISON
CAMP

Defendant(s)

(Please Print)

Submitted By: Akim A. Anastopoulo/David P.
Bolek/Kyle M. Hobbs

Address: 2850 Ashley Phosphate Rd.
North Charleston, SC 29418

SC Bar #: 006498

Telephone #: 843-614-8888

Fax #: 800-313-2546

Other:

E-mail: akim@akimlaw.com

2010-CP-33-94

BOOK PAGE

FILED

2010 NOV 19 P 3:18

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☒ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | | |

Record on Appeal

- Page 224 -

Submitting Party Signature: _____

Date: 11/19/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

CELESTE HEMINGWAY as
Personal Representative for the
ESTATE OF RONNIE EARL
DAVIS,

Plaintiff,

v.

MARION COUNTY, JOHN
REICHARDT as employee/agent
Of Marion County and Marion
County Prison Camp, MARION
COUNTY PRISON CAMP, and
DONALD BRYANT as employee/
Agent of MARION COUNTY
PRISON CAMP,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-33-_____

SUMMONS
(Jury Trial Demanded)

BOOK _____ PAGE _____

FILED

2010 NOV 19 P 3:18

MARION COUNTY SC
CLERK R. RHODES
CLERK OF COURT

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Akim A. Anastopoulo, at his office, 2850 Ashley Phosphate Rd., Suite B, North Charleston, South Carolina, 29418, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at North Charleston, South Carolina on the _____ day of _____, 2010.

ANASTOPOULO & CLORE LAW FIRM, LLC

Akim A. Anastopoulo
David P. Bolek
Kyle M. Hobbs
Anastopoulo & Clore Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 814- 6888
Attorneys for the Plaintiff

Record on Appeal

- Page 227 -

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

CELESTE HEMINGWAY AS)
PERSONAL REPRESENTATIVE)
FOR THE ESTATE OF RONNIE)
EARL DAVIS)

Plaintiffs,)

v.)

MARION COUNTY, JOHN)
REICHARDT as employee/agent of)
Marion County and Marion County)
Prison Camp, MARION COUNTY)
PRISON CAMP, and DONALD)
BRYANT as employee/agent of)
MARION COUNTY PRISON CAMP)

Defendants,)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-33-_____

COMPLAINT

(Jury Trial Demanded)

BOOK _____ PAGE _____

FILED

2010 NOV 19 PM 3:18

The Plaintiffs, complaining of the Defendants, would allege and show unto this Court as follows:

1. That the Plaintiff, Celeste Hemingway (hereinafter referred to as "Plaintiff Hemingway") is a citizen and resident of Marion County, State of South Carolina.
2. That Plaintiff, Ronnie Earl Davis (hereinafter referred to as "Plaintiff Davis") was a citizen and resident of Marion County, State of South Carolina.
3. That Plaintiff Hemingway was duly appointed as Personal Representative of the Estate of Ronnie Earl Davis on August 16, 2010.
4. That upon information and belief, Defendant Marion County, is a government entity of South Carolina, and their agent to accept service is Charles L. McClain, 2141-D Hoffmeyer Rd., Florence, SC 29501.
5. That upon information and belief, Defendant Marion County Prison Camp, is a privately

owned entity of South Carolina, and their agent to accept service is Donald Bryant, 2723 E Highway 76, Mullins, SC 29574.

6. That the acts and omissions, which are subject to this action, of Defendants that caused the catastrophic injuries resulting in the death of Plaintiff Davis occurred in Marion County, State of South Carolina.
7. That this Court has jurisdiction over the parties and the subject matter of this action.

FOR A FIRST CAUSE OF ACTION

(Gross Negligence)

8. The allegations of paragraphs 1 through 7 of this Complaint are re-alleged and re-asserted as if set forth verbatim herein.
9. That on or about June 15, 2010, Plaintiff Davis was an inmate in the custody and control of the Defendants.
10. That on or about June 15, 2010, the Defendants owed the Plaintiff Davis a duty and responsibility of supervision, protection, control, confinement and custody, and Defendants exercised the responsibility or duty to Plaintiff in a grossly negligent manner.
11. Upon information and belief, on or about June 15, 2010, Plaintiffs suffered a loss proximately caused by the gross negligence of Defendants.
12. Upon information and belief, due to the gross negligence of Defendants, Plaintiff Davis drowned in the Little Pee Dee River, in Marion, SC on or about June 15, 2010.
13. That as a direct and proximate result of the gross negligence, carelessness, recklessness, willfulness, wantonness, and acts and/or omissions of the Defendants, as is set forth more fully above, Plaintiff Davis died, and endured pain and suffering, and consciously suffered mentally and emotionally immediately prior to his death.

14. The drowning and resulting damages to Plaintiff Davis and his Estate were caused directly and proximately by one or more of the following grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

As to Defendant Marion County:

- a. In grossly negligently entrusting the safety of inmates to someone they knew or should have known would supervise inmates without using due care and without regard for the safety and rights of the inmates;
- b. In grossly negligently entrusting someone they knew or should have known would supervise inmates in a grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an incident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In grossly negligently entrusting supervision to someone they knew or should have known would fail to exercise the 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 of the dangers and seriousness of having an unsafe, unqualified, incompetent officer supervising inmates;
- e. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
- f. In permitting their employee Defendant Reichardt to supervise inmates when he was not fully qualified to do so.
- g. In failing to properly hire, train and/or supervise their employee Defendant Reichardt
- h. In failing to enact policies that would ensure the safety of prisoners in the Defendant's custody on the river;
- i. In failing and omitting to take any precaution whatsoever of a reasonable nature

to protect this Plaintiff from the dangers of the river on the occasion that the Plaintiff was using same;

- j. In failing to ensure medical treatment for the Plaintiff would arrive promptly;
- k. In failing to adequately warn the Plaintiff as to any dangers that may be present in the river;
- l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;
- m. In causing the extreme pain and suffering of Plaintiff Davis;
- n. In causing the wrongful death of Plaintiff Davis;
- o. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;
- p. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- q. In any such manner the Plaintiffs may discover through the discovery process or trial..

As to Defendant John Reichardt:

- a. In failing to observe the dangerous condition of the river;
- b. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
- c. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the river on the occasion that the Plaintiff was using same;
- d. In failing to ensure medical treatment for the Plaintiff would arrive promptly;
- e. In failing to adequately warn the Plaintiff as to any dangers that may be present in

the river;

- f. In failing to use due care;
- g. In failing to properly supervise Plaintiff;
- h. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;
- i. In causing the extreme pain and suffering of Plaintiff Davis;
- j. In causing the wrongful death of Plaintiff Davis;
- k. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;
- l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- m. In any such manner the Plaintiffs may discover through the discovery process or trial.

As to Defendant Marion County Prison Camp:

- a. In grossly negligently entrusting the safety of inmates to someone they knew or should have known would supervise inmates without using due care and without regard for the safety and rights of the inmates;
- b. In grossly negligently entrusting someone they knew or should have known would supervise inmates in a grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an incident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In grossly negligently entrusting supervision to someone they knew or should have known would fail to exercise the 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 of the dangers and seriousness of having an unsafe, unqualified, incompetent officer supervising inmates;
 - e. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
 - f. In permitting their employee Defendant Bryant to assign Defendant Reichardt to supervise inmates when he was not fully qualified to do so;
 - g. In failing to properly hire, train and/or supervise their employee Defendant Bryant;
 - h. In failing to enact policies that would ensure the safety of prisoners in the Defendant's custody on the river;
 - i. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the river on the occasion that the Plaintiff was using same;
 - j. In failing to ensure medical treatment for the Plaintiff would arrive promptly;
 - k. In failing to adequately warn the Plaintiff as to any dangers that may be present in the river;
 - l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;
 - m. In causing the extreme pain and suffering of Plaintiff Davis;
 - n. In causing the wrongful death of Plaintiff Davis;
 - o. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;
 - p. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
 - q. In any such manner the Plaintiffs may discover through the discovery process or trial.

