

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Diane Schafer Goodstein, Circuit Court Judge

Civil Action No. 2010-CP-15-00894
Appellate Case No. 2012-212865

RECEIVED

MAY 30 2013

SC Court of Appeals

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate
of Jacob Cleveland Wright, and Jake
Wright and Theresa Gadsden, individually Respondents

v.

Colleton County Sheriff's Department..... Appellant

RECORD ON APPEAL

Marshall H. Waldron Jr.
Matthew D. Cavender
Griffith, Sadler & Sharp, PA
600 Monson Street
PO Drawer 570
Beaufort, SC 29901
(843) 521-4242
Attorneys for the Appellant

Paul N. Siegel
PO Box 1143
Walterboro, SC 29488
(843) 549-9547

Eugene P. Warr Jr.
Lucas, Warr & White
PO Box 188
Lamar, SC 29069
(843) 665-8187

Steven D. Murdaugh
Peters, Murdaugh, Parker
Eltzroth & Detrick, PA
PO Box 1164
Walterboro, SC 29488
(843) 549-9544
Attorneys for the Respondent

Paul N. Siegel
PO Box 1143
Walterboro, SC 29488
(843) 549-9547

Eugene P. Warr Jr.
Lucas, Warr & White
PO Box 188
Lamar, SC 29069
(843) 665-8187

Steven D. Murdaugh
Peters, Murdaugh, Parker,
Eltzroth & Detrick, PA
PO Box 1164
Walterboro, SC 29488
(843) 549-9544

Attorneys for the Respondents

Marshall H. Waldron Jr.
Matthew D. Cavender
Griffith, Sadler & Sharp, P.A.
600 Monson Street
PO Drawer 570
Beaufort, SC 29901
(843) 521-4242

Attorneys for the Appellant

Index

Order filed June 25, 2012	1
Order filed June 26, 2012	2
Order filed August 8, 2012	5
Verdict Form.....	6
Complaint	7
Answer.....	13
Trial Transcript	17
Index.....	18
Sheriff George Malone (in-camera)	
Direct Examination by Mr. Siegel	23
Cross Examination by Mr. Waldron	25
Jake Wright	
Direct Examination by Mr. Siegel	27
Cross Examination by Mr. Waldron	32
Rowena Wright	
Direct Examination by Mr. Siegel	35
Sheriff George Malone	
Direct Examination by Mr. Warr	37
Deputy Scott McCoy	
Direct Examination by Mr. Murdaugh	44
Cross Examination by Mr. Waldron	69

Richard Harvey	
Cross Examination by Mr. Waldron	72
Recross Examination by Mr. Waldron	73
Martin Schussel (in-camera)	
Direct Examination by Mr. Siegel	74
Cross Examination by Mr. Waldron	79
Examination by the Court	86
Cross Examination by Mr. Waldron	89
Martin Schussel	
Direct Examination by Mr. Siegel	96
Martin Schussel (in-camera)	
Direct Examination by Mr. Siegel	109
Martin Schussel	
Direct Examination by Mr. Siegel	111
Cross Examination by Mr. Waldron	116
Appellant's Motion for Directed Verdict	119
Donald Roberts	
Direct Examination by Mr. Waldron	126
Cross Examination by Mr. Siegel	136
Sgt. David William Lee	
Direct Examination by Mr. Waldron	140
Appellant's Motion for Directed Verdict	148
Jury Verdict	152

Trial Exhibit; Plaintiff's No. 1	154
Trial Exhibit; Plaintiff's No. 5	166
Trial Exhibit; Plaintiff's No. 7	170
Appellant's Motion <i>in limine</i>	180
Appellant's Post-Trial Motions	192
Appellant's Motion to Alter or Amend	203
Respondents' Motion for JNOV or New Trial	206
Respondents' Motion for Costs	209
Certificate of Counsel	212

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF COLLETON)

FOURTEENTH JUDICIAL CIRCUIT)

CASE NO. 2010-CP-15-894

Jake Wright and Theresa Gadsden, as
 Personal Representatives of the Estate of
 Jacob Cleveland Wright, and Jake Wright
 and Theresa Gadsden, individually,

Plaintiffs,

Vs.

ORDER

Colleton County Sheriff's Department,

Defendant.

Having reviewed the Defendant's motion for judgment notwithstanding the verdict, pursuant to Rule 50, SCRCP, or in an alternative for a new trial pursuant to Rule 59, SCRCP, *both are* hereby respectfully denied.

AND IT IS SO ORDERED.



Honorable Diane S. Goodstein

Presiding Judge

Fourteenth Judicial Circuit

This *18* day of June, 2012.
Shannon South Carolina

PATRICIA C. GRANT
 COLLETON COUNTY
 COMMON PLEAS
 2012 JUN 25 AM 9:12

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate of
Jacob Cleveland Wright, and Jake Wright
and Theresa Gadsden, individually,

Plaintiffs,

vs.

Colleton County Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-15-894

ORDER

This matter came before the Court on the Plaintiffs' post-trial motions. The Plaintiffs moved the Court for judgment notwithstanding the verdict, pursuant to Rule 50, SCRPC, or the alternative for a new trial, pursuant to Rule 59, SCRPC, or under the thirteenth juror doctrine. The Plaintiffs limit their motion to the survival cause of action only. The Court has reviewed material submitted in support of the motion and finds that further argument is not needed.

A.

"The test of a survival action in South Carolina is whether the decedent suffered conscious pain and suffering." *Rutland v. S.C. DOT*, 390 S.C. 78, 83 (Ct. App. 2010), citing *Camp v. Petroleum Carrier Corp.*, 204 S.C. 133, 139, 28 S.E.2d 683, 685 (1944). "If there is any evidence from which the jury could reasonably find conscious pain and suffering, a factual issue is presented. *Ward v. Epling*, 290 S.C. 547, 560 (Ct. App. 1986). During the trial of this case, the Plaintiff, Jake Wright, testified that after the collision, he regained consciousness and saw his son on the seat next to him. He reached out and touched his son's ankle and called "J.C." and heard a moan. The Plaintiff also presented the testimony of Richard Harvey, Colleton

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 JUN 26 PM 12:32

County Coroner, who testified that by the time he arrived Jacob Cleveland Wright was already deceased. Coroner Harvey told the jury about the decedent's injuries and opined that death was not instantaneous. During cross-examination, Coroner Harvey testified that he at no time observed Jacob Cleveland Wright alive at the site of the crash. He testified that he told Mr. Wright's family that Jacob Cleveland Wright did not suffer. Thus, the jurors had conflicting evidence on the issue of survival, and the Court rules that the issue was properly submitted to the jury for their factual determination. The evidence and all inferences fairly deducible therefrom must be resolved in favor of the party given a verdict by the jury. *Collins v. Johnson*, 245 S.C. 215 (1965); *Warren v. Watkins Motor Lines*, 242 S.C. 331, 334 (1963). The Court hereby affirms to the decision of the jury.

B.

"A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State...." Rule 59(a), SCRPC. The Plaintiffs' motion asking for a new trial does not state specific grounds. The Plaintiffs offer no fact or point of law which might justify a new trial. This Court will not rule in a vacuum, and accordingly, declines to grant the Plaintiffs' Rule 59 motion. To the extent that the Plaintiffs base their motion for a new trial on the evidence offered in support of the survival cause of action, the Court reiterates that all inferences must be drawn in favor of the jury's verdict. The Plaintiffs' motion is, therefore, denied.

C.

In South Carolina, a trial judge may grant a new trial following a jury verdict under the thirteenth juror doctrine. The doctrine "entitles the judge to sit, in essence, as the thirteenth juror

when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597 (2009), quoting *Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 478 (2002); *Folkens v. Hunt*, 300 S.C. 251, 387 (1990). The Court does not find that the evidence fails to justify the verdict. Thus, the Court declines to order a new trial under the thirteenth juror doctrine.

D.

The Plaintiffs' motion for judgment notwithstanding the verdict, as to the survival cause of action, pursuant to Rule 50, SCRPC, is respectfully denied.

The Plaintiffs' motion for a new trial, as to the survival cause of action, pursuant to Rule 59, SCRPC, is respectfully denied.

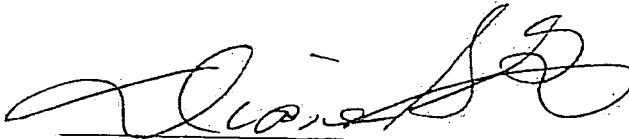
The Court declines to order a new trial under the thirteenth juror doctrine.

Costs are allowed in the amount of \$732.19 as follows:

Colleton County Clerk of Court (filing fee)	\$150.00
SCDMV (accident report)	\$ 6.00
SCDPS (MAIT report)	\$100.00
Omni Flight (medical records)	\$ 10.00
Colleton County Sheriff (records)	\$ 41.75
Colleton County Clerk of Court (filing fee)	\$150.00
Colleton County Coroner's Office (records)	\$ 79.80
Colleton County Clerk of Court (filing fee)	\$ 25.00
Palmetto Parcels Plus (copies)	\$ 44.64
James Herndon - Process Service: Subpoena, Faith Turner	\$ 50.00
Faith Turner (witness fee)	\$ 25.00
Clerk of Court (filing fee for Motions)	\$ 50.00

AND IT IS SO ORDERED.

This 17 day of May, 2012
St. George, South Carolina


Diane Schafer Goodstein
Presiding Judge
14th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate of
Jacob Cleveland Wright, and Jake Wright
and Theresa Gadsden, individually,

Plaintiffs,

vs.

Colleton County Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-15-894

**ORDER DENYING DEFENDANT'S
MOTION TO ALTER OR AMEND
DENIAL OF POST-TRIAL MOTIONS**

This matter came before this Court by way of Defendant's Motion to Alter or Amend Denial of Post-Trial Motions. Because the Defendant's Motion does not raise any new issues for the Court's consideration, the Defendant's Motion to Alter or Amend Denial of Post-Trial Motions is denied with one exception. The amount of the verdict must be reduced to the statutory of \$300,000.00 (THREE HUNDRED THOUSAND AND 00/100 DOLLARS).

With regards to the verdict it is clear that "a jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision..." Wright v. Craft 327 SC 1 (Ct. App. 2006). There was evidence to support the jury's finding.

AND IT IS SO ORDERED.

This 30 day of Aug, 2012
Patricia C. Grant South Carolina

Diane Schafer Goodstein
Diane Schafer Goodstein
Presiding Judge
14th Judicial Circuit

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 AUG -8 PM 1:23

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jake Wright and Theresa Gadsden, as
the Personal Representatives of the
Estate of Jacob Cleveland Wright, and
Jake Wright and Theresa Gadsden,
individually,

Plaintiffs,

vs.

Colleton County Sheriff's Department,

Defendant

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case Number: 2010-CP-15-894

VERDICT FORM

2012 MAR -9 PM 12:10

As to the wrongful death cause of action We, the Jury, unanimously find for the Plaintiffs
in the amount of 1,700,000

Seven hundred thousand dollars.

As to the survival cause of action We, the Jury, unanimously find for the Plaintiffs
in the amount of _____

_____ dollars.

We, the Jury find for the Defendant.

Diane Taylor
PRESIDING JUROR

March 9, 2012
Walterboro, South Carolina

WHEN YOU HAVE COMPLETED THE QUESTIONS, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate of
Jacob Cleveland Wright, and Jake Wright
and Theresa Gadsden, individually,

Plaintiffs,

vs.

Colleton County Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-15- 894

COMPLAINT
(Jury Trial Requested)

2010 AUG 31 PM 2:53

The Plaintiffs, the Estate of Jacob Cleveland Wright by and through its Personal Representatives Jake Wright and Theresa Gadsden, and Jake Wright and Theresa Gadsden, individually, complaining of the Defendant Colleton County Sheriff's Department allege as follows:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiffs Jake Wright and Theresa Gadsden are the Personal Representatives of the Estate of Jacob Cleveland Wright who died on January 13, 2009 while a citizen and resident of the County of Colleton, State of South Carolina. The Plaintiff Jake Wright is a citizen and resident of Colleton County, South Carolina. The Plaintiff Theresa Gadsden is a citizen and resident of Charleston County, South Carolina. The individual Plaintiffs are the parents of Jacob Cleveland Wright and were duly appointed the Personal Representatives of this Estate pending in Colleton County as Case Number 2009-ES-15-00022.

2. The Colleton County Sheriff's Department is a government entity organized and existing under the laws of the State of South Carolina with its sole and principal place of

business in Colleton County and it is a political subdivision within the meaning of the South Carolina Tort Claims Act and at all times hereinafter mentioned was the employer of Deputy Scott Lee McCoy, the owner of the 2008 Ford automobile involved in the collision described herein below and had the ability at all relevant times herein to direct and control and was acting by and through its agents, employees and officers, who at all times were acting on the behalf of Defendant, to further the interest of Defendant and within the course and scope of their employment with the Defendant, making Defendant liable for their acts and omissions.

3. At the time of the facts alleged herein, the Plaintiffs are informed and believe that Colleton County Deputy Sheriff Scott Lee McCoy was responding to a call and operating a 2008 Ford automobile owned by the Defendant County.

4. On January 13, 2009, Jacob Cleveland Wright was riding as a passenger in a 1989 Chevrolet truck owned by his father, Jake Wright, and being operated by Jake Wright in a northerly direction on South Carolina State Highway 303 in Colleton County. The vehicle being operated by Jake Wright and in which the decedent was a passenger approached the intersection of South Carolina State Highway 303 and State Road 436 near the area of Green Pond in Colleton County and was waiting to make a left turn onto State Road 436 when the vehicle being operated by the Deputy Scott Lee McCoy violently collided with the 1989 Chevrolet truck being operated by Jake Wright causing terrible injuries to and the death of Jacob Cleveland Wright.

5. The above set forth collision and death of Jacob Cleveland Wright were proximately caused by the negligence, gross negligence, reckless, willful and wanton acts of Deputy Scott Lee McCoy in one, more, or all of the following particulars:

- a. In operating his patrol car at a high rate of speed;
- b. In failing to keep a proper lookout;

- c. In driving the 2008 Ford in a reckless manner, which was in willful and wanton disregard for the safety of Jacob Cleveland Wright, all in violation of South Carolina Code Ann. §56-5-2920 (1976), as amended;
- d. In failing to properly observe the traffic conditions, and if same were observed, in failing to heed to same;
- e. In failing to apply brakes, if in fact the 2008 Ford vehicle had any brakes at all, all in violation of South Carolina Code §56-6-4850 (1976), as amended;
- f. In operating the patrol car and responding to a call without flashing blue lights;
- g. In operating the 2008 Ford vehicle and responding to a call without a warning siren in operation;
- h. In failing to keep the 2008 Ford vehicle under proper control;
- i. In failing to yield the right-of-way;
- j. In failing to operate the 2008 Ford with that degree of care required by South Carolina Code Ann. §56-6-3230 (1976), as amended; and
- k. In failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar conditions or circumstances.

6. The above set forth collision and death of Jacob Cleveland Wright were proximately caused by one, more, or all of the above set forth particulars on the part of the Deputy Scott Lee McCoy and as a result of same Jacob Cleveland Wright was killed in the aforesaid collision and suffered great physical pain and suffering and emotional distress.

FOR A SECOND CAUSE OF ACTION

7. The Plaintiffs hereby incorporate herein all prior allegations as if fully reiterated verbatim herein.

8. As a direct and proximate result of the acts, delicts and omissions of the Defendant, Jacob Cleveland Wright was killed thereby creating great hardship and damages to his statutory beneficiaries as determined by South Carolina Code §15-51-20 and other law, including, but not limited to, pecuniary loss, loss of companionship, emotional distress, wounded feelings, grief and sorrow, and deprivation of the use and comfort of the deceased's society, all to their damage, and in the future will so suffer.

9. The Plaintiffs are informed and believe that such statutory beneficiaries are entitled to compensation for the aforesaid damages and injuries from the Defendant, in addition to an award of punitive damages for the reckless and wanton disregard of Jacob Cleveland Wright's health, well being, rights and life, all pursuant to South Carolina Code §15-51-10, et seq.

FOR A THIRD CAUSE OF ACTION

10. The Plaintiffs hereby incorporate herein all prior allegations as if fully reiterated verbatim herein.

11. Upon information and belief, the Deputy Scott Lee McCoy was hired by the Colleton County Sheriff's Department to act as a Deputy for the County.

12. Scott Lee McCoy has a long and continuous history of violations of the law while operating motor vehicles which demonstrate that he is unfit and unable to be entrusted with a

Sheriff's patrol vehicle and that no person exercising reasonable judgment would so entrust him with a position of responsibility as to operating a motor vehicle.

13. The Plaintiff is informed and believes that Scott Lee McCoy was hired as a Deputy and given control over a patrol vehicle without a proper review of his driving record and numerous legal violations which were readily available to anyone exercising even a minimal duty of care.

14. In the event the Colleton County Sheriff's Department did inspect the background driving record of Scott Lee McCoy then the decision to hire him as a deputy and give him control of a patrol vehicle despite his past record was in total disregard of the duties of the Sheriff to protect and defend the citizens of Colleton County and in itself an act of negligence. The above set forth collision and resulting death of Jacob Cleveland Wright was additionally proximately caused by the negligence, gross negligence, reckless, willful and wanton acts of the Colleton County Sheriff's Department in one, more, or all of the following particulars:

- a. In failing to do a background check on Scott Lee McCoy;
- b. In failing to investigate the driving records of Scott Lee McCoy;
- c. In failing to ascertain whether Scott Lee McCoy was an appropriate person to have control of a patrol car;
- d. In failing to properly train and supervise Scott Lee McCoy;
- e. In failing to properly discipline Scott Lee McCoy given his numerous driving violations;
- f. In hiring Scott Lee McCoy given his numerous driving violations;
- g. In failing to establish rules for the engaging of emergency signals while a deputy is responding to an emergency call;

- h. In failing to use due care in delegation of duties and responsibilities; and
- i. In entrusting Scott Lee McCoy with a patrol vehicle.

15. As a direct and proximate result of the foregoing the statutory beneficiaries of the Estate have suffered the aforementioned actual damages and losses, and Plaintiffs are informed and believe that they are entitled to compensation for such damages and losses from Defendant, and in addition an award of punitive damages for Defendant's reckless and wanton disregard of Jacob Cleveland Wright's health, well being, rights and life, all pursuant to South Carolina Code §15-51-10, et. seq.

WHEREFORE, the Plaintiffs pray for judgment against the Defendant for an award of actual and punitive damages, the costs of this action and for such other and further relief as this Court deems appropriate.



Paul N. Siegel
Attorney for the Plaintiffs
111 Walter Street
Post Office Box 1143
Walterboro, South Carolina 29488
(843) 549-9547
(843) 549-2528 FAX

Walterboro, South Carolina

August 30, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	CASE NO. 2010-CP-15-894
Jake Wright and Theresa Gadsden, as	)	
Personal Representatives of the Estate of	)	
Jacob Cleveland Wright, and Jake Wright	)	
and Theresa Gadsden, individually,	)	
	)	
Plaintiffs,	)	
vs.	)	ANSWER
	)	
Colleton County Sheriff's Department,	)	
	)	
Defendant.	)	

PATRICIA D. GRAM
 COLLETON COUNTY
 COMMON PLEAS
 2010 SEP 24 PM 4:02

TO: PAUL N. SIEGEL, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

NOW COMES the Defendant, who denies each and every allegation in the Complaint not specifically admitted, and without waiving the affirmative defense of ineffective service of process, in answer to the Complaint states as follows:

ANSWER TO THE FIRST CAUSE OF ACTION

1. The Defendant is without knowledge or information sufficient to provide an answer to the allegations of Paragraph 1, and therefore, the allegations are denied at this time.
2. The allegations set forth in Paragraph 2 are denied, except that the Defendant admits that the Colleton County Sheriff's Office is a governmental entity organized and existing under the laws of the State of South Carolina with its sole and principal place of operation in Colleton County, that it is a political subdivision within the meaning of the South Carolina Tort Claims Act, that it was the employer of Deputy Scott Lee McCoy and that it owned the 2008 Ford automobile involved in the collision.
3. The allegations of Paragraph 3 are admitted.
4. The allegations set forth in Paragraph 4 are denied, except that the Defendant admits that

on January 13, 2009, Jacob Cleveland Wright was riding as a passenger in a 1989 Chevrolet truck owned and operated by Jake Wright in a northerly direction on South Carolina State Highway 303 in Colleton County, that the vehicle operated by Jake Wright approached the intersection of South Carolina State Highway 303 and State Road 436 near the area of Green Pond in Colleton County and that a vehicle operated by Deputy Scott Lee McCoy collided with the 1989 Chevrolet truck operated by Jake Wright causing injuries to and the death of Jacob Cleveland Wright.

5. The allegations of Paragraph 5, including its subparts, are denied.
6. The allegations of Paragraph 6 are denied.

ANSWER TO THE SECOND CAUSE OF ACTION

7. The responses set forth in each paragraph above are incorporated as though fully set forth herein.
8. The allegations of Paragraph 8 are denied.
9. The allegations of Paragraph 9 are denied.

ANSWER TO THE THIRD CAUSE OF ACTION

10. The responses set forth in each paragraph above are incorporated as though fully set forth herein.
11. The allegations of Paragraph 11 are denied.
12. The allegations of Paragraph 12 are denied.
13. The allegations of Paragraph 13 are denied.
14. The allegations of Paragraph 14, including all subparts, are denied.
15. The allegations of Paragraph 15 are denied.

WHEREFORE, having answered the Complaint, the Defendants pray that the Complaint

will be dismissed, for costs and for such other and further relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

As to each affirmative defense set forth below, the responses set forth in each paragraph above are incorporated as though fully set forth herein.

FOR A SECOND DEFENSE

The Defendant pleads the provisions of the South Carolina Tort Claims Act, South Carolina Code Section 15-78-10, *et seq.*, including all the immunities, limitations and defenses granted or preserved by the Act.

FOR A THIRD DEFENSE

The Plaintiff's Complaint fails to state a cause of action upon which relief may be granted; the Defendant reserves his right to file a motion pursuant to Rule 12(b)(6), FRCP.

FOR A FOURTH DEFENSE

The Plaintiff's claims are barred or subject to a reduction of recovery by his own comparative negligence, including but not limited to his assumption of the risk of harm, his failure to use reasonable care to protect himself from harm and his actions as the instigator or aggressor of the alleged confrontations with the co-Defendants.

FOR A FIFTH DEFENSE

The Plaintiff's claims for punitive damages are not recoverable against a government entity under the South Carolina law pursuant to South Carolina Code Section 15-78-120(b).

FOR A SIXTH DEFENSE

The Plaintiff has failed to properly serve the Summons and Complaint and, therefore, the Court has no personal jurisdiction over the Defendant and the Complaint must be dismissed

pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure for insufficiency of service of process.

FOR A SEVENTH DEFENSE

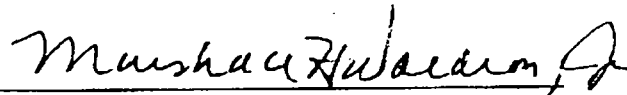
The Defendants reserve the right to timely assert any affirmative defense not currently known to the Defendant.

WHEREFORE, having fully answered the Complaint, Defendant prays that the Court dismiss the Complaint, award it costs and such other and further relief as the Court may deem just and proper.

DATED at Beaufort, South Carolina this 20th day of September 2010, and

Respectfully submitted,

GRIFFITH, SADLER & SHARP, P.A.



MARSHALL H. WALDRON, JR.

600 Monson Street

Post Office Drawer 570

Beaufort, South Carolina 29901-0570

Telephone: (843) 521-4242

Facsimile: (843) 521-4247

ATTORNEY FOR THE DEFENDANT

CERTIFICATE OF SERVICE

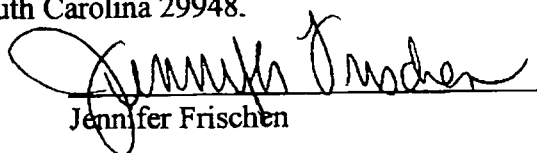
I, Jennifer Frischen, hereby certify that on this 20th day of September 2010, I served the Defendants' Answer upon the Plaintiff by depositing same in the United States mail, postage prepaid to:

Paul N. Siegel, Esquire

111 Walter Street

Post Office Box 1143

Walterboro, South Carolina 29948.


Jennifer Frischen

Beaufort, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NUMBER: 2010-CP-15-00894

JAKE WRIGHT AND THERESA
GADSDEN, AS PERSONAL REPRESENTATIVES)
OF THE ESTATE OF JACOB CLEVELAND)
WRIGHT,)
AND)

JAKE WRIGHT AND THERESA GADSDEN,
INDIVIDUALLY,

PLAINTIFFS,

v.

TRANSCRIPT OF RECORD

COLLETON COUNTY SHERIFF'S
DEPARTMENT,

DEFENDANT.

MARCH 5th - 9th, 2012
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE DIANE S. GOODSTEIN, JUDGE.

APPEARANCES:

MR. PAUL N. SIEGEL, ESQUIRE
111 WASHINGTON STREET
WALTERBORO, SOUTH CAROLINA 29488
MR. STEVEN MURDAUGH, ESQUIRE
MR. EUGENE P. WARR, ESQUIRE
Attorneys for the Plaintiffs

MR. MARSHALL WALDRON
GRIFFITH, SADLER & SHARP
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901
Attorney for the Defendant

Rebecca H. Hill
Official Court Reporter

INDEX

PRE-TRIAL MOTIONS	7
-------------------------	---

IN CAMERA HEARING

<u>WITNESS: SHERIFF MALONE</u>	
DIRECT EXAMINATION BY MR. SIEGEL	66
CROSS-EXAMINATION BY MR. WALDRON	71
INSTRUCTION BY THE COURT	77
JURY SWORN	93
OPENING STATEMENTS	
BY MR. SIEGEL	93
BY MR. WALDRON	99

PLAINTIFF'S WITNESSES

<u>WITNESS: JAKE WRIGHT</u>	
DIRECT EXAMINATION BY MR. SIEGEL	105
CROSS-EXAMINATION BY MR. WALDRON	133
<u>WITNESS: ROWENA WRIGHT</u>	
DIRECT EXAMINATION BY MR. SIEGEL	140
CROSS-EXAMINATION BY MR. WALDRON	156
<u>WITNESS: THERESA GADSDEN</u>	
DIRECT EXAMINATION BY MR. SIEGEL	157
CROSS-EXAMINATION BY MR. WALDRON	186
<u>WITNESS: LT. LUTHER GREEN</u>	
DIRECT EXAMINATION BY MR. SIEGEL	192
CROSS-EXAMINATION BY MR. WALDRON	217
REDIRECT EXAMINATION BY MR. SIEGEL	219
<u>WITNESS: SHERIFF GEORGE MALONE</u>	
DIRECT EXAMINATION BY MR. WARR	221
CROSS-EXAMINATION BY MR. WALDRON	247
REDIRECT EXAMINATION BY MR. WARR	248
STIPULATION OF FUNERAL BILL	250

<u>WITNESS: DEPUTY SCOTT McCOY</u>	
DIRECT EXAMINATION BY MR. MURDAUGH	250
CROSS-EXAMINATION BY MR. WALDRON	340
REDIRECT EXAMINATION BY MR. MURDAUGH	352
RECROSS-EXAMINATION BY INSTRUCTION BY THE COURT	354
<u>WITNESS: RICHARD HARVEY</u>	
DIRECT EXAMINATION BY MR. MURDAUGH	356
CROSS-EXAMINATION BY MR. WALDRON	368
REDIRECT EXAMINATION BY MR. MURDAUGH	369
RECROSS-EXAMINATION BY MR. WALDRON	369
<u>WITNESS: MARTIN D. SCHUSSEL</u>	
PROFFER DIRECT EXAMINATION BY MR. SIEGEL	372
PROFFER CROSS-EXAMINATION BY MR. WALDRON	376
PROFFER DIRECT EXAMINATION BY THE COURT	383
PROFFER CROSS-EXAMINATION BY MR. WALDRON	385
DIRECT EXAMINATION BY MR. SIEGEL	394
CROSS-EXAMINATION BY MR. WALDRON	437
<u>WITNESS: FAITH TURNER</u>	
DIRECT EXAMINATION BY MR. SIEGEL	458
CROSS EXAMINATION BY MR. WALDRON	467
STATE RESTS	467
DEFENDANT'S MOTIONS	468
<u>WITNESS: MR. DONALD ROBERTS</u>	
DIRECT EXAMINATION BY MR. WALDRON	477
VOIR DIRE BY MR. SIEGEL	515
DIRECT EXAMINATION CONTINUES BY MR. WALDRON	519
CROSS-EXAMINATION MR. SIEGEL	529
REDIRECT EXAMINATION BY MR. WALDRON	549
RECROSS-EXAMINATION BY MR. SIEGEL	550
<u>WITNESS: SGT. LEE</u>	
DIRECT EXAMINATION BY MR. WALDRON	551
CROSS-EXAMINATION BY MR. MURDAUGH	565
REDIRECT EXAMINATION BY MR. WALDRON	573
DEFENSE RESTS	578
MATTERS OF LAW	579

CLOSING ARGUMENTS	
BY MR. SIEGEL	593
BY MR. WALDRON	630
BY MR. SIEGEL	642
JURY CHARGE	645
EXHIBITS TO THE JURY	671
JURY QUESTION (Court Exhibit No. 4)	671
JURY QUESTION (Court Exhibit No. 5)	675
JURY QUESTION (Court Exhibit No. 6)	677
JURY QUESTION (Court Exhibit No. 7)	694
VERDICT	694
CERTIFICATE OF REPORTER	697

PLAINTIFF EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>		
ONE	DEP. MCCOY'S EMPLOYMENT APPLICATION	244	335
TWO	DEP. MCCOY'S RESERVE OFFICER APPLICATION	317	319
FIVE	DEP. MCCOY'S 10 YEAR DRIVING RECORD	239	243
SEVEN	C.C.S.O. POLICY MANUAL	209	210
TEN	ARREST RECORD	320	---
ELEVEN	DEATH CERTIFICATE	365	367
TWELVE	FUNERAL BILL	250	250
FOURTEEN C	PHOTO	363	
FOURTEEN D	PHOTO	363	
FOURTEEN E	PHOTO	363	
FOURTEEN FF	PHOTO	131	133
FOURTEEN GG	PHOTO	150	152
FIFTEEN	S.C. DRIVER'S MANUAL	276	276
SIXTEEN	POSTERBOARD OF DON ROBERTS		
SEVENTEEN	POSTERBOARD OF DON ROBERTS		
EIGHTEEN	POSTERBOARD OF DON ROBERTS		
NINETEEN	POSTERBOARD OF DON ROBERTS		
TWENTY	POSTERBOARD OF DON ROBERTS		
TWENTY-ONE	PHOTO	412	413
TWENTY-TWO	PHOTO	412	413
TWENTY-THREE	PHOTO	412	413

DEFENDANT EXHIBITS

ONE	Lexis Nexus printout of statute	343	343
TWO	CDR Data Notebook	446	451
FOUR	Booklet of PowerPoint Presentation	484	485

COURT EXHIBITS

ONE	Plaintiff's Memorandum		70
TWO	Deputy McCoy's employment application		71
THREE	Deposition of Deputy McCoy		298
FOUR	Jury Note - Question Number One		671
FIVE	Jury Note - Question Number Two		677
SIX	Jury Note - Question Number Three		690
SEVEN	Jury Note - Question Number Four		694

DIRECT EXAMINATION

BY MR. SIEGEL:

Q Sheriff Malone, it's good to see you today. Thanks for coming in on such short notice. I want to ask you some questions today regarding standards and procedures in the Sheriff's Office. And first, I want to ask you, did I take your sworn deposition on February 9th, 2012?

A I'm thinking that date is correct, yes, sir. I'm not absolutely sure about the date, but you have taken my deposition.

Q And have you read the deposition?

A Yes, sir.

Q Good. Then, we shouldn't have any problems. Sheriff, in your deposition you testified regarding the depths of your department's investigation for applicants for the position of deputy. Tell me what steps do you take prior to the consideration of hiring a deputy, what investigations do you undertake?

A Well, we run a criminal history on the applicant. We check the applicant's references. We check the applicant's work records in previous employment. We check to find out if the applicant has any local judgments against him, and we also check the applicant's driving record.

Q Do you, as a precondition of hiring a deputy, review criminal history?

1 A Yes, sir.

2 Q And is that local criminal history and national
3 criminal history?

4 A Yes, sir.

5 Q And what does the department do to check national
6 criminal history?

7 A We run a nationwide reference check.

8 Q And do you routinely print the results of that check
9 and put it in the applicant's file?

10 A Yes, sir.

11 Q And how do you do a local criminal history?

12 A Well, there are a couple of ways of running it through
13 NCIC. NCIC is one way; that's usually nationally, but
14 there's another process that can be run to just check with
15 local agencies and surrounding counties and surrounding
16 police departments.

17 Q All right. Since this litigation has begun, have you
18 had the opportunity to thoroughly review Deputy McCoy's
19 personnel file?

20 A Well, I've reviewed it. I wouldn't say thoroughly.
21 I've only reviewed it for what I was looking in it for at
22 the time.

23 Q Okay. Now, I'm going to ask you this first question
24 straight up. Did you review, personally review, Deputy
25 McCoy's ten year driving record prior to your hiring him?

