

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Civil Action No. 2008-CP-27-0529
Appellate Case No. 2012-213115

Derrick Dupont, Appellant,

v.

County of Jasper, Jasper County Sheriff's Office, Ernest Walker, Defendants,

Of Whom the Jasper County Sheriff's Office is the Respondent.

RECORD ON APPEAL

RECEIVED

SEP 30 2013

SC Court of Appeals

Fatima Alexis Zeidan
Clifford Bush, III
LAW OFFICE OF CLIFFORD BUSH III, LLC
20 Old Jericho Road
Beaufort, South Carolina 2006
(843) 379-9500
(843) 379-9550 (fax)
fzeidan@lawofficeofcbushiii.com
cbush@lawofficeofcbushiii.com
Attorneys for the Appellant

O. Edworth Lippfert, III, Marshall H. Waldron, Jr.
Matthew D. Cavender
GRIFFITH, SADLER & SHARP, P.A.
600 Monson Street
PO Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242
(843) 521-4247 (fax)
wliipfert@griffithsadlerssharp.com
mcavender@griffithsadlerssharp.com
Attorneys for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2700529

2012 SEP -5 PM 3:44

Derrick Dupont	County Of Jasper Ernest Walker	Jasper County Sheriff's Office
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff, <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	--

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

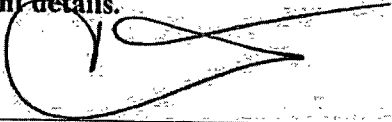
INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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



Circuit Court Judge

2142

Judge Code

9.5.12

Date

For Clerk of Court Office Use Only

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

Clifford Bush III 28 Old Jericho Rd Beaufort, SC
299064222

Marshall H. Waldron Jr. PO Drawer 570 Beaufort, SC
299010570

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Margaret Bostick

Margaret Bostick - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

DERRICK DUPONT,

Plaintiff,

v.

COUNTY OF JASPER, JASPER COUNTY
SHERIFF'S OFFICE and DEPUTY
SHERIFF ERNEST WALKER,
INDIVIDUALLY, AND IN HIS
CAPACITY AS DEPUTY SHERIFF OF
JASPER COUNTY,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 08-CP-27-223

**ORDER DISMISSING THE COMPLAINT
AGAINST THE COUNTY OF JASPER AND
ERNEST WALKER**

CLERK OF COURT
JASPER COUNTY
NOV 29 2010

TO: CLIFFORD BUSH, III, ESQUIRE AND DAVID R. MAREK, JR., ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF:

This matter came before the Court on the Defendants' Motion to Dismiss the Complaint, pursuant to Rule 12(b), SCRPC, against the County of Jasper and against Deputy Sheriff Ernest Walker. The motion was filed on November 25, 2010. David R. Marek, Jr., Esquire, represented the Plaintiff. Marshall H. Waldron, Jr. Esquire, represented the Defendants.

The Defendants' position is that the Jasper County Sheriff's Office is the proper party defendant for this lawsuit and the other Defendants must be dismissed. The Court agrees.

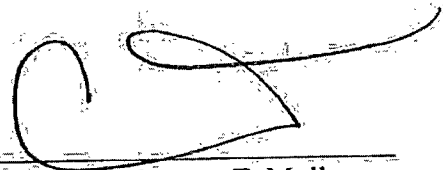
The Defendants contend that the Complaint contains no substantive allegations against the County of Jasper. Because the Plaintiff does not contest dismissal of the County, the Court grants the Defendants' motion as to that party.

The Defendants contend, next, that the South Carolina Tort Claims Act permits suit only against the entity for which the individual was working. The Court reviewed the Complaint and

the Defendants' Answer. The Defendants admitted in their Answer that at the time of the incident complained of Deputy Ernest Walker was an employee in service of the Jasper County Sheriff's Office and at all times acted as a Sheriff's deputy in relation to this case. The Court finds, therefore, that Deputy Walker was acting within the scope of his employment. S.C. Code Ann. § 15-78-70(c), states that when bringing an action against a governmental entity under the Tort Claims Act, a plaintiff "shall name as a party defendant only the agency or political subdivision for which the employee was acting." In the event that the employee is individually named, as in the instant case, Section 15-78-70(c) requires substitution of the agency or political subdivision for which the employee was acting as the party defendant. Therefore, the Complaint shall be dismissed as to the Defendant Ernest Walker.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Dismiss the Complaint is hereby granted as to the County of Jasper and as to Ernest Walker. The Jasper County Sheriff's Office will remain as the party Defendant.

AND IT IS SO ORDERED.



The Honorable Carmen T. Mullen
Presiding Judge
14th Judicial Circuit

Beaufort, South Carolina

This 14 day of June 2011

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

DERRICK DUPONT

Plaintiff(s)

vs.

COUNTY OF JASPER, JASPER COUNTY
SHERIFF'S OFFICE, ET AL.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2008-CP-27- 529

(Please Print)

Submitted By: William C. Clark, Esquire
Address: PO Box 7788, Hilton Head Island, SC 29938

SC Bar #: 1251
Telephone #: 843-842-3500
Fax #: 843-842-3291
Other:
E-mail: wcclark@hargray.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:

William C. Clark

Date:

August 20, 2008

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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

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

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

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 DERRICK DUPONT,)
)
 Plaintiff,)
)
 v.)
)
 COUNTY OF JASPER, JASPER COUNTY)
 SHERIFF'S OFFICE, and DEPUTY)
 SHERIFF ERNEST WALKER,)
 INDIVIDUALLY, AND IN HIS)
 CAPACITY AS DEPUTY SHERIFF OF)
 JASPER COUNTY,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2008-CP-27-529

SUMMONS
(Jury Trial Demanded)

APR 27 2008
 CLERK OF COURT
 COUNTY OF JASPER, SC

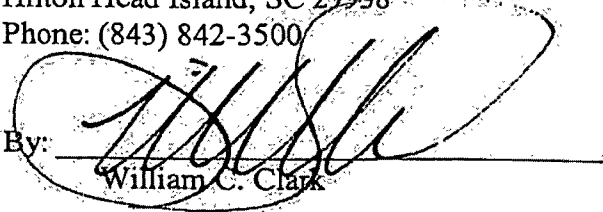
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office of Clark & Stevens, P.A., 60 Arrow Road, Post Office Box 7788, Hilton Head Island, SC 29938 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Darrell Thomas Johnson, Jr., Esquire
 LAW OFFICE OF DARRELL THOMAS JOHNSON
 Post Office Box 1125
 Hardeeville, South Carolina 29927
 (843) 784-2142

CLARK & STEVENS, P.A.
 Post Office Box 7788
 Hilton Head Island, SC 29938
 Phone: (843) 842-3500

By:



William C. Clark

ATTORNEYS FOR PLAINTIFF

April 20, 2008.

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
CASE NO. 2008 - CP - 27 - 529

DERRICK DUPONT,)
)
Plaintiff,)

v.)

COUNTY OF JASPER, JASPER COUNTY)
SHERIFF'S OFFICE, and DEPUTY)
SHERIFF ERNEST WALKER,)
INDIVIDUALLY, AND IN HIS)
CAPACITY AS DEPUTY SHERIFF OF)
JASPER COUNTY,)
)
Defendants.)

COMPLAINT
(Jury Trial Demanded)

FILED
22 APR 2008
JASPER COUNTY SC

The Plaintiff, by his undersigned attorneys, complaining of the Defendants above-named, states as follows:

1. The Plaintiff is a citizen and resident of Ridgeland, Jasper County, South Carolina 29936.
2. At all times mentioned herein, he was a citizen and resident of Jasper County and all incidents referred to herein occurred in Jasper County, South Carolina.
3. Defendant Deputy Sheriff Ernest Walker is an agent, servant and employee of Defendant County of Jasper and of Jasper County Sheriff's Office.
4. Defendant County of Jasper is a government organization providing services within the County of Jasper, State of South Carolina, and at all times relevant herein, acted by and through its agents,, servants and employees for the purpose or carrying on its business of providing services and, therefore, it is liable for the

negligent acts and omissions of its servants, agents, and employees under the theories of non-delegable duty and respondeat superior.

5. Defendant Jasper County Sheriff's Office is a government organization providing services within the County of Jasper, State of South Carolina, and at all times relevant herein, acted by and through its servants, agents, and employees for the purpose or carrying on its business of providing services and, therefore, it is liable for the negligent acts and omissions of its servants, agents, and employees under the theories of non-delegable duty and respondeat superior.
6. The Defendants are jointly and severally liable for all injuries suffered by the Plaintiff in the incidents referred to herein.
7. This Court has jurisdiction of all things referred to in this action.

FOR A FIRST CAUSE OF ACTION

9. The Plaintiff realleges each and every allegation of Paragraphs 1 through 8 of his claim as if set forth verbatim herein.
10. On February 7, 2007, Defendant Walker arrested the Plaintiff at 211 Chippa Willow Road, Jasper County, for Assault and Battery with a Deadly Weapon, Assault and Battery of a High and Aggravated Nature and Malicious Injury to Personal Property and Disobeying a Police Defendant. (See attached Exhibit A, "Jasper County Sheriff's Office Detail").
11. Defendant Walker handcuffed Plaintiff, then placed Plaintiff in the back seat of his patrol car and buckled the seatbelt around him.
12. Defendant Walker walked away from the patrol car to speak with a James Rivers who had arrived on the scene.

13. Plaintiff was calling to Defendant Walker to request that he loosen his handcuffs because they were too tight.
14. Defendant Walker then walked back to the car, opened the back door, grabbed Plaintiff by the front of his shirt and started swinging him back and forth. Defendant Walker then put one hand over Plaintiff's mouth and one hand behind the back of his neck and kept swinging him back and forth to the left and right, pulling Plaintiff's upper body out of the car by his neck screaming at Plaintiff, "Don't spit on me". Plaintiff responded that he wasn't going to spit and never did spit. This is confirmed by James Rivers who was an eyewitness to the event.
15. Plaintiff immediately felt excruciating pains in his neck. It was later determined that this assault caused a kyphae deformity of C2,3 as well as severe cervical stenosis and myelomalacia in his spinal cord. According to his treating physician, he requires a C2,3 disectomy, a very large cervical decompression fusion reconstructive operation.
16. Plaintiff has no funds with which to obtain the medical treatment needed and is unable to work until such time as he receives the treatment.
17. All charges against Plaintiff were dismissed at his preliminary hearing. (See Exhibit B).
18. As a direct and proximate result of the negligent, reckless, willful and wanton acts of each of the Defendants, jointly and severally, complained of above, Plaintiff suffered injuries, including some or all of the following:

- a. Physical injury;

- b. Out of pocket expenses;
- c. Medical expenses, including physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses and transportation expenses connected with medical treatment;
- d. Any future damages resulting from permanent injuries;
- e. Disfigurement;
- f. Mental anguish;
- g. Mental distress;
- h. Apprehension;
- i. Anxiety;
- j. Emotional injury;
- k. Pain, past, present and future;
- l. Suffering, past present and future;
- m. Loss of enjoyment of life; and
- n. Such other damages as will be shown by the evidence produced at trial.

FOR A SECOND CAUSE OF ACTION
Civil Assault

- 19. Plaintiff repeats and realleges each and every allegation of the first cause of action as fully as if set forth herein verbatim.
- 20. That the actions of the Defendants caused Plaintiff to suffer serious physical harm and permanent injury. That the actions of the Defendants constituted attempts, offers and use by force and by threatening words, by acts and deeds including offensive bodily contact upon the Plaintiff, threats, offer of injuries and serious

bodily injury and brutal beating.

21. That these actions were grossly negligent, reckless or intentional and caused a reasonable apprehension of fear and injury. That contact beating and words, acts and deeds were harmful and offensive and the Plaintiff was abused, beaten and injured by this conduct and had a reasonable belief and apprehension that offensive and harmful conduct was about to occur, was occurring and did occur.

FOR A THIRD CAUSE OF ACTION
Civil Battery

22. Plaintiff repeats and realleges each and every allegations of all causes of action contained in this Complaint as fully as if set forth herein verbatim.
23. That the Defendant Walker touched, grabbed, roughed up, and injured the Plaintiff in a rude and insolent manner, causing severe and permanent damages to the Plaintiff's neck, back and other parts of his body causing the damages and injuries set forth herein then well knowing that the Plaintiff had no means of escape. This conduct was intentional or grossly negligent and reckless and was offensive to the Plaintiff and injurious and constituted battery.

FOR A FOURTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress

24. Plaintiff repeats and realleges each and every allegation of all causes of action contained in this Complaint as fully as if set forth herein verbatim.
25. That the Defendant Walker knew or at least should have known that his conduct would cause Plaintiff severe emotional distress and serious bodily injury.
26. That the Defendant Walker's conduct was directed towards the Plaintiff and was

outrageous and intolerable in a civilized society and in the manner of a thug who is in the habit of using force to advance his personal interests.

27. That the Defendant Walker, by his actions, words and deeds, caused the Plaintiff severe distress and it was intended to and did cause severe distress. These actions were, in the alternative, grossly negligent, reckless and willful.

28. As the result of the actions of the Defendants contained in all causes of action plead in this Complaint, the Plaintiff was injured. He suffered mental and physical distress. He was embarrassed in front of the community, in front of his family members and in front of members of the public. He suffered feelings of humiliation and intimidation and extreme pain and suffering from actual physical conduct and the brutal physical treatment he experienced. He suffered reasonable apprehension and fear. He was touched in an offensive and abrupt manner, was caused to be seriously injured about his neck, back and other parts of his body, and that the Plaintiff suffered extreme anxiety and injury over the actions of the Defendants.

29. That such injuries have and will cause the Plaintiff extreme distress, pain, suffering and anxiety.

30. That as a further result, the Plaintiff will be required to spend substantial sums of money for medical treatment and will require medical treatment in the future. He has suffered mental anguish, anxiety, emotional trauma, embarrassment and humiliation, all as a result of unlawful touching, batteries, actions and deeds of the Defendants, acting for the purpose of advancing Defendant Walker's personal interests at the expense of and to the detriment of Plaintiff.

31. That such conduct is extreme and outrageous. It was reckless and grossly negligent, willful and intentional. Defendant Walker should have known that his actions would cause severe distress and that serious bodily harm would result from these actions or that some harm could have resulted.

32. The Plaintiff is informed and believes that at all times material, Defendants' actions with regard to all causes of action through fear, intimidation and violence were used to advance the Defendant Walker's interests at the expense of the Plaintiff's interests.

FOR A FIFTH CAUSE OF ACTION
Negligent Use of Excessive Force

33. Plaintiff repeats and realleges each and every allegation of all causes of action contained in this Complaint as fully as if set forth herein verbatim.

34. That the Defendant Walker was negligent, reckless, wanton, careless and grossly negligent at the time and place above mentioned in the following particulars:

- a. In making use of excessive and unreasonable force against the Plaintiff and in using words, actions and deeds in a manner that Defendant knew or should have known would cause injury to the Plaintiff;
- b. In using physical force far in excess of that necessary and in using that force against the Plaintiff when the Defendant knew or should have known that the force he was using was excessive and unreasonable under the circumstances then and there prevailing;
- c. In Defendant's failure to restrain his temper and allowing himself to reckless and negligently cause injury to the Plaintiff and bodily harm to the Plaintiff;
- d. In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing;

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff and all in violation of the statutes and laws of the United States and the State of South Carolina.

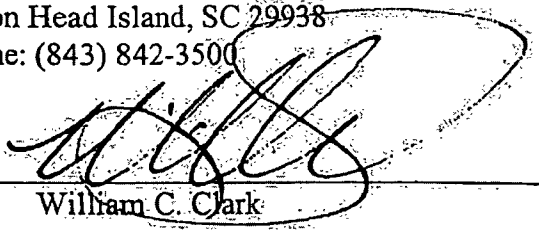
WHEREFORE, Plaintiff prays for judgment against all of the Defendants, jointly and severally, for a temporary restraining order against Defendants to prevent threats and intimidation or abuse of these legal proceedings, for actual damages, for punitive damages, for triple damages, for attorneys fees, for the costs of this action and for such other and further relief as the Court may deem just and proper.

Darrell Thomas Johnson, Jr., Esquire
LAW OFFICE OF DARRELL THOMAS JOHNSON, JR.
Post Office Box 1125
Hardeeville, South Carolina 29927
(843) 784-2142

CLARK & STEVENS, P.A.

Post Office Box 7788
Hilton Head Island, SC 29938
Phone: (843) 842-3500

By:


William C. Clark

ATTORNEYS FOR PLAINTIFF

Sept 20, 2008.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 DERRICK DUPONT,)
)
 Claimant,)
)
 v.)
)
 COUNTY OF JASPER, JASPER COUNTY)
 SHERIFF'S OFFICE, SHERIFF)
 BENJAMIN RILEY and DEPUTY)
 SHERIFF ERNEST WALKER,)
 INDIVIDUALLY, AND IN HIS)
 CAPACITY AS DEPUTY SHERIFF OF)
 JASPER COUNTY,)
)
 Defendants,)
)

VERIFIED CLAIM UNDER THE
 PROVISIONS OF SECTION 15-78-10 ET. SEQ.
 OF THE SOUTH CAROLINA CODE LAWS
 (SOUTH CAROLINA TORT CLAIMS ACT)

The undersigned Claimant, being duly sworn, proposes and says:

1. He is Derrick DuPont, whose date of birth is September 11, 1969.
2. He resides at 209 Chippa Willow Road, Ridgeland, Jasper County, South Carolina 29936.
3. At all times mentioned herein, he was a citizen and resident of Jasper County and all incidents referred to herein occurred in Jasper County, South Carolina.
4. Defendant Deputy Sheriff Ernest Walker is an agent, servant and employee of Defendant County of Jasper and of Jasper County Sheriff's Office.
5. Defendant County of Jasper is a government organization providing services within the County of Jasper, State of South Carolina, and at all times relevant herein, acted by and through its agents, servants and employees for the purpose or carrying on its business of providing services and, therefore, it is liable for the negligent acts and omissions of its servants, agents, and employees under the theories of non-delegable duty and respondeat superior.
6. Defendant Jasper County Sheriff's Office is a government organization providing services within the County of Jasper, State of South Carolina, and at all times relevant herein, acted by and through its servants, agents, and employees for the purpose or carrying on its business of providing services and, therefore, it is liable for the negligent acts and omissions of its servants, agents, and employees under the theories of non-delegable duty and respondeat superior.

7. Defendant Benjamin Riley, Jasper County Sheriff, is head of the Jasper County Sheriff's Office which is a government organization providing services within the County of Jasper, State of South Carolina, and at all times relevant herein, acted by and through its agents, servants and employees for the purpose or carrying on its business of providing services and, therefore, he is liable for the negligent acts and omissions of its servants, agents, contractors and employees under the theories of non-delegable duty and respondeat superior.
8. The Defendants are jointly and severally liable for all injuries suffered by the Claimant in the incidents referred to herein.

FOR A FIRST CAUSE OF ACTION

9. Claimant realleges each and every allegation of Paragraphs 1 through 8 of his claim as if set forth verbatim herein.
10. On February 7, 2007, Defendant Walker arrested the Claimant at 211 Chippa Willow Road, Jasper County, for Assault and Battery with a Deadly Weapon, Assault and Battery of a High and Aggravated Nature and Malicious Injury to Personal Property and Disobeying a Police Officer. (See attached Exhibit A, "Jasper County Sheriff's Office Detail").
11. Officer Walker handcuffed Mr. DuPont, then placed Mr. DuPont in the back seat of his patrol car and buckled the seatbelt around him.
12. Officer Walker walked away from the patrol car to speak with a James Rivers who had arrived on the scene.
13. Mr. DuPont was calling to Officer Walker to request that he loosen his handcuffs because they were too tight.
14. Deputy Walker then walked back to the car, opened the back door, grabbed Mr. DuPont by the front of his shirt and started swinging him back and forth. Deputy Walker then put one hand over Mr. DuPont's mouth and one hand behind the back of his neck and kept swinging him back and forth to the left and right, pulling Mr. DuPont's upper body out of the car by his neck screaming at Mr. DuPont "Don't spit on me". Mr. DuPont responded that he wasn't going to spit and never did spit. This is confirmed by James Rivers who was an eyewitness to the event (See attached Affidavit of James Rivers, Exhibit B).
15. Mr. DuPont immediately felt excruciating pains in his neck. It was later determined that this assault caused a kyphae deformity of C2,3 as well as severe cervical stenosis and myelomalacia in his spinal cord. According to his treating

physician, he requires a C2,3 discectomy, a very large cervical decompression fusion reconstructive operation. Mr. DuPont's treatment chart, medical records and bills are attached hereto as Exhibit C).

16. Mr. DuPont has no funds with which to obtain the medical treatment needed and is unable to work until such time as he receives the treatment.
17. All charges against Mr. DuPont were dismissed at his preliminary hearing. (See Exhibit D).
18. As a direct and proximate result of the negligent, reckless, willful and wanton acts of each of the Defendants, jointly and severally, complained of above, Claimant suffered injuries, including some or all of the following:
 - a. Physical injury;
 - b. Out of pocket expenses;
 - c. Medical expenses, including physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses and transportation expenses connected with medical treatment;
 - d. Any future damages resulting from permanent injuries;
 - e. Disfigurement;
 - f. Mental anguish;
 - g. Mental distress;
 - h. Apprehension;
 - i. Anxiety;
 - j. Emotional injury;
 - k. Pain, past, present and future;
 - l. Suffering, past present and future;
 - m. Loss of enjoyment of life; and
 - n. Such other damages as will be shown by the evidence produced at trial.

II. FOR A SECOND CAUSE OF ACTION

Civil Assault

19. DuPont repeats and realleges each and every allegation of the first cause of action as fully as if set forth herein verbatim.
20. That the actions of the Defendant caused Claimant to apprehend and to in fact, suffer serious physical harm and permanent injury. That the actions of the Defendant constituted attempts, offers and use by force and by threatening words, by acts and deeds including offensive bodily contact upon the Claimant, threats, offer of injuries and serious bodily injury and brutal beating.
21. That these actions were grossly negligent, reckless or intentional and caused a reasonable apprehension of fear and injury. That contact beating and words, acts and deeds were harmful and offensive and the Claimant was abused, beaten and injured by this conduct and had a reasonable belief and apprehension that offensive and harmful conduct was about to occur, was occurring and did occur.

FOR A THIRD CAUSE OF ACTION

Civil Battery

22. Claimant repeats and realleges each and every allegations of all causes of action contained in this Complaint as fully as if set forth herein verbatim.
23. That the Defendant touched, grabbed, roughed up, and injured the Claimant in a rude and insolent manner, causing severe and permanent damages to the Claimant's neck, back and other parts of his body causing the damages and injuries set forth herein then well knowing that the Claimant had no means of escape. This conduct was intentional or grossly negligent and reckless and was offensive to the Claimant and injurious and constituted battery.

FOR A FOURTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

24. Claimant repeats and realleges each and every allegation of all causes of action contained in this Complaint as fully as if set forth herein verbatim.
25. That the Defendant knew or at least should have known that his conduct would cause Claimant severe emotional distress and serious bodily injury.
26. That the Defendant's conduct was directed towards the Claimant and was outrageous and intolerable in a civilized society and in the manner of a thug who is in the habit of using force to advance his personal interests.

27. That the Defendant, by his actions, words and deeds, caused the Claimant severe distress and it was intended to and did cause severe distress. These actions were, in the alternative, grossly negligent, reckless and willful.
28. As the result of the actions of the Defendant contained in all causes of action plead in this Complaint, the Claimant was injured. He suffered mental and physical distress. He was embarrassed in front of the community, in front of his family members and in front of members of the public. He suffered feelings of humiliation and intimidation and extreme pain and suffering from actual physical conduct and the brutal physical treatment he experienced. He suffered reasonable apprehension and fear. He was touched in an offensive and abrupt manner, was caused to be seriously injured about his neck, back and other parts of his body, and that the Claimant suffered extreme anxiety and injury over the actions of the Defendant.
29. That such injuries have and will cause the Claimant extreme distress, pain, suffering and anxiety.
30. That as a further result, the Claimant will be required to spend substantial sums of money for medical treatment and will require medical treatment in the future. He has suffered mental anguish, anxiety, emotional trauma, embarrassment and humiliation, all as a result of unlawful touching, batteries, actions and deeds of the Defendants, acting for the purpose of advancing Defendant's personal interests at the expense of and to the detriment of Claimant.
31. That such conduct is extreme and outrageous. It was reckless and grossly negligent, willful and intentional. Defendant should have known that his actions would cause severe distress and that serious bodily harm would result from these actions or that some harm could have resulted.
32. The Claimant is informed and believes that at all times material, Defendant's actions with regard to all causes of action through fear, intimidation and violence were used to advance the Defendant's interests at the expense of the Claimant's interests.

**FOR A FIFTH CAUSE OF ACTION
Negligent Use of Excessive Force**

33. Claimant repeats and realleges each and every allegation of all causes of action contained in this Complaint as fully as if set forth herein verbatim.
34. That the Defendant was negligent, reckless, wanton, careless and grossly negligent at the time and place above mentioned in the following particulars:

- a. In making use of excessive and unreasonable force against the Claimant and in using words, actions and deeds in a manner that Defendant knew or should have known would cause injury to the Claimant;
- b. In using physical force far in excess of that necessary and in using that force against the Claimant when the Defendant knew or should have known that the force he was using was excessive and unreasonable under the circumstances then and there prevailing;
- c. In Defendant's failure to restrain his temper and allowing himself to reckless and negligently cause injury to the Claimant and bodily harm to the Claimant;
- d. In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing;

All of which were the direct and proximate cause of the injuries and damages suffered by the Claimant and all in violation of the statutes and laws of the United States and the State of South Carolina.

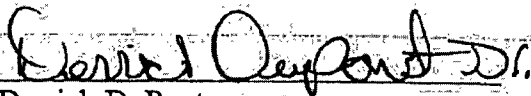
**FOR A SEVENTH CAUSE OF ACTION
42 U.S.C. 1985 Civil Rights**

- 35. Claimant repeats and realleges each and every allegation of all causes of action contained in this Complaint as fully as if set forth herein verbatim.
- 36. That the aforementioned actions of the Defendant did deprive the Claimant of a right protected by the United States Constitution and in violations of the United States Code Section 42 USC 1985 and 1983 and other provisions of that Statute. That the Defendant did deprive the Claimant, directly and indirectly, by use of force, intimidation and threat to injure him and did injure him.
- 37. That the Defendant did conspire to deprive the Claimant of the equal protection of the laws and the privileges of the United States and did injure his person and prevented him from exercising her privileges as a citizen of the United States and his freedom to assemble and to be sure in his person and his property.
- 38. That the actions of the Defendant violated the statutes of the laws of the United States and the State of South Carolina. That the Claimant was injured in his person, he was brutally beaten and such actions violate the Fourth and Fourteenth Amendments of the United States Constitution, all in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

39. That the actions of the Defendant constitute an invasion of the Claimant's right to privacy and his right to be secure in his person and things in violation of the Fourth and Fourteenth Amendments. That the brutal beating conducted upon the Claimant was a cruel and unusual punishment and that his freedom to assemble was violated, that Defendant took the police power of the United States of America and states and counties into his own hands and used brutal and excessive force to beat the Claimant.
40. That the actions of the Defendant deprives the Claimant of the equal protection of laws and privileges that he has as a citizen of the United States and the State of South Carolina.
41. That with regard to all causes of action in this Complaint, the Claimant is informed and believes that he has suffered damages and injuries, some of the injuries are permanent and he is entitled to judgment against the Defendants, jointly and severally, in a fair, just and equitable sum of money for actual damages.
42. Further, Claimant is informed and believes that he is entitled to triple damages, punitive damages, attorneys fees, costs, and actual damages in a substantial amount by virtue of the statutory violations on the part of the Defendants above mentioned and their grossly negligent and reckless conduct and in the alternative, intentional conduct and by virtue of the provisions of the statutes and laws of the United States and State of South Carolina, all in an appropriate amount.

WHEREFORE, Claimant prays for judgment against all of the Defendants, jointly and severely, for a temporary restraining order against Defendants to prevent threats and intimidation or abuse of these legal proceedings, for actual damages, for punitive damages, for triple damages, for attorneys fees, for the costs of this action and for such other and further relief as the Court may deem just and proper.

Respectfully Submitted,


Derrick DuPont

SWORN TO AND SUBSCRIBED before me this

31st day of Oct, 2007


Notary Public for South Carolina

My Commission expires 3-12-11

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

DERRICK DUPONT,

Plaintiff,

v.

COUNTY OF JASPER, JASPER COUNTY
SHERIFF'S OFFICE and DEPUTY
SHERIFF ERNEST WALKER,
INDIVIDUALLY, AND IN HIS
CAPACITY AS DEPUTY-SHERIFF OF
JASPER COUNTY,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 08-CP-27-529

ANSWER

CLERK OF COURT/RMC
JASPER COUNTY SC
-8 AM 10:21

TO: DARRELL THOMAS JOHNSON, JR., ESQUIRE and WILLIAM C. CLARK,
ESQUIRE, ATTORNEYS FOR THE PLAINTIFF.

NOW COME the Defendants, who deny each and every allegation in the Complaint
not specifically admitted, and in answer to the Complaint state as follows:

1. As to Paragraph No. 1 of the Complaint, the Defendants admit the allegations contained therein.
2. As to Paragraph No. 2 of the Complaint, the Defendants admit the allegations contained therein.
3. As to Paragraph No. 3 of the Complaint, Defendants admit that at the time of the incident complained of Ernest Walker was a deputy sheriff employed by the Jasper County Sheriff's Office; the Defendants deny each and every remaining allegation contained in Paragraph No. 3 and demand strict proof thereof.
4. As to Paragraph No. 4 of the Complaint, Defendants admit that the County of

Jasper, State of South Carolina is a government organization that provides services within the County of Jasper, State of South Carolina; the Defendants deny each and every remaining allegation contained in Paragraph No. 4 and demand strict proof thereof.

5. As to Paragraph No. 5 of the Complaint, Defendants admit that the Jasper County Sheriff's Office is a government organization that provides services within the County of Jasper, State of South Carolina; the Defendants deny each and every remaining allegation contained in Paragraph No. 5 and demand strict proof thereof.

6. As to Paragraph No. 6 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.

7. As to Paragraph No. 7 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.

ANSWER TO THE FIRST CAUSE OF ACTION

8. The Defendants present no answer to Paragraph No. 8 because the Complaint does not contain such Paragraph.

9. The Defendants repeat every response in each preceding paragraph of this Answer as though set forth verbatim herein.

10. As to Paragraph No. 10 of the Complaint, the Defendants admit the allegations contained therein.

11. As to Paragraph No. 11 of the Complaint, Defendants admit that Defendant Walker handcuffed the Plaintiff and placed him in the back seat of his patrol car; the Defendants deny each and every remaining allegation contained in Paragraph No. 11 and demand strict proof thereof.

