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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Opinion No. 5666 (S.C. Ct. App. filed July 17, 2019)

Ex parte: The Travelers Home and Marine Insurance Company Petitioner,

In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, ... Respondent,

v.

Cameron Thomas Stringfellow, ... Defendant.

APPENDIX II

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1 to send phone calls to find pot, no one made him do
2 that. When he decided to get the texts and then
3 get in the car and go get marijuana, no one made
4 him do that. That was a choice. All of those
5 choices were choices he made on his own.

6 Number 2, the question is going to be: What
7 percentage do you attribute to the Defendant, Cam?
8 What percentage do you contribute to the Decedent,
9 Corey?

10 Ladies and gentlemen, if Corey doesn't get in
11 the car that night to go buy marijuana, he is still
12 alive today. The accident still happens. Cam
13 still gets a DUI. Cam's parents still buy him out
14 of a DUI. Wesley is still hurt. The BMW is still
15 trashed. But Corey is alive. Corey made a choice
16 that night to go on a venture to engage in a joint
17 enterprise.

18 And the judge is going to tell you that a
19 joint enterprise is simply this: There is a common
20 purpose to do what they were doing. There was a
21 common purpose. They all wanted to go get more pot
22 so they could smoke it. And that the passenger had
23 an equal right to control the car. The passenger,
24 Corey, could have chosen that night -- because,
25 according to the Plaintiff, he can drive safely.

1 He could have chosen to drive home that night. But
2 he didn't. He could have chosen not to go that
3 night. But he didn't.

4 So when you have to look at assigning
5 percentage, the Plaintiff said Cam had the ace in a
6 deck of cards. He had the ace. He decided
7 everything. No, Corey had the ace that night.
8 Corey could have decided not to get in the car.
9 And if Corey wasn't old enough to make that
10 decision, then why did mama and daddy live him home
11 and go to the beach? They thought Corey was mature
12 enough. They thought Corey could make that
13 decision and that's why they left him. And Corey
14 made all of those decisions and all of those
15 choices. And when he did, I say he has the ace.

16 When you assign negligence, Corey is more than
17 50 percent negligent because he's responsible for
18 his actions. If you find that Corey is more than
19 50 percent negligent, if you find he is 50.000001
20 percent negligent, this case is over with. You
21 stop. And it will say stop. You don't answer any
22 further questions. If you find that, no, Corey
23 didn't make his own decisions, Corey didn't know
24 what he was doing, then and only then do you have
25 to decide whether you award money in this case.

1 Now, we've heard a lot about punishment. They
2 want to send a message to the Cams of the world and
3 to every single University of South Carolina
4 student that you can't do what Cam did. They knew
5 that Cam was drunk. They knew that Cam had
6 marijuana in his system. And after they knew the
7 facts of that, they then decided that they should
8 go after BMW. Because when Cam put his foot on the
9 gas pedal, must have been something wrong with the
10 car. BMW must have designed the car wrong. Not
11 that Cam put his foot on the gas pedal, it was
12 BMW's fault.

13 Then when Ms. Stringfellow found out from her
14 boss that there was a conflict of interest because
15 the company she was working for had an account with
16 BMW, then they were done with that. Then they
17 decided that they were going to go after Cam and
18 that they were going to send a message and that
19 they were going to ask for justice. And they were
20 going to ask for the 12 of you to punish him and
21 punish everybody else. They're asking the 12 of
22 you to do something they've never been able to do.

23 They want to punish. They want to send a
24 message. The same time they want to punish and
25 send a message, they were begging for leniency.

1 You want to send a message to kids in college, you
2 send a message to kids in college that when you do
3 this, you go to jail. You don't send a message
4 that mama and daddy are going to be rewarded with
5 two and a half million dollars.

6 Ladies and gentlemen, this case is about one
7 thing and one thing only. Money. That's it. They
8 had an opportunity to seek justice and to prove to
9 kids of the world that when you did -- and when you
10 do what Cam and Corey did, you go to jail and there
11 are going to be times, dear God, when you can lose
12 your life. You can lose your child.

13 Ladies and gentlemen, when you decide to send
14 a message in this case, send a message, send a
15 message to the people sitting at that table and
16 behind that table that your choices have
17 consequences, your actions have consequences, your
18 lack of actions have consequences.

19 When you walk out of this room, it is not
20 about sympathy. It is about the facts. It is
21 about the evidence in this case. And the evidence
22 in this case is that Corey Stringfellow would be
23 alive today had he stayed at home and never gotten
24 in the car. There is zero evidence that anybody
25 made Corey get in that car. There is zero evidence

1 that anybody made Corey make phone calls and get
2 texts about more pot.

3 The facts are John Corey Stringfellow made a
4 choice. It is a choice that I pray every day my
5 children never make, but it was his choice. And
6 his choice, unfortunately, has grave consequences.
7 And his choice, and all of his choices that night,
8 don't allow mama and daddy now to come in and ask
9 for the 12 of you to give money and to punish when
10 they could never do it themselves.

11 Thank you for your time. Thank you for
12 listening. When you go out of this courtroom, no
13 matter what decision you make, I promise you I will
14 respect your voice because you have listened and
15 because you have thought it through.

16 Thank you very much.

17 THE COURT: Mr. Griffin?

18 MR. GRIFFIN: Thank you, Your Honor.

19 FINAL REBUTTAL ARGUMENT

20 MR. GRIFFIN: When the lawyer over there asked
21 you to look at this verdict form and read a
22 question to you, she did what she's done the whole
23 trial. She lied to you, because she stopped
24 halfway. She says, You have to answer the
25 question: Did John Corey Stringfellow, was he

1 negligent on the night of May 24th, 2013? Yeah, he
2 was negligent because he smoked marijuana. Yeah,
3 he was negligent because he tripped over his
4 shoelace. Yeah, he was negligent because whatever.

5 What she doesn't want you to hear about is the
6 requirement that the judge is going to charge you
7 that the negligence had to be the proximate cause
8 of his death. That because Corey smoked marijuana
9 at 9:00 o'clock that he knew -- it was
10 foreseeable -- the judge is going to charge you on
11 proximate cause. It is you take an action and it's
12 foreseeable because you do this you're going to get
13 killed in a car accident doing 90 miles an hour in
14 a 25-mile-an-hour speed zone in Wildewood
15 neighborhood because you smoked marijuana with two
16 kids at 9:00 o'clock at night five and a half hours
17 earlier. You know that you're going to get in a
18 car accident, it's foreseeable you're going to get
19 in a car accident when someone's doing 90 miles an
20 hour in a 25-mile-an-hour speed zone when you
21 decide you're going to ride along, maybe go buy
22 some marijuana and smoke it when you get back to
23 the house.

24 Corey didn't cause his death that night. Now,
25 we can all say had he made different decisions,

1 there would have been a different outcome. And
2 that is the but for test. But for Corey waking up
3 that day, had he -- you know, had he stayed over at
4 a friend's house, had Corey gone to the beach with
5 his parents, had Corey did this, he wouldn't have
6 been in the place at the time he was in the place.
7 That's not the test. That's not the test. The
8 test is did he cause his own death. That's what
9 she doesn't want you to hear about. She wants --
10 And I told you before, the parents aren't on
11 trial here. You're not going to be asked to decide
12 if the parents did anything that they regret.
13 Sure, it haunts them every day that they did not
14 stay home for 12 more hours. Sure, it haunts them.
15 That doesn't mean they caused their son's death.
16 And because Corey gets in the car doesn't mean that
17 he knew or he expected that his brother was going
18 to do 90 miles an hour in a 25-mile-an-hour speed
19 zone. Corey didn't cause his own death. And for
20 her to suggest that when you allocate fault that
21 because he got in the car, he's more than
22 51 percent and he had a choice not to get in the
23 car, she wants you to ignore -- there's no
24 indication, any evidence. And that's what we need
25 to be focused on.

1 She says a lot of things out of her mouth that
2 did not come into the evidence. A lot of things
3 out. This making up stuff about dropping the
4 investigation on BMW because of conflict of
5 interest. That's just out of thin air. You heard
6 the testimony about that. They were looking,
7 investigating to see if there was post-accident
8 acceleration. And we chased that rabbit. They
9 didn't want to believe that their son was going
10 more than 80 miles an hour in a 25-mile-an-hour
11 speed zone. And who would? Who would? But
12 because they did that, they deserve to be grieving,
13 dead parents. They don't have a right -- they
14 don't have a right to come seek justice on behalf
15 of John Corey Stringfellow. That is no defense.

16 And she's just making up stuff when she says
17 that they were smoking pot all night. The evidence
18 is they didn't have pot, that's why they had to go
19 get pot. There's no evidence they were smoking pot
20 in the house when they got back from the movie.
21 Some evidence maybe they were drinking. And there
22 was evidence that they woke Corey up or they got
23 Corey down and said, Come on, come with us. And he
24 did. Now, when he made that decision to come with
25 them, was it foreseeable that they'd be doing 90.

1 miles in a 25-mile-an-hour speed zone? No. No, it
2 was not.

3 And, again, she says -- she says, I didn't
4 accuse Ms. Stringfellow of lying. And then she
5 accuses her of lying. She says they told false
6 statements, that's not lying. Then she goes on to
7 accuse them of lying when there's no evidence to
8 support her accusation. It's another broken
9 promise. It's another misrepresentation to you.
10 It is adding insult to injury, is what it is. Why?
11 I wish I knew the answer.

12 But what you heard about this case from
13 Patti's therapist is that what's right is right and
14 what's wrong is wrong. And that's why it's being
15 pursued. And it would be wrong, it would be wrong
16 to forego Corey's rights for fear that they would
17 have to come in here and face this withering
18 criticism from some group of lawyers and not stand
19 on the rights of Corey and their rights that are
20 guaranteed under the laws of this state. It is
21 right to stand up for Corey and their rights.

22 And we appreciate Mr. Gresham, who in memory
23 and honor of Corey and for his son Cooper, has
24 taken the task to stand up for Corey's rights,
25 because no parent, no parent should be forced in

1 order to obtain what is lawfully right to sue their
2 own son.

3 Ladies and gentlemen, I have carried the
4 weight of the mantle of this lawsuit in this case
5 and the grief of these parents for over three and a
6 half years. And now I am taking the mantle and the
7 burden of that and I am trustingly placing it in
8 your hands.

9 And there's only one thing that we ask, is
10 that when you go home tonight and when you see your
11 loved one, family members and they say, What did
12 you do in court today, that you can look them in
13 the eye and you can tell them, We sent a message
14 hopefully to make the streets safer. We honored
15 and valued the grief of parents of a loving,
16 beautiful child, and we delivered justice. Not
17 half justice, not injustice, but full and complete
18 justice.

19 Thank you.

20 JURY CHARGE

21 THE COURT: Let's stand for a moment.

22 (All comply.)

23 THE COURT: Madam Forelady and members of the
24 jury, you've heard the testimony, received the
25 evidence and heard the arguments of the Plaintiff's

1 representative and the Defendant. I will now
2 explain to you the law that applies in this case.

3 Under the constitution and laws of South
4 Carolina, you are the finders of the facts in this
5 case. I do not have the right to pass upon the
6 facts or even to express any opinion that I might
7 have as to them, because this is a matter solely
8 for you, the jury, to determine. As jurors, then,
9 it is your duty to determine the value, the effect,
10 the weight, and the truth of the evidence presented
11 during this trial.

12 As the trial judge, it is my responsibility to
13 preside over the trial of this case and to rule
14 upon the admissibility of the evidence offered
15 during the trial. You are to consider only the
16 testimony which has been presented from this
17 witness stand, together with any exhibits and
18 stipulations which have been made part of the
19 record.

20 Additionally, I have the duty to charge you
21 the law applicable to this case. And as the
22 presiding judge, I am the sole judge of the law of
23 this case. It is your duty as jurors to accept as
24 correct and apply the law as I now state it to you
25 and then deliberate and reach a verdict.

1 Finally, I charge you in this regard that you
2 should not be concerned with what you think the law
3 ought to be, but rather what I charge you that the
4 law is.

5 You are also the judges, the sole judges of
6 the credibility, that is the believability, of the
7 witnesses who have testified and of the evidence
8 which has been presented during this trial.

9 In evaluating credibility, you may take into
10 consideration many things, such as the demeanor or
11 manner of testifying, whether the witness had a
12 reason to be bias or prejudice, or whether the
13 testimony of a witness was contradicted on the one
14 hand, or supported and corroborated on the other
15 hand. It becomes your duty as jurors to analyze
16 and to evaluate the evidence and determine that
17 evidence which convinces you of its truth.

18 Now, while the arguments of counsel is a
19 beneficial part of every trial, you should remember
20 that the statements made by counsel are not
21 evidence. In presenting arguments, counsel often
22 refers to the evidence. However, you should base
23 your verdict on the evidence as you remember it.
24 Therefore, if there are any conflicts between the
25 recollection of counsel about the evidence and your

1 own recollection, you should rely on your own
2 understanding of the evidence.

3 The Defendant admits he was negligent and
4 reckless. And the Court has found that the
5 Defendant was negligent and reckless, and that his
6 negligence and recklessness was a proximate cause
7 of the Decedent's death. The Defense claims that
8 the Decedent's own negligence proximately caused
9 the Decedent's death and the Plaintiff's damages.

10 Proximate cause is something that produces a
11 natural chain of events, which in the end brings
12 about the injury or damages. It is the direct
13 cause of the injury or damages. And this defense
14 as presented by the Defense is called the defense
15 of comparative negligence.

16 Now, as to comparative negligence, the Defense
17 must prove by a preponderance or a greater weight
18 of the evidence that the Decedent's negligence
19 proximately caused or contributed to his own
20 damages.

21 Negligence means that a person was careless
22 and has done something that a reasonable person
23 would not have done or has failed to do something
24 that a reasonable person would have done in the
25 same situation. The law places upon the Defense

1 the burden of proving the Decedent was
2 comparatively negligent by a preponderance of the
3 evidence.

4 A preponderance of the evidence simply means a
5 greater weight of the evidence. It is evidence
6 which as a whole shows that the fact sought to be
7 proved is more likely true than not true. The
8 preponderance of the evidence is not determined by
9 the number of witnesses. Instead, it must be
10 determined by the greater weight of the evidence.

11 If you find that the negligence of both the
12 Decedent and the Defendant proximately caused the
13 Decedent's damages, you must then decide how much
14 the negligence of the Decedent contributed to the
15 Decedent's damages and how much of the Defendant's
16 negligence contributed to the Decedent's damages.

17 In deciding the percentages of negligence of
18 the Decedent and the Defendant, you may consider,
19 among other things, the following factors: Whether
20 each party's conduct was only inadvertent or
21 whether it was gauged with an awareness of the
22 danger involved and the magnitude of the risks
23 created by each party's conduct, including the
24 number of persons in danger, the possible severity
25 of injuries or damages, the significance of the

1 goal that each party was trying to reach and the
2 need to achieve a goal in that manner, each party's
3 capabilities and abilities to realize and eliminate
4 the risks involved, the particular circumstances
5 confronting each party at the time the conduct
6 occurred, such as the existence of an emergency
7 requiring a quick decision, the relative closeness
8 of the casual relationship of the negligent conduct
9 of the Defendant and the harm to the Decedent, and
10 whether the conduct of either party involved a
11 violation of a safety statute or regulation.

12 The Defense has pled joint enterprise as a
13 defense. Joint enterprise is a legal theory of
14 imputing the negligence of one party to another.
15 In order to constitute a joint enterprise so that
16 the negligence of the driver of an automobile may
17 be imputed to an occupant of the vehicle, there
18 must be a common purpose and a community of
19 interest in the object of an enterprise and an
20 equal right to direct and control the conduct of
21 each other with respect thereto. That is, the
22 passenger as well as the driver must be entitled to
23 a voice in the control and direction of the
24 vehicle. When the liability of the driver is
25 sought to be imputed to the passenger, the test of

1 joint enterprise is whether the passenger had any
2 control with the management of the vehicle.

3 The first element that must be found to be
4 present before two parties can be said to be
5 engaged in a joint enterprise is that they must
6 have some common purpose or pleasure of profit, and
7 must be acting toward the accomplishment of that
8 purpose at the time when the relationship is sought
9 to be established. There must be a common purpose
10 and the passenger must have an equal right to
11 control the direction and management of the
12 vehicle.

13 The test to impute to the Decedent the
14 negligence of his driver is whether such driver was
15 his agent and did he have any control over the
16 management of the automobile. Not until these
17 facts are established can the doctrine of joint
18 enterprise be invoked. If two or more persons
19 unite in carrying out a common purpose under such
20 circumstances that each has authority, expressed or
21 implied, to act for all in respect to the control
22 of the means an agency is employed to execute such
23 purpose, the negligence of one and the management
24 thereof will be imputed to the others. If it does
25 not follow that because several persons or

1 occupants of the same vehicle they are necessarily
2 engaged in a joint enterprise within the rule.

3 Now, whenever the death of a person is
4 proximately caused by the negligence of another,
5 and the negligence would have entitled the deceased
6 to recover damages if the deceased had not died, a
7 personal representative of the estate of the
8 deceased may bring an action for wrongful death and
9 survival. The personal representative has a right
10 to recover compensatory damages for the wrongful
11 death and, if applicable, punitive damages. It is
12 not necessary to show the money value of the life
13 of the Decedent since direct proof of the value of
14 human life is not possible. What is reasonable
15 compensation is left to your sound discretion and
16 judgment.

17 The damages in an action for wrongful death
18 include mental shock and suffering, wounded
19 feelings, grief and sorrow, loss of companionship,
20 if applicable, loss of the use and comfort of the
21 deceased's society, including the loss of the
22 deceased's experience, knowledge, and judgment in
23 managing the affairs of the deceased and his
24 beneficiaries, and medical and funeral expenses.

25 The Plaintiff may also recover damages under

1 the survival statute for any and all pain and
2 suffering and mental distress the Decedent
3 consciously suffered as a result of the accident
4 prior to his death.

5 Now, if you award actual damages, you may also
6 consider and award punitive damages. Punitive
7 damages are intended to punish the Defendant for
8 extraordinary and outrageous misconduct and to
9 prevent the Defendant and others from committing
10 similar acts in the future.

11 Punitive damages can only be awarded when
12 conduct of the Defendant has been something more
13 than mere negligence. The Defendant has admitted
14 and the Court has found that the Defendant's
15 conduct was negligent and reckless. The words
16 reckless, willfulness, and wantonness are
17 synonymous. The terms are used to describe a
18 conscious failure to exercise and observe
19 reasonable or due care.

20 Recklessness implies the doing of a negligent
21 act knowingly. When a person acts negligently and
22 he realizes that he is acting negligently, the law
23 says he is reckless, willful, and wanton.
24 Whichever term you prefer, they all mean the same
25 thing, that is, a conscious failure to exercise due

1 care.

2 Recklessness is distinguished from negligence.
3 Negligence is the failure to use due care.
4 Negligence is carelessness. Negligence is failure
5 by omission or commission to exercise due care as a
6 person of ordinary reason and prudence would
7 exercise in the same circumstances.

8 Recklessness is a higher degree of culpability
9 and responsibility. Recklessness signifies a
10 conscious failure to use or exercise due care.
11 Recklessness is a conscious indifference to the
12 rights of the Decedent or a reckless disregard of
13 the rights of the Decedent. Recklessness is an
14 awareness of wrongful conduct and a continuation to
15 act regardless of the consequences.

16 Clear and convincing evidence is more than
17 just a preponderance or greater weight of the
18 evidence. And punitive damages must be proven by
19 clear and convincing evidence.

20 Preponderance of the evidence requires proof
21 that persuades that a party's claim is more likely
22 true than not true. On the other hand, clear and
23 convincing proof is not as high a standard as the
24 burden of proof in a criminal case, which is proof
25 beyond a reasonable doubt. Clear and convincing

1 evidence -- clear and convincing proof leaves no
2 substantial doubt in your mind. It means that the
3 evidence is not ambiguous, doubtful, equivocal, or
4 contradictory. Convincing means persuading by
5 proof or argument causing one to believe in the
6 truth of what is asserted. Clear and convincing
7 proof establishes in your mind not only the fact
8 was probable, but that it is highly probable.

9 Before awarding punitive damages, you must
10 consider and weigh elements which may be pertinent
11 to facts of this case. You must first consider the
12 relationship between any punitive damage award and
13 the harm caused. Any penalty imposed should take
14 into account the reprehensibility of the conduct,
15 the harm caused, the Defendant's awareness of the
16 conduct's wrongfulness, the duration of the conduct
17 and any concealment. Thus, any penalty imposed
18 should be a relationship to the nature and extent
19 of the conduct and the harm caused, including the
20 compensatory damage award made by you.

21 Secondly, any penalty imposed should take into
22 account as a mitigating factor any other penalty
23 that may have been imposed or which may be imposed
24 for the conduct involved, including any criminal or
25 civil penalty or any other punitive damages award

1 arising out of the same conduct.

2 Finally, any award of punitive damages must be
3 limited to punishment and thus may not affect
4 economic bankruptcy. To this end, the Defendant's
5 ability to pay any punitive damage award should be
6 considered. However, the economic bankruptcy
7 factor is not an absolute bar to an award of
8 punitive damages. Please note that any finding of
9 punitive damages cannot be reduced by any
10 proportion of the Decedent's negligence under
11 comparative negligence.

12 Now, the Plaintiff must prove by a
13 preponderance of the evidence the actual damages
14 which were proximately caused by the Defendant's
15 negligence. The Plaintiff must prove punitive
16 damages by clear and convincing evidence. This
17 does not mean that the Plaintiff must prove damages
18 to a mathematical certainty or produce evidence of
19 the exact amount of damages suffered. However, the
20 existence, causation, or amount of damages cannot
21 be left to guesswork or speculation. Instead, the
22 evidence presented by the Plaintiff must be enough
23 to allow you to determine the amount of damages
24 with reasonable certainty and accuracy.

25 Now, you have been chosen and sworn to give

1 the parties in this case a fair and impartial
2 trial. When you have done so, you will have
3 complied with your oath and no one will have a
4 right to criticize your verdict. You must not be
5 influenced by opinions or expressions of opinion
6 you may have heard outside of the courtroom, but
7 rather should base your verdict solely on the
8 testimony of the sworn witnesses who took the
9 stand, the exhibits received into evidence, and the
10 law which I have stated. You should not be swayed
11 by caprice, passion, prejudice, or improper
12 sympathy for or against anyone in this case.
13 Remember, you have no friends to reward or enemies
14 to punish, and all parties are entitled to a fair
15 and impartial trial.

16 It is your duty as jurors to consult with one
17 another and to deliberate in an effort to reach an
18 agreement. Each of you must decide this case for
19 yourself, but only after an impartial consideration
20 of all the evidence with your fellow jurors.

21 In the course of your deliberations, do not
22 hesitate to re-examine your own views and change
23 your opinion if you become convinced it is
24 erroneous. However, do not surrender your honest
25 conviction as to the weight or effect of the

1 evidence solely because of the opinion of your
2 fellow jurors or for the mere purpose of returning
3 a verdict.

4 As I stated earlier, you are the judges,
5 judges of the facts. Your verdict must represent
6 the considered judgment of each juror. In other
7 words, your verdict must be unanimous.

8 Now, you may have noticed that I have read
9 these instructions. I do so to give you the law as
10 accurately as possible. I will give you a copy of
11 these instructions to have in the jury room. You
12 may refer to these instructions to assist you in
13 your deliberations. You must consider the
14 instructions as a whole and may not follow some and
15 ignore others.

16 Madam Forelady, it will be your duty to
17 preside over the deliberations of the jury.

18 If during your deliberations you should desire
19 to communicate with the Court, please reduce your
20 message or question to writing, signed by the
21 foreperson, and the foreperson only. Then pass the
22 note to the bailiff, who will bring it to my
23 attention. I will then respond as promptly as
24 possible either in writing or by having you return
25 to the courtroom. I caution you, however, with

1 regard to any message or question that you might
2 send that you should not ever state or specify your
3 numerical division at the time.

4 Now, you have heard the evidence and you have
5 heard the law. Whatever your verdict, Madam
6 Forelady, you will indicate it by -- you'll
7 indicate it on the verdict form, and then sign and
8 date your verdict.

9 Now, this case, you have two verdict forms,
10 one for wrongful death and one for survival. And
11 each verdict form is in the nature of questions
12 that you have to answer, in effect.

13 The first, the Defendant -- it is a statement.
14 The Defendant has admitted that he was negligent
15 and reckless and that his negligence was the
16 proximate cause of the Decedent, John Corey
17 Stringfellow's, death. Do you, the jury, find that
18 by a preponderance of the evidence that the
19 Decedent, John Corey Stringfellow, was also
20 negligent and that his negligence was a proximate
21 cause of his death?

22 If your answer to that question is yes, then
23 you move on to the second question. And if your
24 answer is no, then you move on to the third
25 question. If you answer yes to Question Number two

1 dollars, the next question for you says: Taking
2 the combined negligence as 100 percent, what
3 percentage of negligence is attributable to the
4 Defendant and what percentage is attributable to
5 the Decedent, John Corey Stringfellow? And the
6 percentages must add up to 100 percent, and you
7 will indicate in the space indicated. It must
8 total 100 percent.

9 Now, if the Decedent, John Corey
10 Stringfellow's, percentage of the combined
11 negligence is greater than 50 percent, then you
12 stop and deliberate no further. If the percentage
13 of the Decedent's percentage of the combined
14 negligence is 50 percent or less, then you move on
15 to Question Number 3. And Question Number 3 says:
16 Can you please state the total amount of damages
17 sustained by the beneficiaries of the estate of
18 John Corey Stringfellow, Patricia and Thomas
19 Stringfellow, for the wrongful death of John Corey
20 Stringfellow? And in that place you will fill in
21 the amount of actual damages that were sustained.

22 Please note that you are not to reduce the
23 actual damages above by the percentage of
24 negligence attributable to the Decedent, John Corey
25 Stringfellow, in your answer to Number 2. That is

1 something that will be done by the Court
2 afterwards.

3 Question Number 4 says: As to the Plaintiff's
4 claim against the Defendant for punitive damages,
5 we, the jury, find for the estate of John Corey
6 Stringfellow in the amount, if any, of -- and there
7 you would, if you find punitive damages, you will
8 put in the amount of punitive damages, sign and
9 date the form.

10 As to the survival claim for conscious pain
11 and suffering prior to death, the form is in the
12 same -- follows the same -- you follow the same
13 process in completing the form and reaching your
14 verdict.

15 I'm going to have you go to the jury room now.
16 Of course, we ordered lunch for you, and it will
17 come. And you can talk and eat, eat and talk, stop
18 talking and eat, whichever you prefer. It will be
19 up to you. But you will need to remain in the jury
20 room until you have reached a verdict in this case.

21 I'm going to have you go to the jury room, but
22 do not begin deliberating until you receive a copy
23 of these instructions and the verdict forms and the
24 exhibits. That will be your signal to begin
25 deliberating.

1 Now, we selected 14 people. We can only use
2 12 to deliberate. From the first 12 jurors
3 selected, if any of you cannot continue with
4 deliberations such that I would pull in one of the
5 final two, if any of you cannot continue with the
6 deliberations for any reason whatsoever, please
7 raise your hand.

8 (WHEREUPON, there was no response.)

9 THE COURT: All right. Everybody is good to
10 go, which means that I'm going to release the two
11 alternate jurors.

12 So, the alternates, if you all will remain
13 with us while the others go to the jury room and
14 wait for the jury charge, verdict form, and
15 exhibits to begin deliberating.

16 Thank you.

17 (WHEREUPON, the jury retires to the jury
18 room at 12:15 p.m.)

19 THE COURT: And we'll get with you all in just
20 a moment.

21 Any additions or exceptions to the charge?

22 MR. GRIFFIN: Your Honor, just for the record,
23 I would note our earlier discussion and exception
24 as to the punitive damages charge, failing to
25 charge the jury they have a duty to award punitive

1 damages.

2 THE COURT: Yes, sir.

3 By the Defense?

4 MR. LANFORD: Your Honor, there were several.
5 You had charged that they could consider medical
6 and funeral expenses. There was no evidence of
7 medical or funeral expenses put into evidence, so
8 that should not have been in the charge. I believe
9 that was for the wrongful death, which you don't
10 consider funeral expenses anyway, there was no
11 evidence of funeral expenses or medical records.

12 THE COURT: All right.

13 MR. LANFORD: In Your Honor's charge on
14 wrongful death, Your Honor stated it is not
15 necessary to show the value of the life of the
16 Decedent. I think the charge actually says that
17 the damages are not directed to the value of the
18 life of the Decedent. I think not only is it not
19 necessary, I don't think the jury is allowed to
20 consider that, they are only to consider the
21 effects of the Decedent's death on the
22 beneficiaries of the estate. I do think that is a
23 distinction that needs to be made. I think that
24 was an error in that portion.

25 THE COURT: What do you want me to do?

1 MR. LANFORD: The third, Your Honor, I didn't
2 hear assumption of risk. We had pled that
3 affirmative defense.

4 THE COURT: Comparative negligence.

5 MR. LANFORD: The specific factors we had
6 requested. In other words, you said that we had
7 pled joint enterprise as a separate defense.

8 THE COURT: Comparative negligence.

9 MR. LANDIS: I did not hear -- we also pled
10 assumption of risk as a separate defense, nor did I
11 hear the elements of assumption of the risk.

12 THE COURT: I didn't say anything about
13 assumption of the risk, you're correct.

14 MR. LANFORD: Those are the three issues.
15 I've never been in this position where we're doing
16 it after the fact, so whatever Your Honor --

17 MS. O'BRIEN: I have. And, Your Honor, we
18 would request that you bring the jury back in. We
19 would request that you note to the jury that
20 medical and funeral expenses are not to be
21 considered, that there was no evidence presented as
22 to those. We would request that you clarify as
23 to -- specifically that it's not necessary to show
24 the value of life. And then we would request that
25 you charge assumption of risk with respect to

1 negligence.

2 THE COURT: All right. Mr. Griffin?

3 MR. GRIFFIN: Your Honor, we didn't put in the
4 medical bills or funeral expenses. I don't mind
5 taking that out. The assumption of risk charge is
6 the comparative negligence charge. I don't know if
7 he gains anything. I don't know what charge their
8 specifically requesting you to make. The one we
9 submitted is -- still all falls under comparative
10 negligence.

11 THE COURT: Assumption of risk, that's -- what
12 do you want me to tell them about assumption of
13 risks?

14 MR. LANFORD: Your Honor, we have a request to
15 charge.

16 THE COURT: I'm talking, you're talking. What
17 do you want me to tell them?

18 MS. O'BRIEN: We would request that you charge
19 that under South Carolina law --

20 THE COURT: Is she now saying what you're
21 about to say?

22 MR. LANFORD: I have the charge in front of
23 me, the charge we submitted to the Court.

24 THE COURT: Tell me in words.

25 MR. LANFORD: Assumption of the risk is a

1 voluntary choice to assuming no risk. Under South
2 Carolina law the doctrine of assumption of risk
3 embodies the principle that one should not be
4 permitted knowingly and voluntarily to incur an
5 obvious risk of harm when he has the ability to
6 avoid doing so and then holding others responsible
7 for his injury. In determining whether the
8 Plaintiff assumed the risk, you should consider
9 whether he was aware to hold out the exercise of
10 ordinary care, also been aware of the danger,
11 appreciated the nature and extent of the danger,
12 and voluntarily exposed himself to the danger. If
13 you find the Plaintiff assumed the known risk, you
14 should take that into account when determining
15 comparative fault of the parties.

