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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Robin B. Stillwell, Circuit Court Judge

Appellate Case No. 2016-000548
Case No. 2013-CP-23-6522

Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin, ... Respondent,

v.

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County, ... Appellant.

RECORD ON APPEAL - VOLUME I

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Certificate of Compliance

STATE OF SOUTH CAROLINA | COURT OF COMMON PLEAS

COUNTY OF GREENVILLE | C.A. No. 2013-CP-23-6522

MADEL C. RIVERO, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LILIA LORENA BLANDIN,

PLAINTIFF

VS.

SHERIFF STEVE LOFTIS, IN HIS CAPACITY AS SHERIFF OF GREENVILLE COUNTY.

DEFENDANT.

1. Was the defendant grossly negligent?
   ✓ YES - Go to Question 2
   _____ NO - Stop deliberations

2. Was the defendant's gross negligence a proximate cause of the plaintiff's injuries?
   ✓ YES - Go to Question 3
   _____ NO - Stop deliberations

3. Was the plaintiff negligent?
   ✓ YES - Go to Question 4
   _____ NO - Go to Question 7

4. Was the plaintiff's negligence a proximate cause of the plaintiff's injuries?
   _____ YES - Go to Question 5
   ✓ NO - Go to Question 7

5. Using the combined negligence that proximately caused the plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the plaintiff and what percentage is attributable to the defendant? [The percentage must add up to 100%. It is not necessary for each defendant to be assigned a percentage of negligence. It is perfectly acceptable for a defendant to be assigned a zero percentage (0%).]

Plaintiff	_____%
Defendant	_____%
Total	_____%

6. Was the plaintiff's negligence greater than fifty percent?
_____ YES - Stop deliberations
_____ NO - Go to Question 7

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

$250,000.00 Actual Damages - Survival Action

$500,000.00 Actual Damages - Wrongful Death Action

FOREPERSON

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin, Plaintiff, v. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County, Defendant.	)	Case No. Case No. 2013-CP-23-6522 **ORDER**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. BRANHAM
2016 FEB 10 PM

This matter is before the court on two post-trial motions filed by Defendant, Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County. The first motion is pursuant to Rule 59, SCRCP, on the ground of newly discovered evidence that a juror failed to disclose information in response to a *voir dire* question that would have caused Defendant to request that she be struck for cause or would have been a material factor in Defendant's use of its peremptory jury strikes. Defendant also filed a motion pursuant to Rule 60(b), SCRCP, for relief from the jury's verdict, again based upon alleged juror misconduct in failing to disclose information during *voir dire* that would have caused Defendant to request that the juror be struck for cause or would have been material to Defendant's jury strikes.

On December 17, 2015, the court held a hearing on these motions. Present for the Defendant were Russell W. Harter and Carly H. Davis of Greenville, South Carolina. Present for the Plaintiff were J. Christopher Wilson of Bamberg, South Carolina, Daniel J. Farnsworth, Jr., of Greenville, South Carolina, and John S. Nichols of Columbia, South Carolina. After hearing arguments and carefully considering the submissions of counsel, Defendant's motions are

denied.[1]

BACKGROUND

This was a wrongful death case in which the jury returned a verdict for Plaintiff against Defendant. During *voir dire*, the court asked the following question of the jury panel:

Is there anyone among you who has been a victim of criminal domestic violence?

In response to this question, one juror alerted the court that she had been in "a criminal domestic relationship" and that she could "not likely" be fair and impartial in this case. No other potential juror responded to this question.

After the verdict Defendant made several post-verdict motions. While those motions were pending Defendant made additional motions pursuant to both Rule 59 and Rule 60, SCRCP, asserting a juror, Robin Burns, had willfully failed to disclose that she had been a victim of criminal domestic violence in response to the *voir dire* question above.[2] Defendant asserts that the *voir dire* question required her to respond, and that had she responded Defendant would have used the information to challenge her for cause or would have used a peremptory strike to remove her.

The court denies Defendant's motions for the reasons set forth below.

---

[1] Plaintiff waived any objection to the following items being admitted at the hearing for the limited purpose of determining whether any further hearings are warranted: The affidavits of the Simpsonville Police Officers, the affidavit of a 9-1-1 operator, the 9-1-1 tape itself, a certified transcript of the 9-1-1 tape, and defense counsel's several affidavits. Plaintiff, however, objected to any sworn statement from juror Michael Cornish that Defendant submitted. The court sustains the objection to the statement, finding it inadmissible as set forth herein, but the remainder of the submissions were considered without objection.

[2] A party is permitted to amend a Rule 59 motion within a reasonable time after discovery of evidence of alleged juror bias and prejudice. *Gray v. Bryant*, 298 S.C. 285, 379 S.E.2d 894 (1989).

I. THE JUROR'S SWORN STATEMENT

Defendant proffered a sworn statement from juror Charles M. Cornish, Jr., one of the twelve jurors seated in this case. Plaintiff objected on the ground that the sworn statement was improper and inadmissible. The court agrees.

Rule 606(b), SCRE, expressly bars juror testimony regarding deliberations in any inquiry into the validity of a verdict. The Rule provides:

> Upon an inquiry into the validity of a verdict or indictment, *a juror may not testify as to any matter or statement occurring during the course of jury's deliberations* or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

SCRE, Rule 606(b) (emphasis added). *See also Lynch v Carolina Self Storage*, 409 S.C. 146, 760 S.E.2d 111 (Ct. App. 2014) (noting Rule 606(b), SCRE, is the same as the federal rule, and finding testimony of alleged misconduct by other jurors during deliberations to be inadmissible under rule 606(b)); *Warger v. Shauers*, 574 U.S. ____, 135 S. Ct. 521 (2014) (US Supreme Court found an affidavit of a juror to establish that the jury foreperson had lied about her impartiality to award damages based on comments the foreperson had made during deliberations concerning the foreperson's own daughter having been involved in a fatal accident and that "a lawsuit would have ruined her life" because Rule 606(b), Fed.R.Civ.P. barred this type of juror testimony which went to the jury's deliberation process).

Mr. Cornish's proffered statement under oath is not admissible under Rule 606(b). The statement references only conversations that purportedly arose during the course of deliberations,

and Mr. Cornish's individualized interpretations of those purported conversations. These statements are purely intrinsic to the deliberation process and the proffered evidence is, therefore, inadmissible pursuant to Rule 606(b).

II. DEFENDANT'S MOTION FOR NEW TRIAL

A party seeking a new trial based upon the disqualification of a juror must show: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to verdict; and (3) the moving party was not negligent in failing to learn of the disqualification before verdict. *Gray v. Bryant*, 298 S.C. 285, 288, 379 S.E.2d 894, 896 (1989), *citing Thompson v. O'Rourke*, 288 S.C. 13, 339 S.E.2d 505 (1986).

The court finds that Defendant failed to establish the "fact of disqualification" of Juror Burns as required by *Gray v. Bryant*. The court reviewed the 9-1-1 incident report, the 9-1-1 tape and transcript, and the affidavits of the officers who responded to the call from Ms. Burns' home. All of this evidence indicates clearly and unequivocally that Juror Burns was not a victim of Criminal Domestic Violence. The question the court posed in *voir dire* was clear and unambiguous, and there is no evidence that Ms. Burns, either objectively or subjectively, concealed information. Simply put, the record in this case, and the public record in general, clearly indicate that Ms. Burns was not the victim of Criminal Domestic Violence. Accordingly, Defendant has failed to establish the "fact of disqualification" so as to obtain a new trial based upon disqualification of a juror.

Furthermore, after the court had published a brief summary of the allegations in this case, which included the fact that a wife had been killed by her husband, the court posed the following final question in *voir dire*:

> All right, ladies and gentlemen, is there anyone among you who for whatever reason feels as though you could not be a fair and impartial juror in the trial of this case and render a verdict in accordance with the law as I give it to you?

Although one juror responded who had previously indicated her inability to be impartial, Juror Burns did not respond. By failing to respond, Juror Burns clearly indicated that she could be fair and impartial in the trial of the case, notwithstanding her prior experiences. Defendant has failed to show that Juror Burns' failure to respond during *voir dire* was untruthful or deceitful so as to rise to the level of an intentional concealment of information. *See State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) (finding no intentional concealment where question would not elicit the information appellant claimed was intentionally concealed).

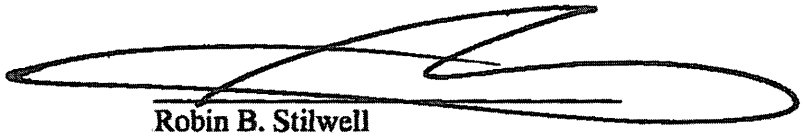
The court agrees that had the Defendant known of Juror Burns' experience with the police concerning an argument with her husband, the Defendant would surely have used a peremptory challenge to strike Ms. Burns. However, having determined that there was no concealment or non-disclosure, the point is moot. *See, e.g., Johnson v. Finney*, 246 S.C. 366, 143 S.E.2d 722 (1965) (it becomes unnecessary for court to decide question where issue is made moot and academic).

Finally, following the hearing the court took the Defendant's motions under advisement and reviewed all materials submitted by both parties. Defendant requested that the court hold a hearing, summon Juror Burns to appear and question Ms. Burns further about the *voir dire* process. After very careful consideration of Defendant's request and the record in this case, the court finds that no additional evidentiary hearing in this matter is required.

CONCLUSION

For the foregoing reasons, Defendant's motions pursuant to Rules 59 and 60 on the ground of juror misconduct are

DENIED.



Robin B. Stilwell
Circuit Court Judge

February 8, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,

Plaintiff,

vs.

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County,

Defendant.

IN THE COURT OF COMMON PLEAS

2013 FEB 11 P 3:29

Civil Action No. 2013-CP-23-6522

ORDER CONCERNING DEFENDANT GREENVILLE SHERIFF POST-TRIAL MOTIONS

This matter is before the Court on seven (7) Motions filed by the Defendant as set out below. The parties submitted written arguments to the Court for consideration.

With respect to the following Motions filed by Defendant Greenville Sheriff, the Court finds that the jury's verdict of $750,000.00 for Plaintiff's survival claim should be reduced, after credit for all applicable offsets and pursuant to the S.C. Tort Claims Act, and judgment should be entered against Defendant for $300,000.00 on the survival claim. Similarly, the jury's verdict of $500,000.00 for Plaintiff's Wrongful Death claim should be reduced, after credit for all applicable offsets and pursuant to the S.C. Tort Claims Act, and judgment should be entered against Defendant for $300,000.00 on the wrongful death claim. Therefore, the Court grants the relief sought by Defendant in the Motions listed below and orders that judgment be entered against the Defendant on the Survival claim for $300,000.00 and the Wrongful Death claim for $300,000.00 :

1. **Defendant's Motion for Offset and Remittitur of Verdict (filed October 12, 2015 at 3:24 pm)**

2. **Defendant's Motion to Alter or Amend (filed October 8, 2015 at 2:11 pm)**

3. **Defendant's Motion for Offset and Remittitur of Verdict (filed October 8, 2015 at 2:09 pm)**

4. **Defendant's Motion to Alter or Amend (filed October 12, 2015 at 3:23 pm)**

With respect to the following Motions, the Court denies the Motions for the reasons set forth herein:

5. **Defendant's Motions for JNOV and New Trial (filed October 12, 2015 at 3:24 and 3:25 pm)**

To recover in a survival action in South Carolina, Plaintiff must establish some evidence of "conscious pain and suffering." Camp v. Petroleum Carrier Corp., 204 S.C. 133, 28 S.E.2d 683 (1944). Our courts do not require an extensive showing to support a finding of conscious pain and suffering, but merely some evidence – "a scintilla" – of conscious pain and suffering to submit the matter to the jury for determination. Croft v. Hall, 208 S.C. 187, 37 S.E.2d 537 (1946). If there is any evidence from which a jury could reasonably conclude a decedent experienced conscious pain and suffering, the issue must be submitted to the jury. Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991) (quoting Croft v. Hall). There is no requisite time period, degree or manner of "conscious pain and suffering" that is necessary to support a survival award. Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000) (citing Holston v. Sisters of Third Order of St. Francis, 165 Ill.2d 150, 650 N.E.2d 985 (1999)).

The Court found at trial and finds now that Plaintiff produced sufficient evidence of Lilia Blandin's conscious pain and suffering to submit the Survival cause of action to the jury. Testimony from Kim Selvy and Barbara Headen showed that Lilia Blandin fought against her attacker and yelled, "Please stop!" after being stabbed. Testimony of the medical examiner explained the "defensive" stab wounds on Lilia's body and how those wounds indicated she fought back against her attacker. The medical examiner testified that Lilia's death would not have been immediate, lasting as long as a few minutes, during which she would have endured conscious pain and suffering. The evidence presented to the jury on this issue, as well as the reasonable conclusions to be drawn from such evidence, support the submission of the survival claim to the jury and the jury's finding of a survival award.

For these reasons, Defendant's Motion is denied.

6. **Defendant's Motion for JNOV and/or In The Alternative New Trial *Nisi Remittitur***

Unless the jury's award for survival is "excessive," remittitur would not be appropriate. Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999). A jury's determination of award on a survival action should be given great deference. Russ v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). Considering the testimony and evidence concerning the survival cause of action, some of which is noted above, the Court finds the jury award of $750,000.00 (which will be reduced to $300,000.00) is not excessive. For these reasons, Defendant's Motion is denied.

7. **Defendant's Motion for JNOV and New Trial (filed October 12, 2015 at 3:24 pm).**

Generally, statutes that create or define the duties of public office do not create a duty of care toward individuals. Parker v. Brown, 195 S.C. 35, 10 S.E.2d 625 (1940); Jensen v. Anderson County DSS, 304 S.C. 195, 403 S.E.2d 615 (1990) (rehearing denied 1991); Arthurs ex. rel. Estate of Munn v. Aiken County, 346 S.C. 97, 551 S.E.2d 579 (2001). However, our courts have recognized an exception to the "public duty rule." Arthurs, infra; Jensen, infra. Steinke v. SC Dept. Labor Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999) (rehearing denied 1999).

Patricia Sullivan's duties and obligations arose, not from statute, but from GCSO General Order 238. The "public duty rule" is therefore inapplicable to her actions or inactions. Failure to follow internal policies and guidelines of an entity is evidence of negligence. Madison, ex rel. Bryant v. Babcock Center, 371 S.C. 123 638 S.E.2d 650 (2006).

With respect to the deputies' failure to investigate and arrest, Plaintiff claimed their duties arose from both GCSO General Order 238 and S.C. Code Ann. §16-25-70. As such, the "public duty rule" may be applicable to claims of a duty existing pursuant to §16-25-70, but it would not apply to the common law duty to follow the GCSO policies and procedures. Madison, supra. Because Defendant did not request a special interrogatory verdict form, the Court is unable to determine whether the jury found GCSO was grossly negligent for violating its own policies, §16-25-70, or both. Plaintiff submitted evidence to support a finding by the jury of a violation of either GCSO Order 238 and SC Code §16-25-70.

Because Plaintiff's claims involved a violation of statute as a basis for a finding of a violation of duty, the Court considered the public duty rule and whether a "special

duty" exception existed. Under Arthurs, a "special duty" exists if the Court so finds after consideration of a six-part test adopted in Jensen. See also, Edwards v. Lexington Sheriff Dep't, 386 S.C. 285, 688 S.E.2d 125 (2010).

The Court has considered the six part Arthurs test in this case. The essential purpose of the CDV Act is to protect against domestic violence and imposes upon law enforcement officers a non-discretionary duty to arrest a suspect where there is sufficient evidence domestic violence has occurred and there is a physical manifestation of injury. Further, the officer may arrest any time there is probable cause, even without a physical manifestation of injury. In the instant case, each officer testified that if Ms. Blandin, Ms. Rivero, or the children had indicated that an assault had occurred, under the totality of the circumstances, Avery Blandin would have been arrested for CDV. Additionally, both experts testified that if the jury believed the testimony of [redacted] Blandin and Ms. Rivero, the deputies would have had no discretion and should have arrested Avery Blandin.

Next, the CDV Act defines a clearly identifiable, limited class of persons to be protected, namely victims of criminal domestic violence. Lilia Blandin was a person within the class of persons to be protected because there was evidence she was a victim of domestic violence on December 9th, when the officers were on the scene. Law enforcement officers are aware of the likelihood of harm to class members upon their failure to fulfill their duties. In this case, Deputy Tyner and Deputy Picone testified about their knowledge of the cycle of domestic violence and that failure to stop that cycle with arrest or intervention would likely result in an escalation of violence against Lilia. Both the Defendant's expert witness and Plaintiff's expert witness testified that the most

effective way to stop the cycle of violence from escalating is to incarcerate the offender, even for a short time.

Finally, the deputies are given sufficient authority to act in circumstances - i.e. arrest - under S.C. Code Ann. §16-25-70 (A) or (B). There was evidence in this case from which the jury could have found that the deputies had a non-discretionary duty to arrest, or, in the alternative, that the deputies were grossly negligent in deciding not to arrest when they had probable cause, and therefore the authority, to do so.

After the Court determines the existence of a duty, matters of breach of duty and causation are generally factual issues for jury determination. Martasin v. Hilton Head Health System, 364 S.C. 430, 613 S.E.2d 795 (Ct. App. 2005)(rehearing denied 2005)(cert. denied 2006); Hill v. York County Sheriff's Dept., 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993) (rehearing denied 1993)(cert. denied 1994). The testimony of the child [redacted] Blandin, Ms. Madel Rivero, and both experts are more than sufficient to establish probable cause for the arrest, and thus a breach of duty upon failure to arrest. State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996)(rehearing denied 1996); State v. Moultrie, 316 S.C. 547, 451 SE2d 34 (Ct. App. 1994).

As to causation, the evidence presented to the jury in the form of expert and lay witness testimony supported the jury's determination of causation. Several witnesses, including both parties' experts and Deputy Picone and Deputy Tyner, testified about the cycle of domestic violence. There was evidence that Avery Blandin only became violent when intoxicated. There was evidence that had Avery been arrested on December 9, 2011, he would likely have still been in jail on December 10, 2011 when he killed Lilia. Proximate causation does not have to be shown with exact certainty. Koester v. Carolina

Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)(rehearing denied 1994); Hill, infra.

Defendant raised several defenses and immunities under the S.C. Tort Claims Act and S.C. Code Ann. § 16-25-70. The Court has considered Steinke and other applicable law, the pleadings, the evidence submitted, the arguments of counsel and requested charges, and finds that a "gross negligence" standard applies to Defendant's duties in this case. The Court instructed the jury several times on "gross negligence" prior to the verdict. The determination of whether Defendant's actions were "grossly negligent" was for jury determination, and the Court will not disturb the verdict. Clark v. SC Dept. of Public Safety, 632 S.C. 377, 608 S.E.2d 573 (2005)(rehearing denied 2005). Plaintiff produced sufficient evidence to support the jury's determination that Defendant was grossly negligent, and thus, liable.

For these reasons, Defendant's Motion is denied.

IT IS THEREFORE ORDERED:

Judgment shall be entered in favor of Plaintiff against Defendant for $300,000.00 (Three Hundred Thousand and 00/100ths Dollars) on the Survival claim and for $300,000.00 (Three Hundred Thousand and 00/100ths Dollars) on the Wrongful death claim.

AND IT IS SO ORDERED.

Honorable Robin B. Stilwell
Circuit Court Judge

November 9, 2016
Greenville, SC

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 FEB 17 PM 2 43

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2306522

Madel C Rivero	**Lilia Lorena Estate Of Blandin**	**Steve Loftis** **Tim Gault** **Woodforest National Bank**	**Sheriff Of Greenville County** **Emergency Medical Services Greenville County**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ 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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Attached hereto are documents and materials upon which the Court relied in making its post-trial determination regarding the Plaintiff's Motion to Vacate for Juror Misconduct. The attachment includes eleven specific documents set forth below:

1. Original transcript of *voir dire*;
2. Sworn statement of Michael Cornish;
3. Copy of jury list;
4. Redacted and unredacted Incident Report of incident on June 23, 2015;
5. Affidavit of Russell W. Harter, Jr., with attachments;
6. Disc of 9-1-1 call with Certification of Authenticity from Simpsonville Police Department;
7. Affidavit of Jennifer Skipper;
8. Affidavit of Jonathan Edwards;
9. Affidavit of David Tedrow;
10. Affidavit of defense counsel dated December 15, 2015; and
11. Written transcript of 9-1-1 call.

These documents are specifically included and incorporated into the record as materials relied upon by the Court in its decision.

This order ☐ ends ☐ does not end the case.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

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	2158 Judge Code	2/9/2016 Date

For Clerk of Court Office Use Only

This judgment was entered on 2/11/16, and a copy mailed first class or placed in the appropriate attorney's box on 2/11/16, to attorneys of record or to parties (when appearing pro se) as follows:

Daniel Joseph Farnsworth Jr. Farnsworth Law Offices, LLC P.O. Box 8719 Greenville, SC 29604
J. Christopher Wilson Wilson & Luginbill, LLC P.O. Box 1150 Bamberg, SC 29003
Daniel W. Luginbill Wilson & Luginbill, LLC P.O. Box 1150 Bamberg, SC 29003
John S. Nichols 1614 Taylor St. Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Russell W. Harter Jr. Chapman, Harter & Harter, P.A. PO Box 10224 Greenville, SC 29603
Grenville D. Morgan Jr. McAngus Goudelock & Courie, L.L.C. P.O. Box 2980 Greenville, SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

CHAPMAN, HARTER & HARTER, P.A.
ATTORNEYS AT LAW
RUSSELL W. HARTER, JR.

14 LAVINIA AVENUE
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GREENVILLE, SOUTH CAROLINA 29601

MAIN: (864) 233-4500
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January 27, 2016

The Honorable Robin B. Stilwell
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601

Mr. David Luginbill
Mr. Christopher Wilson
Wilson & Luginbill, LLC
PO Box 1150
Bamberg, South Carolina 29003

Mr. John S. Nichols
Bluestein, Nichols, Thompson & Delgado, LLC
PO Box 7965
Columbia, South Carolina 29202

Mr. Daniel J. Farnsworth, Jr.
Farnsworth Law Offices, LLC
PO Box 8719
Greenville, South Carolina 29604

Re: Madel C. Rivero as PR of the Estate of Lilia Lorena Blandin vs. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County
C/A No.: 2013-CP-23-06522

Dear Judge Stilwell,

Pursuant to your instructions in yesterday's email, I am submitting at this time, an index and all of the referenced documents to be included as part of the record in the above-mentioned matter.

Thank you for your assistance! Warmest personal regards.

Very truly yours,

Russell W. Harter, Jr.

INCLUDED IN THE RECORD:

1. Original transcript of *voir dire*;
2. Sworn statement of Michael Cornish;
3. Copy of jury list;
4. Redacted and un-redacted Incident Report of incident on June 23, 2015;
5. Affidavit of Russell W. Harter, Jr. with attachments;
6. Disc of 9-1-1 call with Certification of Authenticity from Simpsonville Police Department;
7. Affidavit of Jennifer Skipper;
8. Affidavit of Jonathan Edwards;
9. Affidavit of David Tedrow;
10. Affidavit of defense counsel dated December 15, 2015;
11. Written transcript of 9-1-1 call.

DEFENDANT'S
EXHIBIT 1

ORIGINAL TRANSCRIPT OF *VOIR DIRE*

STATE OF SOUTH CAROLINA	
	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	2013-CP-23-06522
MADEL C. RIVERO, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LILIA LORENA BLANDIN PLAINTIFF	ORIGINAL
vs.	PARTIAL TRANSCRIPT OF RECORD
SHERIFF STEVE LOFTIS, IN IS CAPACITY AS SHERIFF OF GREENVILLE COUNTY DEFENDANT	

September 28, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge; and a jury.

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

DANIEL J. FARNSWORTH, JR., ESQ.
DANIEL W. LUGINBILL, ESQ.
J. CHRISTOPHER WILSON, ESQ.
Attorneys for the Plaintiff

RUSSELL W. HARTER, JR., ESQ.
CARLY H. DAVIS, ESQ.
Attorneys for the Defendant

APRIL HERRON
Official Court Reporter

There were no witnesses.

There were no exhibits.

» › o ‹ «

Jury Qualification 4
Certificate of Reporter 26

THE COURT: All right, ladies and gentlemen, welcome upstairs to courtroom six. Good to see you again. As I promised you downstairs, we are going to pick a jury for the first case that is up this week. I remind you that you remain under the oath that you took downstairs. Now, when I ask you questions, again, the process will essentially be the same. And that is, when I ask you a question, if the answer is in the affirmative, I'll ask you stand up and state your name and your juror number and then respond to the question appropriately. Now, I would ask that each time you stand up, state your name and your juror number because now the court reporter is taking down everything that is being said in the courtroom. And it's important that for the record, that it's clear who responded to what question.

All right, ladies and gentlemen, the case that we are calling to bar today is Madel C. Rivero, Personal Representative of the Estate of Lilia Blandin vs. Sheriff Steve Loftis in his capacity as Sheriff of Greenville County. Additional Defendants --

Do all the additional Defendants remain in this caption?

MR. HARTER: That's the only one, Your Honor.

THE COURT: All right, ladies and gentlemen, that's Case No. 2013-CP-23-6522. Ladies and gentlemen, this is a case in which Mrs. Lilia Blandin was stabbed to death inside Wal-Mart on Whitehorse Road on December 10th, 2011. The Plaintiff contends that Lilia Blandin was killed as a result of Greenville County Sheriff's Office negligently failing to arrest her husband the day before her murder. The sheriff's office contends that there was no legal basis to arrest Mrs. Blandin's husband on December 9th, 2011, based on the information they had at the time.

Now, ladies and gentlemen, the reason I read to you that very basic allegations one to the other, is so that you can answer this question intelligently. Is there anyone among you who has any prior knowledge, any prior opinion, any prior disposition regarding the allegations or the parties in this lawsuit?

There was no response.

Ladies and gentlemen, is there anyone among you who has heard any media reports regarding this incident?

There was no response.

Heard or read?

There was no response.

Okay. All right. Ladies and gentlemen, in this case the Plaintiff is Ms. Madel C. Rivero.

Have I pronounced that right?

MR. FARNSWORTH: Yes, sir, Your Honor.

THE COURT: Ms. Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin. Is there anyone among you who has a personal, professional or family relationship with Ms. Rivero or with the deceased, Mrs. Blandin?

There was no response.

Ladies and gentlemen, in this case Ms. Rivero is represented by Mr. Christopher Wilson and Mr. Daniel Luginbill of Wilson and Luginbill, LLC of Bamburg, South Carolina. They are also -- the Plaintiff is also represented by Mr. Daniel Farnsworth of the Farnsworth Law Firm in Greenville, South Carolina. I'll ask you, is there anyone among you who has a personal, professional or family relationship with any of the attorneys for the Plaintiff?

There was no response.

Ladies and gentlemen, the Defendant in this case is Sheriff Steve Loftis. Is there anyone among you who has a personal or professional relationship or family relationship with Sheriff Loftis? Or with

anyone employed within his office?

All right, let the record reflect no affirmative response.

Ladies and gentlemen, the Defendant is represented by Mr. Russell W. Harter, Jr. and Carly Harter Davis of Chapman, Chapman and Harter, P.A. in Greenville, South Carolina. Is there anyone among you who has a personal, professional or family relationship with defense counsel?

There was no response.

Ladies and gentlemen, I'm going to read for you a list of potential witnesses in this case. Now, this may be inclusive but it may have a few more than will actually testify, maybe a few less. Because each case kind of takes on a life of its own from time to time. But these are potential witnesses. After I've read them out, I'll ask you the same question of whether you have a personal, professional, family relationship with any of them.

Kevin Tyner, David Picone, Jan Kiser, Neil Logan, Mark McCoy, Jeff Granner, Jim Perry, Jason Cassel, Patricia Sullivan, Antonio Bailey, Roger Dobbs, Sheriff Steve Loftis, Jenna Spencer, Avery Blandin, Madel Rivero, Lilia Blandin, [redacted] Blandin, [redacted] Blandin, [redacted] Blandin, Juana

Hamby, Jorge Vasquez, Leroy Hamby, Dr. Mike Ward, Melvin Tucker, John "Jack" Ryan. Ladies and gentlemen, I'll ask you, is there anyone among you who has a personal, professional or family relationship with any of those potential witnesses?

All right, sir, if you would stand and state your name and juror number, please.

PROSPECTIVE JUROR: Clyde Lacount, number 36. Jeff Granner.

THE COURT: Okay. All right, sir, what's the nature of your relationship with him?

PROSPECTIVE JUROR: Friends.

THE COURT: Okay. Do you think knowing that fact that you can still be a fair and impartial juror in the trial of this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay, thank you, for telling me, sir. I appreciate that.

Anybody else?

Ladies and gentlemen, I'll ask you--

MR. WILSON: Your Honor.

THE COURT: Yes, sir.

MR. WILSON: Can we approach one moment, please?

THE COURT: Sure.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen of the jury, I apologize for that pause. That's my fault. The attorneys had given me an additional list of names that I had among all this paperwork that I've already accumulated up here, so I apologize for it. Additional witnesses may include Barbara Headen, Emma Jean Whitener, Neil Logan, G. Richard Thompson, Ph.d, Jenna Spencer, Anthony Tuggle and Kim Selvy. Ladies and gentlemen, any of you have a personal, professional or family relationship with any of those additional proposed witnesses?

Okay, let the record reflect no affirmative response.

Ladies and gentlemen, is there anyone among you who is a personal friend, political contributor or political supporter of Sheriff Steve Loftis, The Greenville County Sheriff?

There was no response.

Ladies and gentlemen, is there anyone among you who has--

MR. LUNGINBILL: Judge --

THE COURT: Yes, sir.

MR. LUNGINBILL: Would you clarify that, Judge?

THE COURT: Yes, sir, I'll read it again. Anyone among you is a personal friend, political contributor or political supporter of the Sheriff, Steve Loftis?

PROSPECTIVE JUROR: I'm a political supporter.

THE COURT: All right. Will you stand up and state your name and juror number for the record, please, sir?

PROSPECTIVE JUROR: Yes, Frank Raddis.

THE COURT: And your juror number?

PROSPECTIVE JUROR: 59.

THE COURT: Okay. All right. And you are a political supporter of the sheriff, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Have you contributed money to his campaign, sir?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. Do you think given the fact that you're a political supporter of his that it would affect your ability to be fair and impartial and objective in this case, sir?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. I appreciate you letting me know, thank you.

Okay, anyone else?

There was no response.

All right, is there anyone among you that has ever been employed by or had an immediate family member or close personal friend who is employed as a law enforcement officer or a 911 operator? Okay, there might be several of you. So, y'all just stand up and as you answer you can just sit back down.

Yes, sir.

PROSPECTIVE JUROR: Juror number 25, Charles Harrigan.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: My college roommate is now a police officer for Greenville City police.

THE COURT: Do you think that you can still be fair and impartial on this case, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right, thank you for telling me. I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Jeff White, juror No. 78.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: One of my coworkers had a son who was employed with the Greenville County Police Department.

THE COURT: Okay. Do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: I do.

THE COURT: Thank you, I appreciate it, sir.

Yes, sir.

PROSPECTIVE JUROR: William Snyder, juror No. 64. I was previously a law enforcement officer in the municipality of Fountain Inn and multiple friends in the department.

THE COURT: Okay, do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you for telling me that, I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Benjamin Poole, number 57, I believe.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: Uncle was a police chief and officer in the State of Michigan.

THE COURT: Okay. Do you think that you can be fair and impartial in this case, sir, given that fact?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you, I appreciate you telling

me.

Yes, sir.

PROSPECTIVE JUROR: Louise Brody, No. four. My father is a retired police officer and chief of police.

THE COURT: Do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you for telling me, I appreciate it.

Anyone else?

There was no response.

All right, is there anyone among you who would tend to hold the testimony of a law enforcement officer in higher regard or believe it to be more credible than the testimony than a member of the general public?

All right, let the record reflect no affirmative response.

And I think I've already asked you this but it's worth stating again. Has anyone read, seen or heard anything about this December 10th, 2011 incident at Wal-Mart on Whitehorse Road?

Okay, let the record reflect --

Oh, you have? Okay. Stand up and give me your

name and juror number, please.

PROSPECTIVE JUROR: Kyle Martin, 43.

THE COURT: Okay. Have you heard media reports is that correct, sir?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Read it in the newspaper, see it on the news?

PROSPECTIVE JUROR: Well, at the time my step-daughter was actually working there when it happened.

THE COURT: Okay. All right. So, you heard from it -- from an account with an employee of Wal-Mart?

PROSPECTIVE JUROR: Yes, my step-daughter that was an employee at the time and on the news.

THE COURT: Okay. Do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Good enough, thank you for telling me.

Yes, sir.

Either of you.

PROSPECTIVE JUROR: Number 10.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: Seen it on the news. In the

newspaper.

THE COURT: Okay, do you think that you can still be fair and impartial having seen it on the media?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you for telling me, I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Travis Norman, juror No. 49, I seen it the news, media on it.

THE COURT: Okay, do you think having seen it on the news that you can still be fair and impartial, sir?

PROSPECTIVE JUROR: I think I could.

THE COURT: Okay, thank you for telling me, appreciate it, sir.

Yes, ma'am.

PROSPECTIVE JUROR: Priscilla Winley, juror No. 80, I saw it on the news.

THE COURT: Okay, you think you can still be fair and impartial in this case, ma'am?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay, thank you, I appreciate it.

Anyone else?

There was no response.

Is there anyone on the jury panel who believes that lawsuits can influence governmental organizations or companies to operate more safely?

All right, let the record reflect no affirmative response.

Is there anyone among you or a member of your family, to your knowledge, ever brought a lawsuit or asserted a claim against a law enforcement agency or officer, 911 officer, dispatcher or communication officers or first responder?

All right, let the record reflect no affirmative response.

Is there anyone among you who has been a victim of criminal domestic violence?

Yes, ma'am.

PROSPECTIVE JUROR: Heidi Letterman, juror No. 40.

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: My first marriage of eight years was a criminal domestic relationship.

THE COURT: Do you think that you can still be fair and impartial in this case, ma'am?

PROSPECTIVE JUROR: It's not likely.

THE COURT: Okay, I appreciate you telling me that. Thank you.

All right, anyone else?

There was no response.

All right, is there anyone among you or a member of your family, to your knowledge, ever been stopped or arrested by a law enforcement officer for anything other than a minor traffic violation?

Yes, ma'am, name and juror number?

PROSPECTIVE JUROR: Jo Rae Jetton, juror No. 33.

THE COURT: Okay. All right. And, ma'am, having been stopped, did you have any problems with an investigating officer or an arresting officer or law enforcement?

PROSPECTIVE JUROR: Are you talking about a vehicle thing?

THE COURT: Anything other than a vehicle stop. If it was just a traffic -- a minor traffic violation, you don't need to worry about it.

PROSPECTIVE JUROR: I was--

THE COURT: You don't have to tell me what it was.

PROSPECTIVE JUROR: Okay.

THE COURT: All you have to do is say yes or no. The purpose of me asking you these questions isn't to embarrass you or pry into your personal business. It influences what the strikes are that the attorneys

will make. So, really, what I'm asking you is, have you ever been stopped or arrested for something other than a minor traffic violation? And if so, did you have issues with law enforcement?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. All right. And can you tell me would that experience affect your ability to be fair and impartial in the case before the Court today?

PROSPECTIVE JUROR: I don't think it would affect me, no.

THE COURT: Okay. All right, thank you for telling me. I do appreciate it.

Yes, ma'am.

PROSPECTIVE JUROR: I'm Heidi Letterman, juror No. 40, yes, I have.

THE COURT: Okay. All right. Why you say, Yes, you have. You had issues and problems with law enforcement officers?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Okay. And I know you've already stated to me that you thought you had some issues with this case and that it would affect your objectivity. Would that still continue to affect your objectivity?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay, thank you, I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Judge, I'm Benjamin Smith, juror No. 63. And I guess to, you know, go with your question, my brother, he had a CDV charge against him and I was there. And it wasn't his fault and I saw it. So, the police came and talked to them and it was just kind of -- yeah.

THE COURT: Okay. Do you think given that fact that you can still be fair and impartial in this case?

PROSPECTIVE JUROR: Yeah.

THE COURT: Okay, thank you for telling me, I appreciate it.

Okay, if you've responded in the affirmative already to this question in some form, you don't have to respond again. But I'll pose a more specific question to you and general question. Have you or any member of your family, to your knowledge, ever had a bad experience with a police officer or a law enforcement officer or a 911 or a communication specialist or a dispatcher officer?

Yes, sir.

PROSPECTIVE JUROR: Juror number 25, Charles

Harrigan.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: My brother filed a complaint against a Greenville County officer.

THE COURT: Okay. Do you think you can still be fair and impartial in this case given that fact, sir?

PROSPECTIVE JUROR: Most likely.

THE COURT: All right, thank you, sir, I appreciate it.

Anyone else?

And I know there are a couple of you that have already responded so you don't need to respond again. Anyone else? Okay. All right, ladies and gentlemen, is there anyone among you who for whatever reason feels as though you could not be a fair and impartial juror in the trial of this case and render a verdict in accordance with the law as I give it to you?

Yes, ma'am, and you've already stated that clearly and I appreciate it.

Okay. Okay, gentlemen, any additional questions of voir dire?

MR. WILSON: None from the Plaintiff, Your Honor.

THE COURT: Did I miss one, Mr. Harter?

MR. HARTER: I don't think you did, Judge.

Thank you.

THE COURT: All right.

Okay, ladies and gentlemen, at this point the attorneys are now reviewing the strike sheets that have been prepared by the Clerk's Office. When you were qualified this morning, after qualification, the clerk generated a random listing of jurors. So, the attorneys could make strikes in this case. Subsequent to the voir dire, the attorneys are reviewing those lists to determine what strikes they will actually make in this case. Now, your names are listed in random order. They're not in alphabetical order and they're not in order of your juror numbers. Each side will get four strikes. The Plaintiff will strike first, then the Defendant will have the opportunity to strike.

When they strike they strike by number -- by the number in sequence that it was arranged by the Clerk of Court's Office. So, you won't know whether you're stricken or not. If you're juror No. 5 and you hear the attorneys say, We strike No. 5, it's not going to be you, it's going to be No. 5 on this list. So, you will never know if you've been stricken or not. When the attorneys indicate to me that they're ready, then we'll begin those strikes. But I'll give them some

latitude in looking over the list.

You ready?

MR. WILSON: Judge.

THE COURT: Yeah?

MR. WILSON: Let's just approach the bench.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

(WHEREUPON, an on the record bench conference was held in the presence of the jury but out of the hearing of the jury.)

MR. WILSON: Did you excuse Ms. Letterman?

THE COURT: Yeah, she indicated that she couldn't be impartial so we're going to take her off the list. So, you'll execute your first strikes between 1 and 21, excluding No. 6.

(WHEREUPON, the bench conference concluded.)

THE COURT: Okay, y'all want one or two?

MR. HARTER: We want two.

THE COURT: All right, Madam Clerk, your show.

THE CLERK: Plaintiff strikes first.

MR. WILSON: Please excuse juror No. 10.

THE CLERK: Plaintiff strikes 10.

MR. HARTER: Defendant strikes No. 17.

THE CLERK: Defendant strikes 17.

MR. WILSON: Please excuse No. 11.
THE CLERK: Plaintiff strikes 11.
MR. HARTER: Defendant strikes No. 3.
THE CLERK: Defendant strikes 3.
MR. WILSON: Please excuse No. 13.
THE CLERK: Plaintiff strikes 13.
MR. HARTER: Defendant strikes No. 21.
THE CLERK: Defendant strikes 21.
MR. WILSON: Please -- just one moment, please. Please excuse No. 7.
THE CLERK: Plaintiff strikes 7.
MR. HARTER: Defendant strikes No. 8.
THE CLERK: Defendant strikes 8.
Now, we'll get the first alternate from 22, 23 and 24.
MR. WILSON: Please excuse No. 22.
THE CLERK: Plaintiff strikes 22.
MR. HARTER: Defendant strikes 24.
THE CLERK: Defendant strikes 24.
And our second alternate will come from 25, 26 and 27.
MR. WILSON: Please excuse No. 25.
THE CLERK: Plaintiff strikes 25.
MR. HARTER: Defendant strikes No. 27.
THE CLERK: Defendant strikes 27.

Gentlemen, I'll call these back to you. Plaintiff strikes 7, 10, 11, 13, 22 and 25. Defendant strikes 3, 8, 17, 21, 24 and 27.

MR. WILSON: That's correct.

MR. HARTER: That is correct.

THE COURT: All right, counsel, any matters of law or issues to take up with regard to the qualification or selection of this jury?

MR. WILSON: Could we have just one moment, please, Your Honor?

THE COURT: Yes, sir.

MR. WILSON: None from the Plaintiff, Your Honor.

MR. HARTER: None from us.

THE COURT: All right, good enough.

Call them forward.

THE CLERK: Ladies and gentlemen, when I call your name, please, bring your things and have a seat in our jury box. Charles Cornish, Darrell Washington, Keith O'connell, Hans Hansen, Robin Burns, Bobby Chapman, Jeffrey White, Juliette Phillips, Corbitt Johnson, Alexandria Nunweiler, Pearl Collins, Amanda Carden. Our first alternate is Benjamin Poole. Second alternate is Taylor Higgins.

THE COURT: All right, ladies and gentlemen, my

condolences to those of you who didn't make it on this jury, better luck next time. We may be calling another jury this week, it really all depends on how long this trial lasts. So, what I'll ask you to do is go back downstairs to your jury coordination room and I think Judy is going to dismiss you almost immediately. But I think she's got some certain points of business to take up with you. So, thank you for coming up. If I don't see you again, thank you for your service on jury duty. And I hope y'all have a good week. If I don't see you again, a good weekend.

(WHEREUPON, the jury venire was excused at approximately 11:35 a.m.)

THE COURT: All right. Counsel, I know that we had discussed earlier this morning y'all have a few matters to take up pre-trial. Are those motions, issues, still outstanding?

MR. WILSON: They are, Your Honor.

THE COURT: Can we still do our opening statements before those matters are resolved?

MR. WILSON: No, Your Honor.

MR. HARTER: I think we could, but.

THE COURT: All right. All right.

Ladies and gentlemen, what I'm going to do is

I'm going to take a short -- I'm going to ask y'all to take a short break. Mr. Anderson will show you where your jury room is and get you acquainted with the logistics of the courthouse. And I'm going to do one of two things. I'm either going to bring you back in and do a brief opening charge on the law and opening statements, or I'm going to release you for lunch. It really depends on how much time this is going to take. If it's going to take a substantial amount of time, I'm going to let y'all go and bring you back. If I can get it done in about ten minutes, I'm going to go ahead and proceed, okay. So, you'll know in just and few minutes. Okay. All right. Thank you.

(WHEREUPON, the jury left open court at approximately 11:37 a.m.)

(WHEREUPON, the requested portion of the proceedings were concluded.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 28th day of September, 2015.

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

November 13, 2015



APRIL P. HERRON, Court Reporter

DEFENDANT'S
EXHIBIT 2

SWORN STATEMENT OF MICHAEL CORNISH

STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin,	)	
Plaintiff,	)	
-vs-	)	C.A. No. 2013-CP-23-06522
Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim Director of Greenville Emergency Medical Services; Wal-Mart Stores, Inc.; Wal-Mart Stores East, LP; Wal-Mart Associates, Inc.; and Woodforest National Bank,	)	
Defendants.	)	

SWORN STATEMENT OF MICHAEL CORNISH

NOVEMBER 18, 2015

Irveta J. Shouse/GWC
119 Jones Avenue • Greenville, South Carolina 29601
864/303-1723

SWORN STATEMENT OF MICHAEL CORNISH

THE FOLLOWING is a transcript of the sworn statement of Michael Cornish, given in the above-captioned matter at the hour of 6:05 p.m. on Wednesday, November 18, 2015, in the offices of Chapman, Harter & Harter, P.A., Attorneys at Law, 14 Lavinia Street, Greenville, South Carolina.

IRVETA J. SHOUSE, Reporter

APPEARANCES:

CHAPMAN, HARTER & HARTER, P.A.
14 Lavinia Avenue
Post Office Box 10224
Greenville, SC 29603
BY Russell W. Harter, Jr., Esquire
Carly Harter Davis, Esquire

.....On behalf of the Defendant
Sheriff Steve Loftis

MICHAEL CORNISH, having first been duly sworn to tell the truth, testified on his oath as follows:

EXAMINATION

By Mr. Harter:

Q. Your full name, please?

A. Charles Michael Cornish.

Q. Mr. Cornish, I'm gonna speak with some formality here. My name is Rusty Harter. As you know, I'm a lawyer here in Greenville. I'm gonna be asking you to share some information with us by way of a sworn statement. And you understand that the court reporter is here this evening and she's taking down everything that's said; she will create a verbatim transcript which will be a statement, by you, under oath, as to the information we're talking about. You understand that?

A. Yes.

Q. I'm gonna ask you to make sure you communicate verbally with us tonight. And now, if you will, give me your home address, please.

A. [redacted] Greenville, South Carolina, 29607.

Q. And how old are you?

A. Thirty-seven.

Q. You're a resident of Greenville County, of course.

A. I am.

Q. And, Mr. Cornish, you served as a juror in a recent

trial in Greenville County involving the Blandin Estate and the Greenville County Sheriff's Office; is that correct?

A. Yes.

Q. And I think following that trial ---and I believe the date was approximately October 26th of 2015--- I believe you called my office to communicate with me some information that you wanted to share concerning what had occurred with respect to jury selection in the case; is that correct?

A. Yes.

Q. Michael, will you tell us what prompted you to make that call to me back on October 26th, 2015?

A. I will. During the deliberations, we were of course in there for a total of probably seven or eight hours, and ---

Q. Let me interrupt you, because I'm gonna ask you: Will you tell me what prompted you? Was there some person or some event that prompted you to call me?

A. Yes. It came out in the deliberation that three of the jurors had been a part of domestic violence in the past. And I do remember a question during the jury selection about domestic violence, and people were supposed to raise their hands and express if they were ever a part of it. And during the deliberation it came out that three other jurors had been a part of it, and I don't recall them coming forward during the jury selection.

Q. And do you know the names or can you identify any of

those three jurors who you had concerns about?

A. I can.

Q. Okay. Can you just kind of go, name each one if you can, and then discuss what you remember that juror may have indicated about their involvement in any prior CVD incident?

A. I can. The two names I remember, one was a female, first name was Robin. She was the foreperson. The second juror was a male; his name was Keith. I do not know his last name. The third one, I cannot remember her name, but I do remember that she was a resident of Lander (sic) and she worked for a dermatologist's office as a nurse or an assistant.

Q. Do you mean Lander or Landrum?

A. Landrum. I'm sorry. Landrum.

Q. And did you bring to my attention your concerns about each one of these three jurors as having served on the case?

A. I did, yes.

Q. And why were you concerned that these jurors were participating in the trial of the case?

A. Well, because I remembered, when this started coming out, that that question was asked by the judge during the selection process, that if you had been a part of domestic violence...I don't remember the exact wording of the question. One, because it didn't pertain to me, I've never been around it, so I just didn't remember the complete question. But I do

remember it came out as --- if they had been involved in domestic violence. And it came out as they had been.

Q. And so, as I understand it, you found out during the deliberations that these jurors had some domestic violence incident?

A. Right.

Q. And were you concerned that they had not brought that to the attention of the Court when the jury was selected?

A. Correct.

Q. Is that a capsulization of things?

A. Yes.

Q. I don't mean to be pointing the question, but is that ---

A. No, that is. Yes.

Q. Did you feel like --- or what were your feelings as to whether or not these jurors should have come forward with information during the selection process of the jury?

A. Well, I feel that, certainly, you come forward if that's asked of you during the selection process. That dictates how the jury is selected.

Q. Okay. Now, if we could, can we go one by one with these jurors and tell us, so that we can have a record and share it with the Court, as to what your concerns were?

A. Yes, sir.

Q. Okay. As to the first person you identified?

A. The first person, like I say, her name is Robin. She was the foreperson of the jury. I don't remember her last name. But it came out during deliberation that she had called the police ---and I don't know how many years ago or how far back it was--- but I think it was her current husband --- or relationship. I think it was her husband at the time. I know that she had the phone ripped out of her hands. I don't know if that's when she called the police, or if it was when she was calling the police that it was ripped out of her hands. But she had commented that the police were there for...it was either a one-hour or a two-hour investigation. And she stressed how long and thorough the police were involved in her investigation.

And then another part that came out, and this is where I am a little foggy on these details ---

Q. Did this Robin person, did she say anything else other than what you've told us about?

A. Yes. I mean, she was --- she said ---

Q. About her incident. About hers.

A. Yes. She said, "You don't understand how scary this is until you're a part of this domestic violence." And so she was certainly, in my opinion, biased, being involved or a part of it.

Q. Okay.

A. And I think there was another incident where she had

witnesses...and I cannot remember the details, but it was either...I don't know if it was her or her mother, but at some point she had witnessed or been a part of somebody having a gun held to their head in another domestic violence incident.

Q. This was the same juror you're referring to.

A. This was the same juror.

Q. That was the forelady.

A. Yes.

Q. Okay.

A. So the best I can recall, there are two instances that she brought up during deliberation. One was the phone being ripped out where the police were called and they investigated it. And I don't believe anybody was arrested during that time. But then it also came up that she had been a part of, or witnessed...and I don't think it was her, but it may be her mother, or somebody, that had a gun to their head by a partner.

Q. All right. Anything else about that information?

A. No.

Q. And I don't want to know anything other than what this juror may have indicated about their ---

A. No. I mean, she was --- no.

Q. Okay.

A. I mean, she certainly shared that with us. I mean, she felt pretty strongly about the events that had taken place

in her life.

Q. Did you think that she was communicating information to you that you interpreted that she was a victim of criminal domestic violence?

A. Yes.

Q. Okay. Anything else you want to tell us about that one?

A. No. I mean, other than those two cases, those two incidents that we've just discussed.

Q. Okay. The other jurors that you had concern about when you called me?

A. Right. The second one was a male. His name was Keith, and I just can't recall his last name. He had witnessed when he was a child ---and I don't know how old he was--- but his mother and I believe it was his step-father ---it sounded like it happened quite frequently--- that they would get in domestic disputes. And he brought up the point that he handled it differently; that he didn't get the police involved, that he actually got involved himself and he was the one that would get in between the two parties and separate, try to mediate the situation.

Q. That's the extent of what you ---

A. That's really the extent.

Q. Okay.

A. From what I gathered through the discussions we had

is, to me, it sounded like it was an ongoing situation, it wasn't a one-time event. From what I can gather and recall.

Q. Okay.

A. He didn't go into many details about the hitting, fighting, police being involved, but there were definitely altercations where he would get involved personally and get in between the two parties.

Q. All right. Did you indicate any concern about any other jurors?

A. Yes. There was one other juror and, like I say, I cannot recall her name. I do know that she is from the Landrum area and works for a dermatologist office. She also came out and said that she had been a part of domestic violence through ...it was either her boyfriend or an ex-husband. And I couldn't tell you for sure which one it was. And it could be her current husband. But it sounded like it was years ago. And she didn't go into a whole lot of detail about the events that took place. But she definitely let it be known that she had been a part of it and let us know her thoughts about domestic violence.

Q. Did she mention that she had been a victim of domestic violence? Or how did you take her comments?

A. Yes. Yes, she said she had been a victim of domestic violence.

Q. Did she provide any more details about that?

A. She, personally, didn't get into a whole lot of detail about what type of violence, no. If I remember right, he would kind of beat on her and hit her, or something along those lines. But, no, she did not go into as much detail as the other two jurors. But she did make it a point to let it be known that she had been a part of domestic violence. And during the deliberation some people had actually asked her questions about ---

Q. Okay, let's don't --- I'm just interested in what she said, not what people asked her.

A. Right. Right.

Q. I don't mean to cut you off.

A. No, that's fair.

Q. Okay. Now I want to just kind of ask you, have you communicated to us what you considered to be concerns about the jury selection process and when this information came to your attention?

A. Yes.

Q. And is this the information that caused or prompted you to call me about these issues?

A. Yes, sir.

Q. Now, did anybody in the case at all try to contact you to solicit information about anything that happened in the jury deliberations or anything about the jury composition?

A. No.

Q. I want to make sure. I didn't contact you, you contacted me.

A. Right. Yes, I definitely contacted you. But I need to clarify that. I did get a letter from the other attorney, I guess the plaintiff's attorney, requesting feedback, if I was interested. But other than that, I've had no personal contact with anybody. But I certainly reached out to you to express my concerns.

Q. And I want to ask you: When was it that this information concerning the individual jurors --- when did that come to light in the process?

A. It was later in the deliberation process. It was probably... The day runs together so much. But it was in the three to five hour mark if I had to put a time on it. It was later in the deliberation when people were really pushing their issues.

Q. And I just want to ask you --- and I know you've crystallized what was said to you. Did you have the impression, after the information came to light, that Ms. Burns, or Robin, the forelady, had been a victim of criminal domestic violence?

A. Ask that question again, please?

Q. Yeah. When you contacted me, did you indicate that you felt that the forelady had been a victim of criminal domestic violence?

A. Yes.
Q. And did you also indicate to me that you felt that there was another female juror on the panel who was also a victim of criminal domestic violence?
A. Right. Yes.
Q. And did you indicate to me that there was a male juror on the panel that was not a victim of criminal domestic violence but a witness to criminal domestic violence?
A. Right.
Q. Is that right?
A. Yes.
Q. And, of course, I believe I told you that I would inquire about it, that I would be requesting the transcript from the trial, and that I would be back in touch with you.
A. Yes, sir. And that was my big concern, was how the question was asked initially. And that's why I was hesitant to speak up during the deliberation process itself, because I couldn't recall the specifics of the question.
Q. I understand.
A. So that's really what brought this to...
Q. Okay. You weren't clear about the question and you brought it up at a later point in time; is that right?
A. Yes. After the trial.
Q. All right. And did I also understand that you had talked to your father-in-law? Is that right?

A. Right.

Q. Can I ask you about that? Is that okay? Will you tell us how and why and how that evolved?

A. Yes. Well, they were here a week or two after the trial, I don't remember the exact date, but just visiting for the weekend. And he is a practicing attorney in Columbia, South Carolina. And he was just interested in the case. And I told him about the case and I told him a concern that I had is, the jury selection process. And he said two things. He said, "Well, you really should have said something during the deliberation process, because that was not right." And he said, "If I were you," he said, "I would not hesitate to contact the attorneys and let them know as well. He said, "The jury's not being truthful under oath," And I believe we were under oath at the time.

Q. And then you later brought this to my attention.

A. Right. I believe a day or two later I contacted you.

Q. I've got that down as October 26th. Would that be about right?

A. That sounds right.

Q. Mr. Cornish, is there anything else you would like to add or say? And, as I told you, I'm interested in the information you have. I plan to share this with the Court and with the other side and it may be something that will be

addressed. Is there anything else you would like to say or add to this information?

A. No, I think we've pretty well covered it.

Q. And I'm sure you'd be glad to answer any further questions that anybody or the judge might have concerning this, if they chose to ask you to.

A. Yes. Yes, sir.

Q. I want to again thank you for coming forward with this information, and thank you for coming here to give this statement to us. And unless you have some questions, we'll close the record and I'll let the court reporter prepare the transcript from this sworn statement interview and we'll ask you to sign it, maybe tomorrow.

A. Okay.

Q. Okay?

A. I'll do that.

MR. HARTER: Thank you again. I appreciate it.

THE WITNESS: Thank you.

(Recorded Concluded at 6:28 p.m.)

STATE OF SOUTH CAROLINA)
: CERTIFICATE
COUNTY OF GREENVILLE)

Be it known that I took the sworn statement of MICHAEL CORNISH;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of pages 3 through 15 is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 18th day of November, 2015.

Irveta J. Shouse
Notary Public for South Carolina
My Commission Expires: 07/24/2022

IN RE: Rivero (Blandin) v. Loftis, et al

I, MICHAEL CORNISH, have read the foregoing pages 3 through 15 and believe them to be a true and accurate transcription of the testimony given by me in the above matter on November 18, 2015.