As to Defendant Donald Bryant:

- a. In grossly negligently entrusting the safety of inmates to someone he knew or should have known would supervise inmates without using due care and without regard for the safety and rights of the inmates;
- b. In grossly negligently entrusting someone he knew or should have known would supervise inmates in a grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an incident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In grossly negligently entrusting supervision to someone he knew or should have known would fail to exercise the 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 of the dangers and seriousness of having an unsafe, unqualified, incompetent officer supervising inmates;
- e. In failing to appreciate the gravity of the dangers associated with inadequately supervised swimming;
- f. In permitting their employee Defendant Reichardt to supervise inmates when he was not fully qualified to do so.
- g. In failing to properly hire, train and/or supervise their employee Defendant Reichardt
- h. In failing to enact policies that would ensure the safety of prisoners in the Defendant's custody on the river;
- i. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the river on the occasion that the

Plaintiff was using same;

- j. In failing to ensure medical treatment for the Plaintiff would arrive promptly;
 - k. In failing to adequately warn the Plaintiff as to any dangers that may be present in the river;
 - l. In failing to use due care;
 - m. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina;
 - n. In causing the extreme pain and suffering of Plaintiff Davis;
 - o. In causing the wrongful death of Plaintiff Davis;
 - p. In causing the Estate and beneficiaries to incur mental anguish, funeral expenses, grief, suffering, bereavement, loss of society, guidance and comfort;
 - q. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
 - r. In any such manner the Plaintiffs may discover through the discovery process or trial.
15. That at all times material to the incident made the basis of this action, Plaintiff Davis and was in the custody, possession and/or under the control of Defendants.
16. That at all times material to the incident made the basis of this action, Defendant John Reichardt was acting by and through its employer Defendants Marion County and Marion County Prison Camp as an employee/agent of Defendants Marion County and Marion County Prison Camp, 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 Defendants Marion County and Marion County Prison Camp.

17. That at all times material to the incident made the basis of this action, Defendant Donald Bryant was acting by and through its employer Defendant Marion County Prison Camp as an employee/agent of Defendant Marion County Prison Camp, 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 Marion County Prison Camp.
18. That Defendants Marion County and Marion County Prison Camp are 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 Plaintiffs, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.
19. At all times pertinent hereto, the Defendants Marion County and Marion County Prison Camp, were under a duty to exercise due and reasonable care in the selection, employment, and training of its agents, servants, and/or employees.
20. That Defendants Marion County and Marion County Prison Camp breached the above-mentioned duties in selecting an inmate supervisor, John Reichardt, who wrongfully and grossly negligently exercised his duties to the Plaintiffs, and whose employees were incompetent and/or unfit and/or unqualified to perform the tasks assigned to them.
21. As a direct and proximate result of the gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants, as is set forth more fully above, Plaintiff Davis has been damaged and injured in the following respects:
- a. Plaintiff has incurred catastrophic injuries resulting in his death;
 - b. The injuries suffered caused Plaintiff to incur, pain and suffering, mental and emotional distress, and has incurred various medical expenses, and has otherwise been damaged or injured; and

c. The Estate and beneficiaries have incurred funeral expenses, mental anguish, grief, suffering, bereavement, loss of society, guidance and comfort.

22. That Defendant acted with a reckless and wanton disregard for the life and safety of others.

23. That any negligence by the Plaintiff did not cause or contribute to his injury.

FOR A SECOND CAUSE OF ACTION

(Wrongful Death of Ronnie Earl Davis)

24. That the allegations of paragraphs 1 through 23 of this Complaint are re-alleged and re-asserted as if set forth verbatim herein.

25. That Defendants' acts and omissions as set forth above give rise to this action under South Carolina Code § 15-51-10.

26. That Defendants knew or should have known that Plaintiff Davis would suffer a foreseeable injury, including death, as a result of the Defendants' exercise of grossly negligent care as described more fully above.

27. The beneficiaries under the Wrongful Death Act are his children Jamar Robinson and Renita Robinson and his parents Roosevelt Davis and Fredrena Davis, for whom this action is brought, have experienced mental anguish, grief, suffering, and bereavement, loss of society, guidance and comfort.

28. As a direct and proximate cause of Defendants' conduct, as set forth above, Ronnie Earl Davis lost his life.

29. As a direct and proximate cause of Defendants' conduct, as set forth above, the beneficiaries and the Estate of Ronnie Earl Davis incurred funeral expenses and have been otherwise seriously damaged.

30. Due to Defendants' intentional, reckless, and/or wanton acts or omissions together with violations of South Carolina law and specifically South Carolina Code § 15-51-10, the Estate of Ronnie Earl Davis is entitled to such damages from the Defendants as this Court deems fit to award.

FOR A THIRD CAUSE OF ACTION

(SURVIVAL ACTION OF RONNIE EARL DAVIS)

31. That the allegations of paragraphs 1 through 30 of this Complaint are re-alleged and re-asserted as if set forth verbatim herein.
32. That Defendants' acts and omissions as set forth above give rise to this action under South Carolina Code § 15-51-90.
33. As a direct and proximate cause of Defendants' conduct, as set forth above, Ronnie Earl Davis was caused to sustain severe pain and suffering prior to his death.
34. Due to Decedent Ronnie Earl Davis suffering extreme pain and injuries as a result of the gross negligence of the Defendants are compensable under South Carolina Code § 15-5-90.
35. Therefore, the Plaintiffs seek and is entitled to an Order of this Court awarding the Estate actual and consequential damages for the Decedent's injuries, pain and suffering, loss of enjoyment of life, for limitations to his ability to participate in and derive pleasure from the normal activities of daily life in an amount of damages from the Defendants as this Court deems fit to award.

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, 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.

Respectfully submitted,

ANASTOPOULO & CLORE LAW FIRM, LLC

BY _____

Akim A. Anastopoulos, Esquire

David P. Bolek, Esquire

Kyle Hobbs, Esquire

Anastopoulos & Clore Law Firm, LLC

2850 Ashley Phosphate Rd., Suite B

North Charleston, SC 29418

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
_____, 2010

UNITED STATES DISTRICT COURT

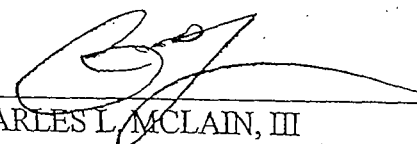
DISTRICT OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO.: 2010-CP-33-941
	)	
Celeste Hemingway as Personal	)	
Representative for the Estate of Ronnie	)	
Earl Davis and David Brown,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF CHARLES MCLAIN
	)	
vs.	)	
	)	
Marion County and Marion County	)	
Prison Camp,	)	
	)	
Defendants.	)	

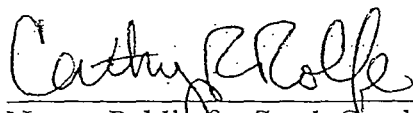
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BOOK _____ PAGE _____
2012 JUN 18 AM 11:01
MARION COUNTY SC
CLERK OF COURT
SHERRY R. RHODES

Personally appeared before me, Charles L. McLain, III, who upon being duly sworn states that he is the Marion County Attorney. He is familiar with the records of Marion County. That attached as Exhibit "A" is a Resolution adopted by Marion County on October 14, 1997. This Resolution provides for Worker's Compensation coverage for inmates of Marion County. This policy is still in full force and effect in Marion County.