1 halfway down, appears to be a record from Patricia Grant
2 informing you about the judgments checked; is that correct?

3 A Yes, sir.

4 Q So you had in the application, the record of the
5 judgments checked with the Clerk. Let me show you also
6 another document in that package and ask you if that's his
7 high school diploma; Scott McCoy, that is?

8 A Yes, sir.

9 Q Within this packet is a memorandum that Mr. Siegel
10 asked you about. Do you know who typed that memorandum?

11 A Since it doesn't say, I'm not absolutely sure.

12 Q Okay. You just said you have 185 officers you are
13 responsible for, you don't personally check out every
14 applicant, do you?

15 A No, sir.

16 Q You have folks that do that for you?

17 A Yes, sir.

18 Q And you trust what they tell you?

19 A Yes, sir.

20 Q And those -- that memorandum talking about two prior
21 employees, that's the kind of thing that your staff does for
22 you, correct?

23 A Yes, sir.

24 Q And if they find things that would disqualify a person
25 from employment, you expect that they would bring that to

1 your attention, correct?

2 A Well, should they find things that would disqualify the
3 employee, I expect it to never come to me.

4 Q You expect that they would be turned away before the
5 application ever gets to your desk?

6 A Exactly.

7 Q And once the application does get to your desk, you
8 trust that your employees, your staff, has fully checked
9 this person out and you can rely on what they've told you,
10 correct?

11 A Correct.

12 Q You testified before that you do a criminal history,
13 check the references, check the work record, check for local
14 judgments, check the driving record, you review a local
15 criminal history, you do a spot check, and you do a national
16 check, which is probably done through NCIC?

17 A Correct.

18 Q And you don't personally punch that into the computer,
19 and you don't personally do all that work, do you?

20 A No, sir.

21 Q You have Stencil White or another member of your staff
22 who does that checking and brings to you or disqualifies the
23 person before he ever gets to you, correct?

24 A Correct.

25 Q Thank you, Sheriff. That's all I have.

1 told him, "Son, wear your seat belt." Just, somehow, he
2 didn't wear his seatbelt and I think he got into something
3 then, but he never was a troubled person. You know, he
4 would listen and do the right thing.

5 Q Did he go to night clubs?

6 A No. His last girlfriend that he had, he would bring
7 her to the house, or matter of fact, she looked more like
8 this girl right there. He'd bring her to the house and we'd
9 sit down and we'd talk, and she asked him one night, "Would
10 you go to the club with me?" and he told her, "Well, you can
11 go, but I'm not going to the club," because he wasn't
12 brought up like that. He was brought up just doing the
13 things of God.

14 Q I want to take you -- and by the way your church was
15 the Heavenly Baptist Church?

16 A Yes, sir.

17 Q On the night of this incident, you were coming back
18 from the Heavenly Baptist Church going home, weren't you?

19 A Yes, I was.

20 Q Do you know where the deputy was headed?

21 A Well, I saw one deputy. He passed me right by that
22 road that leads to the Woods' Brother's Store. He passed me
23 and he was speeding and I didn't think anymore was even on
24 the road. As we traveled this road, I've traveled it
25 hundreds of times, and I'm going home, taking my boys home

1 back to their mom, and didn't have no idea that when I got
2 to that corner to make my turn, I saw a car, but the car
3 that I saw was at least a quarter of a mile back down that
4 road. There ain't no way he could have come up and hit me,
5 but, lo and behold, there it was.

6 Q Do you remember the moment of impact? Do you have any
7 recollection, now?

8 A Over the years, some things were flashing back to me
9 and I was having some thoughts. I was seeing things. And I
10 could see that car light just coming right at me and nothing
11 I could do about it, and when it hit me, everything got
12 dark. I felt myself being driven back, and when I drove
13 back, I was drifting in and out, and I even had a dream and
14 thought about this happening to me and when I was drifting
15 back, I was knocked unconscious, and I came through before
16 anybody got there. I know I didn't tell you this, I didn't
17 even know how to talk about this. It's been a long time and
18 I'm getting stronger now. And I remember when I came
19 through one time, I asked a question, I said, "J.C.?" and I
20 heard a moan in my car and reached out and I put my hand
21 where I thought he was, and the only thing I felt on my son
22 was his feet. His warmth from his ankle. I felt the
23 warmth from his ankle. Wherever his body was, I haven't
24 looked at the picture. I don't know where his body was, and
25 I could never talk about this and I never wanted to talk

1 about this, because I don't believe I could have talked
2 about this, but I'm telling you now.

3 Q Was Timothy in the car with you?

4 A Timothy was in the car. Timothy was in the back -- I
5 didn't call his name; I called J.C.'s name.

6 Q Do you know now what happened to Timothy?

7 A Timothy, somehow he got out of the car. Somehow, he
8 got out of the back, after we was going in and out and not --
9 -- the next thing I remembered was somebody called me, my
10 wife said "Baby". See, that's all we ever called each other
11 is "baby". And when I heard the name "baby," I lift up my
12 head and I saw the figuration of my wife with more people
13 around her and all. After that I just blacked out over the
14 steering wheel again.

15 Q When did you come to after that?

16 A I was coming through and I was going out.

17 Q Were you flown out?

18 A I was flown out. When they brought me, whoever had me,
19 I told them I was cold. When they took me out of the truck,
20 I said I was cold, and I remember feeling somebody covering
21 me, and they took me out and they put me in the -- and I
22 could hear a noise. I hear noise like a helicopter noise.

23 Q Were you transported to a hospital?

24 A Yes, I was. At MUSC hospital.

25 Q When you got to the hospital, did you know what the

1 A No, there had been a number of them that we had went
2 to. It was more than probably about three or four of them.

3 Q Did the police -- did the deputy's respond to the other
4 instances?

5 MR. WALDRON: Objection.

6 MR. SIEGEL: I withdraw the question if he finds an
7 objection.

8 THE COURT: Overruled.

9 A Yeah, there was a time when the police have been there
10 a couple of times.

11 Q They didn't come every time?

12 A No.

13 Q Okay. This is another question. Approximately how
14 long were you and the boys inside the church before you
15 turned around and came home?

16 A I believe we were there -- first and foremost, when we
17 got there, we first drive around the church. The church was
18 put together so that I could drive around anything, and this
19 was way ahead. So we make about three circles around the
20 church to make sure that there's nothing wrong or nobody
21 inside, and then I get out my car and I go in, and the boys
22 stay right there until I get in, and then I come back and
23 let them know it's okay.

24 So they come in and we do our procedures. You know,
25 they look around, J.C. and them, they check the alarm system

1 and they go with me. After everything is okay then they
2 start messing with the instruments like the keyboard and the
3 drum, and we had been there maybe about, it's hard to say,
4 but it couldn't have been no more than probably between 12
5 to 24 minutes; somewhere around there, maybe 12 minutes.

6 Q Okay. Now, I want to show you a photograph, if I
7 could. Can you hold this photograph? Well, you don't have
8 to hold the photograph. Do you recognize this photograph?

9 A Yes.

10 Q Do you recognize the contents of the photograph?

11 A Yes.

12 Q All right.

13 MR. SIEGEL: Your Honor, I'd like to have this marked
14 for identification purposes only.

15 THE COURT: Okay. And it is marked as 14FF.

16 Plaintiff's Exhibit 14FF, in evidence. Well, not in
17 evidence, but for identification purposes. I'm so sorry.

18 Q Do you wear glasses?

19 A No, sir.

20 Q Can you read the date on the lower, right-hand corner
21 of the picture?

22 A 1-13-2009.

23 Q Is that the date of the accident?

24 A That's the date of the accident.

25 Q Can you identify what vehicle that is?

1 day that you couldn't remember the accident, correct?

2 A Yes, sir.

3 Q And you didn't? When you were asked what you remember
4 of the accident, you never mentioned a word about reaching
5 out, touching your son's ankle, did you?

6 A Some of the things in my mind -- my mind would just not
7 let me go through. I just could not go through with it.

8 Q But your mind will let you do it today?

9 A Three years later, I can think more clearly now.

10 Q Well, nine months ago, you said you lost consciousness,
11 you had no memory that you can testify about with regard to
12 this accident, but today, you do?

13 A Yes, sir.

14 Q You never came to a full stop at that ---

15 A What?

16 Q You never came to a full stop before starting to turn,
17 correct?

18 A No, sir.

19 Q You kind of slowed down, you knew you were doing to
20 turn. You had done this hundreds of times, right?

21 A Oh, yes, hundreds of times.

22 Q And it's one of those things were you just kind of spin
23 the wheel a little bit ---

24 A Uh-huh (affirmative).

25 Q --- scoot across?

1 A Yes, sir.

2 Q You also testified that you saw the light coming.

3 A A quarter of a mile down the road.

4 Q And then you saw it, you said the light was just
5 bearing on and coming right at you?

6 A No, sir.

7 Q Okay.

8 A I said I saw the light up and down from where that
9 bridge is, when you hit that bridge, the light just go up
10 and down.

11 Q Okay.

12 A And that's over a quarter or half a mile down the road.

13 Q All right. And then, I thought you had testified that
14 you saw the light just coming right at you. Was the last
15 time you saw the light was down near the bridges?

16 A No, the last time I saw it was when I'm turning, from a
17 quarter of a mile down the road, all of a sudden, he is
18 right up on me.

19 Q Okay. And Rev. Wright, this is going to seem like a
20 pretty basic question, and I don't mean to insult you, but
21 we have to lay a foundation here on the record. You have a
22 driver's license, don't you?

23 A Yes, sir.

24 Q And you understand the rules of the road?

25 A Oh, yes, sir.

1 Q And in a situation where you're going to turn left, you
2 understand that the statute requires you to yield the right
3 away to oncoming vehicles?

4 A Oh, yes, sir, I does.

5 Q And you understand that you didn't do that?

6 A Oh, I do yield; when it's time to yield, I yield.

7 Q Okay. Do you recall either from photographs or from
8 talking to witnesses after the accident, do you remember on
9 what side of the road the impact was?

10 A I remember that the impact being when I'm turning and
11 he caught me, which that was on my left side, but right
12 between the two lanes, from the right to the left, that was
13 the side he made contact with.

14 Q You started your turn and ---

15 A And there he was.

16 Q There he was.

17 A There he was.

18 Q You told Mr. Siegel that this wasn't the first false
19 alarm that you had gotten through the ADT system?

20 A Yes, sir.

21 Q And if I'm not mistaken, the alarm goes to ADT
22 somewhere and then they notify the sheriff's office,
23 correct?

24 A Yes. They first would call my house or call whoever
25 house that we have assigned down, and it happened so that it

1 we can't say that we're gonna get over it in a week or two
2 weeks; it's been three years, and sometimes it feels like it
3 just happened. The pain is so real. I've often told people
4 that you can go and take Tylenol and you can take
5 prescription medicine for pains, but this pain that you
6 carry from losing a child, there's nothing out there that
7 can help heal that wound but to stay in the Word of God.

8 Q Has the family held events since J.C.'s passing to help
9 remember him?

10 A Oh, yes. We do it every year since it's been three
11 years and three years of him gone, we have celebrated his
12 birthday on January 13th. Every year, we put a memorial in
13 the paper just to let people know that he still lives,
14 although we can't see him, but he lives in us.

15 Q I want to go to the night of the accident. Tell me
16 what happened at your house beginning with Jake and J.C.
17 coming home that night.

18 A Well, that afternoon, as always, I am a mother that
19 cooks seven days a week, so I enjoy having a meal ready for
20 my children and my husband when they come home. This
21 particular afternoon, I had just finished cooking and they
22 came in and I fed them. So J.C. and the kids went into the
23 room, dad went into this room, and they were in there
24 playing a game and the phone rang. I never thought one
25 phone call could change your life forever. When that phone

1 call came in, ADT called and said there was an alarm going
2 off at the church, do you need me to notify the Sheriff's
3 Department and I told them yes, they can notify them.

4 My husband got up, they went, the two boys got up along
5 with him and they proceeded to go to the church and then I
6 got a phone call and they told me, and said, "Do you have a
7 seven year old?" and I said, "Yes." "Well, you need to get
8 out here, because he's laying in the middle of the highway."
9 And I'm saying, "God, they just left the house. What could
10 have happened from the time they left the house and got to
11 the church?" I don't even know where the accident, at that
12 moment, took place. All I'm assuming is something happened.
13 I got dressed, me and my children, my girls and my baby boy;
14 they all was at the house.

15 We came along and when we got to the intersection where
16 the accident took place, I got out, and I immediately
17 identified the truck from when I was coming in. I jumped
18 out and I ran to the scene and I saw my husband slumped over
19 the wheel and I called him, I said, "Baby," and at that
20 time, I saw him trying to lean back because he heard my
21 voice, and after that I remember seeing his head went back
22 that way.

23 At that moment, because they let me get close enough to
24 see whether J.C. was still in there, and I kept asking them,
25 I told them I had two children that was in the truck with

1 I determined how the victim was and then I immediately tried
2 to determine how my officer was.

3 Q And who was your officer involved in that accident?

4 A The officer who is involved in this particular trial.

5 Q Yes, sir. You know him, is that correct? You know
6 your deputy?

7 A He's a Deputy Sheriff.

8 Q Is that Scott McCoy?

9 A Exactly.

10 Q Did you hire Scott McCoy to the Sheriff's Department?

11 A Yes, sir.

12 Q Do you recall when he was hired, Sheriff?

13 A I don't recall the date.

14 Q Well, let's talk about your hiring process. In the
15 Sheriff's Department, do you make the hires?

16 A I have the final decision.

17 Q All right. Do you hire your deputies who go out on the
18 road?

19 A Yes, sir.

20 Q And are you involved in the credentials of the person
21 you're about to hire?

22 A Yes, sir.

23 Q And when you're looking at hiring someone, and in this
24 case, let's talk about hiring a deputy to go out on the
25 road. I believe that's what Scott McCoy was, is that right?

1 He patrolled the road, is that right?

2 A Yeah. Well, if I may just remind you that he was
3 originally hired as a reserve officer, not a deputy sheriff;
4 there is a difference.

5 Q All right, sir. Tell us what the difference is and
6 when he went from one to the other, if he did.

7 A The difference is that a reserve officer is not a
8 fulltime, twenty-four a day officer. A deputy sheriff, a
9 full-time deputy sheriff has 24-hour-a-day jurisdiction and
10 is required to perform his duties by law anytime he is
11 called on to do so. A reserve officer, when he is not on
12 duty, he is just like a regular citizen.

13 Q All right, sir. And Sheriff, at some point you did
14 hire Scott McCoy as a regular deputy?

15 A Yes, sir.

16 Q All right. And that's what I'm talking about is when
17 you hired him as a regular deputy. Can you tell us what
18 process you go through at your Sheriff's Department before
19 you hire someone to be a deputy?

20 A We run a full criminal records check on the individual.

21 Q What kind of records do you check?

22 A Criminal records, civil records, whatever is available
23 to us. In some cases, well, now I think we are into even
24 running credit checks. We weren't doing that, probably, at
25 that time.

1 Q Do you look at a work record?

2 A Yes.

3 Q Do you look at any references?

4 A Yes.

5 Q Look at the driving record?

6 A Yes.

7 Q What other things might you take into consideration
8 before you hire someone? Anything else?

9 A Well, we consider several things. We look at the
10 reputation of the person, as far as getting along with other
11 people. We look at whether a person is involved in
12 something either religiously or otherwise that might cause
13 him not to perform his duty as required by law.

14 Q And so you did these things before Scott McCoy was
15 hired and you were involved in hiring Scott McCoy, is that
16 right?

17 A I am the Sheriff of Colleton County, so I am
18 responsible for all the things that were done prior to Scott
19 McCoy being hired. I, personally, did not conduct all of
20 those inquiries myself, personally. I have other people
21 working under my command who are assigned to perform those
22 duties.

23 Q Do you make the final approval, the final decision to
24 hire this deputy?

25 A Based on the information that I received from my

1 employees.

2 Q And I think that was done, if what you're saying is
3 correct, please tell me if I'm saying this wrong, but what
4 you did was you made the final decision to hire him, but you
5 did not personally look at his driving record, work record,
6 et cetera?

7 A No, sir.

8 Q Is that correct?

9 A That's correct.

10 Q Now, have you since this accident, had an opportunity
11 to look at Deputy McCoy's driving record?

12 A Yes, sir.

13 Q And how would you describe his driving record?

14 A Not very good.

15 Q Did he, in fact, have numerous violations?

16 A Yes.

17 Q Do you remember about how many violations he had?

18 A At that time, 19.

19 Q And about how old is Deputy McCoy, do you know?

20 A I don't recall.

21 Q When you hired him he was in his mid-twenties,
22 approximately, is that right?

23 A That's possibly correct; I don't recall.

24 Q But since this accident, you've checked his 10-year
25 driving record, and it's been called to your attention,

1 you've had the opportunity to count those violations
2 yourself, is that right?

3 A Yes, sir.

4 Q Now, if on his application he was asked about work
5 record, you would want to see those responses, correct? If
6 you were evaluating his work record?

7 A I would think I would, yes.

8 Q And if Deputy McCoy, or anyone, let's don't just talk
9 about Deputy McCoy, but if anyone applied for a job of any
10 type at your Sheriff's Department and stated something that
11 was not truthful on their work record, you would want to
12 know that, wouldn't you?

13 A Yes.

14 Q And that would matter to you, wouldn't it?

15 A Yes.

16 Q And if anyone stated something that was not true as to
17 whether or not they had judgments against them, you would
18 want to know that too, wouldn't you?

19 A Yes, sir.

20 Q You'd want to know if they were not truthful with you
21 about that, wouldn't you?

22 A Yes.

23 Q And if someone stated that they had never had an
24 arrest, and they had actually had an arrest, you'd want to
25 know that, wouldn't you?

1 A Yes.

2 Q That would matter to you if they were not truthful with
3 you about that, wouldn't it?

4 A Yes.

5 Q Sheriff, can you tell us who it was that you relied
6 upon in your department to look at these things, if you
7 don't do it?

8 A My Chief Deputy, I have three Captains, I have several
9 Lieutenants, all of them combined, based on what the
10 situation is at the time, they would be involved in that
11 process.

12 Q So they would be able to look back at review these
13 documents?

14 A Yes.

15 Q Now, you have, or someone in your office, has put
16 together a document called the Colleton County Sheriff's
17 Office Policy Manual; is that right?

18 A That's right.

19 Q And Sheriff, I know you were not in here when this
20 occurred, but this document ---

21 MR. WARR: This document, which was identified, Your
22 Honor, as Plaintiff's Exhibit Number Seven, and has been
23 placed into evidence during the testimony of Luther Green.
24 I'm not sure what number it is now. Are we still referring
25 to it as Plaintiff's Exhibit Number Seven?

1 that you've had a chance to review since this accident?

2 A If you say it is, I'll take your word for it.

3 Q Well, take a moment and look at it.

4 THE COURT: Is this exhibit in evidence or is it marked
5 for identification purposes?

6 MR. WARR: It's marked for identification purposes,
7 Your Honor. Not placed into evidence, yet.

8 THE COURT: Okay.

9 A It appears to be the same thing I've looked at before.

10 Q Thank you. This is the driving record that you did not
11 have, that you did not look at yourself, at the time when
12 Scott McCoy was hired; is that correct?

13 A Probably correct, yes.

14 Q This is the one that you counted the numerous
15 violations on, I think, I believe you said 18; is that
16 correct?

17 A Nineteen is what I said.

18 Q Nineteen violations. Thank you. Sheriff, if you had
19 this driving record and it had been called to your attention
20 at the time Scott McCoy was hired, would you have hired him?

21 A Probably not.

22 Q Probably not?

23 A Probably not.

24 Q If I came to you today, Sheriff, and said, "I know
25 someone, Sheriff, he's a good person and would make you a

1 Q Did you have your camera on at the time of the
2 accident?

3 A No, sir.

4 Q Does the camera and the radar work in unison?

5 A The radar is hooked into the camera, so it does show up
6 on the camera, but I'm not sure of what you're asking with
7 the question.

8 Q Will one work without the other?

9 A Yes, sir. Well, I mean the radar is always going to be
10 on the camera, but if it's not turned on then it's not going
11 to be on the camera.

12 Q Okay. And you said the camera records your speed?

13 A Yes, sir.

14 Q Have you ever been told by anyone in the Sheriff's
15 Office that you could make the decision or you have
16 discretion when you can cut your camera off?

17 A Yes, sir.

18 Q Who told you that?

19 A I'm not sure who told us that.

20 Q Okay. Is there a written policy that tells you when
21 you need to implement your camera system and when you don't?

22 A At that time, no.

23 Q Okay. At that time, there was no policy?

24 A No, sir.

25 Q But you were given a verbal command, for lack of better

- 1 Q Where were you living at that time, Mr. McCoy?
- 2 A Highway 15.
- 3 Q How far off from Walterboro down 15 do you live?
- 4 A A few miles.
- 5 Q Can you give me a more accurate than a few?
- 6 A Three.
- 7 Q And so, at the time that you received this call, where
- 8 were you at?
- 9 A I was on Bells Highway by I-95.
- 10 Q Just to reference, to orient myself and members of the
- 11 jury, you say I-95 and Bells Highway, that's over near Wal-
- 12 Mart?
- 13 A Yes, sir.
- 14 Q Okay. What were you doing there?
- 15 A I was driving.
- 16 Q Okay. So, had you been to the Sheriff's Office prior
- 17 to your shift beginning or is this one of those days that
- 18 you signed in on the radio?
- 19 A I just signed on and I received a call from my
- 20 Sergeant, so we were just riding around.
- 21 Q You said "we" were riding around, who is "we"?
- 22 A Myself, I'm sorry.
- 23 Q Now, are you assigned a territory that you patrol?
- 24 A At that time, no.
- 25 Q Okay. So this call came in less than five minutes at

1 the beginning of your shift and I'm assuming that you left
2 your home prior to starting this shift?

3 A Yes, sir.

4 Q You were not on call at Bells Highway; is that correct?

5 A No, sir.

6 Q So the call came in, and basically, just tell me what
7 you were told from dispatch?

8 A From what I remember, it was an alarm call.

9 Q Did you get any other information?

10 A I don't recall.

11 Q They didn't tell you where it was at?

12 A Of course.

13 Q And where did they tell you this alarm call was at?

14 A At the Heavenly Baptist Church.

15 Q Have you ever been to the Heavenly Baptist Church?

16 A No, sir.

17 Q Do you remember what the weather conditions were like
18 that day?

19 A Clear.

20 Q So the call comes in, they tell you there is an alarm
21 at the Heavenly Baptist Church and what do you do next?

22 A I head in that direction.

23 Q Okay. Can you basically tell me and members of the
24 jury what route you took from 95 to the church?

25 A The route that I recall taking is Bells Highway all the

- 1 way to Jefferies Highway. I made a right onto Jefferies,
2 from Jefferies down to Green Pond Highway, took a left onto
3 Green Pond Highway and proceeded down Green Pond Highway.
- 4 Q Were you familiar with Highway 303, the Green Pond
5 Highway?
- 6 A Yes, sir.
- 7 Q Did you travel that highway often?
- 8 A Yes, sir. It's one of the main highways in this
9 county.
- 10 Q Would you say in your employment as a deputy that you
11 traveled Green Pond Highway at least once each shift?
- 12 A Sometimes, yes.
- 13 Q Were you familiar with Green Pond? Where it's located?
- 14 A Yes, sir.
- 15 Q Are you familiar with where the railroad tracks are at
16 in Green Pond?
- 17 A Yes, sir.
- 18 Q Okay. So when you got the call at Bells Highway, did
19 you deploy your siren and your lights?
- 20 A Yes, sir.
- 21 Q And your camera?
- 22 A I did not turn the camera on, no, sir.
- 23 Q Okay. Why?
- 24 A Again, going back to the instructions you were talking
25 about us being able to turn it off, when we have long

1 A Yes, sir.

2 Q Is there some distinction they you have to call in to
3 the Sheriff's Office when you go into emergency mode versus
4 your normal driving?

5 A Repeat the question, please.

6 Q If you go into emergency mode driving, do you have to
7 notify dispatch that you're going into an emergency mode?

8 A According to policy, yes.

9 Q Did you do that on this call?

10 A No, sir.

11 Q But you considered yourself, based on the definition in
12 item 3C, that you were in an emergency driving situation?

13 A Yes, sir.

14 Q Now, I want to go back to this camera for a moment.
15 You testified that you had the discretion to decide when to
16 use your camera; is that correct?

17 A Yes, sir.

18 Q Tell me what in your, Scott McCoy, what is your
19 discretion on when you should activate your camera? Let me
20 be more direct. Was part of your discretion that you should
21 activate your camera when you're in emergency driving
22 situations?

23 A No, sir.

24 Q So you testified that you had your lights and siren on
25 when you came through town; is that correct?

1 A Yes, sir.

2 Q Did you have your lights and siren on when you turned
3 onto Green Pond Highway?

4 A Yes, sir.

5 Q But, your camera was still off?

6 A Yes, sir.

7 Q Well, let's put the camera issue -- let me ask you
8 this, did you have your camera on at any time during this
9 call?

10 A No, sir. It came on, as soon as you turn on the blue
11 lights, the camera automatically cuts on. At that point, I
12 turned it off.

13 Q So you made a discretionary decision to override that
14 camera when you cut your lights and siren on from the point
15 that you got that call?

16 A Yes, sir.

17 Q Okay. So your camera was off throughout this entire --
18 from the time you got the call to the point of accident?

19 A Yes, sir.

20 Q Now, we'll go back. That camera would have recorded,
21 obviously not the video, but the speed that you would have
22 been traveling?

23 A Yes, sir.

24 Q Can you tell me, I want to talk about the siren only.

25 From the time that you turned onto Green Pond Highway, when

1 did you cut your audible siren off?

2 A It was after Ritter Crossroads.

3 Q Can you tell me how far that is from where this
4 accident occurred?

5 A Maybe a mile, two miles.

6 Q Okay. At what point did you cut your flashing lights
7 off? Did you do that at the same time?

8 A Right around the same time. After you go through
9 Ritter Crossroads, there's two curves and then there's a
10 straight away from there all the way past the intersection
11 which the accident took place. I shut off the emergency
12 equipment after I came to the curves.

13 Q Okay. So you cut off the camera, you come around the
14 curve, and I don't want to put words in your mouth, you said
15 it was maybe a mile or two miles from the accident?

16 A Yes, sir.

17 Q And at that point, you cut the lights and siren off?

18 A Yes, sir.

19 Q Let's continue on down Green Pond Highway. Are you
20 familiar with where there's some bridges between where you
21 just described that you cut your lights and siren off and
22 the intersection of Clover Hill?

23 A Yes, sir.

24 Q At that section, is the road rough there?

25 A It is.

1 Q Is there a yellow rough road sign that has a 45 mile an
2 hour yellow and black sign there?

3 A I do believe so, yes.

4 Q How far is that approximately from the intersection at
5 Clover Hill and 303?

6 A I'm not sure. Maybe half a mile; I'm not sure.

7 Q Do you have any idea when you cut your lights and siren
8 off -- let's back up. At any time during this call, from
9 the time you left I-95 to Green Pond Highway, were you
10 driving 100 miles per hour?

11 A The only place that I would believe that would be
12 possible is on the straightaway before Ritter Crossroads on
13 Green Pond Highway.

14 Q I'm not asking you now if it was possible. I want to
15 make sure we're clear. I'm asking you, do you recall at any
16 point during your call that you were driving 100 miles an
17 hour?

18 A I don't recall, no.

19 Q What speeds do you recall?

20 A Probably on that straightaway that I'm talking about
21 it, it was probably close to 100 mile an hour, but I don't
22 know if I can give you an exact.

23 Q Tell me which straightaway you're referring to.

24 A It would be the straightaway ---

25 Q Are you talking about the straightaway just around the

1 curve?

2 Q No, sir.

3 A It's the straightaway after Poor Farm Road and Ritter
4 Crossroads. There's a straightaway in there.

5 Q Okay. At the point that you cut the lights and siren
6 off, how fast do you think you were going?

7 A I had just come around those two curves, so I wouldn't
8 have gone that fast. If I had to guess, it would've been
9 between 70 and 80.

10 Q Not too fast?

11 A Not as fast as 100, no.

12 Q Okay. Well, let me ask you this, when you got to the
13 sign we were talking about where the road is rough, did you
14 slow down?

15 A Yes, sir. I was coasting through that intersection.

16 Q And you say you were coasting through that
17 intersection?

18 A Yes, sir.

19 Q Do you know how fast you were going when the accident
20 occurred?

21 A No, sir.

22 Q Tell me what happened when the accident occurred?

23 A I don't recall.

24 Q Were you unconscious after the accident?

25 A I remember coming up to the intersection. I remember

1 seeing a vehicle's lights coming towards me and the next
2 thing I recall is being in the woods.

3 Q So Mr. McCoy, you don't recall any of the details of
4 the accident?

5 A No, sir.

6 Q That exhibit that you have in your hand, Exhibit Seven,
7 the Policy, have you looked at the third page of that, under
8 Item B where it says "Call Response/Emergency Driving" and
9 the first item there says "South Carolina Code of Laws, 56-
10 5-760, "Operation of Authorized Emergency Vehicles." Are
11 you familiar with that section of the statute?

12 A Yes, sir.

13 Q Were you trained on that section of the statute?

14 A Yes, sir.

15 Q And that was training at the Sheriff's Office, or the
16 Academy, or both?

17 A Probably both.

18 Q Now, under Item 1A -- let me ask you to do this. I
19 don't want to belabor this, but this is very important. Can
20 you read that item for me?

21 A "Operation of Authorized Emergency Vehicles, section A.
22 The driver of an authorized emergency vehicle, when
23 responding to an emergency call or when in pursuit of an
24 actual or suspected violator of the law, or when responding
25 to but not upon returning from a fire alarm, may exercise

1 the privileges set forth in this section subject to the
2 conditions of this section."

3 Q Okay. Stop right there for me. Does Item A apply to
4 you on the call? That burglary alarm call on January 13th?

5 A I believe so.

6 Q Okay. Tell me how it applies?

7 A A burglary alarm is a call in progress.

8 Q Okay. So what that means then is that you would be
9 subject to the conditions that follow that; is that correct?

10 A Yes, sir.

11 Q Now, let's go to those conditions. I'm not going to
12 ask you to read all of those. Item D, the driver of an
13 authorized emergency vehicle may -- and unless you tell me
14 otherwise, I will assume that Item 1 and 2 does not apply to
15 you. Would you read Item 3?

16 A "Exceed the maximum speed limit if he or she does not
17 endanger life or property."

18 Q Now, what is your understanding of that if he or she
19 does not endanger life or property?

20 A That means you can exceed the speed limit as long as
21 you don't endanger anybody else.

22 Q Now, I'm going to ask you ---

23 MR. MURDAUGH: Your Honor, I'd like to approach the
24 witness.

25 THE COURT: You may. You need to show counsel what

1 where I was. I remember telling them I was on Green Pond
2 and Catholic Hill. They asked me if I was on Ritter Road
3 and I told them I was definitely on Green Pond. I really
4 don't remember anything else after that.

5 Q You had the address wrong, but it's fair to say that
6 you were a little disoriented at that time?

7 A Yes, sir.

8 Q I want you to look, go back to this Policy for a
9 second, Exhibit 7, and we're still in the Exception section.
10 I want you to go to Item C and can you read Item C for me?

11 A "The exceptions in this section granted to an
12 authorized emergency vehicle apply only when the vehicle is
13 making use of an audible signal meeting the requirements of
14 Section 56-5-4970 and visual signals meeting the
15 requirements of 56-5-4700 of this chapter, except in an
16 authorized emergency vehicle operated as a police vehicle
17 need not use audible signal nor display a visual signal when
18 the vehicle is being used to obtain evidence of a speeding
19 violation responding to a suspected crime in progress when
20 use of audible or visual signal or both could reasonably
21 result to the destruction of evidence or escape of a suspect
22 or another vehicle or it's occupants who are expected of
23 involvement in a crime."

24 Q Okay. Now, reading that section of the Exceptions,
25 tell me how this section applies to you in this call on

1 January 13th, 2009?

2 A I was responding to a burglar alarm where suspects
3 could have possibly still been at that location prior to my
4 arrival.

5 Q All right. So is it your position in Item C relieves
6 you from the responsibility of having an audible signal
7 and/or a visual signal?

8 A It could.

9 Q Well, in this particular call, I'm asking you did it?

10 A I don't understand the question.

11 Q What you just read in this Section C of the policy,
12 your policy, does this section relieve you from the
13 responsibility of having your audible signals and your
14 visual signals on at the time of this accident?

15 A I believe at the time, it did.

16 Q Okay. Now, would you read Item D?

17 A It says "The provisions of this section do not relieve
18 the driver of an authorized emergency vehicle from the duty
19 to drive with due regard for the safety of all persons, nor
20 shall such provisions protect the driver from the
21 consequences of his reckless disregard to the safety of
22 others."

23 Q Do you think Item D still grants you that relief from
24 using your signals?

25 A (No response.)

1 and the following is held on the record.)

2 THE COURT: Thank you for your cooperation. Good
3 morning, ladies and gentlemen. And at this time, we will
4 continue with the examination; we're still in the
5 plaintiff's case. Mr. Murdaugh, you may continue.