Michael Cornish

SUBSCRIBED and SWORN to before me this 19th day of November. 2015.

Notary Public for South Carolina

My Commission Expires: 07/24/2022

DEFENDANT'S EXHIBIT 3

COPY OF JURY LIST

Sept. 28, 2015

ATTORNEY
(short)
JUROR
LIST

(PLEASE NOTE: The listings are in alphabetical sequence)

Disclaimer:
The attached information is intended only for the person
or entity to which the clerk of court has authorized for trial use only.
It does contain proprietary/personal, and confidential material.
Please do not share this information with anyone outside your office.
We strive to protect the privacy of our jurors at all times.

Greenville County Courthouse

SEPT 28 2015 **Attorney List** Sorted By Name

JUROR #	NAME	RACE	SEX	DOB	ADDRESS
1	Anderson, Karen D				[redacted]
3	Bowers, Michael A				
4	Brody, Louis D				
5	Burns, Robin J				
7	Carden, Amanda L				
9	Castle, Gregory S				
10	Chapman, Bobby N				
12	Chebatoris, Annette T				
14	Collins, Pearl R				
15	Cornish, Charles M Jr.				
21	Gibson, Bryant G				
24	Hansen, Hans O				
25	Harrigan, Charles W				
27	Henderson, James A				
28	Higgins, Taylor L				
29	Horak, Grace M				
33	Jetton, Jo Rae				
34	Johnson, Corbitt L				
35	Kelley, Calvin Jr.				
36	Lacount, Clyde L II				
40	Letterman, Heidi D				
42	Luthi, Joan L				
43	Martin, Kyle E				
48	Murphree, Nathaniel R				
49	Norman, Travis D				
50	Nunweiler, Alexandria K				

File: Attorney List_Name.rpt v6 1

Greenville County Courthouse

SEPT 28 2015 — **Attorney List** — Sorted By Name

JUROR #	NAME	RACE	SEX	DOB	ADDRESS
51	O'connell, Keith W				[redacted]
52	O'connor, Mary B				
55	Phillips, Juliette N				
57	Poole, Benjamin N				
58	Powers, Wayne H				
59	Raddish, Franklin D				
61	Roundtree, April L				
62	Skiba, Judith L				
63	Smith, Benjamin R				
64	Snyder, William A				
68	Tessmann, Sarah M				
70	Threlkeld, Kerryn				
71	Tierney, Andrew M				
73	Varaska, John V				
75	Walden, Anthony B				
76	Washington, Darrell K				
78	White, Jeffrey B				
80	Winley, Priscilla N				

Total Number of Jurors: 44

File: Attorney List_Name.rpt v6.1

Sept. 28, 2015

DETAILED JUROR LIST

(PLEASE NOTE: The listings are in alphabetical sequence)

Disclaimer:
The attached information is intended only for the person
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We strive to protect the privacy of our jurors at all times.

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

BEGINNING WEEK OF: 09/28/2015

NUMBER: 3

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
GREENVILLE SC	[redacted]	[redacted]	2	☑	☐	☐	☐

YOUR OCCUPATION: WAREHOUSE LEAD

PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS:

LEVEL OF FORMAL EDUCATION COMPLETED: HIGH SCHOOL

NAME OF SPOUSE: THERESA BOWERS

SPOUSE'S OCCUPATION: SHIFT SUPERVISOR

SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS:

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

BOWERS, MICHAEL A NBR-3
[redacted]

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015

JUROR NUMBER: 4

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
	[redacted]			☐	☐	☐	☐

YOUR OCCUPATION: Mortgage Banker

PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 2

LEVEL OF FORMAL EDUCATION COMPLETED: High School

NAME OF SPOUSE: Monica Brody

SPOUSE'S OCCUPATION: Customer Service

SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 3

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

BRODY, LOUIS D NBR-4
[redacted]

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015

JUROR NUMBER: 5

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Greenville, S.C.	[redacted]	[redacted]	0	☐	☐	☐	☐

YOUR OCCUPATION: Provider Service Rep.

PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 1 1/2

LEVEL OF FORMAL EDUCATION COMPLETED: High School

NAME OF SPOUSE: John Burns

SPOUSE'S OCCUPATION: Disabled

SPOUSE'S PRESENT OR FORMER EMPLOYER: N/A # OF YEARS:

HAVE YOU EVER SERVED ON A ☑ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN? Many Years Ago

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

BURNS, ROBIN L NBR-5
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

BEGINNING WEEK OF: 09/28/2015 | NUMBER: 7

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Hendersonville, Henderson, NC	[redacted]	[redacted]	1	☒	☐	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
Medical Assistant	[redacted]	2+

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
12th grade	Adam Carden

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
Painter	[redacted]	1+

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

CARDEN, AMANDA L NBR-7
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 10

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Greenville, South Carolina	[redacted]	[redacted]	2	☒	☐	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
retired truck driver	[redacted]	24

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
8th grade	Alma Jeanette Chapman

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
Order-filler (retired)	[redacted]	20

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN? No

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

CHAPMAN, BOBBY N NBR-10
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 12

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Pittsburgh, Allegheny, PA.	[redacted]	[redacted]	2	☒	☐	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
Executive Assistant - Unemployed	[redacted]	19

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
12	Richard

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
Engineer - Retired	[redacted]	4

HAVE YOU EVER SERVED ON A ☒ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN? Not sure - 8 yrs ago

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

CHEBATORIS, ANNETTE T NBR-12
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 14

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Prosser, Benton, Washington	[redacted]	[redacted]	1	X	☐	☐	☐

YOUR OCCUPATION: Production Coordinator
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 33
LEVEL OF FORMAL EDUCATION COMPLETED: Two years of College.
NAME OF SPOUSE: Richard D. Collins
SPOUSE'S OCCUPATION: Filling Machine Specialist
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 23

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

COLLINS, PEARL R NBR-14
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 15

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Greenville SC	[redacted]	[redacted]	2	☒	☐	☐	☐

YOUR OCCUPATION: Residential Contractor
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 3
LEVEL OF FORMAL EDUCATION COMPLETED: College Degree
NAME OF SPOUSE: Jan E Cornish
SPOUSE'S OCCUPATION: Pharmaceutical Sales
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 12

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

CORNISH, CHARLES M JR. NBR-15
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 24

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Brooklyn, NY	[redacted]	[redacted]	4	☒	☐	☐	☐

YOUR OCCUPATION: Process Manager
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 4
LEVEL OF FORMAL EDUCATION COMPLETED: Masters of Business
NAME OF SPOUSE: Ingrid Hansen
SPOUSE'S OCCUPATION: Registered Nurse
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 16

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

HANSEN, HANS O NBR-24
[redacted]

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

(PLEASE PRINT OR TYPE CLEARLY)

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Greenville Greenville, SC	[redacted]	[redacted]	0	☐	☒	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
Auto Engineer	[redacted]	6

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
Associate of Science	[redacted]

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
	[redacted]	

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

HARRIGAN, CHARLES W NBR-25
[redacted]

JUROR INFORMATION SECTION

(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 JUROR NUMBER: 28

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Anderson, SC	[redacted]	[redacted]	0	☐	☑	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
Teacher	[redacted]	1

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
Associates Degree	N/A

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
N/A	N/A	

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

HIGGINS, TAYLOR L NBR-28
[redacted]

JUROR INFORMATION SECTION

(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 JUROR NUMBER: 33

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Columbia, Richland, SC	[redacted]	[redacted]	2	☒	☐	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
Writer, homemaker	[redacted]	18

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
High School Graduate	James S. Jetton

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
Flooring Assoc.	[redacted]	1 mth

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

JETTON, JO RAE NBR-33
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

BEGINNING WEEK OF: 09/28/2015 | NUMBER: 34

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Spartanburg, Spartanburg County S.C.	[redacted]	[redacted]		☐	☐	☐	☐

YOUR OCCUPATION: Production Manager
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 7
LEVEL OF FORMAL EDUCATION COMPLETED: High School Diploma - Iva College
NAME OF SPOUSE: Martha Elaine Johnson
SPOUSE'S OCCUPATION: Unemployed
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 4 mo.

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY?
IF SO, WHEN? (illegible)

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

JOHNSON, CORBITT L NBR-34
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 40

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Greenville, SC	[redacted]	[redacted]	2	☐	☐	☐	☑

YOUR OCCUPATION: EMS Supervisor
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 5 months
LEVEL OF FORMAL EDUCATION COMPLETED: High School Diploma
NAME OF SPOUSE: N/A
SPOUSE'S OCCUPATION:
SPOUSE'S PRESENT OR FORMER EMPLOYER: # OF YEARS:

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☑ YES ☐ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

Heidi Letterman
[redacted]

LETTERMAN, HEIDI D NBR-40
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 42

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Savannah, Chatham GA	[redacted]	[redacted]	1	☒	☐	☐	☐

YOUR OCCUPATION: Sales / Owner
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 2
LEVEL OF FORMAL EDUCATION COMPLETED: College Graduate
SPOUSE'S OCCUPATION: Sales / Owner
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 3

HAVE YOU EVER SERVED ON A ☒ CIVIL JURY, OR ☐ CRIMINAL JURY?
IF SO, WHEN? 1996

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☒ YES ☐ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

LITTLE, JOAN L NBR-42
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

BEGINNING WEEK OF: 09/28/2015 | NUMBER: 43

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Greenville S.C.	[redacted]	[redacted]	2	☑	☐	☐	☐

YOUR OCCUPATION: Truck Driver (Long Dist.) | PRESENT OR FORMER EMPLOYER: [redacted] | # OF YEARS: 8

LEVEL OF FORMAL EDUCATION COMPLETED: 12th Grade | NAME OF SPOUSE: Tammy Martin

SPOUSE'S OCCUPATION: Head Start Center Manager | SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] | # OF YEARS: 16

HAVE YOU EVER SERVED ON A ☑ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN? 2005

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

MARTIN, KYLE E NBR-43
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 49

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Washington, D.C.	[redacted]	[redacted]	2	☐	☐	☑	☐

YOUR OCCUPATION: Retired | PRESENT OR FORMER EMPLOYER: [redacted] | # OF YEARS: 25

LEVEL OF FORMAL EDUCATION COMPLETED: High School | NAME OF SPOUSE:

SPOUSE'S OCCUPATION: | SPOUSE'S PRESENT OR FORMER EMPLOYER: | # OF YEARS:

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

NORMAN, TRAVIS D NBR-49
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 50

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Allentown, Lehigh County, PA	[redacted]	[redacted]	—	☐	☒	☐	☐

YOUR OCCUPATION: Dance Choreographer | PRESENT OR FORMER EMPLOYER: [redacted] | # OF YEARS: 1

LEVEL OF FORMAL EDUCATION COMPLETED: Bachelors | NAME OF SPOUSE: —

SPOUSE'S OCCUPATION: — | SPOUSE'S PRESENT OR FORMER EMPLOYER: — | # OF YEARS: —

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

NUNWEILER, ALEXANDRIA K NBR-50
[redacted]

JURY QUESTIONNAIRES AVAILABLE ONLY TO OFFICERS OF THE COURT

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

BEGINNING WEEK OF: 09/28/2015 | NUMBER: 51

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Chicago, Cook, IL	[redacted]	[redacted]	0	☒	☐	☐	☐

YOUR OCCUPATION: Accountant
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 5
LEVEL OF FORMAL EDUCATION COMPLETED: Masters of Science
NAME OF SPOUSE: Robin O'Connell
SPOUSE'S OCCUPATION: Director of Operations
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 8

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

O'CONNELL, KEITH W NBR-51
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 52

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Lakeland Florida	[redacted]	[redacted]	1	☐	☒	☐	☐

YOUR OCCUPATION: Title Abstractor
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 2.5
LEVEL OF FORMAL EDUCATION COMPLETED: Associates degree
NAME OF SPOUSE: N/A
SPOUSE'S OCCUPATION: N/A
SPOUSE'S PRESENT OR FORMER EMPLOYER: N/A # OF YEARS:

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

O'CONNOR, MARY B NBR-52
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 55

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Tocoa, Stephens GA	[redacted]	[redacted]	1	☐	☑	☐	☐

YOUR OCCUPATION: Project Manager
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 1
LEVEL OF FORMAL EDUCATION COMPLETED: High School
NAME OF SPOUSE: N/A
SPOUSE'S OCCUPATION: N/A
SPOUSE'S PRESENT OR FORMER EMPLOYER: N/A # OF YEARS: N/A

HAVE YOU EVER SERVED ON A NO ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

PHILLIPS, JULIETTE N NBR-55
[redacted]

AVAILABLE ONLY TO OFFICERS OF THE COURT

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 57

CITY, COUNTY, STATE OF BIRTH: Greenville, SC | AGE: [redacted] | YEAR OF BIRTH: [redacted] | # OF CHILDREN: | MARRIED ☐ SINGLE ☒ WIDOWED ☐ DIVORCED ☐

YOUR OCCUPATION: Engineer | PRESENT OR FORMER EMPLOYER: [redacted] | # OF YEARS: 10

LEVEL OF FORMAL EDUCATION COMPLETED: Masters | NAME OF SPOUSE:

SPOUSE'S OCCUPATION: | SPOUSE'S PRESENT OR FORMER EMPLOYER: | # OF YEARS:

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

POOLE, BENJAMIN N NBR-57
[redacted]

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 61

CITY, COUNTY, STATE OF BIRTH: Greenville, SC | AGE: [redacted] | YEAR OF BIRTH: [redacted] | # OF CHILDREN: 4 | MARRIED ☐ SINGLE ☑ WIDOWED ☐ DIVORCED ☐

YOUR OCCUPATION: Account Specialist | PRESENT OR FORMER EMPLOYER: [redacted] | # OF YEARS:

LEVEL OF FORMAL EDUCATION COMPLETED: MBA | NAME OF SPOUSE:

SPOUSE'S OCCUPATION: N/A | SPOUSE'S PRESENT OR FORMER EMPLOYER: | # OF YEARS:

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

ROUNDTREE, APRIL L NBR-61
[redacted]

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 62

CITY, COUNTY, STATE OF BIRTH: Wheeling (Ohio) W. Virginia | AGE: [redacted] | YEAR OF BIRTH: [redacted] | # OF CHILDREN: 1 | MARRIED ☑ SINGLE ☐ WIDOWED ☐ DIVORCED ☐

YOUR OCCUPATION: Retired homemaker | PRESENT OR FORMER EMPLOYER: [redacted] | # OF YEARS: 4 mo.

LEVEL OF FORMAL EDUCATION COMPLETED: College Assoc Degree | NAME OF SPOUSE: Thomas J. Skiba

SPOUSE'S OCCUPATION: Retired USPS | SPOUSE'S PRESENT OR FORMER EMPLOYER: | # OF YEARS:

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☑ CRIMINAL JURY? IF SO, WHEN? 1998

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

SKIBA, JUDITH L NBR-62
[redacted]

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 63

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Richmond GA	[redacted]	[redacted]	2	☑	☐	☐	☐

YOUR OCCUPATION: Pest Control
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 1.5
LEVEL OF FORMAL EDUCATION COMPLETED: 12th grade
NAME OF SPOUSE: Nicole Smith
SPOUSE'S OCCUPATION: Child Care
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 2+

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

*HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

SMITH, BENJAMIN R NBR-63
[redacted]

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 64

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
DANVILLE, LUZERNE, PENNSYLVANIA	[redacted]	[redacted]	2	☒	☐	☐	☐

YOUR OCCUPATION: TEST ENGINEER
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 1
LEVEL OF FORMAL EDUCATION COMPLETED: BACHELORS OF SCIENCE
NAME OF SPOUSE: JENNIFER SNYDER
SPOUSE'S OCCUPATION: ALERT MANAGER
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 5

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

SNYDER, WILLIAM A NBR-64
[redacted]

JUROR INFORMATION SECTION
(PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 | JUROR NUMBER: 68

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Allen Park, MI	[redacted]	[redacted]	2	☒	☐	☐	☐

YOUR OCCUPATION: substitute teacher
PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 5+
LEVEL OF FORMAL EDUCATION COMPLETED: elementary ed. college degree
NAME OF SPOUSE: Eric Tessmann
SPOUSE'S OCCUPATION: project manager
SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted] # OF YEARS: 3

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN? no

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☒ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☒ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

TESSMANN, SARAH M NBR-68
[redacted]

[redacted] MAY ONLY BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT.

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

WEEK OF: 09/28/2015

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Brooklyn, NY	[redacted]	[redacted]	2	☑	☐	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
Legal Assistant	[redacted]	18

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
Associate Degree	Jesse Threlkeld

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
Athletic Trainer	[redacted]	1

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN? UNO

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☑ YES ☐ NO Credit card

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

THRELKELD, KERRYN NBR-70
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 JUROR NUMBER: 76

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
Greenville, Greenville, S.C	[redacted]	[redacted]	2	☑	☐	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
Mail Clerk	[redacted]	22

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
High School Grad	Melody Washington

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
Batch Release Admin	[redacted]	9

HAVE YOU EVER SERVED ON A ☐ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN?

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

WASHINGTON, DARRELL K. NBR-76
[redacted]

JUROR INFORMATION SECTION (PLEASE PRINT OR TYPE CLEARLY)

FOR TERM BEGINNING WEEK OF: 09/28/2015 JUROR NUMBER: 78

CITY, COUNTY, STATE OF BIRTH	AGE	YEAR OF BIRTH	# OF CHILDREN	MARRIED	SINGLE	WIDOWED	DIVORCED
GREENSBORO N.C. GUILFORD CO.	[redacted]	[redacted]	2 STEP CHILDREN	☑	☐	☐	☐

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	# OF YEARS
FUNERAL DIRECTOR	[redacted]	32

LEVEL OF FORMAL EDUCATION COMPLETED	NAME OF SPOUSE
TRADE SCHOOL DIPLOMA	PATRICE A. White

SPOUSE'S OCCUPATION	SPOUSE'S PRESENT OR FORMER EMPLOYER	# OF YEARS
COORDINATOR OF PARENT ENGAGEMENT	[redacted]	12

HAVE YOU EVER SERVED ON A ☑ CIVIL JURY, OR ☐ CRIMINAL JURY? IF SO, WHEN? 1981

HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☑ NO

HAVE YOU EVER BEEN CONVICTED OF A CRIME? (OTHER THAN A MINOR TRAFFIC OFFENSE) ☐ YES ☑ NO

NAME AND/OR ADDRESS CORRECTION: If the information below is incorrect, please write in the correct information in the space provided to the left.

WHITE, JEFFREY B NBR-78
[redacted]

[redacted] WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

	BEGINNING WEEK OF: 09/28/2015			NUMBER: 80		
CITY, COUNTY, STATE OF BIRTH: Ft Sill, OK Comanche	AGE: [redacted]	YEAR OF BIRTH: [redacted]	# OF CHILDREN: 2	MARRIED: ☑	SINGLE: ☐	WIDOWED: ☐	DIVORCED: ☐
YOUR OCCUPATION: Sales Manager	PRESENT OR FORMER EMPLOYER: [redacted]					# OF YEARS: 16
LEVEL OF FORMAL EDUCATION COMPLETED: 2yrs college	NAME OF SPOUSE: Richard					
SPOUSE'S OCCUPATION: Retired	SPOUSE'S PRESENT OR FORMER EMPLOYER: [redacted]					# OF YEARS: 20
HAVE YOU EVER SERVED ON A ☐ CIVIL JURY OR ☐ CRIMINAL JURY? no	HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? ☐ YES ☐ NO					
	HAVE YOU EVER BEEN CONVICTED OF A [redacted] ☐ YES ☐ NO					
[redacted]	[redacted]					

DEFENDANT'S
EXHIBIT 4

REDACTED AND UN-REDACTED INCIDENT REPORT OF INCIDENT ON JUNE 23, 2015

AGENCY I.D. SC0230500

SIMPSONVILLE POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER: 05-15-011483 NCIC INQ. ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 90F - FAMILY OFFENSES, NONVIOLENT	☒ YES ☐ NO	☐ YES ☐ NO	20		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.	☐ YES ☐ NO	☐ YES ☐ NO			
3.	☐ YES ☐ NO	☐ YES ☐ NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): [redacted] ZIP CODE: [redacted] WEAPON TYPE:

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
06/23/2015	1900		06/23/2015	2030	06/23/2015	1928	1932	2045	A

VICTIM #1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
BURNS, ROBIN	SE			S O U	W	F	54	N	[redacted]	H B

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	[redacted]	[redacted]	[redacted]	A

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
BURNS, ROBIN				S O U	W	F	54	N	[redacted]	H B

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	[redacted]	[redacted]	[redacted]	A

VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN –

VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK. DRUGS: ☐ YES ☐ NO ☒ UNK.

☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLAINCLOTHES ☐ OTHER ☐ ALONE ☐ ASSISTED | J - This Jurisdiction S - State O - Out of State U - Unknown

SUBJECT #1

☒ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

SUBJECT NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
BURNS, JOHN	W	M	55	N		6-0	250		

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	[redacted]	[redacted]	[redacted]	

SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK. DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:

ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO TOTAL # ARRESTED 0

DATE/TIME OF OFFENSE: 06/23/2015 1900 DATE/TIME OF ARREST:

NARRATIVE

Offenses:
FAMILY OFFENSES, NONVIOLENT

SEE SUPPLEMENTAL.

Date Entered: 06/24/2015 03:53:05 AM Last Modified: 06/24/2015 04:22:27 PM
Print Date: 11/18/2015 02:49:33 PM

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY:

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY:

PROPERTY

TYPE (GROUP)	TOTAL VALUE
Burned	
Count/Forged	
Lost/Damaged	
Recovered	
Seized	
Stolen	
Unknown	

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED			
☒ YES ☐ NO	☒ YES ☐ NO	☐ ACTIVE ☐ UNFOUNDED	☒ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
PTL D A TEDROW	06/24/2015	D5	CPL A K RANDOLPH	06/24/2015	D2
			FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☐ NO		

INCIDENT REPORT SUPPLEMENTAL

Case Number: 05-15-011483

Officer:00255 TEDROW, D | Date Entered/Changed: 06/24/2015 | Reviewer: 00334 | Review Date: 06/24/2015

DETAILED STATEMENT OF INVESTIGATION: ON 06/23/2015 AT APPROXIMATELY 1928 HOURS I, PFC DAVID TEDROW, WAS DISPATCHED TO [redacted] IN REFERENCE TO A DOMESTIC ISSUE. WHEN I ARRIVED, ALONG WITH K9 OFC J. EDWARDS, I MET WITH THE COMPLAINANT, ROBIN BURNS.

SHE STATED THE HER AND HER HUSBAND, JOHN BURNS, HAD AN ARGUMENT OVER JOHN SITTING ON THE SUN PORCH ALL DAY PLAYING GAMES ON HIS PHONE. ROBIN WAS ON THE PHONE TALKING WITH HER SISTER IN MADLDIN AND JOHN GRABBED THE PHONE AWAY FROM HER BECAUSE HE SAID SHE WAS LYING ABOUT WHAT HAD HAPPENED.

K9 OFC EDWARDS TALKED WITH JOHN CONCERNING HIS ANGER. BOTH PARTIES AGREED TO TRY AND BE MORE UNDERSTANDING TO EACH OTHERS NEEDS. ROBIN STATED THAT SHE WOULD PROBABLY GO STAY AT HER SISTERS HOUSE FOR THE NIGHT JUST TO LET THINGS CALM DOWN.

AGENCY I.D.
SC0230500

SIMPSONVILLE POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER: 05-15-011483

NCIC: INQ. | ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. 90F - FAMILY OFFENSES, NONVIOLENT	☒YES ☐NO	☐YES ☐NO	20	
2.	☐YES ☐NO	☐YES ☐NO		
3.	☐YES ☐NO	☐YES ☐NO		

TYPE VICTIM: ☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): [redacted], SIMPSONVILLE SC | ZIP CODE: 29681 | WEAPON TYPE:

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
06/23/2015	1900		06/23/2015	2030	06/23/2015	1928	1932	2045	A

VICTIM #1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
BURNS, ROBIN	SE			O S O U	W	F	54	N	(864) 908-6735 H / B	H / B

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	SIMPSONVILLE	SC	29681	A

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
BURNS, ROBIN				O S O U	W	F	54	N	(864) 908-6735 H / B	H / B

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	SIMPSONVILLE	SC	29681	A

VISIBLE INJURY (VICT. 1) ☐YES ☒NO EXPLAIN –

VICTIM (NO. 1) USING: ALCOHOL: ☐YES ☐NO ☒UNK. DRUGS: ☐YES ☐NO ☒UNK.

☐TWO-MAN VEH. ☐ONE-MAN VEH. ☐DETECTIVE/SPLASMT. ☐OTHER ☐ALONE ☐ASSISTED | J - This Jurisdiction S - State O - Out of State U - Unknown

SUBJECT #1

☒ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

SUBJECT NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
BURNS, JOHN	W	M	55	N	[redacted]	6-0	250		

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	SIMPSONVILLE	SC	29681	

SUBJECT (NO. 1) USING: ALCOHOL: ☐YES ☐NO ☒UNK. DRUGS: ☐YES ☐NO ☒UNK. TYPE:

ARRESTED NEAR OFFENSE SCENE ☐YES ☒NO | TOTAL # ARRESTED 0

DATE/TIME OF OFFENSE: 06/23/2015 1900

DATE/TIME OF ARREST:

NARRATIVE

Offenses:
FAMILY OFFENSES, NONVIOLENT

SEE SUPPLEMENTAL.

Date Entered: 06/24/2015 03:53:05 AM Last Modified: 06/24/2015 04:22:27 PM
Print Date: 11/23/2015 02:33:05 PM

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

PROPERTY

TYPE (GROUP)							TOTAL VALUE
Burned							
Count./Forged							
Dest./Damaged							
Recovered							
Seized							
Stolen							
Unknown							

ADMINIST

SUBJECT IDENTIFIED ☒YES ☐NO | SUBJECT LOCATED ☒YES ☐NO | ☐ACTIVE ☐UNFOUNDED ☒ADM. CLOSED | ☐ARRESTED UNDER 18 ☐ARRESTED 18 AND OVER | ☐EX-CLEAR UNDER 18 ☐EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE. 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
PTL D A TEDROW	06/24/2015	D5	CPL A K RANDOLPH	06/24/2015	D2
			FOLLOW-UP INVESTIGATION OFFICER ☐YES ☐NO		

INCIDENT REPORT SUPPLEMENTAL

Case Number: 05-15-011483

Officer: 00255 TEDROW, D	Date Entered/Changed: 06/24/2015	Reviewer: 00334	Review Date: 06/24/2015

DETAILED STATEMENT OF INVESTIGATION: ON 06/23/2015 AT APPROXIMATELY 1928 HOURS I, PFC DAVID TEDROW, WAS DISPATCHED TO [redacted] IN REFERENCE TO A DOMESTIC ISSUE. WHEN I ARRIVED, ALONG WITH K9 OFC J. EDWARDS, I MET WITH THE COMPLAINANT, ROBIN BURNS.

SHE STATED THE HER AND HER HUSBAND, JOHN BURNS, HAD AN ARGUMENT OVER JOHN SITTING ON THE SUN PORCH ALL DAY PLAYING GAMES ON HIS PHONE. ROBIN WAS ON THE PHONE TALKING WITH HER SISTER IN MAULDIN AND JOHN GRABBED THE PHONE AWAY FROM HER BECAUSE HE SAID SHE WAS LYING ABOUT WHAT HAD HAPPENED.

K9 OFC EDWARDS TALKED WITH JOHN CONCERNING HIS ANGER. BOTH PARTIES AGREED TO TRY AND BE MORE UNDERSTANDING TO EACH OTHERS NEEDS. ROBIN STATED THAT SHE WOULD PROBABLY GO STAY AT HER SISTERS HOUSE FOR THE NIGHT JUST TO LET THINGS CALM DOWN.

DEFENDANT'S
EXHIBIT 5

AFFIDAVIT OF RUSSELL W. HARTER, JR.
WITH ATTACHMENTS

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin, Plaintiff, v. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim director of Greenville County Emergency Medical Services; and Woodforest National Bank, Defendants.	IN THE COURT OF COMMON PLEAS C. A. NO. 2015-CP-23-06522 **AFFIDAVIT OF RUSSELL W. HARTER, JR.**

PERSONALLY APPEARED before me RUSSELL W. HARTER, JR., who first being duly sworn, deposes and states as follows:

1. That your deponent was trial counsel for the defendant in the above matter.

2. That on October 26, 2015, your deponent received a telephone call from Charles Michael Cornish, Jr., expressing concern and information with respect to the composition of the jury, raising possible issues as to responses provided during voir dire. That your deponent, on October 27, 2015, requested a transcript of the voir dire from the court reporter. (See letter attached). That on October 27, 2015, the court reporter advised that she was out of town due to a family emergency and indicated that the requested information could not be

provided at that time. That in follow-up communications with the court reporter, counsel for the defendant obtained the voir dire transcript on Friday, November 13, 2015.

Further your deponent sayeth not.

Russell W. Harter, Jr.

SWORN TO BEFORE ME
this 19 day of Nov., 2015.

Jennifer L Greene
Notary Public for South Carolina
My Commission Expires: May 28, 2020

CHAPMAN, HARTER & HARTER, P.A.
ATTORNEYS AT LAW
RUSSELL W. HARTER, JR.

141 LAVERNA AVENUE
P.O. BOX 10224 (29603)
GREENVILLE, SOUTH CAROLINA 29601

PHONE (864) 233-4500
FAX (864) 232-1710
EMAIL RWHJR@CHHLAW.NET

October 27, 2015

April P. Herron
Thirteenth Circuit Court Reporter
The Honorable Robin B. Stilwell
P.O. Box 17675
Greenville, SC 29607

Re: ***Madel C. Rivero as PR of the Estate of Lilia Lorena Blandin vs. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County, Tim Gault, in his capacity as Interim Director of Greenville County Emergency Medical Services, et al.***
Civil Action Number: 2014-CP-23-06522
IRF Claim No.: 03841
Date of Loss: 12/09/2011

Dear April:

This is to request a copy of the directed verdict motions of the hearing before The Honorable Robin Stilwell on October 1, 2015. Enclosed is my firm's check in the amount of $26.50.

This is to also request a transcript of the entire jury selection process, including *voir dire*, strikes by the plaintiff and defendant, and that portion where the jury is selected and seated. Please advise as to the cost associated with this request and I will be happy to send you a check.

Could you please put a rush on this request in that I have just become aware of a matter that I may need to take up with the judge concerning jury selection? Also, please let me know when this is ready and I will make arrangements to pick it up.

Warmest personal regards.

Yours very truly,

CHAPMAN, HARTER & HARTER, P.A.

Russell W Harter, Jr.

rwhjr:pfs
Enclosure

Patty F. Sanders

From: Herron, April P. [AHerron@sccourts.org]
Sent: Tuesday, October 27, 2015 4:03 PM
To: Patty Sanders
Subject: RE: Blandin/Rivero v. Loftis, et al.

?Patty, I am out of town due to a family emergency. I am checking my email on another computer and cannot open the attachment. Please advise what this is in regards to.

Thanks.

April P. Herron
Thirteenth Circuit Court Reporter
The Honorable Robin B. Stilwell
P.O. Box 17675
Greenville, SC 29607

From: Patty F. Sanders <psanders@chhlaw.net>
Sent: Tuesday, October 27, 2015 9:54 AM
To: Herron, April P.
Cc: rwhjr@chhlaw.net
Subject: Blandin/Rivero v. Loftis, et al.

April,
Please see attached letter from Rusty.
If you will let us know when the information is ready, we will make arrangements to pick it up.
Thanks.
Patty

Patty Flanary Sanders
Paralegal to Russell W. Harter, Jr.
PLEASE NOTE NEW CONTACT INFORMATION:
Chapman, Harter & Harter, P.A., 14 Lavinia Avenue, (29601), P. O. Box 10224, Greenville, SC 29603; 864 233-4500, ext. 24 864/232-1710 (fax) email psanders@chhlaw.net<mailto:psanders@chhlaw.net>

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~~~

Office Outlook Web Access | Type here to search | This Folder | Address Book | Options | Log Off

Mail
Calendar
Contacts

Deleted Items
Drafts [28]
Inbox (789)
Junk E-Mail
Sent Items

Click to view all folders

CHH
Deleted Messages
Outbox
Sent Messages

Manage Folders...

Reply | Reply to All | Forward | Move | Delete | Close

FW: Blandin/Rivero v. Loftis, et al.

Patty F. Sanders [psanders@chhlaw.net]

Sent: Tuesday, October 27, 2015 6:03 PM
To: Russell W. Harter, Jr.

See April's response that I have highlighted in red below.

Patty Flanary Sanders
Paralegal to Russell W. Harter, Jr.

PLEASE NOTE NEW CONTACT INFORMATION:

Chapman, Harter & Harter, P.A., 14 Lavinia Avenue, (29601), P. O. Box 10224, Greenville, SC 29603; 864 233-4500, ext. 24
864/232-1710 (fax)

email psanders@chhlaw.net

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——Original Message——
From: Herron, April P. [mailto:AHerron@sccourts.org]
Sent: Tuesday, October 27, 2015 4:52 PM
To: Patty Sanders
Subject: RE: Blandin/Rivero v. Loftis, et al.

Patty,

As stated in my earlier email, I am out of town due to a family emergency and will not return until November 9, 2015. The only way I can send that transcript to you is via PDF. However, I do not have wireless connection to send that file from my computer. I

am going to be somewhere tomorrow afternoon that I might be able to have internet access. If so, I will send you the directed verdict motions via PDF. Either way, I will advise.

In regards to your request for the jury selection process, I will not be able to provide the information as to costs, etcetera until I return on 11-9-2015, as I do not have access to those files at this time. I am sorry for any inconvenience this may cause.

Thank you.

April P. Herron
Thirteenth Circuit Court Reporter
The Honorable Robin B. Stilwell
P.O. Box 17675
Greenville, SC 29607

From: Patty F. Sanders <psanders@chhlaw.net>
Sent: Tuesday, October 27, 2015 4:06 PM
To: Herron, April P.
Subject: RE: Blandin/Rivero v. Loftis, et al.

Sure, here is the letter:

October 27, 2015

April P. Herron
Thirteenth Circuit Court Reporter
The Honorable Robin B. Stilwell
P.O. Box 17675
Greenville, SC 29607

Re: Madel C. Rivero as PR of the Estate of Lilia Lorena Blandin vs. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County, Tim Gault, in his capacity as interim Director of Greenville County Emergency Medical Services, et al.
Civil Action Number: 2014-CP-23-06522
IRF Claim No.: 03841
Date of Loss: 12/09/2011

Office Outlook Web Access | Type here to search | This Folder | Address Book | Options | Log Off

Mail
Calendar
Contacts

Deleted Items
Drafts [28]
Inbox (789)
Junk E-Mail
Sent Items

Click to view all folders

CHH
Deleted Messages
Outbox
Sent Messages

Manage Folders...

Reply | Reply to All | Forward | Move | Delete | Close

RE: Rivero v. Loftis

Herron, April P. [AHerron@sccourts.org]

Sent: Wednesday, October 28, 2015 2:51 PM
To: Russell W. Harter, Jr.
Attachments: dvrivero.pdf (50 KB) [Open as Web Page]

Rusty, thanks for you understanding. I was able to access the internet so am sending you the directed verdict motion pdf. Hope this helps.

Thanks!

April P. Herron
Thirteenth Circuit Court Reporter
The Honorable Robin B. Stilwell
P.O. Box 17675
Greenville, SC 29607

From: Russell W. Harter, Jr. <rwhjr@chhlaw.net>
Sent: Tuesday, October 27, 2015 6:06 PM
To: Herron, April P.
Subject: Re: Rivero v. Loftis

April Patty just told me you are in Fla with family emergency please address that situation ... and deal with my request when convenient .. hope all is ok April

April P. Herron
Circuit Court Reporter
P.O. Box 17675
Greenville, SC 29606

November 13, 2015

Mr. Russell W. Harter Jr.
Chapman, Harter & Harter, P.A.
PO Box 10224
Greenville, SC 29603

JUDGE: Robin B. Stilwell
DATE TAKEN: September 28, 2015
LOCATION: Greenville
CASE: Rivero v. Loftis

Dear Mr. Harter:

Once getting started on the Transcript of Record in the above-entitled case, I discovered that the pre-trial motions were in with the jury qualification and selection process. So, the length of the transcript was actually 26 pages as opposed to the 42 pages that I estimated in my letter to you dated November 10, 2015. Also, per your request of receiving the transcript ASAP and upon your payment received November 12, 2015, I did an overnight expedite, making the amount $6.25 per page as opposed to $4.25 per page, making the amount due $165.50 as opposed to $181.50. Please find inclosed a refund in the amount of $16.00.

Sincerely,

April P. Herron
Circuit Court Reporter

ASCII disk or E-Mail available for $35.00

DEFENDANT'S EXHIBIT 6

DISC OF 9-1-1 CALL WITH CERTIFICATION OF AUTHENTICITY FROM SIMPSONVILLE POLICE DEPARTMENT

Simpsonville Police Department

Keith P. Grounsell

Chief of Police

December 11, 2015

Patty Flanary Sanders
Parelegal
Chapman, Harter & Harter
14 Lavinia Avenue
Greenville, South Carolina 29603

Re: Affidavit – Incident Report – 05-15-011483

Dear Patty:

In reference to the 911 call that was mailed to the Law Firm of Chapman, Harter & Harter in reference to Incident Report – 05-15-011483 – I confirm that the recording is a true copy for Incident Report – 05-15-011483 – dated June 23, 2015 at 1928 hours from the Simpsonville Police Department.

Respectfully,

Arthur J. Owens
Captain of Administration
Simpsonville Police
405 East Curtis Street
Simpsonville, South Carolina 29681
(864) 228-2595

Sworn before me on this date 12-14 2015

My Commission Expires:

Apr. 28, 2020

County Greenville State SC

405 East Curtis Street • Simpsonville, SC 29681 • Phone: (864) 228-2595 • Fax: (864) 963-8955
www.SimpsonvillePD.com

DEFENDANT'S
EXHIBIT 7

AFFIDAVIT OF JENNIFER SKIPPER

STAT E OF SOUTH CAROLINA)

AFFIDAVIT OF JENNIFER SKIPPER

COUNTY OF GREENVILLE)

PERSONALLY APPEARED before me Jennifer Skipper who, first being duly sworn, deposes and states as follows:

1. That your deponent is a dispatcher with the City of Simpsonville Police Department.

2. That your deponent has reviewed the recording of the 911 call received by the Dispatch Office on June 23, 2015 originating from [redacted] Simpsonville, South Carolina (Case No. 05-15-011483), involving Robin Burns and John Burns, and said recording is a true and exact copy of the call which was received and taken by your deponent on June 23, 2015.

Jennifer Skipper

Sworn to before me this 16
day of December, 2015.

Notary Public for South Carolina
My Commission Expires: Jan 28, 2020

DEFENDANT'S
EXHIBIT 8

AFFIDAVIT OF JONATHAN EDWARDS

CASE # 05-15-011483

On 06/23/2015 at approximately 1928 hrs, I, PFC Edwards, along with PFC Tedrow, arrived at the Burn's residence in reference to a disturbance. Upon our arrival, PFC Tedrow spoke with Mrs. Robin Burns (complainant) separately, while I spoke with Mr. John Burns in the outdoor sunroom area. Both of the Burns had been drinking alcohol. While speaking with Burns, he stated that his wife called because she got mad that he took her phone away from her. When asked to explain, he stated that he had been purchasing games on his phone and playing them (ie. Poker) He stated that she got mad at him for playing on his phone all the time. From what I can recall, Mr. Burns had knocked or snatched a phone out of Mrs. Burns hand while she was on the phone with her sister. I believe that he stated he snatched it out, according to him, so that he could talk to her sister and explain what was going on (very limited recollection). I believe this was the reason why Mrs. Burns called.

I do recall that she did not seem threatened in any way as she kept coming into the sunroom area. Mr. Burns, however, was very adamant about telling his side of the story and putting the blame on Mrs. Burns. He wanted to explain things that happened months and years ago to which we advised him to explain what happened that day. We stayed on scene for way longer than what we should have for this incident, making sure that the Burns were on the same page as to how to handle the situation and Mrs. Burns was comfortable prior to our leaving.

There was no evidence of any Domestic Violence and no one was charged.

Mr. Burns arrived at the police department after this incident to speak with PFC Tedrow and have him to change what he wrote. He was advised multiple times that the report would not be changed, due to this being our account of the incident and the fact that no one was charged and this was not a domestic issue. Mr. Burns was very unpleased with the fact that the report did not state everything he wanted it to.

These are the only facts that I can remember. I did not speak with Mrs. Burns. I did advise Mr. Burns that they may need to have marriage counseling if they are having so many problems.

End of Statement

PFC Jonathan Edwards, Simpsonville Police Dept.
DATE: 12/14/2015

SIGNED J Edwards 07/258

NOTARY:

KEITH P. GROUNSELL
Notary Public, South Carolina
My Commission Expires
May 14, 2020

K P Grounsell 12-14-2015
Exp. 5-14-2026

DEFENDANT'S
EXHIBIT 9

AFFIDAVIT OF DAVID TEDROW

On June 24, 2015 at approximately 1928 hours I was dispatched to [redacted] in reference to a possible domestic issue. Myself and K-9 Officer Edwards both arrived on scene at the same time. As approached the house I could hear nothing coming from the house that would signify any argument possibly occurring at the time.

...made contact with the complainant, Robin Burns, she stated that she and her husband, John Burns, had an argument over him sitting on the sun porch all day playing games on his cellphone. She stated that she called her sister in Mauldin and John grabbed the phone away from her and stated that she was lying about what had happened. I continued to talk with Robin in the living room and Ofc Edwards went to talk with John on the sun porch.

Robin stated the she and John have had arguments in the past and that she was getting tired of always fighting. I asked her if there was any physical violence today and she stated that there was only arguing. She stated that her husband spent a lot of time sitting on the sun porch and she felt she was working more than him. She stated that he was also under the care of a doctor for mental issues. She than stated that she was worried as John kept weapons in the house and this worried her. I asked her what she wanted me to do while I was here today. She wanted me to take the guns. I explained that I could not take his property unless they were an immediate danger. I had Robin stay in the living room and went to the sun porch to see what John had to say.

John pretty much stated the same thing as Robin did about them always arguing but he placed the blame on Robin. He also stated that Robin and mental issues and was also seeing a doctor. John kept insisting that he wanted to tell us his story as he felt she was hurting his reputation by calling the police. I told John that we were only here to ensure that they were both safe and no one was hurt. Every time myself and Ofc Edwards would attempt to end the call and leave John would state he had more to tell us, most of which had nothing to do with this call

Robin had agreed she would leave for now and go stay with her sister in Mauldin and John agreed to have a family member take the guns so they were not in the house.

A couple of hours later John Burns called me at the police department and stated that Robin had not gone to her sister's house and he wanted me to make her leave. I explained to him that I could not force either of them to leave and that if she changed her mind that was up to her. He then started to ask if charges had been filed against him. I explained no charges had been filed and that I was required to file a report only. He started to ask me what Robin had said about him as he was worried that he was in trouble. I told John that he could obtain a copy of the report if he wanted to see it.

Approximately two weeks later, John Davis contacted me by coming to the police department. He stated that he wanted everything he had told us about his wife put into the report. I tried to explain to him that the information he had given us was not relevant to the reason I had been called to their home. He stated that he felt I was taking her side. He kept insisting that it was important that his side of the story be told. That was the last contact I had with John Burns.

David Tedrow
PFC David Tedrow D5/255

Personally appeared before me & sworn to this 16th day of December, 2015

Jennifer L Greene
Notary Public for the State of South Carolina

DEFENDANT'S
EXHIBIT 10

AFFIDAVIT OF DEFENSE COUNSEL DATED DECEMBER 15, 2015

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin, Plaintiff, v. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim director of Greenville County Emergency Medical Services; and Woodforest National Bank, Defendants.	IN THE COURT OF COMMON PLEAS C. A. NO. 2015-CP-23-06522 **AFFIDAVIT OF RUSSELL W. HARTER, JR.**

FILED-CLERK OF COURT
PAUL D. [illegible]
2015 DEC 15 AM 11 57

PERSONALLY APPEARED before me RUSSELL W. HARTER, JR., who first being duly sworn, deposes and states as follows:

1. That your deponent was trial counsel for the defendant in the above matter.

2. That your deponent has received and reviewed the recording of a 911 call and a transcript of the 911 call made to a law enforcement agency on June 23, 2015 by a juror who was ultimately seated at trial in the above matter. (The tape was received on December 11, 2015). That had the juror in question disclosed this information at *Voir Dire* , the undersigned counsel would have requested that said juror be excused for cause and, if not excused for cause, counsel would have used a strike to prevent this juror from being seated

at trial. Further, had your deponent been aware of a call for assistance made by the juror in question and/or had the juror disclosed information in the incident report related to that call, your deponent would have requested the juror be excused for cause or counsel would have used a strike to prevent her from being seated at trial. That your deponent was totally unaware at the time of jury selection of the information contained in the 911 call dated June 23, 2015 or the incident report of that call and your deponent was totally unaware that the juror in question was a victim of criminal domestic violence, or that the juror in question had been involved in any type of criminal domestic violence whatsoever.

Further your deponent sayeth not.

Russell W. Harter, Jr.

SWORN TO BEFORE ME
this 14 day of December, 2015.

Notary Public for South Carolina
My Commission Expires: 2/20/23

DEFENDANT'S
EXHIBIT 11

WRITTEN TRANSCRIPT OF 9-1-1 CALL

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Transcript of Recorded

911 Call

Recording Provided by

Chapman, Harter & Harter, P.A.

14 Lavinia Ave.

Greenville, SC 29601

Transcribed by: Joy E. McCurley

911 CALL

Q. Simpsonville 911. What's the address of your emergency?

A. Yes, it's [redacted].

Q. [redacted] what?

A. [redacted].

Q. Okay, what's going on?

A. Actually my husband and I got in an argument and he ... I was calling my sister and he ripped the phone out of my hand and twisted my wrist.

Q. Okay. Are you injured? Do you need an ambulance?

A. I'm ... No, I'm not injured, I don't think. No.

Q. Okay, what was your name?

A. Robin Burns.

Q. Mrs. Burns what's your telephone number?

A. It's 963-7356. And my husband has ... I attempted to leave him several months ago and he proceeded to call me, follow me to my sister's home, where I tried to escape to and said he was going to commit suicide.

Q. Okay. Is he still there at the residence now?

A. He was here. When I started to call you, he said he was going to leave.

Q. Okay. You said that he ripped the phone out of your hand?

A. And twisted my wrist to get the phone out of my hand.

Q. What's his name?

A. John Burns.

Q. Alright Mrs. Burns, I'm going to go ahead and get an officer on the way to you, okay?

A. Thank you.

Q. Thank you. Bye-bye.

A. Bye-bye.

STATE OF SOUTH CAROLINA)

: C E R T I F I C A T E

COUNTY OF GREENVILLE)

This is to certify that this transcript, consisting of 3 pages is a true and correct transcript of the said statements given; Said statements were transcribed from a recording provided by The Office of Chapman, Harter & Harter, P.A.

I further certify that I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 12th day of December, 2015.

Joy E. McCurley
Notary Public for South Carolina
My Commission Expires: 05/05/2025

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin,

Plaintiff,

vs.

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County,

Defendant.

ORDER ON DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT AND/OR MOTION FOR RECONSIDERATION

C.A. No.: 2013-CP-23-06522

This matter comes before the Court pursuant to the Defendant's Motion to Alter or Amend Judgment and/or Motion for Reconsideration. Specifically, the Defense has asked for clarification regarding rulings on post-trial motions. The Court shall address the Defense's requests in the order presented.

1. *The Court has not addressed the Defendant's argument that there was no credible evidence that the deputies or 911 operator acted with gross negligence.* It is not the role of the Court to determine the credibility of evidence. The Court simply determines whether there is evidence upon which the jury could have reached its verdict. As specifically stated on the record in response to the Defendant's Motions for Directed Verdict, this Court views the evidence in the light most favorable to the non-moving party. This Court would reassert that rationale provided on the record pursuant to the Defendant's Directed Verdict Motion and would further state that there was evidence in the record upon which the triers of fact could determine that the Plaintiff had met its burden of proof.

2. *The Court has not addressed the sovereign immunity defenses asserted by the Defendant pursuant to the South Carolina Tort Claims Act. Specifically, the Defendant raised defenses under Sections 15-78-60(4), (5), (6), and (20), none of which include a gross negligence exception. Those defenses are not specifically addressed in the Court's Order.* The Court would defer to the transcript of record. However, upon information, recollection, and belief, those specific provisions of the statute were specifically addressed at trial and were charged to the jury. This Court finds that the statute provides immunity under those sections enumerated in the Defense's Motion and acknowledged that by and through a specific charge to the jury. The jury could, and apparently did, find for the Plaintiff under alternate sections of statute and other provisions of law.

NOW, THEREFORE, having clarified the ruling, the Court respectfully denies the Defendant's Motion to Alter or Amend and/or for Reconsideration.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

March 24, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin, Plaintiff, vs. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim director of Greenville County Emergency Medical Services; Wal-Mart Stores, Inc., Wal-Mart Stores East, LP and Wal-Mart Associates, Inc. and Woodforest National Bank; Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2013-CP-23-6522 **COMPLAINT** **(WRONGFUL DEATH ACTION)** **(SURVIVAL ACTION)** **Jury Trial Demanded**

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MACFARLANE
2013 DEC 9 PM 4:55

The Plaintiff, complaining of the Defendant(s) herein, would respectfully show unto the Court:

PREFACE

1. The Plaintiff, Madel C. Rivero, mother of Lilia Blandin and personal representative of the estate of Lilia Blandin, brings this wrongful death and survival action, based on the acts and omissions of Greenville County Deputies David Picone and K.J. Tyner, Greenville 911 Operator, Patricia Sullivan and other dispatch operators, and pursuant to the South Carolina State Tort Claims Act, against the Sheriff of Greenville County, and the Director of Greenville County Emergency Medical Services, for the injuries and wrongful death of Lilia Blandin on December 10, 2011.

2. The Plaintiff, Madel C. Rivera, mother of Lilia Blandin and personal representative of the estate of Lilia Blandin, also brings this wrongful death and survival action, based on the acts and omissions of Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, Wal-Mart Associates, Inc., and Woodforest National Bank, for the injuries and wrongful death of Lilia Blandin on December 10, 2011.

PARTIES AND JURISDICTION

3. This is a claim for damages pursuant to the South Carolina Wrongful Death Act, S.C. Code § 15-51-10, and pursuant to the South Carolina Tort Claims Act, S.C. Code § 15-78-10 to 15-78-190 (Supp. 2002), to recover damages for personal injuries and property damages sustained by the Plaintiff's decedent.

4. All of the acts, omissions, and events complained of took place within Greenville County, South Carolina, and within the venue of this Court.

5. Madel Rivera is Lilia Blandin's mother, and the duly appointed personal representative of the estate of Lilia Blandin, having been so appointed by the Probate Court of Greenville County on October 12, 2012. (Reference Greenville Probate Court File No. 2011ES23023892), is presently serving in that capacity, and is entitled to maintain this action.

6. At the time of her death, Lilia Lorena Blandin, deceased, was approximately 38 years of age and a resident of Greenville County, South Carolina.

7. Lilia's three young children, a son, [redacted] Blandin, (age 10, at the time of his mother's death); a daughter, [redacted] Blandin, (age 7); and her baby girl, [redacted] Blandin, (age 3, at the time of Mrs. Blandin's death), are the legal beneficiaries of this wrongful death claim pursuant to S.C. Code § 15-51-20.

8. Deputies David Picone and K.J. Tyner were at all times relevant to this complaint acting within the course and scope of their employment with the Greenville County Sheriff's Office.

9. Greenville County 911 Operator, Patricia Sullivan, and other 911 operators, were at all times relevant to this complaint acting within the course and scope of their employment with the Greenville County Sheriff's Office, or in the alternative, acting within the course and scope of their employment with Greenville County Emergency Medical Services 911.

10. Defendant Steve Loftis was and is the constitutionally elected Sheriff of Greenville County, South Carolina, and is sued in this action in his official capacity as Sheriff. The Greenville County Sheriff's Office is an agency of Greenville County organized and existing under the laws of the State of South Carolina, and is a political subdivision or entity within the meaning of the South Carolina Tort Claims Act.

11. Defendant Tim Gault, upon information and belief, was and is the interim director of Greenville County Emergency Medical Services, and is sued in this action in his official capacity as Director. Greenville County Emergency Medical Services is an agency of Greenville County organized and existing under the laws of the State of South Carolina, and is a political subdivision or entity within the meaning of the South Carolina Tort Claims Act.

12. The Defendant, Woodforest National Bank, is a privately held bank headquartered in The Woodlands, Texas. Upon information and belief, Woodforest National Bank has over 788 branches in 17 different states including 32 locations in the State of South Carolina.

13. The Defendant, Wal-Mart Stores, Inc., is a corporation organized and existing under the laws of the State of Delaware, authorized to do business in the State of South Carolina, with a principal place of business in Bentonville, Arkansas.

14. The Defendant, Wal-Mart Stores East, LP, is a corporation organized and existing under the laws of the State of Delaware, authorized to do business in the State of South Carolina, with a principal place of business in Bentonville, Arkansas.

15. The Defendant, Wal-Mart Associates, Inc., is a corporation organized and existing under the laws of the State of Delaware, authorized to do business in the State of South Carolina, with a principal place of business in Bentonville, Arkansas.

16. The Defendants, Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, and Wal-Mart Associates, Inc., are hereinafter referred to in this Complaint collectively as Defendant Wal-Mart.

17. All parties, matters and things complained of herein are within the jurisdiction of this Court.

18. On or about December 10, 2011, the Plaintiff LILIA BLANDEN, entered the Defendant Wal-Mart's store, located at 6134 White Horse Road, in Greenville County, South Carolina, for work at her place of employment, Defendant Woodforest National Bank, located within the premises owned, occupied, leased, and/or in all other ways controlled by Defendant Wal-Mart for the purpose of business dealings with and for the benefit of the Defendants, Wal-Mart and Woodforest National Bank; and that the Plaintiff's decedent, LILIA BLANDIN, therefore was owed duties of reasonable care due to her status as an invitee, or in the alternative a licensee, at all times relevant to this complaint.

STATEMENT OF FACTS

19. On the morning of December 9th, 2011, Greenville County Deputies David Picone and K.J. Tyner responded to a call involving a domestic assault at Lilia and Avery Blandin's residence, at [redacted], Simpsonville, South Carolina, in Greenville County.

20. The decedent in this action, Lilia Blandin, called Greenville County 911 at approximately 10:11 am on the morning of December 9th, 2011, to report that she needed someone's help. Mrs. Blandin stated that her husband, Avery Blandin, had assaulted her and threatened to kill her, and that her husband had been arrested before for domestic violence, but was out of jail now.

21. Ms. Blandin explained to Greenville County 911 Communications Specialist, Patricia Sullivan, that the offender was in the house at that moment, and she was trying to leave the house, so that she doesn't have to stay with him any longer. She told the 911 Operator that she tried to get her stuff out, but he 'beat her on her stomach'...and told her 'he was going to kill her', but that her child was still inside the home. Lilia continued to explain that she wanted to get her child, but that she didn't want to go back inside the house, because she knew that the offender 'would put her in a room and continue to beat her'.

22. Greenville County 911 Communications Specialist, Patricia Sullivan, during this emergency 911 call, interrupted Lilia repeatedly and disregarded her allegations of domestic abuse and threats by her husband to kill her. Sullivan told Lilia to 'slow down' and said to Ms. Blandin, "you said your husband is at the house...and you want to go get your things, is that what you're saying?...

23. Lilia Blandin then politely said that yes, but that her husband had threatened her all night,...that she had to sleep in her car, and...that her child was asleep inside the house in her bedroom.