FURTHER THE AFFIANT SAYETH NAUGHT.


CHARLES L. MCLAIN, III

SWORN TO AND SUBSCRIBED
before me this 13th day of
June, 2012

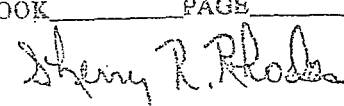


Notary Public for South Carolina
My Commission Expires: 11/2/15

Exhibit "A"

Record on Appeal
- Page 240 -

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA,)

COUNTY OF MARION.)

RESOLUTION

WHEREAS, Marion County has entered into a contract with the State Board of Corrections for the purpose of utilizing inmate labor for road maintenance and roadside cleanup; and

WHEREAS, as a provision of said contract and State Law (Section 42-1-500 of the Code of Laws of South Carolina, 1976 as amended), Marion County is responsible for providing Workers Compensation coverage for inmates regardless of the length of sentence to be served and who are participating in the program; and

WHEREAS, Sedgwick of the Carolinas, Marion County's Workers Compensation carrier, has advised that inmates are not currently covered under the County's program.

NOW, THEREFORE, BE IT RESOLVED, Marion County Council does hereby authorize the County Administrator to execute such documents as are necessary to provide Workers Compensation coverage for inmates regardless of the length of sentence to be served, pursuant to Section 42-1-500 of the Code of Laws of South Carolina, 1976 as amended.

BE IT SO RESOLVED.

DATED this 14th day of October, 1997.

MARION COUNTY COUNCIL

ATTEST:

Edwin P. Rogers, Jr.
Edwin P. Rogers, Jr.
County Administrator

Landis H. Baxley
Landis H. Baxley
Clerk to Council

Timothy H. Pogue
Timothy H. Pogue
County Attorney

Marvin Stevenson
Marvin Stevenson, Chairman

John Q. Atkinson, Jr.
John Q. Atkinson, Jr.
Vice Chairman

Douglas W. McMillan
Douglas W. McMillan

Jacque W. Richardson
Jacque W. Richardson

Elista H. Smith
Elista H. Smith

William Penn Troy
William Penn Troy

Columbus Williams, Jr.
Columbus Williams, Jr.

I certify that this constitutes
a true and exact copy of the
original on file in Council's
Office, Marion, S. C.

Sabrina Davis
Sabrina Davis, Clerk
MARION COUNTY COUNCIL

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
803) 737-5700

WCC File # 1009687
Carrier File # 580000230360
Carrier Code # SF930
Employer FEIN 576000384

Claimant's Name: RONNIE DAVIS SSN 248-23-3502

Employer's Name MARION COUNTY

Address: 2232 N HWY 41A

Address: P.O. BOX 183

City: MARION State: SC Zip: 29571

City / State: MARION, SC Zip: 29571

Home Phone: # 843-423-4907

Insurance Carrier: SC COUNTIES TRUST ASSOCIATION

Work Phone: # 111-111-1111

Preparer's Name: Phyllis Sturkey

Phone # 1-800-845-2724

1. Date of Injury: 06/15/2010

2. Total Weeks of Compensation Paid:

3. Type of Compensation Paid

Periods of Payment:

Type: _____	From: _____	To: _____
Type: _____	From: _____	To: _____
Type: _____	From: _____	To: _____

4. Date of First Payment:

month day year

5. Total Amount Paid (a) Compensation: \$ 0.00

(b) Medical (Include Nursing, Hospital Drugs, Etc.): \$ 0.00

6. Informal Conference is Requested: ☐ yes ☒ no
(check one)

7. Use these lines to send a memo to the Commission:

SIX MONTH REVIEW

Phyllis Sturkey

1-800-845-2724

12/10/2010

Employers Representative

Phone#

Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

WCC Form # 18 REV. DATE 3/96

18

PERIODIC REPORT

RECEIVED
DEC 15 2010
FRONT DESK
SC Workers' Comp Comm.

Record on Appeal
- Page 243-

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
803) 737-5700

WCC File # 1009687
Carrier File # 580000230360
Carrier Code # SF930
Employer FEIN 576000384

Claimant's Name: RONNIE DAVIS SSN 248-23-3502

Employer's Name MARION COUNTY

Address: 2232 N HWY 41A

Address: P.O. BOX 183

City: MARION State: SC Zip: 29571

City / State: MARION, SC Zip: 29571

Home Phone: # 843-423-4907

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Work Phone: # 111-111-1111

Preparer's Name: Phyllis Sturkey

Phone # 1-800-845-2724

1. Date of Injury: 06/15/2010

2. Total Weeks of Compensation Paid:

3. Type of Compensation Paid

Periods of Payment:

Type: _____	From: _____	To: _____
Type: _____	From: _____	To: _____
Type: _____	From: _____	To: _____

4. Date of First Payment:

month day year

5. Total Amount Paid (a) Compensation: \$ 0.00

(b) Medical (Include Nursing, Hospital Drugs, Etc.): \$

6. Informal Conference is Requested: ☐ yes ☒ no
(check one)

RECEIVED

JUN 10 2011

(FRONT DESK)
SC Workers' Comp Comm

7. Use these lines to send a memo to the Commission:

SIX MONTH STATUS REPORT

Phyllis Sturkey

1-800-845-2724

06/08/2011

Employers Representative

Phone#

Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

WCC Form # 18 REV. DATE 3/96

18

PERIODIC REPORT

Record on Appeal
- Page 244 -

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE

CHARLESTON

COLUMBIA

CHARLOTTE

RALEIGH

Anne Veatch Noonan
Direct (843) 284-1097
Fax (843) 284-1081
avnoonan@wjlaw.net

421 Wando Park Boulevard, Suite 100
Mount Pleasant, SC 29464
www.wjcbllaw.net

September 17, 2010

Ms. Virginia L. Crocker
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

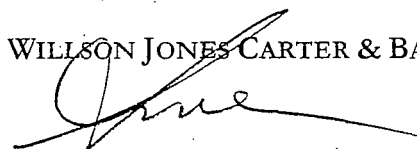
Re: Estate of Ronnie Davis vs. Marion County
WCC File No.: DOI: 6/15/2010
Carrier: Companion Property & Casualty Company - Claim No.: 580000230360
WJC&B File No.: 0560.00352

Dear Ms. Crocker:

Please find enclosed the dependency investigation on this admitted death claim. We ask that a hearing be set to determine benefits owed and beneficiaries ascertained.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

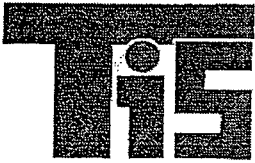


Anne Veatch Noonan

AVN/avn

Enclosures

cc: Akim Anastopoulos, Esquire
Phyllis Sturkey (via e-mail)
Tina Lewis, Marion County
Peggy and Carol Robinson
2309 Blackburn Road
Marion, South Carolina 29571



Walter A. Tuten
Senior Consultant

Christopher L. Tuten
President

September 13, 2010

Ms. Anne Noonan
Willson, Jones, Carter & Baxley, PA
Suite 100
421 Wando Park Boulevard
Mt. Pleasant, South Carolina 29464

Re: Claim Number: 58000023026
Employer: Marion County
Employee: Ronnie Earl Davis (deceased)
Date of Accident: June 15, 2010
Our File Number: SC062210A14-115

Dear Anne:

This will acknowledge receipt of this assignment we originally received from Phyllis Sturkey at Companion to conduct a dependency investigation in the above referenced fatal worker's compensation claim. When we initially received the assignment, we had very little information about the claimant and understood that he was not represented by an attorney when we originally received the information from Phyllis.