12. As to Paragraph No. 12 of the Complaint, the Defendants admit the allegations contained therein.
13. As to Paragraph No. 13 of the Complaint, the Defendants admit the allegations contained therein.
14. As to Paragraph No. 14 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
15. As to Paragraph No. 15 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
16. As to Paragraph No. 16 of the Complaint, the Defendants are without knowledge or information sufficient to provide an answer to the allegations therein, and therefore, the Defendants deny each and every allegation therein and demand strict proof thereof.
17. As to Paragraph No. 17 of the Complaint, the Defendants admit the allegations contained therein.
18. As to Paragraph No. 18 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.

ANSWER TO THE SECOND CAUSE OF ACTION

19. The Defendants repeat and reallege all preceding paragraphs as fully and effectively as if set forth herein verbatim.
20. As to Paragraph No. 20 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
21. As to Paragraph No. 21 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.

ANSWER TO THE THIRD CAUSE OF ACTION

22. The Defendants repeat and reallege all preceding paragraphs as fully and effectively as if set forth herein verbatim.
23. As to Paragraph No. 23 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.

ANSWER TO THE FOURTH CAUSE OF ACTION

24. The Defendants repeat and reallege all preceding paragraphs as fully and effectively as if set forth herein verbatim.
25. As to Paragraph No. 25 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
26. As to Paragraph No. 26 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
27. As to Paragraph No. 27 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
28. As to Paragraph No. 28 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
29. As to Paragraph No. 29 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
30. As to Paragraph No. 30 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
31. As to Paragraph No. 31 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.
32. As to Paragraph No. 32 of the Complaint, the Defendants deny each and every

allegation contained therein and demand strict proof thereof.

ANSWER TO THE FIFTH CAUSE OF ACTION

33. The Defendants repeat and reallege all preceding paragraphs as fully and effectively as if set forth herein verbatim.

34. As to Paragraph No. 34 of the Complaint, the Defendants deny each and every allegation contained therein and demand strict proof thereof.

35. ~~The Defendants deny that the Plaintiff is entitled to the relief sought.~~

WHEREFORE, having answered the Plaintiff's allegations as stated in 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 Defendants repeat and reallege all preceding paragraphs as fully and effectively as if set forth herein verbatim.

- A. The Defendants plead 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.
- B. The Defendants would show that the Plaintiff has failed to state a claim upon which relief may be granted, and the Complaint should therefore be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.
- C. The Defendants allege that if the Plaintiff sustained any injuries or damages as set forth in his Complaint, the same were due to the acts and conduct of the Plaintiff which combined with, concurred with and exceeded any conduct on the part of the Defendants, which is specifically denied, to bring about the said injuries and

damages, if any, as the Proximate Cause therefor and without which the same would not have occurred, and therefore, bars any recovery by the Plaintiff; but if the Defendants are equally as negligent as the Plaintiff, or more negligent than the Plaintiff, which is specifically denied, the amount of recovery of damages, if any, must be reduced in proportion to the amount of the Plaintiff's negligence.

D. The Defendants would respectfully show that they have immunity from and against the within action by reason of the public duty rule.

E. The Defendants would show that at all times alleged in the Complaint they acted as a state entity performing discretionary functions and actions which could reasonably have been thought consistent with the rights of the Plaintiff, which they are alleged to have violated; the Defendants acted reasonably and in good faith and did not violate any clearly established right of the Plaintiff, and therefore, are qualifiedly immune from suit.

F. The Defendants allege that any acts which allegedly caused damages to the Plaintiff, all of which the Defendants deny, were caused by the Plaintiff and/or other known and unknown third parties and if any party should be held accountable it should be the Plaintiff, other known and unknown third parties wholly and exclusively, factually and legally.

G. The Defendant would show that punitive damages are not recoverable against a government entity and, therefore, the Defendant moves to strike any demand for punitive or exemplary damages from the Complaint.

H. The Defendant would show that triple damages are not recoverable against a government entity and, therefore, the Defendant moves to strike any demand for

punitive or exemplary damages from the Complaint.

I. The Defendants would show that the Uniform Contribution Among Tortfeasors Act is not applicable to governmental entities.

J. The Defendants would show that under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 *et seq.*, the Defendants are entitled to recover their attorneys' fees and court costs incurred in litigating this matter.

K. The Defendant would show that attorney fees are not recoverable against a government entity and, therefore, the Defendants moves to strike any demand for attorney fees from the Complaint.

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

WHEREFORE, having fully answered the Plaintiff's Complaint, 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.

Respectfully submitted,


MARSHALL H. WALDRON, JR.

P.O. Box 1674

Beaufort, South Carolina 29901

(843) 521-4242 Telephone

(843) 521-4247 Facsimile

ATTORNEY FOR THE DEFENDANTS

This 5th day of September 2008
Beaufort, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Woodward, legal assistant to Marshall H. Waldron, Jr., certify that on this 5th day of September 2008, I served a copy of Defendants' Answer upon counsel for the Plaintiff at the addresses below by depositing it in the United States Mail, with the proper postage affixed thereto:

Darrell Thomas Johnson, Jr., Esquire
Post Office Box 1125
Hardeeville, South Carolina 29927

William C. Clark, Esquire
Post Office Box 7788
Hilton Head Island, South Carolina 29938

Stephanie Woodward
Stephanie Woodward

Beaufort, South Carolina

2008 SEP -8 AM 10:21
MET BOSTICK
COURT/RMC
COUNTY SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF JASPER)	CIVIL ACTION NO.: 08-CP-27-223
)	
DERRICK DUPONT,)	
)	
Plaintiff,)	
)	
v.)	MOTION TO DISMISS THE COMPLAINT
)	AGAINST THE COUNTY OF JASPER AND
)	ERNEST WALKER
)	
COUNTY OF JASPER, JASPER COUNTY)	
SHERIFF'S OFFICE and DEPUTY)	
SHERIFF ERNEST WALKER,)	
INDIVIDUALLY, AND IN HIS)	
CAPACITY AS DEPUTY SHERIFF OF)	
JASPER COUNTY,)	
)	
Defendants.)	

**TO: WILLIAM C. CLARK, ESQUIRE, AND DARRELL THOMAS JOHNSON, JR.,
ESQUIRE ATTORNEYS FOR THE PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that Defendants will move before the presiding judge of the Court of Common Pleas for the 14th Judicial Circuit at the Jasper County Courthouse, Ridgeland, South Carolina, on the 10th day after service hereof or as soon thereafter as counsel may be heard, for an order dismissing the instant complaint against the County of Jasper and Ernest Walker, pursuant to Rules 8 and 12, SCRCF, and the South Carolina Tort Claims Act. The bases of the motion are:

1. The Complaint makes no allegation against the County of Jasper. "A pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain...(2) a short and plain statement of the facts showing that the pleader is entitled to relief...." Rule 8, SCRCF.

2. The South Carolina Tort Claims Act permits suit only against the entity for whom the individual was working.

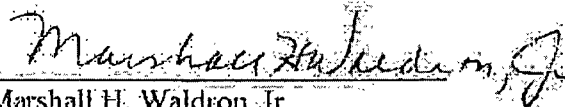
On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

S.C. Code Ann. § 15-78-70(c).

The Defendant's motion is based solely upon the pleadings. In support of the motion, the Defendants rely on the Rules of Court, South Carolina common and statutory law and any memorandum of law to be provided to the Court.

DATED at Beaufort, South Carolina, this 24th day of November 2010.

GRIFFITH, SADLER & SHARP, P.A.



Marshall H. Waldron, Jr.
600 Monson Street (29902)
Post Office Drawer 570
Beaufort, South Carolina 29901
Telephone: (843) 521-4242
Facsimile: (843) 521-4247
ATTORNEY FOR THE DEFENDANTS

Pre-Trial Motions

1 and the following is held on the record.)

2 THE COURT: All right. For those of us -- I am going
3 to look at the evidence issue about the forgery charge for
4 the one witness. Additionally, I am going to read your
5 motion in limine, Mr. Liipfert, regarding the testimony of
6 the plaintiff's expert over the lunch hour. Are there any
7 other motions that we need to take up, y'all? Or do you
8 have any motions in limine, Mr. Bush?

9 MS. ZEIDAN: We do.

10 THE COURT: All right. What are yours? And have you
11 filed paper motions or can you give them to me?

12 MS. ZEIDAN: No, Your Honor, we have not filed any
13 paper motions. It would be a motion to have the evidence of
14 the automobile accident suppressed in this case.

15 THE COURT: You mean the fact that he was involved in
16 an automobile accident?

17 MS. ZEIDAN: Yes, Your Honor.

18 MR. WALDRON: It's part and parcel of his whole
19 treatment plan and the doctor -- their own doctors testified
20 about it. I didn't ask Dr. Strohmeyer any questions. He
21 testified that he saw the accident. He testified that while
22 any injuries suffered there, they are going to recover.

23 THE COURT: Are we playing Dr. Strohmeyer's deposition
24 or is he coming live?

25 MS. ZEIDAN: We're playing Dr. Strohmeyer's deposition.

1 THE COURT: And you asked him questions about it?

2 MS. ZEIDAN: No. I didn't ask him any questions. I
3 think -- yes, we did. You know what, I apologize; we did.
4 And actually Strohmeier's answer was something to the effect
5 of the motor vehicle accident didn't exacerbate or further
6 Mr. Dupont's injury, and I think all of the actual experts
7 in this case testified to that.

8 Furthermore, besides the actual medical treatment when
9 the automobile accident happened when Mr. Dupont went to the
10 E.R., after that, no other medical attention was devoted to
11 the motor vehicle accident injury; he sustained some soft
12 tissue injury. And if you read my memorandum, it states
13 that when he went to the E.R., he was complaining of a
14 headache and some neck pain. They diagnosed him, I think,
15 with a headache and a minor MVA accident; something of that,
16 in general.

17 THE COURT: Did he complain of neck pain in the
18 emergency room?

19 MS. ZEIDAN: On that day, yes. However, he complained
20 of neck pain, but no further treatment. Dr. Strohmeier saw
21 him two days later, and it wasn't due to the motor vehicle
22 accident, it was just that he had an appointment anyway.

23 THE COURT: Okay. I mean, respectfully, I think it's
24 relevant, certainly, so if he complained of neck pain, if it
25 was completely like low back, something not related to what

1 you're claiming here, that would be one thing, but if he
2 didn't complain of neck pain as a result of that ---

3 MS. ZEIDAN: Right.

4 THE COURT: Then, that's relevant; that's coming in.
5 Anything else?

6 MS. ZEIDAN: No.

7 THE COURT: You also were going to get together about
8 the documents. I don't know how long you all need to go
9 grab something to eat, but I would like you all to resolve
10 that issue before we all meet back here. If you all would
11 be back about 2:15.

12 (1:30 p.m., whereupon, the Court is in recess in the
13 trial of this case.)

14 (2:15 p.m., Court is resumed and the following is held
15 on the record.)

16 THE COURT: Okay. Firstly, the defendant's motion to
17 admit the witness's forgery conviction that is over ten
18 years old; do I need to hear anything further on that or ---

19 MR. WALDRON: No, Your Honor.

20 THE COURT: No? Okay. Well, respectfully, I'm going
21 to deny your motion. It is outside the time limit. I know
22 there are exceptions to that under Rule 609, but in this
23 case, because it is a third-party witness, I am not going to
24 allow it. I do think the prejudice outweighs any probative
25 value in this case, so I'm not going to allow you to bring

1 back door of the patrol car and that's when he put -- him
2 and Derrick got into it.

3 Q Before you get there, where were you standing in
4 relation to all of this? I'm trying to just visualize.
5 You're beside the car?

6 A I'm right by where they put gas in, the little gas
7 hole, the nozzle, the gas tank thing; right there.

8 Q On what side?

9 A Right on the driver's side.

10 Q Okay. So what do you witness happened next?

11 A Well, after Derrick keep asking him to take him to
12 jail, Officer Walker had the car door open and he got in the
13 car with Derrick and actually put his knee in between
14 Derrick's leg and grabbed him by his chest and he slung him
15 back and forth like this (witness demonstrates what he means
16 by slung) two or three times, and then after that, that's
17 when he put his left hand behind Derrick's neck and his
18 right hand over Derrick's mouth, leaned over, and said,
19 "Don't you spit on me. Don't you spit on me." And he
20 forced him back into the back of the car.

21 Q Now, I understand your constraints from your witness
22 booth. Mr. Rivers, is it -- and I beg the Court's
23 indulgence for him to step down and show me again what he
24 saw that night.

25 (Witness steps down from witness stand.)

1 Q All right. Mr. Rivers, if you will, just walk me back
2 through everything.

3 A This is the car. Officer Walker was right here, I was
4 right by the quarter panel on the back of the car, right
5 there, and he opened up the back door. When he opened up
6 the back door, he put his knee into Derrick like this,
7 grabbed him by his chest -- wham. Wham. Wham. And he put
8 his hand behind his neck and his hand over his mouth,
9 dragged him out the car and said, "Don't you spit on me.
10 Don't you spit on me." And he forced him back into the car.
11 And I said, "Man, just take him to jail." And then after I
12 said that, he said he was taking him to jail.

13 Q Were you able to see Derrick Dupont while this was
14 happening?

15 A I seen him, yes.

16 Q And how far was Derrick out of the vehicle when you
17 witnessed the shaking?

18 A His head was pretty much touching the road pavement.

19 Q Okay. Was his hand over his mouth the entire time?

20 A Yes, ma'am.

21 Q Did you ever see Derrick Dupont spit ~~---~~

22 A No, I did not. Not at all.

23 Q Okay. You never saw any spit?

24 A No.

25 Q Did you ever see Officer Walker wipe any spit off of

1 his face or hands?

2 A No.

3 Q So after Officer Walker shuts the door what does he do?

4 A Officer Walker? He shut the back door. Then I told
5 him, I said, "Just take him to jail." Then, he said, "Yeah,
6 I'm going to take him to jail." Then, he closed the back
7 door and then he told me he'd talk to me later, and then he
8 jumped into his patrol car, and I stood right there until he
9 got to the top of the road and I saw he put his left signal
10 light on to go to Ridgeland.

11 Q All right. Mr. Rivers, I just want to make it clear.
12 Who was at that scene at the time?

13 A Me, Officer Walker, and Derrick Dupont.

14 Q Where was Officer Mitchell?

15 A He was still talking to Priscilla.

16 Q Where was he talking to Priscilla at?

17 A The incident where they arrested Derrick at.

18 Q So would that have been at Derrick's house?

19 A Yes.

20 Q How far would you say Derrick's house is from where the
21 property is you're purchasing for your sister where this
22 occurred?

23 A Give or take, I'd say 100 yards; it might be more.

24 Q Okay. So he was further down?

25 A Yes.

1 Q And where was Trooper Sommers?

2 A He was leaving; that's the State Trooper. Him and
3 Officer Walker was having a conversation as I was walking
4 down there, before I even talked to Officer Walker, him and
5 Officer Walker were talking and I called Officer Walker's
6 name; and the State Trooper, he jumped in his car and he
7 left.

8 Q So it was just you three?

9 A Yes.

10 Q No other Deputy's showed up?

11 A Nope.

12 MS. ZEIDAN: Your Honor, I have no further questions
13 for this witness.

14 Q Mr. Rivers, please answer any questions
15 opposing counsel may have.

16 A No problem.

17 CROSS-EXAMINATION

18 BY MR. LIIPFERT:

19 Q Mr. Rivers, you and the plaintiff are first cousins,
20 right?

21 A Uh-huh (affirmative).

22 Q Y'all are close family?

23 A Uh-huh (affirmative).

24 Q Is that a "yes"?

25 THE COURT: Is that a "yes" for the record, sir?

1 A Yes. Yes.

2 Q All right. Your mom was their neighbor, lives near
3 them and your mom is also his aunt right?

4 A Yes.

5 Q And you were purchasing property on Chippawillow Road
6 at the time, right?

7 A For my sister, yes.

8 Q And your sister lives on Chippawillow Road?

9 A No.

10 Q Well, you were buying property from her on Chippawillow
11 Road?

12 A Well, she owns property, but she don't have to live on
13 Chippawillow Road to own property.

14 Q Okay. You had agreed that Mr. Dupont was being
15 disorderly when he kicked the door of the cruiser, weren't
16 you? You heard booms?

17 A Yeah.

18 Q So he was being disorderly, right?

19 A At that time, yeah.

20 Q You heard him yelling and carrying on?

21 A The only thing he was saying, "Take me to jail. Take
22 me to jail."

23 Q Okay. So he's yelling, "Take me to jail. Take me
24 jail." So you heard him yelling, "Take me to jail. Take me
25 to jail"?

- 1 Q And did you grow up in Bluffton?
- 2 A Yes, ma'am.
- 3 Q Where did you attend school?
- 4 A Hilton Head High School.
- 5 Q And what year did you graduate?
- 6 A '87.
- 7 Q Where do you currently live?
- 8 A Right here in Ridgeland.
- 9 Q Where in Ridgeland?
- 10 A Chippawillow Road, 209 Chippawillow Road.
- 11 Q How long have you lived there?
- 12 A About 12 years.
- 13 Q And who do you reside there with?
- 14 A My kids.
- 15 Q And let's talk about your family. Are you married?
- 16 A Yes, ma'am.
- 17 Q And who are you married to?
- 18 A Shawna Dupont.
- 19 Q And do you have any children?
- 20 A Yes.
- 21 Q And how many children do you have?
- 22 A Eight.
- 23 Q Are you presently employed?
- 24 A No, ma'am.
- 25 Q And where were you last employed?

1 A Seascape.

2 Q Seascape?

3 A Yes, ma'am.

4 Q What type of work did you do there?

5 A Build decks, I frame it. I did anything they need me
6 to do. I put windows in.

7 Q And when were you last employed there?

8 A About '06.

9 Q Okay. And why did you leave Seascape?

10 A The job came to an end.

11 Q The job that you were working on?

12 A Yes.

13 Q Okay. Have you ever been employed by any other
14 companies?

15 A Yes.

16 Q Where have you been employed previously?

17 A When I first got out of high school, I did some brick
18 mason. I worked at Commodore's Restaurant, did some
19 carpenter work with my father. Worked at Pyle Construction,
20 Wayne Grey Construction, things like that.

21 Q Okay. So you've done a lot of construction work in
22 your past?

23 A Yes, ma'am.

24 Q Mr. Dupont, I want to take you back to February 7th,
25 2007. Do you recall this date?

1 A Yes, ma'am, I do.

2 Q And do you remember what day of the week it was?

3 A Wednesday?

4 Q Okay. And take me to that day, February 7th, 2007,
5 from when you woke up that morning; tell me what you did.

6 A Okay. When I woke up that morning, I had to go to
7 Beaufort. I had a roll call in Beaufort. Left Beaufort
8 about 2:00, 2:30, in that area. Came back to the house.

9 Q Okay. So what time do you guess you came back home?

10 A Three-ish, 3:30.

11 Q Okay. Walk me through what happens once you get home.

12 A When I got home, my daughter came to me and said that
13 Willie Newton and Robbie Mack was asking them if they would
14 like to have sex with them.

15 Q And which daughter was this?

16 A Priscilla Dupont and Alicia Dupont.

17 Q Okay. And where were these people asking them to have
18 sex at? When did this occur?

19 A They was riding a motorbike and a four-wheeler, a
20 scooter, I think.

21 Q And where were they riding these?

22 A Up and down the road, on Chippawillow Road.

23 Q Okay. Gotcha. So after your daughter told you that,
24 what happened?

25 A She was explaining to me what was going on of Willie

1 Newton riding by and he slowed down and looked and noticed
2 that I was in the yard, and he'd speed up. Then, Robert
3 Mack came a few minutes behind, and then I kind of trot to
4 the road to the head of my driveway, and then I look down
5 the road and I didn't see no one but Robert Mack. It looked
6 like the chain had come off of the bike that he was riding.
7 So I, kind of, jogged down there to him.

8 Q And what happened from that point?

9 A Then, I went up to him and told him if y'all continue
10 to bother my kids, I'm going to box you in the mouth.

11 Q And what happened after that?

12 A Then I turned around to walk to come back to my house.
13 My wife was coming down the road in her van and then she --
14 then Robert Mack pulls out a bunch of money and he says it's
15 five stacks, and he says he going to have me killed.

16 Q Okay. So your wife was coming down the road, what
17 happened at that point?

18 A My wife pull up to me, he said that; I turned around
19 and was going back toward him. My wife got out the van and
20 forced me in the van. Then, we got in the van and then we
21 left.

22 Q Okay. Did you know Robert Mack before that day?

23 A He stayed on the same road I did.

24 Q Okay. And did you know Willie Newton before that day?

25 A Yes, I did.

1 They refused to give me a warrant at first, so I had to go
2 to Judge Lynah to get them to put a warrant on him.
3 Finally, about maybe five months later, they put a warrant
4 on him. And then after they put the warrant on him, they
5 went to Court and we had a hearing, find him guilty, told
6 him don't make no kind of contact with my kids.

7 Q Okay. So you originally told Jasper County Sheriff's
8 Office?

9 A Yes, ma'am.

10 Q And at the court hearing, you were informed that he was
11 to have no contact with your kids; is that correct?

12 A Yes, ma'am.

13 Q Okay. Mr. Dupont, I want to take you back to February
14 7th, 2007, the day of the incident. So your daughters have
15 just told you that the man who was sexually abusing them was
16 out front trying to get them to have sex with him?

17 A Yes, ma'am.

18 Q All right. After your wife put you back in the van,
19 what did you do?

20 A We went to pick up a check from RSI, my daughter's
21 check from RSI, because she used to work on weekends.

22 Q And what is RSI?

23 A It's a laundromat.

24 Q And where is that located?

25 A In Bluffton.

1 Q So you drove to Bluffton?

2 A Yes, ma'am.

3 Q And upon picking up that check, did you return home?

4 A No, ma'am. We stopped by my mother's house and then I
5 stopped by the Dollar General.

6 Q Okay. So how long was it before you ended up making it
7 back to your house?

8 A About 45 minutes.

9 Q And what did you see when you got home?

10 A Upon turning on Chippawillow Road, I saw a trooper's
11 car and two Jasper County Sheriff's Cars.

12 Q And where were these troopers and deputies cars
13 located?

14 A Up to the head of the road.

15 Q And did you see any police?

16 A Yes, I saw three officers.

17 Q And what were they doing?

18 A They was in a little huddle talking to Willie Newton
19 and Robert Mack.

20 Q All right. And did you stop for the police?

21 A No. We was approaching them and one officer came --
22 Officer Walker came out and made a gesture, like slow down,
23 so my wife slowed down and then he walked back toward the
24 three officers and Robert Mack and Willie Newton. Then, my
25 wife slowly drove off and I looked back and I noticed that

1 they were getting in their patrol car, so I asked my wife to
2 let me out.

3 Q Okay. And then walk me through what happens next. You
4 get out of the vehicle?

5 A Yes, ma'am. I get out of the vehicle. The officers
6 came down the road.

7 Q Which officers?

8 A All three officers, Sommers, Mitchell and Officer
9 Walker.

10 Q Okay. Continue.

11 A They came down the road and asked me what was going on.
12 I told them I didn't know what was going on down the road
13 right there, but I had a court order for Willie Newton to
14 stay away from my kids. Mr. Walker said, "You know what's
15 going on. You know what's going on. You ran over them." I
16 said, "I didn't run over nobody."

17 Q And now, let me just see, were you driving at all that
18 day?

19 A No, ma'am.

20 Q Were you driving a white van at all that day?

21 A No, ma'am.

22 Q Okay. So after you were accused of this, take me
23 through what happens next.

24 A Trooper Sommers and Mitchell asked to see the van. So
25 they went to inspect the van, they walked around the van.

1 Officer Walker was on the highway talking on the cell phone.
2 After they walked around the van, they didn't say that the
3 van was involved in any accident or anything, and then Mr.
4 Walker came off the highway and walked up in my face and
5 said, "I'm going to put you under arrest."

6 Q And so what did he do at that point, after walking up
7 out of the road and telling you he was going to put you
8 under arrest?

9 A He told me to put my hands on top of the hood and he
10 put the handcuffs on.

11 Q Okay. So he just walked directly out of the street and
12 came and said, "I'm going to put you under arrest"?

13 A Yes, ma'am.

14 Q At that point, what was your understanding that you
15 were being arrested for; were you told?

16 A Attempted murder. He told me attempted murder.

17 Q Who told you that?

18 A Officer Walker.

19 Q All right. So after they place the handcuffs on you,
20 what do they do?

21 A They stuck me in the back of the patrol car; Officer
22 Walker stuck me in the back of his patrol car.

23 Q Walk me through the steps. What happens after you're
24 placed in the back of the control car?

25 A I noticed that Officer Walker shut the door, he walked

1 back and talked to Trooper Sommers and Officer Mitchell,
2 then Trooper Sommers got in his vehicle; and then Trooper
3 Sommers drove down the road and the officer came down in his
4 vehicle and drove right behind him, Officer Walker.

5 Q So Officer Walker drove behind Trooper Sommers?

6 A Yes.

7 Q With you in the back seat?

8 A Yes, ma'am.

9 Q And where did y'all go?

10 A Up to the head of the road, right where the area is
11 when you first turn in and I noticed that all the officers
12 and Willie Newton and Robert Mack were.

13 Q Okay. And now walk me through what happens once you
14 get to the head of the road; do you guys stop?

15 A Yes, we stopped. Officer Walker got out of the
16 vehicle. I asked him before he had got out, I asked if he'd
17 adjust my handcuffs, he told me to "Shut the fuck up." So
18 he shut the door and went to talk to talk to Trooper
19 Sommers, turned back, and was coming back towards the
20 vehicle. He opened the door. Once again I asked him, "Can
21 you adjust these handcuffs?" He said, "Shut the fuck up,"
22 and again, he shut the door, and that's when I noticed Mr.
23 Rivers was walking down the road.

24 Q Okay. When Mr. Rivers walked up, were there any other
25 officers at that point?

1 A No, ma'am.

2 Q So who was at the scene at this point and time?

3 A Officer Walker, myself, and Rivers.

4 Q Where did Trooper Sommers go?

5 A He left.

6 Q In his vehicle?

7 A Yes, ma'am.

8 Q Okay. So now walk me through what happens when it's
9 just you, Walker, and James Rivers?

10 A He was there maybe about 15 or 20 minutes, they was
11 talking, so I asked him, "Can you come and take me to jail,
12 because these handcuffs are hurting my wrist."

13 Q So, Mr. Dupont, when you say they were talking, who is
14 they?

15 A Rivers and Walker.

16 Q So they were having a conversation outside of the car?

17 A Yes, ma'am.

18 Q Okay. Continue.

19 A Then he looked down, but he didn't say nothing, so I
20 kicked the car door. I kicked the car door twice. That's
21 when he opened the car door, reached around and put the seat
22 belt on me, and then he grabbed me by my neck.

23 Q All right.

24 A He clawed my face and then he took me by the hand and
25 grabbed me by the neck and snatched me out the vehicle and

1 start shaking me.

2 Q So he got in the vehicle; walk me through those steps
3 one more time, and put the seat belt on you?

4 A Yes, ma'am. He opened the vehicle door, the back
5 door, reached in, put the seat belt on me, then he reached
6 in and clawed me by my face with his left hand, and his
7 right hand clawed me behind my neck and then snatched me out
8 the vehicle and started shaking me.

9 Q Was he saying anything while this was happening?

10 A Well, I don't know because I closed my eyes, because I
11 was in a lot of pain immediately. When he snatched me, I
12 could feel every bone in the back of my back start cracking.

13 Q How far did he pull you out of the car?

14 A When I opened my eyes at one point, I could see the
15 very top of the patrol car, the lights, and I closed my eyes
16 after he continued to shake me and I remember him tossing me
17 back in the car and I was leaning sideways, like this, and I
18 noticed that he got in the car and when he started driving
19 off, I sat up and I asked him, "How could assault me in
20 front of a potential witness?"

21 Q And what was his response to that?

22 A "Who, James? He's married into the family."

23 Q That's what who told you?

24 A Officer Walker did.

25 Q Okay. So when the assault and the battery is taking

1 place, is it your testimony that he had both hands around
2 your neck?

3 A Yes, ma'am.

4 Q Okay. So he throws you back in the car and takes off;
5 and go from there.

6 A He stopped at the stop sign and that's when I asked him
7 about how could he assault me in front of a potential
8 witness right there, and he mentioned that he was married
9 into the family; and I said, "What family? My family? You
10 married into my family? Who would marry you?" And he told
11 me, "Shut the fuck up before I take you down my dirt road
12 and whip your ass."

13 Q At that point, were you in fear of Deputy Walker?

14 A Yes, ma'am.

15 Q All right. So you're riding down and he tells you to
16 hush before he takes you down the road and something else
17 happens to you, and then what happens?

18 A We pull in to the jailhouse -- well, we went into the
19 back area, the booking area, and then he went with Deputy
20 Gamble, I think his name was. Deputy Gamble asked him where
21 the ticket that you would write up on him and he went into
22 the Sheriff's Office area, came back maybe 30 or 40 minutes
23 later, Gamble asked him again, "Where's the ticket?" He
24 went out to his patrol car, came back in, Gamble asked him
25 again. Gamble said, "I can't book him in unless you give

1 him a ticket." He said, "I'll go get a ticket." He went
2 back into the Sheriff's Office and stayed for another few
3 minutes. In between that time, I asked Mr. Gamble, "Can I
4 see the nurse?" He told me, "No, I couldn't, not until I
5 get booked in." Then, he came back with a ticket.

6 Q Okay. So you asked to see a nurse once you first got
7 to the detention center?

8 A Yes, ma'am.

9 Q Did you ever get to see a nurse that night?

10 A I saw a nurse later on that night.

11 Q Later on that night? And what did you tell her?

12 A I told her that the officer assaulted me.

13 Q What, if anything, was done at that point?

14 A She wrote down what I told her and gave me a Motrin and
15 they put me back in the holding cell.

16 Q Okay. Did you ever request to see the nurse again?

17 A Yes. I requested to see the nurse, but it was like,
18 maybe, seven or eight days later.

19 Q Okay. Had you been asking for a nurse before you ---

20 A Well, I didn't know that you had to write up -- because
21 that was my first time in Jasper County Jail, I didn't know
22 that you had to write an inmate slip to see the nurse, a
23 sick slip. So when I finally found out that, I wrote the
24 inmate slip to see the nurse, and a day later -- I wrote
25 that to them and the next morning I went to see the nurse.