24. Greenville County 911 Operator, Patricia Sullivan, then again interrupted Lilia by saying..."Listen to me... you're going to get your clothing or you're going to get a child? Mrs. Blandin then stated that she wanted to get her child out of the house, but then repeated again to the Greenville County 911 Operator that she didn't want to go inside the home, because her husband had already hit her in the stomach and he told her he was going to kill her.

25. The 911 Operator again interrupted her caller as she was repeating the allegations of domestic violence, then said ..."O.K."... and asked for Mrs. Blandin's home address, the spelling of her name, and her phone number, and told Lilia that she would need to wait for the Sergeant to call her back, instead of immediately dispatching deputies to the scene for a domestic assault and battery incident. After approximately twenty-four (24) minutes later, no call had been made to Lilia Blandin by a Sergeant. However, Greenville County 911 operator, Patricia Sullivan, after those twenty-four (24) minutes passed, to ask why Mrs. Blandin's sister had also called 911 regarding this matter.

26. Mr. Blandin had already, on two previous occasions been arrested for assaulting Lilia, those Criminal Domestic Violence charges still being pending and awaiting a trial date at the time of this emergency 911 call to the Greenville County Sheriff's Office.

27. Greenville County Communications Specialist Operator, Patricia Sullivan, failed to inquire about Mrs. Blandin's repeated allegations of domestic assault during the emergency 911 call, failed to dispatch deputies to the victim's home.

28. Further, Greenville County 911 Operator, Patricia Sullivan, failed to discover or relay information to responding deputies that the victim had in place an Order allowing No Contact by the husband to Mrs. Blandin, on each of her husband's two recent Domestic Violence arrests. Upon information and belief, those No Contact Orders had been placed on Mr. Blandin as conditions of his release from custody on both of the two pending Criminal Domestic Violence arrests with the decedent as his victim.

29. Greenville County Communications Specialist Operator, Patricia Sullivan, mischaracterized the emergency call and entered notes into the 911 Call Record as a 'child custody' matter. Operator Sullivan ignored Lilia's claims that she had been assaulted, that her life had been threatened and that Mr. Blandin had been to jail for committing domestic violence against her before.

30. After no county deputies responded, the decedent's sister, Juana Hamby, called Greenville County 911 a second time, approximately twelve minutes after Lilia Blandin had placed her initial emergency 911 call. Greenville County 911 operator, Neil Logan, answered Ms. Hamby's call and was told that her sister was having a problem with her husband and that she tried to go inside the house for her little girl, but that her husband wanted to kill her. The recording of this call seems to indicate that Operator Logan was unaware that 911 had received a call about this same incident earlier that morning. Ms. Hamby explained that her sister, Lilia, had already called earlier that morning, but that no deputies had responded, and that her sister was outside of her house

waiting because she was scared to go back in. This call at approximately 10:23 a.m. does not appear on the Greenville County 911 call records.

31. During a third call recording on minute later... Ms. Hamby explained to the Greenville County 911 Operator, Neil Logan that her sister, Lilia Blandin, was outside of her house in her car and had slept in the car all night. Juana Hamby continued to describe to the 911 operator that Lilia's husband was acting crazy, that he was in prison before, and "now he is like...crazy". The Greenville County 911 Operator, Neil Logan, took Ms. Hamby's name and the recording ends.

32. A fourth call recording from Greenville County 911, then approximately fifteen (15) minutes after Lilia Blandin's initial emergency 911 call to the Greenville County Sheriff's Office, appears to record no discussion.

33. A fifth Greenville County 911 call recording then captures a continued conversation between Juana Hamby and 911 operator, Neil Logan, wherein the operator asks why Lilia had slept in her car. Juana explained it was because her husband was crazy last night and that he tried to kill her. Operator Logan then asks Juana what her sister's name is, and she tells him Lilia Blandin and provides her address again. Greenville County 911 operator, Neil Logan, then says...alright, we'll get somebody out there", as if there was no knowledge at Greenville County 911 that an initial call had been placed by Lilia Blandin earlier that morning.

34. Greenville County 911 call dispatch records indicate that operator Neil Logan then entered a notation in the CAD reports that ..."sister (Juana Hamby) called to advise that 1024 is outside the house and that the husband has threatened 1089B to her...1024 has slept in the car all night because husband wouldn't let her in and was

1081". This notation was also inaccurate and incomplete, as Lilia and her sister did not say that her husband would not let her in the house, but that he had threatened her all night, and she slept in her car, and that he had hit her when she tried to go inside.

35. Approximately eight (8) minutes later, at 10:35 am, Greenville County Sheriff's Office 911 Operator, Patricia Sullivan, called Lilia asking whether Ms. Blandin was at her house, asking her…'you're not at your house, correct?"… Lilia politely explained that she was outside her house, as she had said during her initial call. Operator Sullivan told Ms. Blandin to wait outside, claiming …"that's what I think I told you last time", which she had not, in fact, advised her during their initial call. Greenville County 911 Operator Sullivan did not respond to or acknowledge any of Lilia's repeated descriptions of being beaten and threatened by her husband, or sleeping in her car overnight out of fear of her husband hurting her. 911 Operator Sullivan did not inquire about any of Ms. Blandin's domestic violence claims, did not ask if her husband had any weapons in the house, or if he was under the influence of drugs or alcohol, failing to show any concern for her safety.

36. Lilia explained that she had been outside waiting for deputies to respond, and began to say…'but, he tried'… Greenville County 911 Operator, Sullivan, again interrupted Ms. Blandin and asked who is Juana, and if Lilia's sister had also called 911. Lilia said that she had spoken with her sister, Juana, and that Juana agreed to call 911 again because "they know how he's been aggressive." Operator Sullivan again interrupted Lilia and seemed to scold her about having her sister, Juana, calling again to 911, saying …"she doesn't have to call also…and again that …'you don't need to have her call also"… Greenville County 911 Operator, Patricia Sullivan, told her not to go

back inside the house, and again told her that the Sargent would be calling her back, again failing to dispatch deputies promptly to her home to investigate Lilia's claims of domestic violence by her husband.

37. During calls with Greenville County 911 operators, by Lilia Blandin and her sister, Juana Hamby, 911 operators failed to respond to or inquire further about the repeated references to physical abuse and threats to her life that Lilia and her sister reported to 911 operators on the morning of Friday, December 9th, 2011.

38. Finally, at approximately 10:47 a.m., approximately thirty-six (36) minutes after Lilia's initial emergency call to Greenville County 911, two deputies arrived at the scene. Upon their arrival at the residence, Deputies David Picone and K.J. Tyner made contact with the decedent, Lilia Blandin, and her husband Avery Blandin.

39. Deputies David Picone and K.J. Tyner, spoke with Avery and Lilia Blandin, and concluded that there was no evidence of any threats or assault and battery against Mrs. Blandin. The deputies failed to interview any of the children, two of whom had heard his threats toward their mother, and seen their father hit their mother the night before and the morning that Lilia Blandin called 911. One of the deputies even dismissed Lilia's mother's pleas for them to arrest Mr. Blandin, because he had hit her and threatened to kill her, by explaining that Lilia's claims that her husband hit her were ..."only her story".

40. Deputies David Picone and K.J. Tyner failed to follow the established procedure and General Orders of the Greenville County Sheriff's Department when responding to the home on the morning of October 9th, 2011. Deputies David Picone and K.J. Tyner collected identification from Lilia Blanding and Avery Blandin and spoke

with each of them, then left the incident scene without making an arrest of Avery Blandin for either the allegations of threats made by Mr. Blandin towards Mrs. Blandin, or the physical violence that Lilia Blandin had reported. The two sheriff's deputies failed to properly consider what had been advised by both Lilia Blandin and her sister, Juana, in their calls to Greenville County 911 that morning, and the allegations made again at the scene, and the surrounding circumstances concerning prior abuse against Lilia Blandin by her husband.

41. Deputies David Picone and K.J. Tyner further also failed to investigate, discover or consider the fact that Avery Blandin had, at the time if this incident, been previously charged on two other recent occasions with beating and threatening the life of Lilia, which were awaiting trial, and dismissed Lilia Blandin's allegations that Mr. Blandin had beaten her and threatened to kill her before they arrived.

42. Deputies David Picone and K.J. Tyner, during their investigation at the home the day before, also failed to determine whether the victim had a current Protection Order or Restraining Order in place, or inquire whether there were No Contact Orders in place requiring Mr. Blandin to stay away from Mrs. Blandin. Avery Blandin, upon information and belief, had been placed on two separate No Contact Orders when he had been released from custody on his two previous Domestic Violence incidents against Lilia over the prior seventeen (17) months, one less than six (6) weeks prior to this incident occurring on October 20, 2011, and another occurring on July 8, 2010.

43. The responding deputies should have been aware that there would be No Contact Orders in place against Mr. Blandin, called to confirm them, and arrested him for being in violation of those Orders, alone. Such No Contact Orders are put in place as a

condition of bond in virtually every domestic violence arrest, requiring an offender arrested for Domestic Violence to stay away from the victim and make no contact with her during the pendency of those criminal matters.

44. Deputies David Picone and K.J. Tyner either neglected to seek information concerning the existence of No Contact Orders against Mr. Blandin after being put on notice that prior domestic violence had been committed by the offender against Lilia Blandin, or, as claimed by a representative of the Sheriff's Office, after actually being made aware of the two (2) pending charges of Domestic Violence against Lilia, the deputies neglected to make an arrest for the violation of the two (2) No Contact Orders, themselves.

45. After getting some of their belongings, Lilia and her children left the home with Lilia's mother, Madel Rivera. As they drove away, Lilia received a call from her husband, Avery Blandin, on her cell phone and he was heard laughing loudly by the occupants of the Mrs. Rivera's car.

46. Later that afternoon, when Lilia returned with her Mother and children to see if her husband was away from the house and to attempt to get more of the children's things, Lilia noticed that the tires on her minivan that had remained in the driveway were slashed. Lilia quickly retrieved some other belongings from the van and left without going into the home.

47. When urged by her mother to call the Sheriff's Office about her tires being slashed, she responded, "Oh, Momma, they'll just say its only my version, again". The next morning Lilia and her mother awoke at her mother's home to find a tire on her mother's car slashed.

48. At approximately 1:15pm that next day, December 10, 2011, the offender, Avery Blandin, walked into Lilia's place of employment at Woodforest Bank, located in the Wal-Mart store, located at 6134 White Horse Road, in Greenville County, and stabbed Mrs. Blandin to death with a long kitchen knife, pulling her over a desk and stomping on her head and neck.

49. Mr. Blandin walked out of the Wal-Mart store and drove away. He was later found hiding from law enforcement officers and arrested for the violent assault against his wife. Lilia Blandin was transported to Greenville Memorial Hospital, where she died shortly thereafter from her wounds.

50. On October 7th, 2013, Avery Blandin plead guilty to murdering Lilia Blandin, and received a prison sentence of 35 years.

51. Deputies David Picone and K.J. Tyner also further violated the established procedures and General Orders of the Greenville County Sheriff's Office by neglecting to complete an incident report as required on all allegations of criminal domestic violence. A supplemental incident report was submitted by one of the deputies only after Ms. Blandin was murdered by her estranged husband, and over two full days after the deputies had left the Blandin residence without having made an arrest, as they should have.

52. Deputies David Picone and K.J. Tyner also further violated the established procedures and General Orders of the Greenville County Sheriff's Office by neglecting to include in a report, verbal statements made by all persons present, using quotes when possible.

53. Deputies David Picone and K.J. Tyner also further violated the established procedures and General Orders of the Greenville County Sheriff's Office by neglecting to include in a report those prior instances of emotional or physical abuse by the suspect reported by the victim.

54. Deputies David Picone and K.J. Tyner also further violated the established procedures and General Orders of the Greenville County Sheriff's Office by neglecting to report a description of the scene, to include where and when prior incidents of Domestic Violence had occurred between the offender and the victim.

55. Deputies David Picone and K.J. Tyner also further violated the established procedures and General Orders of the Greenville County Sheriff's Office by neglecting to document in a report all persons present at the scene, neglecting to document giving the victim a report case number, victim assistance form, and order of protection instruction form.

56. Deputies David Picone and K.J. Tyner also further violated the established procedures and General Orders of the Greenville County Sheriff's Office by neglecting to attempt to get a written statement from the offender during their investigation of this incident, or attempt to take written statements from any witnesses, including the children, who had seen their father hit their mother, or the victim, herself, at the time of their response.

57. Deputies David Picone and K.J. Tyner further neglected to arrange for photographs for visible signs of injury to persons to include the victim, the areas of her body which she had claimed had been beaten, or any photographs at the scene regarding the circumstances outlined by Lilia Blandin and her family.

58. The Wal-Mart store where the murder of Lilia Blandin occurred on Saturday, December 19, 2011, and located at 6134 White Horse Road, Greenville, South Carolina, (hereinafter referred to as 'the Wal-Mart Store') had previously operated as a twenty-four (24) hour store, but due to the criminal activity and vast number of crimes occurring at that location, the store chose to reduce their hours of operation and begin closing at 11pm each night.

59. The Wal-Mart store is located in an area known to Wal-Mart employees, managers, and supervisors for being a problem area with higher than normal crime rates.

60. Upon information and belief, other businesses in and around the area that the Wal-Mart store is located have added increased security measures to deter crime, including armed security personnel.

61. During the thirty-six (36) month period prior to Plaintiff's decedent's murder, Eight Hundred Fifty-Four (854) crimes were reported occurring at Defendant Wal-Mart's store.

62. Despite the numerous crimes committed at Defendant Wal-Mart's store, upon information and belief, Defendant Wal-Mart made little or no efforts to deter potential crimes, other than reducing the hours of the store. Defendant failed to employ any uniformed security staff, off-duty police officers, armed security staff, or other reasonable methods of crime deterrence, none of which were present in the Wal-Mart Store at the time Avery Blandin walked into the store and into the area of Woodforest National Bank, which leased business space from the Wal-Mart Store, and brutally stabbed his wife to death, pulling her over a desk and stomping on her head and neck.

63. Defendant Wal-Mart's published Statement of Ethics claims that they are, "...committed to the health and safety of our customers..." , yet the Wal-Mart store made the most minimal efforts, if any, to protect customers from the foreseeable and expected criminal acts continuing to take place on their premises.

64. Immediately after Plaintiff's decedent was brutally murdered in the plain view of Wal-Mart shoppers and employees, Defendant Wal-Mart chose to continue its busy Christmas shopping sales rather than close its doors temporarily, to await the securing of the scene, clean up the blood splattered area, calm its customers and employees, or as a gesture to the family of the Lilia Blandin, after their loved one had been slain.

65. Defendant Woodforest National Bank employed Lilia Blandin for approximately two (2) years prior to her death. On the morning of December 10, 2011, after Plaintiff arrived to work, her estranged husband, Avery Blandin, began calling Plaintiff's decedent on the Bank's business phone. Over the course of approximately the next three (3) hours, Avery Blandin repeatedly called Defendant Woodforest National Bank's phone line approximately fifty (50) times.

66. Despite receiving such an alarming number of phone calls from Lilia's estranged husband the morning of Plaintiff's death, none of Defendant Woodforest National Bank's employees or managers took any steps to increase security or protect Mrs. Blandin.

67. Defendant Woodforest National Bank knew or should have known that there was a risk to Plaintiff's decedent's safety based on the numerous harassing phone calls to

the Defendant's phone, and Lilia's discussions with co-workers concerning the history of violence between she and her husband, Avery Blandin.

68. However, no employee, manager, or supervisor took any action in response to the repeated calls from Avery Blandin, including but not limited to calling law enforcement or notifying Defendant Wal-Mart of a potential threat.

69. There was no negligence on the part of the decedent, Lilia Blandin, that caused or contributed to her injuries.

Legal Theories of Recovery

FOR A FIRST CAUSE OF ACTION
(Wrongful Death and Survival Action: Recklessness, Gross Negligence, Willfulness or Wantonness)

As To Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County

The Plaintiff incorporates by reference all previous allegations of fact and law as if repeated herein.

70. The Defendant is statutorily liable for the acts, omissions and exercise of discretion of Deputies David Picone and K.J. Tyner, and Greenville County 911 Operator, Patricia Sullivan, and other 911 operators, while acting within the course and scope of their employment.

71. In each and every particular act of negligence alleged and/or committed by Deputies David Picone and K.J. Tyner, and Greenville County 911 Operators, under the Doctrine of Principal-Agent, Master-Servant, and/or Respondeat Superior.

72. Defendant Sheriff Steve Loftis owed the public, and particularly the victims of domestic abuse, a duty to protect the public and such victims, as stated in the

Greenville County Sheriff's Office own 'General Orders', as follows:

GENERAL ORDER 238 – CRIMINAL DOMESTIC VIOLENCE

"PURPOSE: It is the policy of the Greenville County Sheriff's Office to provide immediate assistance to victims of domestic violence, protect victims from further abuse, and take appropriate action against offenders."

73. Defendant Sheriff Steve Loftis owed a duty to victims of domestic violence, as set out in his own General Orders, policies and department rules, and pursuant to South Carolina Code of Laws Section 16-25-70, and to have mandatory arrests made when there is:

a. physical manifestation of injury to a victim of domestic violence with probable cause that a crime has occurred, with physical manifestation of injury to mean evidence that supports an allegation that the injury occurred, whether or not the injury is visible. (General Order 238), or

b. a violation of an order of protection issued under the Protection From Domestic Abuse Act with physical manifestation of injury to the victim with probable cause. (General Order 238).

74. Additionally, Defendant Sheriff Steve Loftis owed a duty to victims of domestic violence, pursuant to South Carolina Code of Laws, Section 16-25-70, to have his deputies make an arrest for a domestic assault or battery, if the officer has probable cause to believe that the person has freshly committed domestic violence, even if the act did not take place in the presence of the officer.

75. South Carolina Code of Laws, Section 16-25-70, further sets out that the officer may, if necessary, verify the existence of probable cause related to a violation pursuant to the provisions of this chapter by telephone or radio communication with the appropriate law enforcement agency. Confirming the two prior incidents of Domestic Violence against Lilia by her husband, and his violation of two (2) Orders for No Contact with Mrs. Blandin, should have been considered along with her allegations of threats and physical abuse to establish probable cause for Mr. Blandin's arrest.

76. Further, Section 16-25-70 provides that a law enforcement agency must complete an investigation of an alleged violation of this chapter even if the law enforcement agency was not notified at the time the alleged violation occurred. If an arrest warrant is sought, the law enforcement agency must present the results of the investigation and any other relevant evidence to a magistrate who may issue an arrest warrant if probable cause is established.

77. South Carolina Law defines 'probable cause' for an arrest as not requiring a deputy to find enough evidence sufficient for an offender to be found guilty of that crime beyond a reasonable doubt, but only finding sufficient facts and circumstances to warrant a prudent man or woman in believing that the offender had committed an offense.

78. Furthermore, the Law of South Carolina, pursuant to South Carolina Code of Laws, Section 16-25-20, makes an offender guilty of Criminal Domestic Violence when he makes a mere threat to kill or an offer to cause physical harm to a spouse or household member, when one has the apparent present ability under circumstances reasonably creating fear of imminent peril. Physical violence alone is not required under

South Carolina law to support and arrest and conviction for Criminal Domestic Violence.

Greenville County Sheriff's Deputies, David Picone and K.J. Tyner

79. Deputies David Picone and K.J. Tyner owed a duty to properly investigate, consider allegations and circumstances surrounding those allegations made by Lilia Blandin, make required reports of domestic abuse allegations, and make mandatory arrests of an offender when the evidence, as it had in this instance, established that a violent crime had probably occurred, as had been clearly alleged in this incident.

80. Deputies David Picone and K.J. Tyner were further reckless, grossly negligent, willful or wanton in that their actions were in violation of Greenville County Sheriff's Office own established "General Orders", policies and department rules concerning properly and thoroughly investigating allegations of domestic violence crimes, when to make an arrest for Criminal Domestic Violence and when to make reports of such allegations.

81. Deputies David Picone and K.J. Tyner, were reckless, grossly negligent, willful or wanton and breached their duties by not thoroughly investigating the circumstances surrounding this incident and the allegations made by Lilia Blandin and others at the scene of this incident before dismissing Lilia Blandin's complaints, and by not considering the circumstances surrounding this incident, including the records of prior arrests for domestic violence committed by the offender against the victim that occurred.

82. Greenville County Sheriff's Deputies, David Picone and K.J. Tyner breached their duties and were reckless, grossly negligent, willful or wanton by failing to

arrest Avery Blandin for even being at the house with the victim and violating the No Contact Orders that had been placed on him after both of his prior, pending arrests for Criminal Domestic Violence against Lilia.

83. Deputies David Picone and K.J. Tyner breached their duty and were reckless, grossly negligent, willful or wanton in failing to exercise the degree of care and prudence any reasonable law enforcement officer would have exercised under the same or similar circumstances.

84. Greenville County Sheriff Steve Loftis, and Deputies David Picone and K.J. Tyner, further breached their duty to the public, to victims of Domestic Violence and to Lilia Blandin, and were reckless, grossly negligent, willful and wanton, in intentionally misstating what had actually occurred during the deputies' investigation at the Blandin home on the morning of Friday, December 9th, 2011. Although no incident report was filed after the deputies left the Blandin home on that morning, as was required by their General Orders, a Supplemental Report was later filed by Deputy K.J. Tyner after Lilia's murder the next day, and two days after the incident at the Blandin home.

85. Such Supplemental Report was full of misstatements and misrepresentations by the deputies, in an apparent attempt to conceal their fault in failing to arrest Avery Blandin for and his beating of Lilia that morning and the repeated threats to Lilia's life throughout night before and that morning, those threats that were carried out the very next day.

86. Deputies David Picone and K.J. Tyner, were reckless, grossly negligent, willful or wanton and breached their duties by misrepresenting in their Supplemental Report, filed two days after failing to arrest Avery Blandin when called out to the home

on December 9th, 2011, that Lilia Blandin stated that neither threats had been made, nor had her husband assaulted her. Lilia Blandin had just called 911, just over a half-hour before deputies arrived, stating clearly and repeatedly on this audio recorded call that her husband had threatened her all night, had beat her in her stomach, and that she had slept out in her car all night because she was afraid to go back in the house because he would continue to beat her.

87. The Greenville County Sheriff's Office Supplemental Report contained false statements that Lilia Blandin told them that her husband, Avery, locked her out of the house the night before. Lilia Blandin had her keys to her house with her while she slept in her car overnight with her two young daughters, even while her husband, Avery Blandin, had taunted her from the door of the home, telling her to come in the house. Lilia she remained in the minivan with her two young daughters the entire night, out of fear for what her husband may do to her if she stayed inside. Mrs. Blandin had to conserve fuel during the night while still trying to heat the vehicle for her and the young girls, by repeatedly running the engine and heater, then shutting it off periodically to keep from running out of gasoline. Lilia Blandin let herself into the house the next morning, while her husband still slept. She woke her son and tried gathering some things for her and her children, when her husband awoke, grabbed her and hit her in the stomach, all of which she had just stated in her emergency 911 call before the deputies arrived.

88. The Greenville County Sheriff's Office Supplemental Report also mischaracterized the incident as a 'domestic dispute involving the custody of the children', instead of a domestic violence call. The Supplemental Report stated that Avery Blandin had refused to let her have the children the night before, which were all

inside at the time. However, Lilia Blandin had her two young daughters, ages 3 and 7, with her while they slept in the minivan all night for fear of being beaten or killed if she stayed in the home. Late that night, after her husband had bloodied her nose by striking her in the face, she gathered her two youngest children to leave, but her 10 year old son didn't want to leave, so Lilia slept in her minivan in the driveway of her home, with her two daughters, because she didn't want to leave her son alone at the house.

89. Greenville County Sheriff's Office Supplemental Report also misstated Lilia had decided to call 911 the next morning in order to handle the issue of custody of the children. Lilia Blandin called the morning of December 9th, asking for help to get her baby girl out of the house, but also repeatedly referenced the threats that her husband had made to kill her throughout the night, and that he had beat her in the stomach. Audio Recordings of the emergency 911 calls clearly document Lilia's allegations of assault and battery by Avery Blandin overnight and into the morning she called 911.

90. Greenville County Sheriff's Office Supplemental Report also included a statement that Lilia told the deputies that she woke up the next morning and her husband, Avery, would still not give her the children. Mrs. Blandin's two daughters were still with her in the minivan that morning when she awoke. Lilia let herself into the home the next morning to wake her son and get some of their things, hoping her husband would not awaken. As she got her son and one of her daughters into the car, her husband found Lilia the downstairs bathroom, grabbed her and hit her in the stomach, which is consistent with what she reported to the Greenville County 911 operator during her emergency 911 call the morning of December 9th, 2011.

91. The Greenville County Sheriff's Office Supplemental Report also stated untrue statements that Lilia Blandin told them that shortly before the deputies arrived after her 911 call the next morning, that her husband came out of the home and the children got in the car with her. Two of Lilia's children had been in the minivan with her all night, and only when she went quietly into the house the next morning, which she was not locked out of, contrary to what the Supplemental Report states, did the two young daughters go inside with their Mom to try to get some of their things, get their brother without waking Mr. Blandin.

92. The Greenville County Sheriff's Office Supplemental Report also stated false statements that Lilia Blandin told them that "her husband had made threats to hurt her or kill her in the past, but she could not state a time or exact working that had been used". Lilia had stated during her recorded 911 call, just over a half-hour before, then asked her sister to call 911 again about 12 minutes later when no deputies had responded, both callers clearly stating that Lilia's husband had threatened to kill her the night before and Lilia stating several times during her call to 911 that her husband had hit her. And further, when Lilia's mother arrived, her mother, herself, asked one of the deputies why they weren't arresting Avery, after he had hit her in the stomach just that morning and had been arrested for hitting her before. The deputy told Lilia's mother that... "that's just her story". The deputies failed to mention in the Supplemental Report that they had even talked with Lilia's mother at the incident scene.

93. Defendant Sheriff Steve Loftis was grossly negligent, careless, reckless, willful or wanton by breaching his duty to protect victims of domestic violence by failing to properly train and supervise Deputies David Picone and K.J. Tyner to follow the

Sheriff's Department's 'General Orders', procedures and rules regarding properly investigating this incident and make a detention of a violent offender after allegations of Domestic Violence, thereby protecting the safety of Greenville County citizens.

94. Greenville County Sheriff's Deputies, David Picone and K.J. Tyner, were inadequately trained or supervised concerning their duties regarding properly investigating this incident and make a detention of a violent offender after allegations of Domestic Violence, thereby protecting the safety of Greenville County citizens

95. Defendant Sheriff Steve Loftis' own Greenville County Sheriff's Office 'General Orders' define an employee's "Neglect on Duty" to be a failure to comply with any orders, directives, regulations, etc. oral or written.

96. Defendant Sheriff Steve Loftis was reckless, grossly negligent, willful or wanton by breaching his duty to protect victims of domestic violence by entrusting Deputies David Picone and K.J. Tyner with the responsibility of protection service to the citizens of Greenville County, when the Sheriff's Office knew, or through the exercise of ordinary care, should have known this officer was reckless, grossly negligent, willful and wanton in the administration of their duties.

97. Lilia Blandin's death was a direct and proximate result of Deputy Picone's and Deputy K.J. Tyner's acts and omissions on December 9th, 2011.

98. Greenville County Sheriff's Deputies David Picone's and Deputy K.J. Tyner's recklessness, gross negligence, willfulness or wantonness in failing to arrest Avery Blandin when called to the Blandin home on December 9, 2011, was a direct and proximate cause of the death of decedent, Lilia Blandin. But for the acts and omissions of Deputies David Picone and K.J. Tyner, Lilia Blandin's death on the following day,

December 10, 2011, would not have occurred.

99. As a direct and proximate result of the negligence, recklessness, gross negligence, willfulness or wantonness of Greenville County Sheriff's Deputies David Picone and K.J. Tyner, the Plaintiff's decedent received severe injuries from which she suffered excruciating pain and anguish and subsequently died, all to her damage in such substantial sums as the Court may determine.

100. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness or wantonness of Greenville County Sheriff's Deputies David Picone and K.J. Tyner, as aforesaid, Lilia Lorena Blandin was severely injured and subsequently died, causing her statutory beneficiaries, [redacted] Blandin, [redacted] Blandin, and [redacted] Blandin, to incur and suffer extreme mental shock, emotional pain, mental anguish and suffering; wounded feelings, grief and sorrow; pecuniary and economic loss; loss of decedent's ability to earn income for the support, maintenance, care and protection, education and protection of her children, and pecuniary loss, loss of companionship and depravation of the benefit and comfort of Ms. Blandin's presence, guidance and society, and to incur funeral and medical expenses, and all to their damage in such substantial sums as a jury at the trial of this action this should determine.

Greenville County 911

101. Greenville County 911 Communications Specialist, Patricia Sullivan, and other 911 Operators owed the public and this victim a duty to properly and efficiently handle emergency calls from the victim and her family when those calls were received and according to the Greenville County Sheriff's Office General Orders, are to give

domestic violence priority over other routine calls for service, and dispatch at least two deputies to each incident when possible. (See Greenville County Sheriff's Office General Order 238)

102. Greenville County 911 Communications Specialist, Patricia Sullivan, and other 911 Operators owed a duty, specifically, and pursuant to their "General Orders", to make an effort to determine and relay the following information to the responding deputies:

a. Any serious injury requiring EMS.

b. Whether the suspect is present, the suspect's description, vehicle description and possible whereabouts.

c. Whether weapons are involved or accessible

d. Whether the suspect is under the influence of drugs or alcohol.

e. Whether there are children currently present in the home.

f. Whether the victim has a current Protection Order or Restraining Order in effect.

g. The complaint history at the dispatched location.

(See Greenville County Sheriff's Office General Order 238)

103. Greenville County 911 Operator, Patricia Sullivan, and other Greenville County 911 operators, were reckless, grossly negligent, willful or wanton in failing to make diligent efforts to determine what had occurred concerning the incident Lilia Blandin and her family had reported and in failing to relay that information to responding deputies.

104. Greenville County 911 Operator, Patricia Sullivan, and the other

Greenville County 911 operators, were reckless, gross negligence, willful or wanton in failing to properly recognize, inquire about, and promptly follow established protocol in determining what had occurred that lead to the emergency calls being made regarding the incident at the Blandin home on December 9, 2011, and further failing to immediately dispatch deputies to respond to the home.

105. Greenville County 911 Communication Specialist, Patricia Sullivan, and other 911 operators, were reckless, grossly negligent, willful or wanton in failing to relay to the responding officers any of the following:

h. Any serious injury requiring EMS.

i. Whether the suspect is present, the suspect's description, vehicle description and possible whereabouts.

j. Whether weapons are involved or accessible

k. Whether the suspect is under the influence of drugs or alcohol.

l. Whether there are children currently present in the home.

m. Whether the victim has a current Protection Order or Restraining Order in effect.

n. The complaint history at the dispatched location.

(See Greenville County Sheriff's Office General Order 238)

106. Defendant Sheriff Steve Loftis owed a duty to the public and victims of domestic abuse to properly train his deputies, staff and 911 communication specialists to effectively receive calls, dispatch deputies, relay vital and important information, investigate allegations of domestic abuse and criminal activity, and make arrests when they should be made.

107. Defendant Sheriff Steve Loftis was reckless, grossly negligent, willful or wanton by breaching his duty to protect victims of domestic violence by failing to properly train or supervise Greenville County 911 Operators to follow the Sheriff's Department's 'General Orders', procedures and rules regarding receiving emergency calls and determining their type and character, obtaining necessary information from callers, reporting allegations of Domestic Abuse and Violence, dispatching deputies promptly to investigate allegations of Domestic Violence, and relaying vital information to responding deputies concerning the same.

108. Greenville County 911 Operators were inadequately trained or supervised concerning their duties regarding obtaining necessary information from callers, reporting allegations of Domestic Abuse and Violence, dispatching deputies promptly to investigate allegations of Domestic Violence, and relaying vital information to responding deputies.

109. Defendant Sheriff Steve Loftis' own Greenville County Sheriff's Office 'General Orders' define an employee's "Neglect on Duty" to be a failure to comply with any orders, directives, regulations, etc. oral or written.

110. Defendant Sheriff Steve Loftis was reckless, grossly negligent, willful or wanton by breaching his duty to protect victims of domestic violence by entrusting Greenville County 911 Operator, Patricia Sullivan, and other Greenville County 911 operators, with the responsibility of protection service to the citizens of Greenville County, when the Sheriff's Office knew, or through the exercise of ordinary care, should have known these 911 Operators were reckless; grossly negligent, willful or wanton in the administration of their duties.

111. Lilia Blandin's death was a direct and proximate result of Greenville County 911 Operator, Patricia Sullivan's, and other Greenville County 911 operators' acts and omissions on December 9th, 2011.

112. Greenville County 911 Operator, Patricia Sullivan's, and other Greenville County 911 operators', recklessness, gross negligence, willfulness or wantonness was a direct and proximate cause of the death of decedent, Lilia Blandin. But for the acts and omissions of Greenville County 911 Operators, Patricia Sullivan, and other Greenville County 911 operators, on Friday, December 9th, 2011, Lilia Blandin's death on the following day would not have occurred.

113. As a direct and proximate result of the negligence, recklessness, gross negligence, willfulness or wantonness of Greenville County 911 Operators, Patricia Sullivan, and other Greenville County 911 operators, the Plaintiff's decedent received severe injuries from which she suffered excruciating pain and anguish and subsequently died, all to her damage in such substantial sums as a jury at the trial of this action may determine.

114. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness or wantonness of Greenville County 911 Operators, Patricia Sullivan, and other Greenville County 911 operators as aforesaid, Lilia Lorena Blandin was severely injured and subsequently died, causing her statutory beneficiaries, [redacted] Blandin, [redacted] Blandin, and [redacted] Blandin, to incur and suffer extreme mental shock, emotional pain, mental anguish and suffering; wounded feelings, grief and sorrow; pecuniary and economic loss; loss of decedent's ability to earn income for the support, maintenance, care and protection, education and protection of her

children, and pecuniary loss, loss of companionship and depravation of the benefit and comfort of Ms. Blandin's presence, guidance and society, and to incur funeral and medical expenses, and all to their damage in such substantial sums as a jury at the trial of this action this should determine.

FOR A SECOND CAUSE OF ACTION
(Wrongful Death and Survival Action: Recklessness, Gross Negligence, Willfulness or Wantonness)

As To Tim Gault, in his capacity as Director of Greenville County Emergency Medical Services

The Plaintiff incorporates by reference all previous allegations of fact and law as if repeated herein.

115. Defendant EMS Director, Tim Gault, owed a duty to the public and victims of domestic abuse to properly train his staff, 911 Operators and communication specialists to effectively receive calls, dispatch law enforcement officers, relay vital and important information, investigate allegations of domestic abuse and criminal activity.

116. Greenville County 911 Communications Specialist, Patricia Sullivan, and other 911 Operators owed the public and this victim a duty to properly and efficiently handle emergency calls from the victim and her family when those calls were received and according to the Greenville County Sheriff's Office General Orders, are to give domestic violence priority over other routine calls for service, and dispatch at least two deputies to each incident when possible. (See Greenville County Sheriff's Office General Order 238)

117. Greenville County 911 Communications Specialist, Patricia Sullivan, and other 911 Operators owed a duty pursuant to their "General Orders", to make an effort to determine and relay the following information to the responding deputies:

a. Any serious injury requiring EMS.

b. Whether the suspect is present, the suspect's description, vehicle description and possible whereabouts.

c. Whether weapons are involved or accessible

d. Whether the suspect is under the influence of drugs or alcohol.

e. Whether there are children currently present in the home.

f. Whether the victim has a current Protection Order or Restraining Order in effect.

g. The complaint history at the dispatched location.

(See Greenville County Sheriff's Office General Order 238)

118. Greenville County 911 Communication Specialist, Patricia Sullivan, and other 911 operators, were reckless, grossly negligent, willful or wanton in failing to make diligent efforts to determine what had occurred concerning the incident that Lilia Blandin and her family had reported and in failing to relay that information to responding deputies.

119. Greenville County 911 Operator, Patricia Sullivan, and the other Greenville County 911 operators, were reckless, gross negligence, willful or wanton in failing to properly recognize, inquire about, and promptly follow established protocol in determining what had occurred that lead to the emergency

calls being made regarding the incident at the Blandin home on December 9, 2011, and further failing to immediately dispatch deputies to respond to the home.

120. Greenville County 911 Communication Specialist, Patricia Sullivan, and other 911 operators, were reckless, grossly negligent, willful or wanton in failing to inquire about or relay to the responding officers any of the following:

a. Any serious injury requiring EMS.

b. Whether the suspect is present, the suspect's description, vehicle description and possible whereabouts.

c. Whether weapons are involved or accessible

d. Whether the suspect is under the influence of drugs or alcohol.

e. Whether there are children currently present in the home.

f. Whether the victim has a current Protection Order or Restraining Order in effect.

g. The complaint history at the dispatched location.

(See Greenville County Sheriff's Office General Order 238)

121. Greenville County 911 Communication Specialist, Patricia Sullivan, and other 911 operators, were reckless, grossly negligent, willful or wanton in failing to accurately note and relay information concerning what Lilia Blandin and her family had reported concerning the Domestic Violence incident at the Blandin home on the morning of Friday, December 9th, 2011.

122. Defendant Greenville Emergency Medical Services Director, Tim Gault, was reckless, grossly negligent, willful or wanton by breaching his duty to

protect victims of domestic violence by entrusting Greenville County 911 Operator, Patricia Sullivan, and other Greenville County 911 operators, with the responsibility of protection service to the citizens of Greenville County, when the Sheriff's Office knew, or through the exercise of ordinary care, should have known these 911 Operators were reckless; grossly negligent, willful or wanton in the administration of their duties.

123. Lilia Blandin's death was a direct and proximate result of Greenville County 911 Operator, Patricia Sullivan's, and other Greenville County 911 operators' acts and omissions on December 9th, 2011.

124. Greenville County 911 Operator, Patricia Sullivan's, and the other 911 operator's recklessness, gross negligence, willfulness or wantonness was a direct and proximate cause of the death of decedent, Lilia Blandin. But for the acts the acts and omissions of Greenville County 911 Operator, Patricia Sullivan, and other 911 operators, Lilia Blandin's death on the following day, December 10, 2011, would not have occurred.

125. As a direct and proximate result of the negligence, recklessness, gross negligence, willfulness or wantonness of Greenville County 911 Operators, Patricia Sullivan, and other Greenville County 911 operators, the Plaintiff's decedent received severe injuries from which she suffered excruciating pain and anguish and subsequently died, all to her damage in such substantial sums as a jury at the trial of this action may determine.

126. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness or wantonness of Greenville County 911 Operators,

Patricia Sullivan, and other Greenville County 911 operators as aforesaid, Lilia Lorena Blandin was severely injured and subsequently died, causing her statutory beneficiaries, [redacted] Blandin, [redacted] Blandin, and [redacted] Blandin, to incur and suffer extreme mental shock, emotional pain, mental anguish and suffering; wounded feelings, grief and sorrow; pecuniary and economic loss; loss of decedent's ability to earn income for the support, maintenance, care and protection, education and protection of her children, and pecuniary loss, loss of companionship and depravation of the benefit and comfort of Ms. Blandin's presence, guidance and society, and to incur funeral and medical expenses, and all to their damage in such substantial sums as a jury at the trial of this action this should determine.

FOR A THIRD CAUSE OF ACTION
(Wrongful Death and Survival Action: Negligence, Recklessness, Gross Negligence, Willfulness or Wantonness)

As To Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., and Wal-Mart Associates, Inc.,

The Plaintiff incorporates by reference all previous allegations of fact and law as if repeated herein.

127. The Defendant in the conduct of their business engages in the sale of goods, services, or a combination thereof;

128. The Defendant has a duty to properly train management and staff to act prudently;

129. The Defendant has a duty to provide security on the premises;

130. The Defendants have a duty to prevent recurring crimes on the premises, through the implementation of appropriate policies and procedures;

131. The Defendant owed a duty not to create dangerous conditions on the property or allow them to exist, but did so anyway, namely the criminal activity at the location;

132. The Defendant breached the duties owed to persons on its premises by failing to exercise the amount of care and prudence a reasonable business would have exercised in the same or similar circumstances by failing to employ adequate security;

133. By failing to hire and/or staff their premises with adequate security personnel knowing that the store had a history of high crime incidents in an effort to deter recurring crimes on the premises;

134. In failing to properly train their management and security staff on protocol for responding to a criminal act on the premises;

135. In failing to properly supervise their management and security staff;

136. In the failure to adhere to and employ existing policies and procedures regarding security on the premises;

137. In failing to employ and/or educate employees on proper policies and procedures to prevent injuries to persons;

138. In failing to take reasonable steps to prevent injuries on the premises, such as by not hiring security personnel;

139. In failing to prevent injuries on the premises;

140. In failing to take safety precautions to warn of or eliminate foreseeable unreasonable risks;

141. Defendant knew or should have known of a potential threat to persons, namely the Plaintiff, on their premises due to recurring criminal acts, and was negligent for failing to take reasonable precautions to prevent a potential security threat;

142. For failing to take proper action after being aware of a sequence of conduct sufficient to enable Defendant to act on behalf of Plaintiff's safety;

143. In failing to provide notice to customers that the store's location was located in an area known for its high rate of crime, specifically that the crimes were frequently committed at the store;

144. By negligently allowing injury to the Plaintiff knowing that a risk of great bodily harm to Plaintiff was present and

foreseeable due to the numerous crimes previously reported at that location;

145. In failing to provide notice to customers that the store's location was located in an area known for its high rate of crime, specifically at that store's location;

146. In such other particulars as the evidence at trial may show; and

147. In all other ways being negligent.

148. Lilia Blandin's death was a direct and proximate result of the acts and omissions of Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., and Wal-Mart Associates, Inc., on December 10th, 2011.

149. The negligence, recklessness, gross negligence, willfulness or wantonness of Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., and Wal-Mart Associates, Inc., was a direct and proximate cause of the death of decedent, Lilia Blandin. But for the acts and omissions of Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., and Wal-Mart Associates, Inc., Lilia Blandin's death on Friday, December 10th, 2011, would not have occurred.

150. As a direct and proximate result of the negligence, recklessness, gross negligence, willfulness or wantonness of the Defendant Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., and Wal-Mart Associates, Inc., as aforesaid, the Plaintiff's decedent received severe injuries from which she suffered excruciating pain and anguish and subsequently lead to her death, all to her damage in such substantial sums as a jury at the trial of this action may determine.

151. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness or wantonness of the Defendants as aforesaid, Lilia Lorena Blandin was severely injured and subsequently died, causing her statutory beneficiaries, [redacted] Blandin, [redacted] Blandin, and [redacted] Blandin, to incur and suffer extreme mental shock, emotional pain, mental anguish and suffering; wounded feelings, grief and sorrow; pecuniary and economic loss; loss of decedent's ability to earn income for the support, maintenance, care and protection, education and protection of her children, and pecuniary loss, loss of companionship and depravation of the benefit and comfort of Ms. Blandin's presence, guidance and society, and to incur funeral and medical expenses, and all to their damage in such substantial sums as a jury at the trial of this action and should determine.

152. Further, due to the negligence, recklessness, gross negligence, willfulness or wantonness of the Defendants Wal-Mart Stores, Inc., Wal-Mart Stores, East, Inc., and Wal-Mart Associates, Inc., as aforesaid, Plaintiff is informed and believes that as to these Defendants, Plaintiff's decedent should be vindicated and said Defendants should be made an example of, to deter those Defendants and others from committing like acts and omissions in the future, and that the Estate of Lilia Lorena Blandin is entitled to exemplary or punitive damages, in such amount as a jury at the trial of this action should determine.

FOR A FOURTH CAUSE OF ACTION
(Wrongful Death and Survival Action: Negligence, Recklessness, Gross Negligence, Willfulness or Wantonness)

As To Defendant Woodforest National Bank

The Plaintiff incorporates by reference all previous allegations of fact and law as if repeated herein.

148. Woodforest National Bank, in the conduct of their business, engages in the sale of financial products, banking services, or a combination thereof;

149. Woodforest National Bank has a duty to properly train management and staff to act prudently;

150. The Defendant has a duty to provide security on the premises;

151. The Defendant breached the duties owed to persons on its premises by failing to exercise the amount of care and prudence a reasonable business would have exercised in the same or similar circumstances to respond to a foreseeable criminal act – namely by failing to take reasonable steps after Plaintiff's husband threateningly called her place of employment approximately thirty (30) times the morning of Plaintiff's death;

152. In failing to properly train their management and security staff on protocol for responding to a foreseeable criminal act – namely by failing to take action after the repeated phone calls to Plaintiff's place of employment.;

153. In failing to take reasonable steps to prevent injuries on the premises – namely by failing to take action after the repeated phone calls to Plaintiff's place of employment.;

154. In failing to take safety precautions to warn of or eliminate foreseeable unreasonable risks;

155. Defendant knew or should have known of a potential threat to Plaintiff, and was negligent for failing to properly notify authorities of a potential security threat after receiving repeated phone calls from Plaintiff's husband;

156. For failing to take proper action after being aware of a sequence of conduct sufficient to enable Defendant to act on behalf of Plaintiff's safety;

157. In failing to properly supervise their management and security staff;

158. By negligently allowing injury to the Plaintiff knowing that a risk of great bodily harm to Plaintiff was present and foreseeable;

159. In failing to provide notice to customers that this bank's location was located in a store known for its high rate of crime;

160. In failing to hire competent management and security staff;

161. In failing to employ and/or educate employees on proper policies and procedures to prevent injuries to persons;

162. In such other particulars as the evidence at trial may show;

163. In all other ways being negligent.

164. Lilia Blandin's death was a direct and proximate result of the acts and omissions of Woodforest National Bank on December 10th, 2011.

165. The negligence, recklessness, gross negligence, willfulness or wantonness on the part of Woodforest National Bank, was a direct and proximate cause of the death of decedent, Lilia Blandin. But for the acts and omissions of Woodforest National Bank, Lilia Blandin's death, on Saturday, December 10th, 2011, would not have occurred.

166. As a direct and proximate result of the negligence, recklessness, gross negligence, willfulness or wantonness of the Defendant Woodforest National Bank, as aforesaid, the Plaintiff's decedent received severe injuries from which she suffered excruciating pain and anguish and subsequently died, all to her damage in such substantial sums as the Court may determine.

167. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness or wantonness of the Defendants as aforesaid, Lilia Lorena Blandin was severely injured and subsequently died, causing her statutory beneficiaries, [redacted] Blandin, [redacted] Blandin, and [redacted] Blandin, to incur and suffer extreme mental shock, emotional pain, mental anguish and suffering; wounded feelings, grief and sorrow; pecuniary and economic loss; loss of decedent's ability to earn income for the support, maintenance, care and protection, education and protection of her children, and pecuniary loss, loss of companionship and depravation of the benefit and comfort of Ms. Blandin's presence, guidance and society, and to incur funeral and

medical expenses, and all to their damage in such substantial sums as a jury at the trial of this action this should determine.

168. Further, due to the negligence, recklessness, gross negligence, willfulness or wantonness of the Defendant Woodforest National Bank, as aforesaid, Plaintiff is informed and believes that as to Defendant Woodforest National Bank, Plaintiff's decedent should be vindicated and said Defendants should be made an example of, to deter those Defendants and others from committing like acts and omissions in the future, and that the Estate of Lilia Lorena Blandin is entitled to exemplary or punitive damages, in such amount as a jury at the trial of this action should determine.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, as set forth below:

(A) For compensatory damages in such sums as are necessary to fully compensate the Estate of Lilia Lorena Blandin for the severe injuries and damages sustained by Mrs. Blandin, and that caused or contributed to her violent and brutal death, together with such punitive damages as a Jury and this Court should lawfully determine against Defendants, plus all costs and expenses incurred in the bringing and prosecution of this action, under the Plaintiff's Survival Claim;

(B) For compensatory damages in such sums as are necessary to fully compensate the statutory beneficiaries of Lilia Lorena Blandin for the death of Mrs. Blandin, that caused or contributed to her violent and brutal death, together with punitive damages as Jury and this Court should lawfully determine against Defendants, plus all

costs and expenses incurred in the bringing and prosecution of this action, under the Plaintiff's Wrongful Death Claim; and

(C) For such other and further relief as this Honorable Court deems just and proper.

The Plaintiff demands a trial by jury.

Respectfully submitted,

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December 9th, 2013
Greenville, South Carolina

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL E. ...
2014 FEB 17 AM 9 32

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin,	)	C/A NO.: 2013-CP-23-06522
Plaintiff,	)	**ANSWER OF SHERIFF STEVE LOFTIS, IN HIS CAPACITY AS SHERIFF OF GREENVILLE COUNTY AND TIM GAULT, IN HIS CAPACITY AS INTERIM DIRECTOR OF GREENVILLE COUNTY EMERGENCY MEDICAL SERVICES**
vs.	)	
Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim director of Greenville County Emergency Medical Services; Wal-Mart Stores, Inc., Wal-Mart Stores East, LP and Wal-Mart Associates, Inc. and Woodforest National Bank,	)	(Jury Trial Requested)

The above defendants, hereinafter referred to as Sheriff Steve Loftis and Tim Gault, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as is expressly admitted, modified, or explained herein, strict proof is demanded of each and every allegation of the plaintiff's Complaint and except as is admitted, modified or explained herein, the allegations of the plaintiff's Complaint are denied and strict proof thereof is demanded.

2. That as to the allegations of paragraph 1 of the plaintiff's Complaint, these defendants are without sufficient information with which to admit or deny the relationship

of Madel Rivero to Lilia Blandin and these defendants are without sufficient information with which to admit or deny Madel Rivero's status as personal representative. That further in response to the allegations of the plaintiff's Complaint and the section entitled "Preface," it is admitted, upon information and belief, that Sheriff Loftis is the sheriff of Greenville County and has certain duties and responsibilities established by law. That it is admitted, upon information and belief, that Tim Gault is the interim director of Greenville County Emergency Medical Services but, upon information and belief, Tim Gault in his capacity as interim director of Greenville County Emergency Medical Services is not a proper party and/or defendant to this action. That further, upon information and belief, Deputies David Picone and K. L. Tyner are and were at relevant times deputies of the Sheriff of Greenville County. That further, upon information and belief, at times and dates relevant hereto, Patricia Sullivan was a communications specialist for Sheriff Loftis. That, upon information and belief, to the extent the Complaint alleges acts or omissions by David Picone, K.L. Tyner or Patricia Sullivan, those individuals are answerable to Sheriff Steve Loftis ultimately and/or pursuant to applicable law.

3. That further, upon information and belief, on or about December 9, 2011 at approximately 10:13 an individual identifying herself as Lilia Blandin called 911 and made a report requesting assistance. That, upon information and belief, on December 9, 2011 there were communications at different times between communications specialists

and Lilia Blandin as well as a communication between a communication specialist and an individual identifying herself as Lilia Blandin's sister. That said communications, upon information and belief, were recorded and/or transcribed. That, upon information and belief, the 911 calls prompted a response by law enforcement and, upon information and belief, on December 9, 2011 at approximately 10:30, Deputies Tyner and Picone responded to the call of a domestic disturbance, arriving at the scene of [redacted] in Greenville County, South Carolina. That, upon information and belief, Deputies Tyner and Picone conducted a proper and appropriate investigation and interviewed Lilia Blandin as well as Avery Blandin. That although the parties reported that there had been a disagreement and/or argument, the investigation of Deputies Picone and Tyner revealed that no assault had occurred to Lilia Blandin and/or Avery Blandin and there was no basis at that time and/or probable cause at that time to make an arrest for any crime and/or criminal domestic violence. That, upon information and belief, Deputies Picone and Tyner were present while Lilia Blandin collected items from the home for herself and her children and left with her mother with plans to stay elsewhere. That, upon information and belief, the communications to 911 make reference to various allegations of abuse and/or threats. Communications ultimately resulted in the investigation and response to the call by Deputies Tyner and Picone. That, upon information and belief, deputies of Sheriff Loftis timely responded to Lilia Blandin's call for service and based upon the information presented in the course of their interviews

with Lilia Blandin and Avery Blandin, there were no grounds for any arrest. That, upon information and belief, on December 10, 2011 at approximately 1:20 p.m., Avery Blandin entered a Wal-Mart Store located at 6134 White Horse Road, Greenville County, South Carolina, approached Lilia Blandin in a bank service area and stabbed her with a knife, causing fatal wounds. That, upon information and belief, Avery Blandin was later apprehended and charged with the murder of Lilia Blandin, was convicted and is under sentence.

4. These defendants deny any breach of any duty of care on their part resulting in the tragic death of Lilia Blandin. That further, these defendants deny that they committed any acts or omission which were a proximate cause of the damages referenced in the plaintiff's Complaint. These defendants deny they are in any way liable for the claims set forth in the plaintiff's Complaint. That as is expressly admitted, modified or explained herein, the allegations of the plaintiff's Complaint consisting of paragraphs 1 through 168 are denied and strict proof thereof is demanded. That further these defendants incorporate by reference their response to the Preface of the plaintiff's Complaint as fully as if repeated verbatim in the response to the allegations of paragraphs 1 through 168 of the plaintiff's Complaint.

5. That these defendants reserve the right to amend and modify their response to the allegations of the plaintiff's Complaint, paragraphs 1 through 168 and these defendants anticipate filing and serving an Amended Answer to the plaintiff's Complaint

within ten (10) days.

FOR A SECOND DEFENSE

6. That the allegations of the plaintiff's Complaint fail to state fact sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

7. That these defendants did not owe to the plaintiff any duty of care as is alleged in the Complaint and the Complaint should therefore be dismissed.

FOR A FOURTH DEFENSE

8. That the defendants herein did not breach any duty of care owed to the plaintiff as is alleged in the plaintiff's Complaint and the plaintiff's Complaint should be dismissed.

FOR A FIFTH DEFENSE

9. That defendant Tim Gault in his capacity as interim director of Greenville County Emergency Medical Services is not a proper party and/or defendant and any such claims should be dismissed.

FOR A SIXTH DEFENSE

10. That any claims against these defendants are subject to the provisions of the South Carolina Tort Claims Act and these defendants therefore plead and assert the South Carolina Tort Claims Act as a complete and absolute defense and bar to the claims set forth in the plaintiff's Complaint. That these defendants specifically plead and assert all

statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps or limits on damages as are set forth in the South Carolina Tort Claims Act.

FOR A SEVENTH DEFENSE

11. That specifically, but without limitation, the within defendants plead and asserts the provisions of S.C. Code Ann. § 15-78-60(1)(2)(3)(4)(5)(6)(20)(21)(23) and (25).

FOR AN EIGHTH DEFENSE

12. That specifically, but without limitation, these defendants plead and assert the provisions of S.C. Code Ann. § 15-78-30 as a complete and absolute defense and/or bar to the allegations of the plaintiffs' Complaint.

FOR A NINTH DEFENSE

13. That these defendants plead and assert provisions of S.C. Code Ann. §15-78-70 as a bar and/or defense to the allegations of the plaintiff's Complaint.

FOR A TENTH DEFENSE

14. That these defendants plead and assert provisions of S.C. Code Ann. §15-78-100 as a bar and/or defense to the allegations of the plaintiff's Complaint.

FOR AN ELEVENTH DEFENSE

13. That these defendants plead and assert provisions of S.C. Code Ann. §15-78-120 as a bar and/or defense to the allegations of the plaintiff's Complaint.

FOR A TWELFTH DEFENSE

14. That these defendants plead and assert provisions of S.C. Code Ann. §15-78-170 as a bar and/or defense to the allegations of the plaintiff's Complaint.

FOR A THIRTEENTH DEFENSE

15. That to the extent the damages and/or injuries referred to in the plaintiff's Complaint resulted from acts or omissions by parties over which these defendants had no control and/or authority, same are asserted as a bar and/or defense to the allegations of the plaintiff's Complaint against these defendants.

FOR A FOURTEENTH DEFENSE

16. That these defendants plead and assert that the sole and proximate cause of the unfortunate death of Lilia Blandin was due to the criminal acts of Avery Blandin and not these defendants.