Attempts to Locate the Insured's Family:

When we initially received the assignment we had very little information but we contacted several individuals with Marion County in an attempt to locate the claimant's family. We spoke with Mitchell Joye who is the prison camp supervisor at the prison where the claimant was incarcerated at the time of his accident. Mitchell can be reached by telephone at (843) 423-8280. We spoke with Mitchell and were told that they did not have any information regarding the claimant's family. We also contacted the Marion County Sheriff's office for any information regarding how to contact the claimant's family. They also told us at the time that we contacted them on June 24th that they did not have any information as well.

On June 24th we also contacted one of the local funeral homes in Marion and it was the Jackson McGill Funeral Home on Main Street. One of the secretaries at the sheriff's department told us that this was most likely the funeral home that handled the claimant's funeral service. We spoke with the funeral home and they confirmed that the claimant's sister, Celeste Hemmingway, was handling the claimant's funeral arrangements. They gave us a telephone number where we could contact Celeste. On June 24, 2010 we contacted Celeste Hemmingway

Ms. Anne Noonan
File Number: SC062210A14-115
September 13, 2010
Page Two

Celeste told us that she was the claimant's sister, however, she refused to give us a statement at that time because she stated that she was talking with an attorney and was planning to be represented by that attorney in the future and as a result she told us that we would need to contact her later to get her statement. We contacted Celeste again on June 30th and at that time she told us that she was represented by Attorney Akim Anastopoulo with the law firm of Anastopoulo and Clore in Charleston. Anastopoulo & Clore can be reached by telephone at (843) 722-8070. We then contacted Attorney Anastopoulo and explained to him that we could be conducting the dependency investigation in this case.

Contact with Girlfriend:

We also received information that the claimant had a girlfriend named Delores and she had called Ann Noonan's office inquiring about the case and stated that she was the claimant's wife or girlfriend. On June 29th, 2010 we contacted Delores again and tried to see if we could schedule a time to secure her statement. We left a message for her that we would be calling her back later to secure the statement.

We continued to contact Attorney Akim Anastopoulo on June 30, July 6, July 9, July 22 and July 26. We eventually were able to set up a time with Attorney Anastopoulo's office where we could secure the recorded statement from the claimant's sister, Celeste Hemmingway.

We spoke with another attorney at the law firm named Eric Poulin and it was our understanding that he was now handling this case. Eric was the one who was able to schedule the appointment to secure Celeste's recorded statement.

Recorded Statement – Celestine "Celeste" Hemmingway (Claimant's Sister):

On July 28, 2010 we secured the attached recorded statement from the claimant's sister, Celeste Hemmingway. Also present when we secured her statement was Attorney Eric Poulin with the law firm of Anastopoulo & Clore in Charleston. Celeste Hemmingway currently resides at 3045 Ammons Loop, Marion, South Carolina 29571. She can be reached by telephone at (843) 423-7009.

Celeste stated that her brother, Ronnie Earl Davis, grew up in Marion County, South Carolina in the town of Gresham. Celeste confirmed that her brother, Ronnie, always lived in the Marion County area.

Ronnie was never married at any point during his life, but he did have two children. Those children are a daughter named Renita Robinson and a son named Jamar Robinson. Renita is currently 21 years old and was born on July 19, 1989. The claimant's son is named Jamar Robinson and he is around 11.

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years old, although Celeste did not know his exact birth date. Celeste stated that Renita currently attends Florence-Darlington Technical College and prior to that she was a student at Coastal Carolina. At the time of her father's accident she was on summer break but she had just finished her second semester at Florence Darlington Tech. Celeste confirmed that both Renita and Jamar lived with their mother whose name is Gail Robinson. At the time of our statement, however, Celeste told us that Gail passed away on the previous day, which was July 27, 2010. As a result, Celeste stated that both Renita and Jamar would probably now be living with their mother's parents, Peggy and Carol Robinson. Peggy and Carol Robinson are the parents of Gail Robinson who is the mother of the claimant's two children, Jamar and Renita Robinson. Celeste told us that Peggy and Carol Robinson can be reached by telephone at (843) 423-1774. Celeste also confirmed that the claimant was paying child support for his children, although that child support for Renita may have ended since she is over 18.

Celeste told us that her brother, Ronnie, was an inmate in the Marion County prison at the time of his accident and he was in the process of serving a 30-day sentence. At the time of his accident he had 11 days left on his sentence. Prior to being an inmate in the prison, Celeste confirmed that her brother was living with her in her home. Celeste confirmed that the claimant lived with her and also with another one of his sisters. Celeste explained that Ronnie lived with herself and a sister and together they helped take care of the claimant's mother who is in poor health.

Celeste explained that other than herself, the claimant also had three other siblings including a sister named Shirley Davis and two brothers named James Stanley Davis and Dean Davis. The claimant's parents were named Roosevelt Davis and Fredrena Davis. Both of his parents are still living, although Celeste did not have any contact information for the claimant's father, Roosevelt. Celeste told us that she did not know of any other children that Ronnie had at any point during his life other than his daughter, Renita, and his son, Jamar. Celeste confirmed that she did not know of anyone who was totally dependent upon the claimant, although she stated that she was partially dependent upon him because he would help with bills and expenses from time to time. Celeste also stated that the claimant had a girlfriend named Delores Garner and the two of them had dated a long time but had an on and off relationship. Celeste did not elaborate, but she told us that Delores was the reason that Ronnie was incarcerated.

Recorded Statement – James Stanley Davis (Brother):

On August 19, 2010 we secured the attached recorded statement from the claimant's brother, James Davis. James currently resides at 1910 Paces

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Landing, Apartment 1615, Rock Hill, South Carolina 29732. He can be reached by telephone at (803) 370-8127.

James stated that his brother, Ronnie Earl Davis, grew up in the Friendship Community near the town of Gresham, South Carolina in Marion County. James told us that Ronnie always lived in the Marion County area. Ronnie was never married at any time during his life, but he did have two children including a girl and a boy. The claimant's oldest child is his daughter named Renita and she is around 21 years old. The younger of Ronnie's two children is a son named Jamar who is about 10 or 11 years old. James told us that both of the claimant's children live with their maternal grandmother since their mother, Gail Robinson, just passed away. James confirmed that Ronnie lived with his sister, Celeste, before going to jail and he had lived with her for at least several months prior to his incarceration. The claimant's mother is named Fredrena Davis and his father is named Roosevelt Davis.

Other than James, the claimant was survived by two other siblings, two sisters named Celeste and Shirley. James stated that he did not know of any other children that Ronnie had at any point during his life other than his daughter, Renita, and his son, Jamar. James stated that he believed that Ronnie was not paying any child support for Jamar, but he was not certain about that. He also thought that Ronnie may have paid child support for Renita, but he was certain about that was well. James stated that he did not know of anyone who would have been financially dependent upon his brother, Ronnie, at the time of his accident or death.

Recorded Statement – Renita Catrice Robinson (Daughter):

On August 28, 2010 we secured the attached recorded statement from the claimant's daughter, Renita Robinson. We were told by the claimant's sister, Celeste, not to contact Renita for a week or two since she had just lost her mother and her family was in a great deal of grief. After more than a week, we placed several calls to Renita and none of those calls were returned. On August 28, 2010 we contacted Celeste again and she told us that she would contact Renita and that Renita would speak with us. She was aware that it was important that we talk with Renita in order to complete our investigation. After Celeste spoke with Renita she called us back and we secured Renita's attached recorded statement.