6 MR. MURDAUGH: Good morning, Your Honor. May it please
7 the Court?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION CONTINUES

10 BY MR. MURDAUGH:

11 Q Officer McCoy, when we were last together yesterday, I
12 don't want to replot a lot of ground, but I want to go back
13 and reset the scene a little bit. We were talking about the
14 time of the accident and when you had received this call,
15 you testified that you were out on the Bell's Highway, near
16 I-95; is that correct?

17 A Yes, sir.

18 Q And you testified at that point that you, when you
19 received the call and you began to respond, that you had cut
20 your lights and siren on, that you had manually overrode
21 your camera; is that correct?

22 A Yes, sir.

23 Q Okay. And then you also testified that as you turned
24 on the Green Pond Highway, at some point, you cut your siren
25 off?

1 A Correct.

2 Q And you also testified that approximately one to two
3 miles before the scene of the accident that you cut your
4 lights off?

5 A Yes, sir.

6 Q Okay. The last speed that you recall that you were
7 driving, can you tell me what that was again?

8 A Between 70 and 80.

9 Q Between 70 and 80. Okay. I think you also testified
10 that you recalled passing a rough road sign at the point
11 where the bridge was, that had a 45-mile-per-hour yellow and
12 black sign just beneath it?

13 A Yes, sir.

14 Q Okay. Do you recall as you proceeded on near the scene
15 of the accident passing a yellow intersection sign?

16 A I believe so.

17 Q Okay. I want to refer back a moment to the South
18 Carolina Drivers Manual, which has been admitted as Exhibit
19 Fifteen.

20 MR. MURDAUGH: Your Honor, may I approach the witness?

21 THE COURT: You certainly may.

22 Q Deputy McCoy, this is page 178 of the manual. This
23 sign 30 here, does that resemble the sign that you passed as
24 you approached the intersection?

25 A Yes, sir.

1 Q Okay. Can you tell me, if you start reading here where
2 it says signs 29 and 30.

3 A "Signs 29 and 30 give notice that you are approaching
4 an intersection and should watch for entering traffic. The
5 black lines show you what kind of intersection it is. Sign
6 29 tells you that it is a branch intersection with traffic
7 entering from one side. Sign 30 tells you that it is a
8 crossroad. Be prepared to slow down and observe any special
9 speed limit instructions in the event that a car enters or
10 crosses the highway from the side road."

11 Q Thank you, Officer McCoy. So you were entering into an
12 intersection, you had your camera off, correct?

13 A Yes, sir.

14 Q Your lights were off?

15 A Yes, sir.

16 Q And your siren was off?

17 A Yes, sir.

18 Q Okay. As you approached the intersection, what
19 happened?

20 A What I've already told you.

21 Q All right. Can you tell me again, though; that was
22 yesterday.

23 MR. WALDRON: Objection, Your Honor. It's been asked
24 and answered.

25 THE COURT: We're in cross-examination; I'll allow it.

1 Q Okay. Well, do you recall what speed you were
2 traveling at the time of the accident?

3 A No, sir.

4 Q Did you apply your brakes?

5 A I don't recall.

6 Q Do you remember if there were any skid marks on the
7 highway? A I do not.

8 Q And you also testified that you attended training at
9 the police academy, correct?

10 A Yes, sir.

11 Q During your training at the police academy, do they
12 ever tell you that a vehicle can be just as dangerous as a
13 weapon?

14 A I'm not sure.

15 Q Okay. I want to now go back to yesterday, you remember
16 we were in the policy manual of the Sheriff's Office, which
17 I believe is marked as Exhibit Number Seven.

18 MR. MURDAUGH: Your Honor, if I may approach the
19 witness and hand him this.

20 THE COURT: You may.

21 Q Officer McCoy, if you recall yesterday, if you would
22 turn over to page 3 where it says "call response/emergency
23 driving." Do you recall yesterday that we walked through
24 the South Carolina statute?

25 A Yes, sir.

1 Q Okay. I want you to now go through page 5, that's
2 under Section C where it says "risk assessment." Are you
3 familiar with this policy?

4 A I'm sure I've read it before.

5 Q Is that a "yes"?

6 A Yes, sir.

7 Q Okay. Can you read Item One for me?

8 A "As in a vehicular pursuit, officers must elevate a
9 call for service by balancing a need for police action or
10 the result of their action against the need for immediate
11 response. Risks to be considered include, but are not
12 limited to, vehicle and pedestrian traffic, weather
13 conditions, road conditions, nature of the call for service
14 versus the distance to be traveled by the responding unit."

15 Q Okay. Now, can you go down to Item Three and read Item
16 Three for me?

17 A "Units responding to robbery and burglary in progress
18 calls should discontinue the use of siren before coming
19 within hearing distance and at that time, fully comply with
20 all traffic rules."

21 Q Okay. Now, let's go through that section. It says
22 "units responding to a robbery or a burglary in progress."
23 Did you consider that you were responding to a burglary in
24 progress?

25 A Yes, sir.

1 Q You testified that you had not radioed in and notified
2 them that you were in emergency mode?

3 A Yes, sir.

4 Q Okay. Now, it goes on to say that units responding to
5 a robbery or burglary in process call should discontinue the
6 use of the siren before coming within hearing distance."
7 Were you within hearing distance of the church?

8 A At that time, I wasn't really sure where the church
9 was, but I knew I was getting somewhat close.

10 Q Okay. When you say that you didn't know where the
11 church was at, before, you testified that you were familiar
12 with the Green Pond Highway; is that correct?

13 A That's correct.

14 Q Okay. And you, at that particular point in time, is it
15 true that you had -- that there was another deputy that was
16 in progress to this same call that was immediately ahead of
17 you?

18 A Yes, sir.

19 Q And were you making radio contact with this deputy?

20 A I believe I did.

21 Q So if this deputy were ahead of you and you weren't
22 sure where the church was at, did you ask him at any point
23 in time, "How far am I from the church?"

24 A The officer that was in front of me was not from around
25 this area. He was unfamiliar with the area. He had not

1 went on scene yet, so he didn't know either.

2 Q Well, he had the address to the church; is that
3 correct?

4 A Yes.

5 Q And he was ahead of you?

6 A Yes, sir.

7 Q So what were y'all talking about in this communication
8 you were having with him?

9 A As I turned onto Green Pond Highway off of Jefferies, I
10 asked him where he was. He gave me his location. It was
11 just a few miles ahead of me on Green Pond. I believe that
12 was the last time I talked with him.

13 Q Well, let me ask you this, Officer, McCoy, what is the
14 hearing distance of the siren?

15 A I'm not sure.

16 Q Okay. So when you have this policy that says that
17 units responding to a robbery or burglary in progress call
18 should discontinue the use of siren before coming within
19 hearing distance, how do you know when to implement this
20 policy if you don't know the hearing distance of the siren?

21 A I'm not sure.

22 Q Were you trained on how to do this?

23 A No, sir.

24 Q Okay. Do you know how far it was from the church, or
25 from the intersection where the accident occurred to the

1 church?

2 A No, sir.

3 Q I mean, since the accident, you haven't tried to find
4 out how far it is?

5 A No, sir.

6 Q If I told you it was between three to four miles, would
7 you disagree with that?

8 A No, sir, because I don't know.

9 Q Okay. Well, let's go on to Item Four. We've talked
10 about the siren. Let's talk about the emergency lights in
11 Item Four. Would you read that for me?

12 A - "Units within viewing distance of the incident location
13 may turn off their emergency lights to avoid alerting any
14 suspects of law enforcement response."

15 Q Okay. Well, let me just ask you, Officer McCoy, were
16 you within viewing distance of the church?

17 A No, sir.

18 Q But you had your lights off?

19 A Yes, sir.

20 Q So would you agree with me that you were in violation
21 of this policy?

22 A Yes, sir.

23 Q I want you to flip on back, Officer McCoy, if you will,
24 to page 10 of this Sheriff's Office Policy, Vehicle
25 Operations and Pursuits Policy. Do you see that section?

1 MR. MURDAUGH: Yes, I'm sorry, it's marked as
2 Plaintiff's Exhibit Ten.

3 THE COURT: For identification purposes?

4 MR. MURDAUGH: For identification.

5 THE COURT: Okay.

6 MR. MURDAUGH: Your Honor, I'd like to move that we
7 enter it into evidence, Plaintiff's Exhibit Number Ten...

8 MR. WALDRON: No foundation. No authentication.

9 THE COURT: Sustained.

10 Q Officer McCoy, have you had an opportunity to review
11 that?

12 A Yes, sir.

13 Q Does this refresh your memory of being arrested?

14 A Yes, sir.

15 Q Is this the only time that you've ever been arrested?

16 A That I can remember.

17 Q So can you tell me a little bit about this arrest?
18 What were you charged with?

19 A It was a weapons charge, unlawful carrying of a pistol.

20 Q Now, Officer McCoy, you answered this Question 13 in
21 your employment for application as a reserve officer, you
22 checked that box "no". Is it your testimony that on January
23 23rd, 2006, that you had not been arrested or that you had
24 been arrested?

25 A On the application, I put no; yes.

1 dismissed in your application, anywhere?

2 A Probably so.

3 Q In the application, back on Page 2, at the beginning
4 where it says, "Read before filling out this application."
5 The last sentence of that says, "If space provided is not
6 sufficient for complete answers or you wish to furnish
7 additional information, you may attach sheets the same size
8 as this application and number answers to correspond with
9 the questions." When you submitted this application to
10 state that you had been terminated from a job, did anyone in
11 the Sheriff's Office ask you what job you had been
12 terminated from?

13 A No, sir.

14 Q Did they ask you if that was the only job that you had
15 been terminated from at Egret's Pointe?

16 A No, sir.

17 Q In fact, is that the only job that you have been
18 terminated from?

19 A No, sir.

20 Q Where else were you terminated from?

21 A SCDC.

22 Q For purposes of explanation the jury, can you tell me
23 what SCDC stands for?

24 A South Carolina Department of Corrections.

25 Q So you worked as a -- what position did you hold at the

1 South Carolina Department of Corrections?

2 A Corrections Officer.

3 Q Where was that at?

4 A At Lieber.

5 Q Can you point in this application for me where you
6 listed your employment with the South Carolina Department of
7 Corrections in your employment history?

8 A It's not on here.

9 Q Is the South Carolina Department of Corrections the
10 only previous job experience you've had that was law
11 enforcement related?

12 A Probably, yes.

13 Q And you didn't disclose that in your application for a
14 law enforcement position?

15 A No.

16 Q Can you tell me why you didn't do that?

17 A I don't know. It wouldn't have helped me, so I didn't
18 put it on there.

19 Q Okay. So if it wouldn't have helped you and the
20 application was asking you to be truthful, would you agree
21 with me that that's not very truthful?

22 A Yes, sir.

23 Q Were you terminated from your employment with the --
24 well, I refer to it as the monkey farm in Yemassee?

25 A That was a -- I had turned in my notice and they told

1 Q Did you disclose to them that you had been terminated
2 from the prison, also?

3 A No, sir.

4 Q Did you disclose to them that you had even been
5 employed at the prison?

6 A No, sir.

7 Q And your testimony was that you didn't do that because
8 you were afraid that it wouldn't help you in your
9 application?

10 A Yes, sir.

11 Q Okay. Let's go to page 11. Do you see anything on
12 page 11 that's inaccurate?

13 A No, sir.

14 Q Let's talk about that; Item 51. Can you read item 51
15 and your response?

16 A "Do you have any judgments or civil cases pending
17 against you" and my response was "No."

18 Q Was that truthful?

19 A To my knowledge.

20 MR. MURDAUGH: Your Honor, may I approach the witness?

21 THE COURT: You may.

22 Q Officer McCoy, I'm going to hand you now, Exhibit One,
23 which is actually your application for employment. That's
24 your application for employment as a full-time Deputy, and I
25 turned it open to a page that was provided to the Sheriff's

1 yesterday that your speed might have gone close to 100 at
2 some point?

3 A Yes, sir.

4 Q And I thought you said that it was in the Ritter
5 Crossroads area?

6 A Before that, yes.

7 Q Okay. Then, you started slowing down and when you came
8 around the bend which leads to that long stretch just before
9 it actually leads up to the site of the accident, were you
10 slowing down or accelerating as you went through that
11 stretch?

12 A As I was coming up to the intersection, I was slowing
13 down.

14 Q Let's go back before the intersection. As you travel
15 along that straight stretch on Green Pond Highway, the road
16 kind of declines or has a grade down a little bit, correct?

17 A Yes, sir.

18 Q Were you accelerating down or were you coasting at that
19 point?

20 A I don't think I was accelerating.

21 Q Do you remember what your speed was in that area?
22 We're talking about prior to the bridges, now.

23 A I'd say probably 70 to 80.

24 Q Okay. And now we get to the rough road sign that you
25 talked about and that rough road sign is right in front of

1 some bridges or a bridge, correct?

2 A Close, yeah.

3 Q If you sit here today, do you have a memory of that
4 night of seeing that warning sign for the bridges?

5 A I don't remember seeing it, but I know it's there.

6 Q Do you remember where in that stretch, with reference
7 to the warning sign for the bridges, where did you turn off
8 your lights and siren?

9 A Probably before.

10 Q We marked your deposition as Court's Exhibit Number
11 One; I think you have it there.

12 MR. SIEGEL: Your Honor, may we approach?

13 THE COURT: Sure.

14 (Whereupon, a bench conference is held off the record
15 and out of the hearing of the jury.)

16 MR. WALDRON: If you would, pick up that transcript,
17 Deputy, and turn to page 44, and then turn over to page 45,
18 the next page. In line 4, Mr. Siegel asked you after you
19 passed -- you tell me in your own words what happened after
20 you passed the bridges that we talked about heading towards
21 the intersection. Tell me what you saw and what you did;
22 read your answer, please.

23 A "I remember turning my lights off. I remember seeing a
24 car. I remember seeing headlights. I remember taking my
25 foot off the gas at the rough road sign. As I turned off my

1 lights, I approached the intersection, I remember seeing the
2 vehicle traveling at a very low rate of speed and then the
3 next thing I remember is my car on the side of the road."

4 Q You can put the transcript down. Do you remember now
5 when you turned your lights off?

6 A Yes, sir.

7 Q Is that the bridges?

8 A Yes, sir.

9 Q Do you know how far the bridge is from the site of the
10 accident?

11 A No, sir.

12 Q Mr. Murdaugh asked you about whether you were enforcing
13 the law and whether that's your job. Were you enforcing the
14 law that night?

15 A I was headed to a burglary alarm.

16 Q So is the answer yes, that you were out under police
17 business, enforcing the law?

18 A Yes, sir.

19 Q On that night, there were two of you out there,
20 correct? Two officers responding to this burglary alarm,
21 Deputy Smith and you?

22 A Yes, sir.

23 Q Are officers suppose to have each other's back when
24 they're out there?

25 A Yes, sir.

1 about?

2 A Well, the main thing here is time of death is from the
3 time, you know, actual death determination is going to be
4 determined by the fact that, in most cases, when your heart
5 stops. We know, basically, for a fact, that in within three
6 to six minutes brain death starts to occur.

7 Q Okay. Mr. Harvey, the only other question I have.
8 When you list the time of death on this document is that
9 your best belief of the time of death?

10 A That's correct.

11 Q Okay. I don't have anything further.

12 THE COURT: Okay. Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. WALDRON:

15 Q Mr. Harvey, when you arrived on scene, the decedent had
16 already passed away, correct?

17 A That's correct.

18 Q Did you have conversations with his family afterwards?

19 A I did.

20 Q Do you remember talking with his mother?

21 A I do.

22 Q What did you tell his mother?

23 A I, basically, told her, and we do this in many cases,
24 simply because of the suddenness and the shock that families
25 go through, that he didn't suffer

1 have any evidence from your investigation that he was ever
2 conscious when you were there?

3 A Right. When I was there, he was not.

4 Q Thank you.

5 THE COURT: All right. Is this witness free to leave?

6 MR. WALDRON: I would like to reserve the right to
7 recall this witness, but it would not be until tomorrow.

8 THE COURT: Okay. You would call him on the phone and
9 let him know. You are not released from the subpoena, so
10 you may be needed at some point. All right.

11 Ladies and gentlemen, I'm going to send you all to
12 lunch, because there is a matter I must hear of outside your
13 presence, and I figured you might as well go answer your
14 din-din bell, rather than sit in there waiting on me. We
15 are going to start back at 2:00. Have a good lunch. Please
16 do not discuss this matter or allow anyone to discuss it
17 with you.

18 (Whereupon, the jury exits the courtroom and the
19 following is held on the record.)

20 THE COURT: Okay. Now, we're on the expert thing.

21 Please raise your right hand. Do you solemnly swear or
22 affirm that the testimony that you give will be the truth,
23 the whole truth and nothing but the truth?

24 MR. SCHUSSEL: I do.

25 THE COURT: Thank you so kindly. If you'd please be

1 seated and when you are seated, if you would state your full
2 name for the record and spell your last name.

3 MR. SCHUSSEL: My name is Martin Schussel, S-C-H-U-S-S-
4 E-L..

5 THE COURT: Your witness.

6 MR. SIEGEL: So, Your Honor, we're going to go through
7 his entire testimony?

8 THE COURT: I don't know.

9 MR. SIEGEL: Your Honor, there's one issue that was
10 whether we're introducing him as an engineer; we're not.
11 We're introducing him as an expert in accident
12 reconstruction, so it possibly ---

13 THE COURT: Right. But as I understood the motion in
14 limine, there was concern about a particular software
15 program and that's, as I understood the motion in limine,
16 there was some concern that the witness would identify
17 himself as an engineer, if he's not in fact, an engineer.

18 MR. WALDRON: He has a Master's in Engineering, Your
19 Honor. That will be part of his CV.

20 THE COURT: Okay. Sure.

21 MR. SIEGEL: Do we want to go straight to the software
22 issue?

23 THE COURT: I think so and then cross examine him
24 whatever he wants to. I'd rather like that.

25 MR. WALDRON: Your Honor, he is qualified as an

1 accident reconstructionist, what I question is the software.

2 THE COURT: I know. We know that. So taking it from
3 the software top, your first question would be, "Mr.
4 Schussel,"

5 MR. SIEGEL: All right.

6 PROFFER DIRECT EXAMINATION

7 BY MR. SIEGEL:

8 Q Mr. Schussel, in your deposition, you testified that as
9 part of your work to reconstruct this accident that you
10 utilized software developed by your office, and I would like
11 for you to explain to the Court what this software was and
12 what established resources were used to validate the
13 reliability and the scientific integrity of the software
14 which you utilized?

15 A I think what I also said was that what was implemented
16 in the software was accepted accident reconstruction
17 principles and so what I've brought is a section from a
18 textbook, the textbook is entitled "Fundamentals of Traffic
19 Crash Reconstruction." It's published by the Institute for
20 Police Technology and Management, which teaches accident
21 reconstruction to police and accident reconstructionists.

22 In that document, in that book, which is the textbook
23 that's used during the course, section 11.7 talks about
24 speed from a spin analysis, and what this section covers is
25 the rotation of a vehicle along a path from a point of

1 impact to a point of final rest, and when you're trying to
2 determine the speed of that motion, rather than what is
3 typically done by police or some accident reconstructionists
4 to only take a single value for friction in that section,
5 they suggest that you break it up into multiple segments and
6 then analyze the information for the friction for each of
7 those segments.

8 And so, if you position the car along the tire marks
9 and you measure the angles and distances that it's moved,
10 you look at the orientation of the tires relevant to the
11 path and what the software did that we created is to
12 automate that process.

13 It's not new. It's not novel approach. It's the
14 recommended approach in accident reconstruction and all we
15 did was to implement it in such a way that we can
16 automatically put in the start and finish angles at each of
17 those segments, the friction of the surface that it's going
18 across, whether the wheels are locked or free to turn, and
19 it automatically calculates the friction across the entire
20 path to arrive at an accurate speed at the start of that
21 skid when you know the end of the skid that it's at 0 miles
22 per hour.

23 Q Have you used this process in a court proceeding before
24 using this software?

25 A Yes. I don't know that I use it every time, because

1 not every circumstance has a significant rotation from
2 impact to rest, but most cases involve this kind of
3 rotation. And so it's been used many times and I've
4 testified to it in Court, and we also internally have
5 verified its validity by taking the special cases.

6 You can lock and unlock wheels and do the manual
7 calculation to make sure that that portion of it is working
8 properly. We look at the weight distribution, front to
9 rear, so we know what the weight is in each tire for the
10 friction of each tire. We look at the angle of the tire,
11 and so we validated each of the aspects of it and then the
12 entire process we validated as well to show that it, in
13 fact, correctly calculates and most accurately calculates
14 versus other methods that people typically use because they
15 don't want to go through the process of doing hundreds of
16 calculations to write a result. We've automated it so now,
17 essentially, excel spreadsheet calculates all of these
18 things for us automatically and then allows us to tie them
19 together to do it even more accurately than what the
20 methodology here recommends.

21 Q Have you testified using this method in a Court in the
22 State of South Carolina?

23 A I have.

24 Q And has it been introduced and accepted into evidence?

25 A Yes, it has.

1 Q You have been allowed to rely upon the evidence adduced
2 from calculations using this software which accomplishes the
3 ends that you've testified to?

4 A Yes.

5 Q When is the most recent time you've utilized this
6 software?

7 A I'd have to look at the most recent -- I know I used it
8 in a case that Mr. Waldron was involved in; I think it was
9 in Jasper County, sometime last year.

10 Q Was that in late 2011?

11 A I thought it was more mid-2011, but something like
12 that, yes.

13 Q All right. Did Mr. Waldron object to the use of this
14 software at that trial?

15 A No.

16 Q Have you ever been retained by Mr. Waldron to represent
17 one of his clients?

18 A I have, yes.

19 Q Has there been any time that you have ever failed to be
20 qualified as an expert in accident reconstruction by a
21 Court?

22 A No.

23 MR. SIEGEL: I believe that's all I have for right now,
24 Judge.

25 THE COURT: Okay. You're up.

1 CROSS-EXAMINATION

2 MR. WALDRON:

3 Q Mr. Schussel, indeed you and I have worked together in
4 the past. When you testified in Jasper County, you did not
5 tell the Court and the jury that you used a computer program
6 as part of your testimony, did you?

7 A Well, I didn't tell you that I used a computer program.
8 I told you that I used computer software.

9 Q So even I didn't know that you were using it.

10 A Well, it's an Excel spreadsheet, so the terminology
11 that came out in the deposition may be different than what
12 came out earlier, but all of this is in an Excel
13 spreadsheet. It's not a separate computer program. It's
14 not a separate piece of software, but I described it as
15 software because it's a way of automating manual processes
16 and that's what I was referring to.

17 Q And you did testify that you have this internal
18 software -- "we've developed some software," aren't those
19 the words you used?

20 A Yes. And I did that in the trial in Jasper County, as
21 well.

22 Q And it automatically calculates, but you don't always
23 use this, depending upon the circumstances of the particular
24 accident in the investigation that you're doing?

25 A I would say most of the time I use it, because most of

1 the cases we get involved in are complicated cases and
2 involve rotation vehicles, but I can't say that I've used it
3 every time.

4 Q All right. And you also said that you check -- I think
5 the words you used you were "internally qualified." Does
6 that mean that you and Mr. Richardson and Mr. Black check it
7 in-house to make sure it's accurate?

8 A Sure. The same way that anything I do in an Excel
9 spreadsheet, or that anyone else does, in preparation for
10 doing accident reconstruction does. We've implemented this
11 and we validated that the results it's going to give are
12 correct, so the methodology is already accepted based on the
13 fact that it's published and has been critiqued and so what
14 we're doing is, it's an implementation we've created for our
15 internal use.

16 Q The methodology that goes into the software has been
17 published and critiqued, correct -- or into the system that
18 you use?

19 A That's correct.

20 Q But your particular system has never been published for
21 any outside review, correct?

22 A Correct. Nor would Mr. Roberts, for the spreadsheet
23 that you sent me from him, that's not critiqued by someone
24 outside as well. So accident reconstructionists use Excel
25 as a tool to implement their analysis and that's what I did.

1 Q Okay. And the method that you used has never been
2 presented for peer review?

3 A The method I use, yes, has been presented. It's
4 published in a textbook that's used to teach accident
5 reconstruction.

6 Q Using the software that you designed, have you
7 presented that for peer review?

8 A No. I have no intention to.

9 Q Have you published the process that you used in any of
10 the journals or manuals or the SAE articles that we find in
11 your field?

12 A No. The process is published. That's what's in this
13 paper, or the section of the textbook. So the methodology
14 has been checked and validated through peer review.

15 Q I understand. All I'm talking about is the process
16 that you used in-house to take the input from the processes
17 that have been approved to get your final result.

18 A In the same way that momentum, which is used to
19 calculate from the outputs, there's formulas, and if you
20 implement those formulas that are in Excel spreadsheet and
21 you put in the inputs and it gives you the outputs, this is
22 exactly the same thing.

23 Q Had you submitted your results for review by any other
24 scientists than the folks at Engineering Experts Academy?

25 A Well, in the other cases that we worked on, they've had

1 the results of our analysis and they would have evaluated
2 that to determine if it was correct or incorrect?

3 Q How about other scientists or in journals. Have you
4 published anything in any journals?

5 A No. I have no intention to either.

6 Q In fact, when I sent you a subpoena, you told me you
7 don't use anything but commercially available software and
8 you were prohibited by licensing agreements to give me that.

9 A Commercially available programs, yes. You asked not
10 for software, you asked for computer programs in your
11 subpoena and I was trying to clarify that I can't provide
12 Excel to you because I'm not authorized to give that to you,
13 and what I asked in my response was do you really mean what
14 I referred to in the deposition as software, and then you
15 came back and acknowledged that that's in fact what you were
16 asking for and that's what I provided.

17 Q When you were evaluating this accident, you did not do
18 a crush analysis, correct?

19 A That's correct.

20 Q You did not do any analysis, other than the one method
21 that you chose, which is the momentum analysis?

22 A Well, it's a combination of momentum, but yes,
23 basically, that's the approach.

24 Q But you used one approach to come up with your
25 determination?

1 A Right. When I looked at the other methods that I could
2 use to do it, one of them being crush, and looked at the
3 available information, because the police car was scrapped
4 soon after the accident, it was not available for eye
5 investigation and because MAIT didn't take the type of
6 photographs that would allow doing an accurate
7 photogrammetry analysis of the data, then crush was not an
8 available option because the photographs that were available
9 that were taken at night with flash cameras were not good
10 enough to do an accurate photogrammetric analysis. And in
11 fact, we looked at the analysis that Mr. Roberts' did, he
12 provided that information, and we looked in the computer
13 program, it showed that his residuals that were calculated
14 for the individual points were extremely large and the
15 software said "Warning -- the results you get may not be
16 correct because your residuals are too large. Do what you
17 can do to try to reduce the residuals." But unfortunately,
18 when you have poor photographs and use photogrammetry, you
19 get results that are not reliable and so my belief is that
20 the analysis that was done using crush is not an accurate or
21 supportable analysis based on that information.

22 Q Did you make any attempt to utilize and to try to work
23 with the warnings that were generated by this program that
24 you're talking about to try to do a photogrammetry analysis?

25 A We have an engineer that works for us who was obtaining

1 a Master's degree in Mechanical Engineering from Perdue
2 University and one of the graduate courses that he took was
3 in photogrammetry analysis and he uses the photogrammetry
4 program, the same one that Mr. Roberts' used.

5 He looked at the available photographs, he looked at
6 the results that were obtained, and said based on the
7 graduate level course that he took in photogrammetry, that
8 you could not get reliable results to tell what the crush
9 was on the police cruiser from the photographs that were
10 available.

11 Q So the answer to my question is whether you even tried
12 to make a correction and apply it is no.

13 A Right. We looked at the base data. We look at the
14 information that was available, and based on his training in
15 this approach, the mathematics behind it and the
16 practicalities of using it, that it should not have been
17 used to obtain crush in this case.

18 Q Are there other methods that you and your field used to
19 determine the speeds of vehicles prior to impact?

20 A Yes.

21 Q Did you use any of those to check your results in this
22 case?

23 A When I got involved in the case, I found an evidence
24 sheet that indicated that MAIT had taken the airbag control
25 module from the police cruiser after the accident, and I

1 asked for the information that was downloaded from that
2 module, and was told it had not been downloaded.

3 So I asked for permission to get access to that module
4 and instead, MAIT downloaded the data, at that point, a year
5 and a half after the accident. I also asked for the PCM
6 module. When you look at the airbag module and the date
7 that's stored in cars, it tells you about what information
8 is stored in the car and there's two modules in this
9 particular police cruiser: one is the airbag control module,
10 the other is the power train control module.

11 The powertrain control module contains information that
12 directly reads out speed, throttle, breaking, for up to at
13 least 25 seconds before impact and sometimes as much as 5
14 minutes before impact. There's no indication in any of the
15 MAIT materials that they attempted to save the powertrain
16 control module or download data from the powertrain control
17 module while it was still in the vehicle.

18 If that had been available, then that would have been a
19 way to get a direct readout of the speed of the vehicle, but
20 because they didn't take it out of the vehicle and made no
21 attempt to download the data, that was non-accessible to me.

22 Well, the other way that we could have gotten a direct
23 read in speed was if Officer McCoy had not turned off his
24 camera. Most video systems directly record the speed of the
25 vehicle on the video, but if they don't, then you can take

In-Camera Examination
Cross-examination of Martin Schussel by Mr. Waldron
Examination of Martin Schussel by The Court

383

1 fixed objects that are appearing in the distance and measure
2 the time it takes to go between one fixed object and another
3 fixed object in the field of view of the camera and get a
4 reading of the direct speed of the police cruiser, but
5 again, that wasn't available to us. So for the methods that
6 I knew were available, I used what was the one and only
7 accurate method to get the speed of the police cruiser.

8 MR. WALDRON: That's all I have. Thank you, Judge.

9 THE COURT: Anything further?

10 MR. SIEGEL: No, Your Honor. Other than that I would
11 move that Mr. Schussel's method is properly -- there's a
12 proper foundation for it and that his testimony should be
13 allowed. He's qualified as an expert in accident
14 construction.

15 MR. WALDRON: And I would disagree because it doesn't
16 meet any of the factors laid out.

17 THE COURT: Okay. I got a couple of questions, just to
18 be clear that I'm clear.

19 FURTHER EXAMINATION

20 BY THE COURT:

21 Q You can do the calculations manually?

22 A That's correct.

23 Q And everybody knows what the Excel program is, and you
24 use Excel, and the software, I gather, is proprietary and is
25 within your group. And what it does, if I understand what

1 you were telling me, is it just saves the time, energy, and
2 effort and probably -- and I heard you say something like,
3 maybe it's a little more accurate because the calculations
4 are a part of the software.

5 A And secondly, less error prone, because you're not
6 going to transpose numbers when you move them from one place
7 to another to do the next set of calculations, yes.

8 Q Right. Or be bored, or get a telephone interruption,
9 or anything.

10 A And you're also tempted not to do as many segments and
11 not to do it as accurately where I could put in and say, do
12 a hundred segments between here and here, and it would do
13 that for me. Instead, they recommend you do eight, because
14 that's the maximum they think anybody's ever going to spend
15 their time to do it.

16 Q Let me ask you this question, this is curiosity as much
17 as anything. How did you actually go about inputting the
18 software? Did you put in the requested calculations at the
19 requested locations? How did you go -- it's fascinating.

20 A Excel has a set of functions, what they call functions.
21 And the functions -- I did software engineering for 25
22 years, so I'm familiar with software programming, and you
23 take those functions and there are "if statements" and there
24 are "min and max values" and you can look at signs and co-
25 signs and all kinds of different mathematical expressions,

1 and you can just implement each of the elements of this
2 formula in an Excel spreadsheet.

3 So if you want to do a square root, it's s-q-r-t, open
4 parentheses, the value, and then out comes the square root.
5 So I took each of the formulas that's available in Excel and
6 used them to implement these formulas. And then the process
7 of going from one to the next, there's some if I do multiple
8 segments, then I link those together, so the output from one
9 becomes the input to the next, and it will go through the
10 entire calculation for me.

11 Q You could have sat with paper and pen and done exactly
12 the same thing?

13 A And would have done exactly the same thing, yes.

14 THE COURT: Yes?

15 MR. WALDRON: That's prompted some follow-up questions,
16 if you don't mind.

17 THE COURT: Of course.

18 MR. SIEGEL: Your Honor, is it proper for Mr. Roberts
19 to be here during his testimony?

20 THE COURT: You haven't made a motion to sequester him.
21 And typically, experts are here, you know, to listen to one
22 another. I certainly would not exclude your expert. I
23 would certainly let him in.

24 CROSS-EXAMINATION

25 MR. WALDRON:

1 Q Mr. Schussel, in this case, you didn't go out to the
2 scene of the accident, correct?

3 A Correct.

4 Q You didn't take any measurements out there?

5 A I did not.

6 Q You relied on the measurements taken by MAIT?

7 A In measurements, yes..

8 Q And by Mr. Roberts?

9 A No, not from Mr. Roberts.

10 Q Okay. You relied on the total station that MAIT used?

11 A Yes.

12 Q The analysis that you used is sensitive to angles,
13 correct?

14 A Using conservation momentum, yes; could be, depending
15 on angles.

16 Q And the angle that's put in to your program can affect
17 the outcome of the other end of the Excel spreadsheet?

18 A It absolutely does. It's one of the inputs and
19 therefore -- and if you change an input, you get a different
20 output.