FOR A FIFTEENTH DEFENSE

17. That to the extent discovery reveals that Lilia Blandin knew of any threats of harm and/or additional threats of harm for her well-being by Avery Blandin, to the extent Lilia Blandin failed to take reasonable precautions for her safety and welfare, same may constitute negligence on her part and, if so, these defendants plead and assert the negligence and/or comparative fault of Lilia Blandin as a bar and/or defense to the allegations of this suit.

18. That these defendants therefore plead and assert that to the extent discovery

discloses same, the comparative fault of Lilia Blandin is plead and asserted as a bar to any recovery by the plaintiff from these defendants and/or affirmatively in mitigation of any damages sought to be recovered by the plaintiff from these defendants.

FOR A SIXTEENTH DEFENSE

19. That these defendants plead and assert the public duty rule and/or public duty doctrine as a bar and/or defense to the allegations set forth in the plaintiff's Complaint.

Wherefore, these defendants pray as follows:

1. That the Complaint of the plaintiff be dismissed.

2. That the defendants be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.

BY: _____

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ATTORNEY FOR DEFENDANTS SHERIFF STEVE LOFTIS, IN HIS CAPACITY AS SHERIFF OF

GREENVILLE COUNTY AND TIM GAULT, IN HIS CAPACITY AS INTERIM DIRECTOR OF GREENVILLE COUNTY EMERGENCY MEDICAL SERVICES

Greenville, South Carolina

February 10, 2014

FILED-CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

2015 OCT 12 PM 3 24

Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,) Civil Action No. 2013-CP-23-6522

Plaintiff,

vs.

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County;

Defendant.

NOTICE AND MOTION OF DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND A NEW TRIAL PURSUANT TO S.C.R.C.P. RULE 50 AND RULE 59

The defendant moves for an Order of Court to alter or amend any Judgment entered or to be entered in the above matter on the grounds and authority more fully set forth in the Defendant's Motion for Judgment Notwithstanding the Verdict and a New Trial Pursuant to S.C.R.C.P. Rule 50 and Rule 59 attached and incorporated herein.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

October 12, 2015
Greenville, South Carolina

FILED-CLERK OF COURT
2015 OCT 12 PM 3 24

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,	)	Civil Action No. 2013-CP-23-6522
Plaintiff,	)	
vs.	)	**DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND A NEW TRIAL PURSUANT TO S.C.R.C.P. RULE 50 AND RULE 59**
Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County;	)	
Defendant.	)	

Subject to any other post-trial motions timely filed or to be filed, the defendant moves for an Order of Court granting Judgment Notwithstanding the Verdict and a New Trial pursuant to S.C.R.C.P. Rule 50 and Rule 59.

I. THE DEFENDANT HAD NO DUTY UNDER THE CIRCUMSTANCES OF THIS CASE WHICH WOULD GIVE RISE TO LIABILITY UNDER THE SOUTH CAROLINA TORT CLAIMS ACT AND/OR UNDER S.C. CODE § 16-25-70, ET SEQ.

The "public duty rule" recognizes that, generally, statutes which create or define the duties of a public office create no duty of care towards individual members of the general public; however, an exception to the general rule exists when the statutory duty is owed to individuals rather than to the public at large. *Arthurs ex rel. Estate of Munn v. Aiken Cnty.*, 346 S.C. 97, 551 S.E.2d 579 (2001). In determining whether a special duty arises from a statute so as to remove a public officials' immunity from a private cause of action arising out of special duty, the court should consider the following six-part test:

1. Whether the essential purpose of statute is to protect against the particular type of harm;

2. Whether the statute, either directly or indirectly, imposes on the specific public officer a duty to guard against or not cause that harm;

3. Whether the class of persons the statute intends to protect is identifiable before the court;

4. Whether the plaintiff is a person within protected class;

5. Whether the public officer knows or has reason to know the likelihood of harm to members of class if he fails to do his duty; and

6. Whether the officer is given sufficient authority to act in circumstances or he undertakes to act in exercise of his office.

The Court in *Arthurs* did not reach the question as to whether under different circumstances the CDV act could be the basis of a special duty. Applying the six-part test, the defendant submits that there is no duty under the facts and circumstances of this case.

The plaintiff's negligence claim revolves around two theories, the first being the Patricia Sullivan miscategorized the 911 call as a child custody case rather than a domestic dispute. The second theory is that the officers should have arrested Avery Blandin on December 9, 2011. In regards to plaintiff's first claim and in light of the factors set forth in *Arthurs ex rel. Estate of Munn v. Aiken Cnty.*, Patricia Sullivan did not have any special duty to act under the CDV statute because as a 911 operator, she lacks the necessary authority required to arrest anyone, including Avery Blandin.

S.C. Code Ann. § 15-25-70 is a criminal statute providing a description of the offense of Criminal Domestic Violence and providing for penalties for Criminal Domestic Violence offenses. Section 15-25-70 provides for warrantless arrests in certain limited circumstances. Section 15-25-70 (B) provides that a law enforcement officer must arrest with or without a warrant if physical manifestation of injury to the victim is present, and if the officer has probable

cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of the act.

Section 16-25-70(A) provides that a law enforcement officer may arrest with or without a warrant if the officer has probable cause to believe that a suspect is committing or has freshly committed domestic violence as defined by the statute. Under subsection (A) an arrest is not mandatory; hence there is no duty and/or authority to act.

In this case there was no evidence whatsoever that Mrs. Blandin had "physical manifestations" of any injury. In fact, the testimony was to the contrary. Without a physical manifestation of injury, even if there is arguable probable cause, a law enforcement officer has no duty to make a mandatory arrest, and in this case, there was no duty imposed on either of the deputies involved to arrest the husband on December 9, 2011 [absence of prong #2].

Law enforcement in this case further, did not have sufficient authority to act under the circumstances because again there was no physical manifestation of injury to give rise to a mandatory arrest in this situation and because there was an absence of probable cause [absence of prong #6].

The six-prong test to determine whether a special duty exists is not satisfied under the facts of this case and in light of the provisions of S.C. Code Ann. § 16-25-70. Because there is an absence of a special duty, the defendant respectfully requests that the Court grant Judgment Notwithstanding the Verdict and enter Judgment in favor of the defendant. Alternatively, the defendant requests that the Court grant a new trial.

II. THERE WAS NO CREDIBLE EVIDENCE OF GROSS NEGLIGENCE AS A MATTER OF LAW AND THERE WAS NO EVIDENCE OF A BREACH OF ANY LEGAL DUTY OWED BY THE SHERIFF'S OFFICE TO THE ESTATE.

To the extent it is argued that Section 16-25-70 provides a special duty in this case, subsection (I) provides that law enforcement officers are not liable for any acts and/or omissions under S.C. Code Ann. § 16-25-70 unless their actions or exercise of discretion amount to gross negligence, recklessness, willfulness, and/or wantonness. For purposes of governmental entity liability, gross negligence is defined as the failure to exercise slight care; it is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. *Clyburn v. Sumter County School Dist.* 17, 311 S.C. 521, 429 S.E.2d 862 (Ct. App. 1993). Further, a defendant is grossly negligent if he is so indifferent to consequences of his conduct as not to give slight care to what he is doing. *Jackson v. South Carolina Dept. of Corrections*, 390 S.E.2d 467.

Sheriff's Office Communications Specialist received a call for service on December 9, 2011 and two officers responded to the Blandin residence. There is no evidence whatsoever that between the time of Mrs. Blandin's initial call and the time law enforcement arrived, that she sustained any injuries and/or harm. Further, the undisputed evidence is that two officers responded to the Blandin residence and were at the Blandin residence for approximately 28 minutes.

Further, it is undisputed that the officers separated Mr. and Mrs. Blandin and questioned them as to what events had transpired. Having been told that there had been no conduct which would amount to probable cause for an arrest of CDV and the officers remained on scene until Mrs. Blandin left. Further, Mrs. Blandin was given information regarding the process to obtain an Order of Protection. Although the Personal Representative testified with respect to her recollection of events while briefly on scene, the Personal Representative did not and could not provide facts which would amount to probable cause to justify an arrest of the decedent's

husband. Because the actions of Greenville County Sheriff's Office were not grossly negligent as a matter of law, the defendant requests that the Court grant Judgment Notwithstanding the Verdict and enter Judgment in favor of the defendant; alternatively, the defendant requests that the Court grant a new trial.

III. AS A MATTER OF LAW, THERE WAS NO PROBABLE CAUSE TO ARREST AVERY BLANDIN ON DECEMBER 9, 2011.

Probable cause is said to exist when the facts and circumstances known to an officer would warrant the belief of a prudent person that the arrestee had committed or was committing an offense. *State v. Moultrie,* 316 S.C. 547, 552, 451 S.E.2d 34, 37 (Ct. App. 1994); *Taylor v. Waters,* 81 F.3d 429 (4th Cir. 1996). "'Probable cause' is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise." *Jones v. City of Columbia,* 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990). "The determination of probable cause is not an academic exercise in hindsight." *Jackson v. City of Abbeville, Riley's BP, and Angela McCurry,* 366 S.C. 662, 623 S.E.2d 656, S.C.App. (2005); *George,* 323 S.C. at 509, 476 S.E.2d at 911. Probable cause is determined at the time of the arrest, based on the facts and circumstances known to the arresting officer and objectively measured. *State v. George,* 323 S.C. 496, 476 S.E.2d 903, 911 (1996); *Deaton v. Leath,* 279 S.C. 82, 302 S.E.2d 335 (1983); *Jackson v. City of Abbeville, Riley's BP, and Angela McCurry,* 366 S.C. 662, 623 S.E.2d 656, S.C.App. (2005). Probable cause requires more than a "bare suspicion" but less than evidence necessary to convict. *United States v. Gray,* 137 F.3d 765, 769 (4th Cir. 1998).

On December 9, 2011, the Sheriff's Office had absolutely no authority to arrest Avery Blandin absent probable cause. Much of the plaintiff's case hinged on hindsight as to what

occurred on December 10, 2011 at Mrs. Blandin's workplace. Hindsight cannot and should not be used to judge the actions of officers on scene on December 9, 2011.

There was no physical manifestation of any injuries to Ms. Blandin, there was no Order of Protection in place, and the facts, even viewed in the light most favorable to the plaintiff simply do not amount to sufficient probable cause to arrest.

It is respectfully submitted that as a matter of law absent probable cause the officers had no ability, opportunity, and/or authority to, in any way, take action on December 9, 2011, that would have and/or could have prevented Mrs. Blandin's murder.

The defendant respectfully requests that the Court grant Judgment Notwithstanding the Verdict and enter Judgment in favor of the defendant; alternatively, the defendant requests that the court grant a new trial.

IV. ANY ALLEGED ACTS AND/OR OMISSIONS OF GREENVILLE COUNTY SHERIFF'S OFFICE WAS NOT, AS A MATTER OF LAW, THE PROXIMATE CAUSE OF THE MURDER OF LILIA BLANDIN ON DECEMBER 10, 2011.

In *Thomas v. South Carolina Department of Highways and Public Transportation,* 320 S.C. 400, 465 S.E.2d 578 (Ct. App. 1995), the Court of Appeals held that speculation about the criminal actions of a third party tortfeasor in relation to the enforcement of a statute was insufficient to establish causation for a plaintiff's injuries. The Court of Appeals, in affirming the grant of a directed verdict, held that, "[b]efore a plaintiff can recover in a negligence action, the plaintiff must prove, among other things, causation in fact.... Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence." *Id.* at 402, 465 S.E.2d at 580 (citations omitted). The question as to whether Mrs. Blandin's death could have and/or would have been prevented is simply a matter of speculation.

An expert can speak to the subject, however, an expert's offer of what is foreseeable is

inadequate and suspect at best. *See McBeth v. TNS Mills, Inc.*, 318 S.C. 388, 458 S.E.2d 52 (S.C. Ct. App. 1995).

Mrs. Blandin's murder resulted from the criminal actions of a third party, Avery Blandin, and there is no way that a jury could have rationally concluded that but for the failure of officers to arrest him on December 9, 2011, Lilia Blandin would not have been killed.

As a matter of law, the defendant respectfully submits that there is no proximate cause between the alleged acts and/or omissions of the Sheriff's Office and the murder of Lilia Blandin. Accordingly, the defendant requests that the Court enter Judgment Notwithstanding the Verdict and enter Judgment in favor of the defendant; alternatively, the defendant respectfully requests that the Court grant a new trial.

V. THE PROVISIONS OF S.C. CODE ANN. §15-78-60 APPLY AND PROVIDE IMMUNITY FOR THE GREENVILLE COUNTY SHERIFF'S OFFICE.

Regardless of any alleged negligence that arguably could exist on behalf of the defendant, the defendant is entitled to immunity as a matter of law.

The provisions of S.C. Code Ann. §15-78-60 (4)(5)(6) and (20) apply. Specifically, S.C. Code Ann. §15-78-60 provides in pertinent part that the governmental entity is not liable for a loss resulting from:

> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
>
> (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
>
> (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;

...

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;

S.C. Code Ann. §15-78-60 (4),(5),(6), (20).

Even if these provisions are read in light of a gross negligence standard, the facts of this case are not such as to preclude application of the immunities preserved by S.C. Code Ann. § 15-78-60.

The defendant requests that the Court grant its motion for Judgment Notwithstanding the Verdict and enter Judgment in favor of the defendant; alternatively, the defendant requests that the Court grant a new trial.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

October 12, 2015
Greenville, South Carolina

FILED IN COURT
GREENVILLE COUNTY, SC
2015 OCT 12 PM 3 25

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin, Plaintiff, vs. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Defendant.	Civil Action No. 2013-CP-23-6522 **NOTICE AND MOTION OF DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND/OR IN THE ALTERNATIVE NEW TRIAL NISI WITH REMITTITUR PURSUANT TO S.C.R.C.P. RULE 50 AND RULE 59**

The defendant moves for an Order of Court to alter or amend any Judgment entered or to be entered in the above matter on the grounds and authority more fully set forth in the Defendant's Motion for Judgment Notwithstanding the Verdict and/or in the Alternative for a New Trial Nisi with Remittitur Pursuant to S.C.R.C.P. Rule 50 and Rule 59 attached and incorporated herein.

Respectfully submitted,

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October 12, 2015
Greenville, South Carolina

FILED
CLERK OF COURT
GREENVILLE S.C.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE 2015 OCT 12 PM 3 25)	
Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,	Civil Action No. 2013-CP-23-6522
Plaintiff,	
vs.	**DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND/OR IN THE ALTERNATIVE NEW TRIAL NISI WITH REMITTITUR PURSUANT TO S.C.R.C.P. RULE 50 AND RULE 59**
Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County;	
Defendant.	

Subject to any other post-trial motions timely filed or to be filed, the defendant moves for an Order of Court granting Judgment Notwithstanding the Verdict and/or in the alternative, a new trial nisi with Remittitur.

The Jury verdict of $750,000 as to the Survival Claim of the Estate should by operation of law be reduced pursuant to the South Carolina Tort Claims Act to $300,000. The verdict, nevertheless, even if reduced to the Tort Claims Act cap of $300,000, is excessive under the facts of this case.

South Carolina allows for an award of damages for pain and suffering to compensate the injured person for physical discomfort and the emotional response to the sensation of pain caused by a physical injury. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). The test of a survival action in South Carolina is whether the decedent suffered conscious pain and suffering. *Camp v. Petroleum Carrier Corp.*, 204 S.C. 133, 139, 28 S.E.2d 683, 685 (1944).

In this case, the decedent was attacked and her assailant inflicted fatal stab wounds which resulted in her death within minutes. The undisputed testimony at trial is that the decedent was unconscious within a matter of minutes, and further the evidence at trial indicated that she

"immediately was unconscious and quickly lost pulses and stopped breathing." It is admitted that the decedent had an opportunity to appreciate she was being attacked just seconds before she received fatal stab wounds to her chest, but in all fairness an award for conscious pain and suffering in this case of the verdict awarded ($750,000) reduced to the Survival Action cap under the Tort Claims Act ($300,000) is simply not supported by the credible evidence in this case, and is excessive given the very brief interval of time when the decedent could possibly have been conscious.

For the reasons indicated, the defendant moves for a Judgment Notwithstanding the Verdict as to the plaintiff's Survival Action claim and/or in the alternative, that the Court grant a new trial nisi remittitur finding and ordering that the Survival Action verdict of $750,000 is grossly excessive, and that a Survival Action award of $300,000 for this particular claim is likewise excessive under these circumstances.

The defendant requests that the Court grant the defendant Judgment Notwithstanding the Verdict and enter judgment in favor of the defendant. Alternatively, the defendant requests that the Court remit and reduce the survival claim amount to a sum not to exceed $50,000.

Respectfully submitted,

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October 12, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE)

2015 OCT 12 PM 3 25

Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,) Civil Action No. 2013-CP-23-6522

Plaintiff,

vs.

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County;

Defendant.

NOTICE AND MOTION OF DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND A NEW TRIAL ABSOLUTE PURSUANT TO S.C.R.C.P. RULE 50 AND RULE 59

The defendant moves for an Order of Court to alter or amend any Judgment entered or to be entered in the above matter on the grounds and authority more fully set forth in the Defendant's Motion for Judgment Notwithstanding the Verdict and a New Trial Absolute pursuant to S.C.R.C.P. Rule 50 and Rule 59 attached and incorporated herein.

Respectfully submitted,

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October 12, 2015
Greenville, South Carolina

FILED - COURT
GREE... S.C.
FAD... CLERK

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) 2015 OCT 12 PM 3 25
)

Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,

Plaintiff,

vs.

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County;

Defendant.

Civil Action No. 2013-CP-23-6522

DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND NEW TRIAL ABSOLUTE PURSUANT TO S.C.R.C.P. RULE 50 AND RULE 59

Subject to any other post-trial motions timely filed or to be filed, the defendant moves for an Order of Court granting Judgment Notwithstanding the Verdict and/or in the alternative, a new trial absolute.

I. THE JURY VERDICT OF $750,000 AWARDED FOR THE SURVIVAL CAUSE OF ACTION WAS EXCESSIVE, SHOCKING TO THE CONSCIENCE, AND WAS THE RESULT OF PASSION, PREJUDICE, OR CAPRICE.

The South Carolina Survival Statute provides that a cause of action for injuries to a person shall survive the person's death, with damages being recoverable by the legal representative of the deceased. S.C.Code Ann. § 15–5–90 (1976). Damages in a Survival Action include recovery for the deceased's conscious pain and suffering and medical expenses. *Smalls v. S. Carolina Dep't of Educ.*, 339 S.C. 208, 216, 528 S.E.2d 682, 686 (Ct. App. 2000); *See generally Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990) (ruling that the Tort Claims Act does not preclude a Survival Action for conscious pain and suffering and medical expenses when an injured person later dies as a result of the tort).

In South Carolina, an award of damages for pain and suffering is intended to compensate the injured person for physical discomfort and the emotional response to the sensation of pain caused by a physical injury itself. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). In South Carolina, the cause of action for physical injury survives, even if the injured person does not, and the established law of South Carolina recognizes pain and suffering as damages in such survival actions, but the law requires that it be proven and that it be consciously suffered. *Camp v. Petroleum Carrier Corp.*, 204 S.C. 133, 28 S.E.2d 683 (1944). Speculation is not allowed.

The test of a survival action in South Carolina is whether the decedent suffered conscious pain and suffering. *Camp v. Petroleum Carrier Corp.*, 204 S.C. 133, 139, 28 S.E.2d 683, 685 (1944). South Carolina case law provides illustrative examples of when a Survival Action has evidentiary support for and of conscious pain and suffering.

In *Camp*, the evidence considered by the Supreme Court was that a man was heard groaning from within a car before he died of injuries sustained in the wreck. There was no evidence, however, that he was "conscious of pain and suffering." 204 S.C. at 138, 28 S.E.2d at 685. Thus, the claim for conscious pain and suffering was rejected in that case. Conversely, in *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000), conscious pain and suffering was established by testimony when the child in question spoke to his mother and made clear he was in conscious pain. Likewise, conscious pain and suffering between injury and death was established in the cases of *Vereen v. Liberty Life Ins. Co.*, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991) (shooting victim crawled away leaving an eight foot trail of blood and clutched leaves and pine needles to his chest wound); *Smalls v. South Carolina Department of Education*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000) (child moved fingers when spoken to); and *Croft v. Hall*, 208 S.C. 187, 37 S.E.2d 537 (1946) (daughter opened eyes in response to mother's

voice). However, cases of death upon impact have never been accepted as appropriate for an award of damages for conscious pain and suffering in South Carolina.

In this case, there was testimony that the decedent was attacked by her assailant with a knife and suffered multiple stab wounds. The testimony, however, is very clear that the decedent died within a few minutes, and further, the medical examiner stated that he could not testify which stab wounds were received by the decedent in what order. He confirmed that she had multiple stab wounds to her chest and torso, severing her aorta, and he further opined without any contradiction, that she would have become unconscious and unresponsive within minutes. Even further, first responders indicated that it was "[r]eported that pt immediately was unconscious and quickly lost pulses and stopped breathing." She also received the lowest possible rating on the Glasgow Coma Scale when EMS arrived.

It is appreciated that the jury heard this evidence and it is appropriate to view the evidence in a light most favorable to the plaintiff; however, for a jury in this circumstance to award $750,000 for the very brief interval of possible or conceivable conscious pain and suffering is the result of the jury's reaction not to the damages sustained by the decedent, but rather a result of passion, prejudice, and caprice given the undisputed evidence at trial.

There is no evidence that Mrs. Blandin screamed, gasped for air, spoke, moaned, or moved at any time after she was stabbed. She was unconscious before the attack was over and there is no evidence otherwise.

The unfortunate circumstances surrounding the husband's attack of Mrs. Blandin obviously inflamed the jury, causing them to respond with this verdict out of emotion as opposed to the actual facts that were before them. That being said, the defendant respectfully submits that

the Survival Claim award of $750,000 is excessive and unsupported by the facts presented in this case.

Accordingly, the defendant respectfully requests that the Court grant Judgment Notwithstanding the Verdict, and enter judgment in favor of the defendant. Alternatively, the defendant requests that the Court grant a new trial absolute.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

October 12, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

FILED IN THE OFFICE OF THE CLERK OF COURT
GREENVILLE COUNTY, S.C.
PAUL D. BRIMMER
2015 OCT 26 PM 8 56

Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,

Plaintiff,

vs.

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim Director of Greenville Emergency Medical Services; Wal-Mart Stores, Inc.; Wal-Mart Stores East, LP; Wal-Mart Associates, Inc.; and Woodforest National Bank,

Defendants.

Civil Action No. 2013-CP-23-6522

PLAINTIFF'S MEMORANDUM IN REPLY TO DEFENDANT GREENVILLE SHERIFF OFFICE'S POST-TRIAL MOTIONS

TO: RUSSELL W. HARTER, JR., ATTORNEY FOR DEFENDANT GREENVILLE SHERIFF OFFICE

Defendant filed numerous Motions, some of which seem to be repetitive. To the extent that Plaintiff has failed to respond to any Motion of Defendant by oversight, Plaintiff would object to such Motion for the reasons set forth herein. With respect to the post-trial Motions filed by Defendant both on October 8, 2015 and October 12, 2015, Plaintiff responds as follows:

1. **Defendant's Motion for Offset and Remittitur of Verdict (filed October 12, 2015 at 3:24 pm)**

Plaintiff agrees that Defendant Greenville Sheriff Office is entitled to an offset or reduction against the wrongful death and survival verdicts, respectively, for monies paid in settlement of survival and wrongful death claims, respectively, by settling parties WalMart and Woodforest National Bank. Plaintiff asserts that offset or reduction of the settlement amounts against each verdict will not reduce the Defendant Greenville County Sheriff Office's obligation for payment of the verdict below the $300,000.00 Tort Claims

Act cap on either the wrongful death or survival causes of action. Pursuant to Court Order, Plaintiff has already provided the attorney for Greenville County Sheriff Office with the amounts and allocations for the WalMart settlement and Woodforest National Bank settlement. Plaintiff will provide such information to the Court also as necessary. Both the WalMart settlement and the Woodforest National Bank settlement contain confidentiality provisions. To the extent that Defendant Greenville County Sheriff Office seeks reduction or offset, and to the extent that such offset or reduction does not reduce the entry of judgment on the survival and/or wrongful death verdicts below the $300,000.00 statutory Tort Claims Act caps, Plaintiff consents to the Motion.

2. **Defendant's Motion to Alter or Amend (filed October 8, 2015 at 2:11 pm)**

To the extent that Defendant seeks to enter judgment on the verdicts for wrongful death and survival for $300,000.00 each, after taking into account any offset or reduction issues, Plaintiff consents to the Motion.

3. **Defendant's Motion for Offset and Remittitur of Verdict (filed October 8, 2015 at 2:09 pm)**

See #1 above.

4. **Defendant's Motion to Alter or Amend (filed October 12, 2015 at 3:23 pm)**

See #2 above.

5. **Defendant's Motion for JNOV and New Trial (filed October 12, 2015 at 3:24 and 3:25 pm)**

It is axiomatic that in order to recover in a survival action in South Carolina, Plaintiff must establish some evidence of "conscious pain and suffering." Camp v.

Petroleum Carrier Corp., 204 S.C. 133, 28 S.E.2d 683 (1944). Our courts do not require an extensive showing to support a finding of conscious pain and suffering, but merely some evidence – "a scintilla" – of conscious pain and suffering to submit the matter to the jury for determination. Croft v. Hall, 208 S.C. 187, 37 S.E.2d 537 (1946). If there is any evidence from which a jury could reasonably conclude a decedent experienced conscious pain and suffering, the issue must be submitted to the jury. Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991) (quoting Croft v. Hall). There is no requisite time period, degree or manner of "conscious pain and suffering" that is necessary to support a survival award. Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000) (citing Holston v. Sisters of Third Order of St. Francis, 165 Ill.2d 150, 650 N.E.2d 985 (1999)).

There was clearly evidence of Lilia's conscious pain and suffering sufficient to submit the Survival cause of action to the jury. Testimony from bystanders and witnesses showed that Lilia Blandin fought against her attacker and yelled, "Please stop!" **after** being stabbed. The medical examiner explained the "defensive" stab wounds on Lilia's body and how those wounds indicated she fought back against her attacker. Even though the medical examiner could not pinpoint exactly how long Lilia would have survived after the fatal wound, he testified that her death would not have been immediate, lasting as long as a few minutes, during which she would have endured conscious pain and suffering. The evidence presented to the jury on this issue, as well as the reasonable conclusions to be drawn from such evidence, support the jury's finding of a survival award.

6. **Defendant's Motion for JNOV and/or In The Alternative New Trial *Nisi Remittitur***

For the reasons set forth in #5 above, Plaintiff asserts a survival award is appropriate in this case. Furthermore, the evidence presented supports the jury's award of $750,000.00 for the survival claim. Unless the jury's award for survival is "excessive," remittitur would not be appropriate. Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999). Where there is a least a "scintilla of evidence tending to prove" the elements, the matter is for the jury. Smalls v. SC Dept of Education, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000)

Considering Lilia suffered 14 identifiable defensive stab wounds prior to the fatal injury, the testimony that she would have lived some minutes after the fatal blow and would have been self aware of her own impending death, and the testimony regarding her screams for help, a $750,000.00 verdict (which will be reduced to $300,000.00) is not excessive. A jury's determination of award on a survival action should be given great deference. Russ v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). Defendant focuses on the relatively short amount of time between the attack and Lilia's death. However, our Courts have found that, absent an excessive award, the trial Court is to be concerned only with the existence or nonexistence of evidence to support a survival claim – not the length of time between injury and ultimate death. The amount to be awarded is generally left to the jury's determination, absent a showing the award was based on passion, prejudice, caprice or some other improper motive. Smalls, infra. Short periods of time of conscious pain and suffering have supported significant awards, and the jury's award here is not excessive as to warrant action by the Court. Scott v Porter, 340 S.C. 158, 530 S.E.2nd 389 (Ct. App. 2000) (citing with approval New Prospect Drilling Co. v. First

Commercial Trust, N.A. 332 Ark. 466, 966 S.W.2d 233 (1998)(affirming $1,000,000 in conscious pain and suffering for time period between period of accident and before paramedics arrived)); Holston v Sisters of the Third Order of St. Francis, 165 Ill.2d 150 209 Ill.Dec. 12, 650 N.E.2d 985 (1995)(affirming $1,000,000 conscious pain and suffering award where evidence could allow jury to infer suffering of only several hours).

7. **Defendant's Motion for JNOV and New Trial (filed October 12, 2015 at 3:24 pm).**

Defendant asserts that it had no duty to Plaintiff, specifically referring to the South Carolina Tort Claims Act and S.C. Code Section 16-25-70 (CDV Arrest Statute) and the "public duty rule" as barring its liability. Generally, statutes that create or define the duties of public office do not create a duty of care toward individuals. Parker v. Brown , 195 S.C. 35, 10 S.E.2d 625 (1940); Jensen v. Anderson County DSS, 304 S.C. 195, 403 S.E.2d 615 (1990) (rehearing denied 1991); Arthurs ex. rel. Estate of Munn v. Aiken County, 346 S.C. 97, 551 S.E.2d 579 (2001). However, our courts have clearly recognized an exception to the "public duty rule." Arthurs, infa; Jensen, infra. Steinke v. SC Dept. Labor Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999) (rehearing denied 1999).

First, Patricia Sullivan's duties and obligations arose, not from statute, but from GCSO Order 238. The "public duty rule" is therefore inapplicable to her actions or inactions. Rather, Ms. Sullivan's duty stems from her job duties as a 911 operator for defendant, Greenville County Sheriff's Office. When a caller interacts with a 911 operator, that operator has a duty to follow the policies and procedures of the GCSO, and a failure to do so is evidence of negligence. Madison, ex rel. Bryant v. Babcock Center, 371 S.C. 123 638 S.E.2d 650 (2006). With respect to the deputies' failure to investigate

and arrest, their duties arise from both GCSO Order 238 and SC Code Section 16-25-70. As such, the "public duty rule" may be applicable to claims of a duty existing pursuant to Section 16-25-70, but it would not apply to the common law duty to follow the GCSO policies and procedures. Madison, supra.

Even applying the Public Duty Rule to the deputies' statutory obligations, there are clearly exceptions to the Rule. Under Arthurs, a "special duty" exists if the Court so finds after consideration of a six-part test adopted in Jensen. To establish a duty arising from statute, a plaintiff must establish; (1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office. Arthurs, supra; Edwards v. Lexington Sheriff Dep't, 386 S.C. 285, 688 S.E.2d 125 (2010). In Arthurs, the Supreme Court was presented with the opportunity to hold as a matter of law that Section 16-25-70 could never be the source of a duty to an individual, but they specifically declined to do so, limiting the decision to the facts of that case in holding the facts did not support a violation even if a duty were found to have existed.

Here, the trial Court properly considered the six-part test and found a special duty was owed by the Defendant to Lilia Blandin. Therefore, the case was properly submitted to the jury to determine if plaintiff presented evidence that this duty was violated. To the

extent that any duty of Defendant stems solely from GCSO Order 238, the "public duty rule" is not implicated. Because the verdict form did not have a special interrogatory, we have no way of knowing whether the jury found GCSO was grossly negligent for violating its own policies, Section 16-25-70, or both. Because there was evidence to support violation of both, Defendant's Motion for a new trial for a lack of duty should be denied.

In applying the six part test to the facts of this case, it is clear the essential purpose of the CDV Act is to protect against domestic violence and imposes upon law enforcement officers a non-discretionary duty to arrest a suspect where there is sufficient evidence domestic violence has occurred and there is a physical manifestation of injury. Further, the officer may arrest any time there is probable cause, even without a physical manifestation of injury. In the instant case, each officer testified that if Ms. Blandin, Ms. Rivero, or the children had indicated that an assault had occurred, under the totality of the circumstances, Avery Blandin would have been arrested for CDV. Additionally, both experts testified that if the jury believed the testimony of [redacted] Blandin and Ms. Rivero, the deputies would have had no discretion and should have arrested Avery Blandin. Next, the CDV Act defines a clearly identifiable, limited class of persons to be protected, namely victims of criminal domestic violence. Lilia Blandin was a person within the class of persons to be protected because there was evidence she was a victim on domestic violence on December 9th, when the officers were on the scene. Law enforcement officers are aware of the likelihood of harm to class members upon their failure to fulfill their duties. In this case, Deputy Tyner and Deputy Picone testified about their knowledge of the cycle of domestic violence and that failure to stop that cycle

with arrest or intervention would likely result in an escalation of violence against Lilia. Both the Defendant's expert witness and Plaintiff's expert witness testified that the most effective way to stop the cycle of violence from escalating is to incarcerate the offender, even for a short time. Finally, the deputies are given sufficient authority to act in circumstances - i.e. arrest - under S.C. Code Section 16-25-70 (A) or (B). As discussed above, there was evidence in this case that the deputies had a non-discretionary duty to arrest, and under any interpretation of the evidence, had the authority to arrest if there was evidence amounting to probably cause.

After determination by the Court of the existence of a duty, matters of breach of duty and causation are generally factual issues for jury determination. Martasin v. Hilton Head Health System, 364 S.C. 430, 613 S.E.2d 795 (Ct. App. 2005)(rehearing denied 2005)(cert. denied 2006); Hill v. York County Sheriff's Dept., 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993) (rehearing denied 1993)(cert. denied 1994). Defendant argues in its Motion that there was no probable cause to arrest on December 9, 2011. The testimony of the children and Ms. Rivero are more than sufficient to establish probable cause. State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996)(rehearing denied 1996); State v. Moultrie, 316 S.C. 547, 451 SE2d 34 (Ct. App. 1994). Probable cause is a factual determination generally reserved for the jury's determination. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990). The jury was charged on the definition of probable cause, and by finding the Defendant was grossly negligent, the jury inherently determined the deputies violated their duty to Lilia. The jury determination of whether probable cause existed, considering the totality of the circumstances and the information at the officers' disposal, and therefore ultimately the jury's determination that Defendant

breached its duty, should not be disturbed because evidence exists to support those determinations.

As to causation, the evidence presented to the jury in form of expert and lay witness testimony supported the jury's determination of causation. Several witnesses, including both parties' experts and Deputy Picone and Deputy Tyner, testified about the cycle of domestic violence. There was evidence that Avery Blandin only became violent when intoxicated. There was evidence that had Avery been arrested on December 9, 2011, he would likely have still been in jail on December 10, 2011 when he killed Lilia. It is obvious Avery could not have killed Lilia on December 10th if he was still jail. Proximate causation does not have to be shown with exact certainty. Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)(rehearing denied 1994); Hill, infra.

Finally, Defendant argues that the S.C. Tort Claims Act grants immunity to Defendant in this action. Defendant raised defenses and immunities under the S.C.Tort Claims Act implicating a "gross negligence" standard, and as such, the Court must read all Tort Claims defenses and immunities under a "gross negligence" standard. Steinke, infra. The Court instructed the jury several times on "gross negligence" prior to the verdict. The determination of whether Defendant's actions were "grossly negligent" was for jury determination. Clark v. SC Dept. of Public Safety, 632 S.C. 377, 608 S.E.2d 573 (2005)(rehearing denied 2005). In addition, S.C. Code Section 16-25-70(I), which Defendant raised, and which was charged to the jury, provides a "gross negligence" standard before liability can be imposed upon a law enforcement officer for an act, omission or exercise of discretion under the Section 16-25-70.

Plaintiff agrees the verdict must be reduced to $300,000 for both the Wrongful Death cause of action and the Survival cause of action. Plaintiff asserts the remaining Motions must be denied and the jury's verdict should stand, as modified.

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October 21, 2015
Bamberg, SC

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin, Plaintiff, v. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim director of Greenville County Emergency Medical Services; and Woodforest National Bank, Defendants.	IN THE COURT OF COMMON PLEAS C. A. NO. 2013-CP-23-06522 **NOTICE OF MOTION AND MOTION PURSUANT TO SOUTH CAROLINA RULES OF CIVIL PROCEDURE, RULE 60(b)**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 NOV 20 PM 2 22

YOU WILL PLEASE TAKE NOTICE THAT the defendant, Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County, will move, on the tenth day after service hereof, or at such time as is set by the court, for an order pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure requesting relief from any order, verdict, judgment and/or proceeding in the above matter and, more particularly, the jury verdict previously rendered in this cause, based upon newly discovered evidence that one or more jurors on the trial jury may have failed to disclose in *voir dire* information that is required and information, if disclosed, would have been a material factor in the use of the defendant's strikes for cause and/or preemptory strikes.

This motion is based on the ground that the trial court conducted *voir dire* in the above case as appears in the transcript attached hereto, consisting of twenty-five (25) pages. The court's *voir dire* inquired, at page 25 of the transcript, as to whether or not any member of the jury panel had been a victim of criminal domestic violence and, further, at page 19 of the transcript, the trial court inquired of the jury panel as to whether any members of the panel felt they could not be fair and/or impartial jurors.

It has come to the attention of counsel for the defendant that juror No. 5 may not have made proper disclosure to the court and counsel during *voir dire* and that juror No. 7 has not, or may not have, made proper disclosure to the court and counsel during *voir dire* as appears from the Sworn Statement of Charles M. Cornish, Jr., which is attached and made a part of this motion (sealed).

Investigation has revealed an Incident Report relative to Juror No. 5 which is included as an attacment to this motion (sealed).

If and to the extent Juror No. 5 and/or Juror No. 7 failed to provide accurate disclosure during *voir dire*, the failure to do so has resulted in prejudice to the defendant. Further, inquiry into the issues raised in this motion is essential and absolutely necessary to insure fundamental fairness and justice in these proceedings.

The defendant moves, accordingly, for an order of Court and relief from any judgment, order and/or verdict in these proceedings and the defendant requests that the court conduct a proper evidentiary inquiry into the issues raised in this motion and, upon a proper showing, that the defendant be granted a new trial. Further, the defendant respectfully requests leave

of court to file supporting documents under seal, if appropriate, and for leave to supplement this motion to the extent additional relevant information is obtained.

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.

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14 Lavinia Avenue
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864/232-1710 (fax)
E-mail: rwhjr@chhlaw.net
ATTORNEY FOR DEFENDANT SHERIFF STEVE LOFTIS, IN HIS CAPACITY AS SHERIFF OF GREENVILLE COUNTY

November 20, 2015

Greenville, South Carolina

Attachments to this Motion:

1. *Voir Dire* transcript, pp. 1 - 25;
2. Jury List (Sealed);
3. Sworn Statement (Sealed);
4. Incident Report (Sealed); and
5. Affidavit of Russell W. Harter, Jr., with attachment.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin, Plaintiff, v. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Tim Gault, in his capacity as interim director of Greenville County Emergency Medical Services; and Woodforest National Bank, Defendants.	IN THE COURT OF COMMON PLEAS C. A. NO. 2013-CP-23-06522 **AMENDED AND SUPPLEMENTAL NOTICE OF MOTION AND MOTION PURSUANT TO SOUTH CAROLINA RULES OF CIVIL PROCEDURE, RULE 59**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 NOV 20 PM 2 19

YOU WILL PLEASE TAKE NOTICE THAT the defendant, Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County, will move, on the tenth day after service hereof, or at such time as is set by the court, for a new trial pursuant to Rule 59, South Carolina Rules of Civil Procedure, based upon newly discovered evidence that one or more jurors on the trial jury may have failed to disclose in *voir dire* information that is required and information, if disclosed, would have been a material factor in the use of the defendant's strikes for cause and/or preemptory strikes.

This motion is based on the ground that the trial court conducted *voir dire* in the above case as appears in the transcript attached hereto, consisting of twenty-five (25) pages. The

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court's *voir dire* inquired, at page 25 of the transcript, as to whether or not any member of the jury panel had been a victim of criminal domestic violence and, further, at page 19 of the transcript, the trial court inquired of the jury panel as to whether any members of the panel felt they could not be fair and/or impartial jurors.

It has come to the attention of counsel for the defendant that juror No. 5 may not have made proper disclosure to the court and counsel during *voir dire* and that juror No. 7 has not, or may not have, made proper disclosure to the court and counsel during *voir dire* as appears from the Sworn Statement of Charles M. Cornish, Jr., which is attached and made a part of this motion (sealed).

Investigation has revealed an Incident Report relative to Juror No. 5 which is included as an attacment to this motion (sealed).

If and to the extent Juror No. 5 and/or Juror No. 7 failed to provide accurate disclosure during *voir dire*, the failure to do so has resulted in prejudice to the defendant. Further, inquiry into the issues raised in this motion is essential and absolutely necessary to insure fundamental fairness and justice in these proceedings.

The defendant requests that the court conduct a proper evidentiary inquiry into the issues raised in this motion and, upon a proper showing, that the defendant be granted a new trial. Further, the defendant respectfully requests leave of court to file supporting documents under seal, if appropriate, and for leave to supplement this motion to the extent additional relevant information is obtained.

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.

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ATTORNEY FOR DEFENDANT SHERIFF STEVE LOFTIS, IN HIS CAPACITY AS SHERIFF OF GREENVILLE COUNTY

November 20, 2015

Greenville, South Carolina

Attachments to this Motion:

1. *Voir Dire* transcript, pp. 1 - 25;
2. Jury List (Sealed);
3. Sworn Statement (Sealed);
4. Incident Report (Sealed); and
5. Affidavit of Russell W. Harter, Jr., with attachment.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin, Plaintiff, vs. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County; Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2013-CP-23-6522 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR A NEW TRIAL PURSUANT TO RULES 59 and 60, SCRCP**

To: Russell W. Harter, Jr., Attorney for the Defendant.

Plaintiff, by and through her undersigned counsel of record offers this Memorandum in Opposition to Defendant's New Trial Motion pursuant to Rules 59 and 60, SCRCP. For the reasons set forth below, Plaintiff asserts the Motion is without merit and should be denied.

On November 20, 2015, Defendant filed a Motion for a New Trial pursuant to Rule 60, SCRCP, claiming newly discovered evidence that one or more jurors on the trial jury may have failed to disclose information during *voir dire,* and if disclosed, the information would have been a material factor in the use of defendant's strikes for cause and/or preemptory strikes. Defendant also filed an Amended and Supplemental Notice of Motion and Motion pursuant to Rule 59, SCRCP, seeking the same relief on the same grounds.

In support of the Motions, Defendant attached the *voir dire* transcript, a jury list, the Statement under Oath of Charles M. Cornish, Jr., (one of the twelve trial jurors), an Incident Report dated June 23, 2015, involving a Non-Violent Domestic call involving Robin Burns (the jury foreperson), and an affidavit of Defendant's attorney, Russell W. Harter, Jr., setting forth various dates when he received information and documents. Defendant subsequently, on

December 11, 2015, (21 days after filing of his Motion) provided the Court a copy of the audio from a June 23, 2015, "911" call involving juror Robin Burns. On December 14, 2015, (24 days after filing his Motion), Mr. Harter provided the Court with a second affidavit, filed December 15, 2015, alleging that he would have exercised his strikes to remove Ms. Burns. On December 15, 2015, Mr. Harter provided a transcript of the 911 call from Ms. Burns. Later that day, at 8:10 p.m. (hardly 36 hours prior to the scheduled hearing on Defendant New Trial Motion), Mr. Harter provided a letter to the Court, with copies to most of Plaintiff's counsel, indicating his intent to provide additional affidavits from Jonathan Edwards and Officer Tedrow, the two Simpsonville police officers who responded to Ms. Burns' call for service. The contents of those affidavits are unknown to Plaintiff as of the date of this Memorandum.

The crux of Defendant's Motion for a New Trial is that one or more trial jurors failed to respond affirmatively to the following question the Court posed to the jury venire during *voir dire*: "Have any among you been the victim of criminal domestic violence?". Defendants aver that these jurors should have responded in the affirmative and, had they done so, Defendant would have moved to strike them for cause or would have exercised a peremptory strike to keep them from being seated as trial jurors. For the reasons set forth below, the Court should deny Defendant's Motion.

As an initial matter, Defendant has attached the sworn statement of Charles M. Cornish, Jr. , who was also a juror in this case. Mr. Cornish testified in his statement, in response to suggestive questions posed by Mr. Harter outside the presence of any counsel for the Plaintiff and without any opportunity for cross-examination, concerning statements that were allegedly made during the deliberation process. Defendant now seeks to use those juror statements to overturn a unanimous verdict the jury reached after eleven (11) hours of deliberation. It is well settled law that Mr. Cornish's testimony may not be admitted as evidence to set aside the verdict.

As a basic principle, Mr. Corning's account of statements allegedly made by other jurors during deliberations is rank hearsay. Placing Mr. Cornish under oath and having him repeat the alleged statements on prompting from Mr. Harter makes them no less hearsay. As these statements meet no exception to the South Carolina Rules of Evidence regarding hearsay, the entire recorded statement of Mr. Cornish must be excluded.

More specifically, Rule 606(b), SCRE, expressly bars juror testimony regarding deliberations in any inquiry into the validity of a verdict. The Rule provides:

> Upon an inquiry into the validity of a verdict or indictment, *a juror may not testify as to any matter or statement occurring during the course of jury's deliberations* or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

SCRE, Rule 606(b). (emphasis added).

The gravity of Defendant's attempt to introduce hearsay evidence of juror deliberation is apparent. The United States Supreme Court, interpreting FRE Rule 606(b), which is essentially identical to our state Rule 606(b), has dealt with this issue head on and found that testimony regarding internal jury deliberations cannot be used to attack the validity of a verdict.

In *Warger v. Shauers*, 574 U.S. ____, 135 S.Ct. 521, 190 L.Ed.2d 422 (2014), the U.S. Supreme Court held that a juror's affidavit regarding the foreperson's conduct during deliberations was not admissible under FRE Rule 606(b). In *Warger*, Plaintiff tried to introduce an affidavit of a juror to establish that the jury foreperson had lied about her impartiality to award damages based on comments the foreperson had made during deliberations concerning the

foreperson's own daughter having been involved in a fatal accident and that "a lawsuit would have ruined her life." The Court specifically found that Rule 606(b) barred this type of juror testimony because the proffered testimony went to the jury's deliberation process.

The federal courts have barred such testimony based on the sound public policy argument that to do so, "would open the door to the most pernicious arts and tampering with jurors." *Warger*, at 527, citing *McDonald v Pless*, 238 U.S. 264, 35 S.Ct. 783 (1915). The Court noted that the purpose of the rule was to address "concerns that the use of deliberations evidence to challenge verdicts would represent a threat to both jurors and finality in those circumstances not covered by the Rule's express exceptions." *Warger*, at 528. Defendant's Motions are the very mischief the Rule seeks to prevent.

In *Tanner v U.S.*, 107 S. Ct. 2739, 97 L.Ed.2d 90 (1987), the U.S. Supreme Court drew the distinction between external and internal influences, for determining whether to allow juror deliberation testimony to attack a verdict. In *Tanner*, a criminal defendant argued that there was widespread alcohol and drug use by the jurors during his trial, thus rendering them incompetent to perform their duties. The District Court allowed testimony from court personnel and defendant's attorney, but would not allow the testimony of any of the jurors themselves, relying on Rule 606(b). The Court contrasted the admission of juror deliberations testimony, and internal influence, with juror testimony concerning outside influences, such as attempted bribery of jurors, evidence of information brought into the jury room but not admitted into evidence, etc. As *Tanner* held, "There is little doubt that post-verdict investigation into juror misconduct would in some instances lead to the invalidation of verdicts reached after irresponsible or improper juror behavior. It is not at all clear, however, that the jury system could survive such efforts to perfect it. Allegations of juror misconduct, incompetency, or inattentiveness, raised for the first time days, weeks, or months after the verdict, seriously disrupt the finality of the process."

Tanner, at 2748.

This is exactly what Defendant is attempting to do in this case. The Defendant has obtained, without warrant, subpoena, or even a FOIA request, complete histories of any calls for service from those jurors implicated through the inadmissible testimony of one juror, made weeks after the verdict. Defendant's Motion seeks to have a full evidentiary hearing, presumably involving direct and cross examination of those jurors singled out by the Defendant, to determine if these jurors intentionally withheld material information in response to a very specific question during *voir dire*. This unchecked intrusion into the private lives of the jurors singled out has but one purpose: to avoid the finality of the decision made by all twelve of the jurors, including Mr. Cornish. The Greenville County Sheriff's Office seeks to avoid this responsibility at the expense of the jury system itself by harassing those jurors who do serve and discouraging those yet called to serve from doing so. This is exactly the type of inquest the *Tanner* Court was worried about and declared could not, and should not, take place.

The South Carolina courts have adopted the internal versus external distinction for admitting juror testimony to attack a verdict. In *Lynch v Carolina Self Storage*, 409 S.C. 146, 760 S.E.2d 111 (Ct. App. 2014), the Court of Appeals reviewed the affidavit of a juror to determine if contained evidence that extrinsic evidence had been admitted into the jury room. The affidavit contained testimony of alleged misconduct by other jurors *during deliberations*, but those portions were found to be inadmissible under rule 606(b). The Court of Appeals specifically focused on whether the juror's testimony indicated the jury considered evidence outside of that presented at trial. Finding the affidavit did not support any such extrinsic evidence, the Court of Appeal upheld the denial of the motion for a new trial on the ground of juror misconduct. Of note, the Court of Appeals specifically found that Rule 606(b), SCRE, is the same as the federal rule, as noted in the comments to the Rule.

Applying Rule 606(b) to this case, it is clear that Mr. Cornish's statement under oath is inadmissible. The statement references only conversations that purportedly arose during the course of deliberations, and his individualized interpretations of those conversations. This is purely intrinsic to the deliberation process and is, therefore, inadmissible. The Court should consider no part of his Statement under Oath.

Defendant next offers the Incident Report and Supplemental Report dated June 6, 2015, obtained by Defendant without subpoena, FOIA request, or release signed by the parties to the report - and offered without foundation - as an exhibit to Defendant's Motions. Defendant offers this as extrinsic evidence that juror Robin Burns intentionally failed to respond during *voir dire* when asked: "Is there anyone among you who has been the victim of criminal domestic violence?"

When determining whether or not a juror has intentionally concealed the truth during *voir dire*, the court must determine whether the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and whether the subject of the inquiry is of such significance that the juror's failure to respond is reasonable under the circumstances. *State v Woods*, 345 S.C. 583, at 588, 550 S.E.2d 282, at 284 (2001), *Lynch, supra.* The question then becomes whether the Incident Report is sufficient extrinsic evidence to establish Ms. Burn's intent to deceive by remaining silent when asked if she had been the victim of criminal domestic violence.

Looking to the Incident Report itself, the incident type is classified as "90F – Family Offenses, Nonviolent." On its face, this document purports to describe something different than Criminal Domestic Violence. While Ms. Burns is listed as both the Complainant and Victim, this is more a function of the form, which is pre-printed with those labels. The narrative, where the responding officer sets out the specifics of this call, also labels the incident "Family Offenses,

Nonviolent." The narrative section then directs the reader to the Supplemental Report filed with the Incident Report. The Supplemental Report does not refer to Ms. Burns as a "victim," rather it describes an argument that culminated in her husband allegedly grabbing the phone out of her hand while she was talking with her sister. There were no allegations made or described that Mr. Burns in any way harmed Ms. Burns. Therefore, this evidence fails to establish that Ms. Burns was a "victim of criminal domestic violence." Additionally, the term "criminal domestic violence" was not defined for the jurors, and CDV has a specific definition in the law. S.C. Code Ann. § 16-25-20 (Supp. 2014). Thus, Ms. Burns' silence during *voir dire* was appropriate and reasonable.

Defendant has also obtained, without subpoena, FOIA request, or release, the audio recording of the 911 call which initiated the Simpsonville Police Department's visit to the home. As an initial matter, this evidence is untimely under Rules 6(d) and 59(c), SCRCP, and thus should be excluded from the Court's consideration. If the Court does consider the information, Plaintiff would stress that Ms. Burns is calm throughout and denies being injured, noting only that her wrist was "twisted" when the phone was taken from her. The contents of the call do not rise to level of criminal domestic violence, as that phrase would be interpreted by a reasonable juror.

Ultimately, Defendant is asking this Court to find that Ms. Burns should have understood this incident to be an instance of "criminal domestic violence" when the Simpsonville Police Department did not consider it so. As Mr. Harter strenuously pointed out throughout the trial of this case, no arrest can be made if there is no probable cause that a crime has been committed. Since the Incident Report indicates no arrest for criminal domestic violence was made, then under Defendant's own theory the Court should infer no evidence of the crime of criminal domestic violence existed at the time. South Carolina is a mandatory arrest state, and if there

was evidence to support probable cause, the officers should have made an arrest. See S.C. Code Ann.§ 16-25-70 (Supp. 2014).

As reasonable police officers responding to the 911 call did not believe Ms. Burns was the victim of criminal domestic violence, logic dictates Ms. Burns was also reasonable in believing she was not a victim of criminal domestic violence. Accordingly, she was correct and truthful in keeping her silence following the question "[i]s there anyone among you who have been the victim of criminal domestic violence." That is, there is no evidence that Ms. Burns did not act reasonably in remaining silent when the Court asked the question regarding criminal domestic violence., Therefore, Defendant's Motion for a New Trial on the grounds that Ms. Burns intentionally concealed the truth during *voir dire* must be denied.

Plaintiff also notes that the court asked one final *voir dire* question: "is there anyone among you who for whatever reason feels as though you could not be a fair and impartial juror in the trial of this case and render a verdict in accordance with the law as I give it to you?" All twelve of the jurors who rendered the verdict currently under attack by the Defendant remained silent following this question. There is no evidence, whatsoever, that all twelve of them were intentionally concealing their true feelings.

"The first part of the *Woods* test requires a showing of intentional concealment because it is not a juror's responsibility to anticipate what an attorney might be seeking by asking a particular question. Rather, the juror's responsibility is only to disclose information that reasonably should be disclosed in response to a question that is reasonably comprehensible." *Lynch*, at 157. Defendant bears the burden of showing, through *admissible* evidence, that the *voir dire* question was reasonably comprehensible in that it unambiguously applied to the juror's particular situation and that the juror intentionally failed to disclose information. *Lynch, supra*; *Woods, supra*. Defendant has offered the 911 recording and a transcript of it as well, and seeks

to offer two additional untested affidavits from Officers Edwards and Tedrow, the contents of which are unknown. This evidence is all untimely under Rules 6(d) and 59(c) SCRCP, and should be excluded from consideration. The Incident Report, being the only admissible evidence offered, simply does not support the allegation Defendant makes. Because the Defendant has failed to meet the first part of the *Woods* test, the Court's inquiry must end.

In conclusion, Rule 606(b), SCRE mandates that Mr. Cornish's testimony is inadmissible and the Court should not consider it as support for Defendant's Motions. The evidence regarding the June 23, 2015, 911 call is untimely and should be excluded, but in any event fails to establish Ms. Burns was a victim of criminal domestic violence, or would have reasonably believed she was a victim of criminal domestic violence so as to require her to respond to the question in the affirmative. The affidavits of Officers Edwards and Tedrow should also be excluded as untimely. The only extrinsic evidence produced by Defendant, the Incident Report from June 23, 2015, does not establish that any juror intentionally concealed information during *voir dire*.

As the Supreme Court of South Carolina expressed:

> The occurrence of a significant degree of jury misconduct calling for the admission of juror testimony has proved to be quite rare. *See State v. Pittman*, 373 S.C., at 554-55, 647 S.E.2d, at 158 (suggesting that the mine-run of prejudicial jury misconduct cases involve internal coercion based on race or gender bias). For this reason, we think trial courts are justified in exercising a degree of caution before entertaining such evidence in an attack on a jury's verdict. As the court stated in *McDonald*:
>
> > But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might vindicate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct ...[and] the result would be to make was intended to be a private deliberation the constant subject of public investigation ... [T]he argument in favor of receiving such evidence is not only very strong but unanswerable – when looked at solely from the standpoint of the

> private party who has been wronged by such misconduct. The argument, however, has not been sufficiently convincing to induce legislatures generally to repeal or to modify the rule. For, while it may often exclude the only possible evidence of misconduct, a change in the rule would open the door to the most pernicious arts and tampering with jurors. The practice would be replete with dangerous consequences. It would lead to the grossest fraud and abuse and no verdict would be safe.