16 THE COURT: I don't believe you charge
17 assumption of the risk now that we have comparative
18 negligence in the law. I think comparative
19 negligence covers assumption of risk.

20 MR. LANFORD: Your Honor, I agree with that,
21 but it is still a separate charge. It is a defense
22 we raised. And under the case law, it is still a
23 charge to be made to the jury. You still make --
24 with the sentence I had at the end, it is something
25 you take into account when determining comparative

1 negligence of the parties, but it is still a
2 separate charge if it was a pleaded defense. There
3 was evidence of that. Certainly it should go to
4 the jury.

5 THE COURT: Tell me again what you said about
6 clarifying regarding wrongful death and the value
7 of life.

8 MR. LANFORD: Your Honor, my recollection is
9 your charge --

10 THE COURT: It's not necessary to show the
11 money value of the life of the deceased since
12 direct proof of the value of human life is not
13 possible.

14 MR. LANFORD: That's correct. And I think
15 what the charge should say and what the law says is
16 that it is not directed to the value of the life of
17 the Decedent.

18 THE COURT: Say it again?

19 MR. LANFORD: It's not directed to the value
20 of the life of Decedent.

21 THE COURT: What is it?

22 MR. LANFORD: In other words, the damages that
23 you're considering are not directed to the value of
24 the life of the Decedent, they're directed to the
25 effect on the beneficiaries. And I think by not

1 making that clarification, by saying simply it is
2 not necessary to show the value of the life, you're
3 not -- telling the jury that they're not allowed to
4 consider the value of life. They're allowed to
5 consider the effect on the beneficiaries of the
6 estate. That would be my -- that would be our
7 clarification to --

8 THE COURT: Well, I'm not going to give that
9 clarification. I don't think it clarifies
10 anything.

11 MR. LANFORD: Okay.

12 THE COURT: I'll bring them out and tell them
13 that the medical expenses and funeral bills are not
14 to be considered. I'm not going to --

15 MR. LANFORD: Your Honor, may I direct the
16 Court's attention to the case of Davenport v.
17 Cotton Hope?

18 THE COURT: What year?

19 MR. LANFORD: 1998. As opposed to comparative
20 negligence, the case states that assumption of risk
21 is no longer an absolute bar, but is to be
22 considered along with the comparative negligence
23 analysis. I can give you the cite on that. In
24 other words, there is still assumption of the risk
25 as a defense. It's simply not an absolute bar

1 since we have comparative negligence, but we're
2 still entitled to the charge on assumption of risk.

3 MR. GRIFFIN: Your Honor, we also have a case,
4 Howard v. South Carolina Department of Highways,
5 343 S.C. 149, Court of Appeals 2000, that says:
6 Although assumption of risk is no longer recognized
7 as a complete defense in a negligent action, it
8 remains a facet of comparative negligence. It says
9 it may be charged to the jury, it doesn't say it
10 has to be charged to the jury. But, I mean, it is
11 part of the comparative negligence, is what it is.

12 MR. LANFORD: Your Honor, may be charged means
13 as to support the affirmative defense of assumption
14 of the risk, then it is charged to the jury and it
15 is under the comparative negligence analysis.

16 THE COURT: This case says: We therefore hold
17 at the end -- it goes back to the finding towards
18 the end of this case, their conclusion about, Based
19 on the above discussion the answer to the five
20 issues presented in this appeal, although the
21 absolute defense of assumption of risk has been
22 treated as a separate defense from contributory
23 negligence, it is incompatible with our comparative
24 fault system. That's Number One. Two, the
25 Plaintiff's conduct in assuming a risk can be

1 compared with the Defendant's negligence. Three, a
2 Plaintiff's conduct in assuming a risk can be made
3 a part of our comparative fault system. Four, by
4 abolishing assumption of risk as an absolute bar to
5 recovery, South Carolina will not be adopting
6 policies that would encourage people to take
7 unnecessary risks. Five, even if Davenport assumed
8 the risk, he would not be barred from recovery
9 unless his negligence exceeded the Defendant's
10 negligence. We therefore hold that the Plaintiff
11 is not barred from recovery by the doctrine of
12 assumption of risk unless the degree of fault
13 arising therefrom is greater than the negligence of
14 the Defendant. To the extent any prior cases are
15 inconsistent with this approach, they are
16 overruled.

17 What does that tell us?

18 MS. O'BRIEN: Your Honor, I agree that it is
19 absolutely not a bar. It is not a bar. That's why
20 it specifically says --

21 THE COURT: It doesn't absolutely bar the
22 Plaintiff.

23 MS. O'BRIEN: That is correct. And that's why
24 the charge says that the Plaintiff assumed a known
25 risk and you should take that into account when

1 determining the comparative fault of the parties.
2 It is absolutely under the heading of comparative
3 fault, but it is different than comparative fault.
4 And it has four distinct elements. And we have
5 to -- the jury has to know what those four distinct
6 elements are in order to be able to decide whether
7 we have proven those elements, and then they have
8 to decide whether they are going to reduce.

9 THE COURT: Well, in the charge, I told them
10 that in considering comparative negligence, they
11 are to consider the magnitude of the risk created
12 by each party's conduct.

13 MS. O'BRIEN: Yes, sir, I agree that you told
14 them that, and that is what negligence is. That's
15 not what assumption of risk is. And the question
16 that was asked is, Does assumption of risk have to
17 be separately charged in that case that we're
18 discussing.

19 THE COURT: What do you say about it,
20 Mr. Griffin?

21 MR. GRIFFIN: Well, Your Honor, I think your
22 existing charge encompassed the comparative fault
23 standard. I don't think their proposed charge is
24 an accurate statement. I had submitted a
25 comparative negligence, assumption of the risk

1 charge, which has the four elements set out. Their
2 charge does not have four elements set out, best I
3 can tell. It's on Page 22 of my -- I leave it up
4 to the Court.

5 THE COURT: I'm not going to charge it. I
6 think that the comparative negligence charge that
7 asks the jury to consider the risk -- magnitude of
8 the risk created by each party's conduct covers any
9 need to charge anything on that issue. I charged
10 joint enterprise. The jury is to consider the
11 magnitude of the risk of each party. I think that
12 covers everything that needs to be covered. I'm
13 going to bring the jury out and tell them that they
14 will not need to consider the funeral expenses and
15 medical bills since they were not presented.

16 MR. LANFORD: Your Honor, before the jury
17 comes back in, can we make an exhibit --

18 THE COURT: We can make that after the jury
19 leaves. I don't see how that exhibit needs to be
20 made a part of the record before the jury comes in.

21 Bring them back.

22 You can do it while they're coming.

23 (WHEREUPON, the jury came into open
24 court at 12:38 p.m.)

25 THE BAILIFF: The jury is seated, Your Honor.

1 THE COURT: All right, ladies and gentlemen, I
2 instructed you as to the damages that you are to
3 consider for wrongful death. I indicated that in
4 addition to mental shock and suffering, wounded
5 feelings, grief, loss of companionship, loss of use
6 and comfort of the deceased's society, that you
7 were also to consider medical expenses and funeral
8 expenses. No evidence has been presented regarding
9 medical expenses, funeral expenses, so you're not
10 to consider medical expenses and funeral expenses.

11 Thank you very much. And you will go back and
12 wait for the things that I said to begin
13 deliberating.

14 (WHEREUPON, the jury retires to the jury
15 room at 12:39 p.m.)

16 THE COURT: Any additional exceptions other
17 than that which we just stated prior to the jury
18 coming out?

19 MR. GRIFFIN: No, Your Honor.

20 MR. LANFORD: No additional exceptions to that
21 charge.

22 THE COURT: All right. So you all can review
23 the exhibits so we can get them to the jury.

24 Our two fine alternates, thank you very much
25 for your time and effort. We need 12 and, quite

1 often, someone falls by the wayside. If for some
2 reason or another they all survived the trial
3 experience, then we release the alternates. So
4 thank you all very much, and you are released from
5 further involvement. Hopefully, participating in
6 this trial has been meaningful to you.

7 And I think you probably will go -- after they
8 get your things out of the jury room, you will just
9 go downstairs. There are no other trial's going
10 on, so I'm sure you'll be released, but you get
11 released on the first floor.

12 All right. If you will check the exhibits.
13 I will release everybody until 2:00 o'clock.
14 (WHEREUPON, the jury began deliberating
15 at 12:41 p.m.)

16 (WHEREUPON, Court's Exhibit No. 2 was
17 marked for identification only.)

18 (WHEREUPON, court was in recess awaiting
19 a verdict.)

20 (WHEREUPON, the proceedings resumed at
21 2:17 p.m.)

22 THE COURT: The jury sent out a question. The
23 question is, Can damages be zero? Do we have to
24 award monetary damages?

25 So I'm going to give you all an opportunity to

1 view the note and to spend some time researching
2 the answer to the question before I respond to it.

3 The question I was going to ask, As to which
4 cause of action. It doesn't specify as to which
5 cause of action.

6 MS. O'BRIEN: Your Honor?

7 THE COURT: Yes.

8 MS. O'BRIEN: I know the answer to the
9 question.

10 THE COURT: You do?

11 MS. O'BRIEN: I do.

12 THE COURT: What is it?

13 MS. O'BRIEN: Can the damages be -- can the
14 actual damages be zero? No, they cannot, because
15 we've stipulated to negligence and recklessness.
16 So my request would be that the jury be brought
17 back in and that the jury be instructed that they
18 can award a nominal amount.

19 MR. GRIFFIN: I was agreeing with her until
20 she added the nominal amount. I mean, I think the
21 law would require them to award an amount of actual
22 damages.

23 THE COURT: So your view is the answer to the
24 question is no?

25 MR. GRIFFIN: No, it can't be zero.

1 THE COURT: No, period?

2 MR. GRIFFIN: Correct.

3 THE COURT: They ask the question, Can the
4 award be zero? The answer is no?

5 MR. GRIFFIN: Correct.

6 THE COURT: You agree with that?

7 MS. O'BRIEN: Do I agree with that?

8 THE COURT: Do you agree with that answer?

9 MS. O'BRIEN: I agree with that answer, but I
10 think that there can be an instruction to the jury
11 as to what the amount can be. And I believe that
12 in a jury charge that it is often appropriate that
13 a nominal amount is described, and that was not
14 described.

15 THE COURT: Well, the charge on wrongful death
16 described what elements the parties are entitled to
17 recover. As to survival it would be conscious pain
18 and suffering. They could conclude there was no
19 conscious pain and suffering. In that event, the
20 answer might be, Yes, zero, as to that cause of
21 action, if that's what they're asking about.

22 MR. GRIFFIN: Your Honor, the verdict form,
23 though, says if you find no conscious pain and
24 suffering then stop, so you don't even get to the
25 damages question. That's how it's laid out. So if

1 they get to the damage question --

2 THE COURT: So it cannot be zero. So I will
3 tell them no.

4 MR. GRIFFIN: Yes, sir.

5 THE COURT: But I'm not going to suggest that
6 they consider nominal damages. I'm not -- it's
7 just a question, and they didn't ask me to define
8 what damages the parties might be entitled to.
9 I've described that already.

10 MS. O'BRIEN: And, Your Honor, I would submit
11 to you they also did not ask the question with
12 respect to which cause of action, and so I think
13 there needs to be additional questions asked.

14 THE COURT: The jury asks the question, I give
15 the answers.

16 MR. GRIFFIN: Yes, sir, if they have another
17 question, then we'll deal with that.

18 MS. O'BRIEN: And, Your Honor, it would be our
19 position that if you can't answer the question --
20 because then in the survival action, it's a
21 different answer. So which cause of action?

22 THE COURT: Well, that's what I suggested
23 earlier would be a different answer until
24 Mr. Griffin says, Well, if they reach that point.

25 MS. O'BRIEN: We disagree --

1 THE COURT: They don't reach that point if
2 they do not find there are damages.

3 MR. GRIFFIN: Right.

4 THE COURT: If they find there are damages,
5 then they must award damages.

6 MR. GRIFFIN: The verdict form says, If you
7 find conscious pain and suffering, if the answer is
8 no, then they stop.

9 MS. O'BRIEN: Well, they could find conscious
10 pain and suffering and still award zero damages.

11 THE COURT: If you pass the note back, and
12 since you all have the answers, you don't need to
13 research it.

14 And we'll bring the jury, please.

15 MS. O'BRIEN: Note our objection, please, Your
16 Honor.

17 THE COURT: The record reflects all arguments
18 of the parties and position of the parties. It's
19 not my position to note anything in regard to
20 argument of the parties.

21 (WHEREUPON, Court's Exhibit No. 3 was
22 marked for identification only.)

23 (WHEREUPON, Court's Exhibit Nos. 4 - 5
24 were marked for identification only.)

25 (WHEREUPON, the jury came into open

1 court at 2:23 p.m.)

2 THE BAILIFF: The jury is present, Your Honor.

3 THE COURT: All right. Madam Forelady and
4 members of the jury, you posed a question: Can
5 damages be zero? Do we have to award monetary
6 damages?

7 Depending on your responses to the
8 interrogatories listed in the form, the answer is
9 no to the question.

10 Thank you. If you all will resume
11 deliberating.

12 (WHEREUPON, the jury retires to the jury
13 room at 2:25 p.m.)

14 THE COURT: Yes, sir?

15 MR. GRIFFIN: Your Honor, I do apologize, when
16 you read the question to the jury, there was really
17 two questions. One, Can damages be zero? And I
18 think we agreed the answer to that is no. Then the
19 second question is, Do we have to award
20 compensatory damages?

21 THE COURT: That would be yes.

22 MR. GRIFFIN: That would be yes.

23 THE COURT: All right. How about that?
24 There were two questions, you're right.

25 MS. O'BRIEN: May I see the question again --

1 questions?

2 THE COURT: If you will bring the jury.

3 MS. O'BRIEN: Your Honor, I'd like to review
4 the question before we bring the jury back -- the
5 questions.

6 THE COURT: I'm sitting here typing it and
7 writing it, and as I was speaking, I thought of
8 that. Any further comment?

9 MS. O'BRIEN: Nothing other than the exception
10 already noted.

11 THE COURT: All right. Bring them back.

12 (WHEREUPON, the jury came into open
13 court at 2:26 p.m.)

14 THE BAILIFF: The jury is present, Your Honor.

15 THE COURT: Ladies and gentlemen, I had you in
16 and out of here pretty fast. You actually asked
17 two questions. The first question was, Can damages
18 be zero? Depending on your response -- your
19 answers to the questions on the verdict form, the
20 answer to that question is no.

21 Do we have to award monetary damages?
22 Depending on your answers to the question on the
23 interrogatory form, the answer is yes as to that
24 second question.

25 So if you will return to the jury room.

1 (WHEREUPON, the jury retires to the jury
2 room at 2:28 p.m.)

3 THE COURT: Anything else from the parties?

4 MS. O'BRIEN: No, sir, Your Honor.

5 MR. GRIFFIN: No, Your Honor.

6 THE COURT: This issue actually was before the
7 Court in the case of Stevens v. Allen, Supreme
8 Court 2000, involving a single-car accident early
9 in the morning when a passenger was injured and the
10 boys had been drinking and smoking marijuana. The
11 parents brought a wrongful death and survival
12 action and the jury returned, found each 50 percent
13 negligent, but awarded zero damages. And the Court
14 of Appeals reversed and held the jury's failure to
15 award any damages was facially inconsistent with
16 its assessment of liability and said the trial
17 court should, upon request, should have resubmitted
18 the matter to the jury with instruction to either
19 assess a definite dollar amount in damages for the
20 Plaintiff or find in favor of the Defendant. And
21 that was affirmed by the Supreme Court.

22 MR. GRIFFIN: Ms. O'Brien --

23 THE COURT: So you both make 100, you got the
24 answer correct without any research or prior
25 research even.

1 MS. O'BRIEN: No, I had the issue.

2 THE COURT: All right, we'll be back in recess
3 in this case and we will resume with our other
4 case.

5 (WHEREUPON, a break was taken.)

6 (WHEREUPON, the following proceedings
7 resumed at 3:49 p.m.)

8 THE COURT: I understand there is a verdict.
9 You can bring them in.

10 (WHEREUPON, the jury came into open
11 court at 4:13 p.m.)

12 THE BAILIFF: The jury is present, Your Honor.

13 THE COURT: Madam Forelady, if you will stand
14 for me. Have you reached a verdict?

15 THE FORELADY: Yes, we have, Your Honor.

16 THE COURT: Is it unanimous?

17 THE FORELADY: Yes, sir.

18 THE COURT: If you'll pass it up. You may be
19 seated.

20 (Court reviews the verdict form.)

21 THE COURT: You may publish the verdict.

22 VERDICT

23 THE CLERK: Case number 2015-CP-40-7180,
24 William Gresham, as Personal Representative of the
25 Estate of John Corey Stringfellow vs. Cameron

1 Thomas Stringfellow.

2 Question Number 1: The Defendant has admitted
3 that he was negligent and reckless and that his
4 negligence was the proximate cause of Decedent,
5 John Corey Stringfellow's, death. Do you, the
6 jury, find by a preponderance of the evidence that
7 the Decedent, John Corey Stringfellow, was also
8 negligent and that his negligence was a proximate
9 cause of his death resulting from the accident of
10 May 24th, 2013?

11 The answer is: Yes. And Decedent, John Corey
12 Stringfellow, 51 percent. The Defendant, Cameron
13 Thomas Stringfellow, 49 percent.

14 THE COURT: Read the entire -- the entire
15 Number 2.

16 THE CLERK: Oh Question Number 2. Taking the
17 combined negligence as 100 percent, what percentage
18 of negligence is attributable to the Defendant and
19 what percentage is attributable to the Decedent,
20 John Corey Stringfellow?

21 Decedent, John Corey Stringfellow,
22 51 percent -- Decedent, John Corey Stringfellow,
23 51 percent. Defendant, Cameron Thomas
24 Stringfellow, 49 percent. For a total of
25 100 percent.

1 Question Number 3: Do you find that Decedent,
2 John Corey Stringfellow, was subjected to conscious
3 pain and suffering prior to his death? The answer
4 is no.

5 This is signed foreperson, Lise Shine.
6 January 12th, 2017.

7 Case Number 2015-CP-40-7181, William Gresham
8 as Personal Representative of the Estate of John
9 Corey Stringfellow v. Cameron Thomas Stringfellow.

10 Question Number 1: The Defendant has admitted
11 that he was negligent and reckless and that his
12 negligence was a proximate cause of Decedent, John
13 Corey Stringfellow's, death. Do you, the jury,
14 find by a preponderance of the evidence that the
15 Decedent, John Corey Stringfellow, was also
16 negligent and that his negligence was a proximate
17 cause of his death?

18 The answer is: Yes.

19 Question Number 2: Taking the combined
20 negligence as 100 percent, what percentage of
21 negligence is attributable to the Defendant and
22 what percentage is attributable to the Decedent,
23 John Corey Stringfellow?

24 Decedent, John Corey Stringfellow, 51 percent.
25 The Defendant, Cameron Thomas Stringfellow,

1 49 percent. For a total of 100 percent.

2 This is signed, Foreperson Lise Shine.

3 January 12, 2017.

4 Madam Foreperson, are these your verdicts and
5 the verdicts of the entire jury?

6 THE FORELADY: Yes, they are.

7 THE COURT: Any individual polling requested
8 or do the parties want to review the verdict form?

9 MR. GRIFFIN: May I take a look at the verdict
10 form, Your Honor?

11 THE COURT: Yes, sir.

12 (Mr. Griffin reviews the verdict form.)

13 MR. GRIFFIN: We do not request to poll the
14 jury.

15 MS. O'BRIEN: No, sir, Your Honor.

16 THE COURT: Any post-trial motions?

17 MR. GRIFFIN: Yes, Your Honor. At this time,
18 we would move for judgment as notwithstanding the
19 verdict on the grounds that no reasonable jury
20 could find that John Corey Stringfellow was
21 reckless as a result of his conduct as the
22 passenger in the car. The Court directed a verdict
23 on recklessness on behalf of the Plaintiff as to
24 the Defendant, Cameron Stringfellow. There's no
25 higher level of fault under the negligence standard

1 than recklessness. And so the jury would have to
2 either find 50/50 based upon the Court's ruling of
3 directed verdict or something less. But under the
4 ruling of the Court, you can't get to 51 percent
5 for John Corey Stringfellow and 49 percent for
6 Cameron Stringfellow.

7 THE COURT: Mere negligence cannot exceed
8 recklessness.

9 MR. GRIFFIN: Correct.

10 THE COURT: What says the Defense?

11 MS. O'BRIEN: Your Honor, the jury absolutely
12 could have found and did find that Corey
13 Stringfellow's negligence could have been reckless,
14 could have been willful, could have been wanton,
15 and was gross. That was pled in the answer. The
16 jury has a right to --

17 THE COURT: The jury doesn't get the
18 pleadings.

19 MS. O'BRIEN: I understand. But the jury --

20 THE COURT: So the pleadings are irrelevant.

21 MS. O'BRIEN: The jury has a right to decide
22 based upon percentage, and that percentage that was
23 assigned was 51 percent as to John Corey
24 Stringfellow. And the jury has a right to decide
25 that negligence can compare to any other

1 negligence. And that's exactly what they did.

2 THE COURT: Any response, Mr. Griffin?

3 MR. GRIFFIN: No, Your Honor. Negligence
4 cannot offset recklessness. It didn't get to
5 recklessness, but you can't get above 50 percent.

6 And then after that, Your Honor, we would
7 request a new trial based on the 13th juror
8 doctrine as a result of the Court's findings of
9 directed verdict on recklessness and that this
10 verdict was against the weight of the evidence and
11 the result of confusion or passion or prejudice.

12 THE COURT: It's an interesting issue. You
13 know, these issues are pretty complex. And I think
14 I will take the matter under advisement and give
15 you all an opportunity to brief the issue and will
16 address that later.

17 MR. GRIFFIN: Thank you, Your Honor.

18 MS. O'BRIEN: Your Honor, how much time do we
19 have to brief the issue?

20 THE COURT: How much time you need?

21 MS. O'BRIEN: No more than ten days.

22 THE COURT: Mr. Griffin?

23 MR. GRIFFIN: That's fine.

24 THE COURT: Ten days.

25 MS. O'BRIEN: Thank you, Your Honor.

1 THE COURT: All right. Thank you all.

2 Ladies and gentlemen, thank you very much.
3 You all did not volunteer for this task. You were
4 called upon, you were drafted, you responded, and
5 you've done the best that you could do under the
6 circumstances.

7 Because I have the matter under advisement, I
8 have to review the legal legalities of the verdict,
9 I will make no further comment concerning the
10 verdict itself, except to certainly thank you all.
11 I know you deliberated for a good period of time
12 and you have come up with a verdict that you
13 believe is fair and just under the circumstances.

14 I'll take a look at it and see where we go
15 from here.

16 What do they need to do now?

17 THE CLERK: Just return to the jury room.

18 THE COURT: Okay. I want to thank you all.
19 You are done with jury duty. You're done not only
20 for this week, other than going downstairs and
21 getting released and getting the work slips and all
22 that, but for the next year you're disqualified
23 from jury service, meaning you cannot serve within
24 the next year in the Circuit Court here and for two
25 additional years you may choose not to serve. So

1 no one can be required to serve more often than
2 once every three calendar years.

3 Typically, when jurors come in, they don't
4 want to be called and, quite often, they don't want
5 to serve. But these are real touching issues and
6 the parties could not resolve it and they presented
7 it to you all to address.

8 And if you were in the same situation as any
9 of the parties in this case, you would certainly
10 want to have the jury look at the case fairly and
11 judge it fairly based on the law and based on the
12 evidence.

13 So I want to thank you all very much on behalf
14 of the parties and other citizens of Richland
15 County. Thank you very much. And y'all are good
16 to go.

17 THE JURY: Thank you.

18 THE COURT: If I could just have the forelady
19 wait for just a few moments so I can chat with you
20 outside the jury room.

21 MS. O'BRIEN: Your Honor, are we excused?

22 THE COURT: Yes.

23 MS. O'BRIEN: Thank you.

24 MR. GRIFFIN: Thank you.

25 THE COURT: We are in recess in this case.

1 (WHEREUPON, the proceedings were
2 concluded at 4:24 p.m.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth 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 Richland County, South Carolina, on the 9th - 12th day of January, 2017.

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

August 6, 2017

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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STATE OF SOUTH CAROLINA	}	COURT OF COMMON PLEAS 2015-CP-40-07180 2015-CP-40-07181
<u>COUNTY OF RICHLAND</u>		
William Gresham as Personal	}	TRANSCRIPT OF RECORD
Representative of the Estate		
of John Corey Stringfellow,		
Plaintiff,		
vs.		
Cameron Thomas Stringfellow,	}	
<u>Defendant.</u>		

March 23, 2017
Columbia, South Carolina

B E F O R E:

THE HONORABLE CLIFTON B. NEWMAN, JUDGE.

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

JAMES M. GRIFFIN, ESQ.
DAVID W. FARRELL, ESQ.
Attorneys for the Plaintiff

BRADLEY L. LANFORD, ESQ.
CARRIE H. O'BRIEN, ESQ.
Attorneys for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

1 I N D E X O F W I T N E S S E S

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4 (WHEREUPON, no witnesses were called

5 during these proceedings.)

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10 E X H I B I T S

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13 (WHEREUPON, no exhibits were introduced

14 during these proceedings.)

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1 MAY 23, 2017

2 THE COURT: Good afternoon. We are here to
3 hear these motion or motions. Mr. Griffin?

4 MR. GRIFFIN: Yes. Thank you, Your Honor.
5 Jim Griffin, for the Plaintiff. Mr. William
6 Gresham, as Personal Representative of the Estate
7 of John Corey Stringfellow, the two cases. The
8 case numbers are 7180 and 7181, filed in 2015. And
9 we're here on the Plaintiff's motion for judgment
10 notwithstanding the verdict or in the alternative
11 for a new trial.

12 Your Honor, the cases were consolidated for
13 trial, and I'll just address the motions jointly.
14 The standard -- and, frankly, Your Honor, I think
15 the principal relief we seek is because our JNOV
16 motion -- and they raised an issue as to whether I
17 made a motion for directed verdict on liability. I
18 haven't confirmed with the court reporter over the
19 record whether I did or didn't, but under the 13th
20 Juror Doctrine it would give us a right to a new
21 trial if you saw fit in your discretion. And, Your
22 Honor, I'm sure I don't need to educate you on what
23 the 13th Juror Doctrine is.

24 THE COURT: Yes, I think you do. Tell me all
25 about that.

1 MS. GRIFFIN: Well, Your Honor, under the 13th
2 Juror Doctrine the trial judge has the veto power
3 over the jury's verdict if he finds that the
4 evidence does not justify the verdict. The effect
5 of making such a finding is as if the jury failed
6 to reach a verdict as if it is a hung jury and
7 because the result of the 13th Juror vote by the
8 judge is a new trial rather than adjustment to the
9 verdict, no purpose would be served according to
10 the South Carolina Supreme Court by requiring the
11 judge to make a factual finding on the record.

12 THE COURT: Say again?

13 MR. GRIFFIN: It says that there is no
14 requirement when the judge grants a new trial under
15 the 13th Juror Doctrine to make factual findings on
16 the record. It is in the judge's discretion should
17 the judge determine.

18 THE COURT: It is sort of like being on the
19 jury, you just decide whatever you want to and
20 don't have to explain anything?

21 MR. GRIFFIN: Well, that is according to
22 *Folkens v. Hunt*, Your Honor, 387 S.E. 2d 265, a
23 1990 case. And in *Jessup v. Hansen*, Your Honor,
24 the Court of Appeals says: When the verdict is
25 contrary to the fair preponderance of the evidence,

1 the trial judge not only has the discretion, but
2 also has the duty to grant a new trial.

3 And that is where we find ourselves here is
4 that the jury's verdict that Corey Stringfellow,
5 who was a passenger in the back seat of a vehicle
6 driven by his brother, was more than 51 percent at
7 fault than the Defendant who pled guilty to
8 involuntary manslaughter for killing Corey, that
9 that finding is against the fair preponderance of
10 the evidence.

11 Your Honor, the definition of involuntary
12 manslaughter is the unintentional killing of
13 another without malice while engaged in a lawful
14 act with reckless disregard for the safety of
15 others. That is S.C. Code Section 16-3-60.

16 Of course Your Honor will remember when the
17 Defendant Cameron Stringfellow testified, he
18 admitted to his own recklessness, and Your Honor
19 granted a verdict -- I mean, a directed verdict on
20 his conduct being reckless.

21 And in the Court's verdict form, which -- and
22 I point out was agreed upon by the Defense
23 counsel -- and the verdict form submitted to the
24 jury under Number One is stated: The Court has
25 ruled that the Defendant was reckless and that his

1 reckless conduct was a proximate cause of the
2 Decedent Corey Stringfellow's death.

3 Then the jury is presented with this question:
4 Do you, the jury, find by a preponderance of the
5 evidence that the Decedent John Corey Stringfellow
6 was negligent and that his negligence was a
7 proximate cause of his death?

8 Now, that was an agreed upon question
9 submitted to the jury and the verdict form. And
10 the reason that is important is, is because there
11 is a substantial difference between recklessness
12 and negligence. And the jury wasn't tasked to find
13 or asked if the Defendant -- excuse me, if the
14 Decedent John Corey Stringfellow was reckless,
15 agreed upon by the Defense is -- the question
16 presented was: Was Corey Stringfellow negligent,
17 and was his negligence a proximate cause of the
18 death?

19 And the jury was instructed therefore to
20 determine whether Corey was negligent and whether
21 his negligence was a proximate cause. And so the
22 jury was then asked to compare the percentage of
23 fault between Corey's negligence and the
24 Defendant's recklessness.

25 And, Your Honor, because by definition

1 recklessness is a higher degree of culpability and
2 responsibility for negligence, that no jury could
3 rationally conclude that the amount of Corey's
4 fault attributed to his negligence could exceed the
5 admitted fault resulting from the Defendant's
6 recklessness.

7 Now, Your Honor, in Berberich v. Jack, the
8 South Carolina Supreme Court stated that you do
9 compare all forms of conduct, recklessness with
10 negligence, and it was appropriate for the jury to
11 do that. But the point here is, there has been a
12 judicial finding, and frankly admission by the
13 Defendant, that the Defendant was reckless. That
14 is a higher degree of culpability than negligence.
15 The Defense agreed to submit to the jury the
16 question of negligence. And to the extent that the
17 jury found the Decedent Corey negligent, then find
18 out what percentage of fault, which was in the
19 jury's discretion.

20 But as found by Your Honor on your legal
21 rulings and factually in this case, no rational
22 jury could conclude that Corey Stringfellow, who
23 was in the passenger's seat in the rear of the car,
24 and had been on a trip that went from -- started
25 early morning, midnight, 1:00 o'clock, went ten

1 minutes to a friend's house, ten minutes back, and
2 then when they get to the neighborhood the
3 Defendant testified that he, without warning to
4 anyone else, decided that he wanted to do
5 essentially a victory lap for making it back and
6 that he got up to speeds of over 60 miles an hour
7 above the speed limit in a neighborhood, in
8 Wildewood, which has a posted speed limit of
9 25 miles an hour. The testimony is he was doing
10 85 miles an hour. And the testimony is that the
11 only person who was keeping a lookout was Corey in
12 the back seat who said, Watch out for that car.
13 That was the only testimony of anyone keeping a
14 lookout.