1 Q Okay. Mr. Dupont, I want to show you something. May I
2 approach the witness, Your Honor?

3 THE COURT: You may.

4 MS. ZEIDAN: Mr. Dupont, I want to show you what's been
5 marked as Plaintiff's Exhibit Number One; do you recognize
6 that document, Mr. Dupont?

7 A Yes, ma'am.

8 Q Is that your handwriting on that document?

9 A Yes, ma'am.

10 Q Can you tell me what that document is?

11 A That's the document, the slip, I wrote the nurse that I
12 needed to see her because I had a lot of pain.

13 Q What's the title of that document?

14 A It's a inmate sick call slip.

15 Q What's the date on that document?

16 A 02-18-2007.

17 Q Thank you, Mr. Dupont. So were you able to see the
18 nurse after this?

19 A Yes. I saw the nurse the next morning.

20 Q And tell me what was the result of that visit with the
21 nurse?

22 A She gave me the Motrin. She gave me a TB shot and told
23 me not to rub the TB shot, that it would bubble up.

24 Q Did you have any more medical treatment after that?

25 A No, ma'am. I took a shower and I rubbed the TB shot on

1 purpose.

2 Q Why did you rub the TB shot on purpose?

3 A Because I was hurting; I needed to see a doctor.

4 Q So you did it on purpose so you could see a doctor?

5 A Yes, ma'am.

6 Q And what happened?

7 A Well, they took me to Coastal Hospital in Hardeeville
8 and I saw a doctor for my chest, because they say since the
9 TB was swelled up, they took a chest x-ray. I told the
10 doctor what happened to me and he said there was nothing he
11 could do about it.

12 MR. LIIPFERT: Objection, Your Honor. That's hearsay
13 about what his doctor told him.

14 THE COURT: Okay.

15 MS. ZEIDAN: Again, sir, you can't say what someone
16 else said; you can just say what you know or what your
17 problems were.

18 A Okay.

19 Q So at that visit, did you tell the doctor about your
20 back?

21 A Yes, ma'am, I did.

22 Q Were you treated for the back?

23 A No, ma'am.

24 Q Or neck injuries?

25 A No, ma'am.

1 Q Why not?

2 A Because it wasn't wrote up in the slip when I went to
3 the doctor.

4 Q Okay. So after that visit in the ER, where did they
5 take you?

6 A Back to the jailhouse.

7 Q Why you were in jail were you on any work detail?

8 A No, ma'am.

9 Q When were you released from jail?

10 A I was released March of -- I can't remember the date
11 exactly, but it was in March.

12 Q Okay. I'm going to take you back to one more question
13 about that work detail. Why couldn't you do any work
14 detail? You were in there for a month.

15 A I was hurting. I was laying down and getting aspirin.

16 Q Okay. So you were released in March; is that your
17 testimony?

18 A Yes, ma'am.

19 Q Was it early March, late March?

20 A It was early part of March.

21 Q When did you seek medical attention after being
22 released?

23 A I got released that night and I went to the emergency
24 room early the next morning.

25 Q Which emergency room?

1 A The Beaufort Memorial Hospital.

2 Q What happened at Beaufort Memorial Hospital?

3 A They took an MRI on my lower back and my neck.

4 Q I'm sorry. What did you complain of at Beaufort
5 Memorial Hospital?

6 A I was having a lot of neck and back pain.

7 Q As a result of that visit at Beaufort Memorial
8 Hospital, were you referred to any other doctors?

9 A Yes, I was.

10 Q Who were you referred to?

11 A Dr. Strohmeyer.

12 Q Had you ever seen Dr. Strohmeyer before?

13 A No, ma'am.

14 Q What were you there to see Dr. Strohmeyer about?

15 A I was having a lot of pain in my back, so they
16 recommended me to go see a follow-up visit to Dr.
17 Strohmeyer.

18 Q Did Dr. Strohmeyer treat you for any other body part
19 besides your back?

20 A My neck.

21 Q Okay. Did you tell Dr. Strohmeyer about the incident
22 with Jasper County Sheriff's Office?

23 A Yes, ma'am, I did.

24 Q Did you follow up with Dr. Strohmeyer after that
25 initial incident?

1 A Yes, ma'am.

2 Q After that initial visit? I'm sorry, I might be a
3 little confusing. So the hospital referred you to Dr.
4 Strohmeier, correct?

5 A Yes, ma'am.

6 Q As a result of that meeting with Dr. Strohmeier, did
7 he send you anywhere for anything else?

8 A Yes, ma'am. He sent me to Charleston, at first, to a
9 Dr. Jackson. Dr. Jackson told me that ---

10 MR. LIIPFERT: Objection, Your Honor. He's testifying
11 on what the doctor told him again.

12 THE COURT: That's right. Again, sir, you can't say
13 what someone told you. You can just say what you understand
14 and know to be your problem or your complaints. All right?

15 Q Okay. Let's go back to the first visit with Dr.
16 Strohmeier, when you told him about your back and neck pain.

17 A Okay.

18 MR. WALDRON: Objection, Your Honor. I think his
19 testimony is that he went to see Dr. Strohmeier. He said he
20 told him about his back pain.

21 MS. ZEIDAN: No, I believe he said he ---

22 THE COURT: Okay. Let's just back up and just ask him
23 the question again, so we know what he said. Okay?

24 Q Mr. Dupont, what did you originally tell Dr. Strohmeier
25 that your complaint was?

1 A I was having a lot of pain in my neck and my back.

2 Q Okay. Did Dr. Strohmeier take any x-rays?

3 A Yes. He sent me back to Beaufort Memorial Hospital to
4 get an MRI done for my neck and my lower back.

5 Q Okay. Did you ever follow-up with Dr. Strohmeier
6 after that MRI and those x-rays?

7 A Yes, I did.

8 Q As a result of that follow up visit, was the next
9 course of action any further treatment?

10 A He told me that I had to have surgery, if I didn't have
11 the surgery, I would be paralyzed.

12 Q What kind of surgery; do you remember?

13 A C2, C3. He said it was a very dangerous surgery.

14 Q So you understood that you had to have surgery on what
15 body part?

16 A My neck.

17 Q Okay. Did you ultimately have surgery on your neck?

18 A Yes. He recommended me to go to a Dr. Chutkan in
19 Augusta and I went out there.

20 Q So, Dr. Strohmeier did do the surgery?

21 A No. He said Beaufort County didn't have the ---

22 MR. WALDRON: Objection, Your Honor.

23 Q Well, why ---

24 MS. ZEIDAN: I apologize.

25 Q Well, why could you not have the surgery here with Dr.

1 Strohmeier?

2 A Beaufort didn't have the equipment to do the surgery.

3 Q When did you ultimately have the surgery?

4 A April 1st.

5 Q And where did you have the surgery?

6 A In Augusta, MCG.

7 Q Are you referring to the Medical College of Georgia in
8 Augusta?

9 A Yes, ma'am.

10 Q Okay. On what body part did you have the surgery?

11 A On my neck.

12 Q To date, have you been released to go back to work?

13 A No, ma'am, I haven't.

14 Q Okay. Mr. Dupont, as a result of these medical visits
15 that you had to go to, have you received any medical bills?

16 A Yes, ma'am, I have.

17 Q Where did you receive medical bills from?

18 A I received from Beaufort Memorial Hospital, Dr.
19 Strohmeier, MCG, and Dr. Chutkans (sic):

20 Q Okay. I'd like to have these exhibits marked. Mr.
21 Dupont, do you recognize that document?

22 A Yes, ma'am.

23 Q What is that document?

24 A It's a lower lumbar spine, an MRI.

25 Q Okay. Whose name is on that document?

1 A I have it.

2 Q Okay. Can you give me a total of all of the bills you
3 received from MCG?

4 A Yes, ma'am. \$67,778.00.

5 Q Can you give me an approximate total of all the medical
6 bills you received due to the injury your received from
7 Deputy Ernest Walker on February 7th, 2007?

8 A Yes, ma'am. \$104,029.69.

9 Q And all of those medical bills are related to the
10 incident that happened on February 7, 2007?

11 A Yes, ma'am.

12 Q The incident with Sheriff Deputy Ernest Walker?

13 A Yes, ma'am.

14 MR. LIIPFERT: Objection. These are leading questions.

15 Q Mr. Dupont, I'm going to turn your attention to another
16 matter. Were you involved in a car accident?

17 A Yes, ma'am. I was.

18 Q Can you tell me when that car accident occurred?

19 A Perhaps in April of 2007.

20 Q Can you tell me about that car accident?

21 A Yes. My wife and I and my son were taking my son to
22 see his daughter. A car pulled out in front of us and we t-
23 boned them to the side.

24 Q All right. Can you characterize the accident for me?

25 A Pain-wise, level-wise ---

1 Q Impact-wise. How was it?

2 A Well, we slowed down. We hit the car pretty good, but
3 she slowed down enough that no one in the car got hurt.

4 Q All right. Well did you suffer any injuries as a
5 result of that accident?

6 A I was having headaches.

7 Q Did you seek any medical treatment?

8 A I went to the emergency room.

9 Q Can you tell me what happened when you went to the
10 emergency room?

11 A Yes. I went to the emergency room and told the doctor
12 there, she recognized me because I was just there a few
13 months ago.

14 Q What were you there a few months ago for?

15 A The injury that I received from the officer.

16 Q Okay. Continue.

17 A She asked me what's happening now and I said, "Well, I
18

19 Q What did you tell her?

20 A I told her that I was just in a car accident and I had
21 a slight headache and stuff.

22 Q All right. Did you tell her about any other pain that
23 you were having?

24 A Not that I can recall at this time.

25 Q Okay. Were there any witnesses to this car accident?

1 A Dr. Strohmeyer. He said he was at the traffic light.

2 Q So Dr. Strohmeyer that was already treating you for
3 your neck injury regarding Mr. Walker?

4 A Yes, ma'am.

5 Q Okay. After that initial emergency room visit for the
6 car accident, did you receive any further treatment for
7 injuries related to the car accident?

8 A Not that I can recall.

9 Q All right. Forgive me, I may have asked you this
10 already, but as a result of the injury with Deputy Walker,
11 have you been released to go back to work?

12 A No, ma'am.

13 Q I want to talk about work for a second. Do you plan
14 on going back to work?

15 A Hopefully.

16 Q What type of work would you like to do?

17 A I was doing carpentry work for such a long time, the
18 only thing I really know is carpentry work.

19 Q Are you in the military?

20 A No, ma'am.

21 Q And you said you graduated from high school in what
22 year?

23 A 1987.

24 Q All right. Can you just walk me through your various
25 employers since high school?

1 when I got to work I stepped on the walk board and I fell
2 backwards off the roof of the ceiling area on to bricks,
3 hurting my lower back, my lower hip area.

4 Q Can you tell me around what year this accident
5 occurred?

6 A Early 90's.

7 Q Okay. Just so you can -- Your Honor, I would like to
8 ask the witness to step down for a second.

9 THE COURT: Go ahead and step down.

10 MS. ZEIDAN: Could you come show me exactly where what
11 body part you injured during the fall at Wayne Gray
12 Construction.

13 A Right around here, the lower back and hip area.

14 Q And while you're standing there, can you show me the
15 body part that was injured in the incident with Deputy
16 Sheriff Walker.

17 A Right here. C2/C3 the highest point of your neck.

18 Q What is that that you were pointing to?

19 A This is the scar that they had to go into to get to my
20 highest point.

21 Q Is that a permanent scar?

22 A Yes, ma'am. It is.

23 Q You can have a seat, Mr. Dupont. After the fall in
24 1992 at Wayne Gray Construction, did you recover from that
25 incident?

1 that was also to take pressure off your spinal cord, wasn't
2 it?

3 A No. It was a way different surgery.

4 Q One was to your low back and one was to your neck.
5 They were both to take pressure off your spinal cord,
6 weren't they?

7 A Yes.

8 Q All right. So you've known since the early 90's that
9 you had a narrow spinal column that put pressure on your
10 spinal cord, haven't you?

11 A No.

12 Q Okay. Yesterday, your father testified that you came
13 back to regular duty immediately after that.

14 A He was wrong.

15 Q You actually came back to light duty, right?

16 A Right.

17 Q So his testimony was wrong on that issue, wasn't it?

18 A At that time.

19 Q Yesterday being that time?

20 A Yes.

21 Q Okay. On the date of the accident, you went to roll
22 call; is that what you had said you had done that morning?

23 A I went to Beaufort, yes.

24 Q For roll call?

25 A Yes.

1 Q Roll call is where criminal defendants have to go to?

2 MS. ZEIDAN: Objection, Your Honor. Relevancy.

3 THE COURT: Overruled.

4 Q What's roll call?

5 A It's where you're in front of a judge, roll call.

6 Q Okay. Why were you at roll call?

7 A Why was I at roll call?

8 Q Yeah.

9 A I had a charge against me.

10 Q Okay. So you were being charged with a crime?

11 A Attempt to distribute.

12 Q Distribute?

13 A Crack cocaine.

14 Q Okay. And so you'd had some incidents with the police
15 before?

16 A Once or twice.

17 Q All right. When you got home and your daughter told
18 you what had happened in this incident you were angry,
19 weren't you?

20 A I was upset. Yes I was.

21 Q And Mr. Newton had just gotten out of jail about a week
22 before?

23 A About two days.

24 Q Two days before this. You were angry when he was out
25 of jail, weren't you?

1 A I might have mentioned, "Take me to jail," but I didn't
2 think I was hollering. I was in the car with the windows
3 rolled up.

4 Q Okay. Do you recall in your deposition saying you were
5 hollering?

6 A Like I said, I don't remember everything I said.

7 Q All right. Let me show you page 85. Right here, it
8 says, lines 16 and 17; I'll read it and you just tell me if
9 I read it right.

10 A Okay.

11 Q "And I asked him again, and I hollered through," the
12 windows and everything else were up, and I hollered and I
13 said, "Man, can you adjust these handcuffs or take me to
14 jail?" See, you did holler.

15 A Yes.

16 Q All right. Did you kick the door?

17 A Yes.

18 Q You're kicking the far door?

19 A I don't remember.

20 Q You don't remember which door you were kicking?

21 A No.

22 Q And then Officer Walker opened the door and belted you
23 in, right?

24 A Yes.

25 Q Then he shook you?

1 A Yes.

2 Q You also wrote, "My back was hurting from the time I
3 come in here," right?

4 A Yes.

5 Q And you wrote this, right?

6 A Yes.

7 Q You didn't put neck in here anywhere, did you?

8 A No, I didn't.

9 Q And she gave you some Tylenol ---

10 A She gave me some Motrin.

11 Q You stayed for about three days in a holding cell?

12 A Yes.

13 Q During that time, you were constantly trying to tell
14 the nurse about your back pain, right?

15 A Yes.

16 Q And then you were put in the general population?

17 A Yes.

18 Q That's when you filled out that slip that talks about
19 your back pain, right?

20 A Yes.

21 Q You felt like you had back pain the whole time you were
22 in the detention center, right?

23 A Yes.

24 Q Two months after you got out of the detention center,
25 you were in this car accident, right -- two months after the

1 incident -- the car accident was April 9th, 2007, right?

2 A Right.

3 Q You were a front seat passenger in that accident?

4 A I was in a truck.

5 Q You already described that accident. Your wife t-boned
6 another car?

7 A Yes, sir.

8 Q It was a pretty good hit?

9 A Yes, sir.

10 Q All right. You went to the emergency room for that
11 accident, right?

12 A Yes, sir.

13 Q Now, while you were in the emergency room, you
14 complained of neck pain, didn't you?

15 A I can't recall what I complained about.

16 Q If I showed you the nurse's note from that accident,
17 would that help you refresh your recollection about what you
18 said?

19 A Yes, sir.

20 Q (Retrieves note from file.) That's from April 9th,
21 2007, right?

22 A Yes.

23 Q That's your name on the top of it?

24 A Yes.

25 Q The complaint listed on there was "Complaint of pain in

1 neck and shoulders, as well as continued pain in back,"
2 isn't it?

3 A Pain in neck and shoulders, as well as continued pain,
4 yes, sir.

5 MR. BUSH: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. BUSH: Hearsay. He's asking him what he wouldn't
8 know, but the nurse would.

9 MR. LIIPFERT: I asked him if it would refresh his
10 recollection; he said it would. I showed him what he
11 reported to the nurse -- that's what he told the nurse,
12 isn't it?

13 THE COURT: He can ask him the question, then.

14 Q That's what you told the nurse, isn't it?

15 A Yes.

16 Q All right. So you told her you had pain in your neck
17 and shoulders, and then continued pain in your back. So the
18 back pain was continuing, but the neck and shoulder pain
19 appeared to be related to the car accident, right?

20 A I already had pain in my lower back. I guess when we
21 hit the car, it might have shocked me.

22 Q Right. And you also reported a past medical history or
23 chronic back pain to the nurse, do you see that?

24 A Yes.

25 Q So you agree that you told the nurse that you were

1 having chronic pain before the car accident happened, right?

2 A Yes.

3 Q Again, you didn't say you were having neck pain before
4 the car accident, were you?

5 A I can't recall.

6 Q On that day, you actually underwent a CT scan at the
7 emergency room that day for your neck; is that right?

8 A Yes.

9 Q That was for the pain in your neck from the car
10 accident, right?

11 A Well, I was in there previously complaining about my
12 neck and back, so they just ran the test, I guess.

13 Q Okay. If I were to show you that record and what you
14 were complaining about, would that refresh your recollection
15 about why they ran that test?

16 A It could.

17 Q All right. That's the CT scan from the same date as
18 the car accident, right?

19 A Yes.

20 Q In that CT scan, you reported neck pain after motor
21 vehicle accident, right?

22 A Yes.

23 Q So you're complaining of neck pain after the motor
24 vehicle accident when they did that CT scan, right?

25 A Yes.

1 Q All right. And you saw Dr. Strohmeyer for pain related
2 to the car accident, didn't you?

3 A I had a follow-up visit. They told me to go to a
4 follow-up visit with Dr. Strohmeyer.

5 Q He sent you on to physical therapy as a result of that
6 car accident; didn't he?

7 A He was about to send me to physical therapy; I just
8 happened to have been in a car accident.

9 Q So he was about to send you to physical therapy
10 beforehand, anyway?

11 A Yes.

12 Q Let me show you, this is marked as Exhibit Five, it's
13 the plaintiff's deposition of Dr. Strohmeyer, and it's for
14 use at trial. In that record, that was 4-11-2007, right?

15 A Yes, sir.

16 Q That's two days after this car wreck, right?

17 A Yes, sir.

18 Q And in that record, it says he's going to go ahead and
19 have you start some physical therapy, right?

20 MS. ZEIDAN: Objection, Your Honor.

21 MR. LIIPFERT: Your Honor, they've done moved it into
22 evidence in the deposition.

23 MS. ZEIDAN: But opposing counsel is mischaracterizing
24 the evidence.

25 THE COURT: Okay. Let's not read it; just ask him if

1 he remembers it. If he's using it to refresh his
2 recollection, he either remembers it or he doesn't, and he
3 can use that to refresh it, but you don't need to be reading
4 from it.

5 MR. LIIPFERT: Okay.

6 Q Does that refresh your recollection about when you got
7 physical therapy ordered?

8 A Yes, I remember, now.

9 Q And it was actually after the car accident, right?

10 A Yes.

11 Q At that time, you reported to Dr. Strohmeyer that your
12 neck and lower back were killing you?

13 A It was hurting before, but I had told him again, yes.

14 Q And, in fact, the medical bill you were claiming from
15 Dr. Strohmeyer was, I believe, for \$570.00?

16 A Yes, sir.

17 Q All right. You hired an attorney for that car
18 accident, didn't you?

19 A Yes, sir, I did.

20 Q And you got a settlement for that car accident?

21 A Yes, sir.

22 Q As part of that settlement, you actually paid Dr.
23 Strohmeyer \$570.00, didn't you?

24 A I can't recall.

25 Q If I were to show you a letter from your attorney and a

1 payment to Dr. Strohmeier for \$570.00, would that refresh
2 your recollection?

3 A No, because I didn't pay the bill. Someone else had to
4 pay that bill.

5 Q Okay. Do you recall whether or not that bill was paid
6 on your behalf?

7 A I don't know. I'm pretty sure it happened.

8 Q You're pretty sure it did not?

9 A I don't know.

10 Q Okay. You don't know if your attorney sent Dr.
11 Strohmeier a check for \$570.00?

12 A No, I don't know.

13 Q All right. I'm going to show you this document.

14 MR. BUSH: Objection, Your Honor.

15 THE COURT: You may.

16 Q Your attorney was Ken Nugent for the car accident?

17 A Yes.

18 Q That is a letter from Ken Nugent to Beaufort
19 Orthopedics and Sports Medicine, right?

20 A Yes, sir.

21 Q That's Dr. Strohmeier's medical records, right?

22 A Yes, sir.

23 Q Attached to that document is a check for \$570.00,
24 payable to Beaufort Orthopedics and Sports Medicine, right?

25 A Yes, sir, it is.

1 Q So you did pay him out of the money that you got for
2 that car accident, correct?

3 A Evidently, they did.

4 Q And that's the full amount you were claiming for your
5 treatment from Dr. Strohmeier here today, isn't it?

6 A Yes, sir, it is.

7 Q Your Honor, I would like to move that one into
8 evidence.

9 THE COURT: We're not moving it into evidence.

10 MR. LIIPFERT: All right.

11 Q Now, you're also claiming a Beaufort Memorial bill
12 dated 1-17-2008; is that right?

13 A I don't know. 1-17 -- what?

14 Q 2008. That one right there. You're claiming this bill
15 as part of your damages in this case?

16 A I do believe so.

17 Q The third page of this bill looks like it shows that
18 one of the things that you claimed was some blood work,
19 chemistry lab; is that what it says?

20 A That's what they billed me for.

21 Q Yeah, you're claiming that.

22 MS. ZEIDAN: Objection, Your Honor. May I approach?

23 THE COURT: You may.

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

1 A Not really hand pain, just the muscle would get tight
2 in my hand.

3 Q And Dr. Chutkan is the doctor that did your neck
4 surgery, right?

5 A Yes.

6 Q And you had your next surgery on April 1, 2010?

7 A April 1st? Yes. April 1st, 2010.

8 Q Three years after this incident?

9 A Yes.

10 Q That was almost three years after the car accident,
11 too?

12 A Yes, sir.

13 Q And when you saw Dr. Chutkan, you were complaining of
14 muscle spasms in your neck and back?

15 A Yes.

16 Q That's the same things you complained about after the
17 car accident, right?

18 A Yes, sir.

19 Q All right. You didn't tell Dr. Chutkan about your car
20 accident, did you?

21 A No, I didn't.

22 Q All right. Thank you, I have nothing further.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MS. ZEIDAN:

1 into evidence.)

2 (Whereupon, Plaintiff's Exhibit Number Two is received
3 into evidence.)

4 Q All right. Mr. Dupont, let's clarify something else
5 for me. Where were you going the morning of February 7th,
6 2007, the date of the incident?

7 A That morning?

8 Q Yes, sir.

9 A I was going to Court.

10 Q And what were you going to Court for?

11 A Attempt to distribute crack cocaine charge.

12 Q And what ultimately happened to those charges?

13 A They got thrown out.

14 Q So they were dismissed?

15 A Yes, ma'am.

16 Q Defendant Walker's attorney was here questioning you
17 about running over Robert Mack, wasn't he?

18 A Yes, ma'am.

19 Q And he was questioning you about assaulting Robert
20 Mack, was he not?

21 A Yes, ma'am.

22 Q Were you ultimately charged with those offenses?

23 A No, ma'am.

24 Q You weren't charged with assaulting Robert Mack?

25 A No, ma'am.

1 A Because of the incident between me and the officer.

2 Q So what date was the motor vehicle accident?

3 A April.

4 Q So you were already treating with Dr. Strohmeyer for
5 the incident with Jasper County Sheriff's Office before the
6 motor vehicle accident occurred, correct?

7 A Yes, ma'am.

8 Q And you received a settlement from the motor vehicle
9 accident, correct?

10 A Yes, ma'am.

11 Q And I believe opposing counsel showed you where Dr.
12 Strohmeyer's office had been paid for out of the
13 settlement, correct?

14 A Yes, ma'am.

15 Q So did you pay Dr. Strohmeyer for charges related to
16 the incident to Jasper County Sheriff's Office?

17 A No, ma'am.

18 Q Were those charges included in that \$570.00?

19 A Yes, ma'am.

20 Q And you paid \$570.00 to Dr. Strohmeyer's office?

21 A Yes, ma'am.

22 Q Okay. All right. So, in essence, you paid for
23 treatment that you had already been receiving from Dr.
24 Strohmeyer before the motor vehicle accident?

25 A Yes, ma'am.

1 Q And that treatment was a direct result of the incident
2 with Deputy Walker?

3 A Yes, ma'am.

4 MR. LIIPFERT: Objection, Your Honor. Again, he's not
5 a doctor. He can't say what his results were.

6 MS. ZEIDAN: Well, he can say why he saw Dr.
7 Strohmeier.

8 THE COURT: He can say why, yes, ma'am. You can
9 continue.

10 MS. ZEIDAN: Okay.

11 Q Mr. Dupont, in your deposition, and I just want to
12 clarify, opposing counsel brought out that on line 18 on
13 page 71 ---

14 MS. ZEIDAN: May I approach the witness?

15 THE COURT: You may.

16 Q The question was asked why did your wife yell at you
17 all the way to Bluffton? The issue was brought up that your
18 wife was yelling at you, correct?

19 A Yes, ma'am.

20 Q But why was your wife yelling at you?

21 A I guess I was upset because ---

22 Q And your answer to your question on line 20, page 71.

23 A "Because she told me we would call the police after we
24 get back to the house."

25 Q And she said because -- can you read the line for me?

1 THE COURT: Thank you.

2 MS. ZEIDAN: Okay.

3 Q Tell me what you were seen for at Beaufort Memorial
4 Hospital on March 7th, 2007. Why did you go there?

5 A I was having neck and back pains. I don't remember too
6 much at the time.

7 Q But after you got out of jail, you went to Beaufort
8 Memorial; what were you going to Beaufort Memorial for?

9 MR. LIIPFERT: She just asked him and he answered he
10 doesn't remember.

11 MS. ZEIDAN: Your Honor, I have a right to clarify my
12 question for my client.

13 THE COURT: You can go ahead. Ask the question.

14 A When I went to the doctor, I told them I was assaulted
15 by an officer and I was having a lot of lower back pain and
16 neck pain, so I went to the emergency room.

17 Q Okay. Mr. Dupont, one more question about this medical
18 record. Well, excuse me, when you went to the Beaufort
19 Memorial Hospital on March 7th, 2007, you got an MRI done,
20 correct?

21 A Yes, ma'am.

22 Q Why did you get an MRI done?

23 A Why?

24 Q What was your chief complaint?

25 A My chief complaint was my lower back and my neck was

1 hurting. I had a lot of pain.

2 Q All right. And which body part was that?

3 A My neck area here, my muscle, my back here was killing
4 me. I was having a lot of muscle spasms.

5 Q And this was on what day?

6 A 03-7-2007.

7 Q March 7, 2007, correct?

8 A Yes, ma'am.

9 Q And your motor vehicle accident wasn't until when?

10 A April.

11 Q So you had previously complained of neck pain before
12 the motor vehicle accident?

13 A Yes.

14 Q And wasn't it your previous testimony that once you got
15 to Beaufort Memorial you were recognized by the ER staff?

16 A For the accident, yes.

17 Q And where did the ER doctor know you from?

18 A I had been in there earlier on March 7th, 2007, and she
19 said, "You're back again?"

20 Q And that March 7th, 2007 visit, is that the one that
21 you were just referring to that you went to seek treatment
22 after the assault from Ernest Walker?

23 A Yes.

24 MS. ZEIDAN: Your Honor, I have no further questions
25 for this witness.

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

COURT OF COMMON PLEAS
CASE NO. 2008-CP-23-529

DERRICK DuPONT,

Plaintiff,

vs.

JASPER COUNTY SHERIFF'S
OFFICE, et al.,

Defendant.

VIDEOTAPED DEPOSITION OF
NORMAN CHUTKAN, M.D.

November 3, 2010

3:05 p.m.

Medical College of Georgia

1120 15th Street

Room BA-3300

Augusta, Georgia

Susan Salenger Smith, CCR-B-1942, RPR

1 which is to say that he had narrowing of the spinal
2 canal due to a spondylitic or degenerative process
3 which was now causing symptoms.

4 Q. You indicate in here or this report
5 indicates that there's a narrowing of the canal that
6 was on -- mainly on the basis of congenital
7 narrowing.

8 What does that mean?

9 A. Well, he had congenital stenosis, which
10 means that the -- that his spinal canal was --
11 (Off the record.)

12 THE WITNESS: Sorry about that.

13 So he had a congenital narrowing of
14 the canal, so his -- his spinal canal was
15 narrower than the average person, so that
16 when he developed spondylitic or
17 degenerative changes, there was not a lot
18 of room there to accommodate those bone
19 spurs and disk bulges and so on that are --
20 that -- that develop with the degenerative
21 process, so it's a combination of the
22 congenitally narrow canal and the
23 spondylosis or degeneration that causes a
24 compression of the canal, so a -- someone
25 with a wider canal could tolerate a certain

1 amount of bone spurs or -- or disk
2 protrusions without compressing the cord
3 because there's more room for the spinal
4 cord within the canal.

5 When you have a congenitally narrow
6 canal, you don't have that tolerance, and
7 that was -- so it's a combination of both
8 the canal size that he was born with and
9 the spondylitic or degenerative changes
10 that were present in his cervical spine.

11 Q. (By Mr. Clark) And when you use the term
12 degenerative, what do you mean by that?

13 A. It's a -- it's -- your -- your body and
14 your spine, like other joints, degenerate over time,
15 and the way they degenerate is the disks lose height,
16 they develop spurs, they develop bulges, and -- and
17 so it's a -- it's a process that's not truly
18 pathological but can cause significant symptoms under
19 certain circumstances.

20 Q. In this particular situation, did
21 Mr. DuPont give you any history of having pain or
22 problems with these issues prior to the incident with
23 the Jasper County Sheriff's Department?

24 A. No, he didn't.

25 Q. Are you aware of any background that he

1 one.

2 MR. CLARK: All right. They're --
3 they're the same --

4 MR. WALDRON: Oh, the same?

5 MR. CLARK: -- they're just different
6 in look and -- and content, not -- excuse
7 me -- not on content, just on look.

8 Q. (By Mr. Clark) Doctor, I'm gonna hand you
9 a document that has been entitled Anterior Cervical
10 Discectomy and Fusion, and is this basically the
11 procedure that you performed on Mr. DuPont?