State v Schumpert, 378 S.C. 62, 69-70, 661 S.E.2d 369, 383 (2008) (citing *McDonald v. Pless*).

Accordingly, the verdict must stand and Defendant's Motions pursuant to SCRCP Rules 59 and 60 must be denied.

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Bamberg, South Carolina

December 16, 2015

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	)	Civil Action No.: 2013-CP-23-06522
Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin,	)	
Plaintiffs,	)	
v.	)	**NOTICE OF MOTION AND MOTION TO ALTER OR AMEND JUDGMENT AND/OR MOTION FOR RECONSIDERATION**
Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County,	)	
Defendant.	)	

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TO: THE HONORABLE ROBIN B. STILWELL

DANIEL W. LUGINBILL, ESQUIRE, J. CHRISTOPHER WILSON, ESQUIRE, DANIEL J. FARNSWORTH, JR., ESQUIRE, AND JOHN S. NICHOLS, ESQUIRE, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County will move before the Honorable Robin B. Stilwell at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCP, altering, amending, and/or reconsidering the Order Concerning Defendant Greenville Sheriff's Post Trial Motions, filed February 11, 2016. Counsel for the Defendant received written notice of entry of the Order on February 16, 2016.

The Defendant's motion is based upon the following grounds:

The Order Concerning Defendant Greenville Sheriff's Post Trial Motions does not address each of the grounds for relief as set forth in the Defendant's Post-Trial Motions. The purpose of this

motion is to respectfully request that the Court address each of the grounds raised by the Defendant so that such issues are properly preserved for appellate review. Specifically, the Defendant requests the Court to issue a ruling on the following grounds as set forth in the post-trial motion:

1. The Court has not addressed the Defendant's argument that there was no credible evidence that the deputies or 911 operator acted with gross negligence.

2. The Court has not addressed the sovereign immunity defenses asserted by the Defendant pursuant to the South Carolina Tort Claims Act. Specifically, the Defendant raised defenses under Sections 15-78-60(4), (5), (6), and (20), none of which include a gross negligence exception. Those defenses are not specifically addressed in the Court's Order.

The Court is respectfully requested to alter or amend its current Order to specifically address these grounds for a JNOV.

The Defendant's motion is based upon the pleadings filed in this case; the trial record; the Order Concerning Defendant Greenville Sheriff's Post Trial Motions, filed February 11, 2016; the Defendant's Post-Trial Motions; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

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Counsel for Defendant Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County

February 25, 2016

STATE OF SOUTH CAROLINA	
	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	2013-CP-23-6522
MADEL C. RIVERO, AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF LILIA LORENA BLANDIN PLAINTIFF	ORIGINAL
vs.	TRANSCRIPT OF RECORD
SHERIFF STEVE LOFTIS, IN HIS CAPACITY AS SHERIFF OF GREENVILLE COUNTY DEFENDANT	

December 17, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RUSSELL W. HARTER, JR., ESQ.
Attorney for the Plaintiff

JOHN S. NICHOLS, ESQ.
J. CHRISTOPHER WILSON, ESQ.
Attorneys for the Defendant

April P. Herron
Official Court Reporter

There were no witnesses.

There were no exhibits.

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Certificate of Reporter 36

THE COURT: Okay. Mr. Harter, if you would announce the name of the case and the case number for the record.

MR. HARTER: Your Honor, this is the matter of Madel C. Rivero, as personal representative of the estate of Lilia Lorena Blandin vs. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County.

THE COURT: Okay.

MR. HARTER: The other defendants were settled out before trial. And action number is 2013-CP-23-06522.

THE COURT: Okay, good enough. Okay, thank you, Mr. Harter, obviously I have a substantial knowledge of the factual scenario of this case having sat through trial. So, I'll be happy to hear your motion, sir.

MR. HARTER: Okay. Your Honor, as you know, this motion deals strictly with an issue regarding disclosure by a juror. We have provided a lot of information. We filed some affidavits with our motions and there were some that we wanted to submit under seal. We did a motion under seal for that. And throughout the process we have submitted some information to the Court and to opposing counsel.

And I'd like to hand up at this time a list of what exhibits we would like to make a part of the record.

THE COURT: Okay.

MR. HARTER: Today for purposes of this case.

THE COURT: Yes, sir.

MR. HARTER: Let me say, Judge, a couple of things right before I get started. This deals strictly with an issue regarding the seating of a juror in the trial of this case. And I want to tell you at the outset, I read opposing counsel's motion and I just want you and them to understand that this issue regarding the juror possible disclosure issue, came to light in a phone call to me by Michael Cornish, he was a juror in the case. I did not reach out to him, I did not make any inquiry, this was a call that was totally unsolicited by me.

THE COURT: Okay, sir.

MR. HARTER: I felt obligated to look into it when it came about; and as you know, I requested a copy of the transcript from the court reporter.

THE COURT: Yes, sir.

MR. HARTER: And then we had, at some point, a conference. I also want to tell you and opposing counsel this. That the Greenville County Sheriff's Office was not involved in any way in the fact

finding mission that I have directed in this case to gather information. It was something that I did in my capacity as an advocate and I actually considered what I was doing somewhat as an officer of the court, quite frankly, Judge. We had a conference call and I believe I brought this information to y'all's attention. And at that time I didn't know whether there was going to be anything to it or not to tell you the truth.

It's a very unusual -- been doing this for 39 years, I've had some issues come up with jurors before but I've never quite had this present itself just like this. And I, frankly, kind of did not know exactly the best way to handle it, but I tried to handle it as best I could, being appreciative that some of the information that would be at issue here might be sensitive, you know. It involves some personal stuff. I don't want to get afar afield with it. Also -- and I hope opposing counsel will understand this, too.

When I set about doing my due diligence on this issue, I made a calculated decision, Your Honor, that whatever I was able to come up with, good, bad or indifferent, whether it supported me or didn't support me, hear this. Because I, frankly, believe

that this is an issue that deserves attention now. And it goes to the basic, conceivably, a breach of integrity of our jury system. And I know that these other lawyers may think that I was, at the last minute, doing an infusion of affidavits and whatnot. The affidavits -- and, Judge, by the way, here they are, I'm sorry.

THE COURT: Okay.

MR. HARTER: The affidavits that I -- I'm filing later affidavits -- I'm filing them as soon as we get them.

THE COURT: Yes, sir.

MR. HARTER: Those affidavits don't really help me, you know. Important [indiscernible] directly support my position. But I just saw it as my role, frankly, to look into and to bring it forward, whatever it is.

THE COURT: Okay.

MR. HARTER: And so, that's the way I went about it. I know there's been some claim that I didn't get all of the affidavits to everybody at the same time or with my motion. But I will tell you when this came up, I felt somewhat to be on the horns of a dilemma. Rule 60 says you got to file your motion within a reasonable length of time. After you become

aware of circumstances. I felt an obligation to certainly do that. And when I filed my motion I based it on the information that had. And I have supplemented that information, providing it to the Court and to both sides as the precess went along.

So, that is where, you know, we are kind of with the record at this point.

THE COURT: Okay.

MR. HARTER: And I do have everything, Judge, that I delineated on that sheet. As part of the record I'd like to mark this, you know, as we go through.

THE COURT: Here's what I'm going to do. I'm going to short circuit you a little bit.

MR. HARTER: Okay.

THE COURT: Today, I don't know that we're going to come to any conclusion in this matter. I know that having read the case law, there's no requirement for a evidentiary hearing. But I do think that it is, based on what I have read, a better practice. And in as much as this case, there's a reasonable expectation that the appellate courts of the State of South Carolina will be looking at this issue that we establish a full and complete record. So, I will tell you today, all I'm worried about, all I really

want to accomplish, is what the law is that bears upon the issue from each perspective, and then, how should we proceed moving forward. I have thoughts and ideas, but I want to hear from you.

MR. HARTER: Okay.

THE COURT: It's your case. And I don't necessarily want go through all of these -- all of this evidence because I think, really, it's incumbent upon us to have a evidentiary hearing. Understand, I don't want to have a evidentiary hearing. Just like I don't want to take the trash out every Friday morning but I got, okay. So, I think we're going to have to have it and I wanted y'all to come today so we could talk it through. And we could define the manner and mechanism of proceeding if we need to. So, I'll hear from you on the law and your suggestion.

MR. HARTER: Thank you. Thank you. I appreciate that, Judge.

THE COURT: Yes, sir.

MR. HARTER: And I do want to be very direct about this, I think there's some controlling law that we've read. And I know this is not the kind of things courts want to do. They're reluctant to do this, I know that. I know that. But there are times

that I think our case law recognizes that there are times that you do need to step in. And in this case, I believe the controlling law that I understand, is we get direction from the Court of Appeals and the Supreme Court. And I focused on the Lynch case. That was one of the cases that opposing counsel cited in their memo. And in the Lynch case, the Court sets forth what I believe are -- is a two-prong test.

Judge, can I ask something real quickly?

THE COURT: Sure.

MR. HARTER: I have Jennifer Sawyer Skipper here, who is the dispatcher who handled the tape.

THE COURT: Yes, sir.

MR. HARTER: She is here at my request.

THE COURT: Yes, sir.

MR. HARTER: We're not going to go into that. Can I excuse her? She has a child with a medical procedure going on right now.

THE COURT: Absolutely. Absolutely.

MR. HARTER: Thank you.

THE COURT: Good luck to you, ma'am.

MS. SKIPPER: Thank you.

THE COURT: Merry Christmas.

MR. HARTER: Thank you, Your Honor.

Thank you, Ms. Skipper.

But the Lynch case has a two-prong catch. The first prong is whether there was an intentional concealment of information in voir dire by a juror. And the second is whether the concealed information would have been a material factor in the use of a parties' preemptory strikes. I think that's the established law.

Now, as to the question of whether or not there's an intentional concealment. It looks like the cases of Lynch and Woods, look at the question that the Court -- they look at the question and not necessarily the answer. But they look at the question to determine whether or not the question presented is reasonably comprehensible to the average juror and the subject of the inquiry is of such a significance that the failure to respond is unreasonable. Is the question comprehensible and reasonable to a average juror?

Unlike some of my questions, Judge, I think your question at voir dire was very simple, it was very direct. It was one of the questions that we asked for in voir dire. And the question was appointed and specific.

On Page 15 of the transcript it says, Is there anyone among you who has been a victim of criminal

domestic violence?

Now, from my recollection of the record, there was a juror who had already identified herself before, but this juror got up and said that a husband had been in a marriage that was -- that she had experienced domestic violence. And she was -- as I remember correctly there was another gentleman who got up and said he had some knowledge about a CDV incident involving his brother. Law enforcement had come out or relative. And anyway, he identified himself. And he provided that information.

As to Ms. Burns, she did not come forward with any of that information at that time. And this was on September the 28th of 2015 at the time of the trial. Now, I won't go into it but her response -- actually, the information that we have been able to glean from our investigation is that there was a call to law enforcement on June the 23rd of the 2015. Which was just three months before. But I submit that the question that was put to Ms. Burns was very direct, Was -- is there anyone among you who has been a victim of criminal domestic violence?

I will tell you, if I had -- if that information had come forward, I would have moved to disqualify her, Judge, for cause; or I would have used a

preemptory strike. Because that information, that question -- and as you recall, we kind of narrowed down the voir dire. We did the magic marker thing. And -- but and it did make us focus on what's important here. And we did, Judge. And that question went to the very guts and the heart of the case as I see it. Was she a victim of criminal domestic violence?

Now, I know we're not -- maybe, maybe not, you know. We got information that is little bit unclear about that in the record. I know you don't to talk about it but we do have information. But I do believe that that question was very specific and direct to her. And I think that he should have responded to that question even -- certainly, if she was the victim. Because it's right appointed, you know. And if she was -- if she was not a victim and it was something less than that but it was a call out there to law enforcement and a disturbance, a family issue, well, you got a little gray area there. But I still think that a reasonable juror, that question was comprehensible enough to another juror, some bell or whistle went off with him.

So, I think the question is there. I think that if the evidence shows that she didn't answer that

question correctly and that would be a fact finding thing, I believe, for the Court to do. And I will tell you, I believe that would be the way to handle it, Judge. Is to do an evidentiary hearing and inquire about Ms. Burn as a juror.

I will tell you that we, frankly, didn't find anything else on the other juror. But based on what Mr. Cornish says, I believe a inquiry, maybe, about her might be [indiscernible]. I definitely believe for Ms. Burns -- if we're going to talk about the law a little bit more, the question comes up and, you know, the other part of the issue is whether or not Mr. Cornish can, you know, whether his affidavit or statement is something to rely on. Or for you to consider or should it be something that's inadmissible under Rule 606?

And I believe -- and I believe this. In this case, what you have in front of you is information regarding that would raise a question as to Ms. Burns' -- whether she appropriately disclosed or not in voir dire what had happened before. That information is based on the 911 transcript where she made the statement herself two times that, He twisted my wrist. Now, that information is from a separate source other than Mr. Cornish is his capacity as a

juror. Yet, we found out about it from him but the evidence that supports that comes from some source other than Mr. Cornish, as a juror.

Now, even, if, however, Mr. Cornish's -- I will also say that under our case law, the fact -- Rule 606 is not an absolute prohibition for the Court to consider an affidavit or sworn statement or information from a juror in the context of what we're talking about here. And I'm talking about the -- I think it's in Woods. I'm sorry, I think it's in the Lynch case, Judge. If the matter does not involve internal deliberations of the jury, then Rule 606 does not come in in absolute as a complete probation against a juror providing evidence or an affidavit about another juror's conduct.

And in this case, we're not talking about the decision making process in deliberations back there. We're not talking about who said what or why they did it or anything like that. We're talking about the composition of the panel. It's just like a game, Your Honor. You're in a game, if you play the game, it doesn't matter what the score is, it doesn't matter who wins, it doesn't matter who looses. If you find out that a person's ineligible, you got to do something about it. And I think that's pretty

much the analogy of what we're talking about here. I think under the Lynch case law and under the Woods case law, that there is a significant issue.

And actually, because I matched this case up with the facts of the Woods case and the Lynch case, we have a lot stronger position here than those folks did in their case. And I know, it's always an uphill battle, you know. But -- and -- but I think that if there is -- if there's an intentional -- and I think the Woods case points this out, if there is an intentional --

The Woods case says, Where the juror's failure to disclose information is without justification, i.e. intentional, the juror's bias will be inferred.

Okay. I just think, and as I understand reading the law here, and fortunately, I haven't been in this area a whole lot, you know. This is a very fact driven issue. And Your Honor, I think based on what you have in front of you that there is -- that there is a -- the proper course for us all to take to know and to know and to get to the root of this issue. Again, it may not be here, you know. Is to do an evidentiary hearing. I think that certainly an inquiry into Ms. Burns' question, you know, about her disclosures would be appropriate. Maybe

[indiscernible], I don't know. It depends, Judge, on how you look at the law on that.

And again, I don't know Mr. Nichols very well or whatnot. I hope nobody thinks that I'm trying to be a sore loser in trying to meddle into this system that we love and that we serve. Everything I've done, I hope, in the context of this case has been honorable. And I know they don't know me, but I've tried to handle this the way I thought it should be handled. And, you know, it's an uphill battle. But sometimes we have to step in and there has to be a guardian. And we're all guardians of this process. And it does not matter who wins or who looses, it really doesn't. What matters is the truth and we've said that, whatever that is. But I think we need to look for it.

THE COURT: Okay, thank you. I appreciate it.

Yes, sir, Mr. Nichols.

MR. NICHOLS: Thank you, Judge. We sent a --

THE COURT REPORTER: I'm sorry, can I get your name?

MR. NICHOLS: John Nichols.

THE COURT REPORTER: Thank you.

MR. NICHOLS: We sent a memorandum around last night, but I've got a hard copy, if you would like.

THE COURT: Sure.

MR. HARTER: I've got a copy, Your Honor.

THE COURT: Okay. All right.

Thank you, very much.

MR. NICHOLS: Judge, I'll be very brief--

THE COURT: Yes, sir.

MR. NICHOLS: -- frankly. We provided with a -- there was actually a decision at the U.S. Supreme Court on this, Judge. Justice Sotomayor wrote the [indiscernible] decision which we've cited there.

THE COURT: Okay.

MR. NICHOLS: And I realize the federal rule is slightly different now but the rule is essentially the same as South Carolina's rule. I heard -- I heard a number of things that I think are interesting. But our position, first off, an evidentiary hearing in this type of thing is proper, to begin with. Particularly, based on a motion that's been made. But in any event, what's been presented to you would say that it would be warranted in this case. I mean, we've been provided the affidavits and we objected to those affidavits. Because, frankly, Judge, those affidavits demonstrate why you don't do exactly what's trying to be done in this case.

Let me say this. Just a few things. Counsel said that this information came to him from Mr. Cornish, who was one of the jurors. Well, that's exactly the type of internal discussion he -- Mr. Cornish is relating something that he thinks he heard in the jury room during deliberations. And that triggers this, how did he put it? Fact finding mission. These fact finding missions are exactly what the U.S. Supreme Court and our State Supreme Court says you don't do based on something that you hear about internal deliberations.

Now, the Lynch and the Woods case, there was information from outside of the court that came into the jury room and formed part of the deliberation. Rule 606 says, Well, you can talk about that but you're not supposed to go into the minds of the jurors during their deliberation. That's exactly what's going on here. Perhaps, we're trying to do it through these extraneous affidavits from police officers or a 911 person and all.

But, Judge, frankly, it reminds me of the one phone case. It's sort of the fruit of the poisonous tree. You start with the improper juror communication about internal deliberations and use that to go on this fact finding mission and then

cloak in it what we call external evidence in order to get out of the prohibition that's found in Rule 606. That's coming in the back door when the front door is barred. And the Court shouldn't allow this. The Court should not allow this.

The law is fairly straightforward that we're not supposed to be going into the minds of the jurors to find out -- these jurors deliberated 11 hours from what I understand. There was a unanimous verdict. I haven't seen the record yet but as far as I know, nobody indicated that they were forced into reaching this verdict. Which from I understand, Mr. Cornish, through some extraneous conversations decided that he needed to call Mr. Harter. That's the very kind of thing we are not supposed to be doing. We are officers of the court, we are supposed to protect the process.

And this kind of fact finding mission into the backgrounds of jurors, after the trial, because you don't like the result, which is what's going on here, is the very thing that the U.S. Supreme Court, State Supreme Court has told us we're not supposed to be doing. If you allow this, you will be opening a door that could lead to all kinds of mischief and the courts have warned us about that. They said this

kind of case, this kind of inquiry, this kind of inquest into the backgrounds of jurors, whether or not they responded to questions is the kind of thing that they don't want us to do.

I did hear counsel say, I think she should have responded, nonetheless.

Well, he may think that. But the key here is, would she have thought that? I mean, we're standing here saying that she lied to this Court. And she lied to everyone in here. So, it's a pretty serious accusation against this juror. We're saying that she sat on her hands when she knew that she should have responded to this question that was being asked by the Court. So, we're going to have to get inside her mind and see the very question that's asked. There weren't questions asked around the nuance of the question.

She was asked very specifically about criminal domestic violence. Which is a very specific term in the law. It's defined in the statue. Case law tells us what criminal domestic violence is. These affidavits, which aren't proper, but they're there. Frankly, they help us. Both of these officers said they saw no evidence of violence. If trained officers don't see any evidence of violence, then you

have -- and it's a criminal domestic violence, one of them said, We told her to go get marriage counseling.

They were a little irritated because her husband kept saying, Wait a minute, you need to put this in the report. He was concerned that he was going to get arrested. No, nobody was going to get arrested because we didn't see any reason to arrest anyone. We didn't see any criminal domestic violence. Well, if the police officers are engaging in that, I mean, they kept saying this call lasted longer than it should have lasted because there was no there there, so to speak.

And so, we're expecting now a lay juror to interpret a very specific question to mean that she should stand up after she's heard a couple of other folk describe what criminal domestic violence is when they responded. She remembers calling them, maybe she remembers the 911. But it's not criminal -- had you asked for any other crime, should she have stood up and said, Yeah, we made a call to 911, my husband and I were fighting and yanked the phone out of my hand. I was trying to call my sister.

Judge, I think it's incredible to expect that she would have understood and she should have said something. But that's what we're saying. We're

saying that she knew, we're getting in her head, we're not to be concerned with what I think she should have done or what Mr. Harter thinks she should have done, but what she thinks she should have done. And that's why these types of inquries are not proper. That's why Rule 606 says what it is. That's why the federal rule says what it says and why the court has told us not to go into this kind of inquisition into the backgrounds of the jury.

And so, we think this whole thing is improper. I understand that you're concerned that you should have a evidentiary basis for the Appellate Court to look at. I would ask you -- or, really, if you can set the perimeters a week, is that evidentiary hearing going to be confined to these police officers who are now being proffered that extraneous evidence even though the internal deliberation evidence is what lead -- the trail that led right to them. Or we've got to be proffering affidavits from these jurors. Or we've got to get Mr. Cornish's live testimony, or we going to call the other 11 jurors, including the effected juror? I have--

THE COURT: That's one of the questions that I was going to pose to y'all.

MR. NICHOLS: Well, Judge, we would object to

that. I think that is exactly what the courts have told us you're not supposed to do. When people come to jury service, are they going to have, sort of, disclaimer hanging over them that they don't know if the things that they say in the privacy of that room, which can get pretty -- pretty personal and pretty heated at times, could be aired in public because somebody doesn't like the verdict that they ultimately reached.

And the courts have said, No, don't to that. We would object. I just think it's entirely improper.

THE COURT: If we do an evidentiary hearing, I'll tell you, it will be limited to things outside of the jury's deliberations. That is questions and examination would be confined to the salient issues. That is, was there a failure to disclose? Was it intentional failure to disclose? And then, I don't think we have to have any evidentiary hearing about whether it's material or not. I think that simple representation does that. But I want you to know, I want you to know, that I haven't decided that absolutely. Okay. I don't want to have a hearing and I don't want to overturn a juries verdict. But right now we have two competing interest. And that is the sanctity of jury verdicts versus the

fundamental fairness of proceedings before the Court. And I've just got to decide how to navigate between the two.

MR. NICHOLS: Okay.

THE COURT: And that's all -- today, that's all I'm trying to do.

MR. NICHOLS: Judge, as I understand, the affidavits were just handed to me, under seal. And I understand you haven't seen those affidavits.

THE COURT: I haven't.

MR. NICHOLS: Okay.

THE COURT: And I haven't read the 911. I've reviewed the transcript but at this point that's about all that I've done. Okay.

MR. NICHOLS: You reviewed the transcript--

THE COURT: From the voir dire.

MR. NICHOLS: Okay.

MR. HARTER: I will tell you, the 911 transcript, the 911 tape, is, I will submit to you, the basis of where I think we go with an evidentiary hearing. And Judge, I'm not talking about what happened back in that jury room, I'm talking about what happened here in this courtroom when those questions were asked.

THE COURT: I gotch you.

MR. HARTER: But I don't know whether -- do we want to mark those things now?

THE COURT: I don't want to mark anything.

MR. HARTER: Okay. And I --

THE COURT: Let me tell you what I want to do. I want to let Mr. Nichols finish.

MR. HARTER: Oh, I'm sorry.

I apologize.

MR. NICHOLS: That's okay, Judge.

MR. HARTER: I'm sorry.

MR. NICHOLS: You asked me a question, I think Mr. Harter --

THE COURT: That's all right, I know. I know.

MR. NICHOLS: I didn't feel he was interrupting me.

Well, I guess, I just want to close with that I'd ask you to look at what's been provided. We had objected because Rule 59(c) says that those should have been attached to the motion. But, frankly, I think when you see those affidavits, when you see them against the 911 transcript, which you're going to apparently look at --

THE COURT: Do you want me to look at them?

MR. NICHOLS: Well --

THE COURT: Here's the problem that I have right

now. I mean, you kind of reference some of these affidavits --

MR. NICHOLS: Right.

THE COURT: To which I haven't seen. Which apparently contrast your position.

MR. NICHOLS: Yes, sir.

THE COURT: So, I don't know whether to look at them or not. Because, you know, ab initio, I am very reluctant to overturn the jury's verdict. But if a party comes in and makes essentially a prima facie assertion that there was a material misrepresentation to the court, I almost have to look at it.

MR. NICHOLS: Right.

THE COURT: So, the question is, you know, what do I look at? I mean, I have to look at something. And what I don't want to do is use very technical rules which would preclude the court from effecting fundamental fairness in a court proceeding.

MR. NICHOLS: Judge, it reminds me of a story I once heard where somebody said don't think of an elephant. And the first thing you think of is an elephant. And our difficulty here is that this extraneous prima facie case, and I'm putting that in your quotes because the record's not going to show that, but the prima facie case derives from

inappropriate evidence. Inappropriate -- it's the inquiry from Cornish or the statement from Cornish regarding, Hey, when we were in the jury room, we heard this. That kicks it all out.

And I realize that it's a little bit different from the exclusion of the rule under the Forth Amendment. But I think there's a good parallel there that when you're looking at the evidence that should not be for the court, the evidence that is improper under Rule 606, and you claim that it then leads you to something that would then support this type of inquisition, that that's improper. Now, if somebody comes to you and says, Hey, one of the jurors brought in a medical journal one day that had -- nobody had talked about and started saying, Hey, I know what this particular procedure is all about. That's the kind of thing that they're talking about in Woods and Lynch. That people bring extraneous things into the jury room. Or they bring a Bible in. Or they bring something into the jury room that should not -- and I have nothing against the Bible, I don't mean that as a--

THE COURT: I understand.

MR. NICHOLS: But something that they're not -- or they gone and done some internet look and they run

something on Wikipedia or something to come in and say, This is what this case is about. That's what they're looking for. And that's the kind of juror misconduct that 606 allows you to go into. But whether you are saying that a jury lied to this Court, and I want to be plain on that. You're accusing a juror of lying to this Court about -- because she sat silent when she should have spoken up. That's the kind of thing that I think the courts don't want you to get into their minds and try to figure out what judgment should she have made when she heard this very specific question about criminal domestic violence. Knowing what she knew about this 911 call and what the officers may or may not have told her when they arrived on the scene. And you'll see that in those affidavits.

THE COURT: Yes, sir.

MR. NICHOLS: So, I really don't have anything else to say. But, of course, we'll abide by whatever you tell us we need to do. But I just want this record to show that we object to this entire process.

THE COURT: Okay.

MR. NICHOLS: Thank you.

THE COURT: Yes, sir.

MR. HARTER: Very briefly, Judge.

THE COURT: Yes, sir.

MR. HARTER: And we're not talking about the internal deliberations. And I appreciate everything Mr. Nichols said. But our court, somebody's got to be the guardian of the sanctity of what happens. We're talking about whether or not -- I'm not saying that she lied, I'm just asking you to look at the record, and I'm asking the Court to make that determination. Because I believe there is a prima facie showing. If you read the transcript from the 911 tape on June 23, 2005 and you compare that with her testimony.

Again, we provided the information that we got. You know, this is -- this is something that runs deeper and broader than this case. But, to be very clear, in the Lynch case, which they cite in their brief, our court says in some cases, our courts have considered the testimony of jurors in deciding whether a juror intentionally concealed information during voir dire. And in each of these cases, however, Rule 606 was not an issue because the matters to which jurors testified did not involve internal deliberations of the jury. And we're not talking about internal deliberations. We're talking about the composition of the jury.

THE COURT: Okay.

MR. HARTER: I believe that a limited inquiry to Ms. Burns with -- concerning the 911 call in that event, by interviewing Ms. Burns, the 911 dispatcher, I don't know that it needs to extend to the officer but I think it could. I think it could be very limited to that. And I believe -- and that's where I focused with my motion, Judge. I mean, my motion, we knew what knew when we filed the motion. And we focused on it now. This is not -- this is not a inquisition. We're here to hopefully get to the bottom of what is a concern. Judge, thank you for your time.

And thank you, gentlemen.

THE COURT: Yes, sir.

MR. NICHOLS: Can I respond to one thing, Judge?

THE COURT: Sure.

MR. NICHOLS: Briefly.

THE COURT: Sure.

MR. NICHOLS: The inquiry into Ms. Burns, I guess we need to figure out what that may look like. Are we're going to ask Mr. Burns to come in here and offer testimony? Are we going to try to get their children or their family members or their friends or their pastor and try to figure out what she was

telling everybody at the time? And then we're going to go in and find out from her what she was thinking whenever she heard that question and why -- I mean, this is, you know. . .

THE COURT: We're going to define that. You know, if we're going to do that, we're going to be very, very sensitive about an inquisition into a jurors thought process and her life and all of the other issues. We're not going to conduct any discovery, we're not going to make it into a new case. I want y'all to talk about how you would do it. My thought is this. My thought is that we -- that I issue a court subpoena, together with a letter to her, calling her to court one day. Instructing her that she is not in trouble. That there are questions regarding representations made of jury qualification. That both sides give me a list of questions from which I can elect to ask her on the record. And those essentially will be -- those will be tailored to whether, in fact, she made an intentional misrepresentation to the court. It would be a very limited inquiry, all right.

Now, that's my thought on the whole matter. Now, the rest of all of this material in a evidentiary hearing may be able to be presented as

part of the record. And y'all can look at that and decide whether, in fact, you want to do that or not. And then make a decision based upon all of the evidence that bears upon the issue. But we're not going to make a new case out of it. I'm not going to allow the parties to issue subpoenas, to conduct depositions or to bring anybody else to the courtroom other than those people who have been specifically directed by a court subpoena. By court subpoena. Okay.

Now, again --

Yes, sir.

MR. HARTER: I was just going to ask one question.

THE COURT: Sure.

MR. HARTER: And I don't know whether this is a proper question or not, I don't know. But I wonder, and I know based on information that Ms. Burns -- or that maybe counsel, you know, being good lawyers, trying to, you know, be better lawyers, but sent out queries to jurors and if they got any feed back from them. I would wonder if any feed back came from Ms. Burns that would bear on this. And I would just question that. I have not spoken to Ms. Burns, I have no intention to and I don't know whether there

was any response--

THE COURT: That is what --

MR. HARTER: -- to that --

THE COURT: -- anything like that. And y'all can talk to me about it.

MR. WILSON: Judge, I'll just go ahead and tell you now as an officer of the court, we wrote all the jurors, as is my practice in every case. I'll be glad to provide a copy of the letter if you want to see it that basically says, In an effort to gain feed back and improve our skills and get your opinions on jury service on this case in particular. If you would like to speak with us, please contact us at your convenience and call us if you need to.

I think is what is says.

THE COURT: Yeah.

MR. WILSON: And I don't know, Your Honor, how many jurors, because I think that maybe I spoke with Mr. Luginbill but we had contact from, I believe, more than one juror. I know Ms. Burns is a juror that called our office. And she spoke with Mr. Luginbill about this case and there was no discussion of any issue that Mr. Harter is raising in his motion on this before the Court. She was talking about the facts of the case and her impression of the

evidence and whether she liked the way it was presented and whether the board was big enough to see the screen. But nothing about any of this matter here, Your Honor.

THE COURT: Okay.

MR. WILSON: And if you want an affidavit to that effect, we'll be happy to provide that.

THE COURT: Okay.

MR. HARTER: That's fine, I accept that. And I just brought that up because --

THE COURT: This is what I want y'all to do. I want y'all to talk. Decide how you would conduct an evidentiary hearing and how you would like to do it. I told you what my preference is. And then after Christmas, during the week between Christmas and New Years, perhaps we have a conference call. It can be an ad hoc conference call. Y'all can call me at any time. Y'all come up afterwards, I'll give you my cell phone. And y'all just call me whenever you want to and we'll talk through it and see what the mechanism should be.

Again, I don't want to conduct an inquisition into juror conduct. But the problem is, if alleged juror misconduct or intentional misrepresentation drops into my lap, what am I to do with it? What am

I to do with it? And again, we have the competing interest of the finality of jury verdicts and the sanctity of deliberations. And the court's ultimate role in fundamental fairness to all the parties that come before the court.

Now, this may be something that the Appellate Courts, The Supreme Court of the State will opine on and issue some guidance, going to give us public policy regarding how far we should go. But I think right now my inclination is to at least establish a record so that they can make an informed decision so that all of the bar will know how to proceed in these instances. Okay.

So again, y'all get back to me and tell me how you want to conduct an evidentiary hearing. I told y'all my opinion, y'all tell me whether that suits you, okay.

MR. HARTER: Thank you, Judge.

THE COURT: All right, thank you.

MR. NICHOLS: Thank you, Judge.

THE COURT: Yes, sir.

Y'all have great day and have a Merry Christmas.

(WHEREUPON, the proceedings were concluded.)

CERTIFICATE OF REPORTER

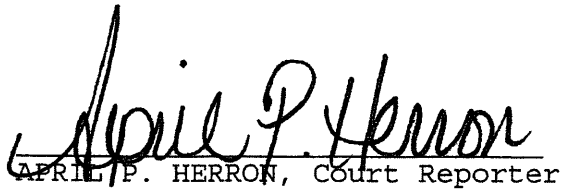
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17th day of December, 2015.

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

August 26, 2016



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2013-CP-23-06522
	)	
	)	
MADEL C. RIVERO, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE	)	
OF LILIA LORENA BLANDIN	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SHERIFF STEVE LOFTIS, IN IS	)	
CAPACITY AS SHERIFF OF	)	
GREENVILLE COUNTY	)	
DEFENDANT	)	

COPY

September 28 - October 1, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge; and a jury.

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

DANIEL J. FARNSWORTH, JR., ESQ.
DANIEL W. LUGINBILL, ESQ.
J. CHRISTOPHER WILSON, ESQ.
Attorneys for the Plaintiff

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CARLY H. DAVIS, ESQ.
Attorneys for the Defendant

APRIL HERRON
Official Court Reporter

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THE COURT: All right, ladies and gentlemen, welcome upstairs to courtroom six. Good to see you again. As I promised you downstairs, we are going to pick a jury for the first case that is up this week. I remind you that you remain under the oath that you took downstairs. Now, when I ask you questions, again, the process will essentially be the same. And that is, when I ask you a question, if the answer is in the affirmative, I'll ask you stand up and state your name and your juror number and then respond to the question appropriately. Now, I would ask that each time you stand up, state your name and your juror number because now the court reporter is taking down everything that is being said in the courtroom. And it's important that for the record, that it's clear who responded to what question.

All right, ladies and gentlemen, the case that we are calling to bar today is Madel C. Rivero, Personal Representative of the Estate of Lilia Blandin vs. Sheriff Steve Loftis in his capacity as Sheriff of Greenville County. Additional Defendants --

Do all the additional Defendants remain in this caption?

MR. HARTER: That's the only one, Your Honor.

THE COURT: All right, ladies and gentlemen, that's Case No. 2013-CP-23-6522. Ladies and gentlemen, this is a case in which Mrs. Lilia Blandin was stabbed to death inside Wal-Mart on Whitehorse Road on December 10th, 2011. The Plaintiff contends that Lilia Blandin was killed as a result of Greenville County Sheriff's Office negligently failing to arrest her husband the day before her murder. The sheriff's office contends that there was no legal basis to arrest Mrs. Blandin's husband on December 9th, 2011, based on the information they had at the time.

Now, ladies and gentlemen, the reason I read to you that very basic allegations one to the other, is so that you can answer this question intelligently. Is there anyone among you who has any prior knowledge, any prior opinion, any prior disposition regarding the allegations or the parties in this lawsuit?

There was no response.

Ladies and gentlemen, is there anyone among you who has heard any media reports regarding this incident?

There was no response.

Heard or read?

There was no response.

Okay. All right. Ladies and gentlemen, in this case the Plaintiff is Ms. Madel C. Rivero.

Have I pronounced that right?

MR. FARNSWORTH: Yes, sir, Your Honor.

THE COURT: Ms. Madel C. Rivero, as Personal Representative of the Estate of Lilia Lorena Blandin. Is there anyone among you who has a personal, professional or family relationship with Ms. Rivero or with the deceased, Mrs. Blandin?

There was no response.

Ladies and gentlemen, in this case Ms. Rivero is represented by Mr. Christopher Wilson and Mr. Daniel Luginbill of Wilson and Luginbill, LLC of Bamburg, South Carolina. They are also -- the Plaintiff is also represented by Mr. Daniel Farnsworth of the Farnsworth Law Firm in Greenville, South Carolina. I'll ask you, is there anyone among you who has a personal, professional or family relationship with any of the attorneys for the Plaintiff?

There was no response.

Ladies and gentlemen, the Defendant in this case is Sheriff Steve Loftis. Is there anyone among you who has a personal or professional relationship or family relationship with Sheriff Loftis? Or with

anyone employed within his office?

All right, let the record reflect no affirmative response.

Ladies and gentlemen, the Defendant is represented by Mr. Russell W. Harter, Jr. and Carly Harter Davis of Chapman, Chapman and Harter, P.A. in Greenville, South Carolina. Is there anyone among you who has a personal, professional or family relationship with defense counsel?

There was no response.

Ladies and gentlemen, I'm going to read for you a list of potential witnesses in this case. Now, this may be inclusive but it may have a few more than will actually testify, maybe a few less. Because each case kind of takes on a life of its own from time to time. But these are potential witnesses. After I've read them out, I'll ask you the same question of whether you have a personal, professional, family relationship with any of them.

Kevin Tyner, David Picone, Jan Kiser, Neil Logan, Mark McCoy, Jeff Granner, Jim Perry, Jason Cassel, Patricia Sullivan, Antonio Bailey, Roger Dobbs, Sheriff Steve Loftis, Jenna Spencer, Avery Blandin, Madel Rivero, Lilia Blandin, [redacted] Blandin, [redacted] Blandin, [redacted] Blandin, Juana

Hamby, Jorge Vasquez, Leroy Hamby, Dr. Mike Ward, Melvin Tucker, John "Jack" Ryan. Ladies and gentlemen, I'll ask you, is there anyone among you who has a personal, professional or family relationship with any of those potential witnesses?

All right, sir, if you would stand and state your name and juror number, please.

PROSPECTIVE JUROR: Clyde Lacount, number 36. Jeff Granner.

THE COURT: Okay. All right, sir, what's the nature of your relationship with him?

PROSPECTIVE JUROR: Friends.

THE COURT: Okay. Do you think knowing that fact that you can still be a fair and impartial juror in the trial of this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay, thank you, for telling me, sir. I appreciate that.

Anybody else?

Ladies and gentlemen, I'll ask you--

MR. WILSON: Your Honor.

THE COURT: Yes, sir.

MR. WILSON: Can we approach one moment, please?

THE COURT: Sure.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen of the jury, I apologize for that pause. That's my fault. The attorneys had given me an additional list of names that I had among all this paperwork that I've already accumulated up here, so I apologize for it. Additional witnesses may include Barbara Headen, Emma Jean Whitener, Neil Logan, G. Richard Thompson, Ph.d, Jenna Spencer, Anthony Tuggle and Kim Selvy. Ladies and gentlemen, any of you have a personal, professional or family relationship with any of those additional proposed witnesses?

Okay, let the record reflect no affirmative response.

Ladies and gentlemen, is there anyone among you who is a personal friend, political contributor or political supporter of Sheriff Steve Loftis, The Greenville County Sheriff?

There was no response.

Ladies and gentlemen, is there anyone among you who has--

MR. LUNGINBILL: Judge --

THE COURT: Yes, sir.

MR. LUNGINBILL: Would you clarify that, Judge?

THE COURT: Yes, sir, I'll read it again. Anyone among you is a personal friend, political contributor or political supporter of the Sheriff, Steve Loftis?

PROSPECTIVE JUROR: I'm a political supporter.

THE COURT: All right. Will you stand up and state your name and juror number for the record, please, sir?

PROSPECTIVE JUROR: Yes, Frank Raddis.

THE COURT: And your juror number?

PROSPECTIVE JUROR: 59.

THE COURT: Okay. All right. And you are a political supporter of the sheriff, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Have you contributed money to his campaign, sir?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. Do you think given the fact that you're a political supporter of his that it would affect your ability to be fair and impartial and objective in this case, sir?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. I appreciate you letting me know, thank you.

Okay, anyone else?

There was no response.

All right, is there anyone among you that has ever been employed by or had an immediate family member or close personal friend who is employed as a law enforcement officer or a 911 operator? Okay, there might be several of you. So, y'all just stand up and as you answer you can just sit back down.

Yes, sir.

PROSPECTIVE JUROR: Juror number 25, Charles Harrigan.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: My college roommate is now a police officer for Greenville City police.

THE COURT: Do you think that you can still be fair and impartial on this case, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right, thank you for telling me. I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Jeff White, juror No. 78.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: One of my coworkers had a son who was employed with the Greenville County Police Department.

THE COURT: Okay. Do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: I do.

THE COURT: Thank you, I appreciate it, sir.

Yes, sir.

PROSPECTIVE JUROR: William Snyder, juror No. 64. I was previously a law enforcement officer in the municipality of Fountain Inn and multiple friends in the department.

THE COURT: Okay, do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you for telling me that, I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Benjamin Poole, number 57, I believe.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: Uncle was a police chief and officer in the State of Michigan.

THE COURT: Okay. Do you think that you can be fair and impartial in this case, sir, given that fact?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you, I appreciate you telling

me.

Yes, sir.

PROSPECTIVE JUROR: Louise Brody, No. four. My father is a retired police officer and chief of police.

THE COURT: Do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you for telling me, I appreciate it.

Anyone else?

There was no response.

All right, is there anyone among you who would tend to hold the testimony of a law enforcement officer in higher regard or believe it to be more credible than the testimony than a member of the general public?

All right, let the record reflect no affirmative response.

And I think I've already asked you this but it's worth stating again. Has anyone read, seen or heard anything about this December 10th, 2011 incident at Wal-Mart on Whitehorse Road?

Okay, let the record reflect --

Oh, you have? Okay. Stand up and give me your

name and juror number, please.

PROSPECTIVE JUROR: Kyle Martin, 43.

THE COURT: Okay. Have you heard media reports is that correct, sir?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Read it in the newspaper, see it on the news?

PROSPECTIVE JUROR: Well, at the time my step-daughter was actually working there when it happened.

THE COURT: Okay. All right. So, you heard from it -- from an account with an employee of Wal-Mart?

PROSPECTIVE JUROR: Yes, my step-daughter that was an employee at the time and on the news.

THE COURT: Okay. Do you think that you can still be fair and impartial in this case, sir?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Good enough, thank you for telling me.

Yes, sir.

Either of you.

PROSPECTIVE JUROR: Number 10.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: Seen it on the news. In the

newspaper.

THE COURT: Okay, do you think that you can still be fair and impartial having seen it on the media?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you for telling me, I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Travis Norman, juror No. 49, I seen it the news, media on it.

THE COURT: Okay, do you think having seen it on the news that you can still be fair and impartial, sir?

PROSPECTIVE JUROR: I think I could.

THE COURT: Okay, thank you for telling me, appreciate it, sir.

Yes, ma'am.

PROSPECTIVE JUROR: Priscilla Winley, juror No. 80, I saw it on the news.

THE COURT: Okay, you think you can still be fair and impartial in this case, ma'am?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay, thank you, I appreciate it.

Anyone else?

There was no response.

Is there anyone on the jury panel who believes that lawsuits can influence governmental organizations or companies to operate more safely?

All right, let the record reflect no affirmative response.

Is there anyone among you or a member of your family, to your knowledge, ever brought a lawsuit or asserted a claim against a law enforcement agency or officer, 911 officer, dispatcher or communication officers or first responder?

All right, let the record reflect no affirmative response.

Is there anyone among you who has been a victim of criminal domestic violence?

Yes, ma'am.

PROSPECTIVE JUROR: Heidi Letterman, juror No. 40.

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: My first marriage of eight years was a criminal domestic relationship.

THE COURT: Do you think that you can still be fair and impartial in this case, ma'am?

PROSPECTIVE JUROR: It's not likely.

THE COURT: Okay, I appreciate you telling me that. Thank you.

All right, anyone else?

There was no response.

All right, is there anyone among you or a member of your family, to your knowledge, ever been stopped or arrested by a law enforcement officer for anything other than a minor traffic violation?

Yes, ma'am, name and juror number?

PROSPECTIVE JUROR: Jo Rae Jetton, juror No. 33.

THE COURT: Okay. All right. And, ma'am, having been stopped, did you have any problems with an investigating officer or an arresting officer or law enforcement?

PROSPECTIVE JUROR: Are you talking about a vehicle thing?

THE COURT: Anything other than a vehicle stop. If it was just a traffic -- a minor traffic violation, you don't need to worry about it.

PROSPECTIVE JUROR: I was--

THE COURT: You don't have to tell me what it was.

PROSPECTIVE JUROR: Okay.

THE COURT: All you have to do is say yes or no. The purpose of me asking you these questions isn't to embarrass you or pry into your personal business. It influences what the strikes are that the attorneys

will make. So, really, what I'm asking you is, have you ever been stopped or arrested for something other than a minor traffic violation? And if so, did you have issues with law enforcement?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. All right. And can you tell me would that experience affect your ability to be fair and impartial in the case before the Court today?

PROSPECTIVE JUROR: I don't think it would affect me, no.

THE COURT: Okay. All right, thank you for telling me. I do appreciate it.

Yes, ma'am.

PROSPECTIVE JUROR: I'm Heidi Letterman, juror No. 40, yes, I have.

THE COURT: Okay. All right. Why you say, Yes, you have. You had issues and problems with law enforcement officers?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Okay. And I know you've already stated to me that you thought you had some issues with this case and that it would affect your objectivity. Would that still continue to affect your objectivity?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay, thank you, I appreciate it.

Yes, sir.

PROSPECTIVE JUROR: Judge, I'm Benjamin Smith, juror No. 63. And I guess to, you know, go with your question, my brother, he had a CDV charge against him and I was there. And it wasn't his fault and I saw it. So, the police came and talked to them and it was just kind of -- yeah.

THE COURT: Okay. Do you think given that fact that you can still be fair and impartial in this case?

PROSPECTIVE JUROR: Yeah.

THE COURT: Okay, thank you for telling me, I appreciate it.

Okay, if you've responded in the affirmative already to this question in some form, you don't have to respond again. But I'll pose a more specific question to you and general question. Have you or any member of your family, to your knowledge, ever had a bad experience with a police officer or a law enforcement officer or a 911 or a communication specialist or a dispatcher officer?

Yes, sir.

PROSPECTIVE JUROR: Juror number 25, Charles

Harrigan.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: My brother filed a complaint against a Greenville County officer.

THE COURT: Okay. Do you think you can still be fair and impartial in this case given that fact, sir?

PROSPECTIVE JUROR: Most likely.

THE COURT: All right, thank you, sir, I appreciate it.

Anyone else?

And I know there are a couple of you that have already responded so you don't need to respond again. Anyone else? Okay. All right, ladies and gentlemen, is there anyone among you who for whatever reason feels as though you could not be a fair and impartial juror in the trial of this case and render a verdict in accordance with the law as I give it to you?

Yes, ma'am, and you've already stated that clearly and I appreciate it.

Okay. Okay, gentlemen, any additional questions of voir dire?

MR. WILSON: None from the Plaintiff, Your Honor.

THE COURT: Did I miss one, Mr. Harter?

MR. HARTER: I don't think you did, Judge.

Thank you.

THE COURT: All right.

Okay, ladies and gentlemen, at this point the attorneys are now reviewing the strike sheets that have been prepared by the Clerk's Office. When you were qualified this morning, after qualification, the clerk generated a random listing of jurors. So, the attorneys could make strikes in this case. Subsequent to the voir dire, the attorneys are reviewing those lists to determine what strikes they will actually make in this case. Now, your names are listed in random order. They're not in alphabetical order and they're not in order of your juror numbers. Each side will get four strikes. The Plaintiff will strike first, then the Defendant will have the opportunity to strike.

When they strike they strike by number -- by the number in sequence that it was arranged by the Clerk of Court's Office. So, you won't know whether you're stricken or not. If you're juror No. 5 and you hear the attorneys say, We strike No. 5, it's not going to be you, it's going to be No. 5 on this list. So, you will never know if you've been stricken or not. When the attorneys indicate to me that they're ready, then we'll begin those strikes. But I'll give them some

latitude in looking over the list.

You ready?

MR. WILSON: Judge.

THE COURT: Yeah?

MR. WILSON: Let's just approach the bench.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

(WHEREUPON, an on the record bench conference was held in the presence of the jury but out of the hearing of the jury.)

MR. WILSON: Did you excuse Ms. Letterman?

THE COURT: Yeah, she indicated that she couldn't be impartial so we're going to take her off the list. So, you'll execute your first strikes between 1 and 21, excluding No. 6.

(WHEREUPON, the bench conference concluded.)

THE COURT: Okay, y'all want one or two?

MR. HARTER: We want two.

THE COURT: All right, Madam Clerk, your show.

THE CLERK: Plaintiff strikes first.

MR. WILSON: Please excuse juror No. 10.

THE CLERK: Plaintiff strikes 10.

MR. HARTER: Defendant strikes No. 17.

THE CLERK: Defendant strikes 17.

MR. WILSON: Please excuse No. 11.
THE CLERK: Plaintiff strikes 11.
MR. HARTER: Defendant strikes No. 3.
THE CLERK: Defendant strikes 3.
MR. WILSON: Please excuse No. 13.
THE CLERK: Plaintiff strikes 13.
MR. HARTER: Defendant strikes No. 21.
THE CLERK: Defendant strikes 21.
MR. WILSON: Please -- just one moment, please. Please excuse No. 7.
THE CLERK: Plaintiff strikes 7.
MR. HARTER: Defendant strikes No. 8.
THE CLERK: Defendant strikes 8.
Now, we'll get the first alternate from 22, 23 and 24.
MR. WILSON: Please excuse No. 22.
THE CLERK: Plaintiff strikes 22.
MR. HARTER: Defendant strikes 24.
THE CLERK: Defendant strikes 24.
And our second alternate will come from 25, 26 and 27.
MR. WILSON: Please excuse No. 25.
THE CLERK: Plaintiff strikes 25.
MR. HARTER: Defendant strikes No. 27.
THE CLERK: Defendant strikes 27.

Gentlemen, I'll call these back to you. Plaintiff strikes 7, 10, 11, 13, 22 and 25. Defendant strikes 3, 8, 17, 21, 24 and 27.

MR. WILSON: That's correct.

MR. HARTER: That is correct.

THE COURT: All right, counsel, any matters of law or issues to take up with regard to the qualification or selection of this jury?

MR. WILSON: Could we have just one moment, please, Your Honor?

THE COURT: Yes, sir.

MR. WILSON: None from the Plaintiff, Your Honor.

MR. HARTER: None from us.

THE COURT: All right, good enough.

Call them forward.

THE CLERK: Ladies and gentlemen, when I call your name, please, bring your things and have a seat in our jury box. Charles Cornish, Darrell Washington, Keith O'connell, Hans Hansen, Robin Burns, Bobby Chapman, Jeffrey White, Juliette Phillips, Corbitt Johnson, Alexandria Nunweiler, Pearl Collins, Amanda Carden. Our first alternate is Benjamin Poole. Second alternate is Taylor Higgins.

THE COURT: All right, ladies and gentlemen, my

condolences to those of you who didn't make it on this jury, better luck next time. We may be calling another jury this week, it really all depends on how long this trial lasts. So, what I'll ask you to do is go back downstairs to your jury coordination room and I think Judy is going to dismiss you almost immediately. But I think she's got some certain points of business to take up with you. So, thank you for coming up. If I don't see you again, thank you for your service on jury duty. And I hope y'all have a good week. If I don't see you again, a good weekend.

(WHEREUPON, the jury venire was excused at approximately 11:35 a.m.)

THE COURT: All right. Counsel, I know that we had discussed earlier this morning y'all have a few matters to take up pre-trial. Are those motions, issues, still outstanding?

MR. WILSON: They are, Your Honor.

THE COURT: Can we still do our opening statements before those matters are resolved?

MR. WILSON: No, Your Honor.

MR. HARTER: I think we could, but.

THE COURT: All right. All right.

Ladies and gentlemen, what I'm going to do is

I'm going to take a short -- I'm going to ask y'all to take a short break. Mr. Anderson will show you where your jury room is and get you acquainted with the logistics of the courthouse. And I'm going to do one of two things. I'm either going to bring you back in and do a brief opening charge on the law and opening statements, or I'm going to release you for lunch. It really depends on how much time this is going to take. If it's going to take a substantial amount of time, I'm going to let y'all go and bring you back. If I can get it done in about ten minutes, I'm going to go ahead and proceed, okay. So, you'll know in just and few minutes. Okay. All right. Thank you.

(WHEREUPON, the jury left open court at approximately 11:37 a.m.)

THE COURT: Okay. How many motions do y'all have?

MR. WILSON: Judge, it's -- I'm sorry, Your Honor, it's six issues that are all laid out right there.

THE COURT: All right.

MR. WILSON: Mr. Harter has a copy of that. Judge, I think some of them are probably agreeable as we go through them.

THE COURT: Okay.

Bring them in, please.

(WHEREUPON, the jury came into open court at approximately 11:45 a.m.)

MR. HARTER: Can I take up something?

THE COURT: Sure.

(WHEREUPON, Mr. Harter had an off-the-record conversation with Mr. Wilson.)

THE COURT: All right, ladies and gentlemen, I'm going to take this opportunity to give you an opening charge. That is to tell you how we will conduct this case and generally the rules and procedures that we will follow during the conduct of the case. Take me about 15 minutes. When I'm done, when I'm done, I'll release you to lunch and then ask you to come back in an hour or hour and a half, depending on how much time we need. Now, ladies and gentlemen, I always find that it is helpful on the front end of the case for me to give you some idea of the process and the procedure that we will follow in the conduct of the case. And then I'll also explain to you what your role is as jurors in the case.

So, we'll start there. Your role as jurors in the trial of the case is to be the triers of fact. The finders of the fact. You will determine what the

facts are in this case based on the evidence that is presented at trial. Now, you have the sole and exclusive responsibility and authority to determine what the facts are. The parties will introduce evidence in the case. You will take that evidence, you will weigh and value it. You will determine what's credible and what is not credible. And from that you will determine what the facts are. After you have determined what the facts are, in your sole and exclusive desecration, then you will apply the law as I give it to you to the facts as you determine them to be and come to a verdict.

Now, I've told you, you are the judges of the facts. But I am the judge of the law. So, I just told you you will apply the law as I give it you to the facts as you determine those -- as you determine them to be. Now, I'm the judge of the law. Which means that during the conduct of this trial I'll make sure we're following the appropriate procedure. and I'll make sure we're following the law, the rules of evidence and the rules of court.

Now, during the conduct of the trial, it will be necessary for me to make rulings on motions that are made by counsel. Now, when I rule on a motion, I necessarily am going to rule for someone and against

someone else. I don't want you to take from that that I have a preference or bias one way or the other. I truly don't. But when a motion is made then I must necessarily make a decision. And I'm making an objective decision based on my understanding of the law and on my understanding of the rules of evidence. But understand I'm just a fair and impartial umpire calling balls and strikes. And I don't have any stake in the outcome of this trial. And I don't have any opinion about what your decision should be.

If during the course of this trial I say anything that gives you the impression that I have an opinion about what the facts are in this case or about what your decision should be, disregard that because I can assure you my only, my only interest in this case is to ensure that both the Plaintiff and the Defense and all of you as well have a fair trial in this case.

Now, ladies and gentlemen, when this trial begins what will happen is the attorneys will have the opportunity to make brief opening statements to you. Now, those opening statements, generally speaking, are intended as a way for the attorneys to introduce themselves, their clients and their theory

of the case. Now, those opening statements are not evidence. That's advocacy, introductions, arguments posed by the attorneys. Those arguments, those introductions and even the questions that are posed during the conduct of a trial by attorneys are not evidence. The evidence is what is produced on the stand. Either by way of testimony from witnesses or introduction through that testimony.