15 A passenger who is looking out, who warns the
16 driver, who has no blood alcohol, had no alcohol in
17 his blood system, and the driver has a .8, that he
18 is more at fault. That is what the jury found, he
19 is more at fault. Greater than 50 percent. The
20 jury found that he was more at fault than the
21 driver of the car. Your Honor, that finding is not
22 only against the very preponderance of the
23 evidence, it is so egregious that if you viewed the
24 evidence in the light most favorable to the
25 Defendant we would be entitled to a judgment as

1 matter of law and therefore a JNOV. I'm not
2 pressing that point today, Your Honor, just to keep
3 the record clean. I think on retrial we'll end up
4 in the same spot because we still have to allocate
5 fault as it went to the jury. But the evidence in
6 this case, there is no view that the passenger in
7 the rear seat can be more than 50 percent at fault
8 for his own death when the driver is driving
9 60 miles over the speed limit, got a .18. He pled
10 guilty to involuntary manslaughter for killing the
11 passenger. And the Defense agreed to submit the
12 question of comparative fault to the jury on the
13 Decedent's negligence alone. As compared to the
14 Defendant's recklessness.

15 So under these circumstances, Your Honor, we
16 would request the Court grant a new trial under the
17 13th Juror Doctrine.

18 THE COURT: All right.

19 MR. GRIFFIN: Thank you.

20 THE COURT: Yes, sir?

21 MR. LANFORD: Thank you, Your Honor. May it
22 please the Court?

23 First of all, to address Mr. Griffin's point
24 about verdict form, negligence, because this is not
25 only civil negligence, it encompasses gross

1 negligence, recklessness, willfulness, and wanton
2 conduct. Your Honor charged those definitions to
3 the jury that these are the types of negligence.
4 The verdict form does not, just because it states
5 negligence, does not limit it to simple negligence.
6 And even if it did, in the case that Mr. Griffin
7 cites, Berberich v. Jack, allows the jury to
8 compare simple negligence with reckless conduct.

9 In fact, in Berberich they found the
10 homeowner, who was simply negligent, was 75 percent
11 at fault while the Defendant was 25 percent at
12 fault.

13 So the verdict form doesn't have to spell out
14 each form of negligence. The term negligence
15 includes all of those terms which are encompassed
16 in the jury charges.

17 Mr. Griffin never moved for a directed verdict
18 on the issue of whether the Decedent was reckless
19 or willful or wanton or grossly negligent. He
20 never asked the Court to make that ruling. The
21 only directed verdict motion Mr. Griffin made was
22 asking the Court to rule that Cameron's conduct,
23 the Defendant's conduct, was reckless. So the jury
24 was absolutely allowed to consider whether the
25 Decedent's conduct was also negligent, reckless,

1 willful, and wanton.

2 And, Your Honor, what we heard, we heard some
3 very self-serving testimony from the Defendant, who
4 was clearly called as a friendly witness to the
5 Plaintiff and gave them friendly testimony. His
6 testimony was to be weighed by the jury, his
7 credibility of what he testified to was that no one
8 in the car objected when he announced that he was
9 going to drive the car fast and started driving the
10 car fast.

11 What we also heard was that the Decedent had a
12 license, he had every right to drive that BMW. He
13 had driven it before. There was evidence that the
14 Decedent was the one who actually initiated the
15 late night venture, joint venture, to go get the
16 drugs that night, that he had been smoking pot
17 earlier that day and driving his vehicle. I think
18 the jury could easily infer from those facts that
19 the reason Corey chose not to drive is because if
20 things went south that night, big brother would
21 take the fall instead of him.

22 So there was plenty of evidence for the jury
23 to consider as far as the Decedent's own
24 negligence, I think Mr. Griffin just conceded that
25 if the case was ever tried again there would be an

1 allocation of fault, so he concedes there is some
2 fault to the Decedent. What he is essentially
3 asking the Court to do is say as a matter of law a
4 passenger can never be more than 50 percent at
5 fault, which is essentially what he is asking.

6 The 13th Juror is completely inappropriate in
7 this case. The Court found that it was appropriate
8 to send the issue of comparative negligence to the
9 jury. They were instructed on the types of
10 negligence. They were instructed on what more than
11 50 percent would mean. And essentially what
12 Mr. Griffin is asking the Court to do is throw out
13 the verdict because Mr. Griffin doesn't agree with
14 the allocation. Whatever his view of the
15 allocation should be, it should be 50/50 or 55/45.

16 THE COURT: When would the 13th Juror
17 application ever be appropriate?

18 MR. LANFORD: Your Honor, I think when the
19 facts are not -- when the verdict is not supported
20 by the evidence and the facts -- the verdict in
21 this case is clearly supported by the evidence. It
22 is not supported by Mr. Griffin's interpretation of
23 the evidence, but the evidence that was presented
24 was that Corey's actions that night were negligent,
25 they were reckless, they were willful and wanton.

1 And the jury weighed both of those things. And
2 they heard evidence that Corey was the one who was
3 making the calls to go get the drugs, that he
4 initiated the trip, that he chose to get in the car
5 not once, but twice. He did not say a word when
6 his brother started driving the car at a high rate
7 of speed.

8 Mr. Griffin could have, before submitting this
9 to the jury, asked the Court to rule as a matter of
10 law that the Decedent could not be more than
11 50 percent at fault. He didn't do that because
12 that is not the law in South Carolina. The law in
13 South Carolina is that is a jury question as to
14 whether there is any allocation of fault between
15 two parties when there is evidence of negligence of
16 both parties.

17 THE COURT: Well, I have never been a 13th
18 Juror. I'm trying to understand. What is that?
19 13th Juror Doctrine. How does that work?

20 MR. LANFORD: Your Honor, do you mind if
21 co-counsel speaks?

22 THE COURT: I am going to call on her even if
23 she didn't volunteer.

24 MS. O'BRIEN: Your Honor, the 13th Juror
25 Doctrine is based upon the premise that whenever

1 the facts do not -- are not in support of what the
2 jury decides. So in this case you would have to
3 find that the facts did not support that the
4 passenger could be 51 percent negligent.

5 So, therefore, in order to get there, there
6 would have to be -- and there should have been a
7 question presented to you at the end of the close
8 of the evidence directing a verdict. And if there
9 is no --

10 THE COURT: That wouldn't be a 13th Juror,
11 would it, that would be in advance of anything by
12 the jury?

13 MS. O'BRIEN: Well, Your Honor, but here is
14 the reason. But it is saying that, whenever you
15 make a motion for a directed verdict, it is saying
16 that there are no facts to support the testimony or
17 the facts in the light most favorable to the
18 Plaintiff, they should still win. And that is
19 basically what the 13th Juror Doctrine is, is even
20 after the jurors have heard all of the facts and
21 all of the evidence, there is no way that anybody
22 sitting here with a reasonable mind could ever find
23 that the Decedent could be more negligent than the
24 Defendant.

25 THE COURT: And that is where I'm leaning.

1 I'm leaning on that thought. And why not?

2 MS. O'BRIEN: Well, and I will tell you why
3 not. Because whenever the jurors were presented
4 with the option of whether there was comparative
5 negligence or contributory negligence and finding
6 that fault, they had the opportunity to look at the
7 facts in this case. And the facts, if you take
8 them even in the light most favorable to the
9 Plaintiff, you have that there were two brothers
10 who were both intoxicated, one of them was drunk,
11 one of them was high. Both of them had impaired
12 judgment. Both of them willingly and knowingly
13 entered a vehicle where one drove, the other one
14 rode. As a result of getting in that vehicle --
15 and our position has always been -- but for the
16 Decedent getting in that car that night. It wasn't
17 like these kids were out and there was some way
18 they had to get home.

19 THE COURT: Wouldn't it always be the
20 situation with a passenger that but for catching a
21 ride with Mr. Bowen, you know -- Mr. Bowen, if I
22 need a ride home this afternoon, you would give me
23 a ride, wouldn't you?

24 THE BAILIFF: Yes, sir. I would give you a
25 ride.

1 THE COURT: And then we have a wreck. Can you
2 then come into court and say, but for the fact that
3 I asked him for a ride home I wouldn't have been in
4 a wreck?

5 MS. O'BRIEN: Well, here is the difference.

6 THE COURT: Okay.

7 MS. O'BRIEN: If you knew when you got in the
8 car with him that he was a reckless driver, that he
9 constantly was speeding, that he was drunk, and you
10 chose to get in the car with him --

11 THE COURT: He sings with one of the leading
12 gospel choirs, they have a number one hit. He
13 doesn't do any of those things.

14 MS. O'BRIEN: I bet he doesn't. But if he
15 did, and you willingly and knowingly got into the
16 car with him, then you could be as negligent as he
17 is or the jury could find that you were more
18 negligent. And in this case it is not that he just
19 happened to get in the car with someone, he got
20 into the car with someone that he had witnessed
21 drinking, that he had reason to believe had been
22 smoking marijuana. He got into the car with the
23 intent to go buy more marijuana for the purpose of
24 smoking it. You typically don't just buy marijuana
25 and not smoke it. And then on the way home he got

1 killed.

2 And, Your Honor, our position is that whenever
3 you set out on a joint venture -- and, you know,
4 here is the other thing that I would add. It is
5 not just simple negligence that we're talking about
6 or comparing simple to gross. There were also
7 affirmative defenses in this case: Assumption of
8 risk, which did not get charged separately, but
9 assumption of risk was discussed. And assumption
10 of risk can take it to 51 percent. The case law is
11 clear on that. And so when he assumed the risk by
12 getting in this car, the jury had a right to decide
13 whether he was zero percent negligent or all the
14 way up to 100 percent negligent. And they had a
15 right to compare. And that is exactly what they
16 did.

17 And if the Court and if the Supreme Court did
18 not want the jurors to be able to compare whenever
19 it was a driver versus a passenger, that would be
20 the case law in South Carolina. And it is not.

21 THE COURT: Well, I notice in your brief on
22 Page 8 of the brief you all cite one of my cases,
23 Hurd v. Williamsburg County. It was 2005 case. So
24 by the time it hit the appellate court, I was on
25 the circuit court bench at that time. But the

1 original trial ended in a mistrial. We called a
2 few witnesses and then took a break, and we walked
3 by the jury room, they were heavy into deliberating
4 on the case, saying who was at fault and who
5 wasn't, and everything, so -- the judge was Duane
6 Shuler, and Duane granted a mistrial because of the
7 premature deliberation by the jury. So it came
8 back on retrial.

9 Mr. Hurd was riding on the Williamsburg Court
10 transit bus and they stopped at a store around
11 Hemingway, between Hemingway and Andrews. When he
12 got off the bus and he went to cross the street, he
13 got hit by a car. And so we sued transit claiming
14 that they caused him to get hit by that car, or
15 contributed to it. And the case was retried by my
16 former law partner, Senator Sabb, and we convinced
17 the jury that the transit driver pulled up just a
18 little to obscure Mr. Hurd's view of the roadway
19 and that contributed to the accident. And the jury
20 awarded about \$750,000 and found Mr. Hurd
21 30 percent at fault and transit 70 percent at
22 fault.

23 You cited it here saying in a comparative
24 negligence case the trial court should grant a
25 motion for directed verdict when the sole

1 reasonable inference from the evidence is that the
2 non-moving party's negligence exceeded 50 percent.
3 I'm not sure how any of that ties into this. Just
4 the fact that you cited my case and that is 2005,
5 and that is, goodness gracious, the case started
6 before 2000. And here we are now in 2017. Go
7 ahead.

8 MS. O'BRIEN: Your legacy lives on.

9 Your Honor, our position would be the JNOV is
10 completely off the table. They did not preserve
11 that motion. And the reason why Mr. Griffin did
12 not go back and look to see if he preserved that
13 motion is because he is very well aware he did not.

14 THE COURT: Well, I am tending to agree with
15 you on that. You make a compelling argument on
16 that.

17 MS. O'BRIEN: Right. So the 13th Juror
18 Doctrine is all that is left in this case, and our
19 position is very clear that.

20 THE COURT: What about the part you claimed
21 about the jury deciding there was no conscious pain
22 and suffering?

23 MS. O'BRIEN: Your Honor, I think the jury has
24 a right to decide that. And I think, you know --

25 THE COURT: Well, you said the only thing

1 remaining on the table. Is that still on the
2 table?

3 MS. O'BRIEN: What do you mean?

4 THE COURT: You just said even if I grant a
5 13th -- a new trial based on 13th Juror, it could
6 only apply to the wrongful death case because the
7 jury -- I may not have looked at your brief before
8 you came in, or maybe you didn't write the brief, I
9 don't know. That even if I grant a new trial on
10 the 13th Juror Doctrine, it would only be as to
11 wrongful death because the jurors decided that
12 there was no conscious pain and suffering.

13 MS. O'BRIEN: Right.

14 THE COURT: So is that still on the table or
15 are you abandoning that argument?

16 MS. O'BRIEN: No, I think that absolutely is
17 still true.

18 THE COURT: Just asking.

19 MS. O'BRIEN: Yes. I am not abandoning
20 anything today.

21 THE COURT: Ms. O'Brien and I ran into each
22 other like a week or two -- the next week, I
23 believe. Or maybe it was the same week or the next
24 week at the bar convention. And she was basking in
25 the afterglow of her victory, so she -- we wanted

1 to talk about the case, but we couldn't because of
2 all this was still pending.

3 MS. O'BRIEN: I'm not sure *basking* would be
4 the appropriate word, but if I was happy from
5 drinking alcohol; correct.

6 THE COURT: All right. Well, she was really
7 mad because I made her -- she missed her daughter's
8 birthday party or something.

9 MS. O'BRIEN: You did. I did miss my
10 daughter's birthday.

11 THE COURT: Mr. Griffin, go ahead.

12 MR. GRIFFIN: Well, Your Honor, I hope Yogi
13 Berra's comment is appropriate eventually in this
14 case: It ain't over until it's over. So we're
15 here on post-trial motions.

16 I would point out on the survival issue
17 that -- two things. One, the jury in the
18 instruction in the verdict form, they were told if
19 they found Corey to be more than 50 percent at
20 fault, 51 percent, then stop, go no further. And
21 so -- and they found that. So I think what happens
22 after that is a nullity. It is that the verdict is
23 based upon a finding of comparative negligence or
24 greater than 51 percent.

25 I also point out that the jury, during their

1 deliberations, they asked if they could find for
2 the Plaintiff but award zero damages. And Your
3 Honor instructed them, No, you can't do that.

4 Now, I don't know why they felt -- they didn't
5 want to award damages, but it appears from the
6 question they found liability, then they went back
7 and tried to figure out how to get around the
8 Court's instruction. That is what it appeared to
9 have happened. But be that as it may, the point of
10 the matter is that --

11 THE COURT: So that is what I'm trying to
12 figure out as this 13th Juror, is that if I now put
13 myself in the mindset that I'm going to go in that
14 jury room and if I don't agree with their
15 conclusion, as a 13th Juror I can just declare a
16 mistrial, in effect -- or grant -- not a mistrial,
17 grant a new trial.

18 MR. GRIFFIN: Yes, sir.

19 THE COURT: Because I don't see how they could
20 possibly come to that conclusion.

21 MR. GRIFFIN: Well, Your Honor, you are more
22 like the president actually. I mean, it is
23 called -- you have veto power over what they
24 decide.

25 Now, to exercise that veto power, you have to

1 weigh the evidence. It is not a legal test like
2 summary judgment or a directed verdict. That is
3 why you are the 13th Juror because you have the
4 discretion to weigh the evidence. And then you
5 determine upon -- after your review of the
6 evidence, if the verdict or the findings that
7 support the verdict are not supported by the
8 evidence. And if you make that finding, then the
9 law is that you are obligated to grant a new trial
10 under the 13th Juror Doctrine.

11 And the case that they cited, Your Honor,
12 Youmans v. South Carolina Department of
13 Transportation, it has got a good discussion,
14 Folkens v. Hunt has a good discussion. That is a
15 2008 case. And they cite a 1938 case that says:
16 As has often been said, the trial judge is the 13th
17 Juror, possessing the veto power to the Nth degree
18 and it must be presumed, recognizes and appreciates
19 his responsibility, and exercises the discretion
20 vested in him with fairness and impartiality.

21 Then in the Youmans case, the Supreme Court
22 also -- or it is Court of Appeals, I believe --
23 court of Appeals, Your Honor, and it also cites
24 Folkens v. Hunt, another Supreme Court case, where
25 it says: The 13th Juror Doctrine is a vehicle by

1 which the trial judge may grant a new trial
2 absolute when he finds that the evidence does not
3 justify the verdict. The ruling has been termed
4 granting a new trial upon the facts. The effect is
5 the same as if the jury failed to reach a verdict.
6 The judge, as the 13th Juror, hangs the jury. When
7 a jury fails to reach a verdict, a new trial is
8 ordered. Neither the judge nor the jury are
9 required to give reasons for this outcome.
10 Similarly, because the result of the 13th Juror
11 vote by the judge is a new trial rather than
12 adjustment to the verdict, no purpose would be
13 served by requiring the trial judge to make factual
14 findings.

15 Now, this is about the only case -- and they
16 cited this case -- but it is the only case where
17 the Court has upset a trial judge's ruling on the
18 13th Juror --

19 THE COURT: Which one is that?

20 MR. GRIFFIN: -- new trial. This is the
21 Youmans v. South Carolina Department of
22 Transportation. This is an Allendale County case.
23 You have got to put an asterisk for Allendale
24 County. Judge Few was the trial judge. And Judge
25 Few order when he granted the new trial, he said

1 that he was more concerned about the brevity of the
2 jury deliberations, not the evidence, but the
3 brevity of the jury deliberations.

4 THE COURT: Who won the case?

5 MR. GRIFFIN: The Plaintiff, Ms. Youman, won
6 against the South Carolina Department of
7 Transportation.

8 THE COURT: They didn't normally take too long
9 in Allendale to give the Plaintiff money.

10 MR. GRIFFIN: Well, that is exactly what Judge
11 Few said. They didn't take long enough to get a
12 drink of water, they had a verdict, and so he was
13 more concerned with the brevity of --

14 THE COURT: How much money did they give them?

15 MR. GRIFFIN: For Allendale County purposes,
16 Your Honor, I don't think that number.

17 THE COURT: 2 million on the survival,
18 9 million on the wrongful death.

19 MR. GRIFFIN: Right. Well, that's a good
20 day's work for -- what is it that Gooding firm down
21 there?

22 So, in any event, and the holding of the
23 Youmans case is: The trial court could not grant a
24 new trial under the 13th Juror Doctrine on the
25 ground that the jury deliberations were brief.

1 That is the holding. But under the 13th Juror
2 Doctrine, you do weigh evidence, you do determine
3 if the verdict is against the -- is not supported
4 by the evidence. And you have discretion to veto
5 what the jury did if you find that it is against
6 the clear weight of the evidence, or the evidence.
7 And that is in your discretion. And if there was
8 ever a case where the 13th Juror Doctrine was
9 appropriate to be applied -- there is a lot more
10 less egregious than this -- this is it.

11 And I would point out -- I hope they have
12 abandoned this argument, but I just want to get it
13 on the record -- one thing they argued is that when
14 the jury came back with the verdict, it was handed
15 up to Your Honor, Your Honor read the verdict, and
16 then Your Honor asked me if I had any post-trial
17 motions. And then I argued the post-trial motions.
18 Then Your Honor excused the jury. And they argue
19 technically that that motion that I made was
20 untimely because I made it before the jury was
21 discharged, although I did it at your instructions.
22 And that, in my view, the jury was discharged when
23 you took the verdict, but you had them sit in the
24 courtroom to hear the motions. And then --

25 THE COURT: Well, a lot of judges, when the

1 jurors return a verdict, they immediately discharge
2 the jury, particularly in criminal cases. And I
3 keep them and let them -- because they are usually
4 quite interested. They have invested all that
5 time, they want to know what the sentence is. But
6 they are discharged when they return the verdict,
7 and I usually invite them to stay. But I always
8 say something to the effect of, Thank you very
9 much.

10 MR. GRIFFIN: Yes, sir.

11 THE COURT: And then discharge them, even
12 though they are still sitting there.

13 MR. GRIFFIN: That is how we view it. And
14 then, Your Honor, you also --

15 THE COURT: She is showing me this language
16 that says: The motion shall be made promptly after
17 the jury is discharged or in the discretion of the
18 Court or ten days thereafter.

19 MR. GRIFFIN: So then Your Honor asked for
20 briefing and then we did it within ten days, and we
21 formally filed motions within the ten-day period.
22 So I think those are non-issues, but I wanted to
23 make the record on that.

24 THE COURT: I don't know whether it was before
25 this case or at the same time of this case, I sat

1 as an acting justice on the Supreme Court.

2 MR. GRIFFIN: During this case.

3 THE COURT: During this case, yes. And
4 basically the same issue, but these guys in
5 Greenville were drinking and driving, or drinking
6 and driving and smoking pot, and everything. And
7 they were involved in a collision. And so I guess
8 the driver -- the passenger was killed. The guy
9 who survived then sued -- a products liability
10 case -- because they were in the back of a Pinto or
11 some car that caused the gas tank explosion or
12 something. And the federal judge certified the
13 question -- Tim Cain, federal judge -- certified
14 the question as to whether or not the applicability
15 of products liability to the particular situation
16 we had. But the case -- I might be missing
17 something -- but the jury, there was a jury finding
18 at some point, and they found 50/50 between -- or
19 either that or a case was cited in their brief --
20 it was 50/50 where the guy, the passenger and the
21 driver was apportioned 50/50 because they were
22 drinking together. So we know it can be 50/50.
23 But can it be 51/49 is the question?

24 MR. GRIFFIN: And, Your Honor, when you
25 exercise your authority and discretion under the

1 13th Juror Doctrine, frankly you are not making a
2 hard and fast rule of law, as they want you to
3 think. What you are doing is you are citing the
4 case on the evidence that was presented to this
5 jury, and there is much overstatement as to what
6 was offered. For example, there was an argument
7 that it was clear that Corey Stringfellow was
8 impaired as a result of the marijuana. There was
9 no testimony about impairment. There was testimony
10 about toxicology report. And it was just -- they
11 had an expert listed to testify about impairment.
12 They didn't call the expert. And the only
13 testimony on impairment was the testimony that the
14 driver had a .18 and that was double the legal
15 limit.

16 They had claimed in their opening statement
17 that they have witnesses at this acquaintance's
18 house who is going to say that the driver -- the
19 Defendant was so impaired that people warned Corey.
20 That is what they represented to the jury. There
21 was no evidence of that.

22 THE COURT: I think I remember that I think.
23 I thought we were getting ready to settle in for
24 the long haul in this case to go far longer than it
25 went, but it came to a pretty quick halt.

1 MR. GRIFFIN: Yes, sir.

2 THE COURT: That was just a matter of
3 strategy. I understand that.

4 MR. GRIFFIN: And so, you know, that I
5 think -- who knows how the jury reached the
6 conclusion they did, but there is a lot of
7 information put in front of the jury in the opening
8 that was never proven up at trial, and I don't want
9 the record to get confused that that was proven,
10 because it wasn't.

11 MS. O'BRIEN: Your Honor, quickly. If you
12 listen carefully to what Mr. Stringfellow said the
13 first time he started talking, he quoted himself by
14 saying, If you grant a new trial, we will find
15 ourselves right back here where the jury has to
16 apportion fault.

17 THE COURT: When you said Stringfellow you
18 mean --

19 MS. O'BRIEN: Excuse me, Mr. Griffin. When he
20 said that, If you grant a new trial, we are going
21 to be right back here where there are going to be
22 12 people sitting in that box and unless a judge
23 says you cannot find more than 50 percent, we could
24 very likely be right back here after an appeal,
25 after a new trial is granted, with another judge,

1 whenever the jurors say, the jury speaks and the
2 jurors say, We find the Decedent 51 percent
3 negligent, then the 13th Doctrine being applied
4 again.

5 The fact that the Plaintiff admits in this
6 case that if you grant a new trial, that we could
7 very likely find ourselves right back here, shows
8 and tells you that it is up to the jurors to decide
9 the facts of this case.

10 And the jurors, based upon what they heard,
11 whether the Plaintiff likes it or not, decided that
12 when the Decedent willingly and knowingly got into
13 a vehicle with someone that he knew was intoxicated
14 and decided to go out on a joint venture to buy
15 more marijuana and then decided to get back in the
16 car when he could have, (a) stayed at home, or (b)
17 stayed at the friend's house. When he got back in
18 that car, he didn't just make one mistake. He made
19 numerous, conscious choices to get in the car. And
20 when he did that, the jury has a right to decide if
21 he is more than 51 -- more than 50 percent
22 negligent.

23 Based upon that -- and, judge, you just said,
24 the reason why you keep jurors is because they are
25 invested. They hear. Those 12 people listened to

1 every single thing that was said. I talked to the
2 12 jurors after this case was over with, and I
3 listened to what they had to say and why they made
4 the decision that they did. And I don't believe
5 that because we don't like the decision or we think
6 that the decision might not be fair to the
7 Plaintiff, that we then come in and say the 13th
8 Juror Doctrine should apply. The 13th Juror
9 Doctrine only should apply when the facts do not
10 support the verdict.

11 And in this case the facts support the
12 verdict.

13 THE COURT: All right. Any other wise words?

14 MR. GRIFFIN: Your Honor, because I agree it
15 is a factual question as to what percentage of
16 fault that the jury allocates percentage of fault,
17 I am not agreeing that the jury under the facts of
18 this case could determine rationally that the
19 passenger was more than 50 percent at fault.

20 THE COURT: You were making that argument in
21 support of your seeking to have me direct a verdict
22 in favor of the Plaintiff.

23 MR. GRIFFIN: Yes, sir.

24 THE COURT: Not the 13th Juror argument for a
25 new trial.

1 MR. GRIFFIN: Yes, sir.

2 THE COURT: That argument was in the portion
3 where you were trying to get me to direct a
4 verdict.

5 MR. GRIFFIN: Yes, sir.

6 THE COURT: Well, when I saw this Youmans
7 case, I just knew it had to be Judge Ralph King
8 Anderson who says: The Raison D'etre of the 13th
9 Juror Doctrine. And he goes through the whole
10 history of it. It says: It has often been said,
11 the trial judge is the 13th juror, possessing the
12 veto power to the Nth degree, and it must be
13 presumed recognizes and appreciates his
14 responsibility, and exercises the discretion vested
15 in him for fairness and impartiality. And they
16 went through all of the cases on the issue in this
17 case.

18 The Supreme Court explained that: The 13th
19 Juror Doctrine is so named because it entitles the
20 trial court to sit in essence of the 13th juror
21 when it finds the evidence does not justify the
22 verdict, and then to grant a new trial based solely
23 upon facts.

24 Of course in that case they claim that Judge
25 Few sua sponte granted it in the Allendale case,

1 the judge on his own granted it. What do you say
2 about that?

3 MR. GRIFFIN: Your Honor, ultimately the Court
4 concluded that the grounds that Judge Few --
5 consideration of the 13th Juror Doctrine
6 encompassed the post-trial motion not otherwise
7 specifically phrased as such.

8 THE COURT: Yes, the way these words are used
9 said.

10 MR. GRIFFIN: Right.

11 THE COURT: He said: The colliquifaction of
12 the judicial and/or counsel statements persuades
13 this Court that the 13th juror doctrine was posited
14 to the circuit court for -- what is that word,
15 arbitrament?

16 MR. GRIFFIN: I think that's right.

17 THE COURT: Then he got into the discussion
18 about the length of the jury deliberation. And in
19 the ends wrapped it up after going through other
20 jurisdictions. And conclusion: We decline to
21 place our approbation and imprimatur upon this 13th
22 juror order based upon length of prior
23 deliberations. The Latin phrase *abundans cautela*
24 *non nocet* (abundant or extreme caution does no
25 harm) is efficacious. Judicial interference with a

1 jury verdict based upon the time of jury
2 deliberations is at best fraught with doctrinal
3 vulnerability.

4 So he spends all the time saying the judge can
5 do it, but he can't do it for the reason Judge Few
6 did it.

7 MR. GRIFFIN: Correct.

8 THE COURT: Of course now that Judge Few is on
9 the Supreme Court he may decide differently.

10 Of course, you know, I sat through this case.
11 And with the aggressiveness to which it was
12 litigated by the Plaintiff and the Defendant by the
13 Defense, many issues were raised that caused me to
14 be more actively involved in it than I often care
15 to be as far as ruling on various things.

16 After the admission by Cameron that he was
17 reckless and basically concluding -- through his
18 testimony it was all his fault -- and I directed a
19 verdict on that issue.

20 You know, I see no way that the jury could
21 reasonably come to the conclusion they came to, no
22 reasonable jury could reach that decision deciding
23 that the passenger was more at fault than the
24 driver. And no evidence was presented that would
25 give the jury a basis to make that decision.

1 So as to the JNOV, I do not think it is
2 appropriate to grant that.

3 As to the new trial based on the 13th Juror,
4 it seems to me as if, in addition to there being no
5 reasonable basis for which the jury could come to
6 that conclusion, basically, the jurors seemingly --
7 or I can't speculate what they decided, but they
8 didn't apply the law or were confused by the law or
9 just didn't apply it or just decided they didn't
10 want to be involved in this process. And they
11 decided they were not going to -- that despite the
12 evidence they were going to do the jury
13 nullification, of sorts.

14 But I'm going to grant the new trial based on
15 13th Juror Law and adopt the Plaintiff's argument
16 with regard to that.

17 I do find, however, that the jury has settled
18 the issue regarding the survival action. The
19 evidence in the case, I think litigated as well, as
20 to whether or not the gasping for the last breath
21 of sorts amounted to conscious pain and suffering.
22 And I submitted that issue to the jury over
23 strenuous objection. I think the verdict, despite
24 the fact that -- I think the verdict form has to be
25 taken as a whole. And that issue has been decided

1 by the jury. And so I limit the new trial to the
2 issue of wrongful death.

3 MR. GRIFFIN: Thank you, Your Honor.

4 THE COURT: And if you will prepare a more
5 extensive order. Or if I don't have to give a
6 reason, according to you, other than what I have
7 already stated, I'll sign it.

8 MR. GRIFFIN: Your Honor, I think a Form 4
9 will be appropriate based on that, or if Your Honor
10 would like me to draft an order, I will be happy
11 to.

12 MS. O'BRIEN: We would request a detailed
13 order. Thank you.

14 THE COURT: Ms. O'Brien wants something that
15 can pick apart. So draft an order, proposed order,
16 share it with counsel, and you can pick it apart
17 before I sign it or you can pick it apart after I
18 sign it. But that is my ruling. I think that is
19 the --

20 MR. GRIFFIN: Thank you.

21 THE COURT: -- clear indication based on
22 common sense and application of the law and facts
23 of this case.

24 And that is the order of the Court.

25 MR. LANFORD: Your Honor, may I just state for

1 the record that, we were not abandoning the
2 argument that Mr. Griffin insinuated that we may be
3 abandoning.

4 THE COURT: Which one is that?

5 MR. LANFORD: With regard to the timing of the
6 post-trial motions. Just to make that clear for
7 the record, we are not adopting all arguments.

8 THE COURT: All right. I will include in my
9 ruling that it was clearly timely based on the
10 Court -- the motions being made at the conclusion
11 of the case. Upon return of the verdict he made a
12 motion, then requested additional time, and the
13 Court granted that request. And there was no
14 objection to him having additional time to file it.
15 I was actually shocked to see a motion claiming
16 that it was not timely.