21 Q Okay. In this case, you gave us an initial evaluation
22 of 79.5 miles per hour, correct?

23 A Correct.

24 Q And then we noticed your deposition for a Wednesday and
25 on Tuesday you spoke with Mr. Siegel by telephone and then

1 you did a recalculation, changed one of the angles, and came
2 up with 83 miles per hour; is that correct?

3 A No, that's not quite correct.

4 Q Okay. Then tell us what is correct.

5 A My initial analysis, I took the information I had
6 available at the time and did an analysis that involved the
7 same calculations and came up with 79.5 or so miles per
8 hour; I don't remember the exact number.

9 Several months after that, in reviewing the photographs
10 that were taken by the police on the night of the accident,
11 I noticed that the rear tires, both right and left rear
12 tires on the police cruiser, had not rotated from impact
13 upon rest; you could look at the photographs and see there
14 was no mud on the tires, whereas on the front tires of the
15 police cruiser and other things, there was mud, and you
16 could see a partial movement of one of the wheels, which
17 indicated that if it had rotated, there would have been mud
18 all the way around the wheel and that was true both left and
19 right.

20 And secondly, you could see on the tread of the tire
21 that there were scrape marks where the aggregate in the
22 roadway had scraped across the tire, which again indicated
23 the tire was not rotating as it moved across the roadway;
24 and so, I changed my input to say that the two rear wheels
25 of the police cruiser were locked where they weren't free to

1 rotate, and that changed the speed from being 79.5 miles an
2 hour to being 83 miles per hour. And that was not done in
3 the timeframe that you're talking about and not associated
4 with the discussion with Mr. Siegel. That was done, I
5 believe, a couple of months or so before my deposition.

6 Q Okay. The point is, you change the input and you get a
7 different output using your computer program.

8 A Yes. Absolutely.

9 Q Thank you, that's all.

10 THE COURT: Great. No problems. I have no problem at
11 all and would find that the objection to the software is
12 simply -- it is this group's software that allows them to
13 use the Excel spreadsheet to do calculations that otherwise
14 they would do by hand, and that they verify by doing manual
15 calculations to be sure that what they are receiving from
16 Excel is what they would be receiving if they were doing the
17 calculations manually and without error. So, I have no
18 problem at all with the utilization of the Excel spreadsheet
19 and the utilization of the software as it has been depicted
20 to me.

21 MR. WALDRON: Moving down to the next paragraph of my
22 concern. My concern is that Mr. Schussel is an accident
23 reconstructionist. You've now overruled my objection and
24 allowed him to testify. I would like a ruling that he can
25 testify about this accident reconstruction, but he cannot

1 testify about highway construction or defects in road signs
2 or police procedures or whether Scott McCoy was wrong, or
3 one of his opinions is that the plaintiff did nothing wrong.
4 That's totally outside his field of expertise, and I'd like
5 to restrict his testimony to accident reconstruction.

6 THE COURT: Well, you tend to qualify him as an expert
7 in the field of accident reconstruction?

8 MR. SIEGEL: I do, Your Honor.

9 THE COURT: All right. It seems to me that to rule as
10 I'm being asked to rule forces me to make a determination in
11 a vacuum. Unless you can help me more, I can't rule in a
12 vacuum.

13 MR. WALDRON: Judge, I provided a copy of my memorandum
14 to you and I filed it, and I've got the opinions that are
15 multiple and they cover three pages. I said in my motion,
16 the only one that I think is fair game is 1A, which is most
17 probable that the speed he was traveling was 83.

18 THE COURT: Okay. Well clearly, B, -- tell me why you
19 believe he cannot opine with regards to B.

20 MR. WALDRON: I gave you my copy, so I'm not sure what
21 B is.

22 THE COURT: I'm so sorry. B is by his own testimony,
23 Deputy McCoy made no attempt to apply his brake prior to the
24 impact. I would think what he would say is, "I've looked at
25 the photographs and there's no indication that brakes were

1 applied by the cruiser."

2 Is your concern that he's simply talking about the
3 testimony as opposed to talking about what he saw -- he did
4 not see, I mean clearly, they can tell you, from braking,
5 much information and tire imprints, as well as gauge marks
6 will tell you a little bit about impact and braking. So I
7 think he can certainly testify within his expertise with
8 regards to braking. I guess your concern is he doesn't want
9 to talk about deposition testimony of McCoy.

10 MR. WALDRON: I think that's partially true. I think
11 there is evidence, there's going to be evidence in the
12 record that Scott McCoy did, in fact, brake and did steer,
13 and that relying on someone else's testimony is unfair.

14 THE COURT: Okay.

15 MR. SIEGEL: Your Honor, he was relying on Scott
16 McCoy's testimony, he was relying on the absence of skid
17 marks and any photograph from the MAIT report or anybody's
18 report that there were skid marks. There was never an
19 attempt to brake. That's an unequivocal fact according to
20 everyone. Now, Mr. Roberts may have come up with something
21 that I don't know about, but pre-impact braking, he admitted
22 he hit him. He volunteered that he hit them.

23 THE COURT: Isn't it typical, though, when experts
24 include accident reconstruction is that when they opine, and
25 can't the foundation be laid with the -- you could say is

1 this the type of -- tell me what you did to prepare to give
2 an opinion. I read the depositions. I looked at
3 photographs. I read the MAIT report. I did calculations.
4 I ate a pink lollipop, and then I was prepared to give my
5 opinion. Is that the kind of information that people within
6 your field typically rely on making their opinions, and he
7 would say, "Well, maybe not the pink lollipop," and then he
8 would give an opinion.

9 In other words, again, that's why it's so very
10 difficult for me to rule in a vacuum. I agree with you, if
11 his opinion is just based on the deposition of Deputy McCoy,
12 that's not an expert opinion, that's just reiterating
13 testimony, but I have a very sneaky suspicion that that's
14 not going to be the end of it.

15 MR. WALDRON: Well, now that you told them how to try
16 their case, I think you're right, Judge.

17 THE COURT: I'll teach you. Don't make me rule in a
18 vacuum. You understand what I'm saying?

19 MR. WALDRON: I understand what you're saying, but I
20 still object to his repeating the testimony of Scott McCoy.
21 He can say what he did and what he relied on.

22 THE COURT: Absolutely. He certainly can testify so
23 long as it's the kind of information that they used to
24 opine. And again, let me say that it is very, very, very
25 difficult for me to rule in a vacuum, and I'm reluctant to

1 do so.

2 MR. WALDRON: And as long as that's the rule from the
3 Court that I can object every time they want to approach it?

4 THE COURT: I think you should. I think that my
5 ability to rule is going to be so much more reliable and I
6 really think that justice demands that it be done in that
7 fashion.

8 MR. WALDRON: For example, I have not objected to when
9 he's made remarks about Mr. Roberts' evaluation, or the MAIT
10 evaluation, or the photographs were so poor, et cetera, but
11 that's the kind of thing that I would be, if he's offering
12 opinions about other people's testimony and their
13 evaluations, why his are right and theirs are -- that's
14 totally wrong.

15 THE COURT: That's called pitting the witness, the
16 stuff about Mr. Roberts, and I would expect you to. But he
17 certainly could talk about the quality of the photographs
18 for his purposes. He could say, you know, the vehicle was
19 gone. I would have loved to have had the vehicle. The
20 vehicle was gone. I had to use photographs. The
21 photographs for my purposes were wonderful or not wonderful.

22 MR. WALDRON: Fair game. I just don't want him
23 comparing his work with MAIT, for example. It may come up
24 and I may open the door, but -- as long as I keep it shut.

25 THE COURT: I understand. Obviously, what is available

1 MR. SIEGEL: Your Honor, the plaintiff calls Martin D.
2 Schussel.

3 (Whereupon, Mr. Martin D. Schussel is duly sworn.)

4 MR. SCHUSSEL: My name is Martin Schussel.

5 THE COURT: Your witness.

6 DIRECT EXAMINATION

7 MR. SIEGEL:

8 Q Mr. Schussel, would you please tell us about your
9 educational background?

10 A I have a Bachelor's Degree in Mechanical Engineering
11 from Carnegie Mellon University in Pittsburgh, Pennsylvania.
12 As a part of mechanical engineering, I studied physics,
13 chemistry, mathematics, a thing called strength in material,
14 which has to do with how metals bend and things like that.
15 Metallurgy, kinematics, and dynamics that can help you
16 figure out what happens to motions of vehicles and things
17 like that, and then control systems -- a whole bunch of
18 different things all that relate to mechanical products and
19 help us understand what happened in different circumstances
20 relating to mechanical products; and then I stayed at
21 Carnegie Mellon and I got a Master of Science degree, also,
22 in mechanical engineering.

23 Q Please tell us about your training specific to accident
24 reconstruction.

25 A Okay. In about 2002, when I started to work in

1 accident reconstruction, I went to a two-week course at the
2 Institute for Police Technology Management at the University
3 of North Florida in Jacksonville, Florida, and studied their
4 advanced course in accident reconstruction.

5 So in that, they, basically, take the principles of
6 physics and tell you how to apply them to accident
7 reconstruction. And accident reconstruction is trying to
8 figure out what happened in an accident. The speeds,
9 motions of the vehicles, the sequence of events, the
10 elements that relate to the mechanical aspects of what
11 happened in an accident.

12 So accident reconstruction is focused on that. I took
13 that two week course and passed the course, took a test
14 again to certify that I had taken the course. Since that
15 time, I've attended a number of different training programs
16 that are given by different organizations. One is called
17 NAARS, National Association of Accident Reconstruction
18 Specialist, I think it is.

19 One thing I studied there, for instance, was heavy
20 truck braking systems because they're sort of unique to
21 understand how they work; a bunch of different things: one
22 on perception and reaction time; things like that. So a
23 number of different courses, and then beyond that, we get a
24 journal every month that comes out and talks about accident
25 reconstruction issues, current topics in it, new technology;

1 things like that.

2 Q Mr. Schussel, please tell us about your work history.

3 A Okay. My first job out of school was working for
4 Martin Lockheed Corporation as a propulsion engineer, and
5 basically, what I did was design rocket motors for missile
6 systems, where people say you don't have to be a rocket
7 scientist to do that kind of job. I was, in fact, a rocket
8 scientist and I helped design rocket motors. I helped
9 evaluate their performance.

10 I did a form of accident reconstruction at that point
11 in time because we had missile failures and we had to figure
12 out from the information that was available, why did the
13 missile fail? What part did the propulsion system play in
14 it? I didn't have to worry about the control system and the
15 war heads, but I had to worry about the propulsion system
16 that I was responsible for.

17 From there, I left and went and started designing
18 software for mechanical engineers to use and designed
19 mechanical products, even though I wasn't directly doing
20 mechanical engineering. I was helping to design tools that
21 people used and meeting with them to understand their
22 problems and how they did it. A portion of my career is
23 outside of mechanical engineering doing software for cell
24 phone operators and non-profits. For the last almost 10
25 years now, I've been working purely in accident

1 reconstruction, doing that 100 percent of the time.

2 Q So you've answered me how long you've been doing
3 accident reconstruction. What percentage of your job
4 involves accident reconstruction, now?

5 A Essentially, 100 percent of my work is accident
6 reconstruction in one form or another. We work on
7 industrial accidents, in addition to vehicle accidents,
8 that's all a part of accident reconstruction; but overall,
9 100 percent of my time is spent in accident reconstruction.

10 Q Are you associated with a firm?

11 A Yes. I'm a partner in a firm called Engineering
12 Experts and there's three of us who are engineers; two of
13 them have P.E. licenses. I don't happen to have a P.E.
14 licenses, Professional Engineer's License, so, I work on the
15 accident reconstructions that don't require a license and
16 they work on ones that do.

17 Q We're here today talking about an accident which
18 occurred at the intersection of Green Pond Highway and
19 Clover Hill Road in Colleton County, South Carolina, on
20 January 13th, 2009. What did you do to investigate this
21 accident?

22 A Okay. Generally, what I try to do first is to gather
23 as much information as is available, so in this case, there
24 were photographs that were taken the night of the accident.
25 There were some interviews that were taken by the MAIT team

1 that investigates accidents. They took measurements at the
2 scene, so we used those measurements, or at least gathered
3 as evidence, those different measurements.

4 I looked at anything that was gathered in the way of
5 deposition testimony because sometimes it contains
6 information that's important to accident reconstruction.
7 What I'm looking for is anything that tells me about the
8 motions of the vehicles, the way the vehicles came together,
9 the speeds of vehicles and things like that.

10 So there could a number of different kinds of
11 information. But the important thing is to find out what's
12 available once I started initially to find information and
13 it usually leads to other information. For instance, when I
14 reviewed the MAIT team, the MAIT team is Multidisciplinary
15 Accident Investigation Team that the State Highway Patrol
16 runs and they often get called into accidents involving
17 fatalities or accident's involving police officers, so
18 they're not investigating their own agency.

19 So MAIT had investigated this accident and they took
20 what's called the airbag control module out of the police
21 cruiser and I wanted to try to get data from that because in
22 addition to this triggering the air bag, it contains
23 information that will help you determine potentially what
24 the speed was of the vehicles involved.

25 When I asked for that information, I was told that it

1 was not available and not been downloaded, even though it
2 was a year and a half after the accident. So I requested
3 permission to be able to get access to that module, and
4 instead, the MAIT team at that point, 18 months later,
5 downloaded the data for the first time from the airbag
6 module. So I received that information.

7 I requested original digital files for all of the
8 photographs that were taken by different parties, several
9 different agencies took pictures the night of the accident,
10 and the reason you want the original digital files is that
11 they contain more information than just a 3 x 5 or 4 x 6
12 photograph, so I requested that information and got access
13 to it.

14 I looked at -- the police cruiser was gone. I first
15 requested access to the police cruiser because from the
16 damage to the vehicle, you can figure out how the two
17 vehicles came together from damage to both vehicles, but it
18 turned out that the police cruiser had been scrapped soon
19 after the accident, so it was not available.

20 I asked for the PCM module, or the powertrain control
21 module, in this year, a Ford Crown Victoria, 2008, because
22 that would have direct readouts of speed, whereas the airbag
23 module looks at deceleration in the vehicle that would
24 trigger the air bag. The powertrain control module stores
25 directly information about the travel position, braking, the

1 speed of the wheels on the vehicle, and all those things
2 directly, and it does it for at least 25 seconds before
3 impact and sometimes up to five minutes before impact;
4 that's a tremendous amount of information.

5 It turned out the MAIT team, even though they took out
6 the airbag control modules, which is one module, the same
7 documentation that tells you that there's an airbag module
8 and where it is in the vehicle, tells you that there's a
9 powertrain control module and where it is, but apparently,
10 they made no effort to remove that from the vehicle.

11 So that data is lost and it could have directly
12 calculated speed. I asked for, or at least there was
13 discussion, in some of the materials that I received that
14 talked about the video camera in the police cruiser and
15 there should have been data that once he turned on his
16 lights and siren that it was recording information, not only
17 video, but also record speed in the vehicle and things like
18 that, and eventually found out that he had turned off the
19 camera, and therefore, none of that information was
20 available. So stuff that would have been available to give
21 us directed speed was not available.

22 There's information that comes out of some of the
23 reports that were produced at the time of the accident to
24 give you what's called the VIN number of the vehicle, the
25 vehicle identification number. And from that VIN number

1 accident.

2 So the first thing that you start with, we know what
3 the scene was like at the time of the accident. The MAIT
4 team used what's called a total station, which is like a
5 surveyor's instrument, to measure points at the scene. And
6 so, using that total station data, I can then construct a
7 drawing of the scene of the accident that's very accurate.

8 In addition to just measuring the roadway and the dash
9 lines and things, they also measured marks that were left in
10 the roadway and in the grass on the day of the accident and
11 those are things that you can't get after the accident. I
12 wasn't involved in the accident until about a year or so
13 after the accident, so those marks were all gone by the time
14 I came into the accident. So instead, we rely on the
15 measurements that they took to help us understand what was
16 there on the day of the accident, because that information
17 is critical to reconstructing the accident.

18 So what we see is the overall scene. Deputy McCoy was
19 coming from this direction, Jake Wright was coming from this
20 direction. Jake was making a left turn and the Deputy was
21 trying to go straight through. So this is the overall area
22 of the accident and what you see here is some detail where I
23 started to work with this data.

24 This is the same scene, just blown up to make it a
25 little bigger, so it's easier to see what's going on and,

1 organization dedicated to looking at lots of issues relating
2 to automobiles, and they've done studies about friction
3 coefficients for different surfaces.

4 They've done it for roadways obviously, but they've
5 also done for what's called off-road surfaces. One of them
6 happens to be grass and sandy soil. And so we look at those
7 friction coefficients and use them as the input into our
8 calculation. We then look at whether or not you can
9 sometimes have circumstances where you've got weight shift
10 going on. There's no evidence that was happening in this
11 particular case. You can also have a slope in the roadway
12 you might want to take into account. That didn't appear to
13 be a very significant factor in this case.

14 I put in the starting angle, I put in the ending angle,
15 I put in whether the rotation was clockwise or counter
16 clockwise, because that matters how to get from start A to
17 end A. I put in the distance that it rotates and I put in
18 the speed -- I've called it the end speed, but that's at the
19 end of the skid and I want to get the speed at the start of
20 the skid.

21 So this starts with that speed as the input and then it
22 goes through steps to take each wheel and calculate its
23 friction coefficient and then the amount of weight on that
24 wheel and add them all together to get the total friction on
25 the car and that information let's me calculate for standard

1 accident reconstruction practice what the speed is at the
2 start of that set of skids.

3 And I've broken this up, you can see ---

4 MR. WALDRON: Your Honor, I may need to object.

5 A Okay. What I've got here is our spreadsheet that we
6 did, that breaks it up into multiple segments automatically.
7 We do grossly the big segments that are talked about in the
8 article. But below that, we break it up into one degree
9 increments to make it even more accurate, so our program
10 even does a little better than what the article says to do
11 manually, because we can do it automatically. We don't
12 worry about all the manual calculations. And so this
13 took 62 steps. I've got one and two shown here. I hid the
14 rest in between, and then 62 and 63, and so, it got to the
15 28.2 miles per hour at the end of the skid for this
16 particular segment. We did it for a bunch of -- for several
17 different segments for each vehicle. I was just trying to
18 show an example of how we did it.

19 MR. WALDRON: Your Honor, at this point, I'm going to -
20 - before Mr. Schussel puts his final calculations up, I'm
21 going to object to his qualifications to testify, his basis
22 for testifying, and would incorporate the argument that I
23 made.

24 THE COURT: Very well. Overruled.

25 MR. WALDRON: And would assert that this particular

1 slide is not responsive to the question that was asked,
2 which was "and you did an accident reconstruction." This
3 calls for -- this is his result. It's not the ---

4 THE COURT: Okay.

5 MR. WALDRON: There's no foundation at this point for
6 that opinion.

7 THE COURT: Okay. Yes? You may proceed.

8 Q Mr. Schussel, as a result of all the information that
9 you have gathered and the calculations that you have done
10 and you reported that they were within standards of accident
11 reconstruction, have you reached an opinion as to what most
12 probably the speeds of the respective vehicles were at the
13 time of the collision?

14 A I have.

15 MR. WALDRON: Object to the form of the question.

16 THE COURT: Overruled. You may proceed.

17 A Okay. So using the information that I talked about
18 earlier, for the police cruiser, I got the post-impact speed
19 of 35.28 miles per hour, and for the pickup, 28.2 miles per
20 hour.

21 And what we're talking about for post-impact is from
22 the positions immediately after impact to final rest, so in
23 other words, we backed up from here up to this point and
24 from here up to this point. And now what we want to do is
25 calculate the speed at the point of impact. So I know what

1 it is from the skids enough to get the post-impact formula.

2 Now, I want to determine what it was before impact.

3 And that may seem kind of silly, but there is a lot of
4 things happening right at impact. And luckily for us, the
5 laws of physics say that momentum is the property that's
6 preserved in an accident. Even an accident as violent as
7 this one. The momentum is the speed, or the velocity, of a
8 vehicle times its weight, for each of these two vehicles.
9 And that means that the momentum of this vehicle before the
10 accident and it can be determined knowing the momentum of
11 both of the vehicles before impact. I'm sorry, I said it
12 backwards.

13 The speed and the momentum before impact can be
14 determined from after impact. So we already know it after
15 impact, now we can use what's called conservation momentum
16 to determine what the speed was before impact. And the
17 information we need to do that are the weights of the
18 vehicles and the speeds of the vehicles and the direction
19 the vehicles were going. After impact, we've got to
20 determine before, and we also need to know the directions of
21 the vehicles before impact.

22 So that's why, earlier, when I talked about how
23 critical it was to get the right positions after impact,
24 it's because I need to look at the positions before impact
25 and after impact to get the direction for the motion of the

1 vehicle after impact, to be able to calculate it what it was
2 before.

3 That's why here I've got a fairly subtle angle to this
4 that's pointing a little to the right of this roadway, and
5 then this vehicle is pointed also to the right. So both
6 vehicles have a motion -- even though this vehicle is being
7 driven backwards, it was going forwards and now it's being
8 driven backwards and pointing in this direction. Its center
9 of mass is moving in this direction and it's how carefully I
10 determined it that helps give me the most accurate answer;
11 and the same for the police cruiser. So just like I've
12 implemented in these other calculations and automated
13 things, I've implemented for conservation a formula, a
14 fairly complex formula that we don't have to get into
15 details of, but it's an accepted formula in accident
16 reconstruction and I put in the weights of the vehicles and
17 I put in the angles of the vehicles coming into impact and
18 the angles that they go out of impact and I can determine
19 what the speeds are going into impact.

20 From those calculations, I determined that the police
21 cruiser was going 83 miles an hour and the pickup truck was
22 going 26.5 miles an hour. And that's all from this process
23 of very carefully using the right process of creating
24 multiple segments for the speed, as you're supposed to do,
25 and then using the proper orientations for the vehicles to

1 IN CAMERA EXAMINATION

2 A All right. So what I looked at was, there's an
3 intersection sign that is 360 feet from the point of the
4 accident -- it's 360 feet from the start of the intersection
5 to the point of impact, and if you look at the amount of
6 time that it took Deputy McCoy, at 83 miles an hour, to
7 cover that distance, which is three seconds, versus covering
8 that same distance at 55 miles per hour, that takes four and
9 a half seconds to cover that distance.

10 So from the sign that warned him about an intersection,
11 there's an extra one and a half second of time for someone
12 to be able to react to someone who's at that point, and that
13 is sufficient time for the pickup truck, at the speed that
14 he was going, to go an additional 58.4 feet. That means
15 that the pickup truck would have been completely through the
16 intersection and there would not have been an accident.

17 THE COURT: I gotcha. That's the testimony that I have
18 no problem with. But it's the way that is, would there have
19 been an accident caused -- you don't know, because it calls
20 for speculation; he may have slowed down, he may have
21 speeded up, but the science of it is fine.

22 The science of the -- the speeds, and how fast you
23 travel, and if you assume the correct speed, and this is the
24 speed it would have traveled and if you've got a vehicle
25 that is traveling 26.5 miles per hour coming at this

1 distance at 55 miles an hour, you would have traversed in a
2 vehicle, going this speed, would have had time to clear the
3 intersection. See what I'm saying? Assuming these matters,
4 there would have been no impact.

5 MR. SIEGEL: So do I need to ---

6 THE COURT: Just let him -- what concerns me is that
7 when you say "I did a calculation to figure out how there
8 wouldn't have been an accident." I mean, my mind goes
9 bananas when you do that because there's so many variables,
10 and the way that that particular question is phrased calls
11 for speculation. He wouldn't know. Any number of things
12 could have happened, but the science is correct. I get the
13 science.

14 What comes to mind is that you don't have to stop the
15 train for the truck to clear the train crossing, you just
16 got to slow it down a little bit; so I understand the
17 science, and you will be able to testify to the science.

18 It's just that I want to be a little tighter on the
19 science in terms of depending that the accident would not
20 have occurred. What is true is assuming 55 miles an hour,
21 assuming 26.5 miles an hour, assuming traveling 55 miles an
22 hour, which is 360 feet per second in a vehicle traveling
23 26.5, you would have cleared the intersection.

24 MR. SCHUSSEL: Okay. That's fine.

25 THE COURT: That just keeps my brain from saying ugh.

1 MR. WALDRON: It was awful.

2 THE COURT: No. Now, stop it. You lawyers are bad
3 about exaggerating. It wasn't awful; it was brilliant,
4 because he got away with it, right?

5 MR. WALDRON: It's brilliant if you let him answer it.

6 MR. SIEGEL: We're ready, Your Honor.

7 THE COURT: I'm ready.

8 (3:15 p.m., Whereupon, the jury enters the courtroom
9 and the following is held on the record.)

10 THE COURT: You may continue.

11 DIRECT EXAMINATION CONTINUES

12 BY MR. SIEGEL:

13 Q Mr. Schussel, did you prepare an analysis based upon
14 the officer traveling at the speed limit from the yield sign
15 preceding the intersection to the point of impact, presuming
16 Mr. Wright was traveling at the speed that you determined,
17 between six and a half miles per hour? I mean, the officer
18 traveling at 55 miles per hour; have you done that analysis?

19 A Yes, I have.

20 Q Could you give us your conclusion?

21 A Just to sort of frame things, for instance, if you
22 we're talking about there is a sign back here that's 360
23 feet from the point of impact and that sign is a black
24 cross-sign with a yellow base, which is a warning that
25 there's an intersection ahead, and so, I thought that that

1 was the appropriate place to look at the difference between
2 traveling at 83 and a half miles per hour to the point of
3 impact and traveling at the speed limit that was 55 miles
4 per hour to the point of impact and see whether or not it
5 would have been different as to whether the accident would
6 have taken place or not.

7 So the way that I did that was using the distance of
8 360 feet, the speeds of the two vehicles that looked at how
9 long it would take Deputy McCoy to travel that 360 feet at
10 83 miles an hour and that turned out to be three seconds,
11 and it was 3.0, but it's actually 3.0 something, but it
12 rounds out to 3.0 seconds. If, instead, he was doing 55
13 miles per hour then it would have taken 4.5 seconds to go
14 that distance and that difference of 1.5 seconds is
15 significant because the pickup truck at 1.5 seconds, would
16 go 58.4 feet further than it did. So, if it's 58.4 feet,
17 he's going to be completely through the intersection,
18 because he's only 18 feet long, so he's going to have long
19 cleared the intersection by the time the police car gets
20 there, if the police car is going at the speed limit,
21 instead of 83 miles an hour. Without the warning of the
22 lights and siren, and he doesn't have an indication that
23 someone's going 83 miles an hour.

24 Q And I want to ask you, If Deputy McCoy had been
25 traveling at 45 miles per hour, would Jake Wright have had

1 start with the base value for the friction for the roadway,
2 which is known from the correct measurements, and calculate
3 what the actual friction was all the way through that
4 rotation until the point of rest.

5 The same would be true, generally, for the police
6 cruiser. People would say, "Well, there's only small amount
7 of rotation, so we'll take one post-impact vehicle and take
8 where it crosses into the grass and we'll take a second
9 here, but again, they're still having to guess at what the
10 friction coefficient is; it's applicable for the particular
11 orientation in the rotation on the vehicle, and in our case,
12 we start with the base road friction or the base grass
13 friction, and then we calculate based on the actual movement
14 of the vehicle of what the speed is at each of the segments
15 in between. So, I don't believe there's a more accurate way
16 to do it, but there are other ways to do this calculation.

17 Q One more question. The option of using crush analysis.
18 You haven't mentioned crush analysis.

19 A Okay. If we have access to both the vehicles, we can
20 measure the damage to the vehicles; that is the profile of
21 the damage when the two vehicles came together, and that
22 profile, people have done -- NHTSA has done tests, that's
23 the National Highway Transportation of Safety
24 Administration, has done tests where the crash cars; you've
25 heard about the crash tests and seen some of those on TV.

1 And those tests are taken by other people and they
2 calculate, "Well, if we do this crash at 25 miles an hour
3 and we've got 25 inches of crush, we can make a number that
4 says if it was 30 miles an hour, we might have gotten 30
5 inches of crush." So we can go from the crush backwards to
6 the speed.

7 So that is a method that we sometimes use for doing
8 analysis is to use crush analysis, but you need access to
9 the vehicles or you need very good pictures of the vehicles
10 to be able to back calculate those.

11 In this case, we have the pickup truck, so we can
12 measure and did measure the crush of the pickup truck, but
13 we don't have the police cruiser; the police cruiser was
14 scrapped soon after the accident. Secondly, the photographs
15 that were not taken are not taken uniformly 360 degrees
16 around the vehicle and they're not taken in daylight; they
17 were taken with flash cameras at night, and the trees are
18 blocking the car in some of the photos. And what you need
19 for a technique called photogrammetry, which is a scientific
20 method of taking photographs and reconstructing from
21 photographs just the physical shapes of the objects. So we
22 use it, for instance, for the roadway. If you have marks in
23 a roadway that are only visible in a photograph, and you
24 have enough photographs, you can go out and measure the road
25 and then you can put the skid marks, or tire marks, back

1 onto the roadway even though they're gone by the time you're
2 there.

3 Well, for the police cruiser, you can potentially look
4 at points on the police cruiser and try to figure out how
5 much it was crushed, but you have to have good photographs
6 and we have to have uniform photographs around the vehicle
7 to be able to do it accurately.

8 And, when we looked at the photographs that were
9 available from the police of the accident that all the
10 people had took photos from the night of the accident, there
11 are just not enough photos to do that, and I know that an
12 attempt was made on one person's part to do that sort of
13 photogrammetric analysis, and we were provided with results
14 of that analysis. And when we put it back into the computer
15 program, called photo monitor, it was used to do that
16 analysis, it puts up a warning and it says, what are called
17 residuals. Residuals is how much uncertainty is there in a
18 point.

19 We looked at the warning and the warning says that if
20 you have more than five pixels of an uncertainty, that your
21 results are unreliable. This had an uncertainty of up to 85
22 pixels, and they were, I think, 2/3 or 3/4 of the points all
23 had residuals of a goggle level of five pixels, which meant
24 that the results from the crush were unreliable, and that
25 meant that we could not do a crush analysis based on that

1 were in the right range?

2 A I used the crush from the pickup truck to get an idea
3 of how the two vehicles came together. I used the photos of
4 the police cruiser to get an idea, some idea, of how it came
5 together with the pickup truck.

6 Q But you didn't do a -- you didn't rely on a crush
7 analysis because you felt that there was not proper data
8 available?

9 A It's not that I just didn't feel it was. The program
10 itself in which the photogrammetry analysis was done
11 indicated that the results were inaccurate, and so doing a
12 crush analysis based on inaccurate results didn't make any
13 sense.

14 Q You stated earlier in your testimony, and I wrote this
15 down, that MAIT made no effort to retrieve the data from the
16 powertrain control module. You don't know if that's true,
17 do you?

18 A I know that MAIT described removing the airbag control
19 module from the vehicle and made no mention of any effort to
20 get to the powertrain control module or to download the data
21 from the powertrain control module.

22 Q Did you ask about the powertrain control module? Did
23 you ask MAIT?

24 A No.

25 Q Do you even know whether the powertrain control module

1 (Defendant's Exhibit Number Two, Notebook of CDR Data,
2 is received into evidence.)

3 Q I think Mr. Siegel tried to ask you this, and I'm
4 probably not bright enough to pick up the answer, did you
5 calculate the point at which the cruiser occupied when the
6 pickup truck crossed the center line into his lane of
7 travel?

8 A No, I did not.

9 Q You don't know where the cruiser was in terms of you
10 don't have a precise, calculated point when the potential
11 threat became an actual threat, that is, when the truck
12 crossed the center line?

13 A The threat depends on which vehicle you're talking
14 about, because obviously, the police cruiser was a threat to
15 the pickup truck ---

16 Q Then let me rephrase ---

17 A --- for that whole time that he was speeding; he was a
18 potential threat.

19 Q Let me rephrase it. You can't put on one of these
20 charts or articulate to us where the cruiser was at the
21 point that the pickup truck crossed into his lane?

22 A I did not determine that because as I indicated
23 earlier, if the police cruiser had been going 55 miles per
24 hour, then the pickup truck would have been through the
25 intersection, so it wouldn't have mattered when it crossed

1 the center line as to whether the accident happened or not.

2 Q Understood. Did you -- you obviously reviewed the MAIT
3 data, because you've used some of it in your calculations.

4 A I used the MAIT measurements, yes.

5 Q Did you review the MAIT report and see that the MAIT
6 report indicated that the tires were free to rotate?

7 A Incorrectly, but it did indicate it, yes.

8 Q So you disagree with that?

9 A From the photographic evidence, yes.

10 MR. WALDRON: I'd like to have the court reporter mark
11 as the next exhibit, a photograph.

12 Q Mr. Schussel, have you ever seen that photograph
13 before?

14 A Yes.

15 Q And was that one of the photographs that you considered
16 in your evaluation, or your assessment, in this case?

17 A No, because this is when it's been hauled out of the
18 area of final rest and is on the back of a jeri-van, I guess
19 is what it's called, so that it's been obviously moved from
20 the final rest position.