Renita Robinson currently resides at 2309 Blackburn Road, Marion, South Carolina 29571. She was born on July 19, 1989 and can be reached by telephone at (843) 230-0348.

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Renita stated that her father, Ronnie Earl Davis, grew up in the Friendship Community in Marion County. Renita told us that as far as she was aware, her father always lived in and around the Marion County area. Renita told us that her father was never married at any point during her life as far as she was aware, but he did have two children. Other than Renita, Ronnie also had another child, a son named Jamar Robinson. Jamar is currently 11 years old and his birthday is November 4, 1998. Renita stated that she did not know of any other children that her father had at any point during his life other than herself and her younger brother, Jamar.

Renita stated that at the time of her father's accident he was in prison, but before he went to prison he was living with his sister, Celeste, and he had been living with her for a few months. Prior to living with Celeste, Renita told us that her father lived for a period of time with his girlfriend and also with his parents as well. Renita told us that her father's girlfriend was named Lois and that was the only information that she knew about her.

Both of Ronnie's parents are still living. His father is named Roosevelt Davis and his mother is named Fredrena Davis. Renita explained that the claimant's mother lives with Celeste.

The claimant also had two brothers and three sisters. He had a brother named Ben Davis and a brother named James Stanley Davis, as well as three sisters named Celeste, Shirley and Olivia Philips. Renita confirmed that to her knowledge, her father was not paying any child support for Jamar, but he just finished paying Renita's child support prior to his death.

Renita told us that she has been attending Florence-Darlington Technical College for the past two years and prior to that she was a student at Coastal Carolina.

Renita told us that she did not know of anyone who was financially dependent upon her father at the time of his accident and death, but she did believe that his sister, Celeste, may have been dependent upon him to an extent because he stayed with her. Renita stated that her father would sometimes give her money aside from the child support that he paid for her because she now has a son named Coby McKenzie, Jr. who is currently one year old. Renita told us that sometimes her father would give money to her and her brother, Jamar, but neither of them was finically dependent upon him. Renita told us that her mother, Gail Robinson, who is also Jamar's mother as well, passed away recently. As a result, Renita confirmed that her maternal grandparents, Peggy and Carol

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Robinson, have legal custody of her little brother, Jamar, and he is living with them now after their mother's death.

Peggy and Carol Robinson's mailing address is 2309 Blackburn Road, Marion, South Carolina 29571. Renita told us that she also lives with her grandparents as well.

Recorded Statement – Delores Councill (Girlfriend):

On September 7, 2010 we secured the attached recorded statement from the claimant's girlfriend, Delores Councill. Delores currently resides at 22325 Highway 41A, Marion, South Carolina 29571. She can be reached by telephone at (843) 506-5824.

Delores stated that she met the claimant many years ago and she and the claimant used to live together for a brief period of time, although the two of them were never married. Delores stated that at the time of Ronnie's accident and death, the two of them were still dating, although Ronnie lived with his sister, Celeste. Delores told us that Ronnie was born in Gresham, South Carolina in Marion County and always lived in that area as far as she was aware. He did visit friends from time to time for a few months in Florida, but he had always had his permanent residence in Marion County.

Delores stated that Ronnie was never married to her knowledge during any point during his life. He did, however, have two children, and also has a grandson as well. Ronnie's two children are a son named Jamar Robinson and a daughter named Renita Robinson. Jamar is currently 11 years old and Renita is currently 21 or 22 years old. Delores told us that both Jamar and Renita have the same mother and her name was Gail Robinson. Delores told us that Gail recently passed away. Delores also told us that she believed that Renita had just graduated college and also told us that Renita had a child as well who is the claimant's grandson.

Delores confirmed that she believed that Ronnie did pay child support for Renita, and also thought that he paid for child support for his son as well. Delores said that she did not know of any other children that Ronnie had at any point during his life other than Jamar and Renita. Delores also confirmed that she is not currently pregnant nor could she possibly be pregnant with the claimant's child.

Ronnie has a sister named Cloristine Hemmingway and Delores told us that was the sister with whom the claimant was living at the time of his accident. Along with his sister, Ronnie was also living with his sister's husband, another sister of his and his mother as well.

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The claimant's mother is named Fredrena Davis and she currently has Alzheimer's. The claimant's father is named Roosevelt Davis and Delores told us that she did not know how to reach him and that he does not stay with his wife, Fredrena, although the two are still married.

Delores told us that she was not dependent upon the claimant, although he would help her with expenses from time to time and helped pay her rent from time to time as well. Delores stated that at the time of the claimant's accident, she was unemployed but she was receiving unemployment compensation. Delores told us other than helping her from time to time, he also may have helped his sister financially since he was living with her as well, although Delores did not know any specifics about Ronnie's financial arrangements with his sister.

Delores did not know of anyone who would have been totally dependent financially upon Ronnie at the time of his death.

Neighborhood Canvass:

On August 19, 2010 we traveled to Marion County and conducted a neighborhood canvass at the claimant's sister's residence located at 3045 Ammons Loop in Marion, South Carolina. We attempted to contact individuals at 3050 Ammons Loop Road and there was no answer at that location. We also spoke with a man who was sitting on his porch at 3039 Ammons Loop and he told us that he did not know the claimant and had just moved there. We spoke with someone at 3055 Ammons Loop and he told us that he knew the claimant and Celestine and he confirmed that he lived with her, but he did not know any information about whether or not Ronnie was married or had any children.

Courthouse Search (Marion County):

On August 19, 2010 we traveled to the Marion, South Carolina and conducted a search of the Marion County Family Court and Probate Court records. Specifically, we searched the Marion County Family Court for any records under the claimant's name indicating the existence of any paternity actions, child support orders, or divorce decrees. We did find one file in the Marion County Family Court under the claimant's name. This case was a child support case in which the claimant was listed as the natural parent for a daughter named Renita C. Robinson, who was born on July 14, 1989. We are also enclosing a copy of an order in the same case stating that the claimant's amount of child support was changed in 1998. Other than this one child support case for the claimant's daughter, Renita, there were no other Family Court cases under the claimant's name in Marion County within the past 18 years.

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We also conducted a search of the Marion County Probate Court. In the Probate Court there was no record of any marriage license under the claimant's name in Marion County. We also spoke with the Probate Court personnel and they confirmed that the claimant was paying child support for one of his children, but there was no child support case for his youngest son, Jamar. One of the clerks in the Probate Court knew the claimant and she told us that she believed that the claimant, who was receiving social security disability payments, was having a portion of those payments deducted and that portion that was deducted satisfied his child support requirements for his younger son, Jamar. This action would not have appeared in the Family Court files, but it would have satisfied the Family Court if money was being deducted from the claimant's social security disability checks for his son, Jamar.

The clerk that we spoke with who knew the claimant confirmed that to her knowledge, he only had two children and one of the children was over 18 and the other child, Jamar, was under 18 and was around 11 years old.

Contact Funeral Home:

We contacted the Jackson & McGill Funeral Home on September 10, 2010. We spoke with Caroline Legette with the funeral home. The Jackson & McGill Funeral Home can be reached by telephone at (843) 423-2241. Caroline confirmed that she knew the claimant's sister, Celeste, and confirmed that to her knowledge, he only had two children. Caroline also agreed to fax us a copy of the claimant's funeral bill and confirmed that as of September 10, 2010 nothing had been paid towards the bill and the full balance still remained.