12 A. Basically. The parts of D and E didn't
13 apply since we didn't take bone from his iliac crest,
14 we -- we used bone from the bone bank, but A, B, and
15 C, there's a -- a rough approximation of what an
16 anterior cervical discectomy would be. Incision
17 location is a little bit more on the right side
18 rather than midline, but it's relatively descriptive.

19 Q. Using this, could you take us through and
20 describe how the surgery is performed and what you do
21 during that surgery?

22 A. Oh, sure. We -- we make about a
23 4-centimeter incision, and the incision is not in the
24 midline, as -- as illustrated here, but off to the
25 right side, generally in this location (indicating)

1 surgical?

2 A. The fusion rate for cervical surgery is
3 dependent on the number of levels, so he had three
4 levels fused, so there is the possibility he may not
5 completely fuse all three levels, and if he doesn't
6 and he has significant residual symptoms, one option
7 would be to go in the back and do a posterior fusion,
8 and we mentioned that as a possibility, but it's way
9 too early to tell if that would ever be necessary.

10 Q. Have you been able to form any opinions as
11 to what caused Mr. DuPont's injuries?

12 A. Based on the history that he gave us -- or
13 gave me, I would say it was the altercation in 2007,
14 I believe is the date he gave us for -- for when that
15 happened.

16 Q. And would that opinion be to a reasonable
17 degree of medical certainty --

18 A. Yes.

19 Q. -- that the incident with the Jasper
20 County Sheriff's deputy most probably caused these
21 injuries?

22 A. Based on his history, yes.

23 Q. Has he reached maximum medical
24 improvement?

25 A. I would say not at this point.

1 Q What standards did you use when forming your opinions
2 in this case?

3 A Well, I mean, I looked at the statute, of course. I
4 looked at the policies. I read the deposition, and I
5 formulated, based on, really, what we would consider an
6 emerging national standard whether or not the behavior that
7 I had read about was written conformed with that particular
8 emerging standard with respect to the use of force and the
9 defensive tactics.

10 Q Is this emerging standard proper and well-established
11 in the law enforcement community?

12 A Yes, ma'am.

13 Q Your Honor, I now move to have Roy Bedard certified as
14 an expert in law enforcement policies and procedures, use of
15 force, and defensive tactics.

16 THE COURT: Any voir dire?

17 MR. WALDRON: No, Your Honor.

18 THE COURT: Thank you. Ladies and gentlemen, in this
19 case, Mr. Bedard is being qualified as an expert in the area
20 of law enforcement, the use of force and police procedures.
21 Ladies and gentlemen, that allows him to give his opinion in
22 this area. Of course, it is for you to use as you see
23 appropriate and it's compared to other evidence in the case.
24 You can accept it or reject it; it's completely for you to
25 decide. Thank you.

1 idea of "if, then" proposition; if the person does this,
2 then law enforcement officer should do that. So it becomes
3 more of a science, professionally speaking, than just a half
4 hazard, "This is how I feel I should behave at this
5 particular moment." It reduces scrutiny. Certainly, it
6 reduces arguments about what's done correctly or
7 incorrectly. It holds officers accountable to a standard
8 internally, as well as externally, because officers know
9 what the rules are. It's essentially a rule book.

10 Q Thank you. Mr. Bedard, in the present case, there's
11 several reports, disputed reports, that Derrick Dupont
12 either spit on, or spat at, Officer Walker. Is this
13 something uncommon for a police officer to experience being
14 spit on or spat at?

15 A I have been spit on and I've been spit at. I think
16 most officers perhaps testify that they have as well. I
17 don't think it's common. It's not something you expect
18 every day, but as you go through a career in law enforcement
19 oftentimes, it's the only way the subject can get you,
20 certainly, if their hands are cuffed and they aren't able to
21 do anything else; they can project that spittle upon you,
22 and so I would say that it's not terribly uncommon.

23 Q In that situation, what are proper tactics that an
24 officer should employ or use when faced with that?

25 A Well, a lot of times officers who are spit on, only

1 realize it after they have been spit on, but certainly if
2 you know the subject is about to spit on you, obviously, the
3 projectory of spit can only go so far. The best thing to do
4 is move away from it.

5 Certainly, there's the ability to place barriers
6 between you or that person. For instance, closing a door
7 would protect you from being spit on. I have seen -- law
8 enforcement has some inventions, if you will, to stop people
9 from spitting, probably the most archaic is to pull the
10 person's shirt up over their head. I've seen officers do
11 that where they can still breathe and have a clear airway,
12 but certainly how they're obstructed by the fabric of their
13 shirt in front of their face.

14 Some marketers have come out with what they call spit
15 masks. They're actually used in corrections a lot more than
16 street law enforcement, because they're accessible and we
17 tend to know habits and patterns of people that is literally
18 a mask, it's like a surgical mask, if you have somebody who
19 has a propensity to spitting on the correctional officers,
20 even law enforcement officers.

21 Q Is the use of an officer's hand placed over a suspect's
22 mouth, or the spitter's mouth, an acceptable technique?

23 A No.

24 Q Why not?

25 A Well, the biggest problem you can have is you can get

1 bit. I mean, from an officer safety perspective, you want
2 to keep your fingers away from somebody's angry teeth if
3 they're spitting on you; I'd assume they're angry. So that
4 would be my number one objection to teaching that or
5 accepting that as a proper technique. It would probably be
6 fairly ineffective, I would think, your hand is not that big
7 to somebody who is jerking their head away; probably you're
8 not going to have a whole lot of control of their mouth just
9 simply by cupping a hand over it.

10 Q And so, it is your opinion that this is never an
11 acceptable technique?

12 A I've never seen it taught and I would say it's not
13 acceptable.

14 Q In this case, and based on your independent review,
15 along with your skills and expertise, did you see anything
16 wrong with the way that Deputy Walker chose to handle this
17 particular situation, if it did occur?

18 A If the spitting occurred?

19 Q Yes.

20 A I don't know that I concluded that was the reason of
21 this, but if the spitting had occurred, I think it would
22 have been very simple for the Deputy to step back and simply
23 close the door to prevent that from happening again.

24 Q Okay. Earlier you stated your knowledge of the use of
25 force that was used against Derrick Dupont, correct?

1 of course, going into the back seat; I don't know why he did
2 that, but I don't know of any technique where you grab
3 somebody by the head and begin pulling and shaking their
4 body. I don't know if it's an appropriate response, and I
5 tried to imagine some kind of resistance, and I haven't
6 concluded that there is any type of resistance that would be
7 the appropriate technique to deal with. It's an area of the
8 body where in law enforcement we train officers generally to
9 stay away from, intentionally, because of what could be
10 complications.

11 Q Okay. I'm going to come back to that. Even if Derrick
12 Dupont said he was yelling and kicking and screaming in the
13 back seat, would that still be an unjustified use of force?

14 A Yes.

15 Q And you stated a second ago that that area of the body
16 is something that officers are trained to stay away from.
17 Can you elaborate why you're trained to stay away from it
18 without getting, I guess, too medically-induced in that
19 conversation?

20 A I teach a class, and I most recently had been to
21 Bloomington, Minnesota to set up an entire policy with
22 respect to a technique that we call neck restraints. I
23 spent a lot of time talking about this, and videos on neck
24 restraints, because they are constantly debated in my field
25 of expertise. Proper neck restraint in law enforcement

1 restricts blood flow and causes unconsciousness. Some
2 officers swear it's the safest technique we do, because,
3 obviously, when somebody's unconscious we can reduce the
4 amount of force that we have to use against them.

5 However, there are many officers that believe, knowing
6 everything that we know, about how the technique works, that
7 they still will not allow it, and if they do allow it, they
8 allow it at a deadly force level, because it is considered
9 amongst the profession, an extraordinarily sensitive area.
10 And again, without getting too medical, I think we're all
11 aware that you're spine is there, there's a vascular system
12 that runs through your neck, and whenever you start
13 tampering with those life sustaining areas of your body, it
14 can complicate things. So some officers, or some agencies,
15 more in particular, do not allow the use or even properly
16 apply the neck restraint because of those complications.

17 Q And, Mr. Bedard, in those that you've seen that do
18 allow neck restraints, have you ever seen anything to the
19 manner of which was presented or acted upon Derrick Dupont
20 in this matter?

21 A No, ma'am.

22 Q So you have not, based on your skill, expertise, and
23 experience recognized the technique that Deputy Walker used
24 on Derrick Dupont?

25 A If it was a neck restraint, the big issue, I think,

1 that people concern themselves with is stabilization.
2 Stabilization means that you have to reduce movement. If
3 you don't generate movement, you don't generate a violent
4 thrashing, swinging, like I understood this technique
5 caused.

6 Oftentimes with neck restraints, when you place the
7 neck restraint on, you would immediately take the person to
8 the ground and simply set them down to stop them from
9 spinning and rolling and twisting, which are the kind of
10 things that I understood this technique caused. So it's
11 really quite opposite of what we would anticipate. Any
12 technique involving the neck would have to have to be
13 considered non-excessive and reasonable.

14 Q And speaking on excessive, did the actions by Deputy
15 Walker constitute excessive force?

16 A I believe they did.

17 Q Why?

18 A Well, excessive force does not necessarily mean that
19 somebody is even injured. It means it's more force than is
20 reasonably necessary and we look at things from an objective
21 reasonable standard in law enforcement. We look at whether
22 or not a reasonable person would have done the same thing.
23 Force, in law enforcement, is functionally used to some end.
24 We're trying to accomplish some particular end, and I
25 described those ends to you as to caress somebody, to

1 protect themselves, as perhaps to prevent somebody from
2 clinging to justice. None of those things seem to be
3 present in what I read in this particular case. You had Mr.
4 Dupont, who was not just in the back seat, but he was
5 handcuffed in the back seat; not just handcuffed in the back
6 seat, but he was belted into the back seat. He was under
7 physical control, now whether his mouth was running or not,
8 I don't know, and to what degree the officer felt threatened
9 by that, I don't know, but I do know that physically, he was
10 restrained in the back seat.

11 He didn't pose a threat to the officer. In fact, the
12 door was even closed; it was a barrier already between them.
13 When the officer opened the door and eliminated that
14 barrier, he created his own set of circumstances where he
15 could have been spit on, he could have been bit, head
16 butted, I mean there's a lot of different things that
17 certainly could have happened. Whether those things
18 happened or not, I don't know, but the opportunity was not
19 presented by Mr. Dupont, it was presented by Deputy Walker,
20 and it was completely unavoidable and completely
21 unreasonable and it seemed grossly excessive to me.

22 Q And so that opinion, as well as all of the others that
23 you've rendered in your testimony today, has been rendered
24 to a reasonable degree of professional certainty?

25 A Yes, ma'am.

1 A Yes.

2 Q And what were those?

3 A I felt that it was not complete with the information,
4 certainly with the respect to use of force and defensive
5 tactics to describe even what happened. I'm still confused
6 about what happened, because there was no narrative telling
7 us why the officer responded the way that he did.

8 Generally, in a proper use of force, or excessive force
9 narrative, we would be very specific about what the subject
10 did and what the officer did in response to that for a lot
11 of reasons. Not the least of which is that every use of
12 force of law enforcement is generally reviewed by someone to
13 make sure that there's not any violation to a person's
14 rights or any excessive or unreasonable force being used
15 with an agency, any development of custom or violation of
16 policy, and I didn't see any of that in the report. I saw
17 just a couple sentences describing the elements of a crime,
18 but not even specifically of the crime that I am led to
19 understand through deposition, occurred.

20 Q And based on the totality of the case as you reviewed
21 it, have you been able to formulate an opinion or any
22 opinions as to Deputy Walker's actions on the day of the
23 incident?

24 A I thought his actions, with respect to use of force and
25 defensive tactics, again, not going into the entire case,

1 I think most, if not all, of the force used was unnecessary.
2 I think it was grossly excessive. I think the technique
3 that he used, we would consider even by statute, deadly
4 force, deadly force being that level of force which is
5 likely to cause death or great bodily harm; clearly pulling
6 somebody by their neck who's strapped into a vehicle is
7 likely to cause at least great bodily harm in my opinion,
8 and it would be classified as a deadly force where there was
9 no cause for force in my opinion at all.

10 Q And you render that opinion from a reasonable degree of
11 professional certainty?

12 A Yes, ma'am.

13 MS. ZEIDAN: Your Honor, at this time I have no further
14 questions for this witness. Mr. Bedard, please answer any
15 questions that opposing counsel may have.

16 CROSS-EXAMINATION

17 BY MR. WALDRON:

18 Q Mr. Bedard, do you believe spitting on an officer is
19 one of the most vile personal attacks that a prisoner can
20 engage in and is, in fact, a criminal violation of the South
21 Carolina statute and the rest of the country?

22 A Yes, I do.

23 Q Those words came from your report?

24 A That's correct.

25 Q Again, from your report, you believe that spitting is

1 A. Yes, sir.

2 Q. Okay. At this time, I want to hand you a
3 piece of paper. (Produces document) Can you identify that
4 for me?

5 A. I have a copy of it, it's in the record. The
6 first note - my first encounter with Mr. Dupont.

7 Q. Okay. And what's the date on that?

8 A. 3/14/07.

9 Q. Okay. And you've got a copy?

10 A. I do. I got a copy where I wrote my memo.

11 Q. All right.

12 ATTORNEY MAREK: Can I have that
13 marked as "Plaintiff's Exhibit #1," please?

14 (NOTE: WHEREUPON, a copy of a medical record on Derrick
15 Dupont dated March 14, 2007 by Scott Strohmeier,
16 M.D., was admitted into evidence without objection and
17 marked, "Plaintiff's Exhibit #1, Strohmeier," 1 page).

18 Q. All right. And in there meeting on 3/14/2007,
19 what was Mr. Dupont's complaint, why was he there to see
20 you?

21 A. He was complaining of neck and lower back pain
22 and what he described as needles in his back or tingling in
23 his back.

24 Q. Okay. And did he tell you how that came to
25 be, how he - -

1 out and make sure there's nothing anatomically wrong. So,
2 in this situation, we went ahead and ordered an MRI Scan and
3 saw him back with that on 3/26.

4 Q. Okay. And when was the MRI Scan done?

5 A. The date of it? I saw him back here on 3/26.

6 Q. Would this help? (Produces document)

7 A. 3/21/07. I got a copy of it. 3/21/07.

8 ATTORNEY MAREK: At this time, I'd
9 like to - -

10 Q. Can you identify this document, a copy which
11 has been handed to the Court Reporter? (Produces document)

12 A. That is the MRI Report from the 3/21/07 that I
13 ordered that he presented back on the 26th for me to reveal
14 with it.

15 ATTORNEY MAREK: Okay. Can I have
16 that marked as "Plaintiff's Exhibit #2?"

17 (NOTE: WHEREUPON, a copy of a Radiology Report of an MRI of
18 the cervical spine on Derrick Dupont, dated March 21, 2007,
19 was admitted in evidence without objection and marked,
20 "Plaintiff's Exhibit #2, Strohmeyer," 1 page).

21 Q. And what were the results of the MRI?

22 A. The results are - - he had - - I can read them
23 to you - - he had what's called generalized canal stenosis
24 which means the bones of your spine make a canal, your
25 cervical canal or your thoracic canal, and that's where your

1 nerves live. So, he had stenosis which means it's too
2 small, stenotic, related to a congenitally narrow AP
3 diameter of the canal which means he was born with that.
4 The findings are most severe at C2-3 which is a level of the
5 cervical spine, really one disc below your skull and at C4-5
6 which is another level. And there's spinal cord impingement
7 with evidence of gliosis.

8 Q. Okay. And what is that, "gliosis?"

9 A. That is a gliosis or a mild - - it's an
10 abnormal cord signal. It's a sign for us that it's being
11 squeezed to the point that the compression is actually
12 changing the spinal cord physiologically, so it's like a
13 bruise.

14 Q. Okay. And I see a note here for impingement,
15 "spinal cord impingement."

16 A. That's what the stenosis is impinging or
17 squeezing the spinal cord.

18 Q. Okay. So, that's the same?

19 A. It's the same thing, right.

20 Q. Okay. And then you said you met with him on
21

22 A. The 26th.

23 Q. March 26th?

24 A. Yes, sir.

25 Q. Okay. Can you identify this document for me?

1 (Produces document)

2 A. That's my note from 3/26 where I saw him.

3 Q. 26? All right.

4 ATTORNEY MAREK: I'd like to have
5 that marked as Exhibit #3, please, "Plaintiff's Exhibit #3."

6 (NOTE: WHEREUPON, a copy of a medical record on Derrick
7 Dupont dated March 26, 2007 by Scott Strohmeier, M.D., was
8 admitted into evidence without objection and marked,
9 "Plaintiff's Exhibit #3, Strohmeier," 1 page).

10 Q. All right. And what did you discuss with
11 Derrick Dupont on March 26, 2007?

12 A. Well, he presented back with a new complaint
13 which was a bit worse. I mean, he said he was having some
14 left leg weakness which he did not have in my first visit.
15 So, that could be from his neck injury, from the swelling or
16 bruising of the spinal cord, or it could be from something
17 with his lower back. So, again, he's having lower back
18 symptoms. So, the first thing, you know, he needed an MRI
19 of his lower back which we set that up, and we talked about
20 having his neck operated on because he needed to have it
21 fixed.

22 Q. Okay. And what were your physical
23 observations of him at that appointment?

24 A. That he basically - - my exam?

25 Q. Yeah?

1 A. I don't think I documented it.

2 Q. Okay.

3 A. But I think, you know, he had some left leg
4 weakness, so we got an x-ray of his neck, set him up for an
5 MRI Scan, and decided, you know, we were going to decide
6 what we were going to do about his neck at the time.

7 Q. Okay. In there I see it says that "He is
8 kyphotic." Can you tell me what that means?

9 A. So, we did an x-ray of his neck. At this
10 point, he had some x-rays done in the Emergency Room, but I
11 hadn't seen them. I had a report which basically said there
12 is some arthritis but negative. When you look at a
13 situation like this, you're going to have to surgically
14 repair his neck, so we have to do two things. One is, the
15 main thing is taking pressure off his spinal cord because if
16 you don't, it's going to paralyze him; the other is, you
17 want to balance his spine, so you get a sitting up x-ray and
18 see what his alignment is sitting up. So, he had what we
19 call a kyphosis at C2-3. So, C2-3 is the level of his neck.
20 Kyphosis means his neck is bent the wrong way. We normally
21 have what we call lordosis which is sort of a backwards C,
22 so he's like this (demonstrating by tilting head forward) at
23 2-3.

24 Q. Okay.

25 A. So, if you're going to correct him, you have

1 And so, I ordered the MRI Scan of his back, saw him back for
2 that; decided nothing in his lower back looked that bad, it
3 was probably from his neck. And I believe I referred him up
4 to MUSC for his neck is what I believe I did at that point.

5 Q. Okay.

6 A. And that reason being is, in order to correct
7 his deformity and take the pressure off his spinal cord, I
8 felt like we needed to go through the front because that's
9 where the deformity is. That's really high in the neck, you
10 probably need an ENT surgeon available because there's a few
11 nerves that, you know, come down and run part of your face
12 and your tongue that are probably going to be in the field,
13 and he's probably going to have - - he potentially could be
14 sick after that operation because it's a pretty big
15 reconstruction. And, you know, in Beaufort, it's a county
16 hospital, we do have an ICU, but there are no intensivists,
17 so I thought he would be better off - - better served for
18 that kind of operation at a tertiary care center.

19 Q. Okay. And what can cause the kyphosis at the
20 2 and 3?

21 A. Degeneration.

22 Q. Degeneration? Okay. All right. And as you
23 mentioned, he went and had another MRI done?

24 A. Right. Came back on 4/11, he's worse and
25 worse basically, if you ask him how he's doing, he's doing

1 terrible. He was involved in a car accident between this
2 visit and that visit, minor MVA, but again, the minor MVA
3 for him is potentially bad with his neck. With his neck
4 right now, he has little defense, any type of
5 hyperextension, he could really cause a neurological problem
6 again.

7 Q. Okay. I'm going to show you another document.
8 Can you identify that for me? (Produces document)

9 A. That is a MRI of the lumbar spine, 4/11/07
10 that I ordered.

11 ATTORNEY MAREK: Okay. Can I have
12 that marked as "Plaintiff's Exhibit #4," please?

13 (NOTE: WHEREUPON, a copy of a Radiology Report of an MRI of
14 the lumbar spine on Derrick Dupont, dated April 11, 2007,
15 was admitted into evidence without objection and marked,
16 "Plaintiff's Exhibit #4, Strohmeier," 1 page).

17 Q. All right. And we already talked about this.
18 What are mild annular bulges that are mentioned in here?

19 A. Degeneration, just wear and tear of the back.

20 Q. Okay. And then, can you identify this for me?
21 (Produces document)

22 A. Yeah. That's my note from 4/11/07 when I saw
23 him back.

24 Q. Okay.

25 ATTORNEY MAREK: Can I have that

1 the 11th?

2 A. Well, as I said before, this visit really is
3 to determine, you know, why he's dragging his leg, is it
4 from his back or is it from his neck. And if you look at
5 his MRI, he's got some spondylosis or just wear and tear of
6 his back. He does have a little far lateral disc at 2-3,
7 but I mean nothing that I think should cause him to drag his
8 leg, so, at this point, I'm pretty sure it's coming from his
9 neck. But now he's got, you know, a bunch of - - a lot of
10 lower back pain, a lot of spasm, neurologically looks okay,
11 he's not worsened since my last visit, so we're going to do
12 basic - - put him in some PT to treat the muscular part of
13 it, and then, you know, again, discuss fixing his neck.

14 Q. Okay. And in your notes, you noted that he
15 remained really unchanged from his previous exam?

16 A. Neurologically he's not any worse, which was
17 good news. And again, a minor MVA for you and me is
18 different than someone who has got that kind of cervical
19 compression.

20 Q. Okay. And would you say that the motor
21 vehicle accident did not cause any new damage to Mr. - -

22 A. It didn't appear to cause any new neurologic
23 damage, no.

24 Q. Okay. And would you be able to state that to
25 a reasonable degree of medical certainty?

1 A. Yes, sir.

2 Q. Okay. And what is the next time you saw him,
3 do you remember the next date?

4 A. I saw him back 5/2/07.

5 Q. '07?

6 A. Right.

7 Q. Okay. Could you identify that for me?

8 (Produces document)

9 A. That's my note from 5/2/07.

10 Q. All right.

11 ATTORNEY MAREK: I'd like to have
12 that marked as "Plaintiff's Exhibit #6."

13 (NOTE: WHEREUPON, a copy of a medical record on Derrick
14 Dupont dated May 2, 2007 by Scott Strohmeier, M.D., was
15 admitted into evidence without objection and marked,
16 "Plaintiff's Exhibit #6, Strohmeier," 1 page).

17 Q. All right. And what did you discuss with
18 Mr. Dupont on 5/2/07?

19 A. At that point, again, is we discussed both
20 problems because there's two issues. I explained I think his
21 lower back will probably resolve without a problem, but his
22 neck was not going to and that needed to be addressed.

23 Q. Okay.

24 A. And I thought with his deformity at 2-3 he
25 needed to have an anterior procedure and possibly an

1 again, they never did - -

2 Q. Can you tell me what that is? (Produces
3 document)

4 A. They surgery was not performed at MUSC.
5 That's a letter from July of '07, my note from July of '07.

6 ATTORNEY MAREK: Can I have that
7 marked as "Plaintiff's Exhibit #7," please?

8 (NOTE: WHEREUPON, a copy of a medical record on Derrick
9 Dupont dated July 11, 2007 by Scott Strohmeier, M.D., was
10 admitted into evidence without objection and marked,
11 "Plaintiff's Exhibit #7, Strohmeier," 1 page).

12 Q. All right. In the notes there it says he is
13 going to have to have a pretty large operation. What would
14 you describe as a "pretty large operation?"

15 A. Front and back reconstruction of his neck, or
16 even a front - - a very multiple level anterior
17 reconstruction of his neck.

18 Q. Okay. And what would that mean in layman's
19 terms?

20 A. That means he could potentially be sick. He
21 could potentially, you know, have a bad outcome. I think
22 he needs, you know, the reason I was referring him to a
23 tertiary care center is I thought he has a potential to need
24 an ICU and intensivist. You know, these type of operations
25 are not without risk. And I think there are institutions

1 where these should be performed, and a county hospital is
2 just not one of them, so, again, I thought he might need an
3 ENT surgeon for the approach, he may need an intensivist to
4 take care of him afterwards, depending on the blood loss and
5 what went on. So, that's why I was going to send him to a
6 tertiary - - level one trauma center, tertiary care center
7 to take care of him who has, you know, covers all those
8 specialties.

9 Q. Okay. Let's see, what is a cervical
10 decompression fusion?

11 A. That's the operation.

12 Q. Okay.

13 A. Decompression means take the pressure off the
14 spinal cord, and a fusion is when you reconstruct his spine,
15 that's what you're going to fuse, you're going to fuse the
16 joints together. Your spine is made up of joints, just like
17 your knees and hips and every other joint are. The
18 difference is the end game is different; when you wear out
19 your knee, we can get you a new one; you can wear out
20 really almost any other joint in your body and we can give
21 you a new one. But if you wear out your neck or your back,
22 we can't give you a new one. We can replace the disc like
23 you asked me earlier, but we can't replace the facet joints
24 in the back. So, a situation like this, you basically line
25 the spine up and you fuse it, which means you line it back

1 A. Cervical means the neck.

2 Q. Okay.

3 Q. So, we're talking about fusing just up here,
4 (indicating neck) not the rest of the neck - -

5 A. No, just the neck.

6 Q. Just the neck?

7 A. Just the neck, yes, sir.

8 Q. Okay. And did he ever get that operation
9 done?

10 A. He did not get it at MUSC. I know he did see
11 Ian Johnson again. Ian Johnson left at some point, and
12 maybe that's what happened, so. I ended up calling a friend
13 of mine, a doctor named Norman Chutkan who is the Chairman
14 of MCG in Augusta who does a lot of deformity work; told him
15 about Mr. Dupont, and again, we're having some, you know,
16 there was no financial backing for him. But I called Norman
17 and explained the situation, and on - - I'm not sure what
18 date it was, but Norman performed the surgery, Dr. Chutkan
19 performed the surgery.

20 Q. And he performed the one that you kept
21 referring to through all of your notes?

22 A. Right. He did an anterior decompression
23 fusion of the cervical spine. And I don't remember exactly
24 what levels, but it was, I believe three levels, I think,
25 maybe four. I can't remember.

1 the same time?

2 A That's correct.

3 Q Sheriff Jenkins let you know that?

4 A Yes, sir.

5 Q During the calendar year of 2007, were you still
6 serving as a Sheriff's Deputy?

7 A Yes.

8 Q And were you a road deputy?

9 A Yes.

10 Q Do you remember February 7th, 2007?

11 A Yes.

12 Q You've been sitting here throughout, so you remember
13 that's the date that we're talking about here?

14 A Yes.

15 Q Were you on duty that day?

16 A Yes, sir.

17 Q Did you hear the call come over the radio, or hear any
18 call come over the radio, which prompted action in this
19 case?

20 A Yes.

21 Q What do you remember about that call?

22 A The call, it was a fight in progress, possibly dealing
23 with weapons, and at that point in time, I was the co-
24 officer for the south-end of the county and that was my
25 responsibility of Jasper County. Once the call came out, a

1 fight in progress with weapons, I then proceeded to the
2 north end of the county, which is the Ridgeland area of
3 Jasper County, which the other officer was patrolling that
4 area; I went to basically back him up on that call.

5 Q Tell me how it works with the Jasper County Sheriff's
6 Office. If two people are on duty -- well, before I ask you
7 that, was Ernest Walker the other fellow who was on duty?

8 A Yes.

9 Q And you were co-deputy's, road deputy's at the time?

10 A Yes, sir.

11 Q How does it work with the Jasper County Sheriff's
12 Office? How do we know whose call it is?

13 A If the call, back then in 2007, we had, basically, two
14 deputy's, like I stated earlier. I was working the south
15 end, my responsibility in the south end of the county, which
16 is the Hardeeville area. Deputy Walker would then be
17 covering the north end of the county, which is the Ridgeland
18 area, and Deputy Walker would be responsible for the
19 northern end of the calls.

20 Q So it was his call and you're the backup officer?

21 A Yes, sir.

22 Q When you responded to the call and you got to
23 Chippawillow Road, tell the jury what you saw when you got
24 there?

25 A When I arrived on the scene, I saw Deputy Walker

1 standing in the roadway, along with two male individuals. I
2 stepped out of my patrol vehicle to assist Deputy Walker.
3 At that time, there were no physical altercations; no fights
4 in progress at that time. I learned from dispatch that no
5 fighting was taking place so, basically, that let's everyone
6 know that they can stop coming if they were coming to the
7 call, and that we basically had the scene secured at that
8 time; me and Deputy Walker were going to be able to handle
9 it.

10 Q You said there were two individuals there; was Mr.
11 Dupont there at that time?

12 A No.

13 Q Who were the two individuals that were there?

14 A The two individuals that were there were Mr. Willie
15 Newton and Mr. Robert Mack.

16 Q What did you learn about the situation?

17 A From the information I received alongside Deputy
18 Walker, Mr. Mack and Mr. Newton were alleging that Mr.
19 Dupont and his wife used their van to run over their
20 motorcycle and they weren't sure at the time why he did it,
21 and that he allegedly came at Mr. Newton and Mr. Mack with a
22 knife.

23 Q Was it your understanding from the conversation that
24 Mr. Dupont had been driving the van or his wife had been
25 driving?

1 Q You started to say that you saw a van turning onto
2 Chippawillow Road?

3 A Yes, sir.

4 Q How far were you and Deputy Walker from the end of the
5 road, or the head of the road, where the van would be
6 turning in?

7 A Approximately, I would say 100 feet from where the van
8 turned off of 46 onto Chippawillow Road.

9 Q Okay. Could you tell at that point who was driving the
10 van?

11 A No, sir.

12 Q Tell the jury what happened.

13 A As the vehicle approached where Deputy Walker and I and
14 Mr. Newton and Mr. Mack were standing in the roadway, Deputy
15 Walker asked Mr. Mack and Mr. Newton was that the vehicle.
16 They acknowledged that it was the vehicle that had struck
17 them. At that time, Deputy Walker stood in the roadway,
18 waving and giving some gestures for the vehicle to stop.