So, after each party has the opportunity to give you opening statements, then the Plaintiff will have the opportunity to present her case. Now, the Plaintiff goes first because generally speaking the Plaintiff has the burden of proof. So, what the Plaintiff will do is call witnesses to the stand. They will call their first witness. That witness will come forward to the witness chair, take the oath of a witness and will testify. The Plaintiff will examine that witness, meaning the Plaintiff will ask that witness questions. The defense will have the opportunity to cross-examine that very same witness.

By and through the testimony of that witness, the parties may introduce additional evidence such as documents, such as video tapes, audio tapes, actual physical objects, evidence can take a lot of different forms. And you may see evidence introduced

in this case in several different forms. I can't tell you right now because I'm in the same position that you're in, which is I don't know what the evidence is going to be because I've haven't heard any of these witnesses or seen any of the evidence either. But that evidence will be introduced through the testimony and the introduction of the case.

After the first witness has been called and all the questions have been exhausted, then the next witness will be called. Again, that witness will take the oath of the witness, examination, cross-examination and then we will move on to the next witness. Ladies and gentlemen, after the Plaintiff has had the opportunity to present all the evidence that it deems necessary and appropriate, then the defense will have the opportunity to then call witnesses to the stand and introduce evidence as well. After the Defense rests, then under certain circumstances and from time to time the Plaintiff will put up rebuttable or reply evidence from time to time. If that is going to happen I'll let you know. Usually that's very surgical and it's designed to address a specific point that's made by the Defense.

After having heard all of the testimony from both parties and after all the evidence has been

presented, then the attorneys will have the opportunity to make closing arguments to you. Now closing arguments are just like opening statements, which is it's not evidence. You will have heard all the evidence that will be presented in the case at that point. And they will simply be commenting on the evidence that has been presented. Arguing in attempting to pursued you to their respective sides.

After you've heard closing arguments from counsel, then I will give you a closing charge on the law. The reason I wait till the very end is because, as I've already told you, I don't know what evidence is going to be presented in this case. And the charge on the law that I give you will relate to the evidence that's presented. And I don't what the evidence is going to be yet. So, at the end I'll give you a closing charge on the law relevant to the evidence that's been presented in this case.

After I give you a closing charge on the law then I'll ask you to return to jury room and you can begin your deliberations. Now, it's very important for you to know that you cannot begin any deliberations, any conversations, any considerations about the evidence in this case until such time as I tell you to at the end of the trial.

Now, at the end of the trial is probably going to be on Thursday, if I had to guess right now. Don't know for sure but that's my guess right now. So during the intervening period, when we're taking breaks or when you are being released from lunch or going home, it's not appropriate for you to discuss the case with your fellow jurors or with anyone outside of the jury either. I've heard over the last several weeks judges commenting on jurors saying we weren't discussing the case, we were just talking about the witnesses. Well, just to clear up any confusion, talking about the witnesses and what they said is talking about the case. Okay.

So, keep your powder dry. You're going to have all the time that you want to discuss the case. I promise you that. And when the trial is over, you can discuss it casually with anyone you'd like to discuss it with. But during the pendency of the trial, don't begin any deliberations or discussions regarding the case.

Now, I recognize that through your common sense you probably know why that is. But at the risk of insulting your intelligence, I'm going to state it any way. You know that in your life, you know, that you cannot make any informed or intelligent decision

until an unless you've heard all of the evidence or all of issues and all the facts that bear upon the issue. You know that probably at some point in your life you had a child or a brother or sister, or parents, friends, whoever, who have come to you and said Hey, you're not going to believe this and have told you some story. And you were convinced of what they told you. Until you heard the other side of the story. And once you heard the other side of the story, it changes the completion of the issue entirely. Well, a trial is the same way. And it's important that you hear everything before you begin making any determination. Keep your powder dry, hear from both sides, hear all of the evidence, hear the arguments. And then, hear the law as it relates to the evidence, then you can begin making an informed and intelligent decision on this case.

Now, we're going to take regular breaks throughout the case. I don't intend to keep you as hostage in that jury box for the next three days. All right. Because I don't want to be hostage up here. I usually take breaks about every hour to an hour and a half depending on where the testimony is, where a witness is in his or her testimony, where we are in our day, okay. But I generally find that

between an hour, hour and a half is about the right amount of time for us to take a pause and to refresh, then come back into the courtroom, okay. We'll take regular lunch breaks. We'll take those about midday, whether it's 12 or 1:00. Again, depending on the evidence, the witnesses. And we'll try to end at a regular business day, that is 5:00. If we're going to go a little bit past 5:00, I'll try to tell you as early in the day as possible so you can make arrangement. But I'm hopeful that we're not going to do that. I'm hopeful giving the posture of this case that we're going to be ending about 5:00 everyday unless there's just some constraint that visits upon us that we have to address, okay.

During all of our breaks, please don't discuss the case. Again, not among yourselves or with your significant others. Okay. When you go home, I recognize that your wife or your husband or your friend, whomever, is going to invite you to discuss the case. They'll say, come on, come on, tell me what's going on? What are you seeing? Don't discuss it with them. Because what happens is that once you begin to tell them, okay, here's the case and this is what it's about, as far as I know, that then -- invariably they ask a question. And then you respond

to the question. And before you know it, you're making qualitative determinations about the evidence that you saw. So, just tell them, I can't discuss it now but I'll discuss it with you when the trial is over.

Also, don't conduct any self help. I know that I asked you questions specifically about whether you had seen anything in the media about this case. I don't know whether you can get on your computer or your smart phone and do a goggle search and find out anything about this case. I suspect that it's stale. That is that any media reports happened a long time ago and you couldn't find them, but don't even try. Because that would taint your deliberations. The only thing that's appropriate for your consideration in this case is that which is presented in trial under the rule of court and the rules of evidence. If you go out and conduct self-help, then you will have tainted your deliberations and we'll just have to stop and start again. So, I'll charge you don't do that.

When you go home, when you take breaks, watch Monday night football, have a good time. You know, talk to your spouse about kids and things of that sort, don't talk the case, okay. Don't try to find

out anything about the case. During the course of the trial, if you need to take a break for whatever reason let me know. You are the 14 most important people in this courtroom. So, it's important that you're payings attention. So, if you need to take a break for whatsoever reason, even if it's two minutes after we've we already come back in on the record, get my attention, get the bailiffs attention and let us know. Because I would much rather you be paying attention to what's happening on the witness stand than thinking, Boy, I wish they would be quite because I'm not focused and I need to take a break. Let me know, we'll take a break and come back in. Okay.

All right. Ladies and gentlemen, the last thing we're going to do before I release you for lunch is ask the clerk of court to swear you in. Now, you've already taken an oath this morning the tell the truth. This is a different oath. This is to verily and truthfully try the case in accordance with the law as I give it to you.

So, Ms. Coker, I ask you to administer the oath.

THE CLERK: Ladies and gentlemen, please stand and raise your right hand for the oath in this case. The response will be I will.

worked for an agency for two years or longer, your certification is valid. You don't recertify every certain amount of years.

Q Do you continue to get trained by Greenville County?

A We get training on different things, but not necessarily on everything that you would in the Academy. We have certain classes that we may attend. The last class that we attended was a class, which is basically dealing with mental health, people that may call in.

Q Okay. Well, let me ask you if you remember being taught some specific things.

A Okay.

Q Were you taught that one of the things an operator must do is be very careful not to become complacent or jaded in fielding these calls?

A Yes, that's correct.

Q Okay. And were you also taught the requirements of General Order 238?

A Yes. We get revisions of any new general orders or policies and procedures. We have to agree -- not necessarily agree, I'm sorry, but we have to review them and sign off that we understand what's in the information.

Q Let me show you the part -- it's a little bit highlighted, it's not in yellow, but it's sort of shaded

there. This is under what is domestic violence. And just let the jury know if you were trained on that part.

A Yes. Yes, I was trained on understanding domestic violence and what is classified as a domestic violence call.

Q Okay. So, even though this is a 2013 -- out of a 2013 manual, it's the same thing you were taught when you went through?

A Yes, it's basic information. And yes, that information that is on that form, on that sheet, yes, that's the information that we were taught.

Q Okay. And as part of what you learned, you had to identify what domestic violence is, correct?

A Yes, that's correct.

Q And domestic violence is essentially when there is people living in the same household who are committing acts of violence against each other?

A Or intimate partners that are no longer living in the same household, but have cohabited, that is correct. We were taught that.

Q So, you would agree with me that Lilia Blandin and Avery Blandin qualified as household members?

A Yes, they did qualify as household members.

Q And if Avery Blandin had punched Lilia Blandin in the stomach, that would meet the definition of criminal

domestic violence, correct?

A That would be, yes, domestic violence.

Q What about threats? Can threats meet the definition of domestic violence?

A If it's something that's occurring at that moment, then yes. If somebody is being threatened, yes, that could meet the definition.

Q Okay. Now, when you went through, were you taught about the four categories and theories of domestic violence?

MR. HARTER: I'm sorry, what is she looking at?

MR. LUGINBILL: It's the next page, four categories and theories of domestic violence.

MR. HARTER: Under the general orders?

THE WITNESS: No, this is information from the Academy.

I don't know if -- it has been over 10 years since I've been in the Academy. I don't know if this information was there at that time. But I do understand the basic information regarding physical abuse, sexual, emotional and psychological abuse.

Yes, I understand that general basic information.

BY MR. LUGINBILL:

Q That information that's on that -- on that sheet?

A Yes.

Q That comports with your training?

A Yes.

Q Okay. Thank you. And usually -- the physical abuse aspect of it, were you trained that it generally escalates?

A Yes, we understand that physical abuse can escalate.

Q And were you trained on the cycle of abuse?

A Yes, we understand that. Yes, we were trained on that at the Academy.

Q And were you trained that some of the risk factors include low income?

A No. If I remember correctly, at the Academy, they said it does not matter what the income status of a person is, that from -- people even at the higher income brackets that there's still domestic violence in those relationships, also. So no, they didn't base it on income factors.

Q How about alcohol or drug use?

A Yes, they said that that can be one of the contributing factors.

Q Financial pressures, unemployment, things like that?

A Well, I would assume pressure, period. Not

necessarily financial, but pressure period could be some of the contributing factors to domestic violence.

Q Is it your understanding that part of your job is to sort of set the tone for the call?

A Yes. But also, the caller, when they call in, they may have already said certain things or they may already be at a certain state, but I have to understand everything. So yes, if you're saying my tone or anything like that dealing with the caller -- there's certain different tones that you use for different callers, so yes.

Q In Mr. Harter's opening, one of the things he said is you don't have the benefit of a real time transcript running in front of you; is that right?

A That's correct.

Q But you do have the ability to sort of control the conversation, correct? In fact, that's what you're trained to do?

A Yes, we're trained to try to take control of the conversation if at all possible.

Q And part of the reason for that is so that you can ask the questions that you need to to get to the important part of the call, correct?

A That's correct.

Q If you have a call that's somewhat about custody

or somewhat about clothing retrieval and you have a call that at the same time is about threats of death and beating, are you trained to take the death and beating as the most serious possibility?

A I'm trained to listen to everything the caller has said, not just whether they're referring to threats of death and beating versus referring to items and child custody. I have to listen to everything that they've said and decide on what is needed.

Q Are you trained to err on the side of caution?

A Yes, I'm trained to err on the side of caution, but I cannot take and make a call a priority call that is not a priority call at that moment. I have to base it on everything the caller has said. And if it's not a priority call, because of the fact that I want it to be one does not necessarily negate the fact that it's not. That's a sergeant's decision to make if I have put a call in for child custody to determine whether or not it actually is.

Q We're going to subject the jury to the full tape one more time here.

A Okay.

(WHEREUPON, the 911 call tape was published to the jury.)

BY MR. LUGINBILL::

Q Now, Ms. Sullivan, what about that call led you to believe that it was an items call and not a domestic violence call?

A Okay. At the beginning of the call, she tells me that her husband has been arrested for criminal domestic violence and he's at the house now. She also says that her child is in the house and she tried to get her things and she does not want to go into the house because she's afraid that if she goes in there that he is going to beat her up. So, when she says that he is at the house now, I'm thinking that that whole incident that she is saying regarding being beat up or anything like that is something that's already been taken care of, he has been arrested and that she wants to go inside and get her things. Because she says that I'm not at the house. So, that's what led me to believe that it was a child custody call.

Q Let me stop you there. Did you -- she was -- she said that the husband had been arrested for CDV, correct?

A Yes, correct.

Q And that he was at the house?

A Yes.

Q And she very clearly did not want him there?

A She says that she does not want to be there.

She does not want to go into the house and get her things because he will take and beat her if she goes in, that he's threatened to beat her if she goes into the house.

Q Would you agree with me that leaving your child in the home with somebody who is a domestic abuser is something no mother should do?

A Yes, I would agree with that.

Q So, there's a risk to that child based on what was just described to you, isn't there?

A Well, there's a potential risk to that child, but she did not say anything about the fact that the child had been threatened. The child had been in the house all night long with him. And this is the next day that she's calling and saying that she wants to go into the house now and get the child. So, if she felt that the child was in danger that night when this incident occurred or whenever it had occurred, she would have called then to indicate she wanted to go get the child.

Q Was it your understanding that the threat of death and the beating took place that night?

A I was understanding that there had been -- I don't necessarily know about the beating because I didn't quite understand everything she said at the beginning of the call, but I was under the impression that he had threatened her last night or there had been some incident

last night.

Q And you were in control of the conversation, correct?

A At the beginning of the call, I was not because she called in, she gave a bunch of information at the beginning of the call. But after I spoke to her and asked her to slow down, then I was in control of the call.

Q And you could have asked specifically when did he hit you?

A Well, she had already told me that he had been arrested. Yes, I could have asked specifically did it occur today, but I did not ask that because she had told me at the beginning that he was out of jail now and at the house and that she was not and that she had been in her car all night.

Q If she had told you that he had beaten her last night and it's now 10:00 in the morning, why isn't that a domestic violence call?

A It is not a call that is in progress. She wants to go get her child, that was what her concern was. She wanted to go into the house to get her child. That is not a domestic violence call because it's not anything that's in progress that will fall under domestic violence rules that we use to decide on how we're going to handle our calls for service.

Q Is it your testimony here today under oath that it is a policy of the Greenville County Sheriff's Department to only treat in progress domestic violence as domestic violence calls?

A Well, this was not a violence call at that moment. So, if it's an already-occurred call, it could still be treated as a domestic violence. But I did not understand her to say that he had beat her. I understood her to say that he had been arrested for the domestic violence and that he had -- he was out of jail now. So, I did not understand her to say that this was an in-progress assault call or anything like that. I understood the call as a threat and she did not want to be threatened, that's why she wanted to go get her child.

Q Is it not your job to make sure you understand that before you decide how to classify the call?

A I thought I did understand the call correctly and that's the reason that I put it in as a child custody call.

Q Are you telling the jury that as you sit here today you were incorrect?

A No, I'm not telling the jury that I'm incorrect. I'm telling the jury that based on the entirety of the call, everything that she said to me that that call was a child custody call and that's the reason I put it in that

way.

Q What new information did you have after Neil Logan changed it that prompted you to change it back to a custody call exactly one minute after Mr. Logan made it a domestic call?

A There was not any additional new information that I had. I was still under the impression that it was domestic -- excuse me, that it was a call for custody. I wanted to speak to Mrs.~Blandin before we had officers responding to information that may be incorrect. So, that's the reason I put the call back in as a call for a sergeant to decide on whether or not we'll respond.

And in the meantime, while I was doing that, I was calling Mrs.~Blandin back to get further and make sure there was nothing that was going on additional to when I had originally spoken to Mrs.~Blandin.

Q I want you to look at the transcript that's going to be coming up here in a second. This is the part we just listened to, correct?

A Yes.

Q All right. She tells you she needs help. My husband has been arrested for domestic violence and he's out of jail. He's at my house. And she said, I took my clothes, I tried to leave. I tried to get my stuff and he beat me on the stomach and told me he was going to kill

me. Now, my baby is on the second floor and I have to go get her, but I don't want to go inside because I know he's going to put me in that room and he's going beat me up.

A Uh-huh.

Q Two things I want to ask you about. So, it's your testimony here today that you believe that this stuff here happened the night before?

A Yes. I understood the call -- and I don't necessarily know if it was a beating that happened the night before or if she is saying that this is what is going to happen if she goes into the house, that if she goes into the house, this would happen because of the fact that there is some broken English and there's the accent. I understood part of what she was saying and I took it as if she goes into the house, this is what is going to happen. Because part of -- the center of the conversation, it was a little confusing as to the way she was saying it. But then, I did understand her clearly when she said if I go into the house, this is what is going to happen to me.

Q She was afraid she was going to get beat up if she went in, right?

A Yes, if she goes into the house.

Q And she was afraid she was going to get beat up because she had just gotten beat up?

A Well, I did not understand her to have just been beaten. I understood her to have had an incident where he had been arrested and that if she goes back into the house, there's going to be another incident.

MR. LUGINBILL: Scroll down. All right. Stop it right there.

BY MR. LUGINBILL:

Q So, what you clarified was is your husband at the house and you want to go get your things; is that what you're saying?

A Yes.

Q All right. Then she says, Yes, but he has threatened me all night. So, that's recent, correct?

A Well, if -- no, it's not recent. This is 10 something in the morning. If he had threatened her all night, then she would have been on the phone that night. So no, this is not recent. She is calling hours later, so no, I don't consider that recent.

Q I had to sleep in my car, so my baby went back on top and she was lying asleep in the bedroom, but I'm not at the house.

And then you cut her off. She was trying to tell you some more stuff here, correct, but you took control of the conversation again?

A I didn't realize that I cut her off but she said

that she is not at the house and the baby had went inside and she wanted to go in to get the baby.

And she said, But I'm not at the house.

I didn't think I had cut her off. I thought she was finished making her statement.

Q You would agree with me that the first thing you did up here when you first spoke to her was you asked her if she wanted to get her things, correct?

A Yes.

Q Then she told you some more stuff about being threatened and you said, You want your clothes or do you want your child, correct?

A Yes. Because I heard her say stuff and I didn't assume that she was referring to the child as stuff when she said that.

Q Okay.

MR. LUGINBILL: Scroll down. Stop, go back up. There you go.

BY MR. LUGINBILL:

Q Then she reiterates, she tells you a second time, I don't want to go inside the house because he's already hit me in the stomach and he's told me he's going to kill me. This is the second time she's told you he's going to kill me, correct?

A Yes. Again, I am going with the very beginning

of her conversation where she says in the very beginning her husband is at the house, he had been arrested for criminal domestic violence. I'm going with the very beginning of that information that she told me. And based on that information when she says he is going to kill her, I'm thinking that she's referring to the incident that happened prior and that she is not at the house and she still just wants to get her child.

Q Do you believe you were wrong in that assumption?

A No, I don't.

Q You still believe that he did not threaten her on the morning of the 9th?

A I don't know when he threatened her. I believe that he had threatened her. I believe there had been threats probably in the past and even probably that night, but it was not anything that was immediate at that moment that was a threat.

Q Did you ask the when question?

A It was not necessary for me to ask the when question because she had told me that it had happened that night. That anything that had happened, it had happened that night. This is the next morning. So, when was already occurred.

Q You agree with me that she was afraid to go back

in, correct?

A Yes, I most definitely agree with you that she was afraid to go back in. That's why she told me she was not at the house and that's why I told her the second time I called her to make sure when she was -- told -- when I heard the update regarding the call from Ms. Hamby, I made sure that I explained to her, Don't go into the house, don't go back inside the house.

Q This is from General Order 238. And these are the communication specialist's responsibilities?

A Yes.

Q So, these would be your responsibilities, correct?

A Yes, correct.

Q And you have been trained on this?

A That's correct.

Q You would agree with me that it is your duty when you're on the phones to do this when you have a domestic violence call, correct?

A When I have a domestic violence call, correct.

Q And it's your testimony today that you didn't do any of this because this was not a domestic violence call?

A That is correct. Also, domestic violence call is based on for a domestic call to be in progress. It has to be something that's immediate. This was not anything

that was immediate. She --

Q Well, let me ask you before we get into that based on what you just said. It wasn't in progress?

A Correct.

Q So, have you been trained by Greenville County Sheriff's Office that if the abuse occurred 15 minutes ago that that's not in progress?

A It's not an in-progress call, it's a just-occurred call, so there could still be situations where the person could still be in harms way.

Q All right. That's a good answer. If you believe the person is in harms way, should General Order 238 be followed?

A Yes.

Q So, it's your testimony today that you did not believe that Lilia Blandin or her children were in harms way?

A I did not believe Mrs.~Blandin was in harms way. As for her child, if the child was in harms way at that moment, then she would have said nothing to indicate that. But no, I did not believe Mrs.~Blandin was in harms way because I did not believe Mrs.~Blandin was at the house.

Q Whose job is it to get the important information out, the caller or the call taker?

A It's a mutual bond with both of us when they

call in. They're going to give me information, I'm going to, as the call taker, question them. And she gave me information that based on that information I understood what she was saying as a child custody call.

Q Would you agree with me that if you had asked these questions, you would have had a better idea of whether or not this was a domestic violence call?

A I would have still based on that information understood the call to be a child custody call because the incident, such as any serious injuries or EMS required. She was not in any situation where this was going on at this moment. If she was injured, she would have indicated that at that moment. Whether the suspect is present, I took it to be that she was not there at the residence. Were there weapons involved? She told me that she was not at the residence, so how would she know if there were any weapons involved in the incident if she is not there.

Q Let me stop you there for a minute.

MR. HARTER: I'm sorry, I think she's still talking.

THE COURT: You still answering, ma'am?

THE WITNESS: Yes, I am still answering.

THE COURT: You can continue.

THE WITNESS: Okay. Whether the suspect is under any drugs or influence of alcohol? She's

not -- based on what she said, she's not as the residence. Whether the children are currently presence in the home? I already know the child was in the house. She had told me that information. Whether or not there was a current protection order? No, I did not ask her that because I didn't think the call was a domestic violence call. And the complaint history at the dispatch location, she had already told me that there had been prior incidents of CDV. So, I had the information. Other than the protection order, that's the only information that I did not have.

BY MR. LUGINBILL::

Q The information on serious injury, you never asked her if she was hurt, correct?

A No, I did not ask her if she was hurt because of the fact that she told me at the beginning of the call that he had threatened her. So no, I did not ask her if she was hurt because it was a threat.

Q Was the hitting in the stomach a threat or was that an actual assault?

A A hit to the stomach, yes, that is an actual assault, but I took that as an incident that had already occurred and had been handled by the officers.

Q So, you made an assumption?

A Yes, based on the information she had gave me, I understood that to have already occurred.

Q Well, did you also assume she didn't have an injury?

A Well, based on the fact that it was a threat, yes, I didn't take it as had any injuries.

Q But she had been punched, correct?

A If she had been punched that night and the incident had already occurred and the officers had already handled it, then she would have let the officers know that the incident had occurred and she was injured. But I did not take what she said as something that was in progress or that the injuries was something that's going on now. So no, I did not ask her if she was injured because of the fact that I'm taking it as a threat, that she was trying to avoid any future threats or any current threats.

Q To be fair, Ms. Sullivan, you already told me in your testimony today just a couple of minutes ago, that you assumed if she was hurt she would have told you?

A Yes, if she was hurt, but she did not tell me anything about being hurt. And based on what she had told me, I did not think that she was injured because of the fact that I am going with the information that she's told me he had already been arrested and was at the house now. So, I'm thinking that that strike to the stomach that

she's talking about was something that had already occurred and he's out of jail for that hitting her to the stomach.

Q If it had happened that night, why would you think he was already out of jail and back in the house? How would that be possible?

A It's quite possible. Usually, when somebody is arrested for criminal domestic violence, they are out of jail again within several hours. You know, that happens. That's just the way it is. And we deal with that. We went out to calls multiple times where somebody has already been out. But based on what she was saying, she had avoided the house because of the fact that she did not want any additional incidents with her husband.

Q That's why the complaint history is important, correct?

A That's correct.

Q And you didn't ask about that or research that, correct?

A I did not research that, but she told me that he was out of jail and I put that information in the second call when I -- after I had called Mrs.~Blandin back, I put that information in there saying that there had been prior incidents of domestic violence.

Q Let's go to the incident recall. While he's

doing that, you would agree with me that you did not know where Mrs.~Blandin was, correct?

A That's correct, I did not know where Mrs.~Blandin was. I knew that based on what she said that she was not at the house, but I did not know where she was. I knew that she was also in her van because she told me that she had slept in her van. So, I knew she was mobile.

Q And you didn't ask her where she was?

A No. She just told me she's not at the house and that's the information that I went with.

Q All right. Once we have this entered, called to advise that the caller is outside the house -- outside the house, correct?

A Yes.

Q And that the husband has threatened to kill her?

A Uh-huh.

Q Caller has slept in the car all night because the husband wouldn't let her in and was 1081, what is that?

A He's causing a problem.

Q Okay. So, based on that, he changed it back; correct?

A He changed it from a child custody call to a domestic call and updated the call for service.

Q Let me stop you. Mr. Logan actually entered this information into the system so that the officers would know why he was changing it, correct?

A Yes.

Q I assume that's the proper procedure to do that. If you're going to make a change, you don't just do it, you tell people why you're doing it, right?

A Well, yes. You want them to understand why there's going to be a change in the status of a call.

Q Okay. And confirmed that she's outside and waiting?

A Uh-huh.

Q That's yours, correct?

A That's correct, that's my comment that I put in. And that also -- then I note that she is referring to a prior incident and that is referring to the comment that Ms. Hamby had made up there regarding the threats to kill her and that the threats to -- that he's causing a 1081 or disturbance.

Q But you changed it at 10:29 --

A Yes.

Q -- exactly one minute after he set it as a domestic call?

A Yes.

Q And you've already testified today that you had

no new information?

A That's correct, I did not have any new information. And that's why I changed it back to a 1021 because a sergeant was put on that call as a 1021. I changed it back, called Mrs.~Blandin to confirm the information. And in the meantime, right after I changed it back to call Mrs.~Blandin to confirm, Eleanor has put the call up for dispatch. So, I'm on the phone with Mrs.~Blandin, Eleanor is dispatching the call and I'm updating the call, so, yes.

Q So yes?

A Yes, I changed the information to a 1021 before I called Mrs.~Blandin. And then after I got off the phone with Mrs.~Blandin and saw that units were being dispatched, I changed it again. So yes, I changed the call base before I had any additional information.

Q Did you believe any of this information was false?

A No, I did not believe the information was false. I believed the information was true to the knowledge that Ms. Hamby had, but I was speaking to Mrs.~Blandin, a person that's actually there. Ms. Hamby is only going -- calling in and giving her information and Mrs.~Blandin actually is able to tell me information at the time as to what is going on and who it was involving.

Q This part right here that the caller is outside the house?

A Uh-huh.

Q That was not what you understood initially, correct?

A No, that's not correct. That's not what I understood. I understood that she was not at the house.

Q So this -- Mr. Logan has a fairly critical piece of information that you didn't have. He has the where question answered, correct?

A He has -- yes, he has the information as to where Mrs.~Blandin is at.

Q So, he now knows that she's right outside the house. The husband who's threatened to kill her is inside the house on the same property and that there's a child in the house with him. That's what he knows, correct?

A He knows this based on third party information, yes. He has that information, but he's assuming this. I wanted to speak to Mrs.~Blandin and actually confirm where she's at and what is going on because based on what she told me last time, she was not at the house. Neil, when he entered his information in, he's getting this from a sister that's not there, who's assuming that Mrs.~Blandin is directly outside the house. I can't go on assumption of where she's at. I needed to confirm actually where

she's at and that's when I called her back. She tells me that yes, she's outside the residence. And I tell her to -- do not go back inside the residence. So, still nothing has happened from when I had initially spoke to her to when I called her back.

Q And you changed it before you found out any additional information?

A That's correct, I did change it before I found out any additional information.

Q Now, this should be the transcript, Exhibit 7, where you called her back?

A Yes, that's correct.

Q All right. All right. And you confirm you're not at your house, that's what you're asking, correct?

A Correct. Yes.

Q Now, when you ask this question, you had already seen on the incident recall that she was, in fact, at her house, correct?

A I had seen on the incident recall that Neil had spoke to a sister who said that she was at her house. I wanted to speak to Mrs.~Blandin to find out where she was and if she's at her house.

Q Okay.

MR. LUGINBILL: Go up.

BY MR. LUGINBILL:

Q And you found out that she was, indeed, at her house, correct?

A That's correct, I did find out that.

Q She was outside?

A Uh-huh.

Q Then you said, Don't go back into the house because I think that's what I told you last time?

A Yes.

Q We can agree you did not tell her that?

A That is correct. And I did not tell her that, but I thought I had spoke to Mrs.~Blandin and told her that. But I did tell her the second time around, Don't go back inside the house.

Q Okay.

MR. LUGINBILL: Let's go back up. Keep going.

BY MR. LUGINBILL:

Q Now, you ask her who Juana is?

A Yes, that's correct.

Q She says, She's my sister.

Okay. Now, I'm going to stop right there. I'm still outside waiting, but he tried -- and then you cut her off again. Is there some reason why you didn't want to know what he tried to do?

A No, I didn't realize that I cut her off.

Q You are a telecommunication specialist, correct?

A That's correct.

Q So, you cut her off and she apologizes to you.

Who is Juana?

Juana is my sister. And she starts to tell you something else and you again cut her off.

MR. LUGINBILL: Go up.

BY MR. LUGINBILL:

Q And Lilia says she spoke with her sister, she said she's going to call the police because they know he's being, presence tense, aggressive with me.

And then you responded, If you're outside, you need to let your sister know that because what you're referring to happened before that you're not in the house with him because she called back and she thought you were in the house with him.

Did Juana Hamby tell Mr. Logan that she thought Lilia was in the house?

A I, actually, did not know what Ms. Hamby told Neil when she spoke to him. I was just going on based on the thought that if she was outside and the sister was saying that he was being aggressive and that he's threatened to kill her that this was something that Neil was updating based on something that's going on now, not something that had already occurred as what I was going on.

Q You would agree with me, however, that that's not what she says, correct? You've now been shown the transcript of Ms. Hamby's call to Mr. Logan, correct?

A Yes --

Q You've seen those?

A -- I've seen those transcripts.

Q And you've heard those tapes?

A Yes, I've heard the tapes.

Q And you're aware that -- today, you're aware that she specifically said that she's outside the house?

A Yes, that she tells Neil that she's outside the house.

Q So, you were incorrect about that?

A Well, I was going still based on the fact that she's outside the house, but that she had been inside the house, that she had tried to go inside the house to get the child.

Q Okay.

MR. LUGINBILL. Go back up.

BY MR. LUGINBILL:

Q And then you said don't ever -- basically, you said, Don't ever call again?

A No, I did not tell --

MR. LUGINBILL: Go back up.

BY MR. LUGINBILL:

Q Right there. You don't need to let her call, also, that's what I'm trying to say.

A I did not tell her don't ever call again. What I was saying was we're getting information from Ms. Hamby. Ms. Hamby is calling and telling us something that is different than what Mrs.~Blandin is telling us. Mrs.~Blandin is there on scene. She's able to provide us with any information that we need. Ms. Hamby is the only one giving us information either based on her opinion or assumptions that she's making that is going on, not something that she's actually seeing at this time.

So, I'm not telling her don't call again. I'm telling her that we need to speak to you and deal with you on this issue, that with your sister calling in that the call is getting confusing and we need to understand what is going on.

Q Ms. Sullivan, isn't it true that the call didn't get confusing, the call got clarified when she called?

A No.

Q It got less confusing --

MR. HARTER: Let her finish.

BY MR. LUGINBILL:

Q Isn't that true?

A No, that's not true. When Ms. Hamby called in, again, she's giving us information from a point that she

is not there. I'm talking to Mrs.~Blandin who's told me information that we needed to know and the information she's told me that we needed to know is for a child custody call. Mrs.~Blandin is calling in referring to a domestic violence call and that's not why Mrs.~Blandin -- excuse me, Ms. Hamby is calling in referring to a domestic violence call that's already been taken care of and Mrs.~Blandin just wants to get her child.

Q Let me ask you this, you've used that term several times today, the domestic violence had already been taken care of. What do you mean by that?

A The husband had been arrested, he was out of jail and that Mrs.~Blandin wanted to go in and get her child. That's what I'm referring to when I say it's been taken care of.

Q But he was there?

A He was there.

Q And she was scared of him?

A She was scared of him, yes, correct. Because he had assaulted her and she did not want to be assaulted again, so she wanted to go get her child in a safe manner.

Q That sounds like it's taken care of?

A The domestic violence portion of her call from previously, yes, that has been taken care of. The getting her child in a safe manner has not. And that's the reason

I put the call in the way I did.

Q Let's listen and just let it run to the call you made.

A Okay.

(WHEREUPON, a 911 call was published to the jury.)

BY MR. LUGINBILL:

Q Is it fair to say that it wasn't until you called back that you realized Lilia was at the house?

A Yes, that's correct.

Q Did you think you had made a mistake at that point and that this really was a domestic violation situation?

A No, I still do not believe the call was domestic violence because I still understood her to be outside the residence, in a safe place because of the fact that she was in her car, she can pull off if she needed to. And she just wanted to get her child.

Q Could you personally get in trouble if you classified something as an items call, custody call and it turned out it was a domestic violence call and the violence happened before an officer could call back?

A If -- okay, could you rephrase that?

Q Take these exact facts.

A Okay.

Q You said somebody will have to call you?
A Yes, correct.
Q So, somebody at some point would have called her to arrange a time for an officer to come to come get her child, correct?
A Yes, a sergeant would have called her back.
Q That's how you expected this incident to go?
A Yes.
Q If you were wrong and it really was a domestic violence call and she's there in the driveway and he's in the house and this person who you know is out of jail on a domestic violence charge injures that child or injures her, could you personally have been in trouble for mischaracterizing that call?
A Yes, I could have been in trouble for mischaracterizing a call that was actually a domestic call that was in progress or something that's just occurred, yes.
Q And isn't that why you called back to make sure you didn't make a mistake?
A No, I called back to make sure Mrs.~Blandin was not at that house and that there was nothing that was differently going on than what Neil had spoke to some person that's not there. And that speaking to Mrs.~Blandin, confirming that there was nothing different

going on at this moment that I needed to stay on the phone with Mrs.~Blandin. So no, I was not trying to make sure I was covering myself, to make sure she was not in an abusive relationship at that particular second.

Q Isn't that why you said, You're not at the house, correct?

A Well, because --

Q You wanted to make sure you were right?

A I'm making sure that I understood her when she said that the first time that she was not at the house. So, that's the reason that I called her back. Because at the beginning, she tells me that she's not at the house. When I called her back, I'm making sure that that's still the same statement, that she is not at that house.

Q And the reason you said -- and the reason you said, Don't go back in because that's what I told you last time. Is because you wanted to make sure she hadn't gone back into that house between the time you talked to her the first time and the second time because now that you know she's there with the abuser, the threat of violence and the threat of injury is a lot more immediate than you originally thought it was?

A Well, it could potentially be, yes.

Q Which means it's really a domestic violence call, not a custody call?

A No, because of the fact that she -- even though she is at the house, she is not in the house. There is nothing going on that is putting her in any immediate danger. If she was in any immediate danger, she could call us back and let us know that I called in earlier, now he's either outside or I'm inside and things have escalated. That was nothing that had called -- changed from my initial call to when I called back to confirm with Mrs.~Blandin where she was -- not only where she was at, but what was going on now from the initial call. So, she was still safe. So no, there was not any domestic violence at that moment.

Q If she's at the house and he's at the house, it would take just a matter of seconds for him to come out and hurt her if he wanted to; isn't that right?

A Yes, he could come out at any minute.

MR. LUGINBILL: Thank you, Ms. Sullivan.

THE COURT: Do you have any questions?

MR. HARTER: I will, Your Honor.

THE COURT: Any of y'all need to take a break before we start cross-examination? Don't be bashful. Usually when I ask that question, I'm looking for somebody to bail me out, okay. So, go ahead and raise your hands.

All right. Y'all take a break and we'll come

back in when you're ready in about 10 minutes or so. Please don't discuss the case.

(WHEREUPON, the jury left open court at approximately 4:00 p.m.)

THE COURT: All right, Ms. Sullivan, you can take a break, too, but since you're under oath you can't discuss your testimony with anyone.

THE WITNESS: Can I step down for just a second?

THE COURT: Yeah, you're on break just like everybody else, yes, ma'am.

Okay. We'll be back in when the jury is ready.

(WHEREUPON, a short break was taken.)

(WHEREUPON, the jury came into open court at approximately 4:14 p.m.)

THE COURT: You may proceed, sir.

MR. HARTER: Ready for me, Judge?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. HARTER:

Q Patricia, let me ask you a few questions. Let me get a little background information from you, if you will.

A Sure.

Q And if you can, can you kind of pull that mic up just a little bit? You can pull it up to you and make

sure --

A Okay.

Q -- old people like me can hear.

A Okay.

Q Will you tell the ladies and gentlemen of the jury a little bit about yourself? Where do you live?

A My name is Patricia Sullivan, I live in Greenville, South Carolina. I've lived here all my life.

Q Tell me a little bit about your education.

A I completed high school. I've had some continuing education courses through jobs that I've had either with the sheriff's office or other jobs that I've had in the past.

Q Okay. And you all are what is called a communication specialist; is that correct?

A Yes, I'm a communication specialist. I'm also the training officer for communications on my shift.

Q Okay. And how long have you been employed with the sheriff's office as a communication specialist?

A Thirteen years approximately.

Q Okay. Now, do you work a set shift or how do y'all deal with that?

A We rotate shifts every six weeks, but I am assigned to a set shift. I work Delta Platoon.

Q Okay. Now, back in December of 2011, we know

you took a 911 call from Mrs.~Blandin?

A Yes, that's correct.

Q 10:13 in the morning?

A Yes, that's correct.

Q Now, tell the jury a little bit about the environment or the setting or how you're set up, or how the communication room looks when you're there?

A It's a large room. It's -- we call it quads, where they have four seats where you have a radio position set up with each radio, channel one, channel two, channel three and channel four, and also, the supervisor's channel. I was sitting at the supervisor's channel that day. Then you have positions that are behind me -- sorry. Positions that are behind me and then positions that are to the right of me.

Q Okay. Now, as you became a communication specialist, did you attend the Criminal Justice Academy?

A Yes, I attended for a week.

Q Okay. Do you remember when that was, Patricia?

A It was either 2002, 2003, I'm not exactly sure. Because it was like the winter part of it, but I'm not exactly sure when it was.

Q Okay. Have you continuously been in communications with the sheriff's office for those past 13 years?

A Yes, that's the only job that I've held is communications at the sheriff's office.

Q Okay. Now, I think you may have suggested this before, but let me clarify a little bit. You get 911 calls from the county; is that right?

A Yes. We receive emergency and nonemergency calls from the citizens of Greenville County.

Q Okay. And now, those calls that you receive, do you -- you don't have any kind of real time transcription of it popping up, do you?

A No. We get the calls in, we listen to the caller, any clarification on what -- you know, try and understand what the caller is saying and we place calls in the system for service for officers to respond to or if another service is needed or that service to be performed.

Q Okay. Now, Patricia, we had a chance to hear the actual 911 call that morning between you and Mrs.~Blandin?

A Yes.

Q Okay. Anything about her accent or her English that was problematic for you?

A At the beginning when she was speaking faster, yes, it was difficult to understand her. That's when I asked her to slow down so that I could understand her more clearly.

Q Now, if she didn't speak English at all, you could have or would have done something different with that call?

A Yes, if Mrs.~Blandin was not an English speaker at all, we would have gotten her over to the language line so that the language line interpreter could translate what she was actually saying. But since Mrs.~Blandin was an English speaker, even though there was some difficulty understanding her, she spoke enough English to be able to assist her.

Q Okay. And now, tell the jury as a communication specialist when you get a call, what do you see your role to be, Patricia? What do you see your function to be?

A I see my job is to help the citizen to be able to decide on what is needed and how to best handle their situation at that time.

Q Is it your position then that you are -- you're to kind of determine what's needed with that call and to route it to somebody somewhere for the appropriate response?

A Yes. I consider myself as a go-between between the citizens and whatever services that they need.

Q Okay. Now, it is sometimes necessary that you filter through the call to find out what's going on and do you have to exercise your common sense and judgment in

doing that?

A Yes. Some callers, you have to question more. Some callers call in and they give you all the information that you need. If the information is not there, then you have to go and question the caller. So yes, sometimes you do have to filter through everything that they're saying and also question the caller if necessary.

Q And what is actually happening is being put on a thing called an incident recall, right?

A Yes. We don't recall everything that the caller is saying on the incident recall, but you summarize what is needed and decide on how to handle the call.

Q Okay. And this shows the primary event or the call came in at 10:13, right?

A Yes.

Q And you had this call with Mrs.~Blandin that we -- what we've heard about, heard part of, which was the first call. And then you entered that as a child custody call; is that right?

A That's correct.

Q And that would have resulted in an officer calling Mrs.~Blandin back to speak directly with her to address what the concern was?

A Yes, that's correct. The sergeant would have called her back and decided on whether or not we would be

able to assist her by going to get the child or if further assistance was needed.

Q Now, then we know -- or we learn there was a 1028 call from Juana Hamby, sister, that gave some additional information. That call came to Neil Logan, right?

A Yes, that's correct.

Q And then you saw that call and then -- or you saw that he changed it from a 1021 call to a 1080 call, right?

A That's correct.

Q And that changed the priority from a three to a one?

A Yes, that's correct.

Q And that was at 10:28?

A That's correct.

Q Okay. And that call, it changed the character of the call and the call would result in and did result in the dispatcher sending two deputies as quickly as possible to the residence?

A Yes. Once the call was changed from a call for a sergeant to an actual call for a domestic call, yes, it was then dispatched out by a dispatcher.

Q Okay. Now, I think you told Mr. Luginbill a little bit about this call. This is the call that when

you saw it or realized that you identified it as a third party call?

A Yes.

Q From somebody else?

A Yes.

Q And that call had information about Mrs.~Blandin being threatened by her husband?

A Yes.

Q But it didn't have anything about custody or children in there, did it?

A No, it does not.

Q Okay. And then as a result of what Neil did, the dispatcher immediately sent units out to the residence, right?

A Yes.

Q Okay. Now, regardless of whether you characterized it correctly or incorrectly, that response was initiated by the sheriff's office when that call came in; is that right?

A Yes. Someone was responding to the call. Once Neil changed it from a call for child custody to a domestic violence, somebody was responding.

Q Then I think you said you called Mrs.~Blandin back to clarify what was going on and what was happening; is that correct?

A That's correct.

Q Okay. And you spoke directly with her and we have the transcript and the recording from that call?

A Yes, that's correct. I called her back and spoke directly to Mrs.~Blandin herself.

Q Okay. Now, let me ask you something. If you look at the incident recall, a couple of things are happening, aren't there?

A Yes.

Q At 10:28, there's a call from the sister; is that right?

A Yes.

Q And that involves Neil being connected to the call, right?

A Yes, that's correct.

Q Okay. And then at 10:36, units are sent; is that right?

A Yes, the call has been pulled up to be dispatched.

Q And then at 10:37, you're speaking with Mrs.~Blandin?

A Yes, I'm speaking with Mrs.~Blandin between those times.

Q Okay. Now, Patricia, are you absolutely infallible about the calls you take and the decisions you

make and how you characterize things?

A No, I'm not. You know, we take calls based on what we understand the caller to say and that's why we send officers out to get information on scene.

Q And when an officer is -- and in this case, you know that Deputies Picone and Tyner, two trained sheriff's uniform patrol officers, were dispatched to that location, right?

A Yes, that's correct.

Q And is it sometimes that you learn that the call that initially comes in can be very different from what the officers find when they get out there, does that happen sometime?

A That happens quite often.

Q It is your expectation that this call -- when a deputy is going to respond to a location that they're going to do their own needed investigation to deal with that?

A Yes. They're the law enforcement officers. They're the ones that's trained for understanding the law, so they're going to respond and do what they need to do for their job.

Q And you're a conduit of information?

A Yes. I put the call in based on what the caller has said and what I understand and the officers get out

there and they do their investigations.

Q Okay. Now, Patricia, I believe that you were asked about the 911 calls and the transcript from the 911 calls for about 35 or 40 minutes just now, right?

A Yes, approximately, yes.

Q You were taken through several lines and isolated sections of that call; weren't you?

A Yes.

Q You were shown Exhibits 5, 7, and 2, which represent transcripts from that call, right?

A Yes.

Q Okay. You talked to Mr. Luginbill about that?

A Yes.

Q All right. And this exhibit shows that this transcript of this call was done by a certified court reporter September 24th, 2015, right? Look at that. See that?

A September 24th?

Q Yeah.

A Okay.

Q Okay. Now, do you have any idea how long it took this court reporter to figure out and decipher what was being said by the caller?

A I know the original transcript had some information in it that was not -- that's different than

this transcript, so I'm not sure how long, but I know it's --

Q You've got no idea how long it took this person to figure out what was being said, do you?

A No.

Q And you actually -- as part of this case, there was a -- there was a transcript of that call created by the sheriff's office in connection with the murder investigation that might be a little different from that, right?

A Yes.

MR. HARTER: Okay. Now, if you don't mind, can we play the first 911 call?

(WHEREUPON, a 911 call was published to the jury.)

BY MR. HARTER:

Q Now, Patricia, we know that you ultimately had to decipher and filter through the language issue and the accent and we know how you determined the call to be categorized?

A Yes.

Q Did you appreciate or feel that the caller at that time was hysterical or in a situation where you were hearing anything in the background that would be alarming to you at that moment?

A No. There was no noise in the background. And as you can hear at the very beginning of the tape, we don't -- as soon as somebody dials 911 -- I want to explain. As soon as somebody dials 911, that phone line starts recording. Even if we have not picked the line up, that phone is recording. There is nothing in the background. When that phone is ringing on my end and she's talking, I don't hear -- now, I don't hear anything. I can hear her talking to someone, but I don't hear anything indicating that there is any immediate threat to her. When I spoke to her, there did not sound like to be any immediate threat to Mrs.~Blandin. She sounded -- even though she was upset, she was still a calm upset.

Q Okay. Now, then after that, I believe we discussed Neil Logan has a call that he deals with and he receives a call from Ms. Hamby?

A Yes, that's correct. Neil spoke to Ms. Hamby after I spoke to Mrs.~Blandin.

Q And then your call back to Mrs.~Blandin, you're checking on her welfare; is that right?

A Yes. I wanted to make sure that there was no change in the status from when I originally spoke to Mrs.~Blandin to when Neil spoke to Ms. Hamby because yes, sometimes calls do change.

Q Okay.

A But in this case, it had not.

Q And let me ask you, do you feel like -- do you feel like in your exchange with Mrs.~Blandin that you were curt with her, that your tone of voice was inappropriate, did you feel like that after hearing it, listening to it?

A No, I don't hear anything differently in my voice than I would any other child custody call or any other normal call for service. I think that I'm being professional with her. I don't think I'm trying to be rude or to cut her off intentionally. I spoke to her and I thought the whole time the call was professional.

Q Okay. And let me ask you, we've heard and looked at a general order that is 238?

A Yes, General Order 238.

Q Okay. And I believe General Order 238 is -- it's a directive from the sheriff's office and it pertains specifically to criminal domestic violence?

A That's correct.

Q And if there's a specific criminal domestic violence call, then these things would be triggered, right?

A Yes.

Q Okay. Let's take a look at General Order 238. And there is a section on Page 3. Okay. Page 3 has a section. Now, 238 applies to officers who respond, but

there's also a section that applies to communication folks; is that correct?

A That's correct.

Q Such as yourself?

A Yes.

Q In this section, it says, Communication center responsibilities. And then it says, Communication specialists are to give domestic violence priority over other routine calls and dispatch at least two deputies to each incident when possible. Okay. Then it lists a few things that are steps or measures to be taken or things you're supposed to make an effort to determine?

A Yes.

Q All right. Now, tell the jury why you did not do those things specifically in this case on December the 9th, that morning?

A Because after listening to Mrs.~Blandin's entire call, I understood the call to be a child custody call and not a domestic violence call that was in progress.

Q And right or wrong, that was your judgment at the time?

A Yes, that was my judgment based on what I heard, what Mrs.~Blandin said, the noises in the background, everything, all my training. I understood the call to be a child custody call.

Q All right. Now, Patricia, you spoke back with her again?

A Yes.

Q A call that you initiated because you were uncertain?

A Well, yes. I was uncertain as to what was going on then since I had spoke to Mrs.~Blandin the first time.

Q Okay. And when you spoke to her that second time, did she sound any more upset, was there anything about the tone of her voice or anything in the background or anything like that that disturbed you or alerted you to any additional concern?

A No, actually she sounded calmer the second time around that I spoke to her than the first time.

Q Okay. And this is Exhibit No. 7, if this is an accurate recount of the transcript -- will you read for the jury what is the last -- one of the last things she says to you?

A She tells me I'm outside, I'm just waiting to somebody to help me get my little girl.

Q According to this exhibit, it says, I'm outside. I'm just waiting to somebody help me get my little girl?

A Yes, that's what she says.

Q Then you said, Okay. Well then, the sergeant will be calling you back.

And she says, Okay. And then she says, Thank you.

And you say, Thank you?

A Yes.

Q Patricia, when did you first listen to the 911 tape? Would it have been after this lawsuit was filed?

A Yes, when I found out that the sheriff's office was being sued based on my actions and also the deputies actions that day. I didn't remember the call. I remembered the incident that happened at Wal-Mart but I did not remember what was said on my part and what was said on Mrs.~Blandin's part. So, I listened to the call then.

Q Have you listened to it over and over and over and over again throughout this case?

A Yes, I've listened to it several times since the case has been going on.

Q Okay. And when you listened to it over and over and over and over and you know what happened after the fact, do you get somewhat of a different picture maybe about what's going on?

A I understand that, you know, we responded to a call based on what she said. But after listening to it over and over and over again, I still hear that this call was a child custody call.

Q And as you listen to it over and over and over multiple times, if you do that, do you have the opportunity to pick up on things because you're listening to it multiple times over and over that maybe you didn't have the benefit or the appreciation or awareness of at the moment you're keying the call in the communications?

A Yes. When I listened to the tapes, there were certain things that I did not hear her say at the beginning of the call that she said. After you've listened to the tape several times when she calls in, yes, I heard what she said, the general gist of everything she said, but there's still certain things that I've missed. After I've listened to this tape I don't know how many times, there are things that I can pick up now that she's saying clearly that I did not hear at the time.

Q You did the best you could with the information you were given, did what you thought what was right that day, that morning?

A Yes, I did.

MR. HARTER: Thank you, Patricia, I appreciate it.

Thank you, Judge.

THE COURT: Yes, sir.

Any redirect?

MR. LUGINBILL: Yes, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. LUGINBILL:

Q Did I understand you to say that you called Mrs.~Blandin back primarily to check on her welfare?

A Yes.

Q If this was just a custody call, why would there have been any question that she was in danger?

A Well, the call had been changed. The call had been changed from what I put it in as a custody call to a domestic call. So, I did not know what was going on since when I spoke to her until when I called her back to make sure that there was no change.

Q That's the transcript of your call, correct?

A Yes.

Q Can you tell the jury where you asked her how she was?

A No, I don't ask her how she is. I ask her where she's at and she's saying that I'm still outside.

Q If the purpose of your call was to check on her well being, why didn't you ask her if she was okay?

A Because she says I'm still outside.

Q Outside the residence?

A Yes. She's still outside. And that's when I realize that she's actually outside the residence and

not -- and that's when I asked her, I say, So, you're outside the residence?

And she says, Yes.

Q After you saw the call change by Mr. Logan, did you talk to anybody else before you decided to change it?

A No.

Q Do you recall telling me in your deposition that you spoke with Mr. Logan?

A Yes. I'm sorry, I spoke to Mr. Logan. He came and told me that he had spoke to Ms. Hamby, so yes, I spoke to him regarding his update and the call. But I did not speak to anyone else regarding whether or not I should change the call I should say.

Q You spoke to Mr. Logan within the one minute after he entered this into the system and you changed it back?

A Well, he came right over to me after he got off the phone with her and told me that the sister had came in and spoke to -- he had called -- excuse me, the sister had came in and that -- had called in and he had spoke to the sister. He came over right after he got off the phone with her and told me this. The room may be big, but it's not so big that it would have taken him a long time to come up to me and say, Patricia, Ms. Hamby -- correction, Ms. Hamby has called in and told me this.

So I changed the call back to a 1021 because that's the call the sergeant was on. And then I called Mrs.~Blandin back right after I speak to Neil and then made the decision that this is still a child custody call and left it as a 1021 until I noticed that there were officers in route. And then I just went ahead and changed it back to a 1080 because of the fact that officers were already responding as a domestic call.

Q It's your testimony that in the one minute between the time he typed in his information and made the changes to the call, he then immediately got up from his station, walked over to your station --

A Yes.

Q -- told you the same information that he had just typed in, which then prompted you to say, Oh, no, change it right back. Why did you do that?

A Well, I saw that the -- excuse me, I saw that the sergeant was on the call as a 1021. He's getting third-party information. He told me that Ms. Hamby's sister had called -- excuse me, Mrs.~Blandin's sister, Ms. Hamby, had called in. So, she's not there. So, I wanted to change it back to a 1021 because the sergeants do not -- the sergeants do not have calls for 1080's that they're going to call back. So, I changed it back immediately to a 1021 until I could get -- until I could

speak to Mrs.~Blandin and clarify what was going on.

Q Let me try this without all the 10 codes. Is it your --

A I'm sorry.

Q My understanding of your testimony, you are saying that the reason you immediately changed it back even after you were told by a fellow operator that there's maybe a different character of this call than what you initially assumed it was, that you're changing it back because you don't what the lieutenant or sergeant or whoever it was that was supposed to call back at some later point in time to have to do that?

A No, I'm not saying that I changed it back because I don't want them to call her back. I changed it back because of the fact that this call was third-party information. The sister is not there, so I wanted to speak to the sister. So, until I spoke to the sister to confirm her status, I changed it as a 1021. And when I did speak to the sister and confirmed what was going on, I left it as a 1021 and then I noticed that officers were responding. So, after I noticed the officers were responding, I changed it back to a domestic call.

Q Would you agree with me that the worst possible thing that could happen if you had just left it alone is that officers come out there and decide it's not a

domestic violence call and go on their way? Isn't that the worst possible thing that could have happened if you had simply left what Neil Logan did alone?

A Well, the call -- if I would have just left the call as a domestic call, then the officers still would have responded even with the ten code of 1021 with her already having dispatched the call. So yes, that's the worst thing -- you know, they still would have responded, but I wanted to make sure Mrs.~Blandin was safe and that there was no change in it. So that's why I still called her back.

Q But you didn't ask how she was?

A No, I did not.

But she said, I'm still outside.

Indicating that she had not been inside the residence. To my understanding, she was still outside waiting for a sergeant to call.

Q If you had left it as a 1021, you would have been required to answer those seven questions, correct?

A If I would have left it as a 1080?

Q Somebody would have needed to?

A Yes, that information would have -- if Mrs.~Blandin would have told me that there had been something differently than when I had spoke to her initially, yes, I would have then went into following up

on, are you okay? Are you injured? Are there any weapons involved? Yes, I would have went into that.

Q And then she could have told you about the hitting and the threats and when it happened and you would have had that information, correct?

A Yes. But she told me based on the fact of the initial call and the call from the second time around that she's still outside, that nothing basically had changed from when I originally put the call in. So, it was still a 1021 for child custody.

Q And if you would have had that information, you could have relayed that information to the officers and they would have had in their minds this is a potential domestic situation and we have a potentially violent person that we're going to have to interact with, correct?

A Neil had information in his call indicating that there was a potential violent person, so they were responding out to Neil's call, not my call. The sergeant --

Q The code -- I'm sorry. Go ahead.

MR. HARTER: I think she was talking.

BY MR. LUGINBILL:

Q Go ahead, finish.