Documentation:

We have secured several supporting documents which we are enclosing with our report. We are enclosing a copy of the claimant's death certificate indicating that he died on June 15, 2010 as a result of drowning. We are also enclosing copies of birth certificates for both of the claimant's children. The claimant's son's birth certificate indicates that Jamar Le Caril Robinson was born on November 4, 1998. The claimant's daughter, Renita Catrice Robinson, was on July 19, 1989 in Florence County, South Carolina. We are also enclosing a copy of the Family Court order in which the claimant was established as the natural parent for his daughter, Renita Robinson. We are also enclosing another order regarding the claimant's child support payments for his daughter as well. We are also enclosing a copy of the funeral program indicating that the claimant was survived by his parents, Roosevelt and Fredrena Davis, a daughter Renita Robinson, and

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son named Jamar Robinson. We are also enclosing a copy of the funeral bill from the Jackson & McGill Funeral Home in Marion.

Results of Dependency Investigation:

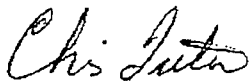
As a result of our investigations it appears the claimant was never married at any point during his life. All of the individuals we spoke with confirmed that to their knowledge the claimant only had two children, a son named Jamar Robinson and a daughter named Renita Robinson. At the time of the claimant's accident Renita was over the age of 18, and was attending college at Florence-Darlington Technical College. The claimant's son, Jamar, is currently 11 years old. It is our understanding that both of the claimant's children now live with their maternal grandmother since their mother, Gail Robinson, recently passed away. Renita still resides with her grandparents and her little brother, Jamar, and it is our understanding that the grandparents also have custody of the claimant's son, Jamar, as well.

The claimant also has a girlfriend named Delores who he had been dating for some period of time. Delores denied being totally dependent financially upon the claimant at the time of his accident and death, although she did state he would assist her from time to time financially and specifically mentioned that he helped her with her rent sometimes.

Remarks:

Since this appears to conclude our handling of this investigation, we are taking the liberty of retiring our file and submitting our bill for services. Thank you very much for this assignment.

Very truly yours,
Tuten Insurance Services



Christopher L. Tuten
President

Enc: Recorded Statement – Celestine Hemmingway
Recorded Statement – James Davis
Recorded Statement – Renita Robinson
Recorded Statement – Delores Councill
Funeral Program/Obituary
Family Court Documents (2)
Birth Certificates (2)

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Death Certificate
Funeral Bill

Cc: Ms. Phyllis Sturkey
Companion Property & Casualty Insurance Company
Post Office Box 100165
Columbia, South Carolina 29202
(Copies of all documents and Service Bill)

6112 Martha's Glen • PO Box 9489 • Columbia, S.C. 29209 • (803) 783-2008 • Fax (803) 783-5452
Email: walter@tuteninsurance.com • chris@tuteninsurance.com

~ The Obituary ~

"But they that wait upon the Lord shall renew their strength, they shall mount up with wings as eagles, they shall run and not be weary and they shall walk and not faint."

Isaiah 40:31

There are many things in life we cannot understand; but we must trust God, and be guided by his hand. All who have God's blessings can rest safely in His care, for He promises safe passage on the wings of faith and prayer.

Mr. Ronnie Earl Davis entered into eternal rest on Tuesday, June 15, 2010 after a drowning accident in Galivants Ferry, South Carolina. He was born on December 24, 1967, in Marion County, to Roosevelt Davis and Fredrena Davis.

He graduated from Terrell's Bay High School, Centenary, South Carolina in 1986. He attended TCI Institute of Charleston, South Carolina and received his CDL. He became affiliated with the Friendship A.M.E. Church, where he remained until his death.

He leaves to cherish fond and loving memories, his parents: Roosevelt and Fredrena Davis; one daughter: Renita Robinson of Marion, SC; one son: Jamar Robinson of Marion, SC; four sisters: Celeste (Teddy) Hemmingway, Shirley Davis, of Marion, SC, Olive (Willie) Phillips, Mullins, SC; Loraine Smith of Conway, SC; two brothers: James Stanley Davis, Rockhill, SC, Dean (Lisa) Davis, Blackstock, SC; three aunts: Rosetta Bennett,

Marion, SC, Earnestine Davis, Gresham, SC, Mattie Walker, Melburn, FL; three uncles: Marvin Bennett, Gresham, SC, Luther Davis, Willie Lee Davis, Melburn, FL; one grandson: Cody McKenzie, Jr. of Marion, SC; eight nieces, three nephews, one preceded him in death; seven great nieces and nephews, and his best friend, Alex Harris and a host of relatives and friends.



~ A Tribute ~

*A precious one from us has gone,
The voice we loved is still,
A place is vacant in our hearts,
Which never can be filled.*

*Dear Master take us by the hand
And guide us through this day;
The path ahead is rough,
Oh Lord, and painful is the way...*

*Dear Master take by the hand
And fill us with thy peace
Uplift our hearts and soul,
Oh Lord, that we may find release.*

*Dear Master take us by the hand
And give us strength to cope
Protect us from the caves of life
And bless us with new hope.*

Always Your Family

~ The Order of Service ~

Rev. Dr. William Smith, Jr., Presiding Eld.
Marion District, Presiding

Prelude	M.
Processional Hymn	Choir
<i>"Nearer My God To Thee"</i>	
Opening Hymn #325	Choir
<i>"What a Friend We Have in Jesus"</i>	
Prayer	Rev. Joseph Bennett
Scriptures:	
Old Testament	Rev. John Brown
New Testament	Rev. Paul Brantley
Solo	Mrs. Gusand Weeks
Remarks:	
(Charleston District) Presiding Elder, Charles J. Graves	
	Mr. Jamar Robinson
	Miss Connie Ford
	Mr. James L. Davis
Solo	Miss Odessa Eaddy
Acknowledgements/Obituary	Miss Connie Ford
Solo	Miss Doretha Davis
Words of Comfort	Rev. McKeever Hemmingway
Selections	Choir

COMMITTAL - BENEDICTION - INTERMENT

Old Ford Cemetery
Gresham, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF Marion
South Carolina Department of Social Services
vs. Ronnie Earl Davis
Conference Date: 8-5-98
Attorney for Obligor: pro se

12th IN THE FAMILY COURT
JUDICIAL CIRCUIT
ADMINISTRATIVE PROCESS
ORDER OF FINANCIAL RESPONSIBILITY
Docket Number: 98-400
CSED Case Number: 0192723

Temporary Order

1. The Custodian and Obligor in this action are:

CUSTODIAN AFDC RECIPIENT: ☒ Yes ☐ No

Name: Gail Robinson

Residence and/or Mailing Address:

Rt. 3 Box 1189
Marion, SC 29571

Telephone: 843-423-1774

Sex: F DOB: 7-19-65

Social Security Number: 250-49-1110

Driver's License No.: _____ Exp. Date: _____

Employer: N/A

Telephone: _____

OBLIGOR

Name: Ronnie Earl Davis

Residence and/or Mailing Address:

Rt. 2 Box 3850
Gresham, SC 29546

Telephone: 843-362-1213

Sex: M DOB: 12-24-67

Social Security Number: 248-23-3802

Driver's License No.: 871732 Exp. Date: 12-24-2000

Employer: N/A

Telephone: _____

2. The Obligor acknowledges proper service of the Notice of Financial Responsibility and waives any defenses; the obligor waives a court hearing;

☒ The obligor is the natural parent of and owes a duty of support to the following dependent child(ren):

☐ The obligor admits to being the natural father of the dependent child(ren) listed below. By this Order, the

obligor is found to be the father of and owes a duty of support to the dependent child(ren).