17 MR. LANFORD: Well, the argument is that is
18 was premature.

19 THE COURT: Oh, premature. Well, if you all
20 want to spend some time with the Supreme Court
21 figuring out when is a verdict a verdict, you know,
22 when is the jury discharged, because the jury is
23 sitting here that means they were still serving on
24 the jury. Good luck being involved with something
25 like that. That sounds like a waste of time to me.

1 But, you never know. You all do as you wish. I am
2 always interested in seeing what others think about
3 things.

4 All right. Good deal. Good to see everyone.

5 MR. GRIFFIN: Thank you, Your Honor.

6 MR. LANFORD: Thank you, Your Honor.

7 MS. O'BRIEN: Thank you, Your Honor.

8 THE COURT: When are you going to send that to
9 me, Mr. Griffin? I am not rushing you, I just want
10 to know.

11 MR. GRIFFIN: Your Honor, I will circulate it
12 to them by Wednesday and hopefully have it to you
13 by Friday, a week from tomorrow.

14 THE COURT: All right. That sounds good to
15 me.

16 MR. GRIFFIN: Okay, thank you.

17 (WHEREUPON, the proceedings were
18 concluded at 4:20 p.m.)

19

20

21

22

23

24

25

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

}

I, Deborah M. McCurdy, Official Court Reporter for the Fifth 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 Richland County, South Carolina, on the 23rd day of March, 2017.

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

April 9, 2017

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter



South Carolina Department of Public Safety

South Carolina Highway Patrol

MF-086-13

Richland County

Post B M.A.I.T.

Team Members

Sgt. M.B. Coffin
Cpl. J.C. Rikard
Cpl. S.L. Farmer
Cpl. J.R. O' Donnell
L/Cpl. B.C. Ridgeway
L/Cpl. M.W. Turner
L/Cpl. J.D. Sisler
L/Cpl. M. R. Nix

MAIT Coordinator

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10311 Wilson Blvd.
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**Forward all Subpoenas for MAIT to
Leigh P. Watkins**

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Appendix 547



SOUTH CAROLINA HIGHWAY PATROL

MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM



Leroy Smith
Director

M.R. Olyer
Colonel

INVESTIGATIVE REPORT

The South Carolina Highway Patrol Multi-Disciplinary Accident Investigation Team reserves the right to amend, correct, or retract any or all inferences, conclusions, or opinions presented in this report. This report is the intellectual property of the South Carolina Department of Public Safety and shall not be duplicated or copied for distribution, unless written permission is granted by the Office of General Counsel.

MAIT CASE NO:	MF-086-13	CAD/CASE NO:	13BW092947
REQUESTING AGENCY:	RCHS		
TROOP:	A		
COUNTY:	RICHLAND	COLLISION LOCATION:	SHALLOW BROOK DRIVE
INVESTIGATING OFFICER:	L/CPL. R.H. ROWE		
DATE:	05/24/2013		
MAIT REGION:	POST 5	TEAM LEADER:	SCT. M. B. COFFIN

1. SPEED CALCULATION.

The speed of unit #1 at impact was calculated to be approximately 82 miles per hour. The speed limit is 25 miles per hour.

2. MAPPING / CAD.

MAIT completed a forensic mapping and CAD of the collision scene.

3. LANE LOCATION.

The collision occurred in the westbound lane of Shallow Brook Drive.

4. MECHANICAL / TIRE.

MAIT conducted a mechanical examination on unit #1 and concluded that unit #1 was in proper mechanical condition prior to this collision and that no mechanical failure contributed to this collision.

5. AUDIO / INTERVIEWS.

MAIT conducted audio recordings during the course of this investigation.



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Post Office Box 1993
Blythewood, SC 29016



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546

6. PHOTOGRAPHS

MAIT took digital photographs during the course of this investigation.

7. VIDEO

MAIT took digital video footage during the course of this investigation.

M. B. Coffin

Team Leader / Region Commander

ACTAR Number: 2363



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
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Blythewood, SC 29016

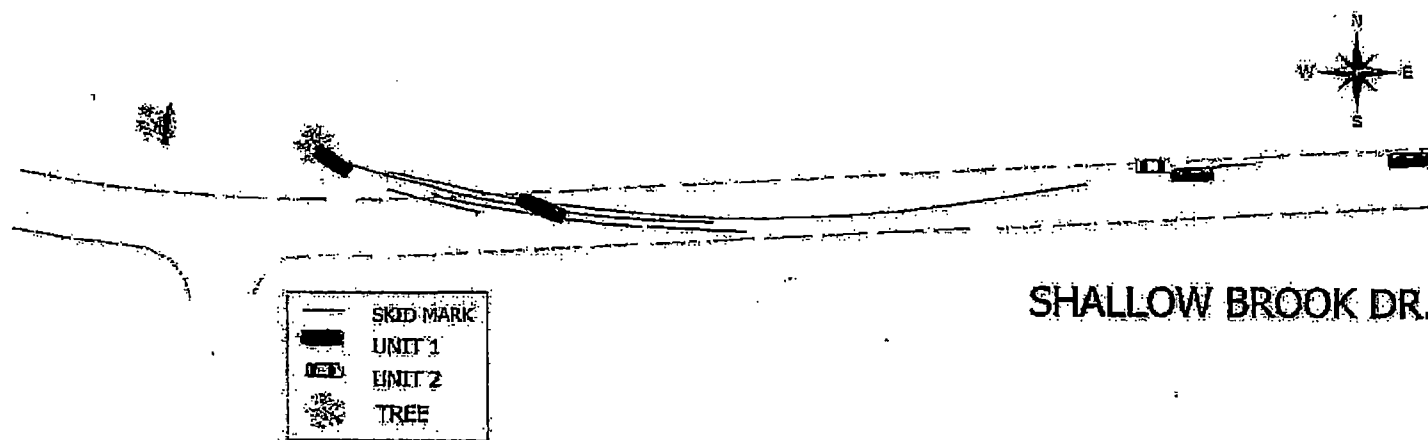


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547

MF-086-13

Appendix 550



SHALLOW BROOK DR.

548

STRINGFELLOW 0282

FINDING #1

MF-086-13

CASE NUMBER: MF-086-13

Comments: Unit #1 speed combined.

** COMBINED MINIMUM SPEEDS W/ KNOWN SPEEDS **

$$S = \sqrt{S^2(1) + S^2(2) + \dots S^2(n)}$$

$$S = \sqrt{(21.00)^2 + (73.00)^2 + (32.00)^2 + (0.00)^2 + (0.00)^2 + (0.00)^2 + (0.00)^2 + (0.00)^2}$$

$$S = \sqrt{441.00 + 5329.00 + 1024.00 + 0.00 + 0.00 + 0.00 + 0.00 + 0.00}$$

$$S = \sqrt{6794.00}$$

$$S = 82.42$$

S = The Speed in MPH.

S² = The Individual Min. Speed.

(1), (2), (n) = The # of the individual speed.

INPUTS:	
Speed #1 in MPH is:	21.00
Speed #2 in MPH is:	73.00
Speed #3 in MPH is:	32.00

RESULTS:	
The Speed in MPH is:	82.42
The Velocity in FPS is:	120.88

SCHEMATIC
POSTER
10311 WILSON BLVD.
BLYTHEWOOD, SC 29016

Printed: 6/5/2013

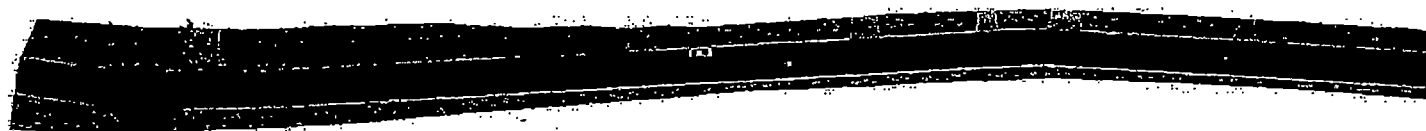
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FINDING #2

MF-086-13



SHALLOWBROOK RD



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
POST B
DATE DRAWN: 05/24/2013

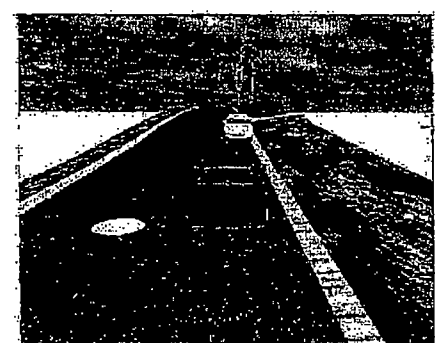
ROADWAY

TROOP 1 / RICHLAND
OCCURRED ON: 05/24/2013
MF-086-13

STRINGER FELLOW 0284

FINDING #2

MF-086-13



SHALLOWBROOK RD



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
POST 8
DATE DRAWN: 05/24/2013

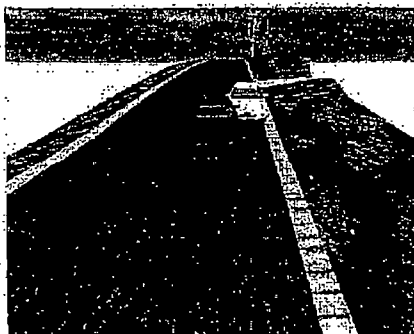
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TROOP 1/RICHLAND
OCCURRED ON: 05/24/2013
MF-086-13

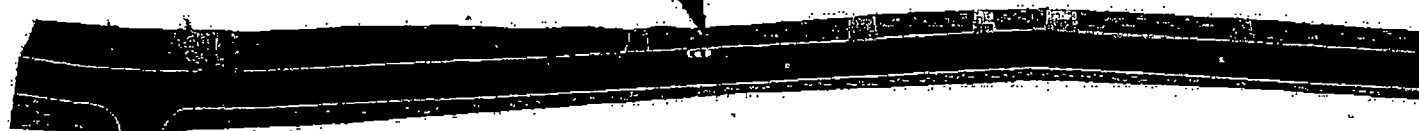
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FINDING #2

MF-086-13



SHALLOWBROOK RD



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
POST B
DATE DRAWN: 05/24/2013

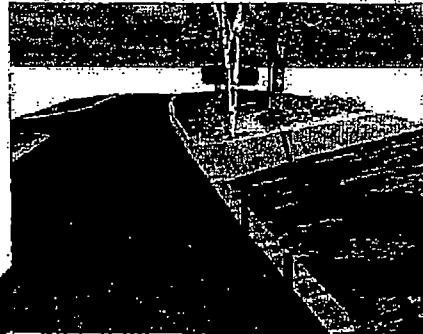
IMPACT 1

TROOP 1 / RICHLAND
OCCURRED ON: 05/24/2013
MF-086-13

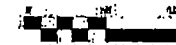
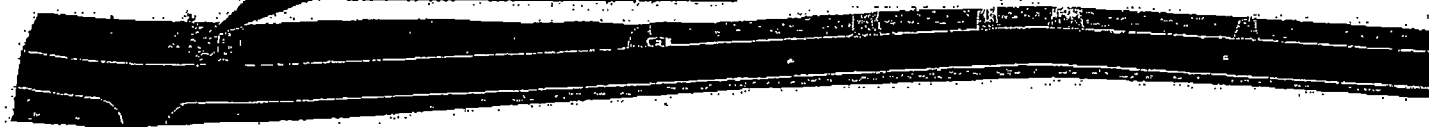
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FINDING #2

MF-086-13



SHALLOWBROOK RD



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
POST B
DATE DRAWN: 05/24/2013

IMPACT 2

TROOP 17 RICHLAND
OCCURRED ON: 05/24/2013
MF-086-13

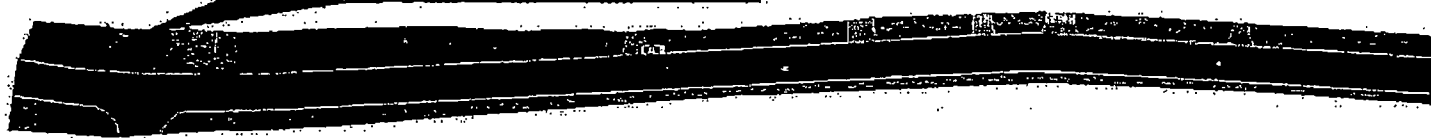
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FINDING #2

MF-086-13



SHALLOWBROOK RD



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
POST 8
DATE DRAWN: 05/24/2013

EVIDENCE AND FINAL REST

TROOP 17 RICHLAND
OCCURRED ON: 05/24/2013
MF-086-13

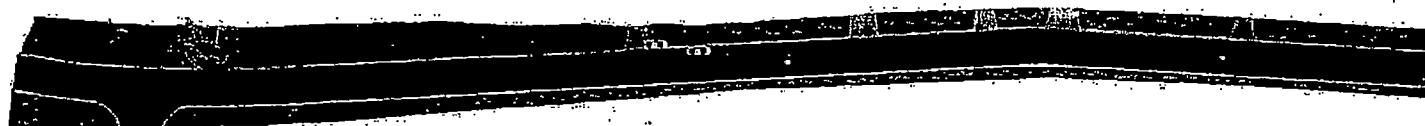
STRINGFELLOW 0288

FINDING #2

MF-086-13



SHALLOWBROOK RD



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
POST B
DATE DRAWN: 05/24/2013

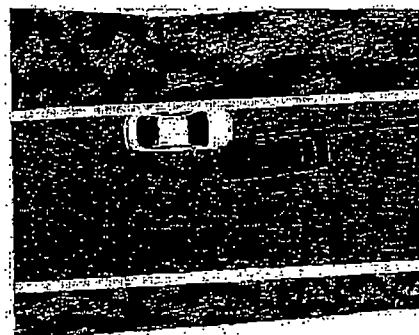
SEQUENCE OF EVENTS

TROOP 1 / RICHLAND
OCCURRED ON: 05/24/2013
MF-086-13

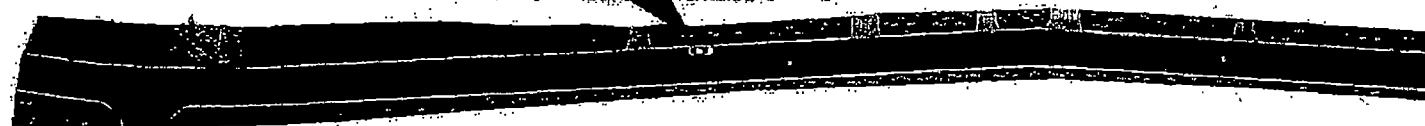
STRINGFELLOW 0289

FINDING #3

MF-086-13



SHALLOWBROOK



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
POST B
DATE DRAWN: 05/24/2013

LANE LOCATION

TROOP 1 / RICHLAND
OCCURRED ON: 05/24/2013
MF-086-13

STRINGFELLOW 0290

Crash Set 1

crash set 1:

01 41 C6 51 A6 73 FA 9C 03 00 00 28 D7 01 3B 00 18 5F 07 D0
00 52 50 25 00 52 50 40 E0 25 FF FF 00 50 00 00 20 EC F8 26
FF C9 FF FF D7 3C 3F 3C 2C 2C 2B 32 FE 33 31 FE 2E 2D 29 38
38 FE FE FE FE 37 34 35 32 39 FE FE FE FE FE FE FE 7F FA E0
01 7F 3A C0 01 40 20 02 00 FF 3F 45 1E 13 7F FF FF FF FF FF
FF 7F FF FF FF FF FF EF 0B D9 00 00 B3 00 0E CB FF FF 85 00
46 CB FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF
FF FF FF AA

Systemtime: 1499:34:43:366 (hh:mm:ss:ms) [0x01 0x41 0xC6 0x51 0xA6]

Operating time counter: 16838:42:59 (hh:mm:ss) [0x73 0xFA 0x9C 0x03]

Power on counter: 10455 0x00 0x00 0x28 0xD7

Timestamp last power on: 1:59:0 24/5/2013 (hh:mm:ss - dd/mm/yyyy)
0x01 0x3B 0x00 0x18 0x5F 0x07 0xD0

systemtime last power on: 1499:23:17 (hh:mm:ss) [0x00 0x52 0x5D 0x25]

system time of the last active system state: 1499:23:55 hh:mm:ss [0x00 0x52 0x5D 0x4B]

Crashinfo of car: E0 25 FF FF
Car Speed: 0xE0 0x25 152 km/h

CC-Reports: 00 50 00 00

Equipment occupant recognition passenger: 0x20
SBR-sensor: not equipped
CIS

Status SBE : 11101100
no SBEX programmed respectively encoded

Status OBS-System: 0xF8 0x26

OBS-System error status:

SBR information passenger seat:
SBR on

Occupation information passenger seat:
occupied

Status SLV: 11111111
No seat back blocking installed.

Status buckle switches (front, rear, centre): 11001001 11111111 11111111
buckle switch driver plugged
buckle switch passenger plugged
buckle switch rear left not installed
buckle switch rear right not installed
buckle switch rear centre not installed

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Appendix 559



crash Set 1

status pos pot : 11010111
POS not installed
PQL off

Resistor values of Ignition circuit before begin of crash

IC01 Airbag driver stage 1:	0x3C	3.09 ohm
IC02 Airbag driver stage 2:	0x3F	3.25 ohm
IC03 Adaptive airbag driver vent:	0x3C	3.09 ohm
IC04 Airbag passenger stage 1:	0x2C	2.27 ohm
IC05 Airbag passenger stage 2:	0x2C	2.27 ohm
IC06 Adaptive airbag passenger vent:	0x2B	2.22 ohm
IC07 Buckle pretensioner driver:	0x32	2.58 ohm
IC08 Belt pretensioner driver:	0xFF	not equipped
IC09 Adaptive load limiter driver:	0x33	2.63 ohm
IC10 Buckle pretensioner passenger:	0x31	2.53 ohm
IC11 Belt pretensioner passenger:	0xFF	not equipped
IC12 Adaptive load limiter passenger:	0x2E	2.37 ohm
IC13 Kneeairbag driver:	0x2D	2.32 ohm
IC14 Kneeairbag passenger:	0x29	2.11 ohm
IC15 Active head rest driver:	0x38	2.89 ohm
IC16 Active head rest passenger:	0x38	2.89 ohm
IC17 Buckle pretensioner rear left:	0xFF	not equipped
IC18 Buckle pretensioner rear right:	0xFF	not equipped
IC19 Adaptive seat airbag driver:	0xFF	not equipped
IC20 Adaptive seat airbag passenger:	0xFF	not equipped
IC21 Seatairbag (thorax) driver:	0x37	2.84 ohm
IC22 Seatairbag (thorax) passenger:	0x34	2.68 ohm
IC23 Curtain left:	0x35	2.73 ohm
IC24 Curtain right:	0x32	2.58 ohm
IC25 SBK:	0x39	2.94 ohm
IC26 SBK 2:	0xFF	not equipped
IC27 Reserve:	0xFF	not equipped
IC28 Reserve:	0xFF	not equipped
IC29 Fire loop pedestrian protection front left:	0xFF	not equipped
IC30 Fire loop pedestrian protection front right:	0xFF	not equipped
IC31 Fire loop pedestrian protection rear left:	0xFF	not equipped
IC32 Fire loop pedestrian protection rear right:	0xFF	not equipped

Release of fire loops: 01111111 1111010 11110000 00000001

IC01 Airbag driver stage 1:	released
IC02 Airbag driver stage 2:	released
IC03 Adaptive airbag driver vent:	released
IC04 Airbag passenger stage 1:	released
IC05 Airbag passenger stage 2:	released
IC06 Adaptive airbag passenger vent:	released
IC07 Buckle pretensioner driver:	released
IC08 Belt pretensioner driver:	not equipped
IC09 Adaptive load limiter driver:	not released
IC10 Buckle pretensioner passenger:	released
IC11 Belt pretensioner passenger:	not equipped
IC12 Adaptive load limiter passenger:	released
IC13 Kneeairbag driver:	released
IC14 Kneeairbag passenger:	released
IC15 Active head rest driver:	released
IC16 Active head rest passenger:	released
IC17 Buckle pretensioner rear left:	not equipped
IC18 Buckle pretensioner rear right:	not equipped
IC19 Adaptive seat airbag driver:	not equipped
IC20 Adaptive seat airbag passenger:	not equipped
IC21 Seatairbag (thorax) driver:	released
IC22 Seatairbag (thorax) passenger:	released

crash set 1

IC23	Curtain left:	released
IC24	Curtain right:	released
IC25	SBK:	released
IC26	SBK 2:	not equipped
IC27	Reserve:	not equipped
IC28	Reserve:	not equipped
IC29	Fire loop pedestrian protection front left:	not equipped
IC30	Fire loop pedestrian protection front right:	not equipped
IC31	Fire loop pedestrian protection rear left:	not equipped
IC32	Fire loop pedestrian protection rear right:	not equipped

Controlled ignition circuits: 01111111 00111010 11000000 00000001

IC01	Airbag driver stage 1:	controlled
IC02	Airbag driver stage 2:	controlled
IC03	Adaptive airbag driver vent:	controlled
IC04	Airbag passenger stage 1:	controlled
IC05	Airbag passenger stage 2:	controlled
IC06	Adaptive airbag passenger vent:	controlled
IC07	Buckle pretensioner driver:	controlled
IC08	Belt pretensioner driver:	not equipped
IC09	Adaptive load limiter driver:	not controlled
IC10	Buckle pretensioner passenger:	controlled
IC11	Belt pretensioner passenger:	not equipped
IC12	Adaptive load limiter passenger:	controlled
IC13	Kneebag driver:	controlled
IC14	Kneebag passenger:	controlled
IC15	Active head rest driver:	not controlled
IC16	Active head rest passenger:	not controlled
IC17	Buckle pretensioner rear left:	not equipped
IC18	Buckle pretensioner rear right:	not equipped
IC19	Adaptive seat airbag driver:	not equipped
IC20	Adaptive seat airbag passenger:	not equipped
IC21	Seat airbag (thorax) driver:	not controlled
IC22	Seat airbag (thorax) passenger:	not controlled
IC23	Curtain left:	controlled
IC24	Curtain right:	controlled
IC25	SBK:	controlled
IC26	SBK 2:	not equipped
IC27	Reserve:	not equipped
IC28	Reserve:	not equipped
IC29	Fire loop pedestrian protection front left:	not equipped
IC30	Fire loop pedestrian protection front right:	not equipped
IC31	Fire loop pedestrian protection rear left:	not equipped
IC32	Fire loop pedestrian protection rear right:	not equipped

Additional information:

Byte 1: 01000000
TCU steered
Byte 2: 00100000
SM seat position driver standardization necessary
Byte 3: 00000010
SPS/SM seat position passenger, seat back
Variable ignition circuit table 1
Crash Nachlaufzeit: Condition not fulfilled 0xFF
Backrest position driver: 53% 0x3F
Backrest position passenger: 69% 0x45
Seat longitudinal position driver: 30% 0x1E
Seat longitudinal position passenger: 19% 0x13

Maximal lateral angle of roll: unknown / default 0x7F 0xFF
Systemtime: system time not available 0x00FFFFFFF

Maximal lateral angular velocity: unknown / default 0x7F

Crash Set 1
 SystemTime: System time not available 0x00FFFFFFF
 Delta-v in x- and y-direction: x=0xEF y=0xB yr=0x9
 Delta-v-x = -17 km/h
 Delta-v-y = +11 km/h
 Delta-v-yr = +9 km/h
 Error info of satellites: 00000000 00000000

Algo path:	Direction	Weight	Time[ms]	Phase	Path	Bytes (HEX)	
CB FF FF	Frontal	5	14	specific	Sensitive	AB	83 00 0E
CB FF FF	Frontal	5	22	specific	Sensitive	AB	85 00 16
FF FF FF	default	15	65535	default	default	default	FF FF FF
FF FF FF	default	15	65535	default	default	default	FF FF FF
FF FF FF	default	15	65535	default	default	default	FF FF FF

Info algo path: Algo path memory was still capacious. 0xFF

Crash record end mark: Crash record completely stored 0xAA

Crash Set 2

crash set 2:

01 41 C6 51 AC 73 FA 9C 03 00 00 2B D7 01 3B 00 1B 5F 07 DD
00 52 5D 25 00 52 5D 4B E0 25 FF FF 00 50 00 00 20 EC F8 26
FF C9 FF FF 07 3C 3F 3C 2C 2C 2B 32 FE 33 31 FE 2E 2D 29 38
38 FE FE FE FE 37 34 35 32 39 FE FE FE FE FE FE FE 7F FA F0
01 40 00 A0 01 40 20 02 00 FF 3F 45 1E 13 7F FF FF FF FF FF
FF 7F FF FF FF FF FF EF 0B 09 00 00 11 00 1B C9 60 00 12 00
2E E1 E0 00 FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF
FF FF FF AA

Systemtime: 1499:34:43:372 (hh:mm:ss:ms) [0x01 0x41 0xC6 0x51 0xAC]

Operating time counter: 16838:42:59 (hh:mm:ss) [0x73 0xEA 0x9C 0x03]

Power on counter: 10455 0x00 0x00 0x28 0xD7

Timestamp last power on: 1:59:0 24/5/2013 (hh:mm:ss - dd/mm/yyyy)
0x01 0x3B 0x00 0x18 0x5F 0x07 0xDD

Systemtime Last Power On: 1499:23:17 (hh:mm:ss) [0x00 0x52 0x5D 0x25]

System time of the last active system state: 1499:23:55 hh:mm:ss [0x00 0x52 0x5D 0x4B]

Crashinfo of car: E0 25 FF FF
Car Speed: 0xE0 0x25 152 km/h

CC-Reports: 00 50 00 00

Equipment occupant recognition passenger: 0x20
SBR-sensor: not equipped
CIS

Status SBE: 11101100
no SBEX programmed respectively encoded

Status ODS-system: 0xF8 0x26

ODS-system error status:

SBR information passenger seat:
SBR on

Occupation information passenger seat:
occupied

Status SLV: 11111111
No seat back blocking installed.

Status buckle switches (front, rear, centre): 11001001 11111111 11111111
buckle switch driver plugged
buckle switch passenger plugged
buckle switch rear left not installed
buckle switch rear right not installed
buckle switch rear centre not installed

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Appendix 563



Crash Set 2

Status pos pol : 11010111
POS not installed
POL off

Resistor values of ignition circuit before begin of crash:

IC01 Airbag driver stage 1:	0x3C	3.09 ohm
IC02 Airbag driver stage 2:	0x3F	3.25 ohm
IC03 Adaptive airbag driver vent:	0x3C	3.09 ohm
IC04 Airbag passenger stage 1:	0x2C	2.27 ohm
IC05 Airbag passenger stage 2:	0x2C	2.27 ohm
IC06 Adaptive airbag passenger vent:	0x2B	2.22 ohm
IC07 Buckle pretensioner driver:	0x32	2.58 ohm
IC08 Belt pretensioner driver:	0xFE	not equipped
IC09 Adaptive load limiter driver:	0x33	2.63 ohm
IC10 Buckle pretensioner passenger:	0x31	2.53 ohm
IC11 Belt pretensioner passenger:	0xFE	not equipped
IC12 Adaptive load limiter passenger:	0x2E	2.37 ohm
IC13 Kneeairbag driver:	0x2D	2.32 ohm
IC14 Kneeairbag passenger:	0x29	2.11 ohm
IC15 Active head rest driver:	0x38	2.89 ohm
IC16 Active head rest passenger:	0x38	2.89 ohm
IC17 Buckle pretensioner rear left:	0xFE	not equipped
IC18 Buckle pretensioner rear right:	0xFE	not equipped
IC19 Adaptive seat airbag driver:	0xFE	not equipped
IC20 Adaptive seat airbag passenger:	0xFE	not equipped
IC21 Seatairbag (thorax) driver:	0x37	2.84 ohm
IC22 Seatairbag (thorax) passenger:	0x34	2.68 ohm
IC23 Curtain left:	0x35	2.73 ohm
IC24 Curtain right:	0x32	2.58 ohm
IC25 SBK:	0x39	2.94 ohm
IC26 SBK 2:	0xFE	not equipped
IC27 Reserve:	0xFE	not equipped
IC28 Reserve:	0xFE	not equipped
IC29 Fire loop pedestrian protection front left:	0xFE	not equipped
IC30 Fire loop pedestrian protection front right:	0xFE	not equipped
IC31 Fire loop pedestrian protection rear left:	0xFE	not equipped
IC32 Fire loop pedestrian protection rear right:	0xFE	not equipped

Release of fire loops: 01111111 1111010 11110000 00000001

IC01 Airbag driver stage 1:	released
IC02 Airbag driver stage 2:	released
IC03 Adaptive airbag driver vent:	released
IC04 Airbag passenger stage 1:	released
IC05 Airbag passenger stage 2:	released
IC06 Adaptive airbag passenger vent:	released
IC07 Buckle pretensioner driver:	released
IC08 Belt pretensioner driver:	not equipped
IC09 Adaptive load limiter driver:	not released
IC10 Buckle pretensioner passenger:	released
IC11 Belt pretensioner passenger:	not equipped
IC12 Adaptive load limiter passenger:	released
IC13 Kneeairbag driver:	released
IC14 Kneeairbag passenger:	released
IC15 Active head rest driver:	released
IC16 Active head rest passenger:	released
IC17 Buckle pretensioner rear left:	not equipped
IC18 Buckle pretensioner rear right:	not equipped
IC19 Adaptive seat airbag driver:	not equipped
IC20 Adaptive seat airbag passenger:	not equipped
IC21 Seatairbag (thorax) driver:	released
IC22 Seatairbag (thorax) passenger:	released

Page 2

Crash Set 2

IC23	Curtain left:	released
IC24	Curtain right:	released
IC25	SBK:	released
IC26	SBK 2:	not equipped
IC27	Reserve:	not equipped
IC28	Reserve:	not equipped
IC29	Fire loop pedestrian protection front left:	not equipped
IC30	Fire loop pedestrian protection front right:	not equipped
IC31	Fire loop pedestrian protection rear left:	not equipped
IC32	Fire loop pedestrian protection rear right:	not equipped

Controlled ignition circuits: 01000000 00000000 10100000 00000001

IC01	Airbag driver stage 1:	not controlled
IC02	Airbag driver stage 2:	not controlled
IC03	Adaptive airbag driver vent:	not controlled
IC04	Airbag passenger stage 1:	not controlled
IC05	Airbag passenger stage 2:	not controlled
IC06	Adaptive airbag passenger vent:	not controlled
IC07	Buckle pretensioner driver:	controlled
IC08	Belt pretensioner driver:	not equipped
IC09	Adaptive load limiter driver:	not controlled
IC10	Buckle pretensioner passenger:	not controlled
IC11	Belt pretensioner passenger:	not equipped
IC12	Adaptive load limiter passenger:	not controlled
IC13	Kneeairbag driver:	not controlled
IC14	Kneeairbag passenger:	not controlled
IC15	Active head rest driver:	not controlled
IC16	Active head rest passenger:	not controlled
IC17	Buckle pretensioner rear left:	not equipped
IC18	Buckle pretensioner rear right:	not equipped
IC19	Adaptive seat airbag driver:	not equipped
IC20	Adaptive seat airbag passenger:	not equipped
IC21	Seatairbag (thorax) driver:	not controlled
IC22	Seatairbag (thorax) passenger:	controlled
IC23	Curtain left:	not controlled
IC24	Curtain right:	controlled
IC25	SBK:	controlled
IC26	SBK 2:	not equipped
IC27	Reserve:	not equipped
IC28	Reserve:	not equipped
IC29	Fire loop pedestrian protection front left:	not equipped
IC30	Fire loop pedestrian protection front right:	not equipped
IC31	Fire loop pedestrian protection rear left:	not equipped
IC32	Fire loop pedestrian protection rear right:	not equipped

Additional information:

Byte 1: 01000000
 TCU steered

Byte 2: 00100000
 SM seat position driver standardization necessary

Byte 3: 00000010
 SPS/SM seat position passenger, seat back
 Variable ignition circuit table 1

Crash Nachlaufzeit: Condition not fulfilled 0xFF
 Backrest position driver: 63% 0x3F
 Backrest position passenger: 69% 0x45
 Seat longitudinal position driver: 30% 0x1E
 Seat longitudinal position passenger: 19% 0x13

Maximal lateral angle of roll: unknown / default 0x7F 0xFF
 Systemtime: System time not available 0x00FFFFFFF

Maximal lateral angular velocity: unknown / default 0x7F
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Crash Set 2
 Systemtime: System time not available 0x00FFFFFFF
 Delta-V in x- und y-direction: X=0xEP Y=0xB Yr=0x9
 Delta-V-X = -17 km/h
 Delta-V-Y = +11 km/h
 Delta-V-Yr = +9 km/h
 Error info of satellites: 00000000 00000000

Algo path:	Direction	Weight	Time[ms]	Phase	Path	bytes (HEX)
Side passenger	1	27				11 00 18
C9 60 00						
				Main Index Acc:	3	(info byte 4)
				Main Index Vel:	0	(info byte 4)
				Dist Index Acc:	2	(info byte 4)
				Dist Index Vel:	1	(info byte 4)
				Conf Index Acc:	1	(info byte 5)
				Conf Index Vel:	2	(info byte 5)
				FP State:	: not met	(info byte 5)
				CV State:	: not met	(info byte 5)
				Neg V State:	: not met	(info byte 5)
				Main STP Sev	: 0	(info byte 6)
				Dist STP Sev	: 0	(info byte 6)
				Main DT Sev	: 0	(info byte 6)
Side passenger	2	38				12 00 26
E1 60 00						
				Main Index Acc:	3	(info byte 4)
				Main Index Vel:	2	(info byte 4)
				Dist Index Acc:	0	(info byte 4)
				Dist Index Vel:	1	(info byte 4)
				Conf Index Acc:	3	(info byte 5)
				Conf Index Vel:	2	(info byte 5)
				FP State:	: not met	(info byte 5)
				CV State:	: not met	(info byte 5)
				Neg V State:	: not met	(info byte 5)
				Main STP Sev	: 0	(info byte 6)
				Dist STP Sev	: 0	(info byte 6)
				Main DT Sev	: 0	(info byte 6)
default	15	65535	default	default	default	FF FF FF
FF FF FF						
default	15	65535	default	default	default	FF FF FF
FF FF FF						
default	15	65535	default	default	default	FF FF FF
FF FF FF						

Info algo path: Algo path memory was stilll capacious 0xFF
 Crash record end mark: Crash record completely stored 0xAA

Crash Set 3:

Crash set 3:

01 41 C6 61 B0 73 FA 9C 03 00 00 28 D7 01 3B 00 18 5F 07 DD
00 52 5D 25 00 52 5D 4B E0 25 FF FF 00 5D 00 00 20 EC E8 26
FF C9 FF FF D7 8C 3F 3E 2C 2C 2B 32 FE 33 31 FE 2E 2D 29 38
38 FE FE FE FE 37 34 35 32 39 FE FE FE FE FE FE FE 7F FA F0
01 00 C0 00 00 00 20 02 00 FF 3F 45 1E 13 7F FF FF FF FF FF
FF 7F FF FF FF FF FF 1F EA EE 00 00 41 00 40 02 FF FF FF FF
FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF FF
FF FF FF AA

Systemtime: 1499:34:47:472 (hh:mm:ss.ms) [0x01 0x41 0xC6 0x61 0xB0]

operating time counter: 16838:42:59 (hh:mm:ss) [0x73 0xFA 0x9C 0x03]

Power on counter: 10455 0x00 0x00 0x28 0xD7

Timestamp last power on: 1459:0 24/5/2013 (hh:mm:ss - dd/mm/yyyy)
0x01 0x3B 0x00 0x18 0x5F 0x07 0xDD

Systemtime last power on: 1499:23:17 (hh:mm:ss) [0x00 0x52 0x5D 0x25]

system time of the last active system state: 1499:23:55 hh:mm:ss [0x00 0x52 0x5D 0x4B]

Crashinfo of car: E0 25 FF FF
Car Speed: 0xE0 0x25 152 km/h

CC-reports: 00 50 00 00

Equipment occupant recognition passenger: 0x20
SBR-sensor: not equipped
CIS

Status SBE: 11101100
no SBE programmed respectively encoded

Status ODS-system: 0xF8 0x26

ODS-System error status:

SBR information passenger seat:
SBR on

Occupation information passenger seat:
occupied

Status SLV: 11111111
No seat back blocking installed

Status buckle switches (front, rear, centre): 11001001 11111111 11111111
buckle switch driver plugged
buckle switch passenger plugged
buckle switch rear left not installed
buckle switch rear right not installed
buckle switch rear centre not installed

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Appendix 567



Crash Set 3

Status pos pol : 11010111
 POS not installed
 POL off

Resistor values of ignition circuit before begin of crash

IC01 Airbag driver stage 1:	0x3C	3.09 ohm
IC02 Airbag driver stage 2:	0x3F	3.25 ohm
IC03 Adaptive airbag driver vent:	0x3C	3.09 ohm
IC04 Airbag passenger stage 1:	0x2C	2.27 ohm
IC05 Airbag passenger stage 2:	0x2C	2.27 ohm
IC06 Adaptive airbag passenger vent:	0x2B	2.22 ohm
IC07 Buckle pretensioner driver:	0x32	2.58 ohm
IC08 Belt pretensioner driver:	0xFE	not equipped
IC09 Adaptive load limiter driver:	0x33	2.63 ohm
IC10 Buckle pretensioner passenger:	0x31	2.53 ohm
IC11 Belt pretensioner passenger:	0xFE	not equipped
IC12 Adaptive load limiter passenger:	0x2E	2.37 ohm
IC13 Kneeairbag driver:	0x2D	2.32 ohm
IC14 Kneeairbag passenger:	0x29	2.11 ohm
IC15 Active head rest driver:	0x38	2.89 ohm
IC16 Active head rest passenger:	0x38	2.89 ohm
IC17 Buckle pretensioner rear left:	0xFE	not equipped
IC18 Buckle pretensioner rear right:	0xFE	not equipped
IC19 Adaptive seat airbag driver:	0xFE	not equipped
IC20 Adaptive seat airbag passenger:	0xFE	not equipped
IC21 Seatairbag (thorax) driver:	0x37	2.84 ohm
IC22 Seatairbag (thorax) passenger:	0x34	2.68 ohm
IC23 curtain left:	0x35	2.73 ohm
IC24 curtain right:	0x32	2.58 ohm
IC25 SBK:	0x39	2.94 ohm
IC26 SBK 2:	0xFE	not equipped
IC27 Reserve:	0xFE	not equipped
IC28 Reserve:	0xFE	not equipped
IC29 Fire loop pedestrian protection front left:	0xFE	not equipped
IC30 Fire loop pedestrian protection front right:	0xFE	not equipped
IC31 Fire loop pedestrian protection rear left:	0xFE	not equipped
IC32 Fire loop pedestrian protection rear right:	0xFE	not equipped

Release of fire loops: 01111111 1111010 11110000 00000001

IC01 Airbag driver stage 1:	released
IC02 Airbag driver stage 2:	released
IC03 Adaptive airbag driver vent:	released
IC04 Airbag passenger stage 1:	released
IC05 Airbag passenger stage 2:	released
IC06 Adaptive airbag passenger vent:	released
IC07 Buckle pretensioner driver:	released
IC08 Belt pretensioner driver:	not equipped
IC09 Adaptive load limiter driver:	not released
IC10 Buckle pretensioner passenger:	released
IC11 Belt pretensioner passenger:	not equipped
IC12 Adaptive load limiter passenger:	released
IC13 Kneeairbag driver:	released
IC14 Kneeairbag passenger:	released
IC15 Active head rest driver:	released
IC16 Active head rest passenger:	released
IC17 Buckle pretensioner rear left:	not equipped
IC18 Buckle pretensioner rear right:	not equipped
IC19 Adaptive seat airbag driver:	not equipped
IC20 Adaptive seat airbag passenger:	not equipped
IC21 Seatairbag (thorax) driver:	released
IC22 Seatairbag (thorax) passenger:	released

Page 2.

Crash Set 3

IC23	Curtain left:	released
IC24	Curtain right:	released
IC25	SBK:	released
IC26	SBK 2:	not equipped
IC27	Reserve:	not equipped
IC28	Reserve:	not equipped
IC29	Fire loop pedestrian protection front left:	not equipped
IC30	Fire loop pedestrian protection front right:	not equipped
IC31	Fire loop pedestrian protection rear left:	not equipped
IC32	Fire loop pedestrian protection rear right:	not equipped

Controlled ignition circuits: 00000000 11000000 00000000 00000000		
IC01	Airbag driver stage 1:	not controlled
IC02	Airbag driver stage 2:	not controlled
IC03	Adaptive airbag driver vent:	not controlled
IC04	Airbag passenger stage 1:	not controlled
IC05	Airbag passenger stage 2:	not controlled
IC06	Adaptive airbag passenger vent:	not controlled
IC07	Buckle pretensioner driver:	not controlled
IC08	Belt pretensioner driver:	not equipped
IC09	Adaptive load limiter driver:	not controlled
IC10	Buckle pretensioner passenger:	not controlled
IC11	Belt pretensioner passenger:	not equipped
IC12	Adaptive load limiter passenger:	not controlled
IC13	Kneeairbag driver:	not controlled
IC14	Kneeairbag passenger:	not controlled
IC15	Active head rest driver:	controlled
IC16	Active head rest passenger:	controlled
IC17	Buckle pretensioner rear left:	not equipped
IC18	Buckle pretensioner rear right:	not equipped
IC19	Adaptive seat airbag driver:	not equipped
IC20	Adaptive seat airbag passenger:	not equipped
IC21	Seatairbag (thorax) driver:	not controlled
IC22	Seatairbag (thorax) passenger:	not controlled
IC23	Curtain left:	not controlled
IC24	Curtain right:	not controlled
IC25	SBK:	not controlled
IC26	SBK 2:	not equipped
IC27	Reserve:	not equipped
IC28	Reserve:	not equipped
IC29	Fire loop pedestrian protection front left:	not equipped
IC30	Fire loop pedestrian protection front right:	not equipped
IC31	Fire loop pedestrian protection rear left:	not equipped
IC32	Fire loop pedestrian protection rear right:	not equipped

Additional information:

Byte 1: 00000000
 Byte 2: 00100000
 SM seat position driver standardization necessary
 Byte 3: 00000010
 SPS/SM seat position passenger, seat back
 Variable ignition circuit table 1
 Crash Nachlaufzeit: condition not fulfilled 0xFF
 Backrest position driver: 63% 0x3F
 Backrest position passenger: 69% 0x45
 Seat longitudinal position driver: 30% 0x1E
 Seat longitudinal position passenger: 19% 0x13

Maximal lateral angle of roll: unknown / default 0x7F 0xFF
 Systemtime: system time not available 0x00FFFFFF
 Maximal lateral angular velocity: unknown / default 0x7F
 Systemtime: system time not available 0x00FFFFFF

Crash Set 3

Delta-v in x- and y-direction: x=0x1F y1=0xEA yr=0xEE
 Delta-v-x = +31 km/h
 Delta-v-y1 = -22 km/h
 Delta-v-yr = -18 km/h

Error info of satellites: 00000000 00000000

Algo path:	Direction	Weight	Time[ms]	Phase	Path	Bytes (HEX)
Tail		1	64			CS1 LOW Y Robust 41 00 40
02 FF FF	default	15	65535	default	default	FF FF FF
FF FF FF	default	15	65535	default	default	FF FF FF
FF FF FF	default	15	65535	default	default	FF FF FF
FF FF FF	default	15	65535	default	default	FF FF FF
FF FF FF	default	15	65535	default	default	FF FF FF

Info algo path: Algo path memory was still capacious 0xFF

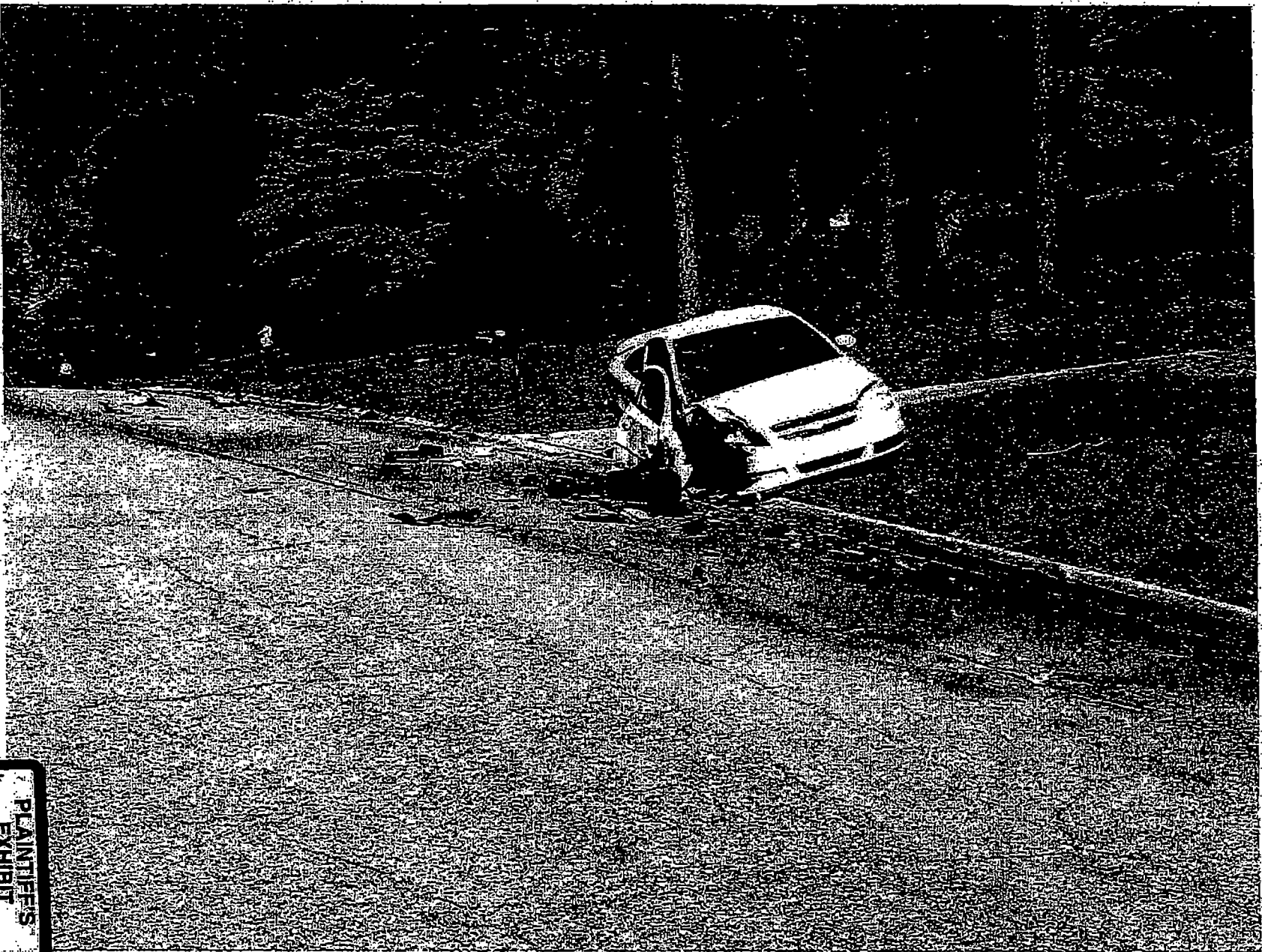
Crash record end mark: Crash record completely stored 0xAA



STRINGER LOW 0093

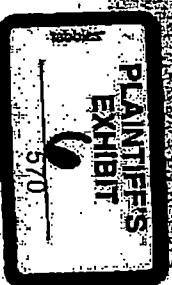
Appendix 571





STRINGFELLOW 0092

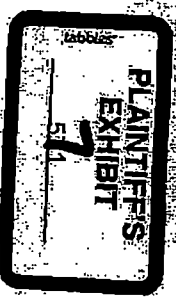
Appendix 572

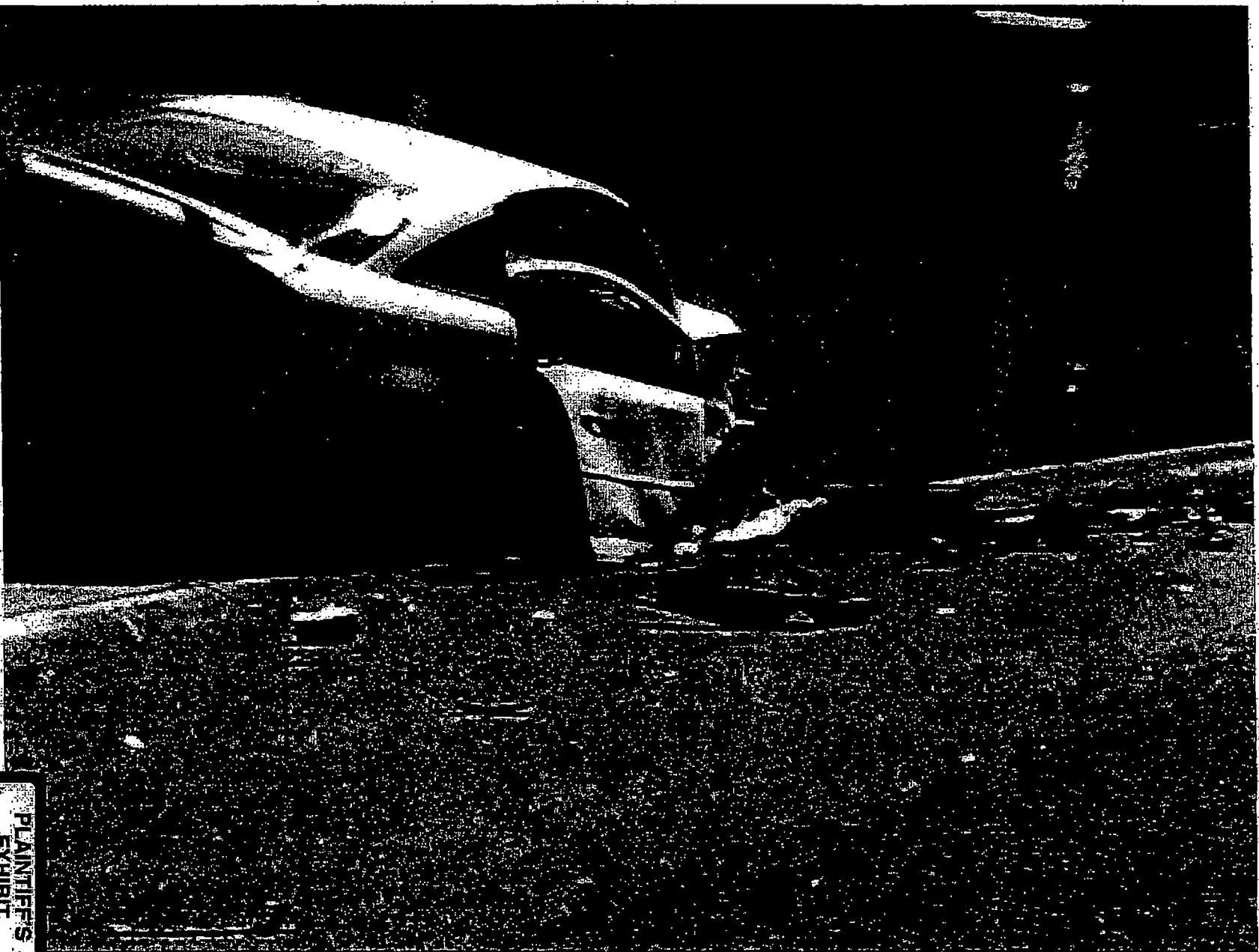




STRANGHELOW0094

Appendix 573

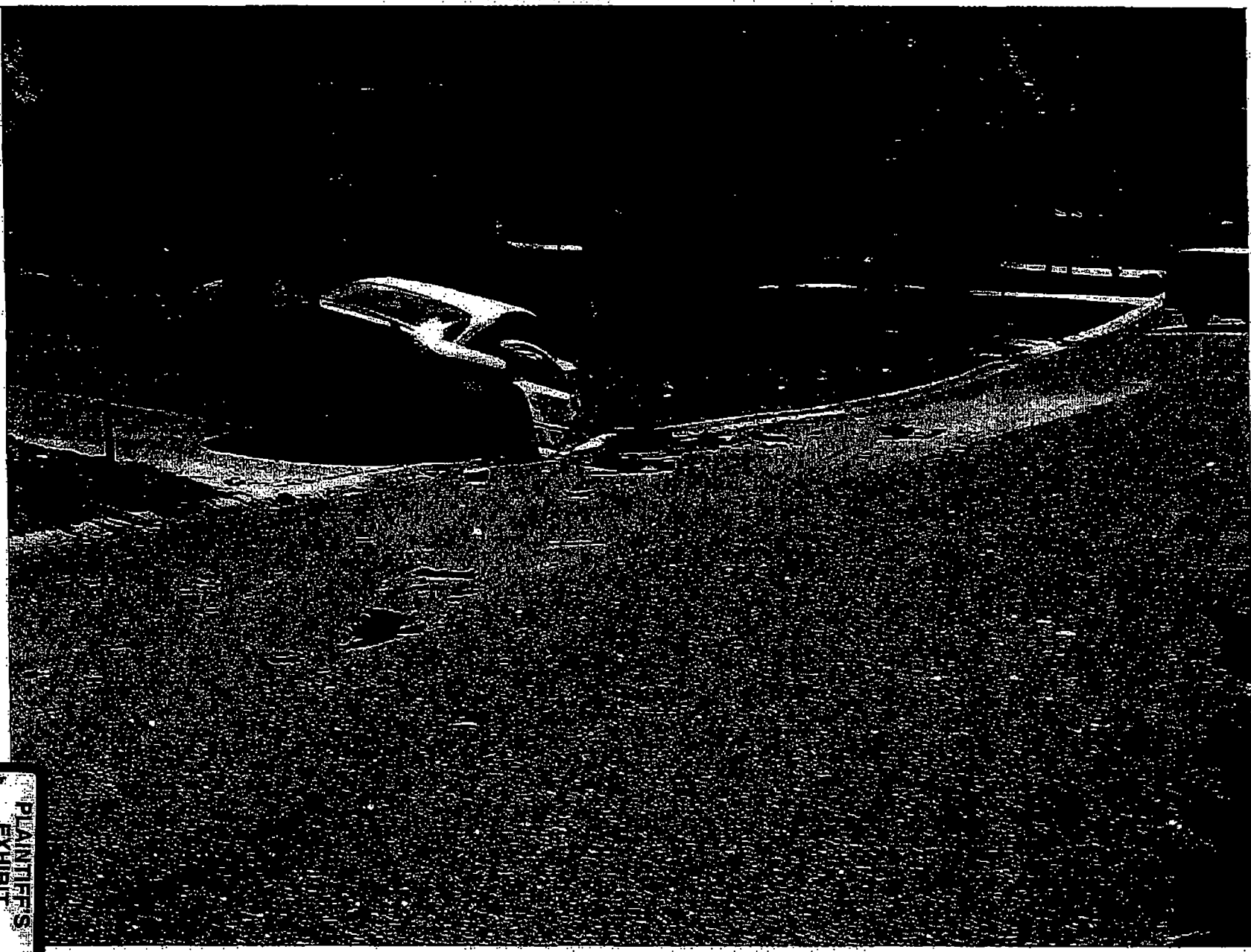




STRINGBELLOW 0091

Appendix 574





STINGRELOW 0088

Appendix 575





STRINGFELLOW 0089

Appendix 576





STRENGTHENING 0090

Appendix 577

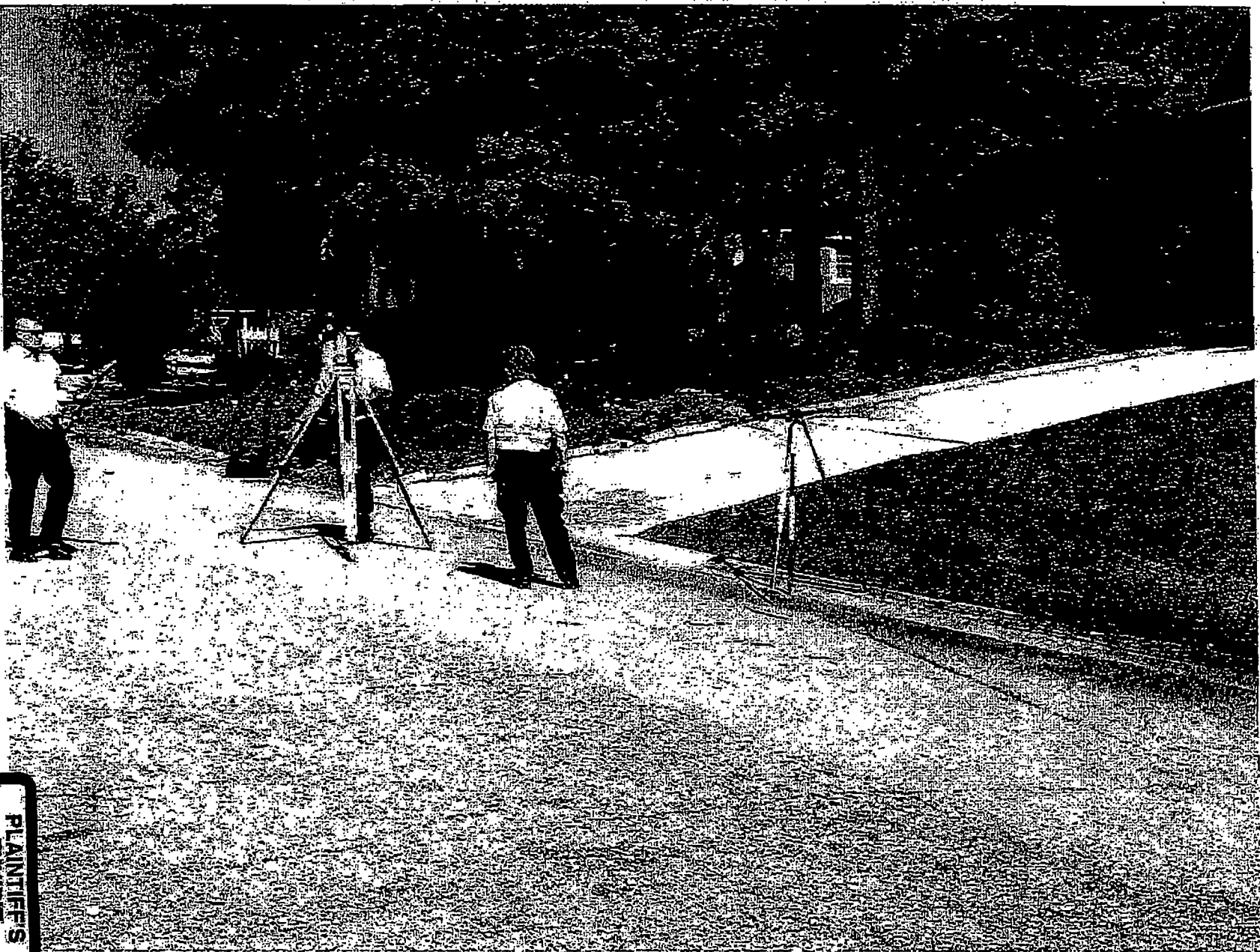




STRINGFELLOW 0095

Appendix 578





STRINGFELLOW 6087

Appendix 579





STRINGFELLOW 0086

Appendix 580





STRUNGHELL.QTY.0083

Appendix 581





STUNGRELOW 0099

Appendix 582





PRID: 24467969		Call #: 000996027	
Service: Richland County EMS		Date: May 24, 2013	
Base: HQ		Team: ALS	
Unit: S242		Crew 1: Primary Caregiver	
Shift: B		* Fowler, Andrew	
Vehic. Grid: Jackson Creek		EMT-B	
Type of Sys: Scene: Unscheduled		Crew 2: Driver	
Response Code: Lights and Siren		Mongell, Nick	
Mode to Ref: Lights / Siren		EMT-B	
Moved Via: Stretcher		Crew 3: Secondary Caregiver	
Position: Supine		* Bowen, Tiffany	
Treated COUNTY RESIDENT		EMT-P	
Outcome: Transported by EMS		* designates an ALS Provider	
		Mode to Ref: Lights / Siren	
		Moved From: Stretcher	
		Pt. Condition: Unchanged	
Location: 400 Shallow Brook Dr		Receiving: Hospital	
COLUMBIA, SC 29223		Fullmetto Richland Memorial	
Requester: Unknown		Emergency Department	
		5 Richland Medical Park	
		Columbia, SC 29203-6863	
		803-434-1682	
		Dest: Grid: HQ	

Last Name: Stringfellow First: Joshua
 Address: 83 Cowdray Park
 City: Columbia ST: SC Zip: 29223
 County: Richland
 DOB: REDACTED
 Age: 16y Sex: M Weight:
 Height:
 Subscriber: No

Odometer	Times
Id Miles: 9.2	Received: 02:39
	Dispatch: 02:39
	EnRoute: 02:39
	At Ref: 02:50
	Leave Ref: 02:57
	At Ref: 03:22
	Available: 03:26

Race: White, non-Hispanic
 Billing Information:

Consent: Signed: No
 EOB / Medical Necessity Signed: No

Company	Group	ID
NA	0	0

Scene Information	
Description: One vehicle MVC, major damage noted to vehicle, patient in backseat on driver's side. Pt being extricated by rescue w/a.	
Patient Belongings: None	
Other Agencies: Fire, Law	
Contact w/ Fluids: No Type of Exposure: None	
Protective Equip: Eye Protection, Gloves	
Chief Complaint (Category: Traffic Accident)	
Traumatic Arrest	
Duration: 25 Minutes	
Anatomic Location: General/Global	
ALS Assessment: Completed for Suspected Illness	
History of Present Illness	
O/A male patient 16 y/o, heavily entrapped in a one vehicle MVC in the backseat on driver's side. Pt unresponsive, GCS 3, agonal respirations noted. Pt currently being extricated by rescue, extricated <5 minutes by unit arrival. Pt extricated and placed in full spinal immobilization precautions. Carotid pulse approx. 20 weak and thready, respirations approx. 4/minute agonal. Pt-LSB-Stretcher-Unit. Once placed into back of unit patient became pulseless and apneic. C/O traumatic arrest. Manual compressions began with 30:2 ratio with ventilations. Placed on Mxw. Asystole in 2 leads. Pt suctioned throughout due to copious amounts of blood coming from mouth and nares. Richland ER notified of traumatic arrest with 15 minute ETA. Backup Paramedic Bowen initiated 16ga IV in LAO w/o difficulty and ran wide	