21 Q Would you agree with me that there is dirt on the top
22 of the tire, as well as the bottom of the tire, in that
23 photograph?

24 A There's a small amount of dirt there, but it's obvious
25 that this wheel has been rotated as it was pulled out of the

1 to sound out my motion. My expert is here. He's my first
2 witness and he is here. He is getting ready to go. He's
3 having some technical difficulties getting his system to
4 work. I anticipate that my case will take no more than
5 three hours.

6 THE COURT: Great.

7 MR. WALDRON: My thought is -- well, my question is do
8 you want to let the jury go today?

9 THE COURT: I do not.

10 MR. WALDRON: You want to keep going until 6:00?

11 THE COURT: I do.

12 MR. WALDRON: All right. Let me ask my expert how he's
13 doing.

14 WITNESS: I'm almost there.

15 MR. WALDRON: All right. Then we can do it. Your
16 Honor, I move for a directed verdict.

17 THE COURT: On the basis that you have articulated in
18 your memorandum?

19 MR. WALDRON: Yes.

20 THE COURT: Very well. Any additional grounds?

21 MR. WALDRON: Let me not sign off on that. I'd like to
22 state the basis that I've laid out in the memorandum. I'll
23 state for the record that I've presented the Court and
24 counsel a memorandum of law just prior to the break. I'm
25 going to sign and file a copy with the Court.

1 THE COURT: Okay. Very well.

2 MR. WALDRON: The basis of my motion, as articulated in
3 Horton v. Greyhound, 241 S.C. 430, 128 S.E.2d 776 (1962).

4 It says that "speed was a contributing factor in placing the
5 vehicle at a particular location on the highway when the
6 emergency arose is without legal significance."

7 I have cited Horton, Blanding v. Hammell, Odom v.
8 Steigerwald, 260 S.C. 422, 426-27; and I will briefly go
9 through those cases.

10 THE COURT: I've already read them. Please, go ahead.

11 MR. WALDRON: The basis of those cases ---

12 THE COURT: Well, let me ask you a question, when you
13 considered your argument, did you also consider Flower v.
14 The South Carolina State Highway Department?

15 MR. WALDRON: No, I did not.

16 THE COURT: All right. That citation, just for our
17 records, is 34 S.E. 2d 769, and it has a progeny, and that
18 progeny says that "every traveler on the highway exercising
19 due care himself in the absence of any circumstances which
20 reasonably should put him on notice to the contrary is
21 entitled to assume and to act upon the assumption that
22 others using it in common with him will exercise reasonable
23 care." You must factor that also in.

24 MR. WALDRON: All right. At this point, I don't see
25 that it changes my analysis, which is, that the deputy, as

1 he drove down the road, had every right to expect that
2 public vehicles to stay within their rights. That it was
3 his right to occupy that lane. We've had testimony that the
4 Sheriff's policy, as well as the state law, allows him to
5 travel at speeds in excess of the speed limit, as long as he
6 exercises due regard for the public safety, and as long as
7 he can travel without his lights and siren. As long as he
8 is responding to an emergency situation, which he described
9 the burglary is one, and when he perceives that he is
10 getting close enough that use of the lights and siren might
11 reasonably scare the perpetrator away," putting it in
12 layman's terms.

13 He testified he knew he was getting close, that's what
14 he did. He also testified that he did so at the area of the
15 bridge about seven-tenths of a mile from the intersection.
16 He was close to the intersection at the time. He testified
17 that his speed at that time was between 70 and 80. Now,
18 we've had an expert testify that his opinion that the speed
19 was greater at the point of collision. However, that still
20 falls within the deputy's purview to be traveling at that
21 speed in that lane.

22 According to the case, and I've printed the cases, and
23 it starts with Odom v. Steigerwald, and proceeds forward.
24 Odom says he has the right to be in that lane and when
25 someone pulls directly in front of him leaving him no time

1 to react, the fact that he might have been speeding was not
2 a factor. The proximate cause, the real cause, is that
3 vehicle that pulled out in front of him.

4 There being no connection of no proximate cause in this
5 case, attributable to the defendant, I would move for a
6 directed verdict.

7 THE COURT: Very well. As you know, I am required to
8 take the evidence and all inferences in the light most
9 favorable to the non-moving party, which of course, would be
10 the plaintiffs. And in doing so, this would be the factual
11 scenario. He should never have been hired as a deputy. He
12 should never have been hired as a reserve deputy and he
13 should never been hired as a deputy. And that's what --
14 that's what the Sheriff has testified to. So that moves us
15 forward to this on this occasion.

16 They have absolutely made out a case for negligent
17 hiring. So then we get down to the issue of proximate cause
18 on this particular evening. And what you have done, Mr.
19 Waldron, so effectively, is you've taken the evidence in the
20 light most favorable to the defendant.

21 Now, let's take the evidence in the light most
22 favorable to the non-moving party, and here's what we've
23 got. What we've got is a deputy on the other side of
24 Walterboro who comes through town, has his siren on, has his
25 flashing lights on. He gets to the Green Pond area and

1 doesn't know where he's going. He doesn't know where the
2 Heavenly Baptist Church is. He turns off his flashing
3 lights. He turns off his siren, and he turns off his camera
4 immediately when he turns off his flashing lights and his
5 siren. And he turns it off two miles prior to the point of
6 impact and doesn't know where the church is; doesn't know.
7 He knows there's another officer ahead of him, doesn't know
8 where the church is, and he turns off that equipment, which
9 is notification to the public that there is an emergency
10 vehicle on the way.

11 There's clear, clear inference here that there is not
12 only negligence, and negligence per se, but there's evidence
13 of reckless, willful and wanton conduct, and gross
14 negligence. So we have a gentleman who is -- who has
15 approached an intersection, and again, I cite to you the
16 Flowers case. He looks, he sees, it's night. It's January.
17 It's night. He looks, he sees a car that he believes to be
18 about a half a mile away. No question but that he has time
19 to cross over and make his turn under Flowers v. South
20 Carolina State Highway Department, as borne out by the
21 testimony of the expert, he should have been able to do it,
22 and would have been able to do it, but for the negligence of
23 the defendant.

24 Now, taking the evidence in the light most favorable to
25 the plaintiffs, I would respectfully deny your motion for

1 directed verdict and ask if you are ready to go.

2 MR. WALDRON: No. I have another motion.

3 THE COURT: Okay

4 MR. WALDRON: There are three separate causes of
5 action. I move for a directed verdict on that cause of
6 action which alleges conscious pain and suffering.

7 THE COURT: Yes.

8 MR. WALDRON: No evidence to satisfy the standard.

9 THE COURT: Very well. The Reverend testified that his
10 son moaned. Taking the evidence in the light most favorable
11 to the plaintiff, he also testified that his hand hit the
12 windshield, broke the windshield, and again, taking the
13 evidence in all inferences, reasonable inferences, in the
14 light most favorable to the plaintiff, I would respectfully
15 deny your motion.

16 MR. WALDRON: Judge, If I could just follow up on that.

17 THE COURT: Sure.

18 MR. WALDRON: It's got to be conscious pain and
19 suffering, and a moan or other incidents of death, are not
20 conscious pain and suffering. And the coroner testified
21 that at no point was he conscious while he was there. Mr.
22 Wright never testified that his son ever regained
23 consciousness. In fact, the coroner testified that he told
24 the family that he didn't suffer.

25 THE COURT: Right.

1 MR. WALDRON: There's no evidence of conscious pain and
2 suffering as required by the cases.

3 THE COURT: I understand what he did testify to,
4 though, is that based upon his view of the evidence is that
5 he reached out at the time of impact, and when he did, he
6 would have hit his hand. And while the photos are not in
7 evidence, he would have hit his hand, broken the windshield,
8 and then subsequently the event that caused his death, his
9 father testified that he heard moaning. I'm satisfied
10 taking the evidence and all inferences in the light most
11 favorable to the plaintiff. It is appropriate to deny your
12 motion and I would respectfully do so, knowing your
13 exception there, too.

14 Other motions?

15 MR. SIEGEL: I don't have as much nerve as Marshall
16 does, but I would move for a directed verdict of negligence
17 in the negligent hiring action on the basis of the clear
18 testimony of the Sheriff himself, because there was reckless
19 and utter disregard of the facts in the file prior to hiring
20 this deputy. There is also proof that there were other
21 problems in the employment file that a reasonable
22 investigation would have discovered, like prior employment
23 at a law enforcement agency, a criminal arrest, and in fact,
24 I don't know that he saw the judgment, but it was in the
25 file. So I would ask that we be granted a directed verdict.

1 retrieval, and I think Mr. Schussel touched on the airbag
2 control modules, power train control modules, and it was,
3 basically, a week long course that certified us to become
4 analysts in that data.

5 Q And you did get that certification?

6 A I did.

7 Q In your over 11 years of experience, can you
8 approximate how many motor vehicle accidents you've
9 reconstructed?

10 A I haven't kept count of them, but probably over 700
11 through the years.

12 Q And my office, or I, I asked you to take a look at this
13 case, correct?

14 A Yes, sir.

15 Q And tell the jury what your fee is.

16 A It's \$200 an hour.

17 Q And tell the jury what you were asked to do in this
18 particular case.

19 A Well, specifically, I was asked to conduct a
20 reconstruction analysis to -- and there were several key
21 questions that needed to be answered, as far as how the
22 collision occurred, what speeds were involved, was the
23 collision avoidable on the parts of the drivers.

24 Q Now, you just mentioned three questions, or three
25 areas, that you looked at. Did you, in the course of your

1 investigation, form an answer to where in the roadway the
2 collision occurred?

3 A I did.

4 Q Where you able to determine the speed of the relative
5 vehicles?

6 A I did.

7 Q And were you able to form an opinion as to whether the
8 collision was avoidable?

9 A Yes.

10 Q And how did you go about answering these questions?
11 Let me ask you in connection with that, what materials did
12 you review and how did you use the materials to go about
13 your analysis?

14 A I received a lot of material on this. The Highway
15 Patrol Specialized MAIT team, accident investigation team,
16 took a lot of photographs, made measurements at the scene.
17 They downloaded what's called the airbag control module or
18 sometimes people call them "black boxes" on vehicles. That
19 gives us data.

20 I looked at, actually going out to the scene, and took
21 my own measurements out at the scene. Now, when I got
22 involved in the case, the collision-related marks, the tire
23 marks, were already gone. The paint marks that the highway
24 patrol had left down to mark the locations of the vehicles
25 had already gone.

1 the pavement and grass, so it's important to look at that.

2 In this case, the front wheels were locked, or couldn't
3 be turned, because of damage, the rear wheels were what we
4 called pre-rolling; if we were to jack that up, you could
5 turn it by hand. There was no damage preventing the rear
6 wheels from turning.

7 Q Did you have access, I think you already testified that
8 the cruiser was scrapped?

9 A That's correct.

10 Q How did you deal with that?

11 A Well, there were a number of photographs taken at the
12 scene by various parties, including the MAIT team, the
13 investigating officers, and others out there. What we do,
14 this is just some of the photographs that you can prove a
15 lot of damage across the front and the driver's side front
16 quarter panel, right in here. So both the front and the
17 driver's side corner here sustained most of the collision
18 damage. If we look at the passenger side, front headlight,
19 you can see the headlight runs itself is still in tact. It
20 didn't have any direct contact, whereas the pickup truck
21 didn't come in contact with this portion of the vehicle. So
22 that helps us.

23 Q Let me stop you for just a second. You've heard
24 testimony about the ACM and the PCM, where is the airbag
25 control module located?

1 of overriding that data. But the key thing after observing
2 this, basically the PCM is just a circuit board, a small
3 computer circuit board, that's enclosed in plastic, and
4 based on what I see here, I would not expect that module to
5 even survive the crash; it's not designed to be crash-
6 worthy, it's designed to run the engine. So, I wouldn't
7 expect it to be crash-worthy.

8 Q So is the fact that you didn't have the cruiser and you
9 didn't have the PCM, was that fatal to your analysis?

10 A Actually, no. I mean it certainly is another means of
11 evaluating the speed of a vehicle, don't get me wrong, but
12 it's not critical to the analysis.

13 In fact, 10 years ago or even up to -- Ford just
14 started allowing downloading of that data, probably about
15 six or seven years ago. So it hasn't been around for
16 reconstructionists forever; even this crash data retrieval
17 equipment wasn't available to reconstructionists like us
18 until 2001.

19 MR. WALDRON: I interrupted you and I apologize.

20 MR. ROBERTS: Okay. So, we look at the various
21 photographs and we can use this to do a photographic
22 analysis, and we use that technique called photogrammetry,
23 and here's a fancy definition for it that I got out of
24 wikipedia right here, but really what photogrammetry is, is
25 using photographs to determine the shape of an object or

1 actually take measurements from an object.

2 And photogrammetry is a science that's been around for
3 decades, even before personal computers were available,
4 people used photogrammetry. What they do is look at the
5 photographs on there and just visually estimate the amount
6 of damage on there; that's a form of photogrammetry.

7 Well, with the advent of personal computers and
8 software, there's specific programs that you can input these
9 photographs that help you estimate the damage in there and
10 we use a program called photo modeler; it's been around for
11 over 20 years and basically, it's an industry standard
12 within the accident reconstruction community for
13 photogrammetry purposes.

14 So we took all the available photos we had of the
15 damage, and you'll notice, we had some good photos of the
16 damage up front and to the driver's side, but we had limited
17 photos, we basically, just had this photo of damage to the
18 passenger side.

19 So when we input these photographs into the program, it
20 created a warning that said, I don't have enough photographs
21 over here to give us accurate measurements. I don't really
22 care about the measurements that much on the passenger side,
23 what I was interested in was the damage in here, on the
24 front end of the driver's side, front of the vehicle,
25 because that's the crush damage in there; that's what we

1 it could be.

2 Q You were talking about delta-v or change in speed?

3 A The delta-v we calculate, that's where the momentum
4 part of the analysis comes in, and we basically take -- what
5 we have to do is take the input angle, basically the
6 direction that the vehicles are initially going coming into
7 the collision. We calculate the directions they go off
8 after and immediately after impact, as they go towards final
9 rest, we plot the center of gravity right there and we
10 figure out the direction it was going shortly after impact.
11 So we take those angles and then we take those post-impact
12 speeds in there, and we input them just to help us do the
13 math, a software program based on the Excel spreadsheet.

14 Q All right.

15 A And this is the Excel spreadsheet I used to do my
16 calculations in there. I know you can't read this, so I'm
17 going to pull out -- this is the bottom line. The impact
18 velocity and the delta-v are down here, so what we're
19 interested in is right there. What we're interested in is
20 this is for the police cruiser. Using a momentum analysis,
21 it says the range of speeds that the police vehicle could
22 have been going was, basically, between 57 and 65 miles per
23 hour; remember that other term I used, delta-v, it also
24 calculates the delta-v for me. And it's the delta-v that
25 the police cruiser went through as a result of that

1 back and forth. My left yellow vehicle is at the point --
2 this is the point I consider it would have been visible to
3 Deputy McCoy that that pickup truck was turning in front of
4 him. So we're at 1.4 seconds prior to impact that this
5 occurs.

6 And we continue up to impact, it should be at time zero
7 that the vehicles turn right and that's the point of impact,
8 and then we'll see the vehicles go off to their final rest
9 positions. This is how they go to their final rest
10 positions right there.

11 Now this gives you a view -- it's easier for you to
12 visualize from this view. As an engineer, I'm interested in
13 looking at things from over top, taking measurements and
14 things like that, so I'll show you another view of this same
15 animation from directly overhead.

16 Okay. I've done the same thing with this animation.
17 Right here, we have Deputy McCoy's vehicle coming from the
18 left right here and the pickup truck approaching the
19 intersection from the right and we're five seconds prior to
20 impact. And I'll step it through again with both vehicles.
21 This vehicle is going. I told you the speed range was 57 to
22 65 miles per hour for Deputy McCoy's vehicle. I used 65
23 miles per hour, the very top of my speed range right here to
24 conduct this animation.

25 You can see both vehicles are approaching the

1 intersection at this point and we're still 2.4 seconds away.
2 Both vehicles are still approaching. Now, we're looking for
3 some indication that this pickup truck is going into -- is
4 actually physically making that turn, and once again you can
5 see from this view, the headlights start swinging over and
6 the vehicle starts, it's just the corner of the vehicle
7 starts crossing that center line at 1.4 seconds prior to
8 impact.

9 I let these vehicles continue. That's where I
10 determined that Deputy McCoy would have been cued, had a
11 visual cue, that this pickup truck was turning in front of
12 him and then taking the impact and then you can see how the
13 vehicles slow down to final rest positions.

14 Q After you created this animation, you used all the
15 scientific principles that you used in making your
16 evaluation?

17 A I did. Basically, to create this, I had scale drawings
18 of this, which I showed you some of those earlier and we
19 basically just overlaid the scale drawing onto a scene where
20 we could make -- put the vehicles in motion. This is
21 essentially a drawing with the vehicles in motion is all
22 I've done and put some other data on here that would be
23 helpful.

24 So once again, yellow is where Deputy McCoy's
25 perception response time would have started, 1.4 seconds

1 prior to impact. So that's the available time that Deputy
2 McCoy would have had, 1.4 seconds.

3 Let me go back to that PowerPoint. I pointed out that
4 Deputy McCoy had 1.4 seconds prior to impact to see that
5 vehicle turning in front of him. That's the available
6 perception response time to him. Here's the other view.
7 These are the still images of the animation I showed you.
8 That's the vehicles at impact and once again, this is
9 another image from that video. The yellow vehicles show the
10 perception, it's where Deputy McCoy first begins his
11 perception response time at 1.4 seconds until these vehicles
12 collide. So what I wanted to determine, the one thing I
13 notice right here is that you can see he actually takes a
14 physical response there. He starts turning his vehicle to
15 the right. So his perception response time is actually less
16 than 1.4 seconds. You can see he visibly starts turning at
17 approximately .2 seconds prior to impact right there.

18 So what that means is we take that 1.4 and subtract out
19 the .2 and that means that Deputy McCoy's actual perception
20 response time for this incident was 1.4 seconds. What we
21 want to do is compare that to what a typical driver's
22 perception response time to see if he was slower, faster,
23 whether he was reasonable in his response.

24 I told you earlier that the average driver's perception
25 response time was 1.5 seconds in this situation. Deputy

1 McCoy's was 1.2 seconds. Typically, at night for a
2 situation like this, even though this is the average
3 perception response time right there, there can be a range
4 of perception response time and typically about one second
5 is the very quickest someone can react and it ranges up to
6 over two seconds. People on the slower end of the scale
7 will actually take over two seconds to respond.

8 So in this case, Deputy McCoy took action to avoid the
9 collision at a very fast rate. Basically, that tells me he
10 saw the vehicle very clearly. I think he testified coming
11 up to that intersection and he responded to that vehicle
12 about as quick as you can expect someone to when an
13 unexpected hazard like that someone coming in front of you.

14 Q Does that complete your evaluation?

15 A That is.

16 Q And what result did you feel pretty sure about his
17 avoidability?

18 A My opinion on avoidability was a reasonable driver
19 would not have been able to avoid the collision in this
20 case. In fact, Deputy McCoy in this case does respond very
21 quickly and I would suggest that he potentially is placing
22 himself at risk by steering to the right. A lot of people
23 in this situation use braking action on their part.

24 In this case, he actually steered to the right at a
25 high rate of speed into a wooded area. So he was

1 Deputy McCoy took immediate action to avoid it and the
2 collision was unavoidable on his part.

3 Q Mr. Roberts, thank you. I have no further questions.
4 I'm sure that Mr. Siegel does. I invite you to answer his
5 questions.

6 THE COURT: Very well. Cross-examination

7 CROSS-EXAMINATION

8 BY MR. SIEGEL:

9 Q Mr. Roberts, I appreciate your presentation, thank you.
10 However, I do have some questions for you. You've made
11 certain assumptions in all three of your scenarios, haven't
12 you?

13 A As part of the analyses, yes.

14 Q Of course. And you have used figures like reaction
15 time that you're telling us that this is the reaction time
16 of a similar person in a similar situation on the average;
17 is that right?

18 A I gave you average times, yes, but I also stated that
19 there's a range of perception response times for drivers,
20 about the fastest that someone is going to react in that
21 situation is about one second and then if we go into the
22 slower drivers, responding over two seconds.

23 Q There's one thing that I didn't see on your animation
24 that I thought was important was the yield sign that Deputy
25 McCoy approached prior to coming to the intersection. Why

1 hour. That's what applies.

2 Q One other good question for you here. Why didn't you
3 do an analysis with the deputy going 55 miles an hour, which
4 would have given the pickup truck sufficient time to clear
5 the highway?

6 A I could have done an analysis and I can do it right
7 here in front of you, if you'd like, but if he was going 55
8 instead of 65, according to my analysis, the collision would
9 still occur and the vehicle would have advanced another four
10 feet. So the collision would occur in the passenger side of
11 the vehicle, most likely, rather than the front of the
12 vehicle.

13 Q And if he were going 70 miles an hour, how far would
14 the vehicle, in your testimony ---

15 A The collision would still occur at 70 miles per hour.
16 Actually, he may pass -- if you go fast enough, if you
17 create the speeds fast enough, he's going to pass before
18 that vehicle crosses in front of him.

19 Q So, if he's going 45 miles an hour, the Deputy is going
20 45 miles an hour?

21 A I didn't do that analysis, because there was no reason
22 to. There's no speed advisory in there, the speed limit is
23 55, why would anyone do 45 mile an hour speed?

24 Q Because someone approaching an intersection is supposed
25 to exercise special care, with lights coming the other

1 A If he was going the speed limit the entire way -- you
2 start collision analysis basically when the vehicle -- you
3 can do a bunch of "what if's". You can say what if Deputy
4 McCoy got that call five minutes later, would the accident
5 have occurred? So ultimately you have to start your
6 analysis, your collision avoidance analysis, when the
7 vehicle actually becomes a hazard. That's our starting
8 point for any collision avoidance analysis.

9 Q Jake Wright testified that his turn signal was on,
10 shouldn't that have given the Deputy more time to realize
11 that Jacob Wright was going to turn?

12 A It would give the Deputy an indication that the vehicle
13 was going to turn, but there's still an expectation upon the
14 driver approaching another vehicle, even if he's got his
15 turn signal on, that is not going to settle his turn
16 frankly. There's no expectation on two driver's approaching
17 each other, even though one has a turn signal on that's when
18 turning from.

19 Q Well, the Deputy, do you concede that the Deputy went
20 through the 45 mile an hour rough road speed zone and then
21 on past the intersection warning sign right before the
22 accident on a road that he traveled daily, yet he continued
23 at excessive speed without lights and siren?

24 MR. WALDRON: Objection to the form of the question.

25 THE COURT: Wait just a second. There's an objection.

1 MR. ROBERTS: I'm sorry.

2 MR. WALDRON: He's characterizing it as excessive
3 speed.

4 THE COURT: Overruled.

5 A I agree that he was traveling without -- I mean, he
6 testified that he was traveling without his lights and
7 siren, and from my analysis he was going between 2 and 10
8 miles per hour over the speed limit at the intersection,
9 when he goes through that intersection. So, yes, he is
10 going over the speed limit without his lights and siren on.

11 Q And isn't it true that if the Deputy had his lights and
12 siren on, as he should have, there would have been a warning
13 to Jacob Wright that the Deputy was, in fact, speeding?

14 A I agree.

15 Q Isn't it true that the Deputy actually had many chances
16 to avoid the accident?

17 A I thought the Deputy responded appropriately to avoid
18 the accident. He basically swerves in a period of time
19 that's faster than the average driver's going to.

20 Q Have you ever studied the driving books and test that
21 they give to police officers at the police academy of South
22 Carolina?

23 A No, sir.

24 Q But you have studied the application of brakes?

25 A I understand how brakes work and people respond to in

1 limit?

2 A Correct.

3 Q No further questions, Your Honor.

4 THE COURT: All right. You may come down. Call your
5 next witness.

6 MR. WALDRON: The next witness is David Lee.

7 THE COURT: Okay.

8 MADAME CLERK: Please come forward to be sworn.

9 (Whereupon, the witness, Mr. David Lee, is duly sworn.)

10 THE COURT: Good morning. Have a seat. State your
11 full name for the record.

12 MR. LEE: David William Lee.

13 DIRECT EXAMINATION

14 BY MR. WALDRON:

15 Q Sgt. Lee, with whom are you employed?

16 A With the South Carolina Highway Patrol.

17 Q And how long have you been with the Highway Patrol?

18 A As of today, 25 years.

19 Q Today's your anniversary?

20 A That's right.

21 Q Mine, too. Congratulations.

22 A I was planning on a party.

23 THE COURT: Is it your wedding anniversary today or
24 some other anniversary?

25 MR. WALDRON: My wedding anniversary. Yes, 43 years.

1 THE COURT: We'll help him with the selection of
2 jewelry later -- a significant piece of jewelry.

3 Q Thank you, Sgt. Lee. Now, you've got me in trouble in
4 more ways than one.

5 A I do what I can.

6 Q Is it safe to assume that you're a graduate of the
7 Criminal Justice Academy of South Carolina?

8 A That's correct.

9 Q Tell the jury what other training, special training,
10 you have had.

11 A I have had 2500 hours, or so, specific training in
12 collision reconstruction. I'm also one of the instructors
13 for our MAIT associated program, we basically teach in-house
14 our new members that come on to our teams. We've trained
15 somewhere in the neighborhood of 125 officers of those, some
16 in the neighborhood of about 25 or so are current members of
17 our unit. We also do some outside instruction that's on an
18 alumni basis. We teach other agencies how to use the same
19 equipment that we use, but that probably brings a number of
20 hours in training with instruction as well up to around
21 3,000 hours, specifically, collision reconstruction.

22 Q Does South Carolina certify its MAIT personnel and it's
23 other highway personnel in accident reconstruction?

24 A Yes.

25 Q Are you so certified?

1 Q Do you recall the dispatch you got and what you thought
2 you were responding to?

3 A It was a phone call. I was told that we had a
4 collision involving a Colleton County deputy and given the
5 area of where the collision occurred, as well as the
6 supervisor on scene, and made contact with that supervisor
7 on the way to the scene.

8 Q Who was that supervisor?

9 A I don't recall.

10 Q Were you the senior officer on scene?

11 A I was.

12 Q Did you supervise the accident reconstruction on the
13 scene?

14 A Yes, sir, I did.

15 Q Would you tell the jury what you found when you got
16 there?

17 A We arrived on scene and found the pickup truck in the
18 roadway itself, there was a Colleton County Deputy's vehicle
19 was along the tree line, just off the edge of the roadway.
20 There was debris in the roadway, which we started looking
21 through to find markings, tire marks, gauge marks,
22 information to tell us where the collision occurred and how
23 these vehicles left from the collision scene itself.

24 Q Were either driver still on scene?

25 A Not that I recall.

1 A I do.

2 Q Will that refresh your recollection as to how you
3 conducted your reconstruction?

4 A Yes, sir.

5 Q Tell us what you did first, please.

6 A When we arrive on scene, the first thing we do is we go
7 through the crash scene itself. As I stated, where the
8 vehicles were located. I talked with the on scene
9 supervisors, the primary investigating officer, and found
10 out exactly what information they had prior to our arrival
11 as well as what might have occurred from the time when they
12 arrived until we got there. We looked at the damage to the
13 vehicles themselves, as well as the impact and post-impact
14 areas to find out how the vehicles departed the scene.
15 From that point, we start photographs and video and then we
16 start mapping the area itself, or at least marking the
17 evidence so we can come back and measure that damaged area
18 of physical evidence at a later date.

19 In this case, we did come back in a couple of days
20 after we had marked it with paint and mapped that
21 information out.

22 Q And when you mapped the information out, did you
23 construct diagrams that were useful in your analysis?

24 A That's correct. We did.

25 Q Did you determine the point of impact?

1 A Yes.

2 Q Where on the roadway was that point of impact?

3 A That would have been within the southbound lane of S.C.
4 303. That would have been in the Deputy's lane.

5 Q Were you able to determine from your analysis how far
6 into the lane the truck was at the point of impact?

7 A According to our diagram, the majority of the truck was
8 across the center line. It would have been the regular tire
9 and that portion of the vehicle would have still been in his
10 lane, the rest of it would have been crossing into the
11 oncoming lane.

12 Q Based upon your evaluation, were you able to determine
13 the speeds of both vehicles at the point of impact?

14 A Yes. Going back to our calculations section.

15 Q When you do your calculations, do you do them manually
16 or do you have a computer that does it?

17 A We use a computer. Obviously, not this one.

18 Q But your measurements and all the data that you obtain
19 from the scene is in a computer program?

20 A That's correct.

21 Q Are you able, at this point, to tell us what the --

22 A We printed those runs out and I'm going through them
23 right now. The pickup truck speed, we showed at 24 miles an
24 hour, and the speed of the deputy's vehicle was at 62;
25 that's the low range, and then the upper range for that

1 would have still been 24 for the pickup and 70 for the
2 deputy's vehicle; that would have been the high and low
3 range for the two vehicles involved in the crash.

4 Q Why do you use a range?

5 A When the deputy's vehicle left the scene, or left from
6 the collision itself, there were a couple things going on.
7 The first is he was traveling across a paved surface and
8 then he left the paved surface and was off on the dirt
9 surface and then the grass surface. So it changes the
10 friction values for the roadway and the grass and dirt are
11 different. So we range those factors to make sure that we
12 encompass the range that would have the speed of the
13 vehicles involved for the post impact.

14 Now, the one for the truck itself, it stayed on the
15 paved surface; it never left that surface. It was a fairly
16 consistent surface it traveled on, so we didn't do very much
17 ranging for that vehicle. And there was also the fact that
18 it came to rest against the tree line and there was some
19 minimal damage done to the right side of the patrol car
20 where it struck the trees, so we looked at that and said
21 there was some energy that was used there, but it was
22 negligible. But we didn't look at that as a possibility of
23 having an increased amount in the post-impact travel, which
24 really didn't affect greatly the speed at impact because it
25 would have been a small number to begin with.

1 Q So to be on the safe side, you used a wider range?

2 A Exactly. Because there would have been energy there
3 when he got to the trees, because it had to do the damage
4 somehow, but it wouldn't have been a great deal of energy to
5 do what damage was left.

6 Q So your range is that it was 62 at the low, just being
7 on the safe side, you ran it up to 70?

8 A That's correct.

9 Q Any way in the world that it could possibly be greater
10 than 70?

11 A No, sir.

12 Q And when you evaluated that scene, did you take into
13 consideration the warning sign -- there's a bridge in a low
14 area, a rough road area, prior to that. Are you familiar
15 with that area?

16 A I know what you're talking about. We've actually got
17 pictures of it, the back of one of those signs in our
18 photographs and the bridge is off in the distance. No, sir,
19 we didn't take that into account. I'm familiar with it, but
20 we didn't take that into account.

21 Q Why did that not factor in?

22 A The signs that we were looking for would have been the
23 intersection ahead signs and that would have had the
24 regulation for the intersection itself, and in this
25 particular case, neither sign on either end had the

1 regulatory sign reducing speed on the way into the
2 intersection. So it would have been the regular highway
3 speed as you approached the intersection.

4 Q What was that?

5 A Fifty-five.

6 Q The regular intersection sign in this case would have
7 been a cross?

8 A That's right. A yellow sign, a diamond shaped sign,
9 with the black crossing indicating there was an intersection
10 ahead.

11 Q And doesn't the highway, the driver's manual, say you
12 should be prepared to slow down when you approach an
13 intersection based upon that sign?

14 A I'm not sure what the exact wording is, but it is
15 something along the lines of using due care when you
16 approach the intersection; it doesn't say that you have to
17 slow, but be prepared.

18 Q Does that change the speed limit from 55 to ---

19 A Unless it's changed by a regulatory sign, no, sir, it
20 doesn't.

21 Q When you looked at this cruiser, did you go inside the
22 cruiser and see if there were either of the modules?

23 A Yes, sir. We did take the module from inside of that
24 cruiser.

25 Q You physically took the airbag control module out of

1 Roberts testified he had about 1.1 to 1.3 seconds to react.
2 All of those cases say he is not the proximate cause.

3 THE COURT: They're all distinguishable. They're all
4 distinguishable, and they are distinguishable for this
5 reason. The section that follows giving law enforcement
6 emergency vehicle the ability to turn off the flashing
7 lights and the sirens, they talk about the fact that when
8 you do that, you've got to be careful about the people who
9 are driving the roads. We don't have a circumstance in this
10 State where law enforcement can run all over and kill people
11 and it ain't no big thing, it's all right, speed, turn off
12 your camera, turn off your speed indicators, turn it all
13 off; run these roads as fast as you want, and if you kill
14 people, it's their fault, tough. That is not the law in
15 this State.

16 At the point and time, when that deputy turned off
17 those flashing lights and that siren, he removed from the
18 people of the State of South Carolina on the roads, the
19 ability to know that you've got a meteor coming at you.
20 what that next section says is that when they do that, and
21 they may only do that in a very specific circumstance, that
22 I think in this case -- which is why I'm troubled by it,
23 because I think his testimony is unbelievable. How about
24 that?