Name	DOB	Social Security Number
<u>Benita C. Robinson</u>	<u>7-19-89</u>	<u>250-81-9260</u>
_____	_____	_____
_____	_____	_____

3. ☐ Paternity tests were conducted for the child(ren) _____

_____. The paternity tests indicate a _____ percent probability of paternity for the above-named child(ren). The obligor owes a child support arrearage of \$ _____, for child support set retroactive to _____

4. The obligor agrees to pay \$ _____ as costs directly to the Child Support Enforcement Division, no later than _____

5. ☒ Obligor was served on 6-10-98

☐ Obligor waives thirty (30) days notice.

6. The obligor's gross monthly income is \$ 0. The custodian's gross monthly income is \$ 0. Day care expenses for the child(ren) are \$ _____ per _____ The cost of insurance is \$ _____ per _____ which is paid by the _____

Initials: RD Y. R.

*
JR-25811 *File*

STATE OF SOUTH CAROLINA)
COUNTY OF Marion)
SOUTH CAROLINA DEPARTMENT)
OF SOCIAL SERVICES,)
PLAINTIFF,)
-vs-)
Ronnie Davis)
DEFENDANT.)

IN THE FAMILY COURT

ORDER
Docket No. 98-DR-33-400

FILED
BOOK
SEP 17 3 58 PM '98

A hearing was scheduled on September 17, 1998, pursuant to a Notice of Hearing. A representative of the South Carolina Department of Social Services Office of Child Support Enforcement appeared on behalf of Plaintiff. Defendant appeared, understood the proceedings and was allowed to proceed without counsel.

The Court finds that a notice of hearing was done pursuant to a temporary order done 8-5-98. Defendant stated disability is still in appeal. Minimum wage imputed for the defendant. Guidelines set support in the amount of \$166.50 per month.

Based upon the above findings,
IT IS THEREFORE ORDERED that temporary order dated 8-5-98 be made into a final order. Support amount will be \$166.50 + 3% court cost for a total monthly payment of \$171.50 to begin 10-4-98.

IT IS FURTHER ORDERED that _____

AND IT IS SO ORDERED.
Marion, S. C.
9-17, 1998
192723

M. E. Bonite
Judge of the Family Court
12th Judicial Circuit

DSS Form 2794 (Sept. 90) CSE
X Gail Robinson
custodial parent - G

Ronnie Davis
Ronnie Davis

A prior order dated _____ from _____ required the obligor to pay \$ _____ per _____ in support for his/her child(ren). The obligor owes a child support arrearage of \$ _____.

8. The obligor shall pay, through the Court, child support payments of \$ 50.00, plus \$ 0 toward the arrearage, plus three percent (3%) court costs, for a total Monthly payment of \$ 51.50, beginning 9-4-98.
9. The obligor's child support obligation shall continue until the child support/arrears are fully paid. The obligor shall pay the amount as ordered until the minor child(ren) attain(s) the age of emancipation; or, until the child(ren) become(s) otherwise emancipated, **as may be determined by the Court**. This does not preclude anyone from seeking a post-secondary education support order.
10. Each payment shall be made payable to the Marion County Family Court, shall contain the Family Court file number, and the obligor's full name.
11. ☐ The obligor shall provide and maintain health insurance coverage for the child(ren) and shall provide proof of coverage to the CSED by _____. The obligor agrees to notify the CSED when health insurance is changed.
- ☒ Insurance is not reasonably available.
- ☐ The obligor shall pay _____% of all unreimbursed health expenses in excess of \$250 per year per child. The custodian shall assume the costs of the unreimbursed medical expenses up to \$250 per year per child.
12. All future notices or correspondence shall be sent to the Obligor and Oblige at the address above. The Obligor and the Oblige shall advise the Court, within ten (10) days, of every change in mailing address or employment. Failure to do so can result in future hearings being held in your absence.
13. Income withholding is ordered pursuant to S.C. Code Ann. §20-7-1315.
14. Any party may request, in writing, a review of his/her child support order for possible adjustment thirty-six (36) months from the date of this order or thirty-six (36) months from the date of the last review of this order. A written request for review must be made to the South Carolina Department of Social Services, Child Support Enforcement Division.
15. Pursuant to the Uniform Interstate Family Support Act and S.C. Code Ann. §20-7-960 et seq., this State has continuing, exclusive jurisdiction over this order.
16. Failure to pay your child support obligations may result in any or all of the following actions: the revocation of any licenses you hold; the reporting of your delinquent status to the credit bureau; the intercept of your federal and state income tax refunds; the intercept of any other payments due to you from the federal government; and/or an action for contempt of court which may result in punishment by a fine, a public work sentence, or by imprisonment or any combination of them. Further, a bench warrant may be issued for your arrest.

17. Defendant states that his disability claim (appeal) has been pending since 1995. A temporary order was done and a hearing is set judicially for Sept. 17, 1998 to address disability issue. Temp. order sets minimum support.

I voluntarily consent to this order:

Dated: 8-5-98

Ronnie E Davis
Obligor

Dated: 8-5-98

Hail Robinson
Obligor's Attorney

Dated: 8-5-98

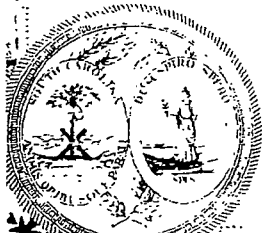
Rachel J. Ferguson
Authorized Designee, Child Support Enforcement Division

Copy Received By: Ronnie E Davis

8/5/98

Obligor

Augment Roll entered August 4, 1998 at 3:05 pm
Martha E. Saxton, C.S.C.P.
Marion Co., S.C.



SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Division of Vital Records, Columbia, S. C.

DATE ISSUED: MAR 04 1990 BIRTH NO.: 139- 98-042733

NAME: *JAMAR LE CARIL ROBINSON*

DATE: NOV 04 1998 SEX: MALE

BIRTH PLACE-COUNTY: FLORENCE FILE DATE: NOV 04 1998

This is a true certification of name and birth facts recorded in this office.

Michael D. Bennett *William R. Hudson*

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Division of Vital Records, Columbia, S. C.

DATE ISSUED: MAR 21 1990 BIRTH NO.: 139- 89-027913

NAME: *RENITA CATRINE ROBINSON*

BIRTH DATE: JUL 19 1989 SEX: FEMALE

BIRTH PLACE-COUNTY: FLORENCE JUL 21 1989

This is a true certification of name and birth facts recorded in this office.

Michael D. Bennett BY *Barbara A. Odum* DEPUTY REGISTRAR

Jackson & McGill Funeral Service

P.O. Box 845 - 612 S. Main Street
Marion, South Carolina 29571
(843) 423-2241 Fax (843) 423-3236

DECEASED Mr. Bonnie Earl Davis No. 1725
DATE OF DEATH Tuesday, June 15, 2010
PLACE OF DEATH Little Red River - Marion County
DATE OF STATEMENT _____

SERVICES, FACILITIES & TRANSPORTATION

Basic Services of Funeral Director & Staff \$ 800.00
Embalming 350.00
Other Preparation of Body 100.00
Use of Facilities & Staff for Viewing / Visitation 150.00
Use of Facilities & Staff for Funeral Ceremony
Use of Facilities & Staff for Memorial Service
Use of Equipment & Staff for Graveside Service
Use of Equipment & Staff for Church Service 175.00
Transfer of Remains to Funeral Home -0-
Hearse 125.00
Limousine 1 Plus 2 300.00
Sedan
Service / Utility Vehicle

Home Visitation set-up 30.00
TOTAL SERVICE CHARGE \$ 2,030.00

MERCHANDISE

Casket (or alternative container) 1,902.00
Name/No. N 2720 E 343 PC
Material Crucifix - Mirror sides 20 GA
Color Ebony / Silver
Outer Burial Container 990.00
Name/No. Bell Burial Vault Co.
Material 3 PC Vault
Clothing
Acknowledgement Cards
Register Book 20.00
Memory Folders / Prayer Cards
Cremation Urn
TOTAL MERCHANDISE \$ 2,912.00

SPECIAL SERVICES

☐ Forwarding Remains to: ☐ Receiving Remains from:
Immediate Burial
Direct Cremation
Other
TOTAL OF SPECIAL CHARGES \$

TOTAL FUNERAL HOME CHARGES \$ 4,942.00
(This total does not include Cash Advances)

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve. If you selected arrangements such as a direct cremation or immediate burial, if we charged for embalming, we will explain why below.