A Okay. I was going to say they were responding out to Neil's call, not my call. My call was a call for

the sergeant to call her back. Neil's call was a domestic call. And in Neil's call, it indicates that there was a threat. And even in my update that indicates that there was a prior history, so the officers did go out there knowing that there was prior history of CDV. And also, information regarding the fact that there could be a incident going on at this moment.

Q Mr. Harter pointed out the transcripts that we've been using today were done by a certified court reporter?

A Yes.

Q Do you understand that that means that she basically takes an oath that these are correct to the best of her abilities?

A Yes.

Q And she doesn't have a favoritism to one side or the other, her job is to get the facts out and tell the truth what about the tapes say, correct?

A Yes.

Q Now, the sheriff's department, you indicated they also did some transcripts, correct?

A I saw a transcript. I didn't know who did the transcript until I was told I believe last week.

Q And those other transcripts that we talked about when we did your deposition and, I'm sure, prior to your

deposition when you were getting prepared, those were done by the sheriff's department, correct?

A Now I know that information, yes.

Q And you would agree with me that those transcripts had some errors in them, correct?

A Yes, they did.

Q But the one that we presented today, to the best of your understanding, after listening to the tapes and reading the transcript, you believe it to be accurate?

A Yes.

Q Did you have trouble understanding the call?

A Yes, at the beginning, I had trouble understanding Mrs.~Blandin. She was speaking faster. Her accent at that particular moment was a little bit thicker and the English was more broken. When I asked her to slow down, the call was more clear and I understood what she said. But at the beginning, also, of the call I understood bits -- I understood bits of what she was saying. And I understood that she was saying that her husband had been arrested, that he was out of jail now and that she wanted to get some stuff. But I also heard something about some children. So yes, I understood the call, but some of it was a little bit difficult to understand.

Q And you didn't ask any questions about who,

where, when and what; did you?

A She had told me that information at the beginning of the call when she said -- when, when she indicated she had been in the car all night. She told me where because of her address. She did not tell me where she was, she told me where she was not. So, I did not have that information. She told me who was involved and told me that it was her husband. And that she wanted to get her child.

Q And that he had threatened to kill her?

A Yes, and that he threatened her.

Q And had punched her?

A Well -- yes, that he had punched her and threatened her. But I took that information based on the fact that she had said that he was out of jail and now at the house as something that had already been taken care of by the officers and that this is something separate that she wanted to do. She wanted to now go to the house to get her child.

Q And the who, the what, the when and the where that you say were answered in the initial part of the call, that's the part of the call that you only understood bits and pieces of, correct?

A Well, I understood most of the call, but yes, I understood what she said and that's the part that I

understood.

Q And you're not infallible?

A No, most definitely not.

Q And if you make a mistake and as a result someone is injured, the county has the duty to make it right, correct?

A If I make a mistake and cause someone to be injured, then yes, unfortunately, yes.

Q Okay.

MR. LUGINBILL: Thank you.

THE COURT: Any recross, sir?

RECROSS-EXAMINATION

BY MR. HARTER:

Q That's the Court and jury's determination, though, isn't it?

A Yes, the jury would make that determination as to whether or not I made a mistake.

Q Okay. And there was no mistake but that two deputies responded to this call, no doubt, right?

A No.

Q So, even if you mischaracterized the call, right or wrong, two deputies responded to a disturbance call and are charged with investigating the case?

A Yes, the officers are the investigators. They're the ones that get out there and make the decision

as to the information.

Q And this incident occurred back December of 2011, that's almost four years ago?

A Yes.

Q And regardless of whether you had communications or what you and Neil talked about, if you talked, where he was, where you were, his -- the way he coded the call, it got answered by two deputies showing up, right?

A Yes, he coded the call as a domestic call and units responded as a domestic call.

MR. HARTER: Thank you, Patricia.

THE COURT: Okay. All right.

Thank you, Ms. Sullivan. Appreciate you being here. You may step down.

MR. WILSON: Your Honor, she was here under our subpoena, we have no objection to her being excused and released.

MR. HARTER: My subpoena, too, but --

THE COURT: Okay. All right.

Ms. Sullivan, everybody's giving you a pass. You can get out of here if you want to. I'd tell you to get out of here while the gettings good, okay.

THE WITNESS: Yes, sir.

THE COURT: All right, ladies and gentlemen, it's five till 5:00. I don't think we're going to be

able to get in another witness this afternoon. So, let's go ahead and adjourn for the evening. I ask you to be back here tomorrow morning at 9:15, at 9:15. And we'll try to start as promptly thereafter as possible.

Again, when you go home tonight, please don't discuss the case. Somebody invariably, without question, is going to offer and invite you to discuss the case. Don't do it. You can discuss it later. You can discuss it after the case is over, but don't do it yet. I hope y'all have a great evening. Enjoy Monday night football. I'll see you back here tomorrow morning, okay.

(WHEREUPON, the jury left open court at approximately 4:56 p.m.)

THE COURT: Okay, counsel, anything additional this afternoon?

MR. WILSON: Your Honor, if we could take about 10 minutes and kind of clear everybody out. We've got the children here. They're a freshman and a seventh grader. I would just like to bring them in and let them see the courtroom so they get a feel for it so they're not overwhelmed when they have to come do it live.

THE COURT: That's not a problem. And I will

tell you as well that, you know, I start -- I like to start at, you know, 9:00 or 7:30 or 7:00, but I recognize that I'm not like most people. So, I start a little bit later to give y'all an opportunity to do things like that and just to make sure you're ready to go. So, you can also bring them any morning that you want to as well.

MR. WILSON: What we're trying to do is not get them out of school any more than have to be.

THE COURT: Yes, I understand.

MR. WILSON: We need literally 10 minutes to bring them in and show it to them --

THE COURT: I'm not suggesting you can't do it this afternoon. I'm saying you can do it more than once if you want to.

MR. WILSON: Thank you.

THE COURT: And in as much is I'll be here early, if y'all need anything from me, let me know.

MR. WILSON: How early can we get in?

THE COURT: You can usually get in at 8:30. Okay. So, if y'all need me between 8:30 and 9:15, let me know. If there's some issue that you need to be resolved, get the bailiff to come back and get me, okay. All right.

MR. WILSON: Thank you, Judge.

THE COURT: Yes, sir, y'all have a great evening.

MR. HARTER: Judge?

THE COURT: Yes, sir.

MR. HARTER: Can I ask one question for planning purposes?

THE COURT: Yes, sir.

MR. HARTER: I know you've got an expert, I've got an expert, too, that's out of state. If possible, we can coordinate -- you'll have your guy tomorrow?

MR. LUGINBILL: Ours will be here tomorrow. I anticipate tomorrow will be Neil Logan, the two officers and the expert. That pretty much takes the day.

THE COURT: Okay. All right. Based on your witness list then, that's about 40 percent of your case?

MR. LUGINBILL: Yeah, really, that will be the liability portion. Then I think we just have Madel and the three children after that and maybe one or two scene witnesses to establish the elements of the survival part.

MR. WILSON: Judge, if we get through those witnesses tomorrow, we will be finished midday on

Wednesday. We might be finished in the morning, but we would definitely be finished 2:00 or 3:00 o'clock.

THE COURT: Okay. Are you two law partners or are you married? Because you're always hitting each other and giving each other cross looks at one another and interrupting.

MR. WILSON: As much time as we spend together--

(WHEREUPON, everyone was talking over one another.)

MR. HARTER: -- specifically plan on that.

MR. LUGINBILL: Your Honor, one thing that might speed it up and, obviously, you can agree or not agree, but we wanted to put in the autopsy report part of -- I don't mind redacting some of the more gruesome parts of it and I don't need the photographs, but there is a part in there that talks about defensive wounds. That's really all I would like to put in.

Mr. Harter, you wanted us to call somebody. We have --

MR. HARTER: Yeah, Mike Ward. He won't be long, he'll be quick.

THE COURT: Okay. All right.

MR. HARTER: Then I'm going to plan on my guy Wednesday because we've got schedule issues.

THE COURT: That's fine with me. I'm here for y'all. Okay. Y'all have a great evening and I'll see you tomorrow.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on Tuesday, September 29, 2015.)

September 29, 2015

THE COURT: All right, good morning. Hope everybody is doing well. Anything before we bring the jury in?

MR. WILSON: No, Your Honor.

MR. HARTER: No, Your Honor.

THE COURT: All right, if they're ready, bring them in.

(WHEREUPON, the jury came into open court at approximately 9:17 a.m.)

THE COURT: All right, good morning, everyone. I hope you had a great evening. Let's go ahead and get back to work.

All right. Mr. Luginbill, Mr. Wilson, you may call your next witness.

MR. WILSON: Your Honor, we would call Mr. Neil Logan.

THE BAILIFF: Put your left hand on the Bible and raise your right hand and face the clerk.

NEIL LOGAN, after being duly sworn, testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Neil Logan.

DIRECT EXAMINATION

BY MR. WILSON:

Q Good morning, Mr. Logan, how are you doing?

A Fine, and yourself?

Q Good, thank you. I want to get a little bit of background information about you for the jury. Tell the jury your full name, please.

A Neil Logan.

Q And where do you live?

A I live at Three River Summit Drive in Simpsonville, South Carolina.

Q Where do you work now?

A I work for the Advanced Auto Parts in Five Forks.

Q Now, back in 2011, you were employed with Greenville County E911?

A Yes, I was.

Q And you had been employed with E911 for some years prior to 2011?

A I started there in 2009.

Q Okay. And I think you worked there up until about May of 2012?

A Correct.

Q Okay. Prior to that time, you had some experience in law enforcement, you were a police officer?

A Yes, I was.

Q How long were you in law enforcement?
A Thirty-three years?
Q What type positions, what type jobs?
A I started as a part-time officer and rose through the ranks to chief of police of the department.
Q So you had experience in going on calls and handling paperwork and investigating cases? I mean, you had experience from ground up to administration, correct?
A Yes.
Q Okay. Now, back in December of 2011, you were involved -- on December the 9th of 2011, you were involved in a telephone call to E911 from Juana Hamby, Lilia Blandin's sister; do you remember that?
A Yes.
Q Okay. The jury has heard this call, but I'm going to let you listen to it this morning and I want to let the jury listen to it again. This is going to be Plaintiff's Exhibit No. 3 and 4 that's being played and I'm going to show you what's Plaintiff's Exhibit 5, which is a transcript of this call. I just want you to follow along as the tape plays, please.
(WHEREUPON, the 911 call was published to the jury.)
BY MR. WILSON:
Q Mr. Logan, is that the telephone call that you

were involved in with Ms. Juana Hamby December the 9th, 2011?

A That's a portion of it, yes.

Q Now, let's put the transcript up, Exhibit No. 5. You've got Exhibit 5 there with you?

A Yes.

Q Okay. Now, Mr. Logan, we're looking on the screen here Exhibit No. 5. When this call comes in, you're gathering information from Ms. Hamby, correct?

A Correct.

Q Let's look at what type of information you gathered from Ms. Hamby. She tells you that her sister has a problem and that she's located at [redacted] in Simpsonville; is that correct?

A That's correct.

Q And what else -- did she tell you that she's having a problem with her husband?

A Yes.

Q Okay. And did she tell you in this call that her sister is at the house, but is outside the house and slept in the car all night?

A Yes, she does.

Q Okay. And she tells you -- let's go down a little bit further. And she tells you that her husband has said that he wanted to kill her and she slept in the

car all night long; do you recall that?

A Yes.

Q So, you're gathering this information and you're processing this information as you receive the call, correct?

A Correct.

Q Okay. Now, this information caused you to take action with respect to this call, didn't it?

A Yes.

Q Okay. Now, let's talk a little bit about how 911 operates. When a calls comes in, a file or an incident is opened on the computer system; is that how it works?

A An entry is made in the CAD system based upon the address of the call.

Q And you can see the information in the CAD system? You can access it and view it?

A Yes.

Q And any of the other 911 operators, can they also access and view the information in the CAD system?

A Yes.

Q So, when you took this call, were you able to see that there was already an opened incident or an opened call from a prior telephone call from Lilia Blandin?

A It was a call for service at this address.

Q Okay. And you were able to see that?

A I was able to see the address. As I recall, you can see the address, the location and the classification of the call.

Q And you were able to see that Ms. Patricia Sullivan would have handled that prior phone call from Lilia Blandin?

A Yes.

Q Okay. Now, let's take that down. I want to show you what's Plaintiff's Exhibit No. 8. And this is kind of small, so it's probably going to be easier to look on the screen here. Look at No. 8. Mr. Logan, what I'm looking at right here, 1028, is that your -- what you did in response to the phone call from Juana Hamby?

A Right, that's what I typed into the narrative section of the CAD.

Q Okay. Let's go back up a little bit then, prior time. So, you would have been able to see that Ms. Sullivan had at 10:13 entered a child custody call and classified it as a code 21?

A Yes.

Q Then right here after the phone call you received from Juana Hamby, you gathered this information and then you would have changed that to a code 21 -- excuse me, changed it from a code 21 to a code 80?

A Yes.
Q Twenty-one is an items call?
A It's an item or custody related call.
Q And 80 is a domestic violence or domestic disturbance situation?
A Correct.
Q You also would have changed it from a three priority to a one priority?
A No, I would not.
Q Okay. What happens there?
A The system automatically changes the priority.
Q Okay. So, when you enter this information, the system changes it to a priority one?
A Yes.
Q And that's considered a higher priority or a more serious call that requires more attention?
A Yes.
Q Okay. And you did that based on the information you gathered from Juana Hamby?
A Correct.
Q Even though Juana Hamby wasn't at the scene, even though she was a third person, you felt that information was important and vital to the incident that had been called in about?
A I felt that based on the information she was

getting and giving to me that it warranted to have the call have someone sent to that address.

Q And you felt that it warranted that call being coded as a code 80, a domestic disturbance call?

A Correct.

Q Okay. Mr. Logan, when a call comes in, if you receive information from that call and you're not sure how to treat that call, if you've got a choice between a couple of different classifications that that call could be, do you generally err on the side of caution or on the side of safety as to how you classify that call?

A I don't understand what you mean by classification, if you're talking about classification as to priority or the classification where the call fits in?

Q Where the call fits in?

A Based on the information that's given, you determine whether it's an assault or a drug involvement or a motor vehicle involvement and using the 10 codes, you would classify it based on the information given to you.

Q Sure. But if a call comes in and you're not sure whether to classify that call as a custody or an items call, or a domestic disturbance call, don't you err on the side of caution and classify it as a domestic disturbance call?

A Custody or articles is diff -- information that

you would be given would be such that it would indicate that it didn't need any immediate action and follow the SOP of the sheriff's office and that's why you would classify it as a custody which required a sergeant to call that person.

Q Sure. But if you have a call that is very close in nature and you can't determine from the information you've gathered if it's a custody or an items call or if it's a domestic disturbance or a domestic violence call, don't you err on the side of caution?

A Well, obviously, in this case, it appeared to be a domestic disturbance, the threat of some violence and was classified as such.

Q And that's why you classified it as a domestic call?

A Yes.

Q Okay. Now, the information that is contained here on the CAD, that's information that every communication specialist in the 911 office can see; is that correct?

A I'm not quite sure that they can see all that detail. You have to open up the call, which would expand the screen to basically see some of these steps. But as a 911 operator or call taker, as I was, all you're seeing is line items or addresses and I believe the classification

of the call. If you click on that screen, it will open it up and give you some more detail.

Q So, when you get a call that pertains to [redacted], you see that there's already an open file for [redacted] and you can click on that and open up the rest of the information?

A Correct. It gives the line item at the top there, 10:26 says location [redacted]. That would show there and then a classification of the initial call, which was a 21, which is a custody or articles-type call.

Q And then each communication specialists could access the rest of the information by clicking on the --

A They could open the call up, yes.

Q Open the call, okay. So, after you took this information, Ms. Patricia Sullivan would have either received some notification that there had been a change in the classification from code 21 to code 80 where she would have been able to click on the icon or the call and see that you changed that, correct?

A Correct.

Q So, this is information that would have been available -- this information about the call you took is information that would have been available to Ms. Sullivan?

A Yes.

Q The information that you enter or that any of the communication specialists enter in this incident detail is entered into the CAD?

A Yes.

Q And that information is also available to officers who are responding to the scene?

A I believe it is through their mobile data terminals. I'm not positive how much they actually can see.

Q But they can see the basic information, the codes and the priority?

A Yes.

Q Okay. And I believe you said -- I want to make sure I understood. You said you changed the classification to domestic disturbance because there was a threat of violence or a threat of the husband to kill?

A There was an indication of violence or a threat. And that it -- at that point, being that it was between a husband and wife then it classified as a domestic disturbance.

Q Okay. Now, Mr. Logan, you see here on the CAD where at 10:29, one minute after you changed that priority to one and the code to 80, Ms. Sullivan changed that priority back to 21 and a priority three?

A Yes.

Q She changed it back from domestic to custody?

A She changed the classification from 1080 to a 1021. The CAD system changed the priority automatically.

Q All right. And she didn't talk with you before she made that change, did she?

A I don't recall talking, a conversation. In this room, there's 12 different stations, so oftentimes, what happens is when someone makes a change to a call and it was someone else's call, they may shout out, did you change my call? And that happens quite often.

Q But in this situation, you don't recall Ms. --

A She may have -- I don't recall having a conversation with her. She may have and subsequently opened up the call to see the additional information.

Q Okay. Give me just one moment, please Mr. Logan. Mr. Logan, you wouldn't have initiated any conversation with Ms. Sullivan about the call or your change of the coding or the classification of the call?

A When I was taking the call --

Q Yes, sir --

A -- or subsequent to the call?

Q When you were taking it or subsequent?

A No, I would have taken the information -- because it was a second caller, I would have taken it as

any normal call to the call center. Taken the information, determined what was going on there, entered it into the CAD and created a call. In this case, a call was already created at that address. So, all I did was update that call with the additional information and reclassify it.

MR. WILSON: Okay. All right. I believe that's all the questions I have, Mr. Logan. I appreciate your time. Mr. Harter will have some questions.

THE COURT: Mr. Harter.

MR. HARTER: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. HARTER:

Q Good morning, Neil, how you doing?

A Good morning. Fine.

Q Neil, you have experience in law enforcement operations as well as you spent time actually doing communication calls as a communication specialist with the Greenville County Sheriff's Office; haven't you?

A Yes, I do.

Q Okay. And for me, can you pull that mic a little bit closer to you, please? I want to ask you, how long did you actually work with the sheriff's office in -- you worked in communications at the sheriff's office? You

never worked in actually other operations; did you?

A I was a call taker, not a dispatcher, a call taker.

Q And you had specific training about that?

A Yes, sir.

Q And how many years did you do call taking with the sheriff's office?

A I worked there from 2009 to 2012, but during that time was only about nine months a year. I would take the summers off.

Q You'd take the summers off to go be with your family in part of the country?

A Yes.

Q Now, in terms of this call -- or in terms of your role as a communication specialists, tell the jury kind of what you think or what you perceived your responsibility is in that chain of communications, Neil?

A My responsibilities -- there's 12 consults. So, through a computerized phone system, each consult gets a call as they come in. When a call rings at my station, I answer it, determine, you know, what's going on basically, who, what, where, when and how kind of information is gathered. Classify the call, whether it's a first aid call, whether it's a noise complaint, whether it's a domestic violence call or whatever, and type in the

information, classify it. And basically, at that point, it gets sent to the CAD and it's visible at the screen of the radio dispatchers in the area where this call is located in the county.

Q Okay. It is your role to basically gather information, filter what the issue is, what the caller's problem is and generate some kind of response appropriately?

A Correct. It's basically I gather the information. I kind of whittle it down and put it in the narrative section.

Q Do you kind of analyze or characterize the call based on any one particular thing or do you try to listen to the caller, evaluate exactly what's going on at the time, consider what you're hearing and view the call and characterize it based on the total call itself?

A Yes, you basically -- in this particular case, it was a very calm voice. There was no background. There was to screaming. There was no yelling. There's types of calls that we do get that's all you get is screaming and yelling and you have to filter that out to try and determine. In this case, it was a very calm call. Information was given. It was clarified by me as to where this was occurring, who was involved. And basically, that's what you do. You have to filter out the

information and whittle it down to a simple text that you put into the call.

Q And depending on what you do, you know that call is going to get a response, right?

A Yes. Once you put it into the system, it's going to get a response.

Q And based on your 30 plus years in law enforcement, have you had or do you know of experiences where you get to a call and it's something entirely different than what you got dispatched and what you found?

A Oh, yes.

Q Happens frequently?

A Yes.

Q And is that why you rely on trained uniform patrol officers who respond to calls to make ultimately a decision as to what's going to happen there?

A Correct. The decision is not made by the caller, it's made by the officers that go out and determine the facts. And they will either reclassify the call if need be. If it wasn't what it was initially classified as, they'll indicate a change of classification and put it in their reports.

Q So, you're not the where all and end all of what's going to happen and be dealt with with this call?

A No, we're not.

Q Okay. Let me just ask if we can listen to Ms. Hamby's call again.

(WHEREUPON, a 911 call was published to the jury.)

BY MR. HARTER:

Q All right. Neil, I want to ask you, did I just hear that recording say we'll get somebody out there?

A Yes.

Q Did you tell her that?

A Yes, I did.

Q Okay. I want you to look at the transcript, Plaintiff's No. 5. Is that transcript complete?

A No, it is not.

Q It doesn't include information that we just heard on that tape that we'll get somebody out there, right?

A No, it does not.

Q Okay. Now, did this call get answered by two deputies going to the scene without delay?

A Yes.

Q Okay. Regardless of how it was initially characterized, right or wrong, it got a priority one response with two deputies going to the scene; is that right?

A Correct.

Q Okay. Now, let's look at the incident recall for a minute. Before I do, so whoever created this transcript, apparently, didn't get it exactly right; did they?

A No, there's a second page to that transcript.

Q Okay. You were asked about this and this is the incident recall, this is the CAD. This is kind of a track or trail to give us a footprint of what's going on, right?

A Yes.

Q Primary event call comes in, Patricia Sullivan takes it at 10:13, calls it a child custody call, right?

A Correct.

Q And then if it's a child custody call -- right or wrong, if it's a child custody call, is it appropriate that an officer call back, a sergeant call back to -- is that the way you handle those calls?

A That's the policy, yes.

Q Okay. And so it was assigned to Mark McCoy, it appears?

A Correct.

Q To be the person to call her back?

A Right. He's the sergeant in that area.

Q Okay. Then there's a second call -- then there's the call that you take at 10:28. And this is the CAD entry that you make, right?

A Yes.

Q Okay. And you saw the call had been a 21, a 1021, and you changed it to a 1080. And you told the jury, I think, why you did that and what was going on in your mindset, right?

A Yes, I did.

Q Now, when you talked to Ms. Hamby -- when you talked to Ms. Hamby on the phone, what she's telling you is that the husband has threatened to kill her sister, right?

A Yes.

Q Is that what you glean the guts of the call to be is about a threat to kill somebody as opposed to something about clothes and going in to get my child?

A Yes.

Q Okay. You filtered that information, right?

A Correct.

Q The main part of that call then to you -- that you were impressed with is the quote, threat to kill?

A Yes.

Q Okay. But you also appreciated and knew a couple of things; didn't you? You knew that Ms. Hamby was not with Mrs.~Blandin at the time, correct?

A Right, she was not there.

Q You know Mrs.~Blandin was not in the house at

the time?

A Yes.

Q And you knew that Ms. Hamby was giving just third-hand information?

A Yes.

Q Okay. But in any event, you characterized it or classified it as a 1080 and that's the way it got dealt with?

A Correct.

Q Okay. Now, there's been some -- there was a call back --

MR. HARTER: Can we come up just a little bit?

Oh, I'm sorry, I apologize.

BY MR. HARTER:

Q There was a call back at 10:37 and this is when Ms. -- I'm sorry, Patricia Sullivan calls back and speaks again with Mrs.~Blandin; do you see that?

A Yes.

Q Okay. Now -- and it's been pointed out that she changed the call back to a quote, custody call, to a 1021 at some point, right?

A Correct.

Q Okay. Now, tell the jury, if she changed the call back to a 1021, what did that have to do -- did that cancel the deputies response --

A No.
Q -- to your call as you characterized it?
A No, it did not.
Q Did it in any way change the way that call was responded to? It was responded to with two deputies and it was responded to as a priority and go without delay, right?
A Correct.
Q Okay. And I'm not going to jump back to hear the tape -- audio again, but in the 911 -- in the call that Ms. Hamby made to you, in that call, she mentioned a threat. She didn't mention anything about her sister having told her I was punched in the stomach or I was hit anywhere; did she?
A No.
Q Obviously, her sister's telling you she's talked to her --
A Right.
Q -- before she made the call?
A Right.
Q And when you get the call from the sister who's concerned about her, she doesn't mention anything about Mrs.~Blandin having said I've been punched or hit in the stomach, right?
A Correct.

Q And Ms. Hamby is calling -- she's not saying I'm in route, she's calling and passing this information on? She's not saying I'm going to my sister's house; is she?

A No, she's not.

Q Okay. Neil -- and you -- is it sometimes difficult when you folks are in that control room there talking with people to figure out exactly what's going on and is your job somewhat of a challenge?

A It is, because you have a bunch of variables that come into play here and it's hard to decipher sometimes what the calls are actually about.

Q Okay. And there's a mobile data terminal that law enforcement has in their vehicles, right?

A Yes.

Q That's what we call -- everybody shortened it to a MDT?

A Correct.

Q It's like a computer that's there that will pop up information that they can access, right?

A Correct.

Q And the deputies that would respond to this call could access the text of what Patricia entered and the text of what you entered; is that correct?

A Correct.

Q Okay. Now, you never spoke to Mrs.~Blandin?

A No, I did not.

Q Okay. And now, did you have the occasion to listen to the dialogue and the call between Patricia Sullivan and Mrs.~Blandin later?

A Yes.

Q After this lawsuit got going?

A Correct.

Q Okay. You had a chance to listen to Patricia's call; is that right?

A That's correct.

Q Okay. And listen to her interaction with Mrs.~Blandin?

A Correct.

Q Okay. Now, having --

MR. WILSON: Your Honor?

THE COURT: Yes, sir.

MR. WILSON: Could we approach one moment?

THE COURT: Sure, absolutely.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

BY MR. HARTER:

Q Neil, you've responded -- you've taken a lot of calls through your years as a communication specialist, right?

A As a communication specialists working in Greenville County. I was never a -- in that job classification in my prior law enforcement experience.

Q Okay. But you'd been doing it here in Greenville?

A Yes, sir.

Q As a communication specialist?

A Yes.

Q Okay. And you had a chance to listen to, after this lawsuit was initiated, the actually 911 call and the dialogue between Patricia Sullivan and Mrs.~Blandin, right?

A Yes, I did.

Q Do you have an opinion as to whether or not Patricia -- can you understand why she would have characterized that as a 21 call as opposed to a disturbance call?

A In listening to that conversation --

Q Can you scoot that mic up, please?

A In listening to that conversation, it was very broken English. It was difficult to understand some things. But I did notice that in the conversation, Patricia asked her several times was she at the house and she said no, she was not at the house.

Q And did you -- even in retrospect and hindsight,

can you see how she would have called it an items call instead of a disturbance call when that call came in?

A Oh, yes. Because in that conversation, she was talking about she wanted to get her daughter.

Q And her things?

A And her things. And that is a fairly common call that comes into the sheriff's office regarding articles. Not so much in domestics, but in any kind of a disturbance where people have lived together or whatever and they want to go to that location, it is the policy that that information, you know, is classified as a custody or articles thing and is made a 21 and a sergeant has to speak with that person.

Q Excuse me, just a minute. Can I look at the 911 CAD just for a quick second? Incident recall, I'm sorry.

A This here?

Q Yes, I'm sorry. Neil, will you look at that and just tell me, during a short interval of time, do you see that three different people are addressing that call or involved in that call? We have at 10:28, the call from the sister. We have a dispatch to the residence. And we have Ms. -- or Patricia Sullivan calling back and having another follow-up conversation with Mrs.~Blandin?

A Yes.

Q Okay. So, several people are dealing with

that -- or, at least, three people are dealing with that call at the same time?

A Yes.

Q Okay.

MR. HARTER: Bear with me a second, Your Honor, I'm about through.

BY MR. HARTER:

Q Can we look at General Order 238, please. General Order 238 addresses criminal domestic violence. And, actually, Neil, if I understand you correctly, there's a section, the section called communication center responsibilities. These are specific questions that if there is a -- if a true criminal domestic violence call, the general orders and directives say that these things should be addressed, to give domestic violence priority, an effort made to determine and relay the following information in response to the deputies.

Now, here, you characterized this call as a disturbance call. You told us before what was done. Did you feel it necessary to go through items one through seven in these general orders when you took the call and did what you did?

A Well, it says effort is to be made. You're not going to ask all of those specifically one through seven. On this particular call, five out of the seven was

addressed in the information that was given to me.

Q So, you're tuned into getting information, not necessarily in response to pointed questions, but as information gets passed on, you can mentally check off these things; is that right?

A Correct. And in this case, there was no indication that anyone was injured. There was no indication of, you know, background and screaming like someone's hurt. So, it wasn't necessarily -- you know, I wasn't going to ask the question is EMS required. First of all, she wasn't even at the scene, so I don't know if she would have even known that.

Q And again, how this call was handled, changed had nothing to do with the response that was initiated?

A No.

MR. HARTER: Okay. Thank you. Those are all the questions I have.

MR. WILSON: Just a little bit, Your Honor.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Logan, now, you testified earlier it's a challenge sometimes in the E911 office. You've got all these variables, 12 different stations, a number of calls coming in at the same time, multiple people working on the

same calls, information may be coming from different sources, a lot of activity at one time; is that correct?

A Correct.

Q That's the variables that you're talking about?

A Yes.

Q And sometimes that can be a challenge to handle these calls and figure out how to decipher the information, how to analyze the information, how to code the information, how to classify the information?

A It's going to be a challenge. I want to say the variables, you know, language is a variable, background noise is a variable, you know, yelling and screaming, whatever such as that is a variable.

Q Okay. And so, that's part of the reason why in your job, when you have a close call or a question about how to classify a call, you err on the side of caution, you err on the side of safety? That's why you classified this call as a domestic disturbance call?

A Yes.

Q Now, the mobile data -- the mobile data terminals that the officers have that Mr. Harter was talking to you about a moment ago, that's the computer that sits in the sheriff's patrol car?

A Correct.

Q And it's kind of right there -- you've seen them

before, it's kind of right there at the officer's side on the right side of the steering wheel?

A Yes.

Q And the information -- the text that you or any other communication specialist enters in to the CAD, the text of the call is something that's accessible on the MDT, I think that's what you testified to?

A I do believe it is accessible, yes.

Q And the code and the priority is also accessible on the MDT?

A Yes.

Q Okay. Now, you said you have read the transcript and you've heard the tape of the telephone call, the initial call that Lilia Blandin made to 911, the call that Ms. Sullivan took?

A Yes.

Q And you said you understood under those circumstances how she classified that as a custody or an items call?

A Yes.

Q Okay. But then you gathered additional information from Ms. Hamby in the phone call that you took?

A Correct.

Q And then you clarified that call? You clarified

that situation?

A The information that Ms. Hamby gave me was the first time I had any knowledge of any information at that address.

Q But that information clarified the situation or gave additional information about the situation of that call at [redacted]?

A I don't know that it gave additional information at that call. It gave me fresh information at that address.

Q And then I think you said that you clarified -- that the call was clarified by you?

A It was classified by me based on the information given to me as a domestic disturbance.

Q So, in addition to the information that Ms. Sullivan gathered in the initial phone call, you received additional information about the call from Ms. Hamby?

A Yes. But I did not know what information Ms. Sullivan gathered. I was not privileged to that.

Q Well, you could see the information that she had entered in the text on CAD?

A All I could see was reference child custody, that's it.

Q Okay. And then you gathered the information

that Ms. Hamby gave, which was -- even if you didn't know what Ms. Sullivan knew, that was information additional about that call? It may not have been additional information to you, but it was additional information about the situation?

A It was the additional information at that address, yes.

Q And that's what caused you to clarify the call and classify it as a domestic disturbance?

A Based on the information given to me that there was a threat of bodily harm, I classified it as a domestic disturbance.

Q Okay. And how you classify that call dictates the actions that you as a communication specialists take?

A I don't follow your question.

Q Well, I mean, General Order 238 sets out a set of guidelines that are supposed to be followed by communication specialists in domestic disturbance calls, correct? We just went through that with Mr. Harter a little while ago.

A Right. Those things should be addressed if you can address them and you can get that information, yes.

Q So, if you classify something as a domestic disturbance call, there's certain types of steps that you're supposed to take, certain type of procedures you're

supposed to follow, a certain type of information that you're supposed to gather?

A Yes. And those seven steps, I believe five of them were addressed.

Q Sure. But the classification of the call sets the tone and dictates how the call is to be handled and how the information is to be handled?

A I believe classification of a call sets the priority of a response to the call.

Q Okay. And that sets -- that sets in tone how the call is going to be handled going forward?

A Correct.

MR. WILSON: Just one moment, please, Your Honor, if I could?

THE COURT: Sure.

MR. WILSON: That's all the questions, Mr. Logan, thank, you very much.

THE COURT: Mr. Harter.

MR. HARTER: Thank you, Your Honor.

THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. HARTER:

Q Neil, was -- did Eleanor dispatch somebody to this call even before the 10 code was changed or posted?

A Yes.

Q And that was a priority one call? Two deputies without delay, right?

A Could you repeat your question?

Q Yeah. Eleanor dispatched two deputies without delay even before the 10 codes were changed out, right?

A Before it was changed from an 80 back to a 21?

Q Right.

A Yes.

Q Okay. Now, you said something about the Eleanor -- the Juana Hamby call, it set the tone for the priority of the response, right? The response priority?

A The response priority is set by the call classification.

Q Does the priority or the classification of the call tell the deputies -- are they expected to investigate whatever the call is when they get there?

A Yes.

Q Fully and completely interview the people, interact with them?

A Yes.

MR. HARTER: Thank you. That's all we've got.

THE COURT: All right, sir.

You may step down. Thank you, sir, I appreciate you being here.

MR. LUGINBILL: Your Honor, we ask Mr. Logan be

excused.

MR. HARTER: I think I have him under subpoena, too, but I hopefully won't need him again.

THE COURT: Thank you. You are relieved of your responsibilities under the subpoena, Mr. Logan. Thank you for being here.

Anyone need to take a break before the next witness? Anybody?

(There was no response.)

THE COURT: You may call your next witness, sir.

MR. LUGINBILL: Your Honor, we would call David Picone.

THE CLERK: Sir, place your left hand on the Bible, raise your right hand, please.

DAVID PICONE, after being duly sworn, testified as follows:

THE CLERK: State your name, please.

THE WITNESS: David Picone.

THE CLERK: Thank you, please be seated.

DIRECT EXAMINATION

BY MR. LUGINBILL:

Q Good?

A Yes, sir.

Q Officer Picone, if one spouse is alleged to have punched another spouse, is that a domestic violence call?

A You go through probable cause. You have to have some facts also to back that up. Not just a mere punching would result in an arrest. If you know the facts, talk to the other party and there's some other facts that reach probable cause, yes.

MR. HARTER: Can you pull that microphone up closer to you for me?

BY MR. LUGINBILL:

Q My question was this, if you have an allegation that you're responding to that one spouse has allegedly punched the other spouse, are you responding at that point to a domestic violence call?

A Yes.

Q If you have allegations that one spouse has allegedly threatened to kill the other spouse, is that a domestic violence call?

A Yes, it is.

Q All right, sir. Now, when you were in route, you were not told that there had been allegations of one spouse punching or threatening to kill the other, correct?

A On the CAD report, I believe there was a little bit of information on there about that.

Q And are you telling this jury that you specifically looked at it?

A Yes, sir. It would have came up on my in-car,

what we call MDT. It's kind of like a laptop.

Q It is your testimony today that you were aware prior to arriving at the scene that Mr. Blandin had allegedly punched Mrs.~Blandin and threatened to kill her?

A No, not that he punched her. It was a -- can I look at this?

Q Sure.

A Well, the incident recall log, there's a couple notes in here that dispatch put in here that I was able to look at before arriving on the scene.

Q My question is did you actually look at it?

A Yeah, it would have came up on my MDT as I respond to the call. And this information would have been information that dispatch would have told me over the radio. But there's nothing in here about punching in the stomach.

Q All right. And in the initial call that was taken by Ms. Sullivan, was there any information put in about those threats?

A The initial call by Ms. Sullivan, the first thing that's in the incident recall at 10:13 says something in reference to child custody.

Q When's the first time you became aware that Mr. Blandin had killed Mrs.~Blandin?

A That would have been the following day.

Q How did you find out?

A I believe Deputy Tyner had told me this had occurred. I think he saw it on his computer in his car about an incident at Wal-Mart.

Q Do you remember telling me during your deposition was the way you found out about it was the news?

A No. I said -- you asked me in my deposition about the lawsuit.

Q We'll get to it in a minute. We'll go back to that in a minute. You talked about probable cause when you first started answering my question, do you recall that?

A Yes, sir.

Q What is your definition of probable cause?

A Those are facts that law enforcement obtains through the course of their investigation that would lead a reasonable person to believe the accused is either committing a crime or has committed a crime or in the process of committing a crime.

Q Facts that would lead a reasonable person to believe that a crime has been committed?

A Uh-huh, yes, sir.

Q When you're looking at the definition of probable cause on scene, you're required to take the facts

that you have and the totality of the circumstances, correct?

A Yes.

Q You can't look at one fact here and disregard all the rest or only look at this one and not the other? You have to look at everything together, correct?

A Yes.

Q The facts that you had available to you at the scene were that Lilia Blandin had called in upset and had made statements that her husband that threatened to kill her and had punched her in the stomach, correct?

A No.

Q That was not a fact that you had?

A No, it was not.

Q But that was a fact that Greenville County Sheriff's Office had through Ms. Sullivan, correct?

A If it's on 911, yes.

Q But she didn't tell you that?

A No.

Q You had the fact that he was out on bond for two prior CDVs, correct?

A I didn't know about two prior CDVs. I was aware of one prior CDV.

Q And that was just five weeks earlier, correct?

A Somewhere around there.

Q And you were aware through your education, training and experience that most people who are out on bond on CDV in Greenville County are placed under a no contact order with the victim, correct?

A Yes.

Q And so you would have known that he should not really be there at all?

A Once we got there and we did our investigation, we determined that the two parties had reconciled. So, that no contact order is something that I can't make an arrest on.

Q We'll get to that in a minute. But you knew under the Magistrate Judge, he had been ordered not to have any contact with his wife, you knew that, right?

A Yes.

Q And you also knew from the incident recall that Mr. Blandin had allegedly threatened to kill Mrs.~Blandin, correct?

A Well, we can go over that and I can kind of explain what I perceive everything to say on this.

Q When you arrived at the scene, what you had was husband has threatened to 1089B, correct?

A That's what it says.

Q That's what you knew. Are telling me you had information from another source prior to arrival?

A There was another -- there's three different lines on this incident recall. And if you read each line -- I can explain how the second line is a lot different than that third line. Now, as I go, obviously, I take into consideration what's being said, but it's my job once I get there to do a full investigation. Dispatch isn't going to be the ones on scene, I am.

Q You were being called to a 911 domestic violence call, correct?

A Yes.

Q That's the only reason you were going to that address?

A That's what it was entered as in the CAD, yes, sir.

Q And for you, under your training, that triggers General Order 238, correct?

A Not necessarily.

Q You have to do the investigation to determine if it applies, correct?

A You start the investigation, but doesn't mean that your investigation is going to lead you to the reason why you're going there in the first place.

Q As you're driving to Lilia Blandin's house, you are under the assumption and belief that this is a domestic violence call, right?

A Yes.

Q So, I'm assuming that you've been trained when it's a domestic violence call, these are things that I need to keep in mind? These are my responsibilities on this call, correct?

A Yes.

Q Okay. The first part is for your own safety, use caution. You don't know what you're getting into yet, correct?

A That's correct.

Q And, in fact, what you did know was that there was a threat of one spouse killing the other, which is potentially an extremely dangerous situation for you, correct?

A Yes.

Q They want you to restore order by gaining control of the situation, correct?

A Yes.

Q All right. Again, for your own safety and the safety of everyone else, they want you to get control of any weapons that are on the scene, correct?

A Yes.

Q Does anybody need medical attention? And you asked them, right, are you hurt? Do I need to get you somebody?

A Through the conversation, we asked if anybody had been assaulted or hit. Nobody said anything, so I didn't need to call EMS.

Q And it's your testimony that Mrs.~Blandin -- that you asked her specifically have you been hit?

A Yes.

Q And she said no?

A Yes, sir.

Q All right. Identify all persons, including children, present, correct?

A Yes, sir.

Q And you knew there were three children present once you got there?

A I did.

Q Did you get their names, ages or any other information?

A No, because we weren't investigating a domestic violence.

Q And you quit -- well, let me ask you this, when did you quit investigating it as a domestic violence?

A Once we separated both parties. Once we talked to each person individually. Once both people did not say that anybody had been abused, hit, punched, kicked, threatened. Their visual, what we saw on their persons. There was no visual injures. Their clothes didn't seem to

be in any kind of scuffle. At that point, when both parties are separated and both parties give the same story and both of them stated there weren't any kind of assault, there's no reason to go any further into the investigation.

Q And during your investigation, you had your microphone activated on your lapel, correct?

A Yes, sir. That is a common practice I do on every call I go to.

Q And it was recording exactly what Lilia Blandin said, correct?

A It should have, yes.

Q So, when you asked her did your husband punch you and she said no, that would have been recorded onto a VHS tape?

A That should have been.

Q Should have been?

A Can I explain?

Q Yes. It should have been, correct?

A Yes. Can I explain a little further into that?

Q Sure.

A Now, when I respond to all calls -- in a domestic violence call, it's not a policy of the sheriff's office to activate your camera. Now, the common practice for myself is every call I get out on, I turn my camera

on, okay. On this day -- these camera systems are old. I've had times where I thought I turned it on and it didn't activate. That's something I can't control. I know for a fact when I exited my vehicle, I hit the button that would activate it. I don't know if it ever came on. It should have been on the entire time I was there. Once I left that call, I never reviewed my tape. We're not supposed to review them in the car because it can mess the tape up. I never reviewed my tape. The next day when we found out about this, didn't think anything about it. It's just a common practice for myself to do, so.

Q The next day when you found out about this, this being the murder?

A Yes, sir. Excuse me.

Q The next day after the murder, in fact, you were told to do a supplemental report, correct?

A I was.

Q Because you didn't do an incident report here, right?

A No, because --

Q Incident report to be completed on allegation of CDV. You didn't do one?

A No, because it wasn't a CDV.

Q And you had a tape -- or you believed you had a type, should have had a type that would have proven it

wasn't CDV, correct?

A Yes.

Q No question about it, it would have proven that?

A No question.

Q And that tape was given to your supervisor, correct?

A Eventually it would have, yes.

Q And I'm sure you said well, gosh, Mr -- Lieutenant, if you want me to do a supplemental report about what happened out there, I've got the whole thing on tape, do you want that, too?

A No.

Q You didn't tell him that?

A No.

Q Did you tell anybody you had the whole incident on tape?

A I didn't -- never looked at it, so I don't know if it actually recorded or not.

Q Wouldn't that have been important to know?

A It might have been, but it's not required to have my camera on. Like I said, it's a common practice for me to do. So, that is not something I go back in my mind and think hey, this call I had the camera turned on. The camera -- not only did I have that incident on there, but there's no telling how many more hours worth of

footage I had on there after that. I didn't turn it in exactly that day.

Q Well, that's my point. You knew on the 10th or the 11th that Avery Blandin had killed Lilia Blandin?

A Yes.

Q And you knew you had a tape of exactly what happened out there, correct?

A That's correct.

Q And you have been told by your bosses, we need you to do a supplemental report because it's important for us to know what happened out there, right?

A I was just told to do what we did on that call.

Q Because it was -- it must have been important or there would have been no reason to do the report, correct?

A I'm guessing. I was just told to do one, so I did one.

Q If it was important enough for you to do a supplemental typed-up report, why would you not have given them the tape that would have shown exactly what happened, no question?

A Because it never crossed my mind. Like I said, it's just something -- I turn my camera on all the time, didn't cross my mind.

Q And you turned the tape in, correct?

A I did, yes.

Q And you did your report, correct?
A Yes.
Q And both of those are missing now?
A Yes, sir.
MR. LUGINBILL: Your Honor, without taking a break and going back and getting his sealed transcript, can I just have him -- can I show him his --
THE COURT: I don't have an issue with that.
Do you have a problem with that?
MR. HARTER: Tell us what page and show it to him and me.
THE COURT: You're going to read the deposition transcript, sir? Mr. Luginbill, are you going to read the deposition transcript?
MR. LUGINBILL: I'm going to give him the transcript.
THE COURT: Ladies and gentlemen, Mr. Luginbill intends to ask the witness questions regarding deposition testimony. Now, a deposition is an out-of-court statement under oath taken for the purposes of either preparation for trial or taken for purposes of introduction at trial. In a deposition, one or another party may notice a deposition and direct a witness to appear at -- usually, it happens

at one of the attorney's offices. At that time, a court reporter, a certified court reporter, just like Ms. Herron here, will show up and the witness will take the oath of a witness and then will respond to questions under oath.

When either of the attorneys refer to deposition testimony or the transcript of a deposition, understand that that is just evidence that you receive into the record just like any other piece of evidence. That is, you determine what weight it has, you determine how valuable it is. It's just like any other piece is evidence. I wanted to make sure you understood what exactly he's referring to when he talks about deposition testimony.

Go ahead, Mr. Luginbill.

MR. LUGINBILL: Thank you, Your Honor.

MR. HARTER: What page, I'm sorry?

MR. LUGINBILL: I'll call the page out before I do it.

MR. HARTER: Okay.

BY MR. LUGINBILL:

Q When you were responding to this, I believe you told me that you were responding to a -- initially, it was to a CDV, correct?

A Yes.

Q At any point did you run the criminal history on Mr. Blandin?

A No, I did not.

Q And is that required to know under General Order 238?

A That is if you make an arrest. You have to -- to run a criminal history. For dispatch to run a criminal history, they have to have a certain reason to do so. So as we weren't applying this general order because there was no domestic violence call we were on, I can't just run a criminal history.

Q In trying to determine the totality of the circumstances for probable cause, his criminal history would have been part of that totality of the circumstance, correct?

A If we were on a domestic violence call, yes.

Q As part of determining whether or not you were on a domestic violence call, that would have been important to know?

A His criminal history?

Q Yes.

A Yes, if I was on a domestic violence call, yes.

Q It's part of the investigative process, correct?

A No. That is something that -- the criminal history is taken into consideration after a primary

aggressor on a domestic violence call is arrested to determine the charges and prior history. There was no domestic violence on this call, so we didn't run his criminal history.

Q And that's based entirely upon what you say Mrs.~Blandin told you?

A And Mr. Blandin, yes, sir.

Q Well, we would expect Mr. Blandin to lie to us, though, wouldn't we?

A I've never dealt with Mr. Blandin before, so I couldn't say that.

Q Do people who are committing crimes generally come right out and say hey, did you hit your wife? Oh, absolutely, I punched her right in the mouth?

A Actually, they do.

Q Do you also get a lot of people that say nope, wasn't me, we were just arguing, didn't happen?

A That's true, too.

Q And you did not identify the children, correct?

A Did not.

Q In fact, you didn't even speak to the children?

A That is correct.

Q And you did no incident report, correct?

A That is correct.

Q When did you first find out that Lilia had told

911 that she had been assaulted?

A Lilia told 911 she had been assaulted?

Q Yeah.

A Several weeks or whatever afterwards, I believe I saw something on the news about this case. I didn't --

Q Did Officer Tyner tell you she had made reference to it?

A In a previous case, yes. Not on this case.

Q So, Tyner told you that Yes, she told me he hit her but it was the case back in October?

A Yes, he made mention to me that he had looked up the report from October, I believe it was, and in that report, there was something about she being assaulted.

Q And punched in the stomach?

A I believe so.

Q You had on the CAD report that he had threatened to kill her. When did you think that occurred?

A I didn't know. I mean, obviously, before I arrived. It was on the CAD.

Q Did you ask?

A Once we got there and we separated the parties, like I said, we talked to everybody -- not everybody, excuse me, but we talked to Mr. and Mrs.~Blandin and asked both of them had anybody made threats, had anybody been assaulted, punched, hit in any sort of way and both of

them said no, it was just an argument.

Q Did you ask her why she changed her story from when she called 911?

A No. Like I said, in the incident recall, both times that she calls, she never makes any reference about being assaulted in her 911 calls that are on CAD.

Q That are on CAD?

A That I have seen, yes.

Q Since this case has started, have you heard the 911 calls?

A Yes.

Q She does, in fact, tell the 911 operator that she was threatened -- that her husband was threatening to kill her and had punched her in the stomach, correct?

A Well, I listened to the 911 calls, I don't know if everybody else has as well, they're kind of hard to hear what's going on. There's a lot of broken English. There's several different phone calls. There's different references in each phone call. I feel like dispatch with the information they had at that time appropriately gave us what we needed to get out there and figure out what was going on.

Q Did Mrs.-Blandin tell dispatch that her husband had threatened to kill her?

A It's broken up. I believe she does.

Q Okay. And nobody asked why she was changing her story, correct?

A No.

Q Did you speak with Ms. Rivero, Madel?

A I was present when Deputy Tyner was sitting there talking to her, yes.

Q Did you hear the conversation?

A Yes.

Q Did she ask you -- when she was talking to Tyner, did she ask Deputy Tyner, Why aren't you taking this man to jail, he's hit my daughter, he's threatened to kill her?

A No, I do not remember that.

Q Does she ask specifically, Why is he not going to jail?

A No.

Q Would you have been close enough for your mic to pick up that conversation?

A Possibly.

Q Did either you or Deputy Tyner tell Mrs.~Blandin and her daughter that's just your story, you don't have any evidence, we're not arresting him?

A Absolutely not. I would never say that.

Q In this case, with the 911 call making allegations of abuse and threats of death, the recent CDV

history, the bond order violation that was happening right in front of you, a victim that is scared to go back in the house -- and you would agree me she did say on the call she didn't want to go back in the house because she was afraid to be beaten up, correct?

A Yes, sir.

Q Multiple prior calls to that residence, substance abuse by the abuser, is that -- would you have had probable cause?

A No.

Q If you had interviewed the children and they said I watched my dad punch my mother in the stomach twice last night, would that have been probable cause?

A That possibly could have been, yes, sir.

Q If those children had told you that, would you have made the arrest?

A Possibly.

Q Now, you agree with me the children were witnesses, correct? They were there in the household?

A I don't know if they were inside the household the whole time. If you listen to her phone call, she talks about sleeping in the van all night long, which she told us that on scene. And I believe there was one child inside the house and two inside the van from what I'm gathering. So, I don't know who saw what.

Q But you didn't ask?

A No, because like I said, once we got there and we separated the parties and both parties never mentioned anything about assault or domestic violence that occurred, there's no reason to get the children involved and get these children upset over something that didn't happen. Once we figured out no domestic violence ever occurred, we were there to handle the child custody at that point after that.

Q You would agree with me that if Lilia had told you that Avery had punched her in the stomach and threatened to kill her that you would have had probable cause for an arrest, correct?

A Yes.

Q And you would agree with me if you have probable cause, he has to go? You have no discretion over that?

A Absolutely.

Q But you're not telling this jury if the children had told you that then you would have, in fact, had probable cause?

A That's not necessarily the fact. I mean, like I said, she didn't tell us anything. He didn't tell us anything. So there's no point of involving the children. We're not there --

Q I understand your testimony, my question is --

MR. HARTER: Objection.

THE COURT: Hold on.

MR. HARTER: I think Deputy Picone was still talking.

THE COURT: Okay.

Mr. Picone, you can continue answering the first question, sir.

THE WITNESS: Yes, sir.

Can you repeat the question, please?

BY MR. LUGINBILL:

Q If you had testimony from the kids?

A Yes, sir.

Q And I understand you say you didn't ask them and I understand why. But if the children had told you, if you had asked them and they said yes, I saw my dad hit my mom last night in the stomach, would that have been probable cause?

A That would have been part of it, yes.

Q Would he have gone to jail that night if you had that information?

A Not necessarily.

Q Why not?

A Because there's not -- obviously, if you have testimony from the children, they said that, yes, but you still have the adults that are involved, both of them are

saying that nothing occurred. There's no physical manifestation of injury at that point.

Q Physical manifestation of injury is not just torn clothing and busted lips, correct?

A It's not. It can be visible or nonvisible injures.

Q And if you punch somebody in the stomach, that doesn't always leave a clear bruise, does it?

A No, it doesn't.

Q In fact, that's something that people that abuse their wifes know? You've come across that before in your experience, correct?

A I mean, I can't recall if I've ever come across a case where somebody's been punched in the stomach.

Q But if Lilia had told you, that would have been it, he would have been gone?

A Yes, that would have played into it, yes. And I would have talked to the children at that point.

Q Did you see any signs of alcohol use on Mr. Blandin?

A I don't believe so.

Q He didn't seem drunk or smell hung over or anything like that?

A No, he seemed like he was carrying on a conversation and understood what I was talking about and

didn't show any signs of intoxication.

Q You've done custody calls before, obviously. Is it your training that when you have a married couple and no Family Court order, you're not allowed to decide which spouse the child goes with; is that right?

A That is correct.

Q And we don't know where your supplemental report is?

A I don't but I can explain a little bit about the supplemental report and the reason why it might not be located.

Q Well, what you told me earlier, as I understand, was you typed it up and you sent it to the central computer, correct?

A What I did was I was asked to write a supplemental record with no case number on it. If it had a case number on it, then it would have been linked to a certain case, which would have been put in records. So, when I typed my supplemental report, I talked about what we did the day before at the residence. And after I typed my supplemental report, we are to send that report, any report to our uniform patrol office. So, I hit print button and it sends that to that printer.

Once I did that, I contacted one of my supervisors, don't know which one, and let them know that

I was supposed to do this, the supplemental report is upstairs. I was told okay and that's the last I heard of it. I've had reports in the past even with case numbers that have been lost. I mean, it's not a perfect system. Things get lost in all the paperwork that goes around, but I know for a fact that I did do one.

Q And the reason you were told to do one is because there was a murder investigation?

A Yes.

Q And this is a murder investigation that got a little bit of publicity at the time here in Greenville County, did it not?

A It did.

Q So, you have what would be at the time sort of a higher profile case and you were told by someone, you don't remember who?

A No.

Q To do the supplemental report and you were specifically told to leave the case number off?

A Yes. Because that's a totally different incident location, a totally different date. There was no -- there was no report -- incident report done because there was no crime committed on that date. So, you're not going to associate a case number with this case with this address because there was no crime.

Q And you did what you were supposed to do, you typed it in, you sent it off and told them okay, I've done it, it's there for you, correct?

A I did.

Q And you are purely speculating as to why it didn't get to where it was supposed to go?

A Yes, sir.

Q You have no idea?

A I don't.

Q And you have no idea why your tape wasn't produced to us or made available, correct?

A Like I said, I've explained that it's common practice for me to turn my tape on. I never thought about going back and even looking to see if there was anything on my tape. That's just something I do every time I get out of the car.

Q And the reason you do that is so that there's a record of what happened, correct?

A Yes.

Q So, if you've got a suspect in front of you that said David Picone called me a blanky, blank, blank, blanky, blank, blank, blank, you can say, no, sir, that didn't happen, let me go show you the tape, right?

A Yes, sir.

Q So, you had an incident one day prior to a

murder where the suspect and the victim were recorded by you, correct?

A Like I said, I'm assuming that it was recorded. I turned the microphone on or should have, but I never went back and even looked.

Q And you were told to do a supplemental report because somebody thought that that incident was important to this murder investigation or to some subsequent civil case that may have come out of it, correct?

MR. HARTER: Object to the form -- I'm sorry.

THE COURT: Go ahead.

MR. HARTER: I'm sorry.

MR. LUGINBILL: Okay.

THE WITNESS: Can you repeat that, I'm sorry?