25 I don't think he knew where he was going. I don't know

1 why he turned off his flashing lights and the sirens, but he
2 turned it off, and at that point and time, in absolute
3 direct contradiction of that statute. You're supposed to,
4 at that point, you are supposed to be looking out for the
5 well-being of the other motorists on the highway, the
6 citizens of the State of South Carolina.

7 It is not a circumstance where you can be a live meteor
8 going down the road without your flashing light and sirens
9 on, and anybody else, it's just too bad. You'd better look
10 out. And that's just not the law in this State. That's
11 what troubles me so much about this case.

12 And the other part of this case and I don't know what
13 I'm going to do about this, which is another reason why I
14 want you all to leave so I can think about it. I am
15 extraordinarily concerned - well, let me hold that. But, I
16 don't know what I'm going to do about that. I genuinely
17 don't. But I'm as close to finding testimony unbelievable
18 -- and the only testimony that's unbelievable is what you
19 impeached him on with his deposition with turning off the
20 lights and the sirens, and when that happened, but it's
21 clear to me he didn't know where he was going and he didn't
22 have a clue. At no point did anybody ask him, "Okay, you
23 thought you were close; how close do you think you were?"
24 He didn't have a clue.

25 So, that's in response. I've got to think about that

1 policies, and all that stuff.

2 MR. MURDAUGH: See Austin v. Beaufort County Sheriff's
3 Office, I don't have the site, but it's a Supreme Court
4 case, and the answer is no. There is no duty to preserve
5 evidence even when on notice or unwritten notice, if they
6 want to. I don't think there's a common law duty or a
7 statutory duty.

8 THE COURT: Well, that's the reason I asked the
9 question, because it's very clear that those cars are not
10 released until such time as the MAIT report is over, and
11 I'll probably do a little bit of looking over the break.

12 You guys go get you some lunch.

13 MR. WALDRON: May I put on the record that I move for a
14 directed verdict on all the causes of action, incorporating
15 herein all of the arguments that we had and my responses to
16 their arguments, including all the cases, including Odom v.
17 Steigerwald, and all the ones cited in my memorandum, which
18 has been filed with the Court.

19 THE COURT: Absolutely.

20 MR. WALDRON: Also, I would move for a directed
21 verdict, as I did at the close of the plaintiff's case on
22 the three causes of action and on the negligent hiring based
23 upon no proof that he violated any standards.

24 THE COURT: The three causes of action meaning wrongful
25 death, survival and negligent hiring?

1 MR. WALDRON: Yes, ma'am.

2 THE COURT: Okay. I'm with you. I've got it. The
3 same reason I'm going to respectfully deny your motion.
4 Now, let me tell you the way that I'm going to set up the
5 charge. The way that I set up the charge is that I'm
6 telling the jury that there is really two actions. There's
7 one for wrongful death and there's one for survival.

8 In the wrongful death one, it's based on negligence and
9 there's two causes of action, there's two theories of
10 negligence, two causes of action for negligence, under the
11 wrongful death. One is driving, negligent driving, and the
12 other is negligent hiring, so that's the way that I've set
13 it up. Then, I've defined for them what a survival cause of
14 action is early on, but then I pick it back up and I'm going
15 to talk about damages.

16 MR. SIEGEL: So then, the only damages are going to be
17 wrongful death and survival. Those are the only two. There
18 will be no separate damage allowance for wrongful hiring?

19 THE COURT: Right. The reason for that is that as I
20 understand in the theory of the case, it is but for the
21 hiring of this Deputy, J.C. wouldn't have been killed.

22 MR. SIEGEL: Right..

23 THE COURT: So, I think it is a part -- I think the
24 damages are the same. There wouldn't be any damages for the
25 negligent hiring that would be separate and apart from the

1 Estate of Jacob Cleveland Wright, and Jake Wright and
2 Theresa Gadsden, individually, versus Colleton County
3 Sheriff's Department.

4 As to the wrongful death cause of action, we the jury
5 unanimously find for the plaintiff in the amount of \$700,000
6 dollars, signed by Dianne Taylor, foreperson. If this is
7 your verdict, please raise your right hand.

8 (All jurors raise hands.)

9 MADAME CLERK: Thank you, you may put them down.

10 THE COURT: All right. Anything from the plaintiff
11 before we dismiss our jury?

12 MR. SIEGEL: Not before we dismiss the jury, Your
13 Honor.

14 THE COURT: Very well. From the defense before we
15 dismiss our jury?

16 MR. WALDRON: No, Your Honor.

17 THE COURT: Very well. I want to thank you so much for
18 your services on this jury and on this jury panel this week.
19 Now, I always tell juries that I have the opportunity to
20 work with, if somebody wants to talk to you about this case
21 and you don't want to talk about it and you have told them
22 you don't want to talk about it and they persist, all you
23 have to do is let Ms. Pat know and she'll get in contact
24 with me and I'll be happy to intercede on your behalf. Let
25 me also tell you that you have, of course, earned you

1 exemption for the year 2013 and 2014 in a court of record,
2 if you choose to exercise your exemption. You are now not
3 eligible to serve on a jury in a court of record for the
4 balance of 2012.

5 Y'all have been an extraordinary group. You have given
6 us so much of your attention, you have given us all of your
7 attention on some days that were long days and I am
8 certainly so grateful to you for every single solitary tick
9 of the clock. Thank you all so much. You are free to go.
10 Have a good weekend.

11 Anything further from the plaintiff at this time?

12 MR. SIEGEL: Your Honor, we would ask for 10 days.

13 THE COURT: Sure. Of course. The only thing that I'm
14 going to ask you to do for me, if you'd be so kind, is to
15 just get with my office, and of course get with Mr. Waldron
16 and arrange for any time that we are going to need for
17 argument. That would be great.

18 MR. SIEGEL: Thank you, very much, Your Honor.

19 THE COURT: Anything from the defense at this time?

20 MR. WALDRON: May we have the same 10 days?

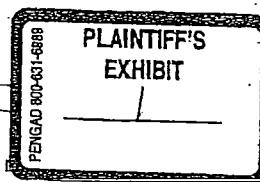
21 THE COURT: You absolutely may have the same ten days.

22 MR. WALDRON: Thank you.

23 THE COURT: Thank you all.
24
25

COLLETON COUNTY GOV'T

EMPLOYMENT APPLICATION



1. APPLYING FOR:

PATROL DEPUTY

Number

Location CC50

2. HOW DO WE CONTACT YOU?

Security Number

Your Name

SCOTT MCCOY

R-543

County

State

Zip Code

Phone (843) 908-9681

Business Phone ☒

Number

E-mail Address

SMCCOY@COLLETONCOUNTY

3. TELL US ABOUT YOUR EDUCATION:

(Name)

W'BORED HIGH SCHOOL

(Location)

W'BORED

☒ Other (Specify) ☐

Highest Grade Completed 12

Graduate? Yes ☐ No ☒

If no, give total credit received

2

Your Name If Different While Attending School

N/A

Give name & address of school, major course of study, and degree received.

College / University

Graduate School

Year Degree Obtained

Degree

Year Degree Obtained

Undergraduate Courses

Credits

Pertinent Graduate Courses

2012 MAR 14 PM 12

Job-Related Training and Course Work

Skills, licenses, and certificates which are related to the job you seek (including words per minute typing speed and computer software proficiency).

I'M A NEW RESERVE OFFICER, I'VE BEEN IN THE COAST GUARD RESERVE
I HAVE SOME LAW ENFORCEMENT TRAINING

COLLETON COUNTY - AN EQUAL OPPORTUNITY EMPLOYER

1 (REVISED 8/98)

THE U.S. ABOUT YOUR EXPERIENCE

experience in detail, beginning with your current or most recent job. Include military service (indicate rank) and job related volunteer work, if applicable. Provide an gaps in employment. All information in this section must be complete. A résumé may be attached, but not substituted for completing this section.

Present or Last Employer ALROBEE SPECIALTIES

JOHNS ISLAND

Phone (843) 276-1973

ELECTRICIAN

Supervised 2 Supervisor's Name ALBERT BROWN

DEC. 1, 05 To PRESENT Hours Per Week 40-60 Salary \$32,000 yr.

Contact this employer? ☐ Yes ☐ No

Give details

WIRE NEW CONSTRUCTION HOUSES AND RENOVATIONS

for Leaving

NA

Next Most Recent Employer COSTAL CAROLINA SPECIALTIES

HILTON HEAD

Phone (843) 670-3569

ELECTRICIAN

Supervised 2 Supervisor's Name NELSON THOMAS

JUN 1, 04 To DEC 1, 05 Hours Per Week 40 Salary \$29,000 yr.

Give details

WIRE NEW COM. HOUSE

for Leaving

JOB ENDED

Next Most Recent Employer WALTERBORO VENDOR

GREENPOND HWY. WALTERBORO

Phone (843) 893-2469

MACH. OPERATOR

Supervised 2 Supervisor's Name JOHN STARKWEATHER

APRIL 1, 03 To JUNE 1, 04 Hours Per Week 40-60 Salary 9.00 HR

Give details

OPERATED MACHINERY

for Leaving

CAREER CHANGE

Next Most Recent Employer USCG
CHARLESTON NAVAL WEAPONS STATION Phone ()
MACH. TECH.
Supervised H Supervisor's Name CHIEF BLITCH
WNE / 1 / 99 To PRESENT / / Hours Per Week RESERVE Salary
Details (give details) CREW, BOARDING TEAM MEMBER, AND ENGINEER

for Leaving

N/A

Next Most Recent Employer
Supervised Supervisor's Name
/ / To / / Hours Per Week Salary
Details (give details)

for Leaving

Next Most Recent Employer
Supervised Supervisor's Name
/ / To / / Hours Per Week Salary
Details (give details)

for Leaving

Do you possess a valid driver's license? ☒ Yes ☐ No SOUTH CAROLINA (State) If yes, provide

2834980 Expiration Date 6/31/2007 Class: (check one) ☐ A ☐ B ☐ C ☒ D ☐ E ☐ F ☐ M ☐ G

Do you have any relatives employed with Colleton County? If yes, please provide names below:

N/A Relation _____ Agency _____

N/A Relation _____ Agency _____

Have you ever been convicted of a criminal offense? ☐ Yes ☒ No

With minor vehicle violations and any offense committed before your 17th birthday, which was finally adjudicated in juvenile court or under a
offender law. Conviction of a criminal offense is not a bar to employment in all cases. Each conviction is evaluated individually.

Please list charge(s) _____

Convicted	Date	Disposition/Status
-----------	------	--------------------

Have you ever been terminated or forced to resign from any job? ☐ Yes ☐ No If yes, explain _____

Are you legally authorized to work in the United States? ☒ Yes ☐ No

Names of two people, not relatives, who are familiar with your work.

ROBERT BROWN Address JOHNS ISLAND SC Phone 843 276 1973

TONY STOCKMAN Address WATER TOWN NY Phone 315 767 0812

PLEASE CAREFULLY READ THE FOLLOWING STATEMENTS

Authority to Release Information: By my signature, I consent to the release of information to authorized officers, agents, and/or employees of Colleton County, which may include but not be limited to information concerning my past and present work; including my official personnel attendance records; evaluations; educational records including transcripts; military service; law enforcement records; and/or any personnel deemed necessary. In addition, I consent to authorize appropriate officers, agents, and/or employees of Colleton County to make inquiries of third parties such as credit bureaus. I further release the organization, educational entity, present and former employers, law enforcement organization, and all third parties from any and all claims of whatever nature that I may have as a result of any inquiry or response given which inquiries made in connection with my application for employment.

Signature [Signature] Date Dec. 20th 2006

Declaration of Applicant: By my signature, I affirm, agree, and understand that all statements on this form are true and accurate. Any misrepresentation, falsification, or material omission of information or data on this application may result in exclusion from further consideration or, if employed, termination of employment. If I have requested herein that my present employer not be contacted, an offer of employment may be conditioned on acceptable information and verification from such employer prior to beginning work.

Signature [Signature] Date Dec. 20th 2006

119 Benson Street

Office: 843-549-2211

WEB SITE: colletoncountynv.org/sheriff

Sheriff



Walterboro, SC 29488

Fax: 843-549-1449

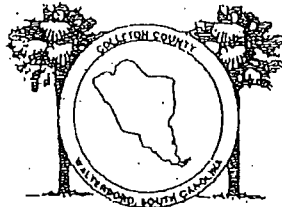
emalone@colletoncountynv.org

George A. Malone

On 3-06-2007, I spoke to a Mr. John Starkweather in reference to Scott McCoy for employment as a deputy sheriff. Mr. Starkweather described Scott as being a pretty sharp individual and catches on very well. Scott had left their employment do to money issues (not enough). After being away for a period of time he returned for a few months before being hired as an electrician. For additional monies, Scott is a reserve in the USCG (United States Coast Guard). He stated that on a personal note, the only problem he saw with Scott was his driving record. It is /was pretty rough. But overall he is a pretty good kid and he would personally vouch for his employment. While Scott was with the Veneer plant he was in middle level management and learned how to operate al the equipment. I asked if he had and opportunity to return can he and Mr. Starkweather stated yes, he left on good terms.

On 3-06-2007, I spoke to a Mr. Albert Brown who identified himself as the owner of Alrobbe Specialties contractors, in reference to Scott McCoy. I explain to Mr. Brown that this is a fact-finding background on Scott McCoy in reference to his employment. I informed him that Scott is seeking employment here, and he stated that he was aware of Scott's desire to become a law enforcement officer. I asked how long was Scott employed with him. He stated for approximately 1 year, because he just started the company for that period of time. He continued by saying that both Scott and he were employed with a company prior to him owning his company. Scott is a hard worker, very dependable, and volunteers for the coast guard and the sheriff's office as a reserve officer. He stated that he believes that Scott would do a good job as a deputy. He hates to loose him as an employee but he understands that law enforcement is a calling of his and he do not want to stand in his way.

PATRICIA C. GRANT
CLERK OF COURT



VICKI H. SYFRETT
DEPUTY CLERK

COLLETON COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT THERE IS ONE RECORD OF A JUDGMENT INSTITUTED IN THE COURT OF COMMON PLEAS FOR COLLETON COUNTY AGAINST SCOTT LEE MCCOY UP TO THE PRESENT DATE.

2003-CP-15-251 FORD MOTOR CREDIT CO VS. SCOTT L. MCCOY

WITNESS MY HAND AND SEAL THIS 12 January 2006.

Patricia C. Grant

CLERK OF COURT OF COLLETON COUNTY

DISCLAIMER: COLLETON COUNTY MAKES NO WARRANTIES AS TO THE ACCURACY OF SUCH INFORMATION SUPPLIED UPON THIS DOCUMENT. YOU ARE ADVISED THAT YOU SHOULD SATISFY YOURSELF AS TO THE ACCURACY OF SUCH INFORMATION BY YOUR OWN INVESTIGATION.

PERMANENT NO.

0214128062

...B ALL INFORMATION

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A Employer Name, Address and I.D. No.

B MRO Name, Address, Phone and Fax No.

Donor SSN or Employer I.D. No.

Reason for Test: ☒ Pre-Employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Periodic ☐ Other

Collection Site Address:

Collector Phone No.

Collector Fax No.

Donor Identification Verified By: ☒ Photo I.D. ☐ Employer Representative

STEP 2: TO BE COMPLETED BY COLLECTOR

Reclmen temperature within 4 minutes, Is temperature between 90 and 100 F? ☒ Yes ☐ No. Enter Remark Below Split Specimen Collection ☐ Yes ☒ No

REMARKS:

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s), Collector dates seal(s), Donor initials seal(s).

STEP 4: TO BE COMPLETED BY COLLECTOR AND DONOR

Daytime Phone No. () Evening Phone No. () Date of Birth / /

TEST(S) REQUESTED BY EMPLOYER:

One to
SSA White

I authorize the collection of this specimen for the purpose of a drug screen. I acknowledge that the specimen is for the use of the company identified on this form and on the label(s) affixed to the specimen container.

(PRINT) DONOR'S NAME (FIRST, MI, LAST)

SIGNATURE OF DONOR

STEP 5: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY LABO

I certify that the specimen given to me by the donor identified on this form was collected in accordance with applicable requirements.

Signature of Collector Time of Collection AM PM SPECIMINE

(PRINT) Collector's Name (First, MI, Last) Date, Day-Month-Year

RECEIVED AT LAB:

Signature of Analyst

(PRINT) Collector's Name (First, MI, Last) Date, Day-Month-Year

Primary Specimen Bottle Seal Intact

☐ Yes

☐ No. Enter Remark Below

SPECIMEN BOTTLE(S) RELEASED TO:

No fee is chargeable for this certificate

1 & 2 ELIZ. 2 CH. 20

CERTIFICATE



GJ 549441

OF BIRTH

Name and Surname Scott Lee McCoy

Sex Male

Date of Birth Thirty first October 1981

Place of Birth { Registration District Reading and Wokingham

Sub-district Reading

I, A. Bradish Registrar of Births and Deaths
for the sub-district of Reading in the
Registration District of Reading and Wokingham do hereby
certify that the above particulars have been compiled from an entry in
a register in my custody.

Date 30th December 1981

MXBRE.68.

A. Bradish
Registrar of Births and Deaths.

CAUTION:—Any person who (1) falsifies any of the particulars on this certificate, or
(2) uses a falsified certificate as true, knowing it to be false, is liable to prosecution.



DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

Certification of Birth Abroad



This is to certify that according to records on file in this Office

Scott Lee MC COY

Sex Male was born at Reading, County of Berkshire, England

on October 31, 1981 Report of birth recorded on March 10, 1983

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the Consular Service of the United States of America at London, England

this 10th day of March 19 83

(SEAL)

Seth Winnick - Vice Consul

WARNING: This certificate is not valid if it has been altered in any way whatsoever or if it does not bear the raised seal of the office of issuance.

South Carolina High School Diploma

The State Board of Education, on the recommendation of state officials,
and the administrators and faculty of

Walterboro High School

awards this diploma to

Scott Lee McCray

who has completed a minimum of twenty units of credit and has met the
exit examination standards.

Given at Walterboro, South Carolina, this third day of June, 2000.

Dr. Hodges
Governor

W. H. Hodges
Superintendent

Bob L. Davis
Principal

Queen A. Davis
Chair, State Board of Education

Raymond J. Davis
State Superintendent of Education

COLLETON COUNTY PERSONNEL ACTION REQUEST

EMPLOYEE/APPLICANT INFORMATION

Effective Date Of Action: 4/15/07

Name: S. J. T. L. C.
(last) (first) (middle)

Address: [REDACTED]
[REDACTED]
(city) (state) (zip code)

Home Telephone Number: 773 1 113 1 7341

Social Security Number: [REDACTED]

Department/Agency/Office Name: 111500

Payroll Account Number: 1111-10

Position/Job Classification and Pay Data:

	Present	Proposed
Position Name		<u>DEPUTY</u>
Category/Position #		<u>D. 2 10</u>
Grade		<u>8</u>
Hourly Rate		<u>11.11</u>
Annual Salary		
Workweek		<u>1.3</u>
Shift/Hours Per Day		
Cycle		<u>810</u>

Exempt/Salaried ☐ Non-Exempt/Hourly ☒

Employee's/Candidate's Signature _____ Date _____

DEPARTMENTAL REVIEW:

Division Head/Supervisor _____ Date _____

Department Head/Elected Official _____ Date _____

Type of Transaction

(Check applicable items):

New Employee ☒ Regular Employee ☐ PRN ☐

Probationary: Initial 6-month ☒ Transfer/Extension 3-month ☐
 Full-Time ☒ End of Probation ☐ Part-Time ☐

Non-Guaranteed Hours/Convenience of the County ☐

Temporary ☐ Type: _____

Provisional Timeframe: _____

Transfer ☐ Old Position #: _____

Other: _____

Salary Changes Due to:

Merit ☐ Reclassification ☐ Demotion ☐ Promotion ☐

Other ☒ W/A 100000 1-5-00-0000

Suspension ☐ Number of Days: _____

Suspension with Pay ☐ Suspension without Pay ☐

Leave: Type/Timeframe _____

Remarks: _____

**Documentation must be attached for all salary changes

Termination Action

(Check applicable item):

Resignation w/status ☐ Resignation w/o Status ☐

Layoff ☐ Retiring ☐ Disciplinary ☐ Probation/Reject ☐

Terminated at the Pleasure of Elected Official ☐

Other ☐ _____

Additional Remarks: _____

**Documentation must be attached to support termination

FINAL REVIEW:

[Signature]
 Human Resources Manager

Date 4/16/07

Finance Director

Date _____

[Signature]
 County Administrator

Date 4/16/07

ALL PAYROLL CHANGES MUST BE GIVEN TO EMPLOYEES IN WRITING AND REVIEWED BY THE COUNTY ADMINISTRATOR

HUMAN RESOURCES MANAGER

PAYROLL MANAGER

DEPARTMENTAL REVIEW

FINAL REVIEW

COLLETON COUNTY PERSONNEL ACTION REQUEST

EMPLOYEE/APPLICANT INFORMATION

Effective Date Of Action: 04/02/07

Name: McCoy Scott LEE
(last) (first) (middle)

Address: [REDACTED]
[REDACTED]
(City) (State) (zip code)

Home Telephone Number: 843 1908 19681

Social Security Number: [REDACTED]

Department/Agency/Office Name: CCSO

Payroll Account Number: 421-00

Position/Job Classification and Pay Data:

	Present	Proposed
Position Name		<u>DEPUTY</u>
Category/Position #		<u>DEP 1 D</u>
Grade		<u>8</u>
Hourly Rate		<u>11.11</u>
Annual Salary		
Workweek		<u>43</u>
Shift/Hours Per Day		
Cycle		<u>86</u>

Exempt/Salaried ☐ Non-Exempt/Hourly ☒

Employee's/Candidate's Signature: [Signature] Date: 4/2/07

DEPARTMENTAL REVIEW:

Division Head/Supervisor: [Signature] Date: 4-3-07
 Department Head/Elected Official: [Signature] Date: 4-3-07

Type of Transaction

(Check applicable items):

New Employee ☒ Regular Employee ☐ Part ☐

Probationary: Initial 8-month ☒ Transfer/Extension 3-month ☐

Full-time ☒ End of Probation ☐ Part-time ☐

Non-Guaranteed Hours/Convenience of the County ☐

Temporary ☐ Type: _____

Provisional Timeframe: _____

Transfer ☐ Old Position #: _____

Other: _____

Salary Changes Due to:

Merk ☐ Reclassification ☐ Demotion ☐ Promotion ☐

Other ☒ 50% increase after SCWA graduation & 50% increase after FTO to min.

Suspension ☐ Number of Days: _____

Suspension with Pay ☐ Suspension without Pay ☐

Leave: Type/Timeframe: _____

Remarks: _____

****Documentation must be attached for all salary changes**

Termination Action

(Check applicable item):

Resignation w/status ☐ Resignation w/o Status ☐

Layoff ☐ Retiring ☐ Disciplinary ☐ Probation/Reject ☐

Terminated at the Pleasure of Elected Official ☐

Other ☐ _____

Additional Remarks: _____

****Documentation must be attached to support termination**

FINAL REVIEW:

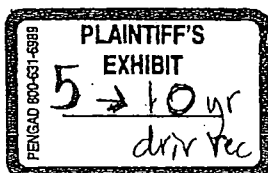
Human Resources Manager: _____ Date: _____

Finance Director: _____ Date: _____

County Administrator: _____ Date: _____

****ALL PAYROLL CHANGES MUST BE GIVEN TO EMPLOYEES IN WRITING AND REVIEWED BY THE COUNTY ADMINISTRATOR****

HUMAN RESOURCES: White - PAYROLL: Green - DEPARTMENT: Pink - EMPLOYEES: Blue



OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 24543547
Name : MCCOY, SCOTT LEE Driver License No.: 7834980
Address : [REDACTED]
City : [REDACTED] State: [REDACTED] Zip: [REDACTED]
County : [REDACTED]
DOB: 10/31/1981 Sex: M Driver Training: N
Status - DL: NO SUSPENSION CDL: NO DISQUALIFICATION

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.
Current							
BP	M	Renewal	03/02/2004	03/02/2005	06/11/2000	Y	N
DL	D	Modify	03/16/2007	10/31/2007	07/15/1997	Y	N
Prior							
BP	M	Re-exam	07/22/2003	07/22/2004	05/11/2000	Y	N
DL	D	Duplicate	03/02/2004	10/31/2007	07/15/1997	Y	N
DL	D	Re-exam	10/30/2002	10/31/2007	07/15/1997	Y	N
BP	M	Renewal	05/11/2000	05/11/2001	05/11/2000	Y	N
DL	D	Renewal	07/15/1997	10/31/2002	07/15/1997	Y	N

2012 MAR 19 PM 12:29

Current
Restrictions: A: Corrective Lens
A: Corrective Lens

Address Change -

Address: 630 THOMPSON ST Date Changed: 02/01/2007
City: WALTERBORO State: SC Zip: 294883851

Address Change -

Address: 1460 CYPRESS CAMPGROUND RD Date Changed: 02/17/2006
City: RIDGEVILLE State: SC Zip: 294727323

Address Change -

Address: 414 CARN ST Date Changed: 07/22/2003
City: WALTERBORO State: SC Zip: 294884043

Address Change -

Address: RT 2 BOX 568 Date Changed: 07/15/1997
City: RUFFIN State: SC Zip: 294750000

Point Summary

Total Current Points: 3
Driver Credit: 0
Adjusted Current Points: 3

VIOL: 421-Speeding 10-mph or less

Ticket#: 94030DK

3/16/2007-2:54:39 PM

Page 1

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 24543547

Name: MCCOY, SCOTT LEE

Driver License No.: 7834980

Violation: 02/01/2006 Conviction: 02/23/2006
ACD: S51 Conviction Loc Ref:
Conviction State: SC
Violation No: 21

Recd: 04/17/2006 Post: 05/05/2006
Conviction Reference:
Court Type: Municipal Court
Violation Points: 2 Current Points: 1

VIOL: 421-Speeding 10-mph or less
Violation: 01/02/2006 Conviction: 02/14/2006
ACD: S51 Conviction Loc Ref:
Conviction State: SC
Violation No: 20

Ticket#: C257379
Recd: 02/28/2006 Post: 03/10/2006
Conviction Reference:
Court Type: Magistrate Court
Violation Points: 2 Current Points: 1

VIOL: 421-Speeding 10-mph or less
Violation: 04/16/2005 Conviction: 05/17/2005
ACD: S51 Conviction Loc Ref:
Conviction State: SC
Violation No: 19

Ticket#: 55434DC
Recd: 06/08/2005 Post: 06/27/2005
Conviction Reference:
Court Type: Magistrate Court
Violation Points: 2 Current Points: 1

VIOL: 475-Careless or negligent driving
Violation: 02/19/2005 Conviction: 03/10/2005
ACD: M81 Conviction Loc Ref:
Conviction State: SC
Violation No: 18

Ticket#: 71097DC
Recd: 04/26/2005 Post: 05/13/2005
Conviction Reference:
Court Type: Municipal Court

VIOL: 421-Speeding 10-mph or less
Violation: 03/11/2003 Conviction: 04/02/2003
ACD: S51 Conviction Loc Ref:
Conviction State: SC
Violation No: 15

Ticket#: A686835
Recd: 04/22/2003 Post: 04/22/2003
Conviction Reference:
Court Type: Magistrate Court
Violation Points: 2 Current Points: 0

VIOL: 421-Speeding 10-mph or less
Violation: 11/27/2002 Conviction: 12/17/2002
ACD: S51 Conviction Loc Ref:
Conviction State: SC
Violation No: 14

Ticket#: 73083CH
Recd: 03/10/2003 Post: 03/10/2003
Conviction Reference:
Court Type: Municipal Court
Violation Points: 2 Current Points: 0

VIOL: 475-Careless or negligent driving
Violation: 01/31/2002 Conviction: 04/22/2002
ACD: M81 Conviction Loc Ref:
Conviction State: SC
Violation No: 13

Ticket#: 78287BU
Recd: 10/31/2002 Post: 10/31/2002
Conviction Reference:
Court Type: Municipal Court

VIOL: 475-Careless or negligent driving
Violation: 01/31/2002 Conviction: 02/25/2002
ACD: M81 Conviction Loc Ref: RL=05340 FR=06566
Conviction State: SC
Violation No: 6

Ticket#: 38860BZ
Recd: 06/03/2002 Post: 06/03/2002
Conviction Reference:
Court Type: Magistrate Court

VIOL: 441-Speeding more than 10 mph but LT 25 mph

Violation: 09/27/2001 Conviction: 10/16/2001
ACD: S92 Conviction Loc Ref: RL=05206 FR=03317
Conviction State: SC

Ticket#: Z758064
Actual Speed: 0 Posted Speed: 0
Recd: 03/01/2002 Post: 04/24/2002
Conviction Reference:
Court Type: Magistrate Court

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 24543547

Driver License No.: 7834980

Name: MCCOY, SCOTT LEE

Violation No: 7

Violation Points: 4 Current Points: 0

VIOL: 421-Speeding 10-mph or less

Violation: 10/25/2001 Conviction: 11/15/2001

ACD: S51 Conviction Loc Ref: RL=05235 FR=05185

Conviction State: SC

Violation No: 8

Ticket#: Z763284

Recd: 03/29/2002 Post: 03/29/2002

Conviction Reference:

Court Type: Magistrate Court

Violation Points: 2 Current Points: 0

VIOL: 421-Speeding 10-mph or less

Violation: 07/18/2001 Conviction: 08/21/2001

ACD: S51 Conviction Loc Ref: RL=05096 FR=01350

Conviction State: SC

Violation No: 5

Ticket#: Y896402

Recd: 12/14/2001 Post: 12/14/2001

Conviction Reference:

Court Type: Magistrate Court

Violation Points: 2 Current Points: 0

ACC: REPORTABLE

Accident: 07/15/2001

Accident Case Number: 82137

Accident Jurisdiction: SC

Accident Loc Ref: SCDPS/ACC#2082137

Posted: 10/17/2001

FR-10 Audit Number:

History: N

VIOL: 475-Careless or negligent driving

Violation: 09/16/2000 Conviction: 10/30/2000

ACD: M81 Conviction Loc Ref: RL=04810 FR=02720

Conviction State: SC

Violation No: 10

Ticket#: 67587BJ

Recd: 04/25/2001 Post: 04/25/2001

Conviction Reference:

Court Type: Municipal Court

VIOL: 442-Disobeying an official traffic device

Violation: 11/18/2000 Conviction: 12/14/2000

ACD: M14 Conviction Loc Ref: RL=04752 FR=01153

Conviction State: SC

Violation No: 4

Ticket#: 27969BP

Recd: 02/28/2001 Post: 02/28/2001

Conviction Reference:

Court Type: Municipal Court

Violation Points: 4 Current Points: 0

VIOL: 421-Speeding 10-mph or less

Violation: 10/08/2000 Conviction: 11/14/2000

ACD: S51 Conviction Loc Ref: RL=04724 FR=09357

Conviction State: SC

Violation No: 11

Ticket#: Y332829

Recd: 01/31/2001 Post: 01/31/2001

Conviction Reference:

Court Type: Magistrate Court

Violation Points: 2 Current Points: 0

VIOL: 421-Speeding 10-mph or less

Violation: 07/05/2000 Conviction: 08/07/2000

ACD: S51 Conviction Loc Ref: RL=04562 FR=04428

Conviction State: SC

Violation No: 3

Ticket#: 67172BJ

Recd: 10/19/2000 Post: 10/19/2000

Conviction Reference:

Court Type: Municipal Court

Violation Points: 2 Current Points: 0

VIOL: 428-Operating an unsafe vehicle

Violation: 05/20/2000 Conviction: 06/08/2000

ACD: F66 Conviction Loc Ref: RL=04450 FR=01458

Conviction State: SC

Violation No: 12

Ticket#: X784290

Recd: 08/21/2000 Post: 08/21/2000

Conviction Reference:

Court Type: Magistrate Court

Violation Points: 2 Current Points: 0

VIOL: 475-Careless or negligent driving

Violation: 02/20/2000 Conviction: 03/02/2000

ACD: M81 Conviction Loc Ref: RL=04338 FR=04116

Ticket#: 63215BI

Recd: 06/07/2000 Post: 06/07/2000

Conviction Reference:

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 24543547
Name: MCCOY, SCOTT LEE

Driver License No.: 7834980

Conviction State: SC
Violation No: 2

Court Type: Municipal Court

VIOL: 421-Speeding 10-mph or less
Violation: 06/08/1999 Conviction: 07/08/1999
ACD: S51 Conviction Loc Ref: RL=04056 FR=06263
Conviction State: SC
Violation No: 1

Ticket#: X221887
Recd: 08/31/1999 Post: 09/01/1999
Conviction Reference:
Court Type: Magistrate Court
Violation Points: 2 Current Points: 0

End of Report

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles
Procedures & Compliance Administrator

	Colleton County Sheriff's Office Policy Manual	Policy and Procedure No. 2.9
	Approved by Sheriff:	Vehicle Ops and Pursuits
	Maintained by: Administration Issue/Rev: April, 2006	Page 1 of 10

COPY

I. Purpose

To establish procedures governing the operation and care of vehicles assigned to and utilized by employees of the Colleton County Sheriff's Office.