19 At that time, the vehicle approached and slowed down,
20 the driver's side window came down, I basically observed a
21 female driver in the van and Mr. Dupont was on the passenger
22 side of the vehicle. Once the vehicle came to a slow crawl,
23 I observed Mr. Dupont then instructed the driver to keep on
24 going; basically, not to stop, just keep going.

25 Q At that point, did the van keep going?

1 A Yes, it did. They took off and proceeded down
2 Chippawillow Road.

3 Q How far did it go?

4 A Maybe about 100 feet to where they made a left into
5 their driveway.

6 Q You're still standing back with Robert Mack and Willie
7 Newton?

8 A Yes.

9 Q Had Mr. Mack or Mr. Newton complained of any injuries?

10 A Mr. Mack was complaining of injuries to his hand.

11 Q Did he tell you how he got those injuries?

12 A He said once the vehicle attempted to hit the moped, he
13 jumped off the moped and then landed on his wrist.

14 Q How about Mr. Newton, was he hurt?

15 A No, sir.

16 Q You told the jury the man went down and pulled into a
17 residence about 100 feet down the road?

18 A Yes.

19 Q What happened next?

20 A At that time, once the vehicle passed us and we heard
21 what Mr. Dupont told the young lady driving the van, myself,
22 Deputy Walker and Trooper Sommers, who was also responding
23 to the accident, because we were still investigating the
24 case at that time, we get in our patrol vehicles and head
25 down to Mr. Dupont's residence.

1 A I'd say about 100 yards, approximately.

2 Q Now, you testified earlier that you're not on the
3 Sheriff's Department now, correct?

4 A That's correct.

5 Q But you want to get back on the Sheriff's Department,
6 correct?

7 A Yes.

8 Q You're trying to get back on, right?

9 A Yes.

10 Q You've worked with Mr. Walker for years before this
11 incident, correct?

12 A Yes.

13 Q So you two are buddy's?

14 A We're friends.

15 Q So you're not going to testify about anything that's
16 going to hurt Mr. Walker today, are you?

17 A I'm going to tell the truth.

18 Q All right. But you're not going to testify to hurt
19 him, correct?

20 A I'm going to tell the truth.

21 Q Okay. Let me ask you this question. You say you went
22 out to the scene, you investigated the scene with Trooper
23 Sommers, correct?

24 A That's correct.

25 Q All right. You saw the motorbike?

- 1 A Yes.
- 2 Q You saw Mr. Newton?
- 3 A Yes.
- 4 Q You saw Mr. Mack?
- 5 A Yes.
- 6 Q You didn't find any weapons?
- 7 A No, sir.
- 8 Q You didn't see any damage to the vehicle that Mr.
- 9 Dupont and his wife rolled up in, correct?
- 10 A No, sir.
- 11 Q Okay. You say Mr. Dupont was yelling and arguing when
- 12 you got there, right?
- 13 A Yes.
- 14 Q He was cursing about the situation with his daughter,
- 15 correct?
- 16 A Right.
- 17 Q Is it your testimony that if that was your daughter
- 18 that you would have even been upset?
- 19 A Absolutely.
- 20 Q Now, further, you said that Mr. Walker put Mr. Dupont
- 21 in his car in his yard in front of his house, correct?
- 22 A Correct.
- 23 Q He put him in there in front of his yard, right?
- 24 A Yes.
- 25 Q Okay. So when you went up there and witnessed Mr.

1 training?

2 A Yes, sir.

3 Q You went back then to get certified as a law
4 enforcement officer in South Carolina?

5 A Yes, sir.

6 Q Did you pass that?

7 A Yes, sir.

8 Q The first time?

9 A Yes, sir.

10 Q When you came back, you were a certified law
11 enforcement officer?

12 A Yes, sir.

13 Q And tell the jurors what your duties were.

14 A As a jailer?

15 Q As a Sheriff Deputy, road deputy.

16 A When I graduated from the academy in 1997, I became a
17 school resource officer.

18 Q And in addition to being a school resource officer from
19 time to time, did you also do road duty?

20 A Yes, sir.

21 Q Was it in your capacity as a road deputy that you first
22 met Derrick Dupont in relation to this incident?

23 A Yes, sir.

24 Q Did you get a dispatch on February 7th, 2007?

25 A Yes, sir.

1 Q Is that how you found out about the need to go out to
2 Chippawillow Road?

3 A Yes, sir.

4 Q Do you remember what the dispatch said?

5 A A fight in progress with weapons.

6 Q Tell the jurors what happened.

7 A I arrived on scene that afternoon. I spoke with Willie
8 Newton and Robert Mack. There was a small mini-bike, not a
9 regular mini-bike, laying on the road. I asked Robert Mack
10 what took place and he stated that Derrick Dupont attempted
11 to run him over with his Toyota van. He jumped off the
12 mini-bike to keep from getting ran over. Willie Newton then
13 stated that Mr. Dupont chased him with a butcher knife. So
14 at that time, I notified my supervisor, Cpl. Bailey about
15 the incident and then I notified Sergeant Jenkins about the
16 incident. Both came to the scene to find out whether it was
17 a traffic accident or dealing with a criminal side of it.
18 Once they notified the State Trooper, Trooper Sommers
19 arrived.

20 During that time, we were talking and I got my
21 information from Mr. Newton and Mr. Mack. Once Trooper
22 Sommers arrived on scene, Trooper Sommers said that it
23 looked like we needed to find out what was going on, before
24 I could take control of the accident, find out if it was an
25 accident or was there a criminal side. At that time ---

1 Q Let me stop you right there, if I might. When you
2 arrived on scene, was Mr. Dupont there?

3 A No, sir.

4 Q The people that you found were Robert Mack and Willie
5 Newton and you talked to them?

6 A Yes, sir.

7 Q And Mr. Newton told you that had been chased by Mr.
8 Dupont with a butcher knife?

9 A Yes.

10 Q You said that they ran over the mini-bike, which was a
11 small mini-bike?

12 A Yes.

13 Q Did they tell you who was driving the van or not?

14 A Mr. Dupont.

15 Q They said Mr. Dupont was driving the van?

16 A Yes.

17 Q Did you look for Mr. Dupont at that time?

18 A Yes.

19 Q Did you find him?

20 A No.

21 Q Okay. Trooper Sommers arrived and you were trying to
22 figure out whether it was a crime in progress or a traffic
23 accident, correct?

24 A Yes.

25 Q Tell the jurors what happened.

1 A While I was on scene after the supervisor came,
2 Sergeant Bailey and Sergeant Jenkins left the area. I
3 stayed on scene still getting my evidence and stuff.

4 Q Was Mr. Mitchell on scene yet?

5 A Yes. Deputy Mitchell was on scene.

6 Q All right. So you get your stuff together, what
7 happened next?

8 A Well, I was standing in the road talking to Mr. Newton,
9 myself and Trooper Sommers were talking, we seen the Toyota
10 coming back home, turn back on Chippawillow Road. Robert
11 Mack stated that that was Derrick Dupont's vehicle; that's
12 the vehicle that attempted to run him over. I was standing
13 in the middle of the road and I tried to stop the vehicle.

14 Q How did you try to stop the vehicle?

15 A I made hand gestures to stop the vehicle. Mrs. Dupont
16 attempted to slow down and stop the vehicle, Derrick Dupont,
17 I'm looking right in the van, told her to keep going, and
18 she sped right off and went to his home and parked the
19 vehicle in the back. When Trooper Sommers, myself, and
20 Deputy Mitchell arrived down to his residence, he met us to
21 the road and cussing and using profanity.

22 Q Who met you at the road?

23 A Mr. Dupont.

24 Q Okay. Continue.

25 A Mr. Dupont was using a lot of profanity and saying we

1 aren't doing our job. That this young man here was walking
2 around free and he was trying to do something to his
3 daughters. I said Mr. Dupont, I don't know what you're
4 talking about. This has nothing to do with that situation.
5 I don't know nothing about that case and that situation.
6 I'm here about this situation. Me and Mr. Dupont tried to
7 talk, he wouldn't never talk to me, and I'm like, I need
8 your side of the story. He was just yelling, "Take me to
9 jail. I know that y'all are going to do that anyway." So
10 he never cooperated with us while we were down there.

11 Q Did he say why you should take him to jail.

12 A He just kept saying, "You're going to take me anyway."
13 That's all he kept saying.

14 Q Okay.

15 A Once they looked at the vehicle, they looked at the
16 vehicle and I stayed up front with him. They came back and
17 I advised him he was charged. I was charging him with
18 traffic violations, which was failure to obey a police
19 officer and then also that he would be charged later
20 probably some more charges pending. I placed Mr. Dupont,
21 once I put the cuffs on Mr. Dupont, I locked up the cuffs so
22 they wouldn't move no more, and when I locked them I made
23 sure that I could get my fingers in the cuff.

24 Q You actively checked?

25 A Yes. I put him on my driver's side in the back seat.

1 Q Why on the driver's side?

2 A Because we were parked on the side of the road and
3 there was a ditch on the other side of the road, so it
4 wouldn't make sense to go around the car and fall; so I put
5 him in my side. Then I turned around and went back down to
6 where Robert Mack and Willie Newton was at, because I had
7 explained to them what was going on that I would need to see
8 them tomorrow morning so they could -- back then, the
9 victim's signed the notice; no deputy did that, so I
10 explained to them that if they wanted to file these charges
11 then they have to come down tomorrow morning and see the
12 Judge.

13 While I was down there talking to Robert Mack, Mr.
14 James Rivers came up. I went to the back of the car where
15 he was at, talking to Mr. Rivers and explained what was
16 going on, what the family needed to do to come down to the
17 jail. At that time, Mr. Dupont was kicking the car,
18 yelling. Mr. Rivers' said, Walker, he don't call me no
19 deputy, he just says Walker. He said, "Walker, go ahead and
20 take him, because he's acting up." So I opened the door.--
21 first of all, I never put the seat belt on because I was
22 just getting away from the situation. So I couldn't
23 transport him to the jail without the seat belt on. I
24 opened the door; I stepped in the car, and with my left hand
25 I reached around and took the seat belt. As I was doing

1 that, he was cussing and yelling and he spit in my face. I
2 said, "Don't do that." He said, "That's the way I talk." I
3 said, "Don't do that. You don't talk that way. Do not spit
4 in my face again."

5 Q Did you touch him at that point?

6 A No, sir.

7 Q You just said don't do that?

8 A Yes, sir.

9 Q He already spit on you once?

10 A Once.

11 Q All right. Tell the jurors what happened.

12 A Once I put the seat belt on, he did it again, and when
13 he did it again, I took my hand and I put the pressure
14 points on him and then I put them here, where my hands were
15 facing him. I had his hand like this with my hand over his
16 mouth, and when I put my hands over him, his mouth had left
17 the area. He started moving and jerking. I never one time
18 took his head and swung it to the left and to the right or
19 out the car. I cannot do that. I'm in a back seat with a
20 cage. I couldn't literally take him where he said he could
21 see the roof top or the blue lights or take his head and put
22 it to the ground when he's in the car and I'm in the car.

23 Q Okay. Let's take this a step at a time. You put the
24 seat belt on him?

25 A Yes.

- 1 Q Snap it in?
- 2 A Yes.
- 3 Q And then you used pressure points?
- 4 A Yes.
- 5 Q Where did you learn that?
- 6 A In the academy.
- 7 Q So that's something you learned at the Criminal Justice
8 Academy?
- 9 A Yes.
- 10 Q The points right here at the base of the jaw?
- 11 A Yes.
- 12 Q It's at that point that Mr. Dupont began to wiggle
13 around?
- 14 A Yes.
- 15 Q Did you sling him around?
- 16 A We were moving together. He was struggling in the car
17 seat to get my hands off of him.
- 18 Q Is it physically possible for you and Mr. Dupont to fit
19 through that car door?
- 20 A No, sir.
- 21 Q You're too big a guy for that?
- 22 A Yes, sir.
- 23 Q At any point, did you yank Mr. Dupont out of that
24 vehicle?
- 25 A No, sir.

1 Q Was there ever a point where his head was up so far
2 that he could actually see the sky and the blue lights?

3 A No, sir.

4 Q How long did this whole incident, this tussle, last?

5 A A couple of seconds.

6 Q All right. What happened next?

7 A Once I got the seat belt on him, I finally got out of
8 the car. I closed the door and I left. During the ride, we
9 was talking. He was yelling some things; I was saying some
10 things. I was upset from him spitting in my face. When I
11 got to the jail, I got to the jail with my ticket book.
12 Went over and around, I opened the door and he got out of
13 the car, walked in and had a seat. I walked him to the
14 counter and filled out my ticket and left.

15 Q When you took your hands away and closed the door, did
16 he complain of anything?

17 A No.

18 Q On the ride to the detention center, how long does it
19 take you to get from Chippawillow Road to the ---

20 A Probably five or ten minutes.

21 Q Okay. Is this the old jail or the new jail?

22 A The new jail.

23 Q Okay. So you have a five to ten minute ride down to
24 the center of town where the new jail is?

25 A Yes.

1 Q You had the mini-bikes?

2 A I didn't take the mini-bike.

3 Q But you had it out there?

4 A I took the pictures.

5 Q And you had the van?

6 A Yes.

7 Q These were some serious charges, correct?

8 A Yes.

9 Q You didn't secure the van?

10 A Once the van was inspected by Trooper Sommers and
11 Deputy Mitchell has saw that the van did not have any marks
12 on it to corroborate their story about him attempting to run
13 them over with the van, we didn't need to take a picture of
14 it.

15 Q All right. So there was no corroborating evidence
16 about the running over anybody with the van, correct?

17 A No, sir.

18 Q And you never found any knives out there?

19 A No, sir.

20 Q Now you testified on direct examination that you were
21 in the Marine Core?

22 A Yes.

23 Q So you had already been trained in hand-to-hand combat
24 prior to joining the force, so you knew how to use your
25 hands to restrain somebody?

1 A Yes, sir.

2 Q Now, the only place you ever received training on how
3 to subdue a suspect was at the academy, correct?

4 A Yes.

5 Q And you had gone to the academy in 1997?

6 A Yes.

7 Q By the time the incident took place with Mr. Dupont,
8 that was the year 2007?

9 A Yes.

10 Q It's fair to say based on the evidence and information
11 you've given us, you have never had any training on use of
12 force since that time, correct?

13 A No, sir.

14 Q Okay. Isn't it your position or it was your position
15 earlier when the deposition was taken that once the person
16 is cuffed, you have the power?

17 A Yes.

18 Q You had the power on that day?

19 A I did.

20 Q So when you put Mr. Dupont in your car in front of his
21 house, you were in power?

22 A At the time, yes.

23 Q Okay. And you never lost that power?

24 A No, sir.

25 Q Okay. Didn't you testify in your deposition that you

1 and you're supposed to give great details in those reports?

2 A Yes, sir.

3 Q You're supposed to state all of the facts to the best
4 of your ability, because you know those facts are used later
5 on in court, right?

6 A Yes, sir.

7 Q You wrote reports in this case, didn't you?

8 A Yes, sir.

9 Q In those reports, you mentioned nothing about Mr.
10 Dupont spitting on you, correct?

11 A No, sir.

12 Q You're alleging now, today, that spitting took place
13 after you wrote your report that didn't include it. The
14 spitting took place on the same day all of this other stuff
15 took place, correct?

16 A The spitting took place the same day, I don't believe
17 stacking charges. He had enough serious charges. So I
18 didn't write those charges.

19 Q Let's talk about the charges, then. Let's clarify
20 that. All those charges were dropped against him, right?

21 A I didn't drop them.

22 Q I didn't ask you that. They were dismissed, correct?

23 A As far as I know.

24 Q Let's talk about the one you did write.

25 A It was dismissed.

1 disrespected when you have spit on your face, correct?

2 A I wasn't disrespected, I was ---

3 Q Did it violate you?

4 A It violated me and made me mad.

5 Q You were upset?

6 A Yes, I was upset.

7 Q You were upset, because you thought he spit in your
8 face?

9 A I didn't think he spit in my face, sir. I know he spit
10 in my face.

11 Q But you were upset?

12 A Yes, sir.

13 Q You were mad?

14 A Upset.

15 Q Then you started yelling back at him.

16 A Saying don't do that again.

17 Q No, after he spit in your face -- after he allegedly
18 spit in your face and you were transporting him and mad.

19 A I said, "Do not spit in my face again, sir."

20 Q But you started saying other things to him and you just
21 don't remember what they are today?

22 A No. After he spit in my face, we didn't talk about
23 that no more until we got in the car and he started saying
24 things and I said what I had to say.

25 Q You said what you had to say?

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

DERRICK DUPONT,
Plaintiff,

vs.

CIVIL ACTION NUMBER
2008-CP-27-529

JASPER COUNTY SHERIFF'S OFFICE,
Defendant.

COPY

The discovery deposition of G. THEODORE
DAVIS, M.D., a witness in the above entitled
cause, taken pursuant to Notice and agreement,
before Shannon Casper, Certified Court Reporter
and a Notary Public, taken at the Law Offices of
Clawson & Staubes, P.A. 126 Seven Farms Drive,
Suite 200, Charleston, South Carolina, on the
31st day of July 2012, commencing at or about
the hour of 11:26 a.m.

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1 ZEIDAN - DAVIS (DIRECT EXAMINATION)

2 journals. I'm familiar with the issue of Mr.
3 Dupont's condition, which is -- I'll use the big
4 medical term, cervical spondylotic myelopathy.
5 So that's something I've encountered in my own
6 practice and previously studied and researched.

7 Q Okay?

8 And you didn't interview anyone
9 else other -- well, you didn't interview
10 anyone and didn't consult with anyone other
11 than Mr. Waldron on this case?

12 A No.

13 Q Okay?

14 If the trial were held today and
15 you had to testify, what would be your
16 opinion regarding this case? What would you
17 testify to?

18 A All right; basically that it was
19 discovered on March 21st, 2007, when a MRI of
20 Mr. Dupont's neck was obtained at the request of
21 Dr. Strohmeier, that he had a medical condition
22 related to two factors. The two factors being a
23 small or narrow spinal canal that he was born
24 with, which is called congenital spinal
25 stenosis, and that at that point he was about

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1 ZEIDAN - DAVIS (DIRECT EXAMINATION)
2 37-years-old, and on top of the narrowing the
3 spinal canal he had developed the normally
4 expected age-related degenerative changes in his
5 neck. Which means he developed some disc
6 bulging and some bone spurs. The name of that
7 is cervical spondylosis, and it is a consequence
8 of the combined narrowed spinal canal and
9 cervical spondylosis. He had developed some
10 pressure on his spinal cord in his neck and that
11 pressure resulted in another condition called
12 myelomalacia, M-Y-E-L-O-M-A-L-A-C-I-A, which
13 means softening of the spinal cord. So he had a
14 chronic condition known as basically cervical
15 spondylotic myelopathy, which accounted for him
16 having some discomfort or pain, and some mild
17 neurological symptoms. So that's number one,
18 the overall medical condition that he had.

19 The second opinion is that he had
20 been involved both in a motor vehicle
21 accident on April 9th, 2007, and in somewhat
22 of an altercation with police on
23 February 7th, 2007, and these events had not
24 caused that condition or the conditions I
25 described to you, nor had those incidents

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1 ZEIDAN - DAVIS (DIRECT EXAMINATION)

2 made the condition worse, but nevertheless
3 he did have the presence of these
4 conditions. And eventually in April 10th,
5 2010 I believe, Dr. Chutkan, who is a
6 neurosurgeon -- or orthopedic surgery at the
7 Medical College of Georgia did a
8 decompression surgery on his neck and took
9 the pressure off of the spinal cord and
10 fused the neck so that there would be no
11 more problem with that and that the surgery
12 was successful.

13 Q Okay?

14 So it's your opinion -- it's your
15 testimony here today that not only did the
16 events of the -- not only was this not
17 caused by any particular event, it was not
18 exacerbated by any event either?

19 A Correct.

20 Q Okay?

21 So this was just something that
22 just he was born with basically and it went
23 through as -- and the disease progressed as
24 he aged; is that your testimony?

25 A Basically, yes.

1 ZEIDAN -- DAVIS (DIRECT EXAMINATION)

2 condition in his neck, and that the condition
3 that he had had been present for a long time and
4 was related to the factors that I described to
5 you earlier. I can go over them again if you
6 want.

7 Q But specifically what -- how did you
8 form your opinions that this condition was not
9 exacerbated by any type of trauma?

10 A Okay; so basically the main issue is
11 that there -- and I've researched this in the
12 past, there's no scientific study that indicates
13 that a condition such as this, that being
14 cervical spondylotic myelopathy, is caused by
15 trauma or exacerbated by trauma.

16 Q Okay?

17 A This is a chronic gradually progressive
18 disorder that is related to continuous pressure
19 on the spinal cord as a result of the sort of
20 factors we talked about earlier, which is a
21 congenitally or inherited small spinal canal and
22 the gradual progression or development of
23 arthritis or spondylosis which puts additional
24 pressure on the cord. So that's number one.

25 Number two is, on the x-ray that

1 ZEIDAN - DAVIS (DIRECT EXAMINATION)
2 was obtained March 7th, which for example is
3 a month after the incident with the police,
4 there were no signs of any trauma on the
5 x-ray, and there were no abnormalities on
6 the soft tissue indicating trauma. The MRI
7 that was obtained on March 21st, 2007 also
8 revealed no signs of any trauma. It only
9 revealed the consequences of changes in the
10 spinal cord that had developed as a result
11 of pressure related to the small canal and
12 the degenerative arthritis over a period of
13 years.

14 Q Okay?

15 I want to go back to the research
16 that you said that you conducted in the past
17 which you referenced. What research was
18 this? Where did it come from?

19 A The research goes probably all the way
20 back to 1985.

21 Q And when did you conduct this research?

22 A Well, when I transitioned from
23 emergency medicine to occupational medicine one
24 of my principal roles as an occupational
25 medicine physician was causation analysis, so in

Matters of Law

Discussion regarding charge of Comparative Negligence

The following discussion is based on the facts of the case of *Smith v. Smith*, 100 Cal. 2d 100, 323 P.2d 100 (1958). In that case, the plaintiff was injured by a car which was driven by the defendant. The defendant was negligent in driving the car. The plaintiff was also negligent in not seeing the car. The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury. The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury.

The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury. The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury. The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury.

The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury. The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury. The court held that the plaintiff's negligence was a proximate cause of the injury and that the defendant's negligence was a proximate cause of the injury.

1 go back and do ---

2 THE COURT: All right. Well, somebody go find me some
3 case law for tomorrow morning. I will see you all at 9:30.

4 MR. BUSH: Thank you, Your Honor.

5 MR. WALDRON: One final point, you didn't mention
6 comparative negligence.

7 THE COURT: Yeah, where is the comparative negligence
8 in this?

9 MR. WALDRON: He spit in his face.

10 MR. BUSH: That doesn't warrant ---

11 MR. LIIPFERT: He was the one thrashing around,
12 according to our guys testimony. He could have hurt
13 himself.

14 MS. ZEIDAN: And that's disputed, Your Honor.

15 THE COURT: If it was disputed, it would be charged.
16 But I just don't see this as a comparative negligence case,
17 y'all. I really don't. The guy was in custody. He stated
18 that he pulled over to put the seat belt on him because he
19 didn't have his seat belt on, and his testimony was that he
20 spit in his face and he grabbed him.

21 I just don't see that as comparative negligence. If he
22 was head-butting him or something along those lines, that I
23 could see, but not spitting in his face. I just don't see
24 how that can be compared. He can't cause his own injuries
25 by spitting in his face. If he was thrashing around, then

1 that could be -- but the thrashing around ---

2 MR. WALDRON: He did testify. I asked him, "Did you
3 ever shake him?" "No, we were moving around because he was
4 jerking around and he kept moving and he was trying to get
5 away and he was kicking," and that's comparative, and I
6 still object to not giving it, because spitting in your face
7 is the part and parcel of this whole thing and that made the
8 situation happen.

9 THE COURT: Yeah, but that's not comparative
10 negligence; it's just not.

11 MR. BUSH: Thank you, Your Honor.

12 THE COURT: He had to have been comparatively negligent
13 in causing his own injuries.

14 MR. WALDRON: I think it's a jury question, at least,
15 because the jury can certainly believe that he contributed
16 to his injuries when thrashing around in the back of the
17 cruiser.

18 MR. BUSH: Your Honor, I don't think by spitting you
19 get a neck injury. That's not comparative. I think the
20 case law, the Nelson case outlines that he had to have done
21 something to trigger the injuries in his neck. This would
22 have never taken place but for the police officer who had a
23 restrained passenger, putting his hands on his neck. And
24 based on expert testimony, there is no restraint by the neck
25 of someone in a car.

1 THE COURT: Okay. I may have to think about that.

2 MR. BUSH: We'll look up the case law tonight, Your
3 Honor.

4 THE COURT: I'm having a hard time with comparative
5 negligence in this case. My only concern would be is when
6 he grabbed his neck, even according to Deputy Walker's own
7 testimony, he was pulling against him, and that could have
8 caused or contributed to the injury. It's not the same. Go
9 find me some case law. I will see y'all at 9:15 in the
10 morning.

11 (Whereupon, the Court is in recess in the trial of this
12 case for the evening. Thereafter, on Thursday, September
13 1st, 2012, the Court is reconvened in the trial of this case
14 and the following is held on the record.)

15 THE COURT: I have to tell you that I have thought long
16 and hard about this over the overnight recess. Mr. Waldron,
17 respectfully, I disagree with you. I do not think that the
18 gross negligence is the standard for the assault and
19 battery. I think what you have is two causes of action.
20 You have an assault and battery and then as a defense, you
21 have a lawful arrest. It's in Anderson's book, it's charged
22 8-8, is it? That a lawful arrest and that he's allowed to
23 use reasonable force necessary. I think that's a defense to
24 the assault and battery, no question.

25 And then, typically, you see when we talk about a

1 negligence standard, you typically see, and obviously, under
2 the Tort Claims Act, it would be a gross negligence standard
3 in this case, but typically, you would see it as to training
4 and supervision of the Sheriff's deputy. It's the
5 surrounding, not exactly how he is executing it. Because I
6 can see where a jury can find that he intentionally under
7 assault and battery, intentionally hurt him. And if it's an
8 intentional tort, he can't be comparatively negligent. But
9 I can also see how a jury could find that in doing the
10 arrest, he treated him to the point where, let's say, taking
11 his words, he was trying to use the pressure points, he
12 exceeded it, and was grossly negligent and maybe didn't
13 intend to batter him, but as a result, did injure him.

14 I can tell you, I've also consulted with -- go ahead
15 and put it on the record, Stephanie McDonald who has done a
16 lot of this work, and we talked again, because of what you
17 were arguing to me yesterday does not make sense and she
18 agreed with me. That is not the standard. Gross negligence
19 is not the standard for assault and battery. It can't be.
20 One is an intentional tort and if one is an intentional
21 tort, there is no comparative negligence for it.

22 What I'm trying to figure out is how is how you do a
23 verdict form and what an inconsistent verdict would be. I
24 mean, my way of looking at it would be that we charge
25 assault and battery, along with the defense of a lawful

1 arrest and the ability to use reasonable force, as to that
2 cause of action. If they find for that cause of action, if
3 they say, yes, it was an assault of battery, go straight to
4 the actual damages at the end, because it would be -- there
5 would be no comparative.

6 If they found no as to that, they would go to question
7 number two was, was the deputy grossly negligent? That's
8 where I'm having a little bit of problem of whether or not
9 to even go to that. I mean, really, what this case is, is
10 this is an assault and battery. I mean, that's really what
11 it should be. That's where I'm having my trouble.

12 MR. WALDRON: And we've thought about it and you're
13 correct. I think what it is, it's an assault and battery,
14 but there's also a cause of action for negligence, I may
15 have put it as gross negligence, but what happens is you
16 have a negligence claim. And in this case where we have a
17 Tort Claims Act exclusion under 15-78-16, it elevates the
18 proof of it.

19 THE COURT: Right. But it's two separate causes of
20 action.

21 MR. WALDRON: That's right.

22 THE COURT: And then the question becomes is the
23 comparative negligence -- and certainly the case you gave
24 me, Worth, says that you can. You certainly, on a gross
25 negligence standard, you can be comparatively negligent. I

1 can tell you that, also, and we'll just do this for appeal
2 purposes. I went back and read the Gibbes and the Lott
3 case, as well, which are two cases regarding this.

4 MR. WALDRON: Is that Berkeley County?

5 THE COURT: Yeah. And so just to kind of look at it.
6 So that's what I think needs to be charged is, I think, and
7 it needs to say on the verdict form, do you find that he
8 committed assault and battery? If the answer is yes, go
9 down to the bottom and fill in the actual damages. And
10 then, if you find that it was assault and battery, then do
11 you find that Deputy Walker was grossly negligent? And if
12 yes, then it will say, do you also find that the plaintiff
13 was comparatively negligent. And it goes through a typical
14 comparative negligence type of questioning. I'll show it to
15 you, but I think that's the proper charge. That is what the
16 stated law is and quite frankly, that makes sense.

17 MR. WALDRON: Okay. Are you also then going to charge
18 duty, breach ---

19 THE COURT: Yes. Yes.

20 MR. WALDRON: Okay.

21 THE COURT: And that's actually what my original charge
22 was before you tried to talk me into the other one
23 yesterday, so we went back to our original charge of before
24 we ever spoke, so I should have just stuck with what I had.

25 MR. WALDRON: I apologize.

1 THE COURT: No, that's okay. Sometimes you have to
2 think it through better, so that's what we're going to do.
3 I just wanted to get that all out to you so you will know
4 what to argue, certainly, in your closing.

5 MR. BUSH: Your Honor, can I ask you one question?

6 THE COURT: Sure.

7 MR. BUSH: Well, if his duty, as defined by gross
8 negligence, the definition of gross negligence and the
9 elements of negligence -- okay.

10 THE COURT: It would be like having punitive damages
11 almost. That is what it would be like. That's what it
12 reads like. You understand, like when you talk about having
13 to prove gross negligence would be that. We're not charging
14 punitives, don't get me wrong, but that's the standard, so
15 yes.

16 MR. BUSH: Thank you.

17 THE COURT: What I'm going to do is this, y'all. While
18 we're playing this video, I'm going to get it all straight
19 and then I will tell you exactly what I'm going to charge,
20 so you all will know and we can all agree on the verdict
21 form.

22 All right. Are we cued up this morning and ready to
23 go?

24 MR. WALDRON: It's in, it's cued up; it's nice and
25 loud.

1 matter of law that I need to take up with the lawyers.
2 Again, do not discuss this case. It wouldn't be appropriate
3 to do so at this time. You have not heard the lawyers'
4 arguments or my charge on the law and we will be back with
5 you shortly. Thank you.

6 (Whereupon the jury exits the courtroom and the
7 following is held on the record.)