Chief Complaint (Category: Traffic Accident)																														
open. 18ga IV initiated in RAC by Paramedic BOWAN w/o difficulty and ran wide open. Pt administered a total of 7 mg 1:10,000 epinephrine at appropriate intervals without change to Mx; Asystole throughout. Continuous manual compressions and ventilations via BVM throughout, suctioned mouth/nares numerous times due to blood as noted. Pt exposed, only other trauma noted minor laceration to left thigh, deformity to left side of neck upon extrication. Good compliance with BVM throughout. Pupils: Fixed/dilated. HBS present/diminished. Code 3 return to Richland ER where report given and care transferred w/o incident. Placed in Trauma Bay #1 on arrival.																														
Medical History	Current Medications	Allergies																												
None	None	None																												
Neurological Exam																														
Level of Consciousness: Unresponsive		Loss of Consciousness: Yes																												
Chemically Paralyzed: No																														
Neurological Present: Abnormal Gait																														
Mental Present: Unresponsive																														
Pupils <table border="1"> <tr> <td></td> <td><u>Left</u></td> <td><u>Right</u></td> </tr> <tr> <td>Size:</td> <td>Dilated</td> <td>Dilated</td> </tr> <tr> <td>React:</td> <td>Non-React</td> <td>Non-React</td> </tr> <tr> <td>React:</td> <td colspan="2">equal, round, and reactive to light</td> </tr> </table>			<u>Left</u>	<u>Right</u>	Size:	Dilated	Dilated	React:	Non-React	Non-React	React:	equal, round, and reactive to light		<table border="1"> <tr> <td></td> <td><u>Motor</u></td> <td><u>Sensory</u></td> </tr> <tr> <td>LA:</td> <td>Flaccid</td> <td>Absent</td> </tr> <tr> <td>RA:</td> <td>Flaccid</td> <td>Absent</td> </tr> <tr> <td>LL:</td> <td>Flaccid</td> <td>Absent</td> </tr> <tr> <td>RL:</td> <td>Flaccid</td> <td>Absent</td> </tr> </table>			<u>Motor</u>	<u>Sensory</u>	LA:	Flaccid	Absent	RA:	Flaccid	Absent	LL:	Flaccid	Absent	RL:	Flaccid	Absent
	<u>Left</u>	<u>Right</u>																												
Size:	Dilated	Dilated																												
React:	Non-React	Non-React																												
React:	equal, round, and reactive to light																													
	<u>Motor</u>	<u>Sensory</u>																												
LA:	Flaccid	Absent																												
RA:	Flaccid	Absent																												
LL:	Flaccid	Absent																												
RL:	Flaccid	Absent																												
Sensory Comments: Appropriate		Glasgow Coma Scale <table border="1"> <tr> <td>E</td> <td>V</td> <td>M</td> <td>Tot</td> </tr> <tr> <td>1</td> <td>1</td> <td>1</td> <td>= 3</td> </tr> <tr> <td colspan="4">Revised Trauma Score</td> </tr> <tr> <td colspan="4">0.00</td> </tr> </table>		E	V	M	Tot	1	1	1	= 3	Revised Trauma Score				0.00														
E	V	M	Tot																											
1	1	1	= 3																											
Revised Trauma Score																														
0.00																														
Airway		Respiratory																												
Status: Patent		Effort: Absent																												
		Sounds: L: Absent R: Absent																												
		Sounds: Bilaterally equal and diminished																												
		Oxygen: 15 lpm via BVM Performed By: EMS																												
		Provider Outcome: Unchanged																												
Cardiovascular																														
JVD: Not Appreciated		Cap. Refill: Less than 2 seconds																												
Edema: Not Appreciated		<table border="1"> <tr> <td></td> <td><u>Left</u></td> <td><u>Right</u></td> </tr> <tr> <td>Carotid:</td> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Radial:</td> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Femoral:</td> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Dorsalis:</td> <td>Absent</td> <td>Absent</td> </tr> </table>			<u>Left</u>	<u>Right</u>	Carotid:	Absent	Absent	Radial:	Absent	Absent	Femoral:	Absent	Absent	Dorsalis:	Absent	Absent												
	<u>Left</u>	<u>Right</u>																												
Carotid:	Absent	Absent																												
Radial:	Absent	Absent																												
Femoral:	Absent	Absent																												
Dorsalis:	Absent	Absent																												
Injury Details																														
Reason For Encounter: Injury/Trauma																														
Drugs/Alcohol?: Unknown																														
Initial Physical Findings																														
Assessment		Immobilization:																												
Skin Findings: Warm and dry		Collar: yes,																												
		C/D: yes, LBB: yes,																												
		KED: no, MAST: no																												
		Performed By: EMS																												
		Provider:																												
		Outcome: Unchanged																												
Impression / Diagnosis																														

Impression / Diagnosis
System: Cardiovascular; Global
Symptoms: Change in Responsiveness; Bleeding; Breathing Problem
Impression: Cardiac Arrest

Activity										
Time	H.R.	B.P.	HRP	RA SpO2	Resp	Rhythm	GCS	ECG	Pain	CRNA
	H.R. Method	B.P. Method			Resp Effort			NAEHRG		
Action/Comment										
02:59	20	0 / 0			4	(REG)	1/1/1			BR
Cardiac Monitor performed by Andrew Fowler. Complications: None. Authorization: Protocol. Pt. Response: Unchanged.										
03:02	0	0 / 0			0	Asystole	1/1/1		0	#2
03:04	0	0 / 0		0	0	Asystole	1/1/1		0	#1
Initial IV Peripheral IV initiated by Tiffany Bowen with 16 ga. at Left Antecubital. Attempts: 1, Successful: Yes. Complications: None. Authorization: Protocol. Pt. Response: Unchanged.										
03:05										#1
Med. Epinephrine 1:10,000, 1 MG via IV - Push given by Andrew Fowler. Complications: None. Pt. Response: Unchanged.										
03:08	0	0 / 0			0	Asystole	1/1/1			#1
Med. Epinephrine 1:10,000, 1 MG via IV - Push given by Andrew Fowler. Complications: None. Pt. Response: Unchanged.										
03:09	0	0 / 0			0	Asystole	1/1/1		0	#1
Initial IV Peripheral IV initiated by Tiffany Bowen with 16 ga. at Right Antecubital. Attempts: 1, Successful: Yes. Complications: None. Authorization: Protocol. Pt. Response: Unchanged.										
03:11	0	0 / 0			0	Asystole	1/1/1		0	#1
Med. Epinephrine 1:10,000, 1 MG via IV - Push given by Andrew Fowler. Complications: None. Pt. Response: Unchanged.										
03:14	0	0 / 0			0	Asystole	1/1/1		0	#2
Med. Epinephrine 1:10,000, 1 MG via IV - Push given by Andrew Fowler. Complications: None. Pt. Response: Unchanged.										
03:17	0	0 / 0			0	Asystole	1/1/1		0	#1
Med. Epinephrine 1:10,000, 1 MG via IV - Push given by Andrew Fowler. Complications: None. Pt. Response: Unchanged.										
03:20	0	0 / 0			0	Asystole	1/1/1		0	#2
Med. Epinephrine 1:10,000, 1 MG via IV - Push given by Andrew Fowler. Complications: None. Pt. Response: Unchanged.										
03:23	0	0 / 0			0	Asystole	1/1/1		0	#1
Med. Epinephrine 1:10,000, 1 MG via IV - Push given by Andrew Fowler. Complications: None. Pt. Response: Unchanged.										

* Assessment made by

Response Factors Affecting Care: None

Scene Factors Affecting Care: None

Transportation Factors Affecting Care: None

Fowler, Andrew: Electronically Signed on 05/24/2013 05:32:58 EST

Mongall, Nick:

Richland County General Sessions

CASE HISTORY FOR CASE 2015GS4001411

State of South Carolina vs. Cameron Thomas Stringfellow

FILED DATE: 2/26/2015

CASE TYPE: GS

JUDGE: Clerk of Court C.P. & S. And Family Court

ARRESTING AGENCY: S.C. Attorney General

CASE PARTIES:

Defendant Stringfellow, Cameron Thomas

83 Cowdray Park, Columbia, SC 29223-8125

Solicitor Hodge, William A.

PO Box 8753, Columbia, SC 29202

Defendant Attorney Gasser, Jonathan S.

1529 Laurel St, Columbia, SC 29201

CASE HISTORY FOR CASE 2015GS4001411

Stringfellow, Cameron Thomas

83 Cowdray Park

Age: 22

DL#: REDACTED

DOB: REDACTED

SSN: REDACTED

Columbia, SC. 29223-8125

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
02-18 Manslaughter / Involuntary manslaughter	5/24/2013	Pled Guilty	2/26/2015

SENTENCING

Sentenced - YOA nta 5 yrs; balance suspended w/probation for 3yrs

Random Drug/Alcohol Screening

Counselling Substance Abuse

Concurrent Sentence

Credit Time Served

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
------	----------	-------------	-----------	--------------

Total:

DATE	TIME	EVENT DESCRIPTION
------	------	-------------------

2/26/2015	4:44 PM	Filing recorded: Filing/GS Case File
-----------	---------	--------------------------------------

2/27/2015	10:04 AM	Filing recorded: Active - Probation
-----------	----------	-------------------------------------

4/6/2016	4:26 PM	Order of Termination
----------	---------	----------------------

Print Date: 01/08/2017

Print Time: 10:43:52AM

Requested By: CS233104

CaseHistory.rpt V6.1



Appendix 586

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeannette Williams
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA
584

Richland County General Sessions

CASE HISTORY FOR CASE 2015GS4001413

State of South Carolina vs Cameron Thomas Stringfellow

FILED DATE: 2/26/2015

CASE TYPE: GS

STATUS: Disposed

JUDGE: Clerk Of Court C.P. G.S. And Family Court

ARRESTING AGENCY: S.C. Attorney General

CASE PARTIES:

Defendant Stringfellow, Cameron Thomas
83 Cowdray Park, Columbia, SC 29223-8125

Solicitor Potts, Carter Reston
PO Box 192, Columbia, SC 29202

Defendant Attorney Gasser, Jonathan S.
1529 Laurel St, Columbia, SC 29201

CASE HISTORY FOR CASE 2015GS4001413

Stringfellow, Cameron Thomas
83 Cowdray Park

Age: 22

DL#: REDACTED

DOB: REDACTED

SSN: REDACTED

Columbia, SC. 29223-8125

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
3355 DUI / Driving under the Influence, .16 or higher, 1st Offense	5/24/2013	Pled Guilty	2/26/2015
SENTENCING			

Sentenced - 90 days or \$1000.; can pay fine while on probation

Concurrent Sentence

Credit Time Served

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
------	----------	-------------	-----------	--------------

Total:

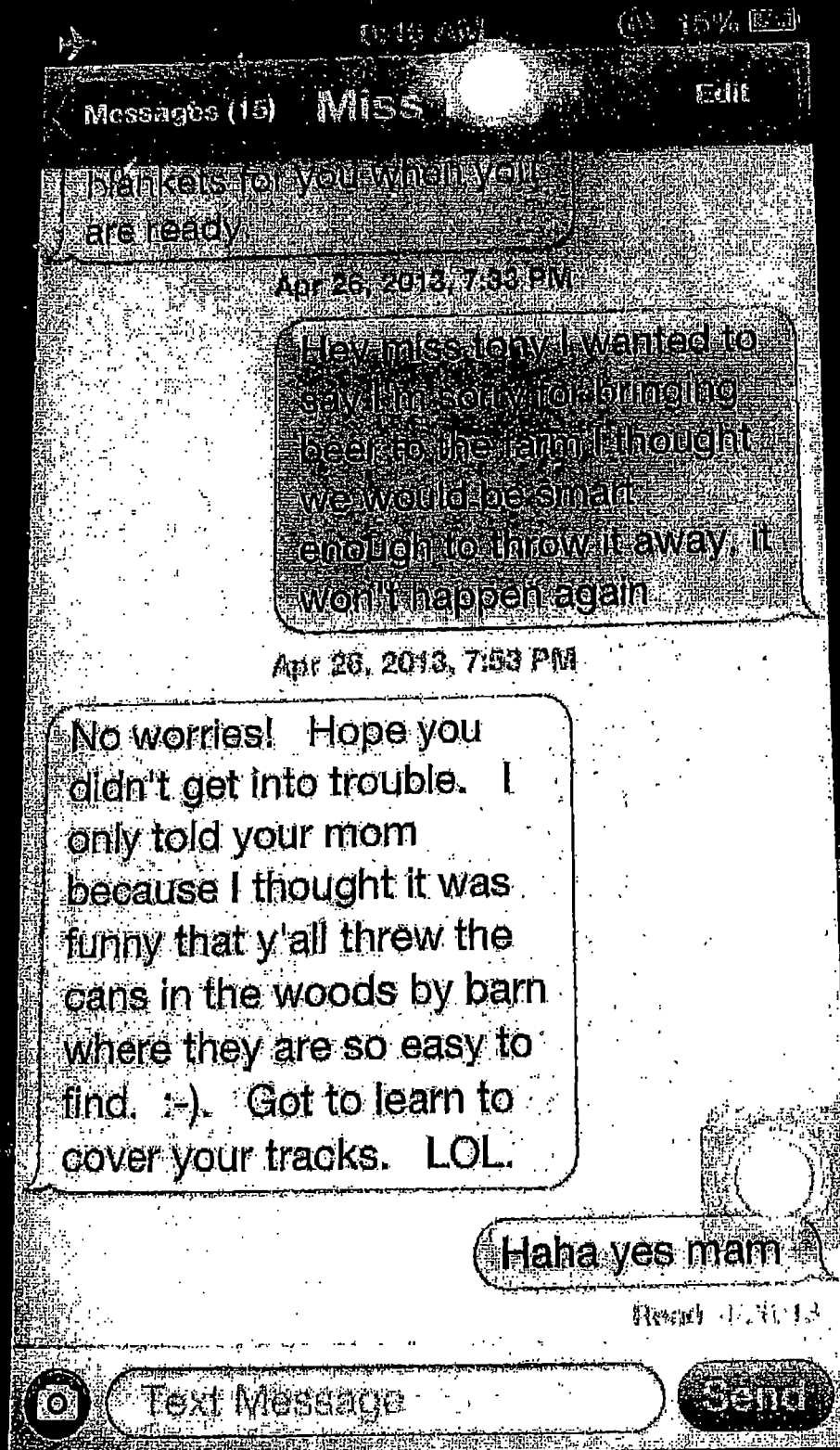
DATE	TIME	EVENT DESCRIPTION
2/26/2015	4:47 PM	Filing recorded: Filing/GS Case File
2/27/2015	10:07 AM	Filing recorded: Active - Probation
2/27/2015	10:09 AM	Filing recorded: Active - Probation
2/27/2015	10:15 AM	Filing recorded: Active - Non Probation
3/11/2015	12:00 AM	Filing recorded: Transmit Driver License
3/11/2015	12:00 AM	Filing recorded: Transmitted to South Carolina Highway Patrol
3/11/2015	12:00 AM	Filing recorded: Transmitted to South Carolina Highway Patrol
2/27/2015	12:00 AM	RC232706 recorded the following Case Note: to pay while on prob. for other charge per court

Print Date: 01/08/2017
Print Time: 10:43:39AM
Requested By: CS233104

CaseHistory.rpt V6.1



CERTIFIED TRUE COPY
OF ORIGINAL FILED
JANUARY 10, 2017
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA
585



10:47 AM

47% [Battery Icon]

Messages (13)

Mom Iphone

Edit

By 6:40 please

Jan 6, 2013, 12:50 AM

So what is that sweet herb
smell upstairs?

Jan 6, 2013, 1:44 AM

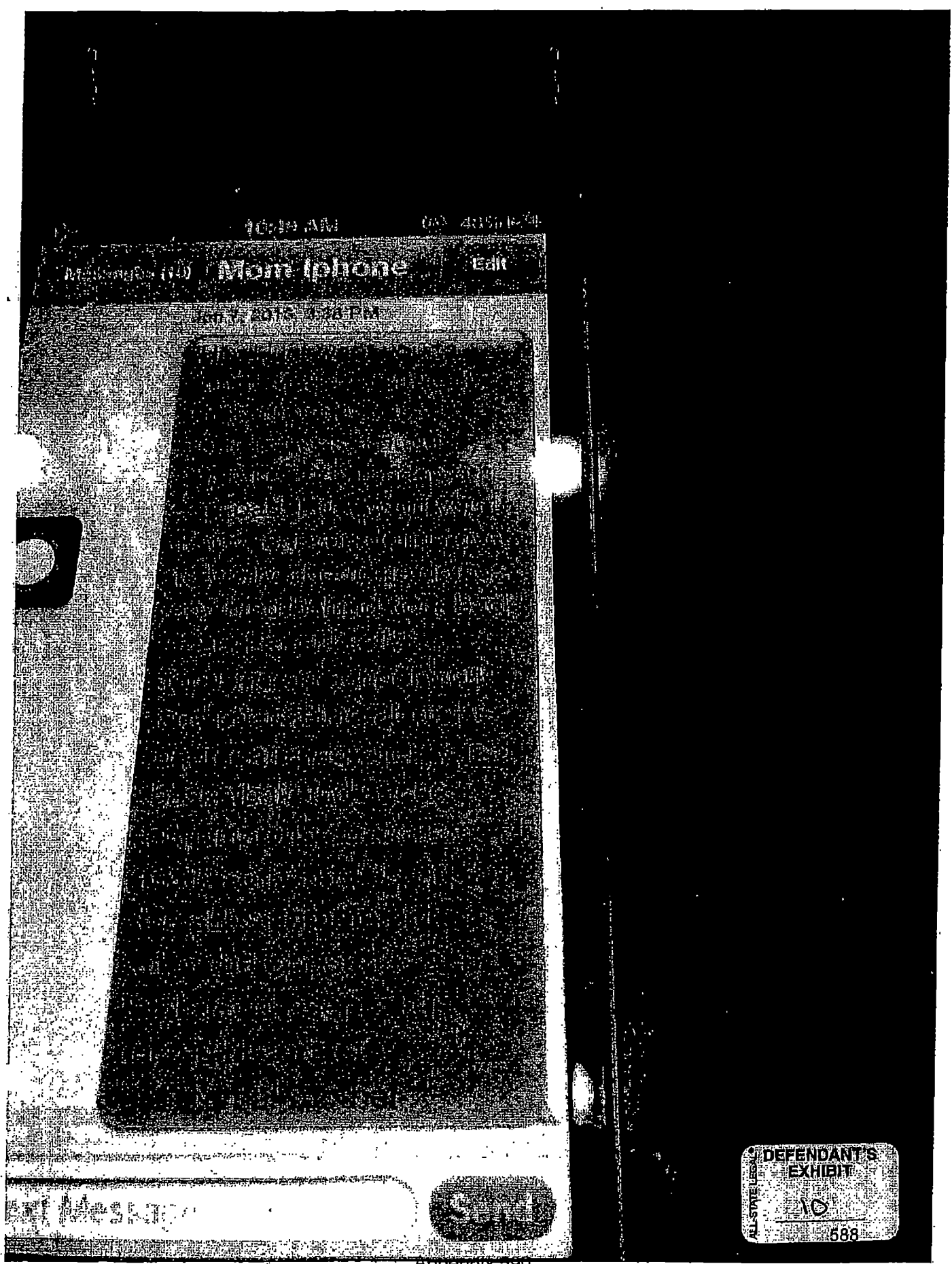
And doors are locked. Ok.
I you guys want food,
that's fine but no one
leaves at this hour. Unless
I call their mom.

Yes mam

Jan 6, 2013, 3:48 PM

Did you call Mama Sara
about the \$100 check for
your birthday? Please
leave H upstairs and come
eat your cake with her and

DEFENDANT'S
EXHIBIT
9



ALL STATE CASE
DEFENDANT'S
EXHIBIT
10
588



Original Form 101

Respiratory Aids

Respiratory Aids

Caution: Do not use

DIRECTIONS FOR USE

1. To use this mask

consistent with its label

only for one second

from a spray, wash

with or varnished surface

which bacteria in an

10 x 14 x 4. Repeat

times daily. Treat average

with one-second spray

in order control caused by

PRECAUTIONARY STATEMENTS

TO HUMANS AND DOMESTIC

CAUTION: Avoid inhalation

avoid contact with eyes

Wash thoroughly with soap

handing and before eating

gum, or tobacco. Keep out

children and pets. FIRST AID

If open and rinse slowly

water for 15-20 minutes

eyes; if present, after the

then continue rinsing eyes

control center or doctor for

for Health Emergency: 800

1-303-389-1658.

PHYSICAL OR CHEMICAL HAZARD

Extremely Flammable. Com-

pression. Keep away from heat

open flame. Do not puncture

container. Exposure to temper-

atures may cause bursting

or liquid. Avoid contact

with eyes. Avoid contact

with skin. Avoid contact

with clothing. Avoid contact

with food. Avoid contact

with drink. Avoid contact

DEFENDANT'S
EXHIBIT
40

AT&T 4G

8:58 AM

100%

Home



***SMOKE WEED AND
FUCK***



Clarity feat. Foxes (Acousti...
Zedd



STUNORFLOW 2016

Appendix 593

AT&T 4G

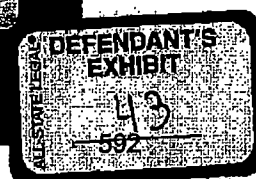
42%

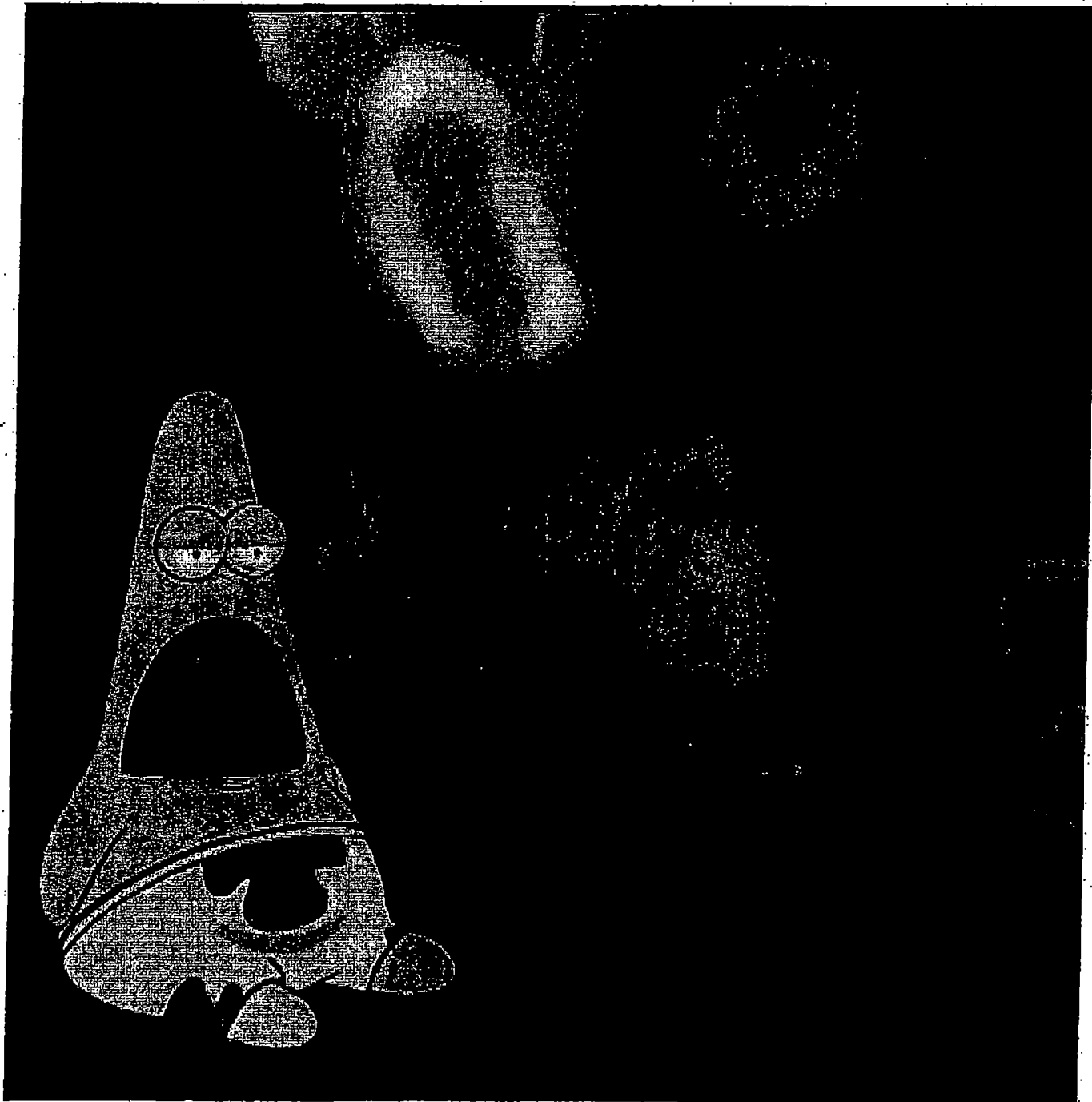
11:45

High (Ft. Wiz Khalifa & Chiddy Bang) - Big Sean

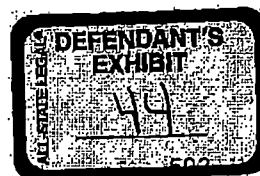


unlock





STRINGFELLOW 2933





AT&T 4G

35%

4:19

Beauty in Thirds - T-Mass



STRINGBELLOW 2958

Appendix 597



Dec 22, 2012, 5:49 PM

On way home?

Dec 22, 2012, 11:37 PM

We all are home. Can someone bring you or should I come get u?

Dec 28, 2012, 10:27 PM

Can I have a cold beer?

No

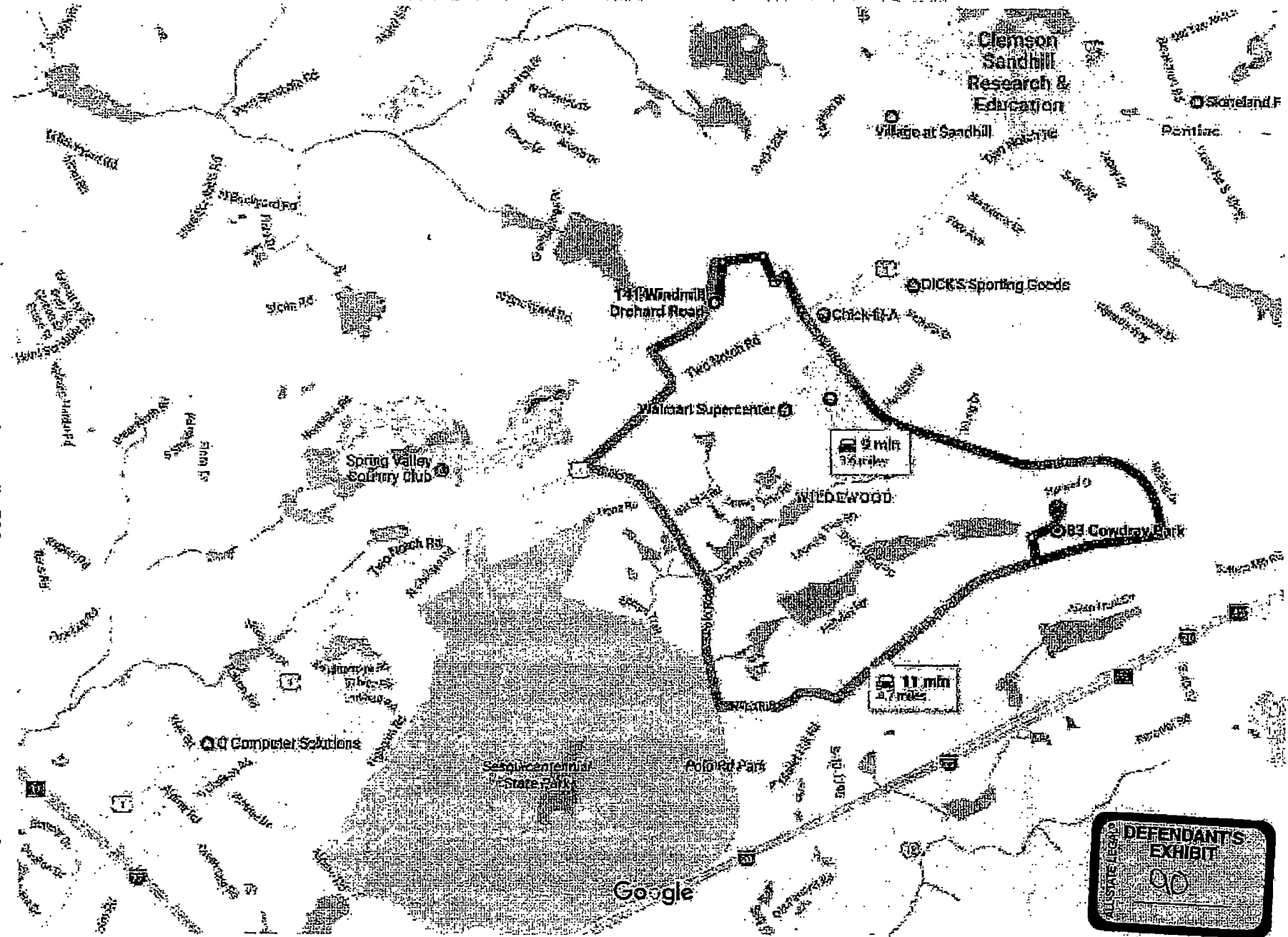


STRONGFELLOW 2517

1/9/2017

141 Windmill Orchard Road, Columbia, SC to 83 Cowdray Park, Columbia, SC - Google Maps

Appendix 599



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKIE R. HALEY
Governor



MARK A. KEEL
Chief

This is to certify that the attached records are true, accurate and complete duplicates of records that were kept in the course of a regularly conducted business activity, and it was the regular practice of that business activity to make the records. This certificate is given in lieu of the personal appearance of the person certifying in connection with the lawsuit for which the request was issued. The records with this certificate are produced as they are kept in the usual course of business, or are organized and labeled to correspond with the categories in the demand. These records were delivered or mailed to counsel for the party causing the issuance of the subpoena.