BY MR. LUGINBILL:

Q Somebody called you and told you to do a supplemental report because they thought that your interactions with the victim and the subject of this murder just one day prior would be relevant to this murder investigation, correct?

A Correct.

Q And might also be relevant to whether or not you and Deputy Tyner did what you were supposed to do that day involving this death, correct?

A No.

Q You didn't think it had anything to do with anything?

A No. If that would have been the case and they didn't think we did our job, I would have been told to go back and write an actual report.

Q It's your testimony that you had no idea whatsoever that the department could potentially be sued for failing to arrest Avery Blandin when they had him there on a call where he had alleged to kill his wife one day before he actually did? It's your testimony today that the thought of a civil suit was completely out of your mind?

A That is my testimony. Because I don't have any interaction with -- I don't do civil suits every day. Plus, I answer calls all day everyday and I don't -- my mind frame when I answer calls isn't, am I going to be sued? It's to handle the call that I'm on and if somebody needs to be arrested to make the arrest. Now, I didn't make an arrest on this day -- or we didn't make an arrest because there was no domestic ever occurred.

Q But you run that tape because that tape has the truth of what happens on your calls, correct?

A You said I ruined the tape?

Q You run the tape. The reason you record and make that tape is because that has the truth of what

happened on your call?

A I run the tape on every call I go to.

Q And you want the truth? You want the actual truth on that tape, correct?

A Absolutely.

Q But we don't have that truth today, do we?

A We don't have it.

MR. LUGINBILL: Please answer any questions Defense may have.

MR. HARTER: May we have a few minutes, Your Honor?

THE COURT: You want to take a break?

MR. HARTER: Yes, sir.

THE COURT: Let's take a short break, ladies and gentlemen. We'll come back and resume testimony in just a few minutes.

(WHEREUPON, the jury left open court at approximately 10:48 a.m.)

THE COURT: All right. We'll be in recess until the jury's ready.

Officer, you can take a break, too. You just can't discuss your testimony with anybody.

THE WITNESS: Yes, sir, I'm fine. I've been standing out in the hallway all day.

THE COURT: Okay. Suit yourself, suit yourself.

(WHEREUPON, a short break was taken.)

(WHEREUPON, the jury came into open court at approximately 11:00 a.m.)

THE COURT: All right. Mr. Harter, your witness, sir.

MR. HARTER: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. HARTER:

Q David, if you don't mind, how about tell the jury a little bit about yourself. Where do you live?

A Currently live in Simpsonville, South Carolina.

Q Are you married?

A Yes, I am.

Q Do you have children?

A One child, almost two years old, a little boy.

Q How long -- how long have you been with the Greenville County Sheriff's Office?

A Be nine years in February 2016.

Q Okay. And if you don't mind, tell the jury a little bit about where you grew up and your educational background?

A Yes, sir. I was actually born in Connecticut. My family moved to Spartanburg, South Carolina, when I was five. I've lived there most of my life until I -- I went

to Burns High School. I graduated high school in 2002, went to Newberry College. And end of 2002, I got a football scholarship where I was a kicker, so I got partial on that. I graduated Newberry in 2006 in December with a Bachelor of Arts in history and a minor the sociology. From there, I applied to the Greenville County Sheriff's Office as well as some other agencies and they were the first to offer a position, so I took it. Then I went to the Academy in February of 2007.

Q 2000?

A 2007, the Police Academy.

Q So, you had a degree from Newberry and you went into law enforcement; is that right?

A Yes.

Q And when you went into law enforcement, you actually got hired before you went to the Academy; is that right?

A That's correct.

Q Isn't that the way it works?

A It is.

Q And then you went to the Criminal Justice Academy in Columbia, right?

A Yes.

Q Would you tell the jury a little bit about what that Academy training is and was and how long it lasted?

A It last nine weeks at that time. When I went, it was a nine-week class or course. First three weeks, you basically just go over case law in South Carolina, learn the laws. You have a test at the end of every Friday and if you pass your tests, obviously, you move on to the next week. After the first three weeks, it's more of learning how to drive patrol vehicles, qualifications in firearms, learning techniques on how to arrest people, doing things such as like hand-to-hand combat.

Q Dealing with the things you typically would be confronted with when you had to go out and do your job, right?

A Yes.

Q Okay. And once you graduated from the Criminal Justice Academy, you were and became a certified law enforcement officer; is that correct?

A That's correct.

Q And you finished the Academy in 2008?

A No, 2007.

Q 2007?

A Yeah, it was towards the end of May, early June 2007.

Q Now, when you finished the Academy and you started work with the sheriff's office, let me ask you, do you have periodic training, in-service training or annual

training with the Greenville County Sheriff's Office?

A Yes, once a year for three days.

Q And you are -- and when you came with the sheriff's office, you started in what's called uniform patrol?

A Yes, I was assigned to uniform patrol.

Q Now, tell these folks how and why you went into law enforcement in the first place and why you're there now, David?

A I had a buddy of mine who was -- actually, a roommate of mine in college who was interested in law enforcement. I had always been interested, wasn't quite sure if I wanted to do it or not. And then he started doing some internships and I became -- he was telling me about it, so it kind of sparked my interest a little bit more. I've always been the type of person I just like to help people. I think I'm a good person and I like to do what's right and make sure that victims get justice.

Q Now, tell the jury a little bit about what being in uniform patrol -- are you in uniform patrol now?

A I'm not.

Q What is your position now?

A Currently, I'm assigned as an investigator in criminal investigative division. And my primary duties, I'm assigned to crimes against children unit.

Q So, you wear civilian clothes most of the time when you go to work?

A Yes, I basically look like this.

Q But at the time that you investigated this incident at the Blandin residence, you were in uniform patrol?

A Yes.

Q Tell the jury what uniform patrol really is and what y'all did.

A Uniform patrol is basically the front line of the sheriff's office. They're going to be the ones who are going to be dispatched to calls in progress. Usually take the initial reports. Ride around and deter criminal activity, look for moving violations, things like that.

Q How long were you in uniform patrol?

A Six years.

Q Okay. And then you now are an investigator investigating children's crimes?

A Yes.

Q Crimes against children?

A Yes, I've been promoted to master deputy and I'm assigned to crimes against children.

Q Okay. Do you have any other positions with the sheriff's office or in the community, any other things that you do?

A Yes.

Q Special service?

A Yes, sir.

Q What is that?

A I'm in two specialized units at the sheriff's office. I'm on the dignitary protection team, which I guess you can say it's kind of a fancy word or whatever, fancy little thing. But it's just any dignitary that comes into town, presidents, governors, senators, whatever, we might assist their security and provide further security for them and help with traffic detail, things like that.

Q Anything else?

A Yes, I also -- recently, I was just put in the hostage negotiator on the SWAT team. I had to go through interview process for that and I was picked out the other candidates who applied.

Q Do you get extra compensation for those positions?

A No, sir.

Q Okay. All right. David, had you before December 9, 2011, had the occasion to respond to criminal domestic violence calls before?

A Many.

Q Okay. Had you conducted arrests or done arrests

before of people following investigations of criminal domestic violence?

A Yes.

Q Okay. At the time that you went to the Blandin residence on the morning of December the 9th of 2011, did you determine whether or not at the time you were there information led you to believe there was probable cause to arrest anybody for criminal domestic violence?

A There was not probable cause.

Q And you know what probable cause is?

A Yes, sir.

Q Okay. Now, when we -- when you went to the Blandin residence, you were dispatched by the sheriff's office. And there's a thing called an incident recall that we have looked at before -- and let me just ask -- let me just stop for a second. We took a break a little while ago, right?

A Yes, sir.

Q You and I didn't talk at all, did we?

A No, sir.

Q You were admonished by the Judge not to talk and nobody talked to you about the case while we were on break?

A Yes, sir. I actually sat in the courtroom the entire time.

DAVID PICONE-CROSS BY MR. HARTER

Q All right. Let's look at the incident recall for a moment. And you see -- well, maybe we won't. The incident recall -- well, you got it?

A Yeah.

Q The incident call is the same thing we call the CAD record. And you have available to you in your vehicle part of this information on your mobile data terminal, correct?

A That's correct.

Q And as you're responding to the call, you don't -- you see and know about the stuff that's bolded, correct?

A Yes.

Q Like child custody, you see that?

A Yes, bold is set to show up on my computer.

Q And the next call at 10:24 is bolded, you would see that, correct?

A That's correct.

Q And then before you got there, you would also see the third section about the third call that's bolded, right?

A Yes, sir.

Q And also, when you're responding to the call, you're hearing information over dispatch? You're hearing information on your radio, too?

A Yes.

Q So, as you respond to this call, you had information before you got there about what was possibly involved; is that right?

A Yes.

Q Okay. Now, when you got to the call -- when you and Kevin Tyner got to the call, what did you see -- or what -- when you go to a call like this, what do you see as y'all's responsibility when you get there and get out on the ground?

A To make a determination -- to start a fresh investigation, open-minded investigation --

THE COURT: You need some water, sir?

THE WITNESS: Thank you.

THE COURT: Yes, sir.

BY MR. HARTER:

Q Okay. I forget where I was. Okay. Okay. When you get to the call, what do you see your role to be?

A I take into consideration what's already been told to me, but it's my job to basically start a fresh investigation. I'm the person there. I need to determine the facts present and determine if there's a crime being committed.

Q And you told Mr. Luginbill about what you did when you got there, y'all separated these parties and you

talked to them. Based on what you were told by Lilia Blandin and her husband, did you determine whether or not -- was it your understanding that nobody had been assaulted, nobody had been threatened, nobody had been punched or hit or injured that night?

A That's what our investigation revealed.

Q And I bundled it up, but did anybody report to you anything that would suggest that there was a CDV incident that night or that day?

A No.

Q Okay. And when you did the questioning process, Deputy Tyner was what -- he was the primary officer, correct?

A Yes. There's a primary officer and then there's a backup officer.

Q Okay. And the primary officer usually is the contact officer, right?

A Yes, he usually is the one who's going to handle most of the call.

Q And the backup officer is usually the cover officer, right?

A That's correct.

Q And this call -- now, who was backup and who was cover?

A I was backup and cover.

Q All right. Now, let me ask you, who got there first?

A I arrived first.

Q All right. And what did you find when you got there?

A As I exited my vehicle and I started to make an approach to the house to locate the parties there, I observed two vehicles where there was a female sitting in one vehicle and a male sitting in another vehicle and they were arguing through the windows.

Q So, they were -- people were outside the house and inside vehicles?

A Yes.

Q Separated vehicles?

A Yes.

Q And this is broad daylight, correct?

A 10:30 in the morning, yeah.

Q What did you do when you got there?

A Deputy Tyner, who was the primary officer on this case, he actually arrived about a minute after I got there. So, when he arrives, our -- we separated both parties. I took Mr. Blandin inside the residence and he took Mrs. Blandin and talked with her, I believe in the front yard or somewhere around the front yard.

Q And then did y'all end up switching?

A Yes.

Q You talked to her a little bit and he talked to him?

A Yeah. The reason for that was, like I said, Deputy Tyner was the primary officer, so he was going to want to talk to both parties. So, we switched and had conversations with the other half.

Q Okay. I think you told Mr. Luginbill that when you got there, you determined this was not a CDV or criminal domestic violence call?

A Yes. After we did our interviews with both parties and determined that, yes.

Q And that was based on the information you were given at the time?

A Yes.

Q Now, you were shown and asked to look at General Order 238. And you were asked some specific questions about the parts of General Order 238 that would be involved if you're investigating a CDV call, right?

A That's right.

Q Okay. Look at the next page, please. Okay. At the bottom of this page, it says responding officer's responsibility. And it says, When responding to a criminal domestic violence call every effort will be made to -- and then I believe they click off a number of

things, right?

A That's right.

Q And it includes restoring control, it includes interviewing the parties that are there, written statements, arrange photographs, do an incident report and make an arrest when appropriate, okay. Now, what I want to ask you, David, is once you got there, once you got there and talked to these folks, did you perceive that you needed to do these things under General Order 238 and/or why not?

A No, I did not.

Q Why?

A The reason being is 238 is specifically for criminal domestic violence calls. Like I said, when we get on scene, it's our job to determine the facts of what's there and what's going on. Nobody made any mention to us about being assaulted, threatened in any way. So therefore, this general order wasn't applying to this call because we weren't there investigating a domestic violence.

Q Okay. Did you see any reason based on what you were told to interview the children?

A No.

Q For the reasons you stated earlier?

A I did not.

Q Now, I want to ask you, when you did respond to this location, did you do any background investigation through NCIC?

A Yes, we did.

Q Okay. And what did the NCIC background investigation indicate?

A Do you want me to explain NCIC?

Q Yeah.

A NCIC stands for the National Crime Information Center. Basically, it holds information that we can -- we run your name, date of birth. It will show if you have any kind of warrants, if you're wanted. It can tell if vehicles are stolen, endangered persons. Then on top of that, it also shows if there's an order of protection or restraining order that has been issued by a court.

Q Okay. Now, let me ask you if you will, let's look at -- this is part of the general order of the sheriff's office. And it has, I think, on the next page some mandatory provisions for an arrest.

A Yes, sir.

Q Okay. Now, let me stop and ask you to look at this right here.

A Okay.

Q It says South Carolina is a mandatory arrest state. Mandatory arrest is applicable in three

situations. Physical manifestation of injury to a victim of domestic violence with probable cause, violation of a restraining order issued under the harassment and stalking statute, or violation of an order of protection issued under the protection from Domestic Abuse Act with physical manifestation of injury to the victim with probable cause. And that mandates an immediate arrest and that authorizes and directs a warrantless arrest. You don't have to go ask a Magistrate, you do it, right?

A That's right.

Q Now, in check with NCIC, would NCIC tell you if there was a restraining order?

A It would, yes, sir.

Q Was there any restraining order?

A There was not.

Q Would checking NCIC tell you whether there was an order of protection in place?

A It would have told me, yes, sir.

Q Did the NCIC check indicate that there was any Order of Protection in place?

A No.

Q Did you feel there was any physical manifestation of injury either observable by you or reported to you?

A Absolutely not.

Q Okay. All right. Thank you. David, let me now ask you a little bit about the issue regarding your report and the question about the activation of your microphone, okay?

A Yes, sir.

Q I think you told us that it is just your routine practice now to activate your recording device when you go to a call when you get out of your vehicle?

A It is.

Q Okay. Now, the sheriff's office has certain specific times that y'all are supposed to or required to do that, right?

A That's right.

Q Okay. And one of them is on a traffic stop, right?

A Yes.

Q And actually, the camera stuff, the camera in cars came about as a result of changes in the DUI enforcement law, right?

A Yes.

Q And so, the cameras in the cars and your mic are by policy activated in a traffic stop and in a suspicious person investigation?

A That's right.

Q Is that right?

A Yes, sir.

Q So, you weren't required to activate your audio or your mic in this case?

A I was not.

Q Okay. But you did because you do that all the time?

A I do do that all the time.

Q Now, these are VHS tapes, right?

A They are.

Q And tell the jury, if you have an incident or a tape or information that you specifically think or appreciate is that significant, that is going to be evidence in the case, what do you do with the tape?

A I place it in property and evidence.

Q You pull the tape and you place the tape in property and evidence?

A Yes, sir.

Q Right then and there?

A Yes, right after I get done with my call.

Q Okay. Whether you're through with the tape or not?

A Yes, sir.

Q Now, in this situation, after you learned that Mrs. Blandin had been murdered and after you were told to write a report, did you place this tape into property and

evidence?

A No.

Q And tell the jury why not.

A Usually, if I place a tape in property and evidence, that's a case I've written a report on and that's a case that I'm going to have to go to court for and testify in the investigation that I did. I didn't initially write an incident report on it. I didn't make an arrest in the case, so it never crossed my mind to ever put it in property and evidence.

Q It just didn't -- you didn't think to do that at that point?

A No, sir.

Q And now, the tape -- would the tape -- would you have kept the tape in your in-car camera and run that tape out to the end?

A Yes, until there was no more able to record on, yes, sir.

Q Then what -- according to policy, what did or would you do with that tape?

A According to our policy, once our tape is finished recording, we're to turn it into our supervisor, whether it be one of our sergeants or our lieutenant, and that tape is then put on a shelf in our lieutenant's office for, I believe, it's 90 days. Then after the

90-day period is over, they destroy them.

Q Okay. Did you ever tell anybody, did you ever go to anybody and say, Hey, there may be information about this interview or this interaction on my tape or my camera?

A No, I did not.

Q Okay. Now, I believe the next day or a day or sometime later, you were asked to write a report; is that right?

A That's right.

Q Okay. And you and Kevin Tyner were asked to do reports; is that right?

A Yes, sir.

Q Okay. And you told the jury about doing a report and you created that report and you sent it to a printer; is that correct?

A That's right.

Q All right. Now, is it significant that there was no case number on the report that you did?

A Yes.

Q And what is the significance of that, tell these folks?

A Like I said, a case number would show that it's associated with a certain incident. This was more or less just wanting to know what we did or what happened at the

house the day before. It wasn't tied into the incident that happened at Wal-Mart and it wasn't tied into the incident that happened at the house. It was more or less just describing what happened at the house.

Q Were you -- would you consider yourself involved in the murder investigation?

A No, I was not involved in that.

Q Okay. Now, when you did that report, you said you sent it to a printer. Did you send it to another computer or did you send it to a printer?

A I would have sent it to a printer.

Q Okay. And did you keep off or print off a copy of that report, put it with any of your personal stuff or did you hand it to anybody that you're aware of?

A No.

Q Okay. Now, the computer that you had --

A Yes, sir.

Q -- at that time, do you know if it was backed up anywhere? Do you still have the computer or when did you -- what happened to your computer?

A I don't know if it backs up anywhere. What I would have done -- what I would do with my reports, I would save them to the computer. But like I said, I had got off uniform patrol in 2012, towards the end of 2012, so that computer that I had at the time was taken from me

because I no longer needed it because I wasn't going to be driving a marked patrol car any more. And they would have most likely wiped everything off the computer to give to another officer who would be taking my position on uniform patrol.

Q All right. And so you changed positions in 2012?

A Yes, sir, it was towards the end of 2012, end of 2012.

Q Okay. If this lawsuit was filed in 2013, would this lawsuit had been filed after you changed your position with the sheriff's office and gave up your computer?

A Yes, sir.

Q Okay. David, you were asked why you didn't have the foresight or the hindsight to specifically isolate the information on your -- on the tape having to do with this incident and why you didn't immediately then and there perceive hey, this is information I need to have and I need to make sure it's saved. Okay?

A Yes, sir.

Q Now, at the time that you made those -- at the time -- at that point in time, were you aware, had you seen news articles in the paper about somebody's going to sue the Greenville County Sheriff's Office over this?

A No.

Q Did you have any idea then and there at the time that that was happening that oh, man, there's going to be a lawsuit against the sheriff's office and I'm going to be blamed for stuff? Did that even cross your mind, David Picone?

A No.

Q December 9, 2011, if you believed you had probable cause to arrest anybody at that incident location, would you have done it?

A Yes. I take my job seriously. And if there was a reason to arrest anybody at that time, we would have made an arrest.

Q Okay. And if you -- if you felt there was probable cause, you would have arrested somebody, wouldn't you?

A Without a doubt.

MR. HARTER: Thank you.

Thank you, Judge.

THE COURT: Yes, sir.

Redirect, sir?

MR. LUGINBILL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. LUGINBILL:

Q Deputy Picone, the fact that you and Tyner were

out there on that call must have been important to somebody or they wouldn't have had you do a supplemental report, correct?

A Yes.

Q Clearly, it was important to somebody up the chain of command?

A I don't know to who.

Q And you turned in that tape and your report to a -- or you turned in the tape to your lieutenant, right?

A Can I clarify that?

Q Sure.

A I believe I told you specifically my lieutenant, but what I meant by that was a sergeant or lieutenant would have gotten my video tape. But the lieutenant is where the -- his office is where the videos are being stored.

Q Okay. How long does it take you to fill up a tape?

A It would take a couple of shifts. I mean, they're eight-hour tapes. So, I believe they're eight -- they're either four or eight-hour tapes. So, it depends on how proactive I'm being or how many calls I'm being dispatched to. So, a couple days, week.

Q And you keep multiple tapes in your car?

A Yes, sir.

DAVID PICONE-REDIRECT BY MR. LUGINBILL

Q So, when one runs out, you don't run back to the office and get another one, you swap the tapes and keep doing your job, right?

A That's right.

Q So, you would have had that tape in your squad car until such time as you turned it, correct?

A That's right.

Q So, we can assume that on the day she was murdered, which was one day after your incident with her, she would have -- you would have known that that conversation was in your car in your possession, correct?

A Possibly.

Q Okay. And you were asked to do a supplemental report either one day or maybe two days, you don't remember exactly when, after the murder; correct?

A One or two days, yes, sir.

Q So, in that one or two days, you would have probably most likely still had that tape, even if it wasn't still recording, you would have probably still had it in your squad car, correct?

A Either that or it could have been in my lieutenant's office, but yes, it would have been accessible.

Q And then once you sent that report off, told somebody it's on the printer and you saved a copy to your

computer, it's your testimony today that it never crossed your mind that the information that you were writing about was actually preserved as it happened precisely and was riding around in the trunk of your car?

A Can you repeat that one more time?

Q As you typed up that supplemental report that you testified to, right?

A Yes.

Q You've got like PDF, you pull it up and fill in the blanks, you send it to the printer and you told Mr. Harter you saved a copy to your laptop, right?

A Yes, that's right.

Q So, as you're describing in your own words what actually happened, you had in your possession what actually happened recorded, right?

A Yeah. I didn't need the video tape to write down what I knew happened.

Q And it's your testimony that it didn't cross your mind that that might be important?

A That's my testimony.

Q When you interviewed Mr. Blandin, were you in the home or outside?

A I was in the home.

Q Would there have been any reason you would not have arrested Mr. Blandin if you had information

indicating that Mr. Blandin had either threatened or assaulted his wife on the night of the 8th going into the morning of the 9th of December 2011?

A With probable cause, no, no reason at all.

Q If you had information -- I want to make sure you understand the question of fact. If you had information, incriminating information indicating that Mr. Blandin had either punched his wife and/or threatened to kill her on the night of the 8th going into the morning of the 9th, would you have made an arrest?

A Yes.

Q And if he was arrested, you would agree with me, he would not have been out of jail to kill her on the 10th?

A I don't agree with you on that.

Q We talked about that a little bit in your deposition. Somebody who is already out on a CDV bond and who is arrested for a subsequent CDV, are they likely to get a personal recognizance bond in your experience?

A Not a personal recognizance, no.

Q Is the Magistrate likely to revoke the original bond that he now knows has been violated and that person is standing right in front of him?

A I can't answer that.

Q In your experience, do the courts just take

people who have now three -- would have been had you made the arrest, three unresolved criminal domestic violence cases against the same person and just say I'll let you go?

A I can't answer what a Judge is going to do but I can tell you that this is not a charge that is a no bonded charge. He would have had a bond set if he was charged with domestic violence. And he had no prior convictions, so you're talking about a CDV first. So, he would have had a bond set. He would have had the opportunity to get a bondsman or whoever to get him out of jail. So, we can't say that he wouldn't have been able to get out of jail.

Q Okay. You agree with me it would not have been a PR bond?

A I agree with you on that.

Q And given the history, it would have been a somewhat significant bond?

A Like I said --

Q More than just a fine, correct?

MR. HARTER: Let him finish.

THE WITNESS. We can't assume that. We don't know which Judge is going to be looking over the case. We can't assume that a Judge is going to do that.

BY MR. LUGINBILL:

Q And you don't go to the bond hearing, correct?

A We don't.

Q More likely than not, if he's arrested on the 9th with that history, is he out on the morning of the 10th?

A I can't answer that because I don't know.

Q Can't or won't?

A I'm not going to answer something that I can't say for sure. I know he would have had a bond set.

Q You would agree with me, at least, that if he was in jail, he wouldn't have been out to kill her?

A If he's in jail, yes.

Q And probable cause exists under the totality of the circumstances, correct?

A With all considerations, everything you take -- everything that you collect, yes, the totality of the circumstances.

MR. LUGINBILL: One minute.

THE COURT: Yes, sir.

BY MR. LUNGINBILL:

Q And probable cause, you have to do an investigation to get that, correct?

A Yes, sir.

Q And when you're going out on a CDV call, which

is what you were doing -- you were dispatched to a CDV call or domestic disturbance call, correct?

A Yes.

Q And your responsibilities are listed for you in this order, correct?

A Yes, sir.

Q And it specifically says you will make effort -- you will make every effort, which I read as being more than just casual, it's not if you want to do it, it's you need to really try to do this, right?

A Which we did. We did a lot of that stuff.

Q Okay.

MR. LUGINBILL: Go down. Stop.

BY MR. LUGINBILL:

Q Privately interview the parties, including child witnesses, right?

A Go back to your pointer. Where are you at?

Q Privately interview all parties, that's why you separated them?

A That's why we separated them.

Q And that includes child witnesses, correct?

A If there's an allegation of domestic violence, yes.

Q Okay. All right. Then they go --

MR. LUGINBILL: Next one down.

BY MR. LUGINBILL:

Q Attempt to take written statements from all witnesses.

Again, you didn't take any written statements because you had already determined at this point that it was not a CDV, correct?

A That is correct.

Q So, you essentially -- you didn't do the entire investigation?

A I did the investigation to the point where there was no domestic violence. So, there's no need to further investigate that if there's not one present.

Q And the proof of that would have been on that tape?

A It could have been, it could have not been.

Q How do you handle it if you've got the --

MR. LUGINBILL: Move back up.

BY MR. LUGINBILL:

Q You're trained there's essentially four kinds of evidence, right? There's exculpatory evidence, which when you're investigating, you find out that the suspect you're investigating didn't do anything wrong. There's incriminating evidence where you find out that the person did do what you think they did or what you're investigating. There's neutral evidence, which doesn't

really do anything as far as whether or not the crime is being committed. And then there's sort of the ambiguous evidence where you have to do more investigation, right?

A Uh-huh.

Q That's how you were trained when you were doing your investigations?

A Yes, sir.

Q The children saying that he had been -- that he had punched her and threatened to kill her, that would be incriminating evidence, correct?

A Yes.

Q Her saying that he didn't would be exculpatory evidence, correct?

A Yes, sir.

Q When you have a difference like that, you have to continue your investigation, correct?

A That's true.

Q And what you did was you got to the first exculpatory, he didn't hit me, which is what you say she said, and you stopped, correct?

A We talked to both parties. Like I said, based on their demeanors, their appearance, no allegations of any assaults, I didn't feel like there was any other need to investigate a domestic violence.

Q And you had -- on the scene, you personally had

no idea that she had initially said he had hit her and threatened in the 911 call?

A That's right.

Q But you did know that there was an allegation of a threat that he would kill her in the second 911 call?

A Yes.

Q But you didn't ask her why she changed her story?

A Like I said, there's a third 911 call where that's changed. Second 911 call is third-hand knowledge, somebody who's not there. And the first and third 911 calls are actually from the person who called 911, who is Mrs.~Blandin.

Q That 911 call was actually initiated by the operator, correct?

A Which one?

Q The third call?

A Yes.

Q And it does -- she never asked her when this happened, when did he assault you, does she?

A I don't know.

Q I mean, you actually don't have any information from that call, do you?

A I have information on the CAD report that mentions some threats and some other things. But like I

said previously, I take this into consideration, but my job is once I get on scene to start an investigation freshly.

Q When you got there, in your mind the totality of the circumstances, you had a custody call, to domestic, back to custody, right?

A Yes.

Q That's what you were aware of when you got there?

A That is.

MR. LUGINBILL: I think that's all I've got, Your Honor.

THE COURT: Any recross, sir?

MR. HARTER: No, sir. Thank you.

THE COURT: Thank you, Officer. You may step down. I appreciate your being here. Okay.

All right, Mr. Luginbill, you may call your next witness.

MR. LUGINBILL: We call Deputy Tyner.

THE BAILIFF: Place your left hand on the Bible, raise your right hand, face the clerk, please.

KEVIN TYNER, after being duly sworn, testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Kevin Joel Tyner.

THE CLERK: Thank you, please be seated.

DIRECT EXAMINATION

BY MR. LUGINBILL:

Q Deputy Tyner, if one spouse allegedly punched the other spouse, that's a domestic violence situation, correct?

A It would be a domestic violence situation if one spouse had allegedly hit the other spouse. We would investigate it as a domestic violence situation and go through based on what we found there.

Q All right. How about if they threatened to kill them?

A We would investigate it as a domestic violence situation based on the conditions of the threat and what was said and how it was said. It could be based on what evidence we found to support that threat.

Q And the way you conduct that investigation would be guided, at least, in part by General Order 238, correct?

A Sure.

Q And 238 requires you to do certain things, one of which is interview everybody at the scene, correct?

A It does if we determine that we have a domestic violence situation. Now, if you look at the totality of the general order, the common sense interpretation would

say that we get there on scene based on what we receive when we respond to that call. When we get there, we investigate the situation. If we get no information when we're there that this is a domestic violence situation and is only a domestic dispute, then this general order does not apply to what we do there on the scene.

Q Well, you would agree with me that the first 911 call when Mrs.~Blandin calls into 911, she makes allegations of being hit and of being threatened with her life, correct?

A There were things said in the first 911 call when you look back on it that she did make statements of he hit me and threatened me. But it's hard to -- listening to it, it is very difficult to make that out the first time you listen to it.

Q And that's -- and you've indicated that would be a domestic violence call, correct?

A Well, dispatch takes the information. They receive a phone call. Based on the totality of that phone call and what they feel like that phone call is telling them, the complainant in that call is telling them is going on on the scene, they would get information to us. Now, based on the information we received, I'm going into this as though it's a domestic dispute or a domestic disturbance and I'm going to determine whether there is

domestic violence that has occurred, yes.

Q The very first sentence of General Order 238 says, When responding to a domestic violence call, deputies will make every effort, right, and then there's a list of things you're supposed to do?

A It does say that in there. But as I said, when I get information that what is -- what is on -- when I'm dispatched to a call, I get information over the radio, which in this case, it's a little bit vague as far as radio traffic goes, and then I get information, which is on the incident recall which would be sent to my computer. It's fairly vague as to what's going on. The information we get is from a third party.

When I get there, I'm going to talk to people on scene. I'm going to determine whether domestic violence has occurred. If I determine domestic violence has occurred or if I feel as though there's a reason to talk to everybody, including children, on the scene, then I will do so. In my -- from my point of view, a domestic situation, even a domestic argument is very detrimental to kids. So when I get there, I try to keep the kids --

MR. LUGINBILL: Your Honor --

THE WITNESS: Give me one second. I just --

MR. LUGINBILL: Your Honor, I've let this go on for this entire trial. I'm trying not to be rude to

anyone here, I respect what they do. But when I ask questions and then they go off way afield. I would like the Court to admonish the witnesses to answer my question and then they can add things that are relevant to the question if they need to. We're now five, six steps removed from my question. Again, I'm not trying to be rude to anyone, I don't want to do that, but I would like for the witnesses to answer my question first and then they can qualify if they need to because that's what the rules say.

THE COURT: Yes, sir.

MR. HARTER: I think he has a right to answer the question, Judge. If he doesn't like the answer, then he can say it's not responsive and come back to it. He's got a right to explain -- I respectfully submit he's got a right to give a full answer because he's here to tell the truth.

THE COURT: I agree, I overrule.

You may proceed, sir.

THE WITNESS: Okay. We're interviewing everyone on the scene. I interviewed the two people on the scene that were adults that had information that I felt which was pertinent to the call. After interviewing these two people, I didn't feel as though there was any need for me to talk to the

children based on the information I was getting.

Like I said, I feel like it's detrimental to talk to kids and to get kids further involved in the situation when they have already been traumatized by what maybe they have already seen. And if I'm not getting information that leads me to believe I need to further my investigation by talking to these children, I don't do so.

BY MR. LUGINBILL:

Q If nothing had happened, what would the kids be traumatized by telling you about?

A Well, like I said, there had been an argument the night before, which led to Mrs.~Blandin sleeping outside in the van. She was clear to me about this argument. She said that there was a disturbance. This disturbance happened over an issue she said that -- she was very vague about what it was over. I know it was -- started an argument over some money and some other issues and that she was going to leave, which furthered the argument. He had been intoxicated the night before. She said based on prior incidents -- he had been intoxicated in most prior incidents where she had been abused by him. And she did not -- when she come outside to put stuff into her van, he locked the door. When she went to go back inside, she found out that the door was locked. She

didn't want to try to further the incident by doing so. If you -- you know, in layman's terms, she was trying to be the bigger person and step away from the incident and try to let things cool off. As she did so, she stayed in the van. I would consider that to be something -- if the kids were in the house, that would be something that would traumatize the kids.

Q Would you consider her staying in the van while they slept in their bed to be traumatizing to them?

A The fact that there was an argument leading up to this which caused her to make this decision -- I feel like if there's an argument that's heated enough for her to feel as though she needs to sleep outside and ends in him locking her out of the house, I feel like that could be traumatizing to the kids.

Q So, you're telling this jury that you knew he had been intoxicated the night before?

A Yeah, she was pretty clear about that. And I think he actually told me that as well.

Q And you're aware that he had prior CDVs?

A I was aware of that. Based on her statements to me, she told me about prior CDV incidents.

Q Based on your training and experience, it was likely -- you knew it was likely that he had a no contact order?

A I knew it was possible that he had a no contact order. Based on the fact that he had been arrested for CDV. Her statement to me was that -- I can't remember if she said it happened in October or if she said sometime around the month before then. It's hard for me to remember specific statements that were made based on the fact at this point it's almost four years. She talked about the fact that one had happened in October about a month before then. She talked about how things had happened in the past. She said that in that incident the month before then, he had assaulted her and she had called the sheriff's office. The sheriff's office had come out and arrested him for that.

Q Isn't it true that she told you she was scared to go back in the house?

A She stated that if she -- she felt as though if she went back into the house things could possibly escalate and she based this on the fact that things had occurred in the past. And his pattern was he gets intoxicated, arguments occur, he gets angry, more and more angry, and then things develop into physical violence. She said that she noticed sort of the pattern of him getting angry, so she wasn't going to try to push anything anymore. Based on her statements to me, there was nothing he did that was an affirmative or direct action which

could be construed in my eyes as an offer or attempt to offer harm or injury to her during that incident the night before.

Q Again, it's your testimony and I understand that you asked her specifically, did he threaten to kill you and she said no?

A I asked her specifically -- well, I asked her specifically did he threaten you. I can't remember specifically asking 100 percent whether I said kill or not. I did specifically ask did he threaten you and she said no.

Q But you knew according -- from the incident recall that there was an allegation he had threatened to kill her?

A Yes. If you look at that, it says that her sister made this allegation. And the third party was not there.

Q And that would be a logical question to ask -- if you knew that allegation was out there, that would have been a logical question for you to ask, yes?

A I don't remember if I asked anything about the sister or not at this point in time. I may have asked where she was or something. I did ask her specifically, Did he threaten you? Did he harm you? And I can't remember -- like I said, I can't remember 100 percent the

words I would have used. Typically, I would say things of, Did he hit you? Did he threaten you? I said those things specifically and she said no to me both of those times.

Q And it's your testimony that she told you that all the kids were in the house and only she was in the van?

A At one point in time, I believe that was the case and then when they came out the next morning is when all three got in the van with her.

Q So, it's your understanding and your belief that she told you the kids did not spend the night with her in the car?

A Yes, based on what she was telling me, that was the case. That's the reason she waited outside because she didn't want to leave without her three children.

Q Was it just one child or all three that was in the house?

A Based on her statements to me, throughout the night, all three were inside. She never clarified to me, she just said before we arrived that morning, they had all gotten in the car with her. I don't remember going into specifics as to when one came out or if one came out or two came out and then another one came out later. I can't remember her being specific about all of that. But I know

during the course of the night, she was pretty specific about the three of them being inside.

Q Did you ask her why she changed her story?

A Did I ask her why she changed her story?

Q She told 911 that there had been a threat and she had been assaulted, but she's telling you 20 minutes later that she wasn't. Did you ever ask her why she changed her story?

A No, sir. Like I said, I was never told specifically about the fact that she made these statements of threats or abuse to 911.

Q Did you ask her why is your sister telling 911 that he's threatening to kill you?

A Like I said, I can't remember if I asked specific questions about the sister. I think I, at least, asked where is your sister? But based on the fact that I'm talking to her and her husband, also, the fact that she's told me either police or sheriff's office has come out to my house before. I have told them about domestic violence before. Based on the fact that he's been arrested by the sheriff's office and by other law enforcement officers, she's been forthcoming about assaults before and about possible threats. I don't know the exact specifics of those prior incidents, but I believe she's told police about domestic violence before.

Then, also after speaking with her and Mr. Blandin, their stories -- I didn't see any contradictions in their stories or reasons to go further and say I think she's lying to me or anything like that. Everything that I was asking her seemed to match up with what he was saying. And then on top of that, she's told police before that she's been assaulted. She's called us out before for assaults and he's gone to jail for those. So I assumed based on those things and after speaking with both of them that I'm getting the truth from both of them.

Q Did you have any trouble understanding her?

A She has an accent, she did, but I had no reason to believe from talking to her that I didn't -- that we weren't communicating clearly with each other.

Q She did tell you that Avery had made threats to her, correct?

A Excuse me?

Q She told you that Avery had threatened her, correct?

A She didn't -- not in this incident. I specifically said, Has he threatened you? Has he harmed you?

She said, No. She said, He has in the past. And she said this and that. She talked about the October incident. And everything she said about -- everything she

said other than that was about incidents that had occurred further in the past before then.

Q You were asked to do a supplemental report after her murder, correct?

A That's correct.

Q And you were told not to put a case number on it?

A That's correct.

Q And you used your computer to fill it out and you sent it to the central printer, correct?

A That's correct. The next day after this incident occurred -- well, the next day after the Wal-Mart incident occurred, Investigator Whaley, who's an investigator with homicide, came out to the residence at 125 North Orchard Farms Avenue and did a search warrant on the residence. As he did so, I responded to the residence because -- when investigators respond out, they respond in unmarked cars and they're also in suits and ties, generally, or something that would not designate them as a law enforcement officer. So, they request uniform detectives to respond as they do so, just basically to prevent any confusion, neighbors don't think there's a burglary happening at the house or something like that.

So when I did so, I told Investigator Whaley the fact that we had been out there the day before and we had

interacted with them. He said -- I basically told them the gist of what had occurred, the fact that I got a statement from both of them that it was just an argument and it was over child custody. She left. She decided that she was going to leave for good. And then he asked me to just do a supplemental report, which would be a report on our computer was done. The program is actually called Omni-Form, which is similar to a PDF file. You would have different blocks that you would go into, click on that block and fill it out, then you go on down. There's one large block that would be where you would fill out a narrative report.

Generally, a lot of times -- I shouldn't say a lot of times, sometimes investigators will ask you to do that if you're doing something that's in reference to a different incident. And then they will -- what happens is when we finish it, it prints off to our uniform patrol office, which is at the law enforcement center, the sheriff's office. Our sergeant would get it and would take it over to the investigators. And that's what Investigator Whaley asked me to do.

Q Let's go ahead and take a look at that report.

MR. HARTER: You got copy of it?

MR. WILSON: It's Exhibit 23.

BY MR. LUGINBILL:

Q This is Exhibit 23 that I'm showing you now, which is your supplemental report, I believe?

A Yes, sir.

Q You recognize this document as being yours?

A Yes, sir, I do.

Q You indicate that you respond, you say when. You arrive on the scene shortly after Deputy Picone. You observed Avery sitting in a Mitsubishi Ontario and she's in a minivan?

A If you're sitting in the driveway, she's on the right-hand side if you're looking from the road towards the house. So, if you're standing in the road as you would be pulling into the driveway, they're both facing the house. She's in the right-hand side in the white minivan. I can't remember the make and model. He's on the left-hand side in a Mitsubishi Ontario SUV. I can't remember the color on that. So, he's sitting in the driver's side on that side. She's sitting in the driver's side of the van on the passenger side of the SUV. His passenger side window is lowered. Her driver's side window is lowered.

Q Could you make out what they were saying?

A I remember they were talking back and forth, arguing back and forth. I was walking up, Deputy Picone

was kind of also talking, so I don't remember any of the words that were actually said. Couldn't have been anything that I would have recognized as key to my investigation that would have, you know, said -- we listen for certain things, such as you hit me or you said this to me or something that's going to get us into what they would call excited utterances under the law, which is a hearsay exception under the law. So, we listen for those type of things. I don't remember hearing anything of that nature or else I would have documented it and further investigated those statements. I just remember them saying things back and forth to each other. It wasn't extremely heated, it was just kind of a -- about a normal volume, I would say, that they were talking back and forth to each other. And you could clearly tell it was a dispute to a certain extent.

Q In responding to this domestic incident, were there -- according to your CAD, you had a threat of violence. Did you come with lights on?

A No, we do not respond with lights and sirens unless life is immediately in jeopardy. So if they would have said husband has a gun and he's threatening to shoot her or he's choking her or something of this nature, we would, but not in this situation.

Q And you did not have your mic activated,

correct?

A I did not -- you're talking about the in-car camera?

Q Yes.

A No, I did not have mine activated. General orders -- I can't remember the exact one now that says that you only have to have your mic activated in a traffic stop if you get out with a suspicious person. And just to kind of define suspicious person, it would be, for instance, say we're driving down the road and we see a person walking down the road who matches the description of somebody who just committed a crime somewhere. So, we're getting out with somebody, a suspicious person or maybe it's somebody walking down the road in the middle of the night and we're going to get out and talk to. We're mandated by policy to have our camera on in our car for those two incidents, no others. Sometimes it's suggested to do so just to document different incidents, but --

Q You didn't --

A -- that's the only time. No, I did not.

Q All right. I want to go over some of this. It was your understanding they had argued the night before, correct?

A Yes, sir, that's correct.

Q So, from a timeline standpoint, the incident

started the night previously?

A That's correct, yes, sir.

Q All right. She tells Avery she's going to leave and that became even more angry, correct?

A Excuse me?

Q She told Avery she was leaving him and the argument then became heated?

A Yes, sir, that's correct.

Q She stated that Avery locked her out, correct?

A That's correct, yes, sir.

Q That he refused to let her have her children. And is it your understanding that it was all the children or just one?

A Based on my understanding, all three of them were inside the house at that point in time. As I said, I don't remember -- I don't think she said anything as far as when one may have came out or two may have stayed in or something of that nature. But I know at one point, all three -- I believe she said all three were inside.

Q All right. And she said specifically she did not want to go back in. And it picks up right here where Lilia stated she did not want to go back into the house because she was worried that the incident may escalate. That's your term, I assume?

A That what it says, yes. I'm sure -- like I

said, it's been four years now, I can't remember the exact wording she used. If you look at this incident report, it's to document an incident that happened the day before a murder. At that point in time, I thought I was doing just this specific dispute and I didn't realize all this was going to come out of it or I may have been a little more detailed of what I put in there. But yes, generally speaking, she was afraid that things may escalate to become physical if she tried to go back inside and push the argument, I guess if you want to use that term.

Q So, she was scared of her husband?

A She knew that he was capable of violence towards her in certain instances, yes.

Q She told you that just before you got there or shortly before you got there that Avery then let the kids -- children get in the car, correct, or gave her back whichever child he was keeping in the house at the time?

A Yes, shortly before we got there. I guess all three of them were in the car. And like I said, she didn't say -- I don't know if someone had come out earlier or not, but before we got there, all three of them had gotten into the car with Avery.

Q Did it concern you at all that somebody with a history of domestic violence was essentially holding one of his own children hostage from the mother?

A Well, if you look further down, at one point, I asked Lilia why she had not called the night before and she stated she did not feel as though she needed to at that point. When we get there, the children are already outside. And like I said, I asked her why she didn't call the night before. We could have come out and tried to help her with the kids so she could leave and wouldn't have slept in the car all night. And she just said that she didn't feel like she needed to at that point in time. She felt like he would eventually calm down and let the kids come out and she could leave with them.

Q You asked Lilia specifically if any threats had been made or if Avery had assaulted her and she stated neither had occurred, correct?

A That's correct, that's what it says.

Q But then you move on to say, she stated Avery has made threats to hurt her or kill her in the past, but she couldn't tell you exactly when, correct?

A Yeah. She was clear to me that things had occurred in the past. Like I said, she mentions an incident in October. I can't remember, like I said, the exact wording she would have used, then having a prior -- or about a month before then or it happened sometime in October. But she had mentioned the incident in October and she mentioned distant past as far as -- I think a lot

of times she was referring to things that were over a year old.

Q So, are you telling the jury that she did tell you about the October 31st incident?

A She mentioned -- she didn't mention October 31st by date, but she did mention that incident had occurred approximately in October.

Q And that would be an exact time, correct?

A Time frame, yes, sir.

Q Okay. Would you consider that to be the distant past?

A When I say distant past, I mean it's not an immediate thing that had just occurred. It's things that deputies had already dealt with based on her statements to me. It's not something that -- she's not telling me that a domestic violence had occurred that I need to handle as the deputy on scene as far as something that would provoke me to think probable cause exist that I needed to make an arrest for domestic violence against Mr. Blandin.

Q Now, you indicated that you advised Lilia how to get an order of protection, correct?

A I did, yes, sir.

Q But you did not give her any paperwork to do that, you just told her where to go?

A I can't remember now if I did or not.

Basically, the Greenville County Sheriff's Office has paperwork that we'll give to victims of domestic violence. The reason I may have given her this paperwork is because she had showed signs to me that she wanted to leave and she wanted to leave for good. This paperwork would be specific to have information on how to obtain an order of protection. It has specific information on how to obtain a resisting arrest, which in her case would be an Order of Protection giving the household relationship, husband and wife. The reason I may have given this to her is because it would have this information on that. I wouldn't have to write it down on a piece of paper, it's already readily available that I can hand to her and give her and she can leave knowing this information.

Offhand, I can't remember 100 percent whether I did or didn't. It's something that I often do in situations such as this when there's a domestic abuse that doesn't rise to domestic violence and these people are showing interest in going to get an order of protection.

Q If there had been an order of protection in place when you arrived on the scene, would you have arrested Avery?

A Yes, I would have.

Q Would you have -- in your training, it would have been nondiscretionary at that point, correct?

A That's correct. State law mandates that I make an arrest if an order of protection is in place and I can determine that that order of protection is in place.

Q I want to show you how it's listed in 238. On number three -- it's right behind you. I think you have 238 in front of you as well. If not, I can certainly give it to you.

A I don't think so.

Q This is number 10. You can take a look at it there instead of here. This is under the mandatory arrest section, correct?

A That's correct.

Q And it says it's issued under the violence protection from Domestic Abuse Act. That's the kind that comes from the Family Court.

A Yes.

Q But then it says you have to have physical manifestations of injury to the victim with probable cause, correct?

A That's what the general order says. I don't believe that state law actually mandates that we have physical manifestation of injury with probable cause if an Order of Protection exists. If an Order of Protection exist, an Order of Protection and charged with domestic violence, it would be a violation of an Order of

Protection.

Q And, in fact, if you have physical manifestation with probable cause, you're supposed to arrest anyway under the law, correct?

A If I have physical manifestation of injury with probable cause and an Order of Protection, I would charge him with violation of Order of Protection and the correct charge of criminal domestic violence.

Q And under the totality of the circumstances that you knew of, you had an individual who was intoxicated the night before, who gets violent when he's intoxicated according to his wife. You have a wife who has called 911 and made an allegation that he threatened to kill her, or, at least, somebody has relayed to you that she made that allegation, correct?

A The sister, yes.

Q The sister. You have him in violation of a bond order right in front of you. And I understand that Greenville County does not enforce those --

A I don't have knowledge of it specifically at that time.

Q You suspected it, correct?

A It could have been. I mean, I don't know how much I was thinking about that at that point in time. Like I said, they were back together, mutually back

together based on her statements.

Q You knew he had prior -- I'm sorry.

MR. HARTER: Your Honor, he was still talking.

THE COURT: Were you still answering, sir?

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead.

THE WITNESS: Based on her statements, they were mutually back together. If I'm not mistaken -- she didn't tell me this, but she actually bonded him out of jail. There's a possibility, and at that point in time, I'm not 100 percent certain, as to whether that bond court is in place still. On top of that, she's showing signs to me based on her statements to me that she has decided to go back into a mutual relationship with him. It's not as though he's at the house against her will trying to force himself on her at that point in time.

Q I thought your report said she was trying to leave?

A Yeah, she was trying to leave at that point in time, but this is 30, 40 days after the no contact order had been in place if it was put in place by the Magistrate Court. During those -- based on her statements to me, during that time period, she had allowed him to come back into the house. I don't know if the Judge would even

enforce that order based on that incident, the fact that she's complacent to him being back around her. And number two, I don't specifically have information to tell me one way or another. Because once the -- once the court --

For instance, somebody gets charged, a Judge can put a no contact order as a condition of a bond. If he finds out information to say otherwise, he can revoke the bond. Once that charge is dismissed through court -- so for instance, if she drops the charges and if the Court dismisses them before the court takes place, that bond court -- or that bond condition is no longer in place and he would no longer have his bond revoked to go back to jail for that. If the trial had already occurred for that and had been dismissed in some other way, that bond condition would no longer be in place. At that point in time, I'm not sure if that is in place or not. So, I'm unsure whether that bond condition is in place.

Q Did you ask her?

A No. Like I said, based on her story to me, she's back there on her own freewill. The fact that she's been back around him for that long -- had she come up to me and said he's under a no contact order, he's not supposed to be around me, I'm here and I've been living here with my kids and he just showed up today and I want to go get this bond revoked so he goes back to jail, I

would make every effort to try to help her do so. But at that point in time, she never made the statements to me that that was in place and I was unsure if it was or not. So, I didn't have any reason to go forward with that.

Q She was scared to go back in, correct?

A During the argument, yes, sir. And I don't know if necessarily -- well, sure, if you want to label it that way, yes. She felt as though things could escalate if she went back into the house based on prior incidents that had occurred.

Q In fact, she tells the first 911 operator that If I go back in, he's going to put me in a room and beat me up.

That's what she told the 911 operator 20 minutes before you got there, correct?

A Based on the transcript of the call.

Q Sounds like somebody who's scared to go back in, right?

A She felt as though he may assault her if she went back inside. I think I've been clear about that, yes, sir.

Q And it's your testimony today that with all that information, you chose to stop viewing this as a domestic call and just treat it as a custody call and that's why you didn't take all the steps of 238?

A Like I said, when I get there, I talk to her and I talk to him. And it's kind of a prolonged incident, 28 minutes that I was there. I talked to her initially. Stepped her away from the car, out of sound -- we could see the kids, but the kids can't hear what we're talking about. I'm talking to her. She gives me the information I've already relayed to you that the argument occurred the night before. She felt as though based on prior incident -- he's intoxicated. She felt like if she went back into the house, things could escalate after he had locked the door. She mentioned to me that deputies had responded before and helped her and he has gone to jail based on these things. And then number three, I talked to him and their stories seemed to match. I don't notice any contradictions in their story.

So, I have a woman who's told me that there's an argument, based on prior incidents, not something that he specifically did today, except for the fact that he was drinking and the fact that they had an argument was the only thing she gave to me that would say that caused her to have these fears. And these are things that mainly -- that have led up to incidents in the past. She says in order to prevent things from escalating, she stayed outside and tried to just mainly wait it out unless he would let her have the kids earlier in the night so that

she could leave. Based on all those things, I didn't feel as though she was lying to me. All those things seem to tell me that she was being forthcoming.

Q Did you have a chance to talk to Ms. Rivero, the mother.

A Did I have a chance to talk to her? Yeah, we talked briefly when she got there. The reason she had to actually respond to the scene was because -- basically anytime we get out with -- pretty well with any people for anything mostly, we'll run them through our dispatch. We'll give dispatch their name and their date of birth. Dispatch will run them through what's called NCIC, which is the National Crime Information Center, which we're called back up with active warrants. Sometimes it could be our warrants, but, typically, what we're looking for through NCIC is outstanding warrants from other jurisdictions. So, if Spartanburg County or even somewhere in the State of Tennessee had issued a warrant for one of them, it would pop up. It would also pop up with an order of protection and it would pop up with a restraining order.

So, I run her through dispatch and Deputy Picone runs Avery while he's talking to him. Both of their licenses -- one of the things they do when they run these names, date of births is their license will pop back.

Both of them popped back or come back with South Carolina licenses and both of them are suspended due to failure to pay insurance, so therefore we can't let her leave. Mrs.~Blandin [sic] does arrive on the scene and when she does arrive on the scene, I talk to her briefly, yes, sir.

Q And didn't she, in fact, say, Why aren't you taking Avery to jail?

A She did not say that.

Q Didn't she tell you, He's hit my daughter, why aren't you taking him to jail?

A She did not say that to me.

Q You would agree with me that if Lilia Blandin had told you she had been hit in the stomach on the night of the 8th and then again the morning of the 9th and that Avery had threatened to kill her in that time frame, in the totality of the circumstances, that would have given you probable cause, correct?

A I would have had to have done a complete investigation. Had she told me those things, I would have done an investigation further into the incident. I have to determine probable cause. After I gather all the things, if I clearly have probable cause that it occurred -- so for instance, say, I look at somebody and they have a swollen eye and they say he hit me in the eye. That gives me probable cause clearly all day. And under

the law, it says that based on that I have probable cause and physical manifestation of injury, which would be the swollen eye, you may take somebody to jail. Allegations in and of themselves -- I would take everything into account, but during the process of my job, I've been lied to before, so just specific verbal statements, it could, but I'm not necessarily going to say for sure.

Q It would have caused you to do a little bit more investigation, correct?

A Sure, yes, sir.

Q All right. And one of the things -- because then you still would have been under 238. At that point, you're clearly investigating a civil domestic violence charge, correct?

A Absolutely, yes, sir.

Q So, you would have done your job and you would have interviewed all the witnesses on the scene, which would have included the children at that point?

A Absolutely, yes, I would have done that.

Q And if the children had corroborated her story and said yes, I saw dad hit her in the stomach the night before and I saw him hit her again this morning, that would have corroborated Lilia's story and then under the totality of the circumstances, you would have had probable cause, can we agree on that?

A Yeah, if all those things had occurred, yes, sir.

Q Okay. And at that point, the arrest would have been made, he would have gone to jail and in all likelihood, Mrs.-Blandin -- Ms. Lilia would still be with us, correct?

A In all -- I can't say for sure that would have prevented the murder, but if I would have had probable cause that criminal domestic violence had occurred, I would have made an arrest.

MR. LUGINBILL: Thank you.

MR. HARTER: Your Honor, I will preserve my questions for Kevin Tyner for my case.

THE COURT: Okay.

Officer, you can step down. Thank you very much.

THE WITNESS: Thank you, Judge.

THE COURT: All right. What does that say, does that say 12:30, 12:45?

Okay. Ladies and gentlemen, let's go ahead and take a break for lunch. If y'all would please be back at 1:30 and we'll resume the introduction of evidence in this case. Please don't discuss the case or conduct any self-help. Enjoy your lunch.

(WHEREUPON, the jury left open court at approximately 12:30 p.m.)

THE COURT: All right. Counsel, anything further before we adjourn for lunch?

MR. HARTER: Nothing from us, Your Honor.

THE COURT: Okay. I'll see y'all back at 1:30. Have a great lunch.

(WHEREUPON, a lunch break was taken.)

THE COURT: Okay, let's call the jury in, please.

Mr. Farnsworth, how old is this child?

MR. FARNSWORTH: She's 10 years old -- 11 now. 11 in October.

THE COURT: Okay.

Is there any question of capacity that needs to be resolved by the Court?

MR. HARTER: I'd like you to address that, Judge. We're talking about events that occurred when she was seven -- seven, six or a little bit younger.

THE COURT: Tell the jury to go back.

Okay. So, let's call Miss Blandin up.

Miss Blandin, you want to come on up.

If you'll swear her in.

THE CLERK: Place your left hand on the Bible, raise your right hand.