8 THE COURT: All right. Are there any motions?

9 MS. ZEIDAN: Your Honor, at this time, the plaintiff
10 requests a motion for directed verdict. That as a matter of
11 law, the plaintiff prevailed in this action because he has
12 proven all of the elements of this claim and no reasonable
13 jury could find otherwise. Specifically, Your Honor, that
14 the plaintiff has put forth evidence from which a reasonable
15 jury could conclude that Deputy Walker with the Jasper
16 County Sheriff's Office was not only negligent, but grossly
17 negligent on the evening of February 7th, 2007. That he
18 breached his duty as an officer to perform to the standards.
19 He caused injury, but not only was he negligent, he was
20 grossly negligent in that he failed to not only exercise
21 even the slightest of care.

22 Second, evidence shows that not only did he commit
23 battery to Derrick Dupont, he also continued to make
24 threats, placing Mr. Dupont in reasonable fear of bodily
25 harm. And these threats included taking him down a dirt

1 road to batter him some more, furthering our evidence to
2 assault.

3 Which brings me to -- to all these reasons and more, we
4 ask for a directed verdict in this matter.

5 MR. WALDRON: Your Honor, I think that's the first time
6 I've heard about the dirt road, so I would say that's not in
7 evidence, but gross negligence is almost always a jury
8 question, unless there's absolutely no doubt. There's
9 certainly -- they've presented their expert who talked about
10 various neck constraints, but conceded that he wasn't sure
11 where South Carolina stood on this. He wasn't even sure
12 what kind of neck restraints that this deputy used, whether
13 the deputy used excessive force or reasonable force, that's
14 for the jury to decide. We would ask that you deny their
15 motion.

16 THE COURT: Respectfully, I am going to deny your
17 motion for directed verdict. I do think it's a jury issue.
18 I think this is an interesting case, quite frankly.
19 Depending on which story you believe, or which side, that
20 there could be either an assault and battery or potentially
21 a negligent application of pressure points causing damages.
22 So again, it's not necessarily clear. I can tell you, I
23 have still a little bit of angst about charging both causes
24 of action, but I think in this case, it's appropriate. I
25 think it's the only way to do it.

1 MR. WALDRON: Your Honor, before we recess, I need to
2 renew my motion for directed verdict for all the same
3 reasons I've cited before. Now, it's even clearer, because
4 Dr. Davis has testified that there was no relation between
5 his present condition and the incident with the sheriff.
6 The sheriff did not cause the problem. There is no
7 connection between the breach of duty, if any, and the
8 damages, therefore, no proximate cause.

9 THE COURT: Well, respectfully, I am going to deny your
10 motion. I think it is a jury issue whether or not if he did
11 breach that duty and was grossly negligent in the
12 application of applying pressure points, even taking it in
13 the light most favorable, again, I think he could have been
14 grossly negligent and injured him. And I do think that Dr.
15 Chutkan does do enough in his deposition to get it to the
16 jury. As we all stated before, I went through and read his
17 deposition, and I think it's on page 33, that's what keeps
18 coming to my mind; it's either 33 or 34. I think he did do
19 quite enough. I wish Mr. Clark had asked more questions and
20 better questions, but hindsight is 20/20. So anyway, I
21 respectfully would deny your motion.

22 Do you have any rebuttal witnesses?

23 MR. BUSH: No, Your Honor.

24 THE COURT: Okay. Let's go through and I will talk to
25 you about the charge as it stands right now and where we're

1 at. Additionally, I want you all to take a look at the
2 verdict form, based on the case that Mr. Liipfert gave me,
3 certainly, and it's the case of Berberich v. Jack. It's a
4 Supreme Court case. There can be comparative negligence for
5 gross negligence or any other form. So as a result, I am
6 going to go ahead and charge comparative negligence in this
7 case. Again, I think it's a little bit awkward, and I think
8 that's probably for the appeal purposes why I have a little
9 bit of angst charging it. It seems a little bit awkward,
10 but I think it's appropriate and it does fit the facts of
11 this case.

12 To go through again and tell you how I'm going to
13 charge this, then. As I stated to you yesterday when we
14 started, the jury is the judge of the facts, I'm the judge
15 of the law. I charge direct and circumstantial evidence,
16 expert testimony, deposition testimony, the burden of proof
17 in this case is by preponderance of the evidence. I'm also
18 going to charge very briefly the respondent's that the
19 employer is liable with an active employee in the scope of
20 their employment. Then, I'm going to charge that Mr. Dupont
21 has brought two causes of action. One is for assault and
22 battery, the other one is for gross negligence. I'm going
23 to explain assault and battery. After that, I'm going to
24 explain the defense of lawful arrest, which is Anderson's 8-
25 8 to this case. Then, I'm going to go ahead and say that

1 next you should consider whether or not -- actually, I think
2 what I will say is if you find that he did not commit an
3 assault and battery, you would then next consider whether or
4 not he was grossly negligent, because that's the way it
5 reads on the verdict form. And I don't think there's no
6 way, if they find that he commits an assault and battery,
7 there's no way they can find that he was grossly negligent.
8 It's got to be one or the other. He can't intentionally do
9 something and then be negligently doing the same thing.
10 Typically, and I think in excessive use of force cases, the
11 negligent cause of action has to do more with the
12 supervision and training by the Sheriff's Department, but
13 that was not pled by the plaintiffs in this case in any way,
14 shape or form, so they didn't offer any testimony in regards
15 to it.

16 I'll show you the verdict form and it will probably
17 make more sense. I'm going to go through and explain
18 negligence, duty, breach, and the standard in this case is
19 by a gross negligence standard. I'm going to explain gross
20 negligence to them. Then, I'll obviously go through
21 proximate cause and damages portion. I am going to go
22 through the comparative portion that says if you find that
23 Deputy Walker was grossly negligent, you then must consider
24 whether or not the plaintiff was also negligent. Then, I go
25 through and explain comparative negligence.

1 (Whereupon, the Court is in a brief recess in the trial
2 of the case.)

3 THE COURT: Margaret, because this verdict form is so
4 complex, I would like to step down and show it to them,
5 instead of just reading it to them, because it is so --
6 they're not going to understand. I would like to show it so
7 that when I'm talking about it, I can go down and read it to
8 them. Okay? I'm going to have to be able to put it on the
9 overhead. Is that okay?

10 MADAME CLERK: Yes. I'm getting it ready, now.

11 THE COURT:

12 MR. WALDRON: I have the original transcript, Becky,
13 for Gordon Davis, M.D. I'll give that to you to include
14 with the record, a court's exhibit or however you want to do
15 it.

16 THE COURT: Thank you.

17 MR. WALDRON: I also moved in yesterday the two
18 exhibits that I marked and there was some objection that we
19 had raised a motion in limine, and indeed, we did raise a
20 motion, you overruled it. They were allowed to talk about
21 it, so at this point, I would move in the two warrants
22 signed by Robert Mack and Willie Newton as exhibits.

23 MR. BUSH: We're not going to move those in.

24 MR. WALDRON: I moved them in yesterday, you objected.
25 You said we had a motion in limine, we did, it was

1 overruled. You got to talk about it and I think it's ---

2 MR. BUSH: It wasn't overruled. She granted it and
3 that's why we didn't talk about it. She granted the motion
4 in limine.

5 THE COURT: What did I do?

6 COURT REPORTER: You had a sidebar and then nothing
7 else was said.

8 MR. BUSH: In the beginning of the case, you granted
9 the motion.

10 THE COURT: Because I didn't think the warrants had
11 anything to do with this case.

12 MR. BUSH: Exactly. Exactly.

13 MR. WALDRON: Yet, the charges were talked about
14 throughout this on the plaintiff's case.

15 THE COURT: Okay. I'm denying that motion. They are
16 not moved in. They are not coming in. He can talk about
17 it, but they are not relevant to whether or not assault and
18 battery was committed. I mean, there's no question that the
19 guy was in custody. That's part of this, you know, is the
20 guy was in custody; it's clear. He was in handcuffs. Which
21 begs me another question of can you be comparatively
22 negligent if you're in custody and don't have your own free
23 will and accord?

24 MR. BUSH: Your Honor, that's the argument we would make
25 on that.

1 (Brief pause in the courtroom as Ms. Bostick prepares
2 the overhead for play.)

3 THE COURT: All right. We need to go back on the
4 record for a minute. For a simple little case, this thing
5 has gotten complicated; I'll go ahead and state that for the
6 record.

7 I'm having a little issue again with the comparative
8 negligence. Like I said, it reads so awkwardly, and let me
9 tell you why. What duty is owed by the plaintiff to plead
10 comparative negligence? I mean, the only analogy I can
11 think of in this case is that in a medical malpractice case,
12 if a patient is not compliant with a doctor's orders, can
13 they be comparatively negligent? And the answer is no,
14 under our case law. I mean, I've researched that and done
15 that in a similar case. I'm having a hard time wrapping my
16 head around how a man who is under arrest and restrained can
17 be comparatively negligent?

18 MR. WALDRON: Judge, I think you said it yesterday when
19 you said if he is putting pressure on him and he then starts
20 to struggle and squirm and move around, he is comparatively
21 negligent.

22 THE COURT: If we charge comparative negligent and you
23 get a defense verdict, you're going to hang onto it, I'm
24 going to tell you that right now. I'm not convinced that
25 comparative negligence is appropriate. Again, it's

1 analogous to a medical malpractice case. A patient can't be
2 comparatively negligent. It's a defense -- it's a defense,
3 but it's not comparative negligence. I guess the answer to
4 the first question you raised, it's not up to the plaintiff
5 to prove comparative or lack of comparative, that is an
6 affirmative defense. The burden falls on me to prove by the
7 preponderance of the evidence that he was comparatively
8 negligent.

9 THE COURT: No, it doesn't. You have to prove his --
10 but there's got to be a duty and he's got to breach that
11 duty. It's straight negligence again, which is the problem.
12 I mean, the charge, you go through and read it. It says
13 that you have to prove as a defense that he had a duty and
14 that he breached that duty. What's the duty? And I
15 understand you can argue that the duty is not be thrashing
16 in the back seat, but the simple fact is the man is in
17 handcuffs, he's under arrest, there's no question in this
18 case that's what happened. I don't think comparative
19 negligence is appropriate. Because if what he did was
20 thrash and cause his own injury, then this man, Mr. Walker,
21 your defendant, is not grossly negligent. It's just up or
22 down. If he can't be comparatively -- he can't -- it can't
23 be both. I truly believe that. I don't think it's
24 appropriate as it is right now. I don't think MR. Dupont
25 can be comparatively negligent. I mean, I'll give you guys

1 ten or fifteen minutes to find some case law, but I have
2 found nothing, other than in this type of case -- I mean,
3 part of the problem is this case was pled so lousy that --
4 I'm not going to charge comparative negligence unless you
5 can go find me the case that says something analogous to
6 this. You know, this really is an excessive use of force
7 case. That's what this is. Either it is or it isn't.

8 Again, I don't think he can be comparatively negligent.
9 So like I said, I'm going to give y'all about ten or fifteen
10 minutes or so to find something, but I'm having a hard time
11 with that. And again, if you end up with a verdict, a good
12 verdict for the defense, I don't think you're going to hang
13 on to it, if I charge comparative negligence.

14 MR. WALDRON: And I think the comparative negligence
15 does not apply to the assault and battery.

16 THE COURT: Well, clearly, we know that.

17 MR. WALDRON: We have a negligence, gross negligence,
18 cause of action, and I think that the burden falls on the
19 defense to what evidence for which we have done and it
20 should be charged to the jury for their determination. I've
21 made my objection for the record. We'll look for a case on
22 that.

23 THE COURT: I don't see how you can purse out of our
24 jury, or how our jury can purse out what percent he was
25 comparatively negligent, because your guy either acted

1 grossly negligent or he did not. It's one way or the other.
2 If what he did was appropriate and this person pulled away,
3 then they should find him not grossly negligent. Let's go
4 ahead and take about 15 minutes. Just go see if you can
5 find me something as far as excessive use of force and
6 whether or not you can charge comparative negligence. I can
7 tell you I've asked Stephanie McDonald and she says she has
8 never seen one. So I just think it's strange.

9 MR. WALDRON: Well, I've never seen an excessive use --
10 a negligent use of excessive force cause of action, so I
11 agree with Judge McDonald on that one.

12 (Brief pause in the courtroom.)

13 MR. WALDRON: Your Honor, may we go back on the record?

14 THE COURT: Yes.

15 MR. WALDRON: In a case that we provided yesterday,
16 which was Berberich v. Jack, 392, S.C. 278, the conclusion
17 on the final page says that, "We conclude under South
18 Carolina's comparative negligence system all forms of
19 conduct amounted to negligence in any form, including, but
20 not limited to ordinary negligence, gross negligence," and
21 it goes on, "may be compared to and offset by any conduct
22 that falls short of conduct intended to cause a jury."

23 (Brief pause while The Court reads case.)

24 THE COURT: The Berberich case is where a painter was
25 upon a ladder at a house and he insisted that the sprinklers

1 continued to be on. So what was the duty that Mr. Dupont
2 owed to your client, to the defendant? Because that's the
3 problem. I mean, I could see it as a duty to himself, but
4 the question is what is the duty he owes to your client?

5 MR. WALDRON: The same duty that he was charged on the
6 ticket. Follow the lawful instructions of a police officer
7 and I initially contend and still do that his conduct in
8 placing himself in the position of spitting, that that
9 conduct is -- it's reckless, it violates the law, because it
10 is an assault and that should take him out of any beneficial
11 inferences or instructions, but once he is lawfully under
12 arrest, which he could have been for -- he was lawfully
13 under arrest. He's got the duty to obey an officer and he's
14 got the duty not to fight back and struggle and spit on him.
15 And then I think what you're considering charging is that
16 when he was spitting and when we tried to stop him from
17 spitting by using the pressure points, he struggled and
18 moved around in the back, he is essentially -- if they
19 believe that any injury resulted from this, he's making the
20 injury worse. He's got a duty not to -- just like we have a
21 duty to protect property from further damage; he's got the
22 duty to not do that. Not be in such a fashion as to
23 exacerbate or create injuries to himself.

24 THE COURT: Again, the problem I have is I know in a
25 medical malpractice case there cannot be comparative

1 negligence. It's either the doctor's negligence. You
2 cannot -- it's up or down. They can find it wasn't the
3 doctors -- that's why I'm having a hard time and I just
4 don't know of any case law.

5 MR. WALDRON: Other than Berberich, I don't either.
6 Obviously, this is not a malpractice case, although it's a
7 care and custody kind of situation.

8 THE COURT: Well, let's put it this way, it's more
9 analogous to a medical malpractice case than it is to a
10 falling off the ladder case; that's for sure. We'll just be
11 at ease for a few minutes. If you find anything, y'all let
12 me know.

13 (Whereupon, the Court is in recess for a brief period.)

14 THE COURT: When we're talking about the gross
15 negligence, there would be comparative negligence, because
16 his duty is not to injure himself. I can go back and forth.
17 We can make it -- you can do it analogous to a wreck case.
18 Obviously, we all have a duty not to injure ourselves
19 further or hurt ourselves further, just as you argued you
20 have to minimize your damages in a construction case.
21 Again, I'm on the other side. I think it's a little closer
22 to analogous to a medical malpractice case, there's a
23 standard. The officer has a standard. You have to meet that
24 standard. As it stands right now, I think I am going to go
25 ahead, and just based on thinking it through, that intent is

1 not required for a civil action of assault and battery.
2 That would take it out of being an intentional tort and we
3 could then go ahead and turn around and argue the gross
4 negligence, comparative negligence. Whether or not the
5 theory is correct or incorrect, I'm sure they will tell us
6 at the Supreme Court. But at this juncture, unless you all
7 can agree to something different, I'm inclined to charge as
8 we stated.

9 MR. BUSH: Your Honor, just for the record, we just
10 want to make an objection to that charge and note it for the
11 record.

12 THE COURT: All right. Noted for the record, I have
13 not only asked, but begged you all to come up with some case
14 law or any reasoning for your objection, which you all have
15 not done. One thing they keep telling us judges to do is
16 give me something, and you all have not come up with
17 anything. So respectfully ---

18 MR. BUSH: You mean as to comparative negligence?

19 THE COURT: As to comparative negligence.

20 MR. BUSH: Well, our argument is based on the same
21 case, but they have not, even if they wanted to plead it at
22 this point, they have not argued nor established, nor put up
23 any evidence to show our client's duty and where he breached
24 it throughout this entire case. There's been no evidence.
25 There's been no one to testify on what duty he had or how he

1 breached it.

2 THE COURT: Well, he has a duty to not act unreasonably
3 to cause injury to himself, and I think that would be the
4 duty. Just like a plaintiff in a wreck case, you know, he
5 has a duty to not act negligently. We're going to go ahead,
6 we're going to charge it and we will see what happens. And
7 we'll see. We'll let the Supreme Court decide if it's more
8 like a med-mal or if it's more like a wreck case. So quite
9 frankly, this whole problem was caused -- it should have
10 been brought as a 1983 action. I mean, that's where this
11 all stems from; the case is not pled properly, which is why
12 we're at the place we're at.

13 MR. WALDRON: Well, it was brought as a 1983 action in
14 Federal Court. They took care of that and sent it back; it
15 was repled.

16 THE COURT: Got it.

17 MR. WALDRON: Are you saying that under civil battery,
18 there is no intent to do the touching? There's no
19 requirement that they prove intent to do the touching?

20 THE COURT: There is an intent -- they have to intend
21 to do the touching, which is the battery. It's the intent,
22 the problem is for the assault, there doesn't have to be an
23 intent as to the assault. So I mean, there's no question
24 it's civil action; it's pertinent, it's relevant, but it's
25 not necessary on the assault, so anyway, we're going to

1 charge it as it is. We're going to keep the verdict form as
2 it is, and let's see what this jury does.

3 MR. WALDRON: Your Honor, not to further confuse
4 things, but are you going to charge the comparative only as
5 to the negligence cause of action?

6 THE COURT: Yes.

7 MR. WALDRON: Good. Thank you.

8 MR. BUSH: What was that, Your Honor? I'm sorry.

9 THE COURT: I'm going to charge the comparative only as
10 to the negligent cause of action.

11 MR. BUSH: Okay, sure. Thank you.

12 THE COURT: The only response to the assault and
13 battery is the defense that it was a reasonable use of
14 force, that's clear.

15 All right. Let's bring the jury out and go ahead and
16 argue, okay?

17 (Whereupon the jury enters the courtroom and the
18 following is held on the record.)

19 THE COURT: Welcome back, ladies and gentlemen.
20 At this time, you are going to hear the closing arguments
21 from the lawyers. I am going to instruct you on the law
22 that is applicable to this case and we are going to send it
23 to you for your deliberation. It's my understanding that
24 your Clerk of Court, Ms. Bostick, has gone ahead and ordered
25 you some lunch and when it comes, we'll give it to you.

Verdict

1 Negligence portion of jury charge, is received into
2 evidence.)

3 BAILIFF: We have a verdict, Your Honor.

4 THE COURT: All right. Is everyone ready to receive
5 the verdict?

6 MR. BUSH: We are, Your Honor.

7 MR. WALDRON: Yes, Your Honor.

8 THE COURT: All right. Jo, bring us the jury.

9 (3:40 p.m., whereupon, the jury enters the courtroom
10 and the following is held on the record.

11 THE COURT: Mr. Foreperson, I understand the jury has
12 reached a verdict.

13 MR. FOREPERSON: Yes, ma'am.

14 THE COURT: Would you please hand it to Ms. Bostick.

15 MADAME CLERK: Thank you.

16 THE COURT: All right. In the case of Derrick Dupont
17 versus Jasper County Sheriff's Office, we, the jury, by
18 unanimous consent find question number one, did the
19 defendant, Deputy Walker commit an assault and battery
20 against the plaintiff, Derrick Dupont? The answer is "No."

21 As to question number two, was the defendant, Deputy
22 Walker, grossly negligent? The answer is "No."

23 Mr. Foreperson, and members of the jury, if this is
24 your verdict, will you please indicate by raising your right
25 hand?

1 (All jurors raise hands.)

2 THE COURT: I will note for the record that all of the
3 jurors have raised their right hand.

4 Is there anything further required of this jury from
5 the plaintiff?

6 MR. BUSH: No, Your Honor.

7 THE COURT: From the defense?

8 MR. WALDRON: No, Your Honor.

9 THE COURT: Ladies and gentlemen, this completes your
10 service. I want you to know that not only have you helped
11 us resolve this case, but additionally, when the week began,
12 or the week before, we had a number of cases on our roster.
13 Because they know jurors are willing to come hear cases,
14 those cases are often resolved by one way or the other,
15 typically settlement. The simple fact is I cannot try every
16 case that is on a trial docket. Typically, we only end up
17 trying maybe three to five percent of all lawsuits filed.
18 And again, without your service, no one else in this room
19 can do their job, and I want to let you all know how much we
20 appreciate it.

21 You have been very diligent this week. Y'all have
22 worked hard. You've been listening, and we appreciate that,
23 and the lawyers know that. We certainly respect your
24 decision. Thank you for being here. I will tell you that
25 you have earned your exemption for the next three years if

1 Thank you again, ladies and gentlemen, you are excused.
2 Have a wonderful long weekend. Thank you.

3 (3:45 p.m., whereupon, the jury exits the courtroom and
4 the following is held on the record.)

5 THE COURT: Anything further from anyone?

6 MS. ZEIDAN: Your Honor, the plaintiff would like to
7 make a motion for a judgment notwithstanding the verdict and
8 that in our case in chief, we provided all of the elements
9 for assault and battery and gross negligence and we would
10 request that the Court grant a decision in our favor.

11 THE COURT: All right. Any response, Mr. Waldron?

12 MR. WALDRON: Very briefly. This was clearly a jury
13 case; both sides presented plenty of evidence. It was
14 enough to take it to the jury and the jury has decided, and
15 the jury's verdict should stand.

16 THE COURT: Well, obviously, the standard is the same
17 whether it's at the directed verdict stage or it's post-
18 trial. I certainly do think there was evidence to submit to
19 the jury and I certainly understand their verdict in this
20 case and the evidence supported, as well. But again, this
21 is why we submit cases to jury's, simply put. They pursued
22 it out for us.

23 But I want to commend both sides. Y'all did an amazing
24 job. You both worked hard. You were very professional.
25 I've got to tell you, it was one of the best professional

1 CLOSING ARGUMENT

2 BY MR. BUSH:

3 Ladies and gentlemen, this is the last time I am going
4 to stand before you today. I don't have a story for you,
5 because we're talking about a man's life. He keeps telling
6 you about pressure, he applied pressure. Ernest Walker, you
7 saw his hands, applied pressure. Pressure was applied. He
8 never told you, and ask yourself when you go back there, he
9 never told you how much pressure he applied to that man's
10 neck.

11 He was born with a condition, the doctor said he could
12 have lived a normal life; this is what caused his injury,
13 Give him justice. Thank you.

14 JURY CHARGE

15 BY THE COURT:

16 Mr. Foreperson, and members of the jury, you've heard
17 the evidence and the arguments of the parties. I now have
18 to explain to you the law that applies in this case.

19 The plaintiff claims that he has been injured or
20 damaged by the actions of the defendant. In bringing this
21 lawsuit, a plaintiff claims the defendant should compensate
22 him for his injuries or damages. Now, there are
23 Constitutions and Code of Laws that only you, the jury, may
24 make findings of fact in this case. I'm not permitted to
25 tell you how I feel about the evidence which has been

1 presented and throughout this trial I have intended to be
2 fair and impartial to both parties involved.

3 Ladies and gentlemen, to determine the facts in this
4 case you'll have to evaluate the credibility or
5 believability of the witnesses. I've already discussed with
6 you some of the things that you may consider as you decide
7 whether or not to believe a witnesses testimony about a
8 particular matter.

9 You can believe as much or as little of each witnesses
10 testimony as you think proper. You may believe the
11 testimony of a single witness against that of many witnesses
12 or just the opposite. You may believe a part of a witness's
13 testimony and disbelieve the rest. You should not determine
14 the truth merely by counting the number of witnesses
15 presented by each side and throughout this trial you have
16 but one objective and that's to seek the truth regardless of
17 its source.

18 Now, ladies and gentlemen, evidence in a case may be
19 either direct or circumstantial. Direct evidence is
20 testimony by a witness about what the witness personally
21 saw, heard, or did. Circumstantial evidence is indirect
22 evidence. That is, it is proof of one or more facts from
23 which you can find another fact. You are to consider both
24 direct and circumstantial evidence. The law permits you to
25 give equal weight to both, but again it is for you to decide

1 how much weight to give to any evidence.

2 Now, the rules of evidence ordinarily do not permit
3 witness's to testify to opinions or conclusions. An
4 exception to this rule exists for witnesses we call expert
5 witnesses. A witness who by education and experience who
6 has become an expert in some art, science, or profession may
7 give an opinion as to the subject a witness claims to be an
8 expert in, and they also give their reasons for the opinion.

9 You should consider an expert opinion given by a
10 witness and like any other evidence give it the weight you
11 think it deserves. If you decide an expert witness's
12 opinion is not based on sufficient education and experience
13 or if you decide for reasons given supporting opinion are
14 not sound or that the opinion is outweighed by other
15 evidence, you may disregard the opinion entirely.

16 An expert witness's testimony is to be given no greater
17 weight than that of other witnesses simply because the
18 witness is an expert. You do not have to accept an expert's
19 opinion, even though it goes uncontradicted.

20 Now, ladies and gentlemen, in this case, testimony was
21 presented to you by deposition. A deposition is a recording
22 containing sworn testimony given by a witness outside the
23 Court in the presence of lawyers for each party who may ask
24 questions of the witness. This testimony is entitled to the
25 same consideration and is to be judged as to the credibility

1 and weight by you in the same way as if that witness were
2 present and gave it testimony read to you as if they were on
3 the witness stand. It is then for you, the jury, to
4 determine the effects, the value of the weight and truth of
5 the testimony that's given in that deposition.

6 Now, ladies and gentlemen, the same Constitutional laws
7 which designate and make you the finders of fact makes me
8 the instructor of the law. You must accept the law as I
9 give it to you. If I'm wrong, there's another place and
10 another time for that error to be considered and if
11 necessary, corrected. But for now, you must accept the law
12 as I give it to you. This means you should not be concerned
13 about what you may think the law should be but rather what I
14 charge you the law is.

15 Now, ladies and gentlemen, the plaintiff in this case
16 has the burden of proving his claim. The burden of proof in
17 this case is by preponderance of the evidence. A
18 preponderance of the evidence simply means the greater
19 weight of the evidence which as a whole shows that the facts
20 ought to be proved if more likely true than not true. And
21 this could be illustrated by imagining a set of scales.

22 When the case begins, the scales are even and after all
23 the evidence has been presented, if the scale should remain
24 even or if they should tip, even slightly, in the favor of
25 the defendant then the plaintiff will have failed to meet

1 his burden of proof and would not be entitled to recover in
2 this case and your verdict would be for the defendant.

3 If on the other hand, those scales should tip even
4 slightly in favor of the plaintiff, then he will have met
5 his burden of proof and you should return a verdict for the
6 plaintiff.

7 Now, ladies and gentlemen, I charge you that it's the
8 law that an employer is liable for the negligent acts or
9 omission of employees which are within the scope of their
10 employment and which proximately cause injury to another
11 person. In this case the plaintiff, Mr. Dupont, has brought
12 two causes of action against the defendant. The first is
13 assault and battery, and the second is gross negligence.

14 Ladies and gentlemen, as to assault and battery, an
15 assault occurs when a person unlawfully attempts or offers
16 to commit a violent injury upon another person and has the
17 present ability to complete the attempted injury. An
18 assault is the intentional creation of a reasonable fear of
19 immediate bodily harm. A battery is the unlawful touching
20 of another person by a person who has committed the assault.

21 An unlawful touching can be caused by a part of the
22 actor's body or by an object the actor puts in motion. A
23 battery is the completion of the assault by using or
24 applying force to another person, however slight, in a rude,
25 angry, or resentful manner without legal justification for

1 doing so.

2 Now, ladies and gentlemen, generally, an officer cannot
3 arrest one charged for the misdemeanor not committed in his
4 presence without a proper warrant for such arrest being in
5 the possession of the officer at the time of the arrest.

6 However, a police officer may arrest, without a warrant,
7 for a misdemeanor not committed in his presence where the
8 fact and circumstances within his observation give him
9 probable cause to believe the crime has been freshly
10 committed. Additionally, an officer has the power and
11 authority to arrest without a warrant those who committed a
12 violation to criminal laws in the State within the view of
13 that officer.

14 Now, ladies and gentlemen, the fact that a person who
15 is arrested may later be found not guilty or the charge
16 against him drops does not make an arrest unlawful. The
17 fundamental question determining whether an arrest is lawful
18 is whether there was probable cause to make the arrest.
19 Probable cause for a warrantless arrest exist when
20 circumstances within the arresting officers knowledge are
21 sufficient to lead a reasonable person to believe that a
22 crime has been committed by the person being arrested.

23 Police officers are often forced to make split second
24 judgments in circumstances that are tense, uncertain, and
25 rapidly evolving about the amount of force that is necessary

1 in a particular situation.

2 Now, when a law enforcement officer has a right to make
3 an arrest, he may use whatever force is reasonably necessary
4 to apprehend the offender or to affect the arrest. An
5 officer who is making a lawful arrest is justified in using
6 such force as is reasonably necessary to secure and detain
7 the offender, overcome his resistance, and protect himself
8 from bodily harm.

9 Although a law enforcement officer is privileged to use
10 lawful force, he is nevertheless liable for assault and
11 battery if he uses force greater than is reasonably
12 necessary under the circumstances.

13 Now, ladies and gentlemen, if you find the defendant
14 did not commit an assault and battery on Mr. Dupont, next
15 you would consider whether or not that Deputy Walker was
16 grossly negligent in his actions and whether Jasper County
17 Sheriff's Office should compensate Mr. Dupont for the
18 injuries he suffered as a result of that gross negligence.

19 Now, in order to prove that the defendant was grossly
20 negligent the plaintiff must prove by preponderance or
21 greater weight of the evidence for offense. First, the
22 plaintiff must prove by preponderance or greater weight of
23 the evidence the defendant owed the plaintiff a duty of
24 care.

25 Next, the plaintiff must prove that the defendant

1 breached that duty by a grossly negligent act or omission.
2 Now, gross negligence is the intentional conscious failure
3 to do something which is incumbent upon one to do or is the
4 doing of a thing intentionally that one ought not to do.