CASH ADVANCES

Certified Copies of Death Certificate
1st 12.00 each \$ 6.00 each \$ 30.00

Clergy

Musicians

Paid Newspaper Notice

Cemetery

Grave opening & closing 350.00

Other
Funeral programs 80.00
Request: 500 TOTAL CASH ADVANCES \$ 460.00

We charge you for our services in obtaining: (specify cash advance items)

SUMMARY

Total Funeral Home Charges 4,942.00
Local Sales Tax (if applicable) \$
State Sales Tax (if applicable) \$ 174.72
Total Cash Advances \$ 460.00
GRAND TOTAL \$ 5,576.72

Less Credits and Payments

Plus church rental \$ 175.00
Total Credits 515.72

BALANCE DUE
Billing To Mrs. Celestine Hemmingway
3045 Ammonas Loop
Marion, SC 29571

DISCLOSURES

Reason for embalming Funeral with viewing.

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.
family's choice to purchase
Casket and 3 piece Vault for
funeral service.

ACKNOWLEDGEMENT AND AGREEMENT

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Casket Price List and the Outer Burial Container Price List.

Terms of Payment: _____

Full payment is due no later than _____.
If any payment is not paid when due, an UNANTICIPATED LATE CHARGE of _____ % per month (ANNUAL PERCENTAGE RATE) on the unpaid balance will be due. I agree to pay the Balance Due listed on this Statement, plus any Late Charge. In the event I default in payment to this funeral establishment, I agree to pay reasonable attorney's fees and court costs in addition to any Late Charge applicable. I understand and agree that I am assuming personal liability for the charges set forth in this Statement and that this is in addition to the liability imposed by law upon the estate of the deceased. By my signature below, I hereby agree to all of the above and acknowledge receipt of a copy of this Statement.

Celestine Hemmingway 6-17-10
Signed _____ Dated _____
Social Security Number _____

Signature _____
ACCEPTANCE This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1009687

Carrier File #:

November 23, 2010

NOTICE OF HEARING RESET

Ronnie Davis v. MARION COUNTY

Subject: To determine to whom benefits are payable and in what amount.
Date: January 4, 2011 at 11:30 AM
Location: City of Beaufort Municipal Court, 1901 Boundary Street, Courtroom
Beaufort, SC 29902

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Derrick L. Williams
803-737-5692, rgsmith@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Renee G Smith, SC Workers' Compensation, November 23, 2010

Party

Employee: Ronnie Davis

Attorney

Akim A. Anastopoulo
akim@akimlaw.com

Dependent: Renita Robinson
2309 Blackburn Road
Marion, SC 29571

Dependent: Jamar Robinson
c/o Peggy and Carol Robinson, Grandparents
2309 Blackburn Road
Marion, SC 29571

Carrier: SC Second Injury Fund
Email: legaldiv@sif.sc.gov

Record on Appeal
- Page 263-

Party

Employer: MARION COUNTY
Carrier: SC Association of Counties SIF

Attorney

Anne V. Noonan
avnoonan@wjlaw.net
843-284-1097

ANASTOPOULO & CLORE, LLC

ATTORNEYS AT LAW

Toll Free: (800) 313-2546

Facsimile: (800) 313-2546 or (843) 853-2291

Mailing Address: 2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418

Akim A. Anastopoulos (SC)

Samuel K. Allen (DC, SC, TN)

David P. Bolek (SC)

Kyle M. Hobbs (SC)

Mark D. Clore (DC, GA, NC, OK, SC, TX) ▲**

Eric S. Brock (GA, SC)

John P. Hayes (MI, NC, OK, PA, SC)

* Certified Civil Trial Law, National Board of Trial Advocacy

♦ Diplomat, Medical Professional Liability, American Board of Professional Liability Attorneys

November 12, 2010

SENT VIA FAX TO 803-737-1281

South Carolina Workers Compensation Commission

P.O. BOX 1715

Columbia, SC 29202-1715

RE: Estate of Ronnie Earl Davis v. Marion County
WCC File #: 1009687

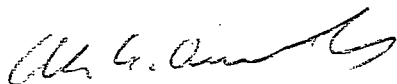
To Whom It May Concern,

Please be advised that I have been retained to represent the Estate of Ronnie Earl Davis. It is my understanding that a hearing has been scheduled in this case. My office has not been contacted regarding this claim either by the commission or opposing counsel. Only this week did we receive a Pre Hearing Form 58 brief from opposing counsel.

Please forward any forms that have been filed in this case to date and provide my office with information on the hearing time, place and date.

I sincerely appreciate your assistance in this matter.

Kindest Regards,



Akim A. Anastopoulos

Record on Appeal

- Page 265 -

ADDITIONAL OFFICES

Columbia, South Carolina * Florence, South Carolina * Greenville, South Carolina

Fax Cover Sheet

Anastopoulos & Clore, LLC
2850 Ashley Phosphate Road
Suite B
North Charleston, SC 29402
Toll Free: (800) 313-2546
Fax: (843) 853-2291

Send to: To Whom it may Concern	From: Akim Anastopoulo
Fax Number: 803-737-1281	Date: November 12, 2010
No. of Pages including cover: 2	Time: 2:03 p.m.
Re: Estate of Ronnie Earl Davis v. Marion County, WCC File# 1009687	

- ☒ Accepted
☐ Revised
☐ Resubmitted
☐ Revised
☐ Resubmitted

Comments:

CERTIFICATE OF COUNSEL

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

November 2, 2012



Eric M. Poulin
Anastopoulo Law Firm, LLC
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 614-8888
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

William H. Seals, Circuit Court Judge

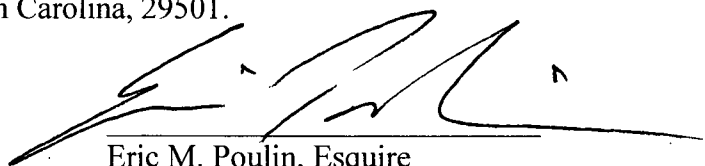
Case No. 2010-CP-33-941

Celeste Hemmingway, as Personal Representative
of the Estate of Ronnie Earl Davis; and David
Brown.....Appellants,
v.
Marion County and Marion County Prison
Camp.....Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Record on Appeal on Marion County and Marion County Prison Camp by depositing a copy of it in the United States Mail, postage prepaid, on November 2, 2012, addressed to their attorney of record, D. Malloy McEachin, 2117 W. Palmetto Street, Suite C, Florence, South Carolina, 29501.

November 2, 2012



Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 614-8888
Attorney for Appellant

Other Counsel of Record:

D. Malloy McEachin, Jr.
217 W. Palmetto St., Suite C
Florence, SC 29501
(843) 665-0135

RECEIVED
NOV 06 2012
SC COURT OF APPEALS