This 11 day of January, 2017

Signed: [Signature]

Title/Company Forensic Chemist / SLED

State of South Carolina:

Rickland County

I, Doris P. Verbrugg, a notary public for this state and county, certify that Shana B. Sorrells, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this the 11th day of January, 2017,

Notary Public (seal)

My commission expires: 10-30-18



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588



SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Coroner Gary Watts
Richland County Coroner's Office
PO Box 192
Columbia, SC 29202

TOXICOLOGY DEPARTMENT

July 03, 2013
SLED No: L13-06957
Your Case No: 2013001260
Incident Date: 05/24/2013

[V-Deceased] John C. Stringfellow

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

PARTIAL REPORT

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Urine - labeled "John C. Stringfellow FA13-142 RCCO 2013-001260"**

No Analysis Performed

Item: 2 **Sample Type: Brain - labeled "John C. Stringfellow FA13-142 RCCO 2013-001260"**

No Analysis Performed



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7251

7/3/13

Item: 3 **Sample Type: Liver -** labeled "John C. Stringfellow FA13-142 RCCO
2013-001260"

No Analysis Performed

Item: 4 **Sample Type: Kidney -** labeled "John C. Stringfellow FA13-142 RCCO
2013-001260"

No Analysis Performed

Item: 5 **Sample Type: Blood (Toxicology) -** Femoral Blood labeled "John C.
Stringfellow FA13-142 RCCO 2013-001260"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	Negative	% (g/dL)	0.010
Methanol	Negative	% (g/dL)	0.010
Acetone	Negative	% (g/dL)	0.010
Isopropanol	Negative	% (g/dL)	0.010

Screen by Enzyme-Linked Immunosorbent Assay (ELISA)

Analyte	Result	Units	Threshold
Amphetamine	Negative	mg/L	0.100
Benzodiazepines	Negative	mg/L	0.050
Carisoprodol	Negative	mg/L	0.500
Cocaine Metabolite	Negative	mg/L	0.200
Methadone	Negative	mg/L	0.050
Methamphetamine	Negative	mg/L	0.100
Opiates	Negative	mg/L	0.075
Oxycodone	Negative	mg/L	0.075
Tramadol	Negative	mg/L	0.050
Zolpidem	Negative	mg/L	0.020



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

7/3/13

Analyte by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Tetrahydrocannabinol	6.5	µg/L	2.000
Synonyms: THC			
11-carboxy-Tetrahydrocannabinol	12	µg/L	2.000
Synonyms: THC metabolite			



Shana B. Sorrells

Forensic Toxicologist

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department, (803) 896-7385.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY

Governor



MARK A. KEEL

Chief

Coroner Gary Watts
Richland County Coroner's Office
PO Box 192
Columbia, SC 29202

TOXICOLOGY DEPARTMENT

July 03, 2013

SLED No: L13-06957

Your Case No: 2013001260

Incident Date: 05/24/2013

[V-Deceased] John C. Stringfellow

[S] Cameron Thomas Stringfellow

[V] Wesley Thompson

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief

South Carolina Law Enforcement Division

PARTIAL REPORT

ITEMS OF EVIDENCE

Item: 6 Sample Type: Blood (Toxicology) - labeled "STRINGFELLOW, CAMERON"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.186	% (g/dL)	0.010



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

7/3/13

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Amphetamine	Negative	mg/L	0.100
Benzodiazepines	Negative	mg/L	0.050
Buprenorphine	Negative	µg/L	1.000
Carisoprodol	Negative	mg/L	0.500
Cocaine Metabolite	Negative	mg/L	0.200
Methadone	Negative	mg/L	0.050
Methamphetamine	Negative	mg/L	0.100
Opiates	Negative	mg/L	0.076
Oxycodone	Negative	mg/L	0.076
Tramadol	Negative	mg/L	0.050
Zolpidem	Negative	mg/L	0.020

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Tetrahydrocannabinol	4.1	µg/L	2.000
Synonyms: THC			
11-hydroxy-Tetrahydrocannabinol	2.3	µg/L	2.000
Synonyms: THC metabolite			
11-carboxy-Tetrahydrocannabinol	34	µg/L	2.000
Synonyms: THC metabolite			



7/3/13



Shana B. Sorrells
Forensic Toxicologist

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

William Gresham as Personal
Representative of the Estate of John Corey
Stringfellow,

Plaintiff,

vs.

Cameron Thomas Stringfellow,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-40-07180

C/A NO.: 2015-CP-40-07181

**DEFENDANT'S REQUEST
TO CHARGE NUMBER _____**

ASSUMPTION OF THE RISK

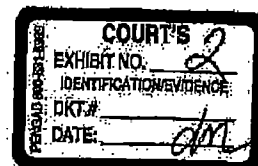
Assumption of the risk is the voluntary choice to assume a known risk. Under South Carolina law the doctrine of assumption of risk embodies the principle that one should not be permitted knowingly and voluntarily to incur an obvious risk of harm, when he has the ability to avoid doing so, and then hold another responsible for his injury. In determining whether the Plaintiff assumed the risk, you should consider whether he was aware (or by the exercise of ordinary care ought to have been aware) of the danger, appreciated the nature and extent of the danger, and voluntarily exposed him/herself to the danger. If you find that the Plaintiff assumed a known risk, you should take that into account when determining the comparative fault of the parties.

Wallace v. Owens-Illinois, Inc., 300 S.C. 518, 524, 389 S.E.2d 155, 158 (Ct. App. 1989).

McClain v. Charleston & W.C. Rv., 4 S.E.2d 280, 283 (1939).

Cole v. S.C. Elec. & Gas Co., 362 S.C. 445, 608 S.E.2d 859 (2005).

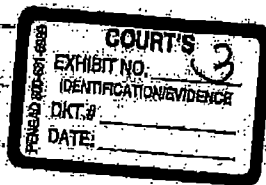
Davenport v. Cotton Hope Plantation, 333 S.C. 71, 508 S.E.2d 565 (1998).



Can damages be \$0? do we have to
award monetary damages?

Lisa Shinn #242

1/12/17



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

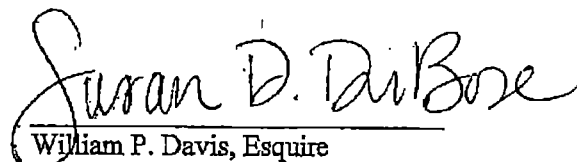
In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, ... Respondent,

v.

Cameron Thomas Stringfellow, ...Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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Attorneys for Appellant

February 27, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181

RECEIVED
MAR 07 2018
SC Court of Appeals

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, ... Respondent,

v.

Cameron Thomas Stringfellow, ...Defendant.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

William Gresham as Personal Representative of the
Estate of John Corey Stringfellow

Plaintiff(s)

vs.

Cameron Thomas Stringfellow

Defendant(s)

Submitted By: James M. Griffin

Address: 1116 Blanding Street, First Floor (29201)
P.O. Box 999
Columbia, SC 29202

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015CP4007181

SC Bar #: 9995
Telephone #: 803-744-0800
Fax #: 803-744-0805
Other:
E-mail: jgriffin@griffindavislaw.com

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

DOCKETING INFORMATION (Check all that apply)

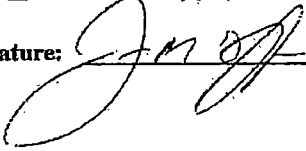
*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)

☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☒ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Dry. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
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☐ Employment Security Comm (991)
☐ Other (999) |
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an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: 

Date: December 1, 2015

SCCA / 234 (06/2015)

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610

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA,)

COUNTY OF RICHLAND)

William Gresham as Personal)
Representative of the Estate of John Corey)
Stringfellow)

Plaintiff,)

vs.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

SURVIVAL ACTION

Cameron Thomas Stringfellow)

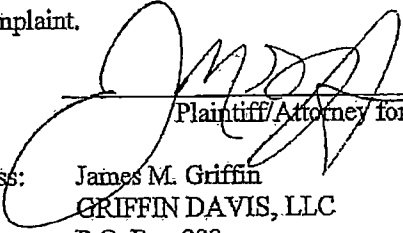
Defendant.)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: December 1, 2015


Plaintiff/Attorney for Plaintiff

Address: James M. Griffin
GRIFFIN DAVIS, LLC
P.O. Box 999
Columbia, SC 29202

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

William Gresham as Personal
Representative of the Estate of
John Corey Stringfellow,

Plaintiff,

v.

Cameron Thomas Stringfellow,

Defendant.

COMPLAINT
(WRONGFUL DEATH)

RICHLAND COUNTY
FILED
2015 DEC -1 PM 3:33
JEANETTE W. MCBRIDE
C.C.P. & G.S.

The Plaintiff, above-named, complaining of the Defendant, above-named, alleges as follows:

1. Plaintiff is the duly appointed personal representative of the Estate of John Corey Stringfellow, ("the Estate"), having been appointed by the Richland County Probate Court on April 28, 2015.
2. Plaintiff brings this action pursuant to the provisions of the South Carolina Wrongful Death Statute, S.C. Code §15-51-10.
3. Defendant Cameron Thomas Stringfellow is a citizen and resident of Richland County, South Carolina.
4. The parties and the subject matter of this action are within the jurisdiction of this Court.
5. On or about May 24, 2013, Plaintiff's decedent John Corey Stringfellow was a 16-year-old minor riding as a passenger in an automobile driven by the Defendant.

6. Defendant was driving an automobile on Shallow Brook Drive, in the Wildewood neighborhood in Richland County, lost control of his vehicle, hit a parked vehicle and then collided with a tree.
7. At the time of the collision, Defendant was under the influence of alcohol and drugs to the degree that Defendant's judgment was impaired. As a result, the South Carolina statutory cap on non-economic damages and punitive damages does not apply.
8. Defendant was also driving in excess of 90 miles an hour at the time of the collision.
9. The speed limit on Shallow Brook Drive is 25 miles per hour.
10. As a result of the collision, Plaintiff's decedent sustained fatal injuries to his head, neck and torso and subsequently died.
11. Defendant was arrested and criminally charged with felony DUI.
12. Defendant had a blood alcohol content of .186 in his blood stream at the time Defendant's blood was drawn shortly after the collision.
13. The airbag control module in the vehicle driven by the Defendant recorded an impact speed of 94.4 m.p.h.
14. On February 26, 2015, Defendant pled guilty to Involuntary Manslaughter and Driving Under the Influence in the Richland County Court of General Sessions.
15. Defendant was negligent, grossly negligent and reckless in the operation of the motor vehicle in one or more of the following particulars:
 - i. Driving too fast for conditions;

- ii. Failing to keep a proper lookout;
- iii. Failing to keep control of his vehicle;
- iv. Driving under the influence of alcohol and unlawful drugs to the degree that the Defendant's judgment was impaired; and
- v. Speeding.

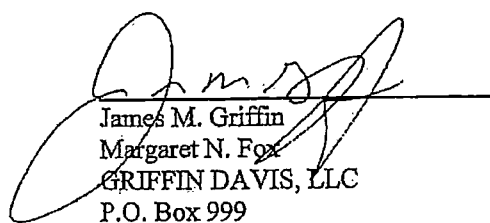
16. As a proximate result of Defendant's negligent, reckless and grossly negligent conduct, Plaintiff's decedent died from the injuries he sustained in the collision.

17. Defendant is therefore liable to the Estate for actual damages including but not limited to the past, present and future mental shock and suffering, grief and sorrow endured and to be endured in the future by decedent's parents, Tommy and Patti Stringfellow, who are the decedent's statutory beneficiaries, and the past, present and future loss of companionship and comfort of the decedent's society in an amount to be determined.

18. Defendant is liable to the Estate for punitive damages in an amount to be determined.

19. Defendant is also liable to the Estate for funeral expenses.

WHEREFORE, the Plaintiff prays for judgment against the Defendant by way of damages as alleged above; for actual and punitive damages in an amount to be determined; for the costs and disbursements of this action; and for such other and further relief as the Court may deem just and proper.



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dwf-law@earthlink.com

December 1, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

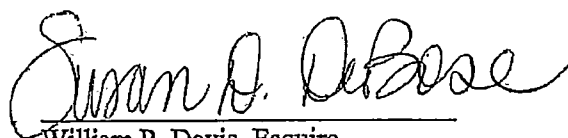
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Supplemental Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.



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Attorneys for Appellant

March 6, 2018

CC-1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY MAR 07 2018
Court of Common Pleas

SC Court of Appeals

Clifton Newman, Circuit Court Judge

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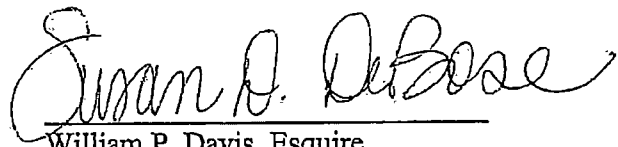
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Attorneys for Appellant

March 6, 2018

COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181

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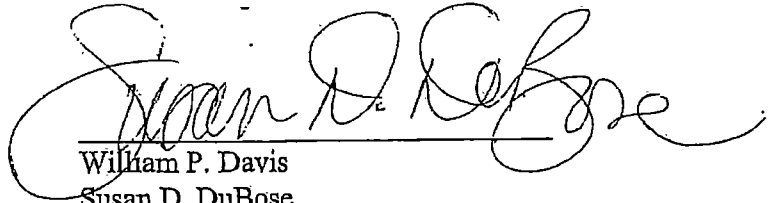
PROOF OF SERVICE

I, Susan Drake DuBose, of Baker, Ravenel & Bender, L.L.P., Attorneys for Appellant, hereby
certify that, on this 7th day of March 2018, I have served the Supplemental Record on Appeal by U.S.

Mail to Respondent's counsel of record at the address shown below:

James M. Griffin, Esquire
Margaret Nicole Fox, Esquire
Griffin Davis, LLC
PO Box 999
Columbia, SC 29202

(signature on following page)



William P. Davis

Susan D. DuBose

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Attorneys for Appellant

March 7, 2018

S

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

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Cameron Thomas Stringfellow, ...Defendant.

FINAL BRIEF OF APPELLANT

RECEIVED
MAR 19 2018
SC Court of Appeals

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Attorneys for Appellant

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN GRANTING RESPONDENT'S MOTION FOR A NEW TRIAL BASED ON THE THIRTEENTH JUROR DOCTRINE WHERE THE MOTION WAS UNTIMELY AND THE TRIAL COURT'S DECISION IS UNSUPPORTED BY THE EVIDENCE AND CONTROLLED BY ERRORS OF LAW?

STATEMENT OF THE CASE

Respondent William Gresham (hereinafter "Respondent"), acting as the Personal Representative of the Estate of John Corey Stringfellow (hereinafter "Decedent"), filed a Summons and Complaint on December 1, 2015 alleging Defendant Cameron Stringfellow (hereinafter "Defendant") caused the wrongful death of Decedent. Appellant The Travelers Home and Marine Insurance Company ("Appellant"), appearing and defending in the name of Defendant¹, admitted Defendant was negligent and reckless but raised comparative negligence, assumption of the risk, and the joint enterprise doctrine as defenses. A jury trial was held in Richland County beginning on January 9, 2017 and ended on January 12, 2017. After hearing all of the evidence, the Court granted the Plaintiff's directed verdict request on the issue of negligence and recklessness but denied the Plaintiff's directed verdict requests regarding comparative negligence and the joint enterprise defense. The court submitted the issue of the comparative negligence between Defendant and Decedent to the jury and also charged the jury regarding the joint enterprise defense. The jury returned a unanimous verdict finding that the percentage of negligence attributable to Decedent was 51% and the percentage attributable to

¹ The Estate had settled its claim with Travelers as the liability carrier for \$295,000 in exchange for a Covenant Not to Execute in favor of the Defendant. The Estate also received \$5,000 in medical payments coverage from the Travelers policy for a total recovery of \$300,000. The Estate then substituted Patricia Stringfellow for William Gresham as the Personal Representative for purposes of filing this lawsuit. (R. p. 236, lines 9-18).

Defendant was 49%. Therefore, the Estate was entitled to no recovery in the wrongful death action.²

After the verdict was returned, but before the jury was discharged, Respondent's counsel orally moved for a judgment notwithstanding the verdict on the ground that Decedent's own negligence could not have exceeded 50% when the Court had directed a verdict that Defendant was reckless. Respondent's counsel also moved at the same time for a new trial pursuant to the thirteenth juror doctrine. The trial court heard the arguments of counsel and took the matter under advisement, requesting that the parties brief the issues within ten (10) days. The trial court then discharged the jury. Respondent served a brief in support of its motion on January 20, 2017 and Appellant responded. A hearing was held on March 23, 2017, at which time the trial court denied Respondent's motion for judgment notwithstanding the verdict, but granted Respondent's motion for a new trial based on the thirteenth juror doctrine. The formal order was signed on April 20, 2017 and entered on April 28, 2017. Appellant received written notice of the entry of the order on May 1, 2017. On May 2, 2017 Appellant timely served a Notice of Appeal appealing the portion of the order granting Respondent's motion for a new trial in the wrongful death action based on the thirteenth juror doctrine.

FACTS

This case arises from a motor vehicle accident that occurred in the early morning of May 24, 2013 and resulted in Decedent's death. (R. pp. 614-615). On the evening of May 23, 2013, Patricia and Thomas Stringfellow left their home in Columbia to go to the beach for Memorial

² Respondent also filed a separate survival action that was tried at the same time as the wrongful death action. The jury found that the Decedent had no conscious pain and suffering and therefore no damages were awarded in the survival action. That finding was not appealed.

Day weekend with their daughter, leaving their teenage sons Cameron, age 18 (Defendant), and Corey, age 16 (Decedent), home alone for the night. (R. p. 136, line 21 – p. 137, line 11). Their home was located in the Wildewood subdivision. (R. p. 270, lines 11-18).

Defendant, his friend Wesley Thompson (hereinafter “Thompson”), and Decedent hung out at the house in the afternoon before Decedent left for soccer tryouts. (R. p. 139, line 11 – p. 140, line 3). Mr. and Mrs. Stringfellow left the house around seven in the evening. (R. p. 139, lines 8-10). Once they left, Defendant and Thompson played video games and started drinking wine they found in the garage. (R. p. 140, lines 4-10). They also poured a flask of Evan Williams bourbon before leaving the house to attend a ten o’clock movie at the Sandhills theatre. (R. p. 141, lines 5-21; p. 142, lines 10-12).

Decedent attended soccer tryouts with his friends Cameron Bohannon (hereinafter “Bohannon”) and Dillion Wood (hereinafter “Wood”). (R. p. 101, lines 7-20). Wood drove them to soccer tryouts from Decedent’s house, stopping at Chick-Fil-A on the way back. (R. p. 110, lines 10-17). Tryouts ended at 8:30 p.m. and it took 30-45 minutes to get back to Decedent’s home. (R. p. 102, line 18 - p. 103, line 4). After soccer tryouts, both Bohannon and Wood testified that they smoked marijuana with Decedent at his house. (R. p. 101, line 7 – p. 102, line 12; p. 104, lines 1-15; p. 110, line 24 - p. 111, line 1). Bohannon did not recall whose marijuana they smoked but admitted he had smoked with Decedent three to five times before. (R. p. 104, line 1 – p. 105, line 9). Wood also testified that he did not know where the marijuana came from but stated that he knew that he did not bring it. (R. p. 113, lines 8-11). After smoking marijuana, Decedent drove Bohannon from the Stringfellow home to Bohannon’s house and Wood drove himself home. (R. p. 105, lines 17-24; p. 112, lines 16-18).

Following the movie, Defendant drove Thompson back to the Stringfellow home. (R. p. 143, lines 6-10). They arrived back around midnight. (R. p. 167, lines 1-3). Defendant testified that he believed that Decedent was already home by the time they returned from the movie. (R. p. 143, lines 16-22; p. 167, lines 1-5). Defendant, Thompson, and Decedent then hung out together. (R. p. 167, lines 6-25; p. 223, lines 11-13). Thompson testified that he and Defendant continued drinking when they returned to the house but that Decedent did not drink with them. (R. p. 204, lines 5-17). Thompson also testified that he does not think they smoked marijuana after the movie. (R. p. 204, lines 18-23). Defendant could not specifically recall whether he smoked marijuana that evening but admitted that he and Decedent both had marijuana in their systems, that he did not smoke any marijuana before the movie, and assumes he smoked marijuana with Decedent and Thompson after the movie. (R. p. 154, line 5 – p. 155, line 15; p. 157, line 16 – p. 158, line 3). Defendant admitted on cross-examination by Appellant that Thompson had been drinking and “smoking pot” with him that night. (R. p. 174, lines 14-17). Defendant also admitted that he had smoked marijuana with his brother in the past. (R. p. 155, lines 16-18). Defendant initially denied that he had ever drank alcohol with Decedent before but was impeached by his deposition testimony admitting that he and Decedent previously drank alcohol together. (R. p. 155, line 19 - p. 156, line 15). Defendant and Thompson also ingested part of a Xanax laced “sweet tart” that evening. (R. p. 174, line 18 – p. 175, line 3). Thompson admitted that he was stoned and drunk, which caused his recollection of the events of the night to be “completely fuzzy”. (R. p. 222, line 2 – p. 223, line 23).

While hanging out with Defendant and Thompson, who were both drinking alcohol and possibly smoking marijuana, Decedent began searching for a source to provide more marijuana

to smoke that night. (R. p. 157, line 20 - p. 158, line 3; p. 165, lines 10-20; p. 204, lines 5-17). Although Defendant testified that it was his idea to get more marijuana, he also testified that everyone went along with it. (R. p. 164, lines 3-9). Thompson initially testified that he was the one who started the search for the source and that Decedent was just "tagging along". (R. p. 224, line 23 - p. 225, line 2). However, he also testified that the cell phone records show that Decedent made calls to find someone to sell the marijuana. (R. p. 218, lines 2-12). The address where they were going to purchase the marijuana was texted to both Decedent's and Defendant's phones at 1:22 a.m. (R. p. 165, lines 3-9; p. 216, lines 16-19). Thompson eventually admitted that Decedent made the phone call to locate the marijuana on Decedent's phone. (R. p. 218, lines 2-12). Defendant testified on direct examination by the Respondent that "somebody" got the number for the contact to purchase weed but stated that he did not do it. (R. p. 144, lines 10-14). On cross-examination by Appellant Defendant ultimately admitted that Decedent arranged the deal to buy the marijuana. (R. p. 165, lines 10-20; p. 180, line 7 - p. 181, line 3).

After receiving the address where the marijuana was located by text, Defendant, Decedent and Thompson decided to leave the Stringfellow home to purchase more marijuana at approximately 1:30 a.m. (R. p. 144, lines 1-19; p. 168, lines 6-10; p. 216, lines 16-19). Both Defendant and Thompson testified that they all three left the house together to go buy marijuana. (R. p. 143, line 23- p. 144, line 4; p. 206, lines 14-18). Defendant drove his mother's BMW without her permission instead of his own vehicle. (R. p. 141, lines 22-25; p. 161, lines 15-22). Decedent willingly entered the car driven by Defendant. (R. p. 180, lines 7-11).

Thompson testified that he smoked marijuana at the house where they went to purchase the marijuana and that Decedent also could have, but he did not witness it. (R. p. 224, lines 7-

17). After purchasing the marijuana they all left to go back to the Stringfellow house. (R. p. 207, lines 6-7). Defendant drove past the house and then drove the BMW at a high rate of speed reaching over ninety miles per hour. (R. p. 91, lines 12-14; p. 146, lines 4-15). Although he initially testified twice on direct examination by Respondent that he did not announce his intention to drive fast to the other occupants of the car, Defendant was impeached by his prior deposition testimony in which he stated that he thought he had told them of his intention to drive fast. (R. p. 125, lines 14-20; p. 146, lines 4-9; p. 182, line 10 - p. 183, line 8). Defendant swiped a car parked along the street which sent the BMW crashing into a tree. (R. p. 146, line 19 - p. 147, line 1; Plaintiff's Exhibit 1; R. pp. 545-556). EMS was dispatched at 2:39 a.m. and found Decedent unresponsive and unconscious. (Plaintiff's Exhibit 18, R. p. 581).

Following the accident, Decedent and Defendant both tested positive for THC in their systems, with Decedent's level being higher than Defendant's. (Defendant's Exhibit 104, R. pp. 598-604). Defendant testified that THC is the active ingredient in marijuana. (R. p. 154, lines 13-22). Defendant was charged and pled guilty to involuntary manslaughter and driving under the influence of alcohol. (Plaintiff's Exhibits 19 and 20, R. pp. 584-585). His blood alcohol level was .186. (Defendant's Exhibit 104, R. p. 602). The Stringfellows paid for Defendant's criminal attorney and wrote a letter to the sentencing judge requesting leniency. (R. p. 315, lines 13-17; p. 340, line 11- p 341, line 2).

Decedent had a history of consuming alcohol and smoking marijuana. (R. p. 104, line 21 - p. 105, line 1; p. 155, line 16 - p. 156, line 15; p. 240, line 14 - p. 242, line 6; Defendant's Exhibit 1, R. p. 586). There was evidence of drug paraphernalia and marijuana references on Decedent's phone. (Defendant's Exhibits 39, 40, 42, 43, 44, 45, 47, R. pp. 589-595; p. 307, line

11 - p. 313, line 17). Evidence was also presented that Decedent's parents were aware of Decedent's prior drug and alcohol use despite testimony to the contrary. (R. p. 286, line 14 - p. 298, line 2; p. 345, line 14 - p. 348, line 8; Defendant's Exhibits 1, 9, 10, 50, R. pp. 586-588, R. p. 596).

At the trial of the case Defendant sat with the Plaintiff and his parents, the beneficiaries of the lawsuit, over the objection of Appellant's counsel. (R. p. 50; pp. 51-55; p. 64, lines 6-7; p. 233, lines 3-4). Defendant testified on behalf of the Plaintiff and admitted that he drove under the influence of alcohol and drugs, was impaired, and was liable for the accident. (R. p. 117; p. 123, line 16 - p. 124, line 14). Defendant also admitted that a defense raised on his behalf was that Decedent assumed the risk of injuries from the accident. (R. p. 125, lines 2-12). Evidence was presented that Decedent had his own vehicle and had driven it earlier in the evening after smoking pot. (R. p. 169, lines 2-13; p. 181, lines 8-20). Defendant admitted that Decedent could have driven his own vehicle to purchase the marijuana and that Decedent made the decision to get in the car with a driver who was inebriated. (R. p. 236, lines 8-20). Defendant also admitted that nobody riding in the car, including Decedent, complained regarding his driving or objected to the high rate of speed before the accident. (R. p. 146, lines 2-3; p. 175, line 20 - p. 176, line 3).

ARGUMENTS

I. THE TRIAL COURT ERRED BY GRANTING RESPONDENT'S UNTIMELY MOTION FOR A NEW TRIAL.

As an initial matter, Respondent's motion for a new trial was not timely. This issue was raised in Appellant's Response to Plaintiff's Post-Trial Motions and discussed at the motions hearing. (R. p. 36; p. 530, lines 11-23; p. 541, line 25 - p. 543, line 4). The trial court ruled that

the “challenge to the timeliness of the motion for new trial under the thirteenth juror doctrine is without merit.” (Order, R. p. 8).

Rule 59(b) of the South Carolina Rules of Civil Procedure clearly provides the time frame within which a motion for a new trial shall be made:

Time for Motion. The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter. In non-jury actions the motion shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered.

Rule 59(b), SCRPC. Respondent’s motion was orally made by counsel prior to the discharge of the jury and no motion was made after the discharge of the jury. (R. p. 495, line 13 - p. 502, line 20). The trial court’s Order states that it “granted counsel’s request for leave to file formal motions and briefs within ten (10) days” and references a request by Respondent’s counsel for “ten days (10) days leave to file formal motions and briefs.” (Order, R. p. 7 and p. 8). However, the trial transcript clearly indicates that the trial judge took the motion under advisement and only allowed ten days to “brief the issue” raised. (R. p. 500, lines 6-25). There is absolutely no reference or request by Respondent’s counsel regarding filing formal motions:

MR. GRIFFIN: . . . And then after that, Your Honor, we would request a new trial based on the 13th juror doctrine as a result of the Court’s findings of directed verdict on recklessness and that this verdict was against the weight of the evidence and the result of confusion or passion or prejudice.

THE COURT: It’s an interesting issue. You know, these issues are pretty complex. And I think I will take the matter under advisement and give you all an opportunity to brief the issue and will address that later.

MR. GRIFFIN: Thank you, Your Honor.

MS. O’BRIEN: Your Honor, how much time do we have to brief the issue?

THE COURT: How much time you need?

MS. O'BRIEN: No more than ten days.

THE COURT: Mr. Griffin?

MR. GRIFFIN: That's fine.

THE COURT: Ten days.

MS. O'BRIEN: Thank you, Your Honor.

(R. p. 500, lines 6-25).

In fact, Respondent's own Motion¹ For Judgment Notwithstanding The Verdict Or In The Alternative For A New Trial contains a footnote in the caption next to the word "Motion" that confirms the untimeliness of the motion under Rule 59(b), SCRPC. The footnote admits that "Plaintiff previously made an oral motion for jnov and for a new trial immediately following the jury's verdict" and that "[t]he court thereafter invited the parties to brief these motions within ten (10) days of the verdict." (R. p. 23 fn. 1).

A court applying the South Carolina Rules of Civil Procedure must give the words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Green By & Through Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). *See also* Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (holding if "a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced"); Stark Truss Co. v. Superior Const. Corp., 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct. App. 2004) (stating that "[w]hen the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning"). The motion for a new trial in the instant matter was premature and untimely under the clear language of Rule 59(b), SCRPC. In Boone v. Goodwin, 314 S.C. 374, 444 S.E.2d 524 (1994) the South Carolina Supreme Court reversed a trial judge's grant of a new trial motion for

noncompliance with this rule, holding that “a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion”. As the trial transcript clearly indicates, Respondent made no motion after the jury was discharged and did not request ten days to make motions. (R. p. 501 – p. 503, line 1). The plain language of Rule 59(b) should be enforced pursuant to the authorities cited herein and the Order granting a new trial should be reversed on the grounds that Respondent’s motion for a new trial was not timely.

II. THE TRIAL COURT ERRED BY GRANTING RESPONDENT’S MOTION FOR A NEW TRIAL BASED UPON THE THIRTEENTH JUROR DOCTRINE.

Even if the motion for a new trial was properly made, which Appellant disputes, the trial court erred in granting a new trial based on the thirteenth juror doctrine. Generally, “the ‘thirteenth juror’ doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds the evidence does not justify the verdict.” Bailey v. Peacock, 318 S.C. 13, 455 S.E.2d 690 (1995). The effect of the doctrine is the same as if the jury failed to reach a verdict. Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990). However, “[d]espite the discretion given a judge by the thirteenth juror doctrine when a party moves for a new trial, it does not allow the court to overstep the boundaries of the doctrine *in toto*.” Youmans ex rel. Elmore v. S.C. Dep’t of Transp., 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct. App. 2008). A trial judge’s determination to grant a new trial premised upon the thirteenth juror doctrine will be reversed when the decision is “wholly unsupported by the evidence or the conclusion was controlled by an error of law.” Id., 380 S.C. at 270, 670 S.E.2d at 4.

Although a trial judge is not required to provide the parties with the basis for his decision when granting a motion for a new trial under the thirteenth juror doctrine, in this case the trial

judge set forth his reasons in the Order granting a new trial and the transcript of the motions hearing. The trial judge's decision was based on his belief that "the jury's finding that the Decedent was fifty-one percent (51%) at fault and the Defendant was forty-nine percent (49%) at fault is not supported by the evidence." (Order, R. p. 9). The trial judge relied on Defendant's admission of recklessness which "by definition is a higher degree of culpability and responsibility than negligence." (Order, R. p. 9). The Order states:

[t]he jury's finding that the negligence of the Decedent exceeded that of the Defendant, whom admitted and was found to be reckless, on the basis that the Decedent contributed to his death by riding as a passenger in the vehicle is clearly against the fair preponderance of the evidence. The Court therefore concludes that a new trial in the wrongful death action should be granted pursuant to the thirteenth juror doctrine.

(Order, R. p. 9).

During the post-trial motions hearing, the trial judge mentioned that he sat as an acting justice on a Supreme Court case during the trial of the instant matter that also involved drinking, driving, and smoking marijuana.³ (R. p. 531, line 24 – p. 532, line 23; R. p. 354, lines 8 – 17; p. 355, lines 8-20). In that case, according to the trial judge, the jury found an apportionment of 50/50 between the driver and the passenger for comparative negligence or else a case was cited where there was a 50/50 apportionment. (R. p. 531, line 24 – p. 532, line 23). The trial judge concluded, "[s]o we know it can be 50/50. But can it be 51/49 is the question?" (R. p. 532, lines 22-23). The trial judge stated:

³ Upon information and belief, the case referenced was Donze v. General Motors, LLC, 420 S.C. 8, 800 S.E.2d 479 (2017). This case involved a certified question from the district court regarding whether comparative negligence is a defense in a crashworthiness case filed by a passenger plaintiff against a car manufacturer. For the purposes of the opinion the Court assumed the imputation of the driver's negligence to the passenger under the joint enterprise doctrine and found that comparative negligence is not a defense in a crashworthiness case.