5 Ladies and gentlemen, negligence is the failure to
6 exercise due care. Gross negligence, the standard required
7 in this case, is the failure to exercise even the slightest
8 care. Gross negligence is a relative term and means the
9 absence of care that is necessary under the circumstances.

10 Gross negligence connotes the failure to exercise a
11 slight degree of care. Gross negligence involves an
12 intentional conscious failure to do something which one
13 ought to do or the doing of something one ought not to do.
14 A defendant is grossly negligent if he is so indifferent to
15 the consequences of his conduct as to not give slight care
16 as to what he is doing.

17 Ladies and gentlemen, the words recklessness,
18 willfulness, and wantonness are also synonymous. The terms
19 are used to describe a conscious failure to exercise and
20 observe reasonable or due care. The plaintiff must prove
21 also by a preponderance of the evidence to prove gross
22 negligence, that he suffered damages as a result of the
23 defendant's breach of duty.

24 And lastly, ladies and gentlemen, a plaintiff must
25 prove, again by preponderance or greater weight of the

1 evidence, that the damages were proximately caused by the
2 defendant breached of duty.

3 Ladies and gentlemen, proximate cause is something that
4 produces a natural chain of events, which in the end brings
5 about the injury, and it's a direct cause of the injury. To
6 prove the defendant's negligence proximately caused the
7 plaintiff's injury, the plaintiff must first prove causation
8 and fact. This is proven by showing that the injury would
9 not have occurred but for the defendant's negligence. The
10 plaintiff must also prove legal cause. Legal cause is
11 proven by showing that the injury was foreseeable, but does
12 not have to prove that the particular injury that occurred
13 was foreseeable. However, the defendant cannot be held
14 responsible for things which could not be expected to
15 happen.

16 Ladies and gentlemen, proximate cause does not mean the
17 only cause. The defendant's act can be a proximate cause of
18 the plaintiff's injury if it was at least one of the direct
19 concurring causes of the injury. Now, ladies and gentlemen,
20 if you do find the defendant, Deputy Walker, was grossly
21 negligent, you must then consider whether the plaintiff, Mr.
22 Dupont, was also negligent. This is what we call
23 comparative negligence.

24 To show that the plaintiff was comparatively negligent
25 the defendant must prove by preponderance or greater weight

1 of the evidence that the plaintiff breached a duty of care
2 which proximately caused the plaintiff's injuries. Now, if
3 you find for negligence for both the plaintiff and the
4 defendant proximately caused the plaintiff's injuries, you
5 must then decide how much the negligence that the plaintiff
6 contributed to the plaintiff's injuries and how much the
7 defendant's negligence contributed to the plaintiff's
8 injuries.

9 In deciding the percentages of negligence of the
10 plaintiff and the defendant, you may consider amongst other
11 things the following factors. Whether each party's conduct
12 was only inadvertent or whether it was engaged in with an
13 awareness of the danger involved, the magnitude of the risk
14 created by each party's conduct, including the number of
15 persons in danger and the possible severity of the injury,
16 the significance of the goal that each party is trying to
17 reach, and the need to achieve the goal in that manner.
18 Each party's capability and ability to realize and eliminate
19 the risks involved. The particular circumstances
20 confronting each party at the time the conduct occurred,
21 such as the existence of an emergency requiring a quick
22 decision. The relative closeness of the causal relationship
23 in the negligent conduct of the defendant and the harm to
24 the plaintiff, and whether the conduct of either party
25 involved a violation of safety statute or regulation.

1 Ladies and gentlemen, I will give you written questions
2 on a special verdict form for you to reach your verdict and
3 the form will have spaces for you to write your decision
4 about the percentages if you find that appropriate.

5 The first question on the sheet has to do with the
6 assault and battery cause of action, but from there,
7 questions two and three on the verdict form, are going to
8 ask you to decide whether the defendant was negligent and if
9 so, whether the defendant's negligence was the proximate
10 cause of the plaintiff's injuries.

11 Questions four and five ask the same questions about
12 any negligence by the plaintiff. Question six asks you to
13 decide the percentage of each party's negligence which
14 proximately caused the plaintiff's injuries; and the
15 percentages must add up to 100 percent. Question seven asks
16 you if the plaintiff's negligence is greater than the
17 defendant's negligence. If so, the plaintiff would not be
18 entitled to recover any damages and your verdict would be
19 for the defendant.

20 Ladies and gentlemen, however, if you find that the
21 plaintiff's negligence was equal to or less than the
22 defendant's negligence, you would answer question number
23 eight, which asks you to determine the total amount of
24 damages suffered by the plaintiff. You will not reduce the
25 plaintiff's total damages awarded based on the percentage of

1 negligence of either party.

2 After you have answered all the questions, I compute
3 the amount of damages based on the percentage of
4 responsibility you find in your verdict form.

5 Now, ladies and gentlemen, if you find the defendant,
6 through its employee Deputy Walker, committed either assault
7 and battery or gross negligence, your next job is to decide
8 how much money the defendant should be required to pay to
9 the plaintiff for the injuries caused. This is called
10 actual damages.

11 Actual damages are to compensate the plaintiff for the
12 plaintiff's injuries or loss and to put the plaintiff as
13 near as possible in the same position the plaintiff was in
14 before the incident occurred. In other words, actual
15 damages would be the actual losses and expenses which the
16 plaintiff has suffered because of this incident. Now, the
17 following are actual damages for you to consider in this
18 case. Medical expenses, pain and suffering, and loss of
19 enjoyment of life.

20 Now, I remind you that the plaintiff bears the burden
21 of proving these elements, again, by preponderance or the
22 greater weight of the evidence. Now, ladies and gentlemen,
23 in personal injury actions, the general rule is that the
24 plaintiff may recover for the necessary and reasonable
25 expenses caused by the injury, such as the amounts

1 necessarily incurred for medicine and medical service and
2 treatment. And while the amount actually charged and
3 incurred may be considered by you, you are not bound by that
4 amount. You must find only such sum that is reasonable and
5 necessary.

6 Ladies and gentlemen, pain and suffering compensates
7 the plaintiff for physical discomfort and any emotional
8 response to the sensation of pain caused by the injury
9 itself. And there is no definite standard by which to
10 compensate the plaintiff for pain and suffering. You have
11 the authority to determine the amount, if any, to be allowed
12 for pain and suffering; using calm and reasonable judgment
13 to ensure that the damages are just and reasonable in light
14 of the testimony and evidence presented in this case.

15 Ladies and gentlemen, loss of enjoyment of life
16 compensates a plaintiff for limitation on the plaintiff's
17 ability to participate in, derive pleasure from the normal
18 activities of daily life.

19 Now, ladies and gentlemen, the plaintiff is never
20 entitled to recover conjectural or speculative damages, but
21 if you find the plaintiff is entitled to a verdict for
22 actual damages, your verdict should include an amount to
23 cover any past, present, and future damages which were
24 proximately caused by the defendant. Any future damages
25 must be reasonably certain to occur in the future as a

1 result of a defendant's act.

2 Actual damages need not be proven to a mathematical
3 certainty or be based on evidence of the precise amount of
4 damages the plaintiff has suffered. Instead, the evidence
5 must allow you, the jury, to determine what amount of
6 damages is fair, just, and reasonable in this case. Now,
7 any future damages must be reasonably calculated to result
8 from the alleged injury or damage sustained in this case and
9 future damages must be reduced to their present day cash
10 value.

11 Now, ladies and gentleman, if you determine that the
12 plaintiff was permanently injured as a result of the
13 defendant actions, you must set aside how, if at all, that
14 injury will affect the rest of the plaintiff's life.

15 A person's life expectancy is determined by the life
16 expectancy table, which is a part of the laws of this state.
17 The life expectancy table is only an estimate of the
18 probable average remaining length for the life of all
19 persons in our state of a given age.

20 In the present case, the plaintiff, Mr. Dupont, is a 42
21 year old male with a life expectancy, according to the life
22 expectancy tables, of 36.46 years. This fact is to be
23 considered by you alone and any other facts and
24 circumstances in evidence bearing on the plaintiff's life
25 expectancy, including occupation, habits, and health at the

1 time of the injury in deciding the amount of damages to be
2 awarded to the plaintiff.

3 Now, ladies and gentlemen, the plaintiff can recover
4 for pre-existing injuries only to the extent that they were
5 aggravated by the defendant's actions. Any portion of the
6 injuries which was not caused by an act or omission on the
7 part of the defendant is not compensable. You can award
8 damages for any aggravation of a pre-existing condition, but
9 not for the original injury itself.

10 Likewise, a defendant is not liable for the natural
11 progression or worsening of a pre-existing condition or
12 disease. The fact that a person is more susceptible to
13 injury because of a pre-existing condition or weakness does
14 not serve to excuse an otherwise grossly negligent defendant
15 who has caused the injury or allowed the injury to happen
16 when there is a duty to act to prevent it.

17 A grossly negligent defendant takes its plaintiff as he
18 finds him, whether the plaintiff be in perfect health or in
19 poor health or somewhere in between.

20 Mr. Foreperson, and members of the jury, as you retire
21 to begin your deliberations in this case, I wish to express
22 the hope that each of you are mindful of the importance of
23 your responsibility here today. You're not called upon very
24 often to serve as jurors. In the proper performance of that
25 duty requires you to reach the height of freeing your mind

1 of all improper influences.

2 You've observed the presiding officer of this Court is
3 always addressed as Your Honor. The reason, ladies and
4 gentlemen, is that this Court is entrusted with the honor of
5 this community, the honor of this state, and the honor of
6 this country in seeing that every case tried here receives
7 fair and impartial justice.

8 Now, you, the jury, take into your care and keeping,
9 the honor of this community, the honor of this state, and
10 the honor of this country. Now, please don't get the idea
11 that I'm trying to intonate to you how you should decide
12 this case. As I've already told you, in the laws of our
13 state, you, the jury, are the judge of all questions of
14 fact, and it would be highly improper for me to influence me
15 in your duty.

16 However, ladies and gentlemen, as the presiding officer
17 of this Court, I am vitally concerned that whatever verdict
18 you reach will be the result of you going back into your
19 jury room and confining your consideration to the evidence
20 and the law that you heard hear in this courtroom over the
21 week, weighing it fairly and impartially, as I have every
22 confidence you will.

23 Ladies and gentlemen, everyone is entitled to justice
24 in this case, for the plaintiff and the defendant. You owe
25 no support or sympathy to anyone. The Court is of the

1 confirmed opinion that whatever verdict you've reached, will
2 represent truth and justice for all the parties concerned.

3 Ladies and gentlemen, to that end, my law clerk,
4 Allyson, has prepared a verdict form, which I am going to go
5 over with you on the screen.

6 (The Court steps down to the overhead projector.)

7 THE COURT: I remind you, ladies and gentlemen, that
8 your verdict must be unanimous. It must be the verdict of
9 all 11 jurors. And to that end, ladies and gentlemen, I'm
10 going to show you -- you will see at the very top of this
11 verdict form it says: The State of South Carolina, the
12 County of Jasper, Derrick Dupont, Plaintiff, versus Jasper
13 County Sheriff's Office, and it has the civil action number
14 and it states a verdict for it.

15 And we go onto the questions. Again, I remind you that
16 it starts with, "We, the jury, by unanimous consent, find,
17 the first question, number one, did the defendant, Deputy
18 Walker, commit an assault and battery against the plaintiff,
19 Derrick Dupont?" If your answer is yes, you're going to go
20 directly to question number eight. And question number
21 eight simply asks, "Please state the amount of damages, if
22 any, sustained by the plaintiff." You, at that point, would
23 stop your deliberations, you are done.

24 However, if, on that first question, you answer that
25 question as no, it says go to question number two.

1 Hopefully, you should be able to follow it. And question
2 number two is, "Was the defendant, Deputy Walker, grossly
3 negligent?" Again, if you say, "No," stop your
4 deliberations, you are done. You need to knock on the jury
5 room door and come on out.

6 If your answer to number two is "Yes," it says,
7 obviously, go to question number three; and we keep going.
8 Number three says, "Was the defendant's gross negligence a
9 proximate cause of the plaintiff's injuries?" If it's "No,"
10 you stop your deliberations. The case is over. You have
11 found for the defendant and we would be done.

12 As to number three, if you answer "Yes," then you're
13 going to go to question number four. We tried very hard to
14 make it so you could go through it. Question number four
15 says, "Was the plaintiff negligent?" And again, at this
16 point, you understand the plaintiff in this case would be
17 Mr. Dupont. If the answer to question number four is "Yes,"
18 you go to question number five and ask the next question.
19 If the answer is "No," then you would go back again
20 immediately to question number eight and just put an actual
21 dollar amount in, all right? And you would be done.

22 If the question is, in fact, "Yes," you would then go
23 to question number five, which is, "Was the plaintiff's
24 negligence a proximate cause of the plaintiff's injuries?"
25 And again, if the answer is "Yes," you would go to question

1 number six, and if "No," go back to question number eight,
2 as you understand you would fill in the actual damages
3 amount. Okay?

4 Number six, it says, "You can combine negligence that
5 proximately caused the plaintiff's injuries as 100 percent
6 so the total is going to have to be 100 percent. Attribute
7 what negligence you do for each, the plaintiff and the
8 defendant. Again, understanding that it must equal 100
9 percent. You probably should write 100 percent in there;
10 that would probably make more sense, but we haven't done it.

11 Ladies and gentlemen, the next question is, "Was the
12 plaintiff's negligence greater than 50 percent?" Obviously,
13 you can look at the question before. If it was greater than
14 50 percent, stop your deliberations, you are done. If it's
15 not, you're going to finally go to question number eight,
16 which is, again, "Please state the amount of damages, if
17 any, sustained by the plaintiff."

18 Now, you see underneath I've written, "If you do find
19 for the plaintiff as to gross negligence, do not reduce the
20 plaintiff's total damages based on the percentage of
21 negligence by any party." You award full damages if you
22 find that he was grossly negligent, if the defense was
23 grossly negligent.

24 If there is a percentage that needs to be reduced, I am
25 going to calculate that. You must award the full damages

1 that you find were caused from this incident, and I will do
2 the math to take out anything or based on the percentages of
3 any fault by the plaintiff. I just want to be absolutely
4 clear on that; it's very important. All right?

5 Mr. Foreperson, then there is a line at the bottom for
6 you to sign and date this form. Additionally, on the very
7 last page, we couldn't keep it all in there, it simply says,
8 "When you have completed, please notify the bailiff by
9 knocking on the door." We're going to accept you back into
10 the courtroom where we are going to receive your verdict.
11 All right?

12 Ladies and gentlemen, again, I remind you, the verdict
13 must be the verdict of all 11 of you. It must be unanimous.
14 Ladies and gentlemen, at this time, and for the very last
15 time, I'm going to send you back to your jury room and I'm
16 going to tell you not to begin deliberating. The attorneys
17 may have something further that they want me to charge you
18 on the law. If they do, I can bring you back out here and
19 I'm going to charge you further. If not, I am going to send
20 to you this verdict form, Mr. Foreperson, as well as the
21 other evidence that has been entered into evidence in this
22 case, and that will be your signal to begin your
23 deliberations.

24 I will also tell you, ladies and gentlemen, that while,
25 Becky, our court reporter, has been here taking down

1 everything that everyone says, we do not have a typewritten
2 version of everything that has been heard here. So if for
3 some reason you want to hear certain testimony played back,
4 you have to understand that we would have to bring you back
5 in here and we would have to play it by audio.

6 Additionally, if you request a certain testimony, I'm
7 required to play the entire testimony of that person. So I
8 just want you all to be clear and understand that. All
9 right?

10 But of course, we can do that. We will cue it up and
11 will be happy to if you need anything. All right? Again,
12 ladies and gentlemen, thank you all for your attention. We
13 appreciate it. We will be with you shortly. If your lunch
14 is back there, please start eating and we will be with you
15 shortly.

16 (1:30 p.m., whereupon, the jury exits the courtroom and
17 the following is held on the record.)

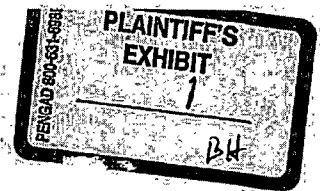
18 THE COURT: All right. Any exceptions or additions to
19 the charge, from the plaintiff?

20 MR. BUSH: None, Your Honor.

21 THE COURT: From the defense?

22 MR. WALDRON: No, Your Honor.

23 THE COURT: I want to make absolutely sure that we have
24 gone through and looked at the evidence from each sides and
25 make sure the verdict form -- the one thing I wanted you all



INMATE SICK CALL SLIP - MEDICAL REQUEST

TO BE COMPLETED BY INMATE: Please complete the top half of the Sick Call Slip and return it to the correctional officer and/or medical staff for submission and review by the medical staff. The medical staff will arrange for you to be seen by the appropriate medical staff member. You will be charged in accordance with the medical co-pay system at this facility.

Today's Date: 2-18-07 Pod/Location: A-1 Cell: 40-A ID# _____

Inmate's Full Name: Derrick Dupont

Complaint/Problem: I'm having pain in my back that hurts like hell. I need to see medical A.S.A.P.

How long have you had this problem? my back was hurting from the time I came in here.

Inmate's Signature: Derrick Dupont Date: 2/18/07

TO BE COMPLETED BY MEDICAL STAFF:

Note Patient's Vital Signs: Temp _____ Resp _____ Pulse _____ B/P _____

Instructions/Assessment: Document your findings, Inmate's responses/actions _____

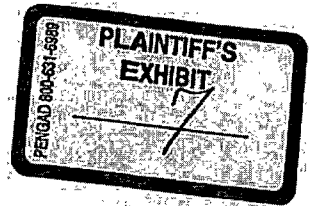
- Received Orders - thru Treatment Protocols; via telephone order; via verbal order
- Follow-Up Required? If checked, date to be seen again: _____
- Chronic Condition
- Inmate to be charged through medical co-pay for this visit

Date Seen by Medical: _____ Seen by: _____

Place original form in patient's medical record.



BEAUFORT MEMORIAL HOSPITAL



EMERGENCY DEPARTMENT PHYSICIAN HISTORY

Chief Complaint: neck + back pain History obtained from: PMD: Time: Complete history unobtainable from patient or other source: precluded by:

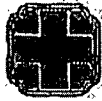
Location: 37 y.o. PM - do neck + back pain. Pt. states 2 mo. ago he was placed in back of police cruiser while handcuffed. Pt states officer stepped him + pulled him out of back of cruiser causing pain to neck + back. It has had pain since - 1 to movement. Pain radiates from low back to hip + down post. leg to occas. tingling. Pt. states X-ray done while in jail - ? results. It. was released last pm - here now for eval. Pt. was given Tylenol + Motrin in jail - relief. New injury.

Associated Signs/Symptoms: PMH: HTN CAD COPD Asthma Diabetes Cancer OTHER: Back injury 95 from fall from roof. Social History: TOB ETOH Drugs (S) M, D, W, NH, Lives Alone, Lives with parents OTHER: Family History: HTN CAD Asthma Diabetes Cancer OTHER: Reviewed PMH, SHx, FHx, & ROS as obtained by Triage RN.

Table with 5 columns: Const, Eye, ENT, Resp, CV, GI, GU, MS, Skin, Neuro, Hem/Lymph, Aller/Immun, Psych, Endo, Dom Viol. Rows include symptoms like Fever, Redness L/R, Hearing Δ, SOB, Chest Pain, ABD Pain, Frequency, Myalgias, Rash, Weakness, Petechia, Rhinorrhea, Depression, Polyuria, Safe.

ROS Unobtainable due to: All Other Systems Negative

Old Records Reviewed Findings:



BEAUFORT MEMORIAL HOSPITAL

EMERGENCY DEPARTMENT PHYSICIAN HISTORY

Page 2 of 5

<p>Constitutional</p> <ul style="list-style-type: none"> • Vital Signs (≥ 3) Noted <input checked="" type="checkbox"/> N Alert <input checked="" type="checkbox"/> Y N ○ Height _____ Well Developed <input checked="" type="checkbox"/> Y N ○ Weight _____ Well Nourished <input checked="" type="checkbox"/> Y N Well Hydrated <input checked="" type="checkbox"/> Y N 	<p>BREAST EXAM</p> <ul style="list-style-type: none"> • Inspection NL Abnl _____ • Palpation NL Abnl _____
---	---

SKIN

- Inspection of Skin & SubQ NL Abnl _____
- Palpation of Skin & SubQ NL Abnl _____

EYES

• Conjunctivae <input checked="" type="checkbox"/> NL Abnl _____	• Optic Fundi NL Abnl _____	○ Corneas <input checked="" type="checkbox"/> NL Abnl _____
• Eyelids NL Abnl _____	Vessels NL Abnl _____	○ Sclerae <input checked="" type="checkbox"/> NL Abnl _____
• Irises NL Abnl _____	Discs NL Abnl _____	
• Pupils <input checked="" type="checkbox"/> PERRLA Abnl _____	Cups NL Abnl _____	• IOP R _____
	Hemorrhages NL Abnl _____	L _____

EARS, NOSE, MOUTH & THROAT

• Ext. Ear <input checked="" type="checkbox"/> NL Abnl _____	• Hearing NL Abnl _____	• Oropharynx NL Abnl _____
• Ext. Nose <input checked="" type="checkbox"/> NL Abnl _____	• Nasal Mucosa NL Abnl _____	Oral Mucosa NL Abnl _____
	Turbinate NL Abnl _____	Tongue NL Abnl _____
• Otoloscopic Exam	• Lips NL Abnl _____	Palate NL Abnl _____
TM NL Abnl _____	Teeth NL Abnl _____	Tonsils NL Abnl _____
Canal NL Abnl _____	Gum NL Abnl _____	Post. Pharynx NL Abnl _____
		Saliva Glands NL Abnl _____

NECK

- Neck
- Masses Y _____
- Trachea Y N _____
- Midline Y _____
- Crepitus Y _____
- Supple Y N _____
- ROM NL Abnl _____
- Overall appearance NL Abnl _____
- Thyroid NL Abnl _____



BEAUFORT MEMORIAL HOSPITAL

EMERGENCY DEPARTMENT PHYSICIAN HISTORY

RESPIRATORY

• Effort _____ • Auscultation Clear Bilaterally Y N _____

○IC Retractions N Y _____ ○Wheezes N Y _____

○Accessory Muscles N Y _____ • Percussion NL Abnl _____ ○Rales N Y _____

○Diaphragmatic N Y _____ • Palpation NL Abnl _____ ○Rhonchi N Y _____

○Other: _____

CARDIOVASCULAR

• Palpation NL Abnl _____ >Clicks N Y _____ >Abd. Aorta NL Abnl _____

• Auscultation >Carotid Pulse NL Abnl _____ >Pedal Pulse NL Abnl _____

>Rate NL Abnl _____ >Radial Pulse NL Abnl _____ >Edema N Y _____

>Rhythm NL Abnl _____ >Femoral Pulse NL Abnl _____ >JVD N Y _____

>Murmur N Y _____

>Gallop N Y _____

>Rub N Y _____

LYMPHATIC

• Neck NL Abnl _____ • Axilla NL Abnl _____

• Groin NL Abnl _____ • Other NL Abnl _____

GASTROINTESTINAL

• Abdomen

Scars N Y _____ • Spleen & Liver NL Abnl _____

Masses N Y _____

Tenderness N Y _____ • Hernia N Y _____

Rebound N Y _____ • Rectum / Anus NL Abnl _____

Guarding N Y _____ • Deferred

○ Bowel Sounds NL Abnl _____

GENTOURINARY

MALE

• Scrotum NL Abnl _____

• Penis NL Abnl _____

• Prostate NL Abnl _____

• Urethra NL Abnl _____

FEMALE

• External NL Abnl _____ • Cervix NL Abnl _____

• Urethra NL Abnl _____ • Uterus NL Abnl _____

• Vagina NL Abnl _____ • Adnexa NL Abnl _____

• Bladder NL Abnl _____ ○Cul-de-sac NL Abnl _____



EMERGENCY DEPARTMENT PHYSICIAN HISTORY

MUSCULOSKELETAL

• Gait/Station NL Abnl slow • Inspection and/or palp. Digits/nails NL Abnl

Examination of Joints, Bones, & Muscles

Table with 6 columns: Insp. / Palpation, ROM, Stability, Muscle strength/tonc, Neurovascular. Rows include Head & Neck, Spine, ribs, pelvis, RUE, LUE, RLE, LLE.

Diffusely tender neck & low back - point specific vertebral tenderness - Tender @ S1
gait - il horn 2" to pain - step off laboratory 2/2 N/V interact - Rom @ leg

PSYCHIATRIC

• Judgment / Insight NL Abnl
• Mental Status
>Orientation X 3 Y N
>Recent Memory NL Abnl
>Remote Memory NL Abnl
>Mood NL Abnl
>Affect NL Abnl

NEUROLOGIC

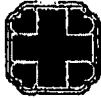
• Ant Fontanelle NL Abnl
• CNs II - XII NL Abnl
• Sensation NL Abnl
• DTRs
o Focal Deficits N Y
o Cerebellar Deficits N Y
o Babinski NL Abnl

CONSIDERED EMERGENCY DUE TO:

- Severe pain / other severe symptoms
Acute onset of symptoms
Threat to life / limb
Impairment of body function
Dysfunction of Body organ / part

I, Dr. personally:

- Took Hx, Performed PE, Evaluated Pt.
Supervised care, Was present for key parts of Hx-PE, Discussed mgt/plan with PA
Agree with notes of PA, Disagree (see note)



BEAUFORT MEMORIAL HOSPITAL

EMERGENCY DEPARTMENT PHYSICIAN HISTORY

MEDICAL DECISION MAKING

<input type="checkbox"/> EKG Interpretation by ERMD:	Clinical Indication:	Rate:	Rhythm:	P-wave:
	PR Interval:	QRS:	ST:	T-wave:
Lab findings: Chem	CBC	CK:	Radiology findings:	
		Trop:	C-spine L-spine) spasm	
		PT:		
		PTT:		
		INR:		
UA:		D-dimer:		
		BNP:		
Other:		HCG:		

<p>May discharge to home begin heat therapy No. Flexcil 10, Naproxen 500, Ultracet Referral to Dr. Prohazky - call Return</p>	<p>Procedures</p> <input type="checkbox"/> See Procedure Form <input type="checkbox"/> See Dictation <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Total CCT()-Procedure Time()-Final CCT()	

REASSESSMENT

Final Diagnosis
lowe lumbar + cervical spasm

Disposition: <input type="checkbox"/> Admit <input checked="" type="checkbox"/> Discharge <input type="checkbox"/> Transfer <input type="checkbox"/> Expired <input type="checkbox"/> AMA	Condition: <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Improved <input type="checkbox"/> Deceased
<input type="checkbox"/> Per Consultant:	

Written by: _____ acting as scribe for Dr. _____

MD Signature / Date:	MD / PA Signature / Date: Whorpe JR 3.7.07	MD / Scribe Signature / Date:
----------------------	---	-------------------------------

Name: DUPONT, FERRICK
Phys: THORPE, M, PA-C
DOB: 09/11/1969 Age: 37 Sex: M
Acct: 01400600 Loc: EDFT
Exam Date: 03/07/2007 Status: DEP ER
Radiology No: 00185449
Unit No: 099221

PE/EXAM RESULT
RAY/LUMBAR SPINE SEE REPORT

LUMBAR SPINE

DATE: 3/7/07

INDICATIONS: Assault one month ago. Persistent low back and neck pain.

FINDINGS: AP and lateral views of the lumbosacral spine demonstrate some straightening of the normal lumbar lordosis. There is no sign of fracture or subluxation. Intervertebral disk spaces and vertebral body heights appear well-maintained.

IMPRESSION: REVERSAL OF LUMBAR LORDOSIS, LIKELY SECONDARY TO MUSCLE SPASM, BUT OTHERWISE UNREMARKABLE EXAMINATION.

** REPORT SIGNATURE ON FILE 03/08/2007 **
Reported By: ERIC B BILLIG, MD
Signed By: DR ERIC BILLIG

CC:

Technologist: ERIKA HAMMOND RT(R)
Transcribed Date/Time: 03/07/2007 (1800)
Transcriptionist: HIS.MSL
Printed Date/Time: 07/24/2007 (1003)

PAGE 1

Signed Report Printed From PCI

Patient: DUPONT, DERRICK	Acct No.: 01400500	Unit No.: 099221
Physician: THORPE, KIM, PA-C	Age/sex: 57/M	Loc: EDET
Complaint: BACK PAIN	Status: DEPT ER	

EMERGENCY ASSESSMENT

03/07/07 - 1235 - MARIAH BYWATER RN

*****ED Triage Assessment*****

primary language English: Y Interpreter Needed? Deaf Interpreter needed? N

ated Complaint: BACK PAIN PMD:

ergies: NKDA

atient's Weight: kg:

Temp: 97.8 Source: 0

BP: 124/88

ulse: 86

Resp: 18

Sat: 99 % RA: Y O2:

tanus Status:

BGL:

Pain: 8

GCS: 15 (Shift F8)

Last Menstrual Period

Implanted Devices:

one Meds: TYLENOL, MOTRIN, LASIX

PMHx: HTN, BACK INJURY IN 1995

MOA: Ambulatory: Y

Wheelchair:

Carried:

Stretcher:

POV: Y

EMS:

Police:

PU: Alert: Y

Pediatric Immunizations: UID:

UNK:

Comment:

Verbal:

Pain:

Infant/Pediatrics: Strong Cry:

Playful:

Calm:

onsive:

Lethargic:

Consolable:

Birth Wt:

lbs

oz

Formula:

riage Interventions:

Ice:

Elevate:

Splint:

Sling:

Dressing Applied:

Mask Placed On Patient: (**Precautions Explained**)

ditional Nurses Notes: PT STATES HE HAS HAD BACK PAIN SINCE HE WAS PULLED FROM A POLICE CAR, STATES THAT WHILE IS PRISON THE LAST COUPLE OF MONTHS HE WAS GIVEN TYLENOL AND MOTRIN BUT THEY ARE NOT HELPING

** ENTER PATIENT ACUITY ** Y

N DATE: 07/24/07
N TIME: 1003
N USER: HIS.SM

Beaufort Memorial Hospital EDM *LIVE*
Assessment Data

PAGE 1

Client: DUPONT, DERRICK	Acct No.: 01400600	Unit No.: 099221
Physician: THORPE, KIM, PA-C	Age/Sex: 37/M	Loc: EDT
Complaint: BACK PAIN	Status: DEF ER	

03/07/07 - 1240 - EVA SAXON RN

BACK PAIN ASSESSMENT

in: Acute Onset: Y Chronic Condition: N
ch. of Injury: pulled
te of Injury: 02/07/07 Time: Current Pain Rating: 7
ation of Pain: back
set of Pain: 1 month Duration: Constant: Y Intermittent:
ality: Ache: Burning: Cramping: Crushing: Dull:
Pressure: Pull: Sharp: Y Squeezing: Stabbing:
Throbbing: Tight:
es pain radiate? Y Where: 1 leg
at relieves pain: nothing
es anything make the pain worse: nothing
fficulty with urination: N If yes, describe problem:
nsation in extremities: Normal: Tingling: Decreased sensation:
ditional Nurses Notes:

N DATE: 07/24/07
N TIME: 1003
N USER: HIS.SM

Beaufort Memorial Hospital EDM *LIVE*
Assessment Data

PAGE 1

Patient: DUPONT, DERRICK	Acct No: 01400600	Unit No: 099221
Physician: THORPE, KIM, PA-C	Age/Sex: 37/M	Loc: EDET
Admit: BACK PAIN	Status: DEP ER	

DISPOSITION ASSESSMENT

03/07/07 - 1357 - EVA SAXON RN

*** ED DISPOSITION ASSESSMENT ***

Temp: BP: Pulse: Resp: Pain Rating at Discharge: 6
Have you ever received any type of Hospice care:
Method of Transport: Ambulatory: Y Wheelchair: Carried: EMS:
Helicopter: Other:
Discharge Instructions Given By: PCSRN.EMS
Discharge Instructions Given to: Patient: Y Parent: Guardian:
Family: Significant Other:
English Instructions: Y Spanish Instructions:

Take Home Medications:

Given? Y

Instruction Acknowledgment Signed: Y

U Referral Made: N Referral to Physician:

Did you document the IV discontinuation under treatments? N

Discharge Instructions given: Return Demonstration:

Additional Nurses Notes: discharge instructions given on back pain.