II. Policy

Personnel operating vehicles issued by the Colleton County Sheriff's Office are responsible for the operation, maintenance, and appearance of those vehicles. Personnel operating agency assigned vehicles will exercise due regard for the safety of all persons and demonstrate exemplary driving behavior.

III. Definitions

The following definitions of terms apply throughout this Policy:

A. *NORMAL OR ROUTINE DRIVING*

Driving which is consistent with the normal flow of traffic, obedience to traffic laws and posted signs/signals, and adherence to common "rules of the road" and general driver courtesy.

B. *EMERGENCY EQUIPMENT/VEHICLE*

Legal requirements which constitute an emergency vehicle as prescribed in the South Carolina Code of Laws, Section 56-5-760.

C. *EMERGENCY DRIVING*

Driving that is in response to a life-threatening or other serious incident which requires the operation of emergency equipment.

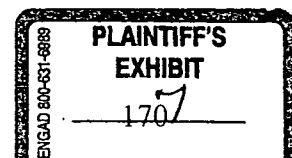
D. *PURSUIT DRIVING*

Driving that involves the pursuit of violator (s) in a motor vehicle which shall be consistent with the provisions of South Carolina Code of Laws, Section 56-5-760

IV. Procedure

A. *VEHICLE REGULATIONS*

1. Employees of the Sheriff's Office may be permitted to operate assigned or issued vehicles off-duty within the following regulations:
 - a. deputies in an off-duty capacity and operating police vehicles that are readily recognizable as law enforcement vehicles, will wear attire that is neat, presentable and professional.
 - b. employees of the Sheriff's Office may be authorized to drive their assigned vehicles home and operate their agency assigned vehicles no further than the adjacent county, unless approved by the Sheriff.



2. Only authorized personnel are permitted to operate department vehicles
3. Off-duty units that happen upon situations needing law enforcement assistance will notify communications and handle the incident and request an on-duty unit to assist or relieve the off-duty deputy.
4. Traffic stops, while in an off-duty status and in civilian attire, will be limited to emergencies or clearly hazardous violations. In all cases, deputies will immediately present their identification to the driver and clearly state their title, name, agency and the reason for the stop.
5. Civilians may accompany members of the department while the vehicle is operated off-duty. Employees shall be responsible for the safety, proper appearance, and behavior of all passengers.
6. If an emergency call for service is received by an off-duty deputy with civilians as passengers, the officer will deposit the passengers at a convenient and safe location prior to responding to the call.
7. The transportation of civilian passengers while on-duty must be authorized by a supervisor (see ride-along policy), except in cases where the transportation of civilian passengers is part of an official duty.
8. Employees will ensure that their assigned vehicles are well maintained and clean at all times. Employees will report any vehicle malfunctions or damage to their supervisor as soon as practical after the incident has occurred or been discovered.
9. All scheduled preventive maintenance will be reported when due and arrangements made to submit vehicles for this maintenance.
10. Employees who are under disciplinary suspension will relinquish use of their assigned vehicle. The vehicle will be turned over to the supply sergeant and all personal equipment must be removed. The supply sergeant will inspect the vehicle and make it available as a spare until the vehicle has been re-assigned.
11. Employees who are on light duty may continue to utilize their assigned vehicles on a case by case basis, as determined by the Sheriff. Considerations include the employee's medical condition, availability of vehicles and duty position. Any employee excluded from all duty by medical orders shall not operate a department vehicle.
12. Department vehicles shall not be utilized for carrying heavy or excessive loads and no objects shall protrude from the trunk or windows unless required as evidence, found property or related to a call for service.

13. Personal pets or other animals will not be transported in department vehicles unless required as evidence, found property or related to a call for service. Excluded from this regulation are members of the K-9 unit.
14. No other vehicle, item, trailer, etc., may be pushed, towed or otherwise conveyed with a department vehicle unless appropriately equipped for such service and as an act of official duty or service.
15. No item may be added to alter the appearance of department vehicles unless authorized by the supply sergeant or which may be necessary for the performance of an official duty.
16. When a vehicle is left unattended, the ignition will be turned off, the key removed, all doors locked, and any equipment which may be subject to theft secured. The key will not be left in the ignition. Situations, which require the engine to be operating, i.e., during the use of emergency equipment, are exempt from this requirement. Also excluded from this regulation are members of the K-9 unit. Caution, however, must be exercised when a vehicle is unattended and left running.
17. Seat belt laws will be followed when operating department vehicles.
19. By memorandum, the Sheriff may limit or suspend personal use of department vehicles as a whole or individually.

B. CALL RESPONSE / EMERGENCY DRIVING

1. South Carolina Code of Laws

56-5-760. Operation of Authorized Emergency Vehicles

- a. The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm may exercise the privileges set forth in this section, but subject to the conditions of this section.

b. The driver of an authorized emergency vehicle may:

1. Park or stand, notwithstanding any other provisions of this chapter;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limit if he/she does not endanger life or property; *Drive through an intersection proceed w/ caution*
4. Disregard regulations governing direction of movement or turning in specified directions.

Conditions

- c. The exceptions in this section granted to an authorized emergency vehicle apply only when the vehicle is making use of an audible signal meeting the requirements of Section 56-5-4970 and visual signals meeting the requirements of Section 56-5-4700 of this chapter, except that an authorized emergency vehicle operated as a police vehicle need not use an audible signal nor display a visual signal when the vehicle is being used to:
 - 1. Obtain evidence of a speeding violation;
 - 2. Respond to a suspected crime in progress when use of an audible or visual signal, or both, could reasonably result in the destruction of evidence or escape of a suspect; or
 - 3. Surveil another vehicle or its occupants who are suspected of involvement in a crime.
 - d. The provisions of this section do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.
 - e. The Criminal Justice Academy shall promulgate regulations pursuant to the Administrative Procedures Act so as to provide uniform guidelines and training programs for law enforcement agencies which use emergency vehicles. Law enforcement agencies authorized to use emergency vehicles shall use the regulations developed by the Criminal Justice Academy to provide written guidelines and to provide training programs for its officers and employees regarding the operation of emergency vehicles.
- 2. Upon a request for service, the dispatcher receiving the request will obtain sufficient information to enable deputies to determine the proper response to that call for service. If uncertainty exists as to the seriousness of the request for service, the call will be presumed as being an emergency call for law enforcement assistance.
 - 3. Based on the information provided, the responding deputy(s) shall determine if an emergency response is necessary, and if so, shall notify the communications center that they are responding by emergency means utilizing the appropriate radio codes.
 - 4. If another deputy is closer to a call for service than the dispatched deputy, that deputy will notify communications and assume primary unit responsibilities. This will enhance response times and shorten the distance required to be traveled by responding units.

5. Supervisors shall be responsible for monitoring deputy's responses to calls for service. The supervisor will evaluate the available information and will have final authority to upgrade or downgrade the priority status of the deputy's response.

C. RISK ASSESSMENT

1. As in a vehicular pursuit, officers must evaluate a call for service by balancing the need for police action, or the result of their action, against the need for an immediate response. Risks to be considered include, but are not limited to:
 - a. vehicle and pedestrian traffic
 - b. weather conditions (i.e., rain, fog, sleet, snow)
 - c. road conditions (i.e., construction, obstacles/hazards, etc.)
 - d. nature of the call for service versus the distance to be traveled by the responding unit.
2. Many of these factors may be grounds for exercising extraordinary care during a response situation. When traveling from point A to point B, thought must be given regarding the route to be followed. Within the route, many of the risks outlined above may be present. This often requires the responding unit to alter the response route or vehicle operation.
3. Units responding to robbery or burglary in progress calls should discontinue the use of the siren before coming within hearing distance and, at that time, fully comply with all traffic laws.
4. Units within viewing distance of an incident location may turn off emergency lights to avoid alerting any suspects of a law enforcement response.
5. Upon arrival at a scene, sworn personnel will immediately evaluate the situation and determine if additional units are needed or whether other units responding can be slowed or canceled.
6. When a deputy determines an emergency exists or is imminent, or the activation of emergency equipment is imminent, or the activation of emergency equipment is necessary to protect life or render necessary law enforcement service, the Sheriff's Office authorizes the use of emergency equipment. Examples of such scenarios include, but are not limited to the following:
 - a. at the scene of any incident where the use of emergency lights constitute a necessary warning for the safety of life, i.e., scenes of fires, accidents, disasters, etc.
 - b. as a visual signal to attract the attention of motorists stopped for traffic violations, or to warn motorists of imminent dangers.

- c. where, because of location, distance to be traveled, or traffic conditions, the deputy determines that an emergency response is essential in order to provide an appropriate response to a call for service.
- d. in response to a deputy's emergency request for assistance.

D. VEHICLE PURSUITS

1. Officers must exercise sound discretion to engage and continue in a pursuit. Vehicle pursuits are high risk situations that require restrictions based on the following consideration:
 - a. does the seriousness of the crime warrant a chase at high speed
 - b. what is the possibility of apprehension
 - c. will the pursuit take place on residential streets, a business district, rural roads or the freeway/interstate
 - d. deputies must remember that the citizens using the public highways are not looking for or expecting police pursuits, therefore officers should not assume that other motorists are aware of their presence
 - e. deputies must also remember that children are drawn towards emergency vehicles instead of being cautioned away from them
 - f. traffic and road conditions
 - g. weather conditions and visibility
 - h. is the risk to the public greater than the need for the pursuit?

E. PURSUIT PROCEDURES

1. Deputy's Responsibilities:

The officer will notify communications of the pursuit with the direction of travel, description of the pursued vehicle and routinely advise as to his/her location. Once a second unit is involved in the pursuit, the back-up unit will then assume radio communications responsibilities.
2. Communication Center Responsibilities:

Once a pursuit has been initiated, the dispatcher will:

 - a. order all other radio traffic cleared except for emergencies
 - b. advise the on-duty supervisor and all other units of the pursuit to include the information given by the pursuing officer
 - c. alert other nearby law enforcement agencies of the pursuit and forward any information concerning the pursuit when it appears likely that the pursuit will extend beyond the jurisdiction of Colleton County
 - d. query DMV and NCIC for registration information and/or warrants, including the Sheriff's Office automated system.

3. Supervisors Responsibilities:

The on-duty patrol supervisor will monitor the pursuit and respond. Supervisors will obtain information regarding the reason for the pursuit.

Upon evaluating all information available at the time, the supervisor may terminate the pursuit if he/she feels the continuation of the pursuit has become unsafe or is unnecessary. If the supervisor allows the pursuit to continue, he/she will assist in directing back-up units to strategic locations.

F. PURSUIT REGULATIONS

1. Deputies will not intentionally ram, bump or collide with a fleeing vehicle, nor will deputies drive alongside fleeing vehicles in an attempt to force the vehicle off the road or into an obstacle.
2. Deputies will not establish roadblocks.
3. Pursuits will be limited to two vehicles, a primary and a secondary. Other units will not leave their assigned area of patrol to join the pursuit unless directed to do so by the on-duty supervisor. Supervisors may direct other units to the area of the pursuit if he/she feels that additional units are needed for the safety of the involved officers or the public.
4. The first back-up officer to engage in the pursuit will assist the primary officer. He/she will assume radio responsibility for updating communications with the location and direction of travel of the pursuit. This will allow the primary officer to focus his/her attention on the pursuit itself. If the primary unit is an unmarked vehicle, the back-up unit will assume the primary unit position upon arrival and the unmarked unit will serve as the secondary unit.
5. Vehicles not equipped with emergency equipment shall not be used for traffic stops or pursuits.
6. Deputies will not fire, or allow to be fired, any weapon from a moving vehicle.
7. If a supervisor directs that the pursuit be discontinued, the pursuing deputy and all other officers involved must do so immediately by slowing to the speed limit and turning off all emergency equipment.
8. The pursuing officer must end the pursuit if at any time during the course of the pursuit he/she loses extended sight of the fleeing vehicle.
9. A pursuing deputy will not follow or duplicate a violator's hazardous maneuvers such as entering a one way street against the flow of traffic or entering the interstate via an exit ramp. The deputy will instead transmit,

via radio, detailed observations of the suspect vehicles actions and location.

10. Air observation should be utilized to assist in a pursuit if such support is available at the time. Communications personnel will make the proper notification to inquire air support if available.

G. USE OF TIRE DEFLATION DEVICES

1. Hollow spike tire deflation devices may be deployed by assisting units to stop fleeing vehicles after other reasonable means of termination have been considered. Only certified deputies trained in the use of tire deflation devices may deploy them. Whenever possible, supervisory approval should be obtained prior to deployment.
2. The only tire deflation devices currently authorized by the Colleton County Sheriff's Office is the "Stinger Spike System". Prior to deployment, officers should consider the:
 - a. the safety of sworn personnel involved
 - b. the risk to innocent parties, i.e., pedestrians, bystanders, and other motorists, etc.
3. Tire deflation devices are designed to be used against vehicles with four or more tires and therefore may not be used against motorcycles, mopeds, or similar two and three wheeled vehicles.
4. Tire deflation devices may only be used on paved surfaces.
5. Tire deflation device should not be used against the following vehicles:
 - a. passenger vehicles such as school buses or vans carrying passengers
 - b. vehicles carrying hazardous loads, fuel, etc.
6. Deputies should use extreme caution when planning and deploying tire deflation devices considering geographic location conducive to minimizing risk and should seek an area of protection once deployed.
7. Radio communications and close coordination shall be maintained between pursuing units and personnel deploying the tire deflation device. Subsequent pursuing units should be careful when approaching the location of deployment so as not to drive over the devices themselves. Deputies deploying the device shall promptly remove the device from the roadway once the fleeing vehicle has crossed over the device.

H. PURSUIT TERMINATION

1. Under some conditions, abandoning a pursuit may be the most practical and intelligent decision a deputy can make. Some of the factors a deputy or supervisor should consider in deciding whether to discontinue a pursuit is:
 - a. if, in the opinion of the pursuing deputy or supervisor, the pursuit creates a clear and unreasonable danger to officers, other motorists

or pedestrians, and that danger outweighs the need for immediate apprehension

- b. the suspects have been identified and can be apprehended later.

I. INTER JURISDICTIONAL PURSUITS

1. Section 17-13-40 (B) of the South Carolina Code of Laws limits the authority of a county deputy to pursue within their employed county and within the adjacent county.
2. Deputies shall immediately notify communications when it is apparent that a pursuit is leaving Colleton County and into another jurisdiction.
3. The controlling supervisor will determine if a pursuit should continue outside the jurisdiction of Colleton County based upon the facts known at the time.
4. If a decision is made that a pursuit should continue outside of jurisdictional lines, communications personnel shall notify the affected law enforcement agency of the approaching pursuit, the reason for the pursuit, its progress, and the known charge (s) against the violator.
5. In cases where pursuits initiated by other agencies enter the jurisdiction of Colleton County, deputies may only assist the pursuing agency at the termination point, or provide other appropriate assistance during the pursuit which does not violate the guidelines of this policy.

J. REPORTING AND INVESTIGATION OF PURSUITS

1. Any deputy who engages in a pursuit shall submit an incident report detailing the particulars of the pursuit (i.e., reason for the pursuit, speeds reached, routes taken, etc.)
2. Any deputy who assists in a pursuit must submit a supplemental report detailing their involvement in the pursuit.
3. The supervisor responsible for monitoring the pursuit will submit an interdepartmental report of his/her findings to the Division Lieutenant, as soon as practical. The report should also indicate whether violations of department policy were found and any recommendations for discipline or remedial training, if warranted.
4. The Division Lieutenant will forward a copy of all reports relating to the pursuit to the Chief Deputy, with a copy to the employee's Division Captain, for review, to determine whether any specific training needs or methods should be addressed.
5. Any vehicle accidents which occur during a pursuit will be investigated by the South Carolina Highway Patrol.

K. SHERIFF'S OFFICE VEHICLE ACCIDENTS

1. Whenever a vehicle of the Colleton County Sheriff's Office is involved in an accident, whether on private property or on the public street, the operator will immediately notify the Sheriff's Office dispatcher, giving the location and whether there is property damage or personal injury.
2. The Sheriff's Office dispatcher will notify the appropriate emergency response agency(s) as necessary and will notify the appropriate law enforcement agency to investigate the accident.
3. The operator's immediate supervisor or other appropriate on-duty supervisor will be dispatched to the scene to conduct an administrative investigation regardless of the amount of damage and request an investigation by the South Carolina Highway Patrol if personal injury or property damage to another party is evident.
 - a. The investigating supervisor will prepare an Inter-Departmental Incident Report, prior to ending his tour of duty.
 - b. The investigating supervisor will notify the Supply Sergeant and request an Accident Review Board inquiry. The Accident Board will prepare an Accident Review Board Findings Report after their inquiry, indicating whether or not there was improper driving on the part of the employee and whether or not disciplinary action is recommended.
 - c. The Inter-Departmental Incident Report (s) and the Motor Vehicle Accident Report and Accident Review Board Findings Report will be forwarded through the chain of command to the Chief Deputy and Sheriff.
 - d. The Sheriff will review the investigating officer's report and the Accident Review Board Findings Report. Based on this review, the Sheriff may order disciplinary action up to and including dismissal. When appropriate, the Sheriff may also order retraining or other administrative remedies and require the employee, if he/she is at fault, to pay the insurance deductible covering the Sheriff's Office vehicle.
 - e. Sheriff's Office personnel will be required to take a drug test when involved in a vehicle accident while operating a county owned vehicle. (See drug testing policy)

Note: This policy is for internal use only, and does not enlarge a deputy's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this agency, and then only in a non-judicial administrative setting.

COPY

Sheriff: _____

Date: _____

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jake Wright and Theresa Gadsden, aa
Personal Representatives of the Estate of
Jacob Cleveland Wright, and Jake Wright
and Theresa Gadsden, individually,

Plaintiffs,

vs.

Colleton County Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-15-894

MOTION IN LIMINE
EXPERT TESTIMONY

2012 MAR -5 AM 11:38

TO: PAUL N. SIEGEL, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

NOW COMES the Defendant, the Colleton County Sheriff's Department, and respectfully moves the court for an Order *in limine* that testimony from Plaintiff's witness Martin D. Schussel, is not permitted for the reasons set forth more fully herein.

STATEMENT OF FACTS

On January 13, 2009, a two-vehicle collision occurred in Colleton County on South Carolina Primary Highway 303, Green Pond Highway. Colleton County Sheriff's Deputy Scott Lee McCoy, on duty and driving a Sheriff's cruiser, was in response to a burglar alarm. McCoy traveled south on Green Pond Highway toward the Heavenly Baptist Church. As he got closer to his intended destination, he turned off his emergency lights and siren.¹ Jake Wright, who resides at 644 Oregon Road in Green Pond, South Carolina, was traveling north on the same road, intending to make a left turn onto South Carolina Secondary

¹ Deposition of Scott Lee McCoy, Page 41, Lines 10-12.

Highway 436. His son, Jacob Cleveland Wright, was in the truck's front passenger seat. The speed limit for this section of roadway is 55 miles per hour. Despite seeing the cruiser's headlights, Jake Wright attempted to turn, crossed over the center of the road and into the deputy's lane of travel, and the two vehicles collided. Jacob Cleveland Wright suffered fatal injuries. Jake Wright, driver of the pickup truck, does not remember the accident.² Scott Lee McCoy is not sure how fast he was traveling at the time of the collision.³

The Plaintiff retained the services of Martin D. Schussel of Mt. Pleasant, South Carolina, to offer expert opinions on the speeds of the relative vehicles. Mr. Schussel has a Master of Science from Carnegie Mellon University and he took a two-week course in accident reconstruction.⁴ He has no other education to qualify him as an expert in any field but accident reconstruction.⁵ He is a partner in Engineering Experts, Inc., with a principal place of business in Mt. Pleasant, South Carolina.⁶ Mr. Schussel reconstructed the accident and prepared two pages of opinions on this case.⁷

During his deposition, Mr. Schussel conceded that he did not visit the site of the accident and, therefore, did not personally make any observations, collect any data, take any measurements or perform any tests in the formulation of his opinion. Instead, he relied on the measurements and data collection completed by the South Carolina Multidisciplinary Accident Investigation Team (MAIT) and Donald Roberts, the Defendant's expert. Mr. Schussel testified that his firm has written some software that assists in the accident

² Deposition of Jake Wright, Page 26, Lines 8-9.

³ Deposition of Scott Lee McCoy, Page 47, Lines 9-11; Page 50, Lines 14-18

⁴ Deposition of Martin D. Schussel, Page 6, Lines 5-13.

⁵ *Id.*, Page 7, Line 23 – Page 8, Line 25.

⁶ *Id.*, Page 9, Line 19 – Page 10, Line 2.

⁷ Exhibit No. 1 to the Deposition of Martin D. Schussel and attached hereto as an exhibit.

reconstruction.⁸ The computer program was designed and is maintained in connection by Mr. Schussel and his business, Engineering Experts, Inc. The computer program is used strictly in-house, has not been published, has not been presented for evaluation by anyone practicing in the field of engineering, has not been presented at seminars or otherwise presented publicly and has not been offered for peer review.⁹

LAW AND ARGUMENT

“Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). In South Carolina, the proper analysis for determining admissibility of expert testimony is under the South Carolina Rules of Evidence. *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” *Rule 702, SCRE*.

The trial court must make three preliminary findings pursuant to *Rule 702* before the jury may hear expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. *Watson, supra*, at 446, 699 S.E.2d at 175. The Defendant agrees that any testimony dealing with accident reconstruction and the scientific determination of the speed of a

⁸ *Id.*, Page 31, Line 23, Page 79, Lines 19-22.

⁹ *Id.*, Page 80, Line 2 – Page 81, Line 17.

motor vehicle immediately prior to an accident when neither driver can recall his speed is beyond the ordinary juror's knowledge and requires expert testimony. The Defendant disagrees, however, that Martin Schussel can offer such testimony.

Second, the trial court must find that the expert has acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. *Id.* The Defendant would demonstrate to the Court that the expert is not qualified to testify.

The third requirement is that the trial court must evaluate the substance of the testimony and determine whether it is reliable. The Defendant would urge the Court to rule that the proffered testimony is not reliable.

The *Watson* case is an excellent guide for the Court. There, the witness, proffered as a cruise control expert, testified that he had worked in the automotive industry as a trainer, consultant, software developer and writer since the early 1980s and was currently conducting seminars to train automobile technicians who focus on the brake systems in vehicles. On cross-examination, he admitted that he had no professional experience working on cruise control systems prior to the litigation then pending. He also admitted that he had not conducted any comparison of the vehicle's cruise control system to any other system and acknowledged that he had never taught or published papers on cruise control systems. The trial court qualified him as an expert, however, and allowed him to testify. On appeal, the South Carolina Supreme Court found no evidence to support the trial court's qualification as an expert. The Supreme Court found that he had no knowledge, skill, experience, training or education specifically related to the subject

testimony. It appeared to the Court that the witness merely studied the cruise control system just before trial. The Court ruled:

While [the witness] may have been qualified as an expert in other aspects of automobile components, such as the brake system, the trial court failed to properly evaluate [his] qualifications specific to cruise control systems...Accordingly, we hold that the trial court erred in qualifying Williams as a cruise control expert.

Watson v. Ford Motor Co., 389 S.C. at 447-448, 699 S.E.2d at 176. The result must be the same for the proffered testimony in the instant case.

The Supreme Court in *Watson* identified the factors the Court should consider when determining whether scientific expert evidence is reliable: (1) publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) quality control procedures used to ensure reliability; and (4) consistency of the method with recognized scientific laws and procedures. *Watson* at 449-450.

In the instant matter, Mr. Schussel testified that he has not published anything with regard to his computer software, has not presented the software or results for peer review, nor has the software been reviewed and critiqued by others in the field. Without access to the software itself,¹⁰ there is no way for the Defendant or his expert to check Mr. Schussel's calculations and result. Nor is there any means of independently evaluating the software to ascertain whether the computer applies the data appropriately to arrive at a reliable result. The initial indication is that this expert's proffered result is not reliable in that it varies

¹⁰ Mr. Schussel objected and declined to produce the software in response to the Defendant's subpoena.

widely from the determinations of both the Defendant's expert and the MAIT calculation.¹¹ Without any way to verify the work, the method must be suspect and the result deemed unreliable.

The Plaintiff's expert cannot demonstrate adequate quality control procedures to ensure reliability. He did not visit the site of the accident and, therefore, did not make any personal observations, collect any data, take any measurements or perform any tests in the field. He relied entirely on data gleaned from reading the MAIT report and from dissecting the work of the Defendant's expert. He is highly critical of both MAIT and the results reported by the defense expert, and yet Mr. Schussel relied completely on the same information for input into his computer program. The Defendant has no question as to the data its own expert collected, since he personally collected each piece of information, conducted his own measurements and independently verified the accuracy of his work. The same cannot be said of the Plaintiff's expert. Neither his work with the computer program nor his results have the requisite indicia of reliability.

The Defendant urges the Court to find that the results obtained by the Plaintiff's expert fail to demonstrate consistency of the method with recognized scientific laws and procedures. The obvious indicator is the disparity between Mr. Schussel's result and those achieved from the two independent investigations and separate calculations performed by MAIT and by the defense expert. And, there is no way to independently examine and verify his results.

¹¹ The MAIT report puts the cruiser speed in the range of 62-70 miles per hour, and the Defendant's expert calculated the speed slightly lower. Both the MAIT report and the defense expert data have been exchanged in discovery.

As proponent of the evidence, the burden is on the Plaintiff to satisfy the foundation requirements. *Clark v. Cantrell*, 332 S.C. 433, 449 (Ct. App. 1998). He cannot.

An additional problem is that Mr. Schussel holds himself out as an engineer. He is not licensed in South Carolina, and the Court should not allow him to mislead the jury by giving testimony as an engineer when he is not privileged to do so. In his deposition, Mr. Schussel testified that he is not licensed in South Carolina or any other state.¹² The LLR statutes prohibit him from taking the stand and holding his opinions out to the jury as supported by his engineering background. “[I]t is unlawful for a (1) person in a public or private capacity to practice or offer to practice engineering or surveying without being licensed pursuant to this chapter.” S.C. Code Ann. § 40-22-30(A)(1). The practice of engineering includes offering expert technical testimony and performing engineering surveys and studies. S.C. Code Ann. § 40-22-20(23).

A person must be construed to practice or offer to practice engineering, within the meaning and intent of this chapter who:

(a) practices any branch of the profession of engineering;

(b) by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter; or

Id. To allow Mr. Schussel to offer himself as an expert whose testimony is supported by his engineering and educational background would violate S.C. Code Ann. § 40-22-20(23) and cannot be permitted.

¹² Deposition of Martin Schussel, Page 9, Lines 4-6.

Even if the Court permits Mr. Schussel to offer expert opinions, the scope of his testimony must be very limited. He came to his deposition with a long list of his opinions that he intends to offer at trial.¹³ A copy of the list is attached hereto as an exhibit. He must be limited solely to his work in reconstructing the accident and determining the speeds of the relative vehicles.

Reviewing Mr. Schussel's list of opinions, it is clear that only the statement in Paragraph 1(a) is appropriate. The remainder of the items on the three-page list either touch on matters outside the expertise of this witness or are expressed about topics that are within the province and knowledge of the jurors, and therefore, do not meet the requirements of *Rule 702, SCRE*. They must not be allowed.

Finally, Mr. Schussel cannot offer testimony critical of other witnesses, especially those who have not or may not even testify. It is for the jurors, and only the jurors, to evaluate the credibility of witnesses, *Wise v. Broadway*, 315 S.C. 273, 279 (1993), especially experts. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 307 S.C. 161, 164 (1992)(It is the duty of the jury to weigh conflicting evidence.)

In summary, the Court must exclude the testimony of the Plaintiff's expert. "Expert testimony is **not admissible** unless it satisfies **all three requirements** with respect to subject matter, expert qualifications, and reliability." *Watson v. Ford Motor Co.*, 699 S.E.2d 169, 175 (2010)(emphasis added). The Plaintiff is not able to satisfy the foundational requirements.

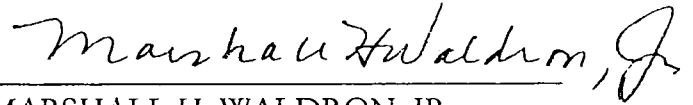
[Signature on the following page.]

¹³ *Id.*, Page 13, Lines 4-9.

DATED this 5th day of March 2012, in Beaufort, South Carolina and

Respectfully Submitted,

GRIFFITH, SADLER & SHARP, P.A.



MARSHALL H. WALDRON, JR.

P.O. Drawer 570

Beaufort, South Carolina 29901

(843) 521-4242 Telephone

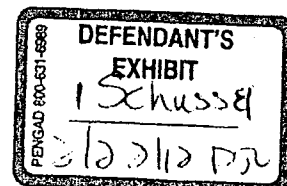
(843) 521-4247 Facsimile

ATTORNEY FOR THE DEFENDANT

Opinions

Jacob Wright vs Colleton County Sheriff Office 10-CP-15-894

1. This accident was caused by reckless behavior of Deputy Scott McCoy in driving at an excessive speed without the required lights and siren as he approached the intersection of Green Pond Highway and Clover Hill Road.
 - a. It is most probable that Deputy McCoy was traveling at approximately 83 mph through a section of road that was posted at 55 mph.
 - b. By his own testimony, Deputy McCoy made no attempt to apply his brakes prior to the impact.
 - c. It is Colleton County's written policy that if a deputy makes the decision to approach a possible crime scene without the required lights and siren, they must fully comply with all traffic laws (including speed limits.)
 - d. Deputy McCoy was still several miles from the church with the silent alarm, yet he was running without lights and siren. He deprived Jake Wright of the warning provided by lights and siren.
 - e. Deputy McCoy's actions of driving at an excessive rate of speed, and turning off his lights and siren while at the excessive speed, show that he was driving without regard to the safety of others.
2. Jake Wright did nothing wrong in making his turn onto Clover Hill Road.
 - a. Had Deputy McCoy been traveling at the posted speed limit, the pickup in which Jacob Wright was a passenger would have completely cleared the intersection before Deputy McCoy's police cruiser reached the point of impact. There would have been no accident.
 - b. Deputy McCoy deprived Jake Wright of the warning provided by lights and siren.
 - c. At night it would have been difficult to estimate the speed of the police cruiser hundreds of feet down the road from the intersection.
3. The MAIT analysis of the speed of the police cruiser significantly understates its speed at impact.
 - a. They used a friction coefficient for the roadway of 0.70 which is lower than they normally use for a police cruiser (lower friction coefficient resulted in lower speed being calculated.)
 - b. They used a friction coefficient for dry grass of 0.45 which is lower than published data (lower friction coefficient resulted in lower speed being calculated.)
 - c. They indicated that the rear wheels of the police cruiser were free to roll, but the photographs show that neither rear wheel rotated as it moved across the grass to final rest. (Rear wheels free to rotate resulted in a lower speed being calculated.)
 - d. They did not take into account the angle of the police cruiser as it skidded across the road and grass to final rest. (This resulted in a lower speed being calculated.)
 - e. They used the broken speedometer speed from the Chevy pickup for its speed at impact. This has been discredited in accident reconstruction literature as unreliable. Interestingly, they did not use the speedometer of the police cruiser (showing 75 mph) as an indication of its speed at impact.



- f. They used in-line momentum instead of 360 degree momentum to calculate the pre-impact speeds for the police cruiser. (This was not an in-line collision and will give incorrect results.)
 - g. They removed the airbag control module from the police cruiser but did not download the data from it until two years later (when I asked for permission to download the data.) Therefore, they did not have all the information that was available.
 - h. They did not remove the power train control module from the police cruiser even though it would have given them a direct readout of the speed of the police cruiser for at least 20 seconds before impact. If they were trying to get the most accurate speed, this would have been the most reliable data available.
 - i. MAIT waited over two weeks to interview Deputy McCoy; and then did not press him for his speeds before and after he turned off his lights and siren.
 - j. Neither the troopers assigned to the accident nor MAIT team performed a detailed inspection of the police cruiser. As a result, there are no clear photographs showing the damage to the front and left side of the vehicle (they were all taken in the dark with a flash.) Although it has been standard practice in many other accident investigations, MAIT did not measure crush on the Ford Crown Victoria police cruiser.
4. The speed calculations from Don Roberts of DeltaV significantly understates the speed of the police cruiser.
- a. The calculation for post impact speeds uses a composite friction coefficient for pavement and one for grass that do not take into account the changing angle of the vehicle along its path to final rest. The correct way to perform this calculation is to calculate the change in speed in small increments from post impact to final rest, taking into account the orientation of the tires relative to the vehicle path.
 - b. Even though the MAIT team indicated that the rear wheels of the police cruiser were free to roll, an examination of the photographs of the tires shows that the tires did not rotate and therefore should be treated as locked. (This resulted in a lower speed calculated for the police cruiser.)
 - c. The conservation of momentum calculation requires an accurate input for the post impact direction of the cg of the pickup. The angle Don Roberts used in the calculation is incorrect for the motion of the cg immediately after impact and appears to represent the angle from impact to final rest. (This resulted in a lower speed calculated for the police cruiser.)
 - d. In his estimation of delta V based on crush, Mr. Roberts used a crush stiffness slightly below that for an unmodified Crown Victoria, which does not include the added stiffness of the front end from the aftermarket push bar. (This resulted in a lower speed calculated for the police cruiser.)
 - e. The peak forces that are shown for the EDCRASH analysis Mr. Roberts performed indicate that the results are invalid. The peak forces differ by more than 20% from one another and they should be essentially the same for the calculated delta V's to be valid.
 - f. Because the police cruiser was scrapped by Colleton County Sheriff's Office soon after the accident, Mr. Roberts had someone try to determine the crush profile for the front of the police cruiser using photogrammetry. If there were a large number of high quality

photographs of the entire vehicle, this might have been a reasonable approach, but unfortunately, the quality of the photos is poor and portions of the vehicle are obscured. As a result, the Photomodeler program reports residual values for a majority of the points determined from the photos to be larger than the recommended value of 5 pixels. This means the results are unreliable. In addition, the Photomodeler program reports that the angle separation between the photos is lower than 5 degrees and "will not be computed accurately". (The analysis performed using Photomodeler and EDCRASH was intended to confirm the results of the momentum analysis, but with unreliable crush profile data, the results are meaningless.)

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate of
Jacob Cleveland Wright, and Jake Wright
and Theresa Gadsden, individually,

Plaintiffs,

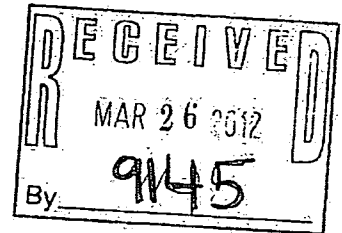
vs.

Colleton County Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-15-894



DEFENDANT'S POST-TRIAL MOTIONS
RULES 50 AND 59, SCRCP

2012 MAR 22 PM 4:34
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

TO: PAUL N. SIEGEL, ESQUIRE, EUGENE P. WARR, JR., ESQUIRE and STEVEN
D. MURDAUGH, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

NOW COMES the Defendant, pursuant to Rules 50 and 59, SCRCP,¹ and presents
post-trial motions as set forth more particularly below.

I. STATEMENT OF FACTS

On January 13, 2009, Rowena Wright, wife of Plaintiff Jake Wright, received a telephone call that a burglar alarm at her husband's church, Heavenly Baptist Church, had been activated. After she asked the alarm company to notify the Colleton County Sheriff's office, Jake Wright and his two sons, Jacob Cleveland Wright and Timothy Wright, drove to the church. The Sheriff's dispatcher sent two deputies, in separate cruisers, to respond to the alarm. Deputy Scott McCoy received the dispatch when he was on Bell's Highway near I-95, on the far side of Walterboro. McCoy activated his blue lights and siren, turned off his

¹ "The motion for judgment n.o.v. shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." Rule 50(e), SCRCP. Upon request of both parties, the Court allowed 10 days for filing post-trial motions.

camera, drove through the city and turned onto Green Pond Highway, State Route 303. While southbound on Green Pond Highway, McCoy utilized his lights and sirens while he drove at speeds that reached close to 100 miles per hour. After he passed the Ritter crossroads, he began to slow down but still kept the lights and siren employed.

Jake Wright and his sons arrived at the church, checked it out and found nothing amiss. After waiting for a period of time, they got back in the truck and headed home. They drove out Springhill Road and turned left, headed north on Green Pond Highway. Jake's intention was to turn left onto Clover Hill Road to reach the family home.

In order to reach the Heavenly Baptist Church, Deputy McCoy had to travel through the intersection of Green Pond Highway and Clover Hill Road. Seven tenths of a mile prior to the intersection, McCoy turned off his lights and siren because, although he did not know exactly where the church was, he believed he was close. At this point his speed was high 70s, low 80s. As he coasted toward the intersection, he could see the headlights of Jake Wright's pickup truck coming from the opposite direction. McCoy saw that the truck appeared to be traveling slowly as if about to turn. Suddenly, the truck crossed the centerline, into the southbound lane, and appeared directly in front of McCoy's cruiser. The speed limit at this point was 55. The vehicles collided nearly head-on in the deputy's lane. Jake Wright was injured. His son, Jacob Cleveland Wright, suffered fatal injuries.

Sergeant David W. Lee, South Carolina Coastal MATT, came to the scene, investigated the accident and did an accident reconstruction to ascertain the vehicle speeds prior to impact. He determined the cruiser speed to be in the low end of a 62 to 70-mile-per-hour range, in no event greater than 70. Defense expert Donald Roberts evaluated the

evidence and completed a professional reconstruction. He testified that the deputy's speed most probably was 63 miles per hour. The plaintiff presented the testimony of Martin Schussel, who reconstructed the accident and opined that the cruiser speed was 83 miles per hour.

Jake Wright and Theresa Gadsden, Jacob Cleveland Wright's mother, individually and as co-personal representatives of Jacob Cleveland Wright's estate, brought suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann., §§15-78-10, et seq. The Complaint alleged negligent hiring and negligent driving as the bases for claims of wrongful death and conscious pain and suffering.

Trial was held in Colleton County Court of Common Pleas March 5 through March 9, 2012. At the close of the Plaintiffs' case, the Defendant moved for a directed verdict. The Court denied the motion. Following the defense presentation of evidence and after the Plaintiff rested, finally, the Defendant again moved for a directed verdict, which the Court denied. The jury returned a verdict for the plaintiffs in the amount of \$700,000 on the wrongful death claim. The jury found the plaintiffs did not prove their claim for conscious pain and suffering. The Court permitted the parties 10 days to file post-trial motions.

II. MOTIONS AND ARGUMENT

A. Motion for Judgment Notwithstanding the Verdict

1. Proximate Cause

"A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict." Rule 50(b), SCRPC. The Defendant incorporates herein by

reference the memorandum of law in support of the motions for a directed verdict.² The Defendant urges the Court to set aside the verdict and to enter judgment in the Defendant's favor.

"Negligence is not actionable unless it proximately causes the plaintiff's injuries." *Bailey v. Segars*, 346 S.C. 359, 366, 550 S.E.2d 910, 914 (Ct. App. 2001). "A negligent act or omission proximately causes an injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred." *Id.* In the case at bar, the evidence is that the deputy exceeded the posted speed limit by 7 to 8 miles per hour. Neither driver was affected by sight distance or obstructed vision. Jake Wright testified that he saw the deputy's lights at least a quarter mile away. Deputy McCoy told the jury that he saw the lights of the pickup truck as it arrived at the intersection.

It is also undisputed that the deputy remained in his lane of travel and that the collision occurred within that lane when Jake Wright attempted to turn left in front of McCoy. Expert Don Roberts testified that the truck crossed the centerline and traveled directly into the path of Deputy McCoy leaving the deputy only 1.3 seconds in which to react. Roberts testified that the accident was unavoidable, even though McCoy reacted at 1.2 seconds, faster than the average of 1.5, by attempting to brake and swerve away from the crash. On cross-examination, Mr. Roberts testified that even at 55 miles per hour, the speed limit, the accident was unavoidable since the cruiser would have T-boned the truck making impact with the passenger door. There is no question that Deputy McCoy had the

² The original memorandum was filed with the Clerk of Court at the time of argument on the motion for a directed verdict.

right of way and the right to occupy the lane in which he was traveling. Neither is there a dispute that the collision occurred in McCoy's lane of travel.

This case is an example of the classic trap, as described in *Odom v. Steigerwald*, 260 S.C. 422, 428 (1973) and *Blanding v. Hammell*, 267 S.C. 352, 356 (1976). The facts of the *Odom* case are that on a clear day, Odom drove his pick-up truck along Hudson Road in a southerly direction. Steigerwald proceeded easterly along St. Augustine Street, which makes a T intersection with Hudson Road. Hudson Road is the favored, or through, street. Vehicular traffic entering Hudson Road from St. Augustine Street is required to honor a Stop sign before entering the favored street. Steigerwald attempted to enter the through street from Odom's right. The collision occurred after Steigerwald undisputedly stopped at the Stop sign as required and then pulled out directly into Odom's lane. The collision occurred in Odom's lane of traffic as the front of his pick-up truck struck the left front fender of Steigerwald's car.

Odom testified that she observed Steigerwald stopped at the Stop sign and that as she approached the intersection about two car lengths away, he pulled out in front of her and into her path of travel. She testified that she applied her brakes as hard as she could, but was unable to stop before colliding. The entire defense was based on the contention that Odom was traveling at an excessive rate of speed and that such speed was a proximate concurring cause of the collision. The trial court denied a motion for a directed verdict and declined to grant a motion for a new trial following a verdict. The Supreme Court reversed, holding that in failing to grant the motion for a directed verdict and in failing to grant the motion for a new trial the trial court erred. The Court held, "It is without legal significance that speed

was a contributing factor in placing the pick-up truck at a particular location on Hudson Road when the emergency arose, because the plaintiff had the legal right to occupy that portion of the street." 260 S.C. at 426-427. The Court found it fundamental that before the negligence of a party will defeat the motion for a directed verdict, "it must be made to appear that such negligence contributed to the injury as a proximate cause." 260 S.C. at 427, 196 S.E.2d at 637.

Assuming, without so deciding, that [Odom] was driving at an excessive rate of speed and was negligent, we think, as a matter of law, that such was not a contributing proximate cause. The real cause, the more immediate and efficient cause, was the improper driving conduct of young Steigerwald. By driving his car directly into the path of [Odom's] vehicle when [Odom] was obviously so close to the intersection, young Steigerwald created a trap from which [Odom] could not escape...The lower court should have granted the motion for a directed verdict.

Odom v. Steigerwald, 260 S.C. at 428, 196 S.E.2d at 638.

The same result must apply here. The South Carolina Supreme Court in *Odom* assumed that the plaintiff was driving at an excessive rate of speed and was negligent. The Court found, however, as a matter of law, that such conduct was not a contributing proximate cause. The Supreme Court held that the real cause, the more immediate and efficient cause, was the improper driving conduct of Steigerwald. By driving his car directly into the path of an oncoming vehicle, Steigerwald created a trap from which the driver could not escape. 260 S.C. 428. An important factor stressed by the Court, in ruling that speed is without legal significance, is that the vehicle on the through street had the legal right to occupy that portion of the street. That is exactly the situation in the case before this court in the suit brought by Jake Wright and Theresa Gadsden versus the Colleton County Sheriff's Office. The law, as stated in *Odom*, mandates judgment for the Defendant.

Blanding v. Hammell, 267 S.C. 352, 228 S.E.2d 271 (1976), was a wrongful death action in which a collision occurred when the deceased attempted to cross over a four-lane highway from a private entrance to a retail store. He had a clear, unobstructed view in the direction of the defendant. The deceased stopped before entering the highway, looked in the direction of the defendant's approaching vehicle and started across the road. When the defendant had been about 500 feet from the site of the accident, he observed the deceased stopped, preparing to cross the highway. Alerted to the potential threat, he continued on but changed to the inside lane. The deceased's car pulled in front of him 30 feet from the point of impact. The defendant applied his brakes but was not able to stop. The cars collided resulting in the death of the plaintiff's decedent and substantial damage to the cars.

The plaintiff argued there was evidence that the defendant was negligent in speeding and in failing to keep a proper lookout. The trial judge granted the defendant's motion for a directed verdict, concluding that the sole proximate cause of the accident was the negligence of the deceased. The testimony showed that the plaintiff pulled directly in front of the defendant, the deceased having pulled across the lane when the defendant was but 30 feet away. The impact caused substantial damage to both vehicles. In directing a verdict, the trial judge assumed the defendant was negligent and speeding. The Supreme Court affirmed. Citing *Odom*, the Supreme Court held:

In the absence of circumstances alerting the defendant that deceased would recklessly enter the four lane highway from a private parking lot, the defendant could assume he would comply with the statute and exercise caution before entering the highway. Defendant knew the deceased had a clear, unobstructed view of approaching traffic. The defendant had seen him stop and defendant's actions thereafter in changing lanes, checking for traffic approaching an intersection, and not seeing the deceased's vehicle until he was 30 feet away was not evidence of a failure to maintain a proper lookout. As

noted in *Guyton v. Guyton*, *supra*, '(a)n automobile may not be controlled by brakes or steering so as to avoid a hazard which becomes apparent for only a 'split second' before the point of impact is reached.'

Blanding v. Hammell, *supra*, at 358, 228 S.E.2d at 273, quoting *Guyton v. Guyton*, 244 S.C. 357, 137 S.E.2d 273 (1964).

The facts in *Blanding* are very similar to the situation tried before this Court. Deputy McCoy saw the pickup truck ahead and knew that it was possible the driver would turn left. He had his foot off the gas and was slowing down. Just as he reached the intersection, the pickup suddenly appeared in his lane. With only 1.3 seconds to react, McCoy was unable to avoid impact. The collision occurred in McCoy's lane, injuring both drivers and causing severe damage to the vehicles. The result in the instant case must be the same as in *Blanding*. The Court should reconsider denial of the Defendant's trial motions and at this point either direct a verdict for the Defendant or enter judgment notwithstanding the verdict.

Another case illustrative on the same issue is *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776 (1962). J. C. Scott was killed in a head-on collision between a pick-up truck, in which he was a passenger, and a Greyhound bus. The action was brought by Scott's Administratrix, under the wrongful death statute, against the Greyhound Corporation and its bus driver. The trial court directed a verdict for the defendants. The plaintiff appealed. The facts showed that on a clear day, the bus approached the scene of the collision from the north. The truck approached from the south. The vehicles met on a long, rather sharp curve. The centerline of the highway was marked with double yellow lines to indicate no passing. At about the apex of this curve, a secondary highway intersected from the west, or to the right of traffic headed toward Darlington. The collision, in which both occupants of

the truck were killed, occurred in the intersection. Three witnesses who saw the bus prior to and at the moment of impact estimated its speed at from 70 to 80 miles per hour. The bus driver testified that as he approached the intersection, at about 50 miles per hour, he saw a pick-up or panel truck stopped in the north bound lane, giving a left turn signal. As he got closer, he noticed a pick-up in a weave that came directly from behind the stopped truck and straight out in the path of the bus. He braked as hard as he could but could not avoid the collision.

The South Carolina Supreme Court held that the bus driver was required to operate the bus at a speed that was reasonable and prudent under the conditions and to drive at such a speed as to avoid colliding with any vehicle on the highway in compliance with legal requirements and the duty of all persons to use due care. "However, he was not required to anticipate that the truck would suddenly turn into his lane of travel and to drive at such a speed as to avoid collision." 241 S.C. 439-440, 128 S.E.2d 781-782. The Court held, "[T]he excessive speed of the bus must be regarded as coincidental rather than as causal. Its mere concurrence with the efficient cause of the collision does not impose liability on the defendants." *Id.* at 440, 128 S.E.2d at 782. The Supreme Court found that the plaintiff's evidence tended to establish that the speed of the bus was excessive. However, the Court found that excessive speed insufficient to establish a causal connection between it and the occurrence of the collision. *Horton* supports a directed verdict in favor of the Colleton County Sheriff's Department in the case before this Court and likewise supports judgment n.o.v.

The three cases discussed above state the law controlling the issue before the Court. Jake Wright and Theresa Gadsden presented ample evidence from which the Court should conclude that Deputy McCoy exceeded the speed limit. Whether McCoy was in violation of the Sheriff's policy is not determinative of the issue. The trap created by Jake Wright pulling into McCoy's lane, leaving him but 1.3 seconds in which to react, is determinative. The Court should either reconsider its denial of the Defendant's motion for directed verdict, or in the alternative, enter judgment for the Defendant notwithstanding the verdict.

2. Verdict in Excess of Statutory Maximum

This case is governed by the South Carolina Tort Claims Act, which provides, "[N]o person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120. The verdict in the instant case was awarded on one cause of action, wrongful death. As such, the amount exceeds the statutory maximum and must be reduced to \$300,000. Although the verdict is reduced by operation of law, the Defendant moves the Court for an order amending the verdict to reduce it in accordance with the statutory limitation.

III. CONCLUSION

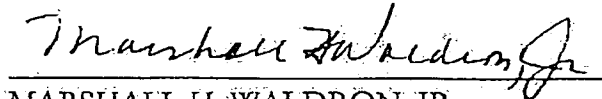
Based upon the evidence presented at trial and the arguments set forth above, the Court should enter judgment for the Defendant notwithstanding the verdict. If the Court denies the motion for j.n.o.v., then the Court must reduce the jury award to the statutory cap of \$300,000 and enter judgment accordingly.

[Signature on the following page.]

DATED this 16th day of March 2012 at Beaufort, South Carolina, and

Respectfully submitted,

GRIFFITH, SADLER & SHARP, P.A.



MARSHALL H. WALDRON, JR.

P.O. Box 570

Beaufort, South Carolina 29901

(843) 521-4242 Telephone

(843) 521-4247 Facsimile

ATTORNEY FOR THE DEFENDANTS

CERTIFICATE OF SERVICE

I Jennifer Frischen, Legal Assistant to Marshall H. Waldron, Jr., Esquire, certify that on this 16th day of March 2012, I served the Defendant's Post-trial motion upon all counsel by depositing same in the United States mail, postage prepaid to:

Paul N. Siegel, Esquire
111 Walter Street
Post Office Box 1143
Walterboro, South Carolina 29948

Eugene P. Warr Jr., Esquire
Lucas Warr & White
PO Box 188
Lamar, SC 29069

Steven D. Murdaugh, Esquire
Peters Murdaugh Parker Eltzroth & Detrick, PA
PO Box 1164
Walterboro, SC 29488


Jennifer Frischen

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jake Wright and Theresa Gadsden, aa
Personal Representatives of the Estate of
Jacob Cleveland Wright, and Jake Wright
and Theresa Gadsden, individually,

Plaintiffs,

vs.

Colleton County Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-15-894

MOTION TO ALTER OR AMEND
Rule 59(e), SCRCF

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 JUN 27 PM 1:54

TO: PAUL N. SIEGEL, ESQUIRE, EUGENE P. WARR, JR., ESQUIRE and STEVEN D.
MURDAUGH, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant will move before the Court at the Colleton County Courthouse in Walterboro, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCF, altering or amending the Order denying the Defendant's post-trial motions, filed on June 25, 2012.

The basis for the motion is that the Defendant moved the Court for an order entering judgment notwithstanding the verdict. In the trial of this case, it was not disputed that the Defendant's employee exceeded the posted speed limit. It is clear under South Carolina law that speed is without legal significance as a contributing factor in placing a vehicle at a particular location on a highway, because the Defendant has the legal right to occupy that portion of the highway, *Odom v. Steigerwald*, 260 S.C. 422, 426-427 (1973), and the Plaintiff does not, S.C. Code, Ann., § 56-5-2360 and *Yaun v. Baldridge*, 134 S.E.2d 248, 251 (1964).

In South Carolina, "Negligence is not actionable unless it proximately causes the plaintiff's injuries." *Bailey v. Segars*, 346 S.C. 359, 366, 550 S.E.2d 910, 914 (Ct. App. 2001). In this case, Plaintiff's negligence was the sole contributing cause of the motor vehicle accident. The Court should have directed a verdict, and when the jury returned a verdict for the Plaintiff, the Court should have either directed a verdict at that point or entered a judgment notwithstanding the jury's verdict. The Court's Order denying the Defendant's post-trial motions is silent on what facts and law the Court considered and the basis of the Court's decision. The Defendant respectfully asks the Court to reconsider, alter or amend its June 25, 2012, Order, in light of the facts adduced at trial and the arguments set forth in the Defendant's post-trial motions.

In addition to the motion for a JNOV, the Defendant asked the Court to find that the jury's verdict was in excess of statutory maximum, pursuant to S.C. Code Ann. § 15-78-120(a). The Defendant moved for an order reducing the verdict accordingly. The Court's Order denying the Defendant's post-trial motions does not address this issue. The Defendant maintains that he is entitled to a reduction of the verdict to conform to the statutory limit, as cited above. The Defendant asks the Court to reconsider, alter or amend her Order of June 25, 2012.

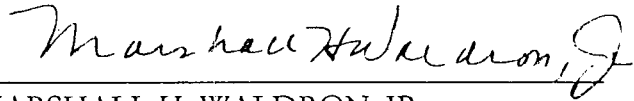
WHEREFORE, the Defendant respectfully asks the Court to reconsider her Order denying the Defendant's post-trial motions and enter a new order in accordance with the facts adduced at trial and with the statutes and common law of South Carolina.

{Signature follows.}

DATED this 25th day of June 2012 at Beaufort, South Carolina, and

Respectfully submitted,

GRIFFITH, SADLER & SHARP, P.A.



MARSHALL H. WALDRON, JR.

P.O. Box 570

Beaufort, South Carolina 29901

(843) 521-4242 Telephone

(843) 521-4247 Facsimile

ATTORNEY FOR THE DEFENDANT

CERTIFICATE OF SERVICE

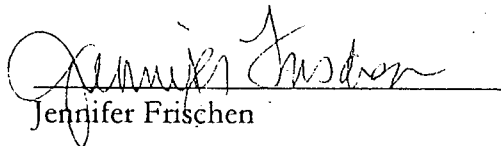
I Jennifer Frischen, Legal Assistant to Marshall H. Waldron, Jr., Esquire, certify that on this 25th day of June 2012, I served the Defendant's Motion to Alter or Amend upon all counsel by depositing same in the United States mail, postage prepaid to:

Paul N. Siegel, Esquire
111 Walter Street
Post Office Box 1143
Walterboro, South Carolina 29948

Eugene P. Warr Jr., Esquire
Lucas Warr & White
PO Box 188
Lamar, SC 29069

Steven D. Murdaugh, Esquire
Peters Murdaugh Parker Eltzroth & Detrick, PA
PO Box 1164
Walterboro, SC 29488

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 JUN 27 PM 1:54



Jennifer Frischen

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-15-894

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate of
Jacob Cleveland Wright, and Jake Wright
and Theresa Gadsden, individually,

Plaintiffs,

vs.

Colleton County Sheriff's Department,

Defendant.

**MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
OR IN THE ALTERNATIVE FOR
A NEW TRIAL AS TO THE
SURVIVAL CAUSE OF ACTION**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 MAR 16 PM 2:09

As to the survival cause of action, only, in the above captioned matter the Plaintiffs hereby move for a Judgment Notwithstanding the Verdict pursuant to Rule 50(b) SCRPC, or in the alternative, for a new trial pursuant to Rule 59 SCRPC or under the thirteenth juror doctrine. This motion is based on the following:

1. Jake Wright, the driver and father of the decedent, testified that he regained temporary consciousness, post impact, and felt his son's ankle with his right hand. Jake called out "JC". In response, Jake heard groans. Then Jake, again, lost consciousness.
2. Richard Harvey, Colleton County Coroner, placed the time of death, on the death certificate, at five minutes after the time of the collision. According to Harvey's testimony, brain activity continues for three to six minutes after one's heart ceases

to beat. The coroner also affirmed the fact of survival on the basis of flowing blood which would have ceased upon heart failure.

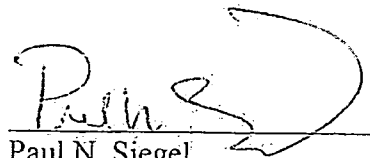
Finally, Coroner Harvey opined that the decedent's hand, not his head, broke the windshield. The coroner suggested that the decedent undertook a defensive measure or reaction pre-impact. Clearly, this order of events allows an inference that the decedent experienced pre-collision fear and that a gap in time existed from the hand striking the windshield until death occurred at some future time due to head and neck trauma.

3. Absolutely no evidence was produced at trial which would support an immediate death for Jacob. The evidence is uncontraverted that Jacob did survive and was conscious for at least some period of time. Therefore, the Plaintiffs are entitled to a Judgment Notwithstanding the Verdict pursuant to Rule 50(b) as to the survival action in an appropriate amount to be determined by the court.
4. The trial judge, under the thirteenth juror doctrine, may grant a new trial absolute when the court finds that the evidence does not justify the verdict. The Plaintiffs request that the court grant a new trial as to the survival action, but only in the event the court denies Plaintiffs' Motion for Judgment Notwithstanding the Verdict as to the survival action.

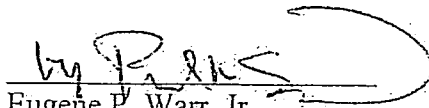
Based on the foregoing, as to the survival action only Plaintiffs hereby move for a

Judgment Notwithstanding the Verdict pursuant to Rule 50(b) SCRPC, or in the alternative, for a new trial pursuant to Rule 59 SCRPC or under the thirteenth juror doctrine.

Respectfully submitted,



Paul N. Siegel
Attorney at Law
Post Office Box 1143
Walterboro, South Carolina 29488
(843) 549-9547



Eugene P. Warr, Jr.
Lucas, Warr and White
2917 West Palmetto Street
Florence, South Carolina 29501
(843) 665-8187

ATTORNEYS FOR PLAINTIFFS

March 11, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

Jake Wright and Theresa Gadsden, as)
Personal Representatives of the Estate of)
Jacob Cleveland Wright, and Jake Wright)
and Theresa Gadsden, individually,)

Plaintiffs,)

vs.)

Colleton County Sheriff's Department,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-15-894

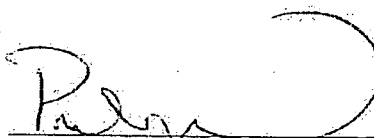
MOTION FOR COSTS

2012 MAR 16 PM 2:08

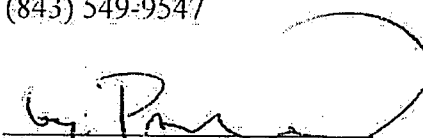
PATRICIA O. GRANT
COLLETON COUNTY
COMMON PLEAS

PLEASE TAKE NOTICE, that the Plaintiffs, Jake Wright and Theresa Gadsden, as Personal Representatives of the Estate of Jacob Cleveland Wright, and Jake Wright and Theresa Gadsden, individually, by and through their undersigned attorneys, pursuant to Rule 54 of the South Carolina Rules of Court, move the Court for the costs associated with the trial of this matter.

Respectfully submitted,



Paul N. Siegel
Attorney at Law
Post Office Box 1143
Walterboro, South Carolina 29488
(843) 549-9547



Eugene P. Warr, Jr.
Lucas, Warr and White
2917 West Palmetto Street
Florence, South Carolina 29501
(843) 665-8187

ATTORNEYS FOR PLAINTIFFS

Walterboro, South Carolina
March 16, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
Jake Wright and Theresa Gadsden, as)
Personal Representatives of the Estate of)
Jacob Cleveland Wright, and Jake Wright)
and Theresa Gadsden, individually,)
Plaintiffs,)
vs.)
Colleton County Sheriff's Department,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-15-894

AFFIDAVIT OF COSTS

2012 MAR 16 PM 2:08
PATRICIA E. GRAFF
COLLETON COUNTY
COMMON PLEAS

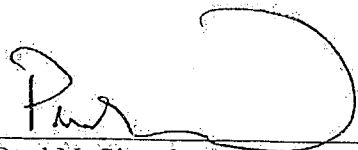
Personally appeared before me, Paul N. Siegel and Eugene P. Warr, Jr., who being duly sworn depose and state that the following costs were incurred in the trial of the above captioned case.

Colleton County Clerk of Court (filing fee)	\$ 150.00
SCDMV (accident report)	\$ 6.00
SCDPS (MAIT report)	\$ 100.00
Omni Flight (medical records)	\$ 10.00
FedEx	\$ 25.00
Colleton County Sheriff (records)	\$ 41.75
Colleton County Clerk of Court (filing fee)	\$ 150.00
Colleton County Coroner's Office (records)	\$ 79.80
Delta V Forensic Engr. (discovery)	\$ 228.00
Lowcountry Court Reporting	\$ 536.50
Depositions: Scott McCoy	
Teresa Gadsden	
Jake Wright	
Colleton County Clerk of Court (filing fee)	\$ 25.00
Duffie & Campbell (mediation)	\$ 437.50
Lowcountry Court Reporting	\$ 269.35
Deposition: Luther Green	
Postmaster (postage)	\$ 5.20
Colleton County Clerk of Court (jury list)	\$ 35.00
Delta V Forensic Engr. (discovery)	\$ 180.00
Lowcountry Court Reporting	\$ 396.00
Depositions: Sheriff Malone	
Chief Deputy Stanfield	
Mary Ferguson (reim./DMV Handbook)	\$ 5.35
Palmetto Parcels Plus (copies)	\$ 44.64

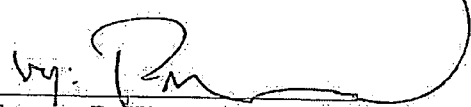
James Herndon	\$ 50.00
Process Service: Subpoena, Faith Turner	
Court Reporters, Inc.	\$ 304.90
Deposition: Martin Schussel	
Faith Turner (witness fee)	\$ 25.00
Engineering Experts, Inc. (Charges at trial)	\$ 1,200.00
Photocopies	\$ 300.00
Federal Express (Fedex charges)	\$ 300.00
Clerk of Court (filing fee for Motions)	\$ 50.00
TOTAL	\$ 4,954.99

We certify that the foregoing costs incurred in this action are true and accurate.

Respectfully submitted,



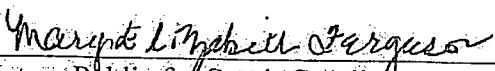
Paul N. Siegel
Attorney at Law
Post Office Box 1143
Walterboro, South Carolina 29488
(843) 549-9547



Eugene P. Warr, Jr.
Lucas, Warr and White
2917 West Palmetto Street
Florence, South Carolina 29501
(843) 665-8187

ATTORNEYS FOR PLAINTIFFS

SWORN TO and subscribed before me
this 16th day of March, 2012.


Notary Public for South Carolina
My Commission Expires: 11-04-19

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Diane Schafer Goodstein, Circuit Court Judge

Civil Action No. 2010-CP-15-00894
Appellate Case No. 2012-212865

RECEIVED
MAY 30 2013

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate
of Jacob Cleveland Wright, and Jake
Wright and Theresa Gadsden, individually Respondents

SC Court of Appeals

v.

Colleton County Sheriff's Department Appellant

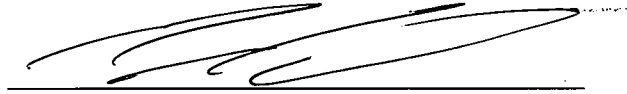
CERTIFICATE OF COUNSEL

I certify that the Brief of Appellant and Reply Brief of Appellant comply with Rule 211(b), SCACR. I also certify that the Brief of Appellant, Reply Brief of Appellant, and Record on Appeal comply with the South Carolina Supreme Court's Order dated August 13, 2007, regarding personal data identifiers and other sensitive information in appellate court filings.

[SIGNATURE PAGE FOLLOWS]

GRIFFITH, SADLER & SHARP, P.A.

By:



Marshall H. Waldron Jr.
Matthew D. Cavender
600 Monson Street
PO Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242
(843) 521-4247 (fax)
mwaldron@griffithsadlerssharp.com
mcavender@griffithsadlerssharp.com

Attorneys for the Appellant

May 10, 2013
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Diane Schafer Goodstein, Circuit Court Judge

Civil Action No. 2010-CP-15-00894
Appellate Case No. 2012-212865

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate
of Jacob Cleveland Wright, and Jake
Wright and Theresa Gadsden, individually Respondents

v.

Colleton County Sheriff's Department..... Appellant

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to
be included by any of the parties and not any other material.

[SIGNATURE PAGE FOLLOWS]

GRIFFITH, SADLER & SHARP, P.A.

By:



Marshall H. Waldron Jr.

Matthew D. Cavender

600 Monson Street

PO Drawer 570

Beaufort, SC 29901

(843) 521-4242

(843) 521-4247 (fax)

mwaldron@griffithsadlerssharp.com

mcavender@griffithsadlerssharp.com

Attorneys for the Appellant

May 3, 2013
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Diane Schafer Goodstein, Circuit Court Judge

Civil Action No. 2010-CP-15-00894
Appellate Case No. 2012-212865

RECEIVED

MAY 30 2013

SC Court of Appeals

Jake Wright and Theresa Gadsden, as
Personal Representatives of the Estate
of Jacob Cleveland Wright, and Jake
Wright and Theresa Gadsden, individually Respondents

v.

Colleton County Sheriff's Department Appellant

CERTIFICATE OF SERVICE

Marshall H. Waldron Jr.
Matthew D. Cavender
Griffith, Sadler & Sharp, P.A.
600 Monson Street
PO Drawer 570
Beaufort, SC 29901
(843) 521-4242
(843) 521-4247 (fax)
mwaldron@griffithsadlersharp.com
mcavender@griffithsadlersharp.com

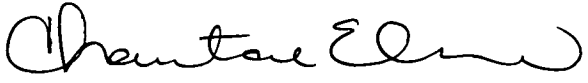
Attorneys for the Appellant

I am a legal assistant at Griffith, Sadler & Sharp, P.A., and on May 13, 2013, I placed a copy of the *Record on Appeal*, *Brief of Appellant*, *Reply Brief of Appellant*, and *Certificate of Counsel* in the US Mail, with first-class postage prepaid, and addressed as follows:

Paul N. Siegel
PO Box 1143
Walterboro, SC 29488

Eugene P. Warr Jr.
Lucas, Warr & White
PO Box 188
Lamar, SC 29069

Steven D. Murdaugh
Peters, Murdaugh, Parker, Eltzroth & Detrick, PA
PO Box 1164
Walterboro, SC 29488


Chautae Elmore