TIME: 1003

Patient Notes

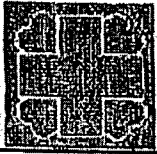
USER: HIS.SM

Ident:	DUPONT, DERRICK	Acct No:	01400600	Unit No:	099221
Physician:	THORPE, KIM, PA-C	Age/sex:	37/M	Loc:	EDET
Admit:	BACK BAIN	Status:	DE-ER		

PT AMBULATORY TO EAST TRACK BED #6 WITHOUT DIFFICULTY

to fast track t6.

rays were neg. pt was informed.



BEAUFORT MEMORIAL HOSPITAL
Main Phone: (843) 522-5200

03/07/07
01400600
DUPONT, DERRICK
EDFT
THORPE, KIM, PA-C

Patient Instructions Signature Page

Patient Name: DUPONT, DERRICK

Guardian Name:

The above-named patient and/or guardian has received the following patient instructions:

Back Pain, HEAT THERAPY, MUSCLE RELAXERS

on this date: 03/07/07 - 1349

I have read and understand the instructions given to me by my caregivers.

DUPONT, DERRICK

Print Patient Name	
<i>Derrick Dupont</i>	<i>3-07-06</i>
Patient (or Guardian) Signature	Date
<i>[Signature]</i>	<i>3-07-06</i>
Caregiver/RN/Doctor Signature	Date

(6)



Authorization and Release

I hereby authorize Dr. Thorpe (and any assistants) to administer any tests or treatment necessary during this encounter at Beaufort Memorial Hospital. I also understand that no guarantees or assurances have been made to the results that may be obtained.

I accept full responsibility for any personal articles that I take to my bedside or treatment area.

I hereby authorize payment directly to Beaufort Memorial Hospital of any insurance benefits wherein specified and otherwise payable to me, but not to exceed the balance due of the hospital's regular charges for this period of hospitalization.

I understand that, BMH will bill my insurance company; however, I am financially responsible for all uninsured balances. I request that payment or authorized benefits be made on my behalf.

Any price quoted is only an estimate. You will be fully responsible for 100% of the services you receive.

I consent to appropriate tests for the presence of infections, such as, but not limited to Hepatitis B and Acquired Immune Deficiency Syndrome (AIDS) for the protection of others and I authorize the drawing of blood or other body fluids for this purpose. HIV testing will be done only on an as needed basis following employee exposure to a patient's blood, body fluids and/or mucous membranes.

Beaufort Memorial Hospital does not bill for professional fees for the Emergency Room Physician, Pathologist, Radiologist, Anesthesiologist or any other treating physician. You will receive a separate bill from their billing companies. Any estimates provided are for hospital services only.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

I acknowledge and agree that I have been offered a copy of Beaufort Memorial Hospital's Notice of Privacy Practices.

DIRECTORY: My name and location in the hospital will be listed in the hospital's directory and will only be given out to individuals who ask for me by name. It is also used for the delivery of gifts, flowers, cards, etc. Under HIPAA, I have the right not to be listed in the hospital directory, which means that my presence in the hospital will not be acknowledged. List my name in the directory yes no

Patient Signature: X Dupont Derrick Date 03 07 07 or

Legal Representative: _____ Relationship to Patient: _____

Witness: [Signature]

Patient Health Questionnaire



Name: DEPRICK DENT Date: 3/14/07 Family Doctor: _____

Reason for this Office Visit: BACK PAIN

Previous Hospitalizations & Surgeries (Include Place, Date and Reason whether it's related to today's problem or not) None

Current Medications: NAPROXEN, TRAMADOL/APAP, Cyclobenzaprine

Allergies: If none state "NONE" NONE

Circle YES or NO	Self		Parents		Other Relatives	
	YES	NO	YES	NO	YES	NO
Diabetes	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Heart Problems (Heart Attack)	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
High Blood Pressure	<input checked="" type="radio"/> YES	NO	YES	NO	YES	NO
Stroke	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Tuberculosis	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Cancer	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Crippling Arthritis	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Bleeding Tendencies	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Blood Clots	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Liver Disease	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Kidney Disease	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Mental Health Problems	YES	<input checked="" type="radio"/> NO	YES	NO	YES	NO
Do you play Sports Activities?	YES	NO				
If YES then which Sports?						

Personal History:

If Married, health of spouse: Excellent

If Single, Do you have family support? YES NO

DO YOU:

Smoke YES NO

Drink Alcohol YES NO

Use Caffeine YES NO

Wear Dentures YES NO

How Much?

occasional

often

For How Long?

Patients General Health Recently _____

Date: 3/14/07

NEW PATIENT FOR

Initials: JK

NAME: Gerald DuPont

DOB: 9/11/69

Chief Complaint: Right / Left Cervical - pain needles
In patient's words: lumbar - pain in back

History of Trauma: no known trauma

Symptoms: pain in neck How Long? 2/7/07

Any Previous Similar History? YES / NO Any Night Pain YES / NO ALL DAY

Went to ER -> X-rays Any Treatment Thus Far? YES / NO If So, Did It Help? YES / NO

Pain Scale: Low 1 2 3 4 5 6 7 8 9 10 High

Eyes	Yes / <input checked="" type="radio"/> No	Musculoskeletal	<input checked="" type="radio"/> Yes / No
Ears, Nose, Mouth, Throat	Yes / <input checked="" type="radio"/> No	Neurological	Yes / <input checked="" type="radio"/> No
Cardiovascular	Yes / <input checked="" type="radio"/> No	Psychiatric	Yes / <input checked="" type="radio"/> No
Respiratory	Yes / <input checked="" type="radio"/> No	Endocrine	Yes / <input checked="" type="radio"/> No
Hematologic / Lymphatic	Yes / <input checked="" type="radio"/> No	Gastrointestinal	Yes / <input checked="" type="radio"/> No
Allergic/Immunologic	Yes / <input checked="" type="radio"/> No	Genitourinary	Yes / <input checked="" type="radio"/> No
Constitutional Symptoms (e.g. fever, weight loss)	Yes / <input checked="" type="radio"/> No	Integumentary (skin and/or breast)	Yes / <input checked="" type="radio"/> No

BP: Pulse 98 Height 5'3" Weight 185

MEDICINES: Naproxen, tramadol/APAP, cyclobenzaprine

VITAMINS / SUPPLEMENTS: 4

ALLERGIES: NKDA

Ralph F. Salzer, M.D.

Mark T. Dean, M.D.

Scott E. Strohmeyer, M.D.

DUPONT, DERRICK – 9/11/69
#22298
3/14/07

CHIEF COMPLAINT: Neck, lower back and left anterior thigh pain.

Pt is a thirty-seven year old gentleman who on 2/7 of last month who according to him was falsely arrested and he said they had him handcuffed too tight and the officer pulled him out of the back of the squad car by his head. Since that time he has had neck pain and he also describes some lower back pain and left anterior thigh pain. He had a previous back injury. A carpenter fell off of a scalpel onto a brace but that resolved with conservative treatment. He has neck pain and tingling in his spinal cord as he calls it and around the trapezial area of his back and down both shoulders. Nothing down the arms but what he calls left hip pain. He denies any bowel or bladder complaints and denies any trauma. He was taken to the ER and they did some x-rays and sent him home. After he got out of the ER he went back and had his own x-rays done and was diagnosed with whiplash injury. By report only the x-rays are negative. I do not have those films for my review.

PAST MEDICAL HISTORY: Non-contributory. He denies any health problems. No allergies and no medications. He works as a carpenter.

PHYSICAL EXAMINATION: Exam wise straight leg raise is negative. Quad, hamstring, EHL, anterior tib and gastrocsoleus complex is 5/5. No real tension signs. He has Hoffmann's on the left and the right of upper extremities. Negative Babinski's and negative for clonus. No asymmetry or atrophy. Range of motion of the neck is limited. He has some point tenderness in the _____ and no midline tenderness or signs of deformity. Deltoid, biceps, triceps, reflexes are 5/5 both uppers and lowers. Reflexes, knee jerk and ankle jerk, biceps, triceps, brachialis are about 3+ both uppers and lowers. He has 2+ pulses in all four extremities. There are no wounds noted.

CLINICAL IMPRESSION: I discussed the options with him. Thirty-seven year old who does look like he has long tract signs with a neck injury. It definitely warrants an MRI. I am going to get an MRI and I will see him back with that.

Scott Strohmeyer, MD

Name: DUPONT, DERRICK
Phys: STROHMEYER, SCOTT, MD
DOB: 09/11/1969 Age: 37 Sex: M
Acct: 01403004 Loc: MRI
Exam Date: 03/21/2007 Status: REG CLI
Radiology No: 00185449
Unit No: 099221

/EXAM RESULT

MRI/CERVICAL SPINE W/OUT CO

MRI OF THE CERVICAL SPINE - 3/21/07.

INDICATION: Neck pain and left upper extremity radiculopathy.

T1 and T2 sagittal sequences were performed. Gradient echo and 3D
Fiesta axial sequences were performed.

The patient has a congenitally narrow AP diameter of the canal. There
is canal stenosis from all levels from C2-3 through C6-7. The canal
stenosis is most severe at C2-3 and C4-5. The spinal cord is flattened
through these 2 areas and there is increased signal compatible with
gliosis. There was no spinal cord impingement at the other levels.
There is no evidence of disk herniation. The canal stenosis appears
related to mild midline annular bulges at C2-3 and C4-5.

There is no cerebellar tonsillar herniation.

IMPRESSION; GENERALIZED CANAL STENOSIS RELATED TO A CONGENITALLY
NARROW AP DIAMETER OF THE CANAL. THE FINDINGS ARE MOST SEVERE AT C2-3
AND C4-5 WHERE THERE IS SPINAL CORD IMPINGEMENT AND EVIDENCE OF
GLIOSIS.

** REPORT SIGNATURE ON FILE 03/22/2007 **
Reported By: C PHILLIP BLALOCK, MD
Signed By: DR C PHILLIP BLALOCK

CC: STROHMEYER, SCOTT, MD

Technologist: DAN GUTHRIE, RT(R) (MR)
Transcribed Date/Time: 03/21/2007 (1911)
Transcriptionist: HIS.JH
Printed Date/Time: 07/24/2007 (1001)

PAGE 1

Signed Report Printed From PCI

Date 3-26-07

PATIENT UPDATE FOR:

Initials LP

NAME Derrick Dupont

DOB 9-11-69

Chief Complaint: Right / Left Cervical mri 3-21-07
In Patient's Words

continuous c "needles" in back - (L) leg weakness - continued c neck pain

Since Last Date 3-14-07

Remained the Same - Someday bad
 Worsened Someday good
 Had Problem Re Occurrence

Improved
 Been Injured
 New Complaint
pain meds helps c ster

Explanation of Above mri Consult

Eyes	Yes / <input checked="" type="radio"/> No	Musculoskeletal	<input checked="" type="radio"/> Yes / <input type="radio"/> No
Ears, Nose, Mouth, Throat	Yes / <input checked="" type="radio"/> No	Neurological	Yes / <input checked="" type="radio"/> No
Cardiovascular	Yes / <input checked="" type="radio"/> No	Psychiatric	Yes / <input checked="" type="radio"/> No
Respiratory	Yes / <input checked="" type="radio"/> No	Endocrine	Yes / <input checked="" type="radio"/> No
Hematologic / Lymphatic	Yes / <input checked="" type="radio"/> No	Gastrointestinal	Yes / <input checked="" type="radio"/> No
Allergic/Immunologic	Yes / <input checked="" type="radio"/> No	Genitourinary	Yes / <input checked="" type="radio"/> No
Constitutional Symptoms (e.g. fever, weight loss)	Yes / <input checked="" type="radio"/> No	Integumentary (skin and/or breast)	Yes / <input checked="" type="radio"/> No

BP _____ Pulse 78 Height 5'3" Weight 185

MEDICINES Ø


VITAMINS / SUPPLEMENTS Ø

ALLERGIES NKDA

Previous History Reviewed: Cervical & Back Pain

Needs more pain meds

DUPONT, DERRICK - 9/11/69
#22298
3/26/07

Pt returns back today. He has his MRI with him and he basically has severe stenosis from two down to seven with myelomalacia and bad behind two and three and bad behind five and six. He has signs of early myelopathy with the Hoffmann's sign as well as some loss of function in his left hand. His right hand is fine. He is also sort of dragging his left leg so that is an issue that needs to be addressed also. He needs an MRI of his lower back. He is dragging his left leg which is most likely lumbar. I went through the anatomy in great detail. I did a lateral x-ray and he is kyphotic at 2,3 and he basically has neutral alignment I really cannot do a laminoplasty that high. It is very hard to go from the front of the 2,3. I am going to do a 2,3 laminectomy with instrumented fusion and then do a laminoplasty below with some kind of  might be an option.

CLINICAL IMPRESSION: At this point I am going to do two things. One is get an MRI of his lower back. It sounds like he has pretty severe stenosis down there also with his left leg symptomatology and I also want to go ahead and get a social worker involved and get him some kind of funding for this. I will see him back in one week or so. We discussed the possibility of cord injury so he needs to take it easy. I will see him back next week.

Scott Strohmeyer, MD

Name: DUPONT, FERRICK
Phys: STROHMEYER, SCOTT, MD
DOB: 09/11/1969 Age: 37 Sex: M
Acct: 01411341 Loc: MRI
Exam Date: 04/11/2007 Status: REG CLI
Radiology No: 00185449
Unit No: 099221

EXAM RESULT
MRI/LUMBAR SPINE W/OUT CONT

MRI OF THE LUMBAR SPINE - 4/11/07.

INDICATION: Low back pain. Recent MVA.

T1 and T2 axial and sagittal sequences were performed. The vertebral bodies and disk spaces are well maintained in height and signal intensity. There are mild annular bulges at L4-5 and L5-S1. There is no focal disk herniation. The neural foramina and lateral recesses are well preserved. The facet joints are intact. The conus medullaris and cauda equina have a normal configuration. There are no pre or paravertebral masses.

IMPRESSION: MILD ANNULAR BULGES AT L4-5 AND L5-S1.

** REPORT SIGNATURE ON FILE 04/12/2007 **
Reported By: C PHILLIP BLALOCK, MD
Signed By: DR C PHILLIP BLALOCK

CC: STROHMEYER, SCOTT, MD

Technologist: DAN GUTHRIE, RT(R) (MR)
Transcribed Date/Time: 04/11/2007 (1911)
Transcriptionist: HIS.JH
Printed Date/Time: 07/24/2007 (0958)

PAGE 1

Signed Report Printed From PCI

Date 7/11/09

PATIENT'S STATEMENT

NAME Derrick Dupont

DOB 9/11/69

Chief Complaint: Right / Left lumbar men

In Patient's Words

Since Last Date 3/26/07

Remained the Same
 Worsened
 Had Problem Re Occurrence

Improved
 Been Injured
 New Compliant

Explanation of Above worse and worse

Eyes	Yes / <input checked="" type="checkbox"/> No	Musculoskeletal	<input checked="" type="checkbox"/> Yes / No
Ears, Nose, Mouth, Throat	Yes / <input checked="" type="checkbox"/> No	Neurological	Yes / <input checked="" type="checkbox"/> No
Cardiovascular	Yes / <input checked="" type="checkbox"/> No	Psychiatric	Yes / <input checked="" type="checkbox"/> No
Respiratory	Yes / <input checked="" type="checkbox"/> No	Endocrine	Yes / <input checked="" type="checkbox"/> No
Hematologic / Lymphatic	Yes / <input checked="" type="checkbox"/> No	Gastrointestinal	Yes / <input checked="" type="checkbox"/> No
Allergic/Immunologic	Yes / <input checked="" type="checkbox"/> No	Genitourinary	Yes / <input checked="" type="checkbox"/> No
Constitutional Symptoms (e.g. fever, weight loss)	Yes / <input checked="" type="checkbox"/> No	Integumentary (skin and/or breast)	Yes / <input checked="" type="checkbox"/> No

BP _____ Pulse 70 Height 5'3" Weight 185

MEDICINES

VITAMINS / SUPPLEMENTS

ALLERGIES nkda

Previous History Reviewed: TR

DUPONT, DERRICK
4/11/07

Pt returns back today. He was actually in a car accident which I actually saw the other day. It was a pretty minor MVA but he has a lot of back pain. The good news is he did not paralyze himself and it did not cause any more cord injury. His neck and lower back is killing him. Exam wise he is neurologically intact and really unchanged from his previous exam both sensory and motor. Deltoid, biceps, triceps, reflexes are 5/5. Quad, hamstring, EHL, anterior tib and gastrocsoleus complex is 5/5. He is walking with a cane which is a new complaint. Lot of perispinal muscle spasms from the neck all the way down the back. No x-rays.

CLINICAL IMPRESSION: MVA pt with cervical stenosis. MRI of his lumbar spine is unremarkable other than some early disk disease at 4,5. We discussed the options. I am going to go ahead and have him start some physical therapy and range of motion and then we will see him back in three weeks. Once the acuteness of this episode goes away we will plan on going in and fixing his neck at that point.
Scott Strohmeyer, MD

For label and (P) 12/14

Date 5/2/7

PATIENT UPDATE FORM

Initials Ke

NAME Suzanne Dubois

DOB 9/11/69

Chief Complaint: Right / Left neck, lumbar pain.
In Patient's Words stiff neck

Since Last Date 4/11/7

- Remained the Same
- Worsened
- Had Problem Re Occurrence

- Improved
- Been Injured
- New Complaint

Explanation of Above 90% numbness & pains, leg

Eyes	Yes / No	Musculoskeletal	<input checked="" type="checkbox"/> Yes / No
Ears, Nose, Mouth, Throat	Yes / No	Neurological	<input checked="" type="checkbox"/> Yes / No
Cardiovascular	Yes / No	Psychiatric	Yes / No
Respiratory	Yes / No	Endocrine	Yes / No
Hematologic / Lymphatic	Yes / No	Gastrointestinal	Yes / No
Allergic/Immunologic	Yes / No	Genitourinary	Yes / No
Constitutional Symptoms (e.g. fever, weight loss)	Yes / No	Integumentary (skin and/or breast)	Yes / No

BP _____ Pulse 78 Height 5'3" Weight 186

MEDICINES Ø

VITAMINS / SUPPLEMENTS Ø

ALLERGIES Ø

Previous History Reviewed: 90% altercation = present -
caused neck, back pain.

DUPONT, DERRICK - 9/11/69
#22298
5/2/07

Pt returns back today. He has two problems. One is an injury from when a policeman handcuffed him behind his back and some neck pain. At that point he was diagnosed with severe cervical stenosis and myomalacia at 2,3 and 4,5 with a kyphotic deformity at 2,3 and congenital stenosis. That is the main issue at this point. The second problem was he was in a car wreck and suffered some lower back and neck pain. MRI of his lower back is unremarkable other than a far lateral disk and disk disease at 3,4 and disk disease at 4,5. I encouraged him that I think the back and neck pain will resolve without problems. He has severe myomalacia and that is what is going to give him long term sequela. I discussed it at length with him and did some x-ray and again he has a kyphae deformity at 2,3 and he is going to have to that taken care of from the front and then have a posterior decompression stabilization also. I am going to refer him to MUSC for their tertiary care center. I think he needs a good ICU which we do not have here and also get an ENT involved which is difficult for us dissecting up around 2,3. I am going to send him to Dr. Pallette and Dr. Patel for their combined evaluation and I will see him back following that.

Scott Strohmeyer, MD

BFA

Date 5/23/07 PATIENT UPDATE FOR Initials JR

NAME Derrick Dupont DOB 9/11/69

Chief Complaint: Right / Left Cervical
In Patient's Words

(L) Hip

Since Last Date 5/2/07

Remained the Same
 Worsened
 Had Problem Re Occurrence

Improved
 Been Injured
 New Complaint

Explanation of Above Continues T PT 3x week

Eyes	Yes / No	Musculoskeletal	<u>Yes</u> / No
Ears, Nose, Mouth, Throat	Yes / No	Neurological	Yes / No
Cardiovascular	Yes / No	Psychiatric	Yes / No
Respiratory	Yes / No	Endocrine	Yes / No
Hematologic / Lymphatic	Yes / No	Gastrointestinal	Yes / No
Allergic/Immunologic	Yes / No	Genitourinary	Yes / No
Constitutional Symptoms (e.g. fever, weight loss)	Yes / No	Integumentary (skin and/or breast)	Yes / No

BP _____ Pulse _____ Height 5'3" Weight 186

MEDICINES ~~0~~

VITAMINS / SUPPLEMENTS ~~0~~

ALLERGIES nxda

Previous History Reviewed: JR

DUPONT, DERRICK - 9/11/69
#22298
5/23/07

Pt returns back today. Not much has changed. He has been going to PT but again he has myomalacia and cervical myelopathy. He needs to have a large cervical decompression fusion. I referred him to Dr. Patel and he has not made that referral at this point yet. They will have to go up to C2 and do a pedicle screw instrumentation from the back or an ACDF from the front. It is not something I would want to do at Beaufort Memorial Hospital. I discussed that with Derrick and he understands and that he needs to go to the referral center for that. I will make that referral today and make sure he has his films. I want him to keep me up to date on his progress.

Scott Strohmeier, MD

Beaufort Orthopaedic Sports and Spine Center, LLC

1076 Ribaut Rd., Suite 101

Beaufort, S.C. 29902

(843) 525-0045

Alph F. Salzer, M.D.

Mark T. Dean, M.D.

Scott E. Strohmeyer, M.D.

DUPONT, DERRICK – 9/11/69

#22298

7/11/07

Pt returns back today. He is a thirty-seven year old gentleman with neck pain. He has severe cervical myelopathy with a kyphae deformity at C2,3. He needs a front and back operation but unfortunately with ICU here we are not equipped to that type of operation and I have actually never done a C2,3 disectomy. I have tried to refer him up to MUSC and they have refused him for some reason. I am going to try and call Dr. Patel and see if I can get Ian Johnson or Dr. Patel to take a look at him. He has been approved for Medicaid but he has not worked since February so he is pretty desperate financially at this point. His exam has not changed and symptomatology has not changed. Again he is going to need to have a pretty large operation. He works as a carpenter and he is not going to be able to go back and do that anytime in the near future. I am going to get him in with Dr. Patel or someone equipped that can perform this type of operation and I will see him back as necessary at this point.

Scott Strohmeyer, MD

Beaufort Orthopaedic Sports and Spine Center, LLC

1076 Ribaut Rd., Suite 101

Beaufort, S.C. 29902

(843) 525-0045

Dr. F. Salzer, M.D.

Dr. Mark T. Dean, M.D.

Dr. Scott E. Strohmeyer, M.D.

July 11, 2007

Re: Derrick Dupont

To Whom It May Concern:

This is a letter concerning Mr. Derrick Dupont. He is a thirty-seven year old gentleman who I originally saw in March of this year after an altercation with a police officer and complaining of neck pain. At that time he was noted to have signs of myelopathy and underwent an MRI. MRI confirms a kyphae deformity of C2,3 as well as severe cervical stenosis and myelomalacia in his spinal cord. He is by trade a carpenter and he is going to require a very large neck reconstructive operation. He is going to be unable to work for an extended period of time and may never be able to go back and do that type of work again.

I hope you will consider this a medical necessity and allow him all the appropriate medical benefits. If you need any more information please let me know.

Sincerely,



Scott Strohmeyer, MD

SS/lp

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort)
South Carolina Department of Social Services)
Plaintiff,)
vs.)
Derrick Dupont)
Defendant.)

IN THE FAMILY COURT
Fourteenth JUDICIAL CIRCUIT
PHYSICIAN'S REPORT
07 -DR- 07 1526
CSED No 0693629

The undersigned (print name here) SCOTT STRUBBERGER

Doctor Nurse Nurse Practitioner Physician's Assistant Other _____, affirms that:

1. Patient's Name: Derrick Dupont

DOB: 9/11/49 SSN: _____

2. Patient is being treated for: (basic diagnosis) CERVICAL STENOSIS
CERVICAL MYELOPATHY

3. Date treatment began for this particular injury/disabling condition: 3/1/07

4. Patient is: presently able to work in his/her usual occupation;
 not able to work in his/her usual occupation;
 can work in a limited capacity as described below in Item 8;
 released from care;
 not now and has never been our patient.

5. Patient is: permanently and totally disabled;
 temporarily disabled;
 partially and permanently disabled;
 partially and temporarily disabled;
 Other: _____

6. Present prognosis is that patient will be released to return to work on: Jan (date).

7. Patient is scheduled to be seen again on: unknown (date) and/or has surgery or other treatment scheduled for _____ (date) for _____

8. Remarkable comments: _____

Signed: (doctor/other) [Signature] Date: 4/4/07
Address: 1074 Ribault Rd Ste 101 Telephone: 8435252045
Beaufort SC 29902

This document is HIPAA compliant by Court Order dated: 5-21-08
OR by consent of the individual named above: (signature) _____

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS)
OF THE FOURTEENTH JUDICIAL CIRCUIT)

DERRICK DUPONT)

CIVIL ACTION NO: 2008-CP-27-529)

Plaintiffs,)

vs.)

VERDICT FORM

JASPER COUNTY)
SHERIFF'S OFFICE)

PARAGRETT ROOM
CLERK OF COURT
JASPER COUNTY SC

2012 SEP -5 PM 3:44

WE THE JURY, BY UNANIMOUS CONSENT, FIND:

1. Did the Defendant, Deputy Walker, commit an assault & battery against the Plaintiff, Derrick Dupont?

_____ YES - Go directly to Question 8

NO - Go to Question 2

2. Was the defendant, Deputy Walker, grossly negligent?

_____ YES - Go to Question 3

NO - Stop deliberations

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

_____ YES - Go to Question 4.

_____ NO - Stop deliberations

4. Was the plaintiff negligent?

_____ YES - Go to Question 5

_____ NO - Go to Question 8

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

_____ YES - Go to Question 6

_____ NO - Go to Question 8

Please proceed to Page 2

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

Plaintiff _____%

Defendant _____%

Total _____%

7. Was the plaintiff's negligence greater than fifty percent?

_____ YES - Stop deliberations

_____ NO - Go to Question 8

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

\$ _____ Actual Damages

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

I certify that this decision is the unanimous decision of the jury.

Michael J. Williams 8/30/2012
FOREPERSON

August ____, 2011
Ridgeland, South Carolina

WHEN YOU HAVE COMPLETED, PLEASE NOTIFY THE BAILIFF.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2008-CP-27-0529

Jasper County Sheriff's
Office,

Respondent,

v.

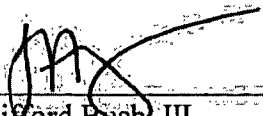
Derrick Dupont,

Appellant.

NOTICE OF APPEAL

Derrick Dupont appeals the judgment of the Honorable Carmen T. Mullen dated September 5, 2012. Appellant received written notice of entry of this judgment on September 7, 2012.

September 26, 2012



Clifford Bush, III
Fatima Alexis Zeidan
28 Old Jericho Road
Beaufort, South Carolina 29906
(843) 379-9500
Attorneys for Appellant

Other Counsel of Record:
Marshall H. Waldron, Jr.
Post Office Drawer 570
Beaufort, South Carolina 29901
Attorney for Respondent
(843) 521-4242

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2008-CP-27-0529

Jasper County Sheriff's
Office,

Respondent,

v.

Derrick Dupont,

Appellant.

CERTIFICATE OF SERVICE

I, the undersigned, Bonnie L. McMillan, a paralegal at the Law Office of Clifford Bush, III, attorney for Appellant, do hereby certify that on September 26, 2012, I served a copy of the Notice of Appeal, on the below-listed party by personally depositing a copy of the same, certified mail, return receipt requested, in the United States Postal Service Mailbox, addressed as follows:

Marshall H. Waldron, Jr.
Post Office Drawer 570
Beaufort, South Carolina 29901
Attorney for Respondent
(843) 521-4242



Bonnie McMillan

September 26, 2012

Certificate of Counsel

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

August 13, 2013



Fatima Alexis Zeidan
Clifford Bush, III
28 Old Jericho Road
Beaufort, South Carolina 29906
(843) 379-9500
(843) 379-9550 (fax)
fzeidan@lawofficeofcbushiii.com
cbush@lawofficeofcbushiii.com
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2008-CP-27-0529
Appellate Case No. 2012-213115

Jasper County Sheriff's
Office,

Respondent,

v.


Derrick Dupont,

Appellant.

CERTIFICATE OF SERVICE

I, the undersigned, S. Kim Daniels, a paralegal at the Law Office of Clifford Bush III, attorneys for Appellant, do hereby certify that on August 13, 2013, I served a copy of the **Record on Appeal** on the below-listed parties by personally depositing a copy of the same, in the United States Postal Service Mailbox, sufficient first class postage attached, addressed as follows:

Matthew David Cavender, Esquire
Otto Edworth Lippfert, III, Esquire
Griffith, Sadler & Sharp, P.A.
Post Office Drawer 570
Beaufort, South Carolina 29901


S. Kim Daniels

August 13, 2013

RECEIVED

AUG 15 2013

SC Court of Appeals