[a]fter the admission by [the Defendant] that he was reckless and basically concluding through his testimony that it was all his fault . . . and I directed a verdict on that issue.

You know, I see no way that the jury could reasonably come to the conclusion they came to, no reasonable jury could reach that decision deciding that the passenger was more at fault than the driver. And no evidence was presented that would give the jury a basis to make that decision. . .

As to the new trial based on the 13th Juror, it seems to me as if, in addition to there being no reasonable basis for which the jury could come to that conclusion, basically, the jurors seemingly -- or I can't speculate what they decided, but they didn't apply the law or were confused by the law or just didn't apply it or just decided they didn't want to be involved in this process. And they decided they were not going to -- that despite the evidence they were going to do the jury nullification, of sorts.

But I'm going to grant the new trial based on 13th Juror Law and adopt the Plaintiff's argument with regard to that.

(R. p. 539, line 16 -- p. 540, line 16). The trial judge concluded the hearing by granting a new trial under the thirteenth juror doctrine "based on common sense and application of the law and facts of this case". (R. p. 541, lines 21-23). The transcript of the motions hearing and the Order clearly reveal that the trial judge's decision to grant a new trial was unsupported by the evidence presented at trial and controlled by errors of law.

A. The trial court's decision to grant a new trial premised on the thirteenth juror doctrine is wholly unsupported by the evidence presented at trial.

The trial court's justification for granting a new trial was that "the jury's finding that Decedent was fifty-one percent (51%) at fault and Defendant was forty-nine percent (49%) at fault is not supported by the evidence." (Order, R. p. 9). The trial court based this decision on the fact that Defendant "admitted he was reckless and that his recklessness caused the accident."

(Id.). The transcript of the motions hearing reveals that the trial judge was under the mistaken belief that there was “no way that the jury could reasonably come to the conclusion they came to.” (R. p. 539, lines 20-24). The trial judge’s conclusion that “no evidence was presented that would give the jury a basis to make [the] decision” that a passenger was more at fault than a driver is completely unsupported by the evidence that was submitted. (R. p. 539, lines 24-25).

The trial court found the evidence presented at trial was sufficient to charge the jury on comparative negligence, assumption of the risk⁴, and joint enterprise, all three defenses that factor into a jury’s analysis and consideration of comparative negligence. (R. p. 461, line 3 – p. 465, line 3). It appears that the jury also had a physical copy of these charges in the jury room with them during deliberations. (R. p. 471, lines 10-11). Appellant raised the issue of these affirmative defenses as an explanation for the verdict to the trial court in its Response to Plaintiff’s Post-Trial Motions and at the motions hearing. (R. p. 37; p. 515, lines 11-24; p. 520, line 18 - p. 521, line 20). However, in granting the new trial motion, the trial court failed to acknowledge that the evidence presented in support of these affirmative defenses provided the jury with the basis to find that Decedent’s negligence exceeded Defendant’s.

1. Decedent’s Independent Negligence

Evidence was presented regarding Decedent’s independent acts of negligence, including assumption of the risk. The evidence was undisputed that Decedent smoked marijuana earlier in the evening with his friends. (R. p. 101, line 7 – p. 102, line 12; p. 104, lines 1-15; p. 110, line 24 – p. 111, line 1). The evidence also indicated that Decedent was likely the source of the

⁴ Both parties submitted proposed separate charges for assumption of the risk but neither of the charges were included in the jury instructions. Appellant requested that the jury be brought back in and given the assumption of the risk charge, which the Court declined to do. (R. pp. 477-485). Appellant’s proposed charge was made Court’s Exhibit 2. (R. p. 605)

marijuana they smoked. (R. p. 104, lines 1-11; p. 113, lines 8-11). Although Defendant's testimony was conflicting regarding whether he and Decedent smoked marijuana together that evening, he admitted that they had in the past and he ultimately stated that he assumes he smoked marijuana with Decedent and Thompson that evening. (R. p. 154, line 5 – p. 155, line 18; p. 157, line 1 – p. 158, line 3). Furthermore, Decedent was tested for marijuana after the accident and his level was higher than Defendant's. (Defendant's Exhibit 104, R. pp. 598-604).

The undisputed evidence shows that Decedent entered the car willingly with the inebriated Defendant after witnessing him drinking and made no complaints regarding Defendant's driving or the high rate of speed before the accident. (R. p. 146, lines 2-3; p. 174, lines 14-17; p. 175, line 20 – p. 176, line 3; p. 180, lines 7-11). Furthermore, both Defendant and Thompson ultimately testified that it was Decedent who orchestrated locating the marijuana that they left the safety of the Stringfellow house to purchase. (R. p. 165, lines 10-20; p. 180, line 7 – p. 181, line 3; p. 218, lines 2-12). Decedent also willingly got in the car with Defendant a second time when leaving the party after purchasing more marijuana and within minutes of the accident. (R. p. 207, lines 2-7). Defendant also testified that Decedent knew that he should not get in the car with someone who was drinking and should not drive drunk or impaired. (R. p. 178, line 25 – p. 179, line 9). Defendant further testified that Decedent had his own vehicle and could have driven his Jeep but purposefully chose to ride with Defendant that night. (R. p. 181, lines 4-20).

At the conclusion of the evidence, Respondent moved for a directed verdict arguing that there was no evidence to support that Decedent was at fault or assumed any risk. (R. p. 371, lines 2-7). A directed verdict is proper “[w]hen the evidence yields only one inference ...

[h]owever, if the evidence as a whole is susceptible of more than one reasonable inference, the case must be submitted to the jury.” Hurd v. Williamsburg County, 353 S.C. 596 at 609, 579 S.E.2d 136 at 142-143 (Ct. App. 2003), *aff’d* 363 S.C. 421, 611 S.E.2d 488 (2005). The trial judge denied the directed verdict motion and noted, when discussing the verdict form, that “of course the jury can still find that the [decedent] was more than 50 – or 50 percent or more.” (R. p. 393, lines 15 – 20; p. 394, lines 4-8). The jury was charged on comparative negligence. (R. p. 461, line 3 – p. 463, line 11). Although the trial judge did not give a separate charge regarding assumption of the risk, even after the Appellant’s objection where it was previously agreed upon in in the charge conference and yet was failed to be charged, the jury was instructed that a factor they could consider in deciding comparative negligence percentages was whether the party’s conduct “was gauged with an awareness of the danger involved and the magnitude of the risks”. (R. p. 369, lines 6-24; p. 462, lines 17-23; pp. 477-485). The evidence and law provided the jury with a reasonable basis to find that the Decedent was independently negligent and assumed the risk of his injuries.

2. Negligence Imputed to Decedent

The defense of joint enterprise was also raised in Defendant’s Answer. (Answer ¶ 24, R. p. 21). The uncontroverted evidence presented during trial was that all three boys left the Stringfellow residence and entered the vehicle for the same mission and with the sole purpose of purchasing more marijuana. (R. p. 143, line 23- p. 144, line 19; p. 168, lines 4-10; p. 206, lines 14-18; p. 216, lines 16-19). Although Defendant denied on direct examination by Respondent

that Decedent had an equal right to control the vehicle, evidence was presented to the contrary.⁵ (R. p. 126, lines 20-25). The evidence indicated that both Decedent and Defendant had the same right to drive the vehicle since Defendant was driving their mother's BMW without her permission. (R. p. 141, lines 22-25). Decedent was a licensed driver and had in fact driven his vehicle after smoking marijuana earlier in the evening. (R. p. 105, lines 17-24; p.112, lines 16-24). There was absolutely no evidence presented that Decedent objected to the Defendant driving and the evidence indicated that Decedent did not protest the high rate of speed before the accident. (R. p. 146, lines 2-3; p. 175, line 20 – p. 176, line 3).

Respondent's counsel moved for a directed verdict on the defense of joint enterprise at the conclusion of Appellant's case. (R. p. 371, line 9 - p. 375, line 24; p. 380, line 15 - p. 382, line 2). The trial judge denied the motion, specifically stating that "it appears that this joint enterprise law exists such that it should be an issue for the jury's determination". (R. p. 393, lines 20-23). By denying the motion for a directed verdict on joint enterprise the trial judge found that there was "material evidence tending to establish the issue in the mind of a reasonable juror". *See Hurd v. Williamsburg County*, 353 S.C. 596, 609, 579 S.E.2d 136, 143 (Ct. App. 2003), *aff'd* 363 S.C. 421, 611 S.E.2d 488 (2005). The jury was subsequently charged on the law regarding joint enterprise and the requirements for imputing the negligence of a driver to an occupant of the vehicle. (R. p. 463, line 12 – p. 465, line 2). The evidence and law presented regarding joint

⁵ The jury was charged by the judge that they were to be the "sole judges" of the credibility and believability of the witnesses and could consider their demeanor, potential bias, prejudice, and contradictions in their testimony in making their evaluation of the evidence. (R. p. 460, lines 5-17).

enterprise provided the jury with a basis to reasonably impute all of the Defendant's admitted recklessness to the Decedent.

3. Decedent's Combined Negligence

The thirteenth juror doctrine is only appropriate when the trial court finds that "the evidence does not justify the verdict." Bailey v. Peacock, 318 S.C. 13, 455 S.E.2d 690 (1995). If the trial court's conclusion that no evidence supports the jury's verdict is not supported by the record then the order granting the new trial should be reversed. *See* Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct. App. 2008) (reversing grant of new trial as thirteenth juror on grounds that trial court's finding that there was no evidence to support jury's finding regarding comparative negligence was not supported by the record). In this case, the trial judge concluded that "no evidence was presented that would give the jury a basis to make [the] decision" that a passenger was more at fault than the driver in an accident. (R. p. 539, lines 20-25). The trial judge's holding is not supported by the record. The jury was presented with evidence and instructed on law that supports their verdict.

By denying the directed verdict motions on comparative negligence and the joint enterprise defense, the trial court found that there was sufficient evidence presented on these issues to submit them to the jury and subsequently charged them on the applicable laws. These defenses provided the basis for the jury's verdict. The reasonable explanation for the verdict is that the jury found the joint enterprise doctrine applied, imputed the Defendant's recklessness to the Decedent, and then added a separate allocation for the Decedent's independent acts of negligence to reach a total percentage of negligence attributable to the Decedent that exceeded Defendant's. *See* Berberich v. Jack, 392 S.C. 278 at 289, 709 S.E.2d 607 at 613 (2011) (stating

that purpose of comparative negligence scheme is to allow jury to “evaluate **overall culpability** of each party”) (emphasis added).

The trial court’s finding that there is no reasonable basis to support the jury’s apportionment of negligence is wholly unsupported by the evidence and law. The degrees of negligence attributed to Defendant and Decedent were questions of fact for the jury that were fully supported by the evidence. *See Hurd v. Williamsburg County*, 363 S.C. 421, 611 S.E.2d 488 (2005) (“[t]he determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn.”). Therefore, this Court should find that the use of the thirteenth juror doctrine by the trial court to grant a new trial was error. The trial court is simply substituting his own view of what the relative percentages of fault should (or rather should not) have been for those of the twelve impartial Richland County jurors who reached a unanimous verdict finding that the Decedent’s overall negligence slightly exceeded Defendant’s.

B. The trial court’s decision to grant a new trial premised upon the thirteenth juror doctrine was controlled by errors of law.

The transcript of the motions hearing and the Order reveal that the trial judge’s grant of a new trial based on the thirteenth juror doctrine was based on conclusions controlled by several errors of law and, therefore, should be reversed.

1. Comparative negligence allows for the comparison of all forms of negligence

The trial court found that because Defendant admitted to acting recklessly during the accident, “a higher degree of culpability and responsibility than negligence”, then it was impossible for the jury to find the negligence of Decedent, a passenger, outweighed the recklessness of Defendant. (Order, R. p. 9). However, that is not the law in South Carolina. In

Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011), where the plaintiff was found to have been 75% negligent despite the defendant's admitted recklessness, the Supreme Court held that a plaintiff's ordinary negligence may be compared to a defendant's recklessness. Noting the "broad spectrum of conduct" to be considered by a jury to "evaluate the overall culpability of each party" under comparative negligence, the Court ultimately held:

[U]nder our comparative negligence system, all forms of conduct amounting to negligence in any form, including, but not limited to, ordinary negligence, gross negligence, and reckless, willful, or wanton conduct, may be compared to and offset by any conduct that falls short of conduct intended to cause injury or damage. By this method, each party's relative fault in causing the plaintiff's injury will be given due consideration. A trial court should instruct the jury on the definitions of these various terms, in addition to ordinary negligence, when so requested by a party

Berberich, 392 S.C. at 293–94, 709 S.E.2d at 615. The Supreme Court made it clear that all degrees of negligence could be compared by the jury when apportioning fault under a comparative negligence system, specifically holding that "comparative negligence encompasses the comparison of ordinary negligence with heightened forms of misconduct such as recklessness, willfulness, and wantonness." Id., 392 S.C. at 292, 709 S.E.2d at 614. The Court also specifically rejected the argument that the jury should be instructed that "heightened degrees of wrongdoing should be accorded greater weight than ordinary negligence." Id., 392 S.C. at 294, 709 S.E.2d at 616. Therefore "a jury may compare all forms of negligence as part of its assessment of fault." Id.

Respondent's counsel even acknowledged that the jury could compare negligence to recklessness while discussing jury charges with the Court during the trial of the case, stating: "And I agree that they can compare simple negligence against gross negligence or recklessness. I

think the law allows a jury to make that adjustment ..." (R. p. 364, lines 11-14). Later, Respondent's counsel reiterated that "the law is you can compare, you know, all forms of fault, gross negligence, recklessness, and negligence." (R. p. 403, lines 14-17).

In this case, the jury was instructed on the definitions of the various forms of negligence. (R. p. 461, line 1 – p. 463, line 11; p. 466, line 20 – p. 467, line 15). Based on the uncontroverted evidence presented regarding assumption of the risk, the jury could have reasonably concluded that Decedent's own conduct by choosing to ride in a vehicle with a driver he knew to be inebriated rose to levels above simple negligence and that his negligence exceeded Defendant's. *See infra* pp. 13-15. In Ardis v. Griffin, 239 S.C. 529, 123 S.E.2d 876 (1962) the South Carolina Supreme Court found that a passenger who "knowingly entrust[s] his safety to a driver who is intoxicated is guilty of a conscious failure to exercise due care." The Supreme Court further held that this failure "to exercise due care for his own safety **would constitute willfulness and recklessness**" and bars the passenger's recovery. Ardis, 239 S.C. at 534, 123 S.E.2d at 878 (holding that passenger precluded from recovery where he knew driver under influence when entered vehicle) (emphasis added). Even if the jury found Decedent only to be simply negligent, the jury could still find, as the Berberich court made clear, that this simple negligence exceeded Defendant's admitted recklessness.

Furthermore, "all forms of conduct amounting to negligence in any form" are to be compared under South Carolina's comparative negligence system. Berberich, 392 S.C. at 293, 709 S.E.2d at 615 (stating that purpose of comparative negligence scheme is to allow jury to "evaluate overall culpability of each party"). This determination necessarily includes an analysis of a party's independent acts of negligence in addition to any negligence imputed to the party by

the acts of another. In the instant matter, the jury was presented with evidence and law to reasonably impute all of Defendant's recklessness to Decedent under the joint enterprise doctrine. The jury was also presented with evidence and law to support an additional allocation for Decedent's own negligence, which explains the slightly greater percentage of negligence attributed to the Decedent. Therefore, the trial judge's holding that Defendant's recklessness cannot outweigh Decedent's negligence as a passenger is not in line with South Carolina law and does not account for the joint enterprise and assumption of the risk defenses that were presented and charged to the jury.

2. There is no law that a passenger's negligence cannot exceed a driver's negligence

The trial judge's decision to grant a new trial was based on the conclusion that a passenger's negligence cannot exceed the negligence of a driver. While discussing the jury's allocation at the motions hearing he stated: "So we know it can be 50/50. But can it be 51/49 is the question?" (R. p. 532, lines 22-23). The trial judge incorrectly concluded as a matter of law that the answer to his question was "no". There is no authority in South Carolina supporting this conclusion. In fact, as discussed above, South Carolina allows for the comparison of all forms and levels of negligence, including imputed and independent acts of negligence, in the comparative negligence analysis. See Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011). To the extent that the trial judge is relying on Ardis v. Griffin, 239 S.C. 529, 123 S.E.2d 876 (1962), which states the general principle that a passenger who voluntarily and knowingly entrusts his safety to an intoxicated driver "is equally at fault with the driver and is precluded from recovery", his reliance on this case for his conclusion is misguided. Ardis was decided prior to the adoption of comparative negligence and dealt solely with the issue of assumption of the

risk. In the instant matter, there was evidence by which the jury could impute all of Defendant's admitted recklessness to Decedent under the joint enterprise doctrine and additional evidence of Decedent's own independent acts of negligence in assuming the risk, which arguably also rose to the level of recklessness, that supports the jury's greater allocation of negligence to the Decedent.

3. Speculation regarding a jury's deliberations is not grounds for a new trial

"Despite the discretion given a judge by the thirteenth juror doctrine, it does not allow the court to overstep these boundaries *in toto*. Additionally, granting a new trial due to suspicions of deliberation quality is a flagrant deviation from premising a new trial upon the facts." Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct. App. 2008) (holding it was improper for the trial court to use the thirteenth juror doctrine to grant a new trial based upon the quality of jury deliberations and reversing order). At the post-trial motions hearing in this case and immediately before granting a new trial, the trial judge speculated regarding the quality of the jury's deliberations, stating:

[A]s to the new trial based on the 13th juror, it seems to me as if, in addition to there being no reasonable basis for which the jury could come to that conclusion basically, the jurors seemingly—or I can't speculate what they decided, but they didn't apply the law or were confused by the law or just didn't apply it or just decided they they didn't want to be involved on the process. And they decided they were not going to—that despite the evidence they were going to do the jury nullification, of sorts.

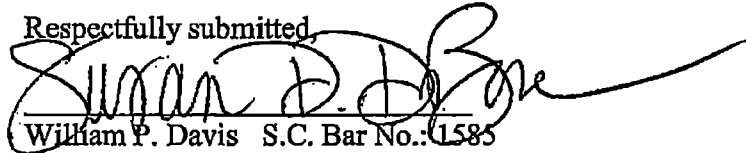
(R. p. 540, lines 3 – 13). As previously established, the record proves that there was a reasonable basis for the jury's verdict. *See infra* pp. 12-18. The trial judge's speculation regarding the jury's deliberations is without evidentiary support and an improper ground for a new trial under

Youmans. The jury in the instant matter was presented with evidence and instructed on law that fully supports their verdict and it should be reinstated.

CONCLUSION

Based on the arguments and authorities cited above, the trial court's order granting a new trial should be reversed and the jury's verdict reinstated on the grounds that the motion for a new trial was not timely and did not comply with the plain language of Rule 59(b), SCRCP. Alternatively, the trial court's order should be reversed and the jury's verdict reinstated because the trial judge's decision is not supported by the evidence and is controlled by multiple errors of law.

Respectfully submitted,



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March 15, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, ... Respondent,

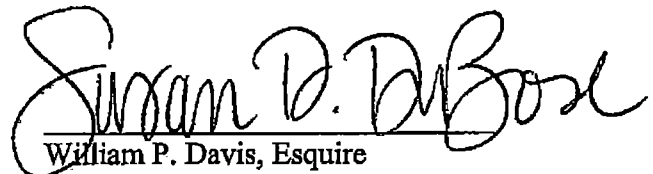
v.

Cameron Thomas Stringfellow, ...Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
SCACR.

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SC Court of Appeals



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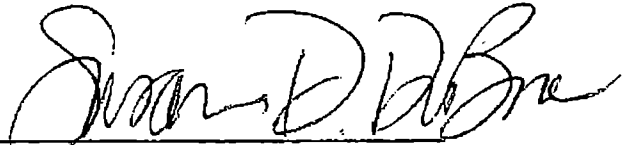
Cameron Thomas Stringfellow, ...Defendant.

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I, Susan Drake DuBose, of Baker, Ravenel & Bender, L.L.P., Attorneys for Appellant, hereby
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL JUDGE PROPERLY EXERCISE HIS DISCRETION AS THE THIRTEENTH JUROR BY GRANTING A NEW TRIAL AFTER THE JURY FOUND THE DECEASED PASSENGER WAS MORE AT FAULT THAN THE DEFENDANT DRIVER WHO PLED GUILTY TO INVOLUNTARY MANSLAUGHTER AND DUI, WHEN THE UNDISPUTED EVIDENCE ESTABLISHED THAT THE DRIVER, ACTING ON AN URGE, SUDDENLY ACCELERATED TO MORE THAN 90 MPH IN A RESIDENTIAL NEIGHBORHOOD AND STRUCK A PARKED CAR, AFTER BEING WARNED BY THE DECEASED PASSENGER, RESULTING IN THE DEADLY CRASH?

- II. WAS RESPONDENT'S RULE 59 MOTION FOR NEW TRIAL TIMELY WHEN THE MOTION WAS FIRST MADE IN OPEN COURT FOLLOWING THE RETURN OF THE JURY'S VERDICT AND SUBSEQUENTLY FILED WITHIN TEN (10) DAYS THEREAFTER AS PERMITTED BY THE TRIAL JUDGE?

STATEMENT OF THE CASE

Respondent, William Gresham, as Personal Representative of the Estate of Corey Stringfellow ("Corey") commenced an action alleging wrongful death against Defendant Cameron Stringfellow ("Cameron") on December 1, 2015. Appellant The Travelers Home and Marine Insurance Company ("Travelers") as the Underinsured Motorist Carrier defended the action on behalf of Defendant Cameron. A jury trial was held before the Honorable Clifton B. Newman in the Richland County Court of Common Pleas from January 9, 2017 until January 12, 2017. At the conclusion of trial, the jury returned a verdict for Defendant Cameron, finding that Corey was 51% at fault. Respondent made an oral motion for a new trial after the jury returned its verdict and with the Trial Court's permission filed a written motion for new trial eight (8) days later on January 20, 2017. On March 23, 2017, the Trial Court held a hearing on the motion and issued a formal Order

granting the motion for new trial under the thirteenth juror doctrine on April 20, 2017. Appellant Travelers filed a notice of appeal from this Order on May 2, 2017.

FACTS

Corey Stringfellow died at the age of sixteen (16) from injuries suffered in an automobile accident that occurred at approximately 2 a.m. on May 24, 2013. Corey was riding as a passenger in the driver's side back seat of the automobile driven by his older brother, Cameron Stringfellow.

Defendant Cameron, who was eighteen (18), had recently finished his last high school class and was scheduled to graduate from Spring Valley High School the following week. Defendant Cameron and his friend Wesley Thompson, who had also finished his last class and was scheduled to graduate with Cameron, had been celebrating at the Stringfellow's family residence earlier in the evening. Defendant Cameron and Corey's parents, as well as their younger sister, had just departed for the beach for the Memorial Day weekend, leaving them home alone. Cameron and Corey were scheduled to meet their family the next day, after Corey finished classes. (R. 136:1-25; 137:1-19).

Defendant Cameron and Thompson drank wine they found in a box in the garage and then went to a movie. They took a flask of bourbon with them and presumably drank it. After the movie, they went back to Stringfellow residence. Up until this point in the evening, Corey had not been with Defendant and Thompson. (Id. at R. 139:8-140:5; 143:6-22).

Corey had soccer practice earlier in the evening that ended at 8:30 pm. Corey then stopped to get some fast food with two of his friends and went back to his house to play video games with them. Corey and his two friends also smoked an unknown quantity of marijuana after arriving at his home. Both friends described the amount as "not much" and "not a lot" because they had classes the next day. (Id. at R. 102:1-6; 110:24-25; 111:1-10). About thirty (30) to forty (40)

minutes after smoking, Corey drove one friend home and the other friend drove himself home. (R. 105:17-25; 111:7-10).

Upon arriving back at the Stringfellow residence after the movie, Defendant Cameron and Thompson continued drinking. Corey was not drinking with them. Defendant Cameron then decided that he wanted to smoke marijuana, but neither he nor Thompson had any. (Id. at R. 157:8-11; 163:19-22; 164:3-7; 204:14-23). Thompson contacted a friend of his who knew someone selling marijuana, and they arranged to meet at Thompson's friend's residence. (Id. at R. 204:24-25; 205:1-11). Defendant Cameron testified that only he and Wesley planned to buy marijuana, and they simply "made" Corey ride with them. (Id. at R. 164:10-18; 166:6-10).

Defendant Cameron drove to Thompson's friend's residence, with Thompson and Corey. Thompson testified that Defendant Cameron's driving seemed fine on the way to the friend's house and on the return drive back to the Stringfellow's residence. (Id. at R. 206:19-25; 207:1-11). However, upon arriving back at the Stringfellow residence, Defendant Cameron drove past his residence rather than parking in the driveway. (Id. at R. 207:12-13).

Defendant Cameron, who was driving his mother's new BMW 7 series luxury sports car without permission, "suddenly got this urge to go fast." (R. 145:17). He testified that "I knew there was a straight-away [sic] in the back of our neighborhood, so I just kept going through and went back there and just gunned it." (Id. at R. 145:14-21; 146:10-12). Defendant Cameron made this decision alone, without prompting from either Thompson or Corey and did not inform either Thompson or Corey of his plan. (Id. at R. 146:7-9; 208:8-11).

Defendant Cameron suddenly accelerated up to 94 mph on this back straightaway and struck a parked car, lost control of the vehicle, went up an embankment that launched the vehicle

into the air, struck two trees, and crashed to the ground. (R. 91:12-15; 121:23-25; 122-127; 132:9-25; 133:8-25; 134:1-2).

Corey, who was seated in the back seat, warned Defendant Cameron about the parked car, but Defendant struck it nevertheless. (Id. at R. 146:21-23; 208:15-19). Those were the last words Corey ever spoke. He died from injuries that he suffered in the accident.

After the accident, Defendant was arrested and his blood was tested. The toxicology report for Defendant reflected he had a BAC of .186 and a THC level of 4. Corey did not have any alcohol in his blood and had a THC level of 6.5. There was no expert testimony presented as to what THC levels of 4.0 and 6.5 mean. Defendant testified that he did not recall smoking marijuana any time prior to the accident. Corey smoked "not much" marijuana around 9 p.m. on May 23, 2013, about five (5) hours before the accident. (R. 598-604).

The evidence was undisputed that Corey did not have any knowledge of how much alcohol Defendant consumed the night of the accident. Corey was not present when Defendant and Thompson drank alcohol at the Stringfellow residence prior to attending the movie nor was Corey present at the movie when Defendant and Thompson presumably drank bourbon. There is no evidence that Corey knew that Defendant had consumed any marijuana.

Furthermore, despite the promise made by Traveler's counsel in its opening statement to the jury that the defense would present testimony that Defendant was obviously drunk, and stumbling at Thompson's friend's residence, and that people warned Corey that Defendant should not drive, Travelers did not offer any such evidence at trial. (R. 77:5-25). Rather, there was absolutely no evidence presented of Defendant's behavior and whether he appeared as intoxicated

as his blood level might suggest. In fact, the defense did not offer any evidence from a toxicologist as to the effects of a BAC of .186 or the effects of a THC of 4.0.¹

At trial, Defendant admitted to all of the material allegations in the Complaint. (R. 121:23-124:1). Defendant also admitted that he is liable to the Estate of Corey Stringfellow for actual and punitive damages. (Id. at R. 124:2-14). Furthermore, Defendant testified that Corey could not have known that Defendant was going to “floor it.” (Id. at R. 126:7-11). Defendant denied taking any directions from Corey as to the manner in which he was driving, and he denied that Corey had an equal right to control and manage the vehicle. (Id. at R. 126:20-25).

After the accident, Defendant pled guilty to involuntary manslaughter and DUI. As a result of the plea and Defendant’s testimony at trial, the Trial Court granted a directed verdict on Plaintiff’s claim that Defendant was reckless and that this recklessness proximately caused the death of Corey. Travelers’ counsel likewise conceded that Plaintiff was entitled to a directed verdict on recklessness.

As a result of the directed verdict ruling, the factual issues presented to the jury were limited to whether Corey was negligent, and if so, whether such negligence proximately caused his death. The jury was asked to apportion fault if they found that Corey was negligent and his negligence proximately caused his death. If Corey’s portion of fault was 50% or less, then the jury was instructed to award compensable damages and that it may also award punitive damages. (Id. at R. 472:14-474:9); see also (R. 12-13).

After a few hours of deliberation, the jury sent a note asking if the jury could award zero damages or must the jury award compensatory damages. (R. 606). The Trial Court instructed the

¹ In fact, defense counsel’s toxicology expert testified in his deposition that the THC threshold for impaired driving in states that have legalized marijuana is 5.0. (R. 26).

jury that, depending on their answers to the questions presented on the verdict form, they could not award zero damages and must award compensatory damages. (R. 492:3-493:24). Then, after a few more hours, the jury returned a verdict finding that Corey was 51% at fault and Defendant was 49% at fault. (R. 12-13).

After the verdict was published, the Trial Judge asked whether the parties wished to poll the jury. Neither party requested polling. Immediately thereafter, the Trial Judge asked if there were any post-trial motions. In response, counsel for Respondent moved for judgment notwithstanding the verdict and for a new trial, under the thirteenth juror doctrine. (R. 498:7-24; 500:6-11). After counsel argued post-trial motions, the Trial Court stated:

It's an interesting issue. You know these issues are pretty complex. And I think I will take the matter under advisement and give you all an opportunity to brief the issue and will address that later.

(Id. at R. 500:12-16).

The Trial Judge asked how much time was needed to submit written briefs and both counsel requested ten (10) days. The Trial Judge then granted the parties ten (10) days to brief the post-trial issues. (Id. at R. 500:18-25). Eight (8) days later, Respondent filed and served a written Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial in both the wrongful death and survival actions. (R. 23-32).

At the post-trial motions hearing, the Trial Judge addressed Travelers' claim that the post-trial motions were "premature," because the jury had not been "discharged." The Trial Judge explained that the jury was discharged when it rendered a final verdict. Judge Newman stated:

Well, a lot of judges, when the jurors return a verdict, they immediately discharge the jury, particularly in criminal cases. And I keep them and let them—they are usually quite interested. They have invested all that time, they want to know what the sentence is. But they are discharged when they return the verdict...

(R. 530:25-531:7).

Judge Newman further explained,

I will include in my ruling that [the post-trial motion] was clearly timely based on the Court---the motions being made at the conclusion of the case. Upon return of the verdict he made a motion, then requested additional time, and the Court granted that request....I was actually shocked to see a motion claiming that it was not timely.

(R. 542:8-16).

Appellant asserted that the motion was premature, rather than untimely. To this argument, Judge Newman responded:

Oh premature. Well, if you all want to spend some time with the Supreme Court figuring out when is a verdict a verdict, you know, when is the jury discharged, because the jury is sitting here that means they were still serving on the jury. Good luck getting involved with something like that. That sounds like a waste of time to me.

(Id. at R. 542:19-25).

The Trial Court subsequently issued a written order granting Respondent's motion for a new trial on the wrongful death action and denying the motion as to the survival action. (R. 4).²

The Trial Court's Order also addresses the timeliness of the post-trial motion:

The Plaintiff's post-trial motions were promptly made after the jury returned its verdict, their service had been concluded, and upon direction by the Court. Furthermore, the Court requested additional briefing and Plaintiff's counsel requested ten (10) days leave to file formal motions and briefs, which the Court granted.

(Id. at R. 8).

² Judge Newman concluded that the verdict on the survival action was supported by the lack of evidence of conscious pain and suffering. Id.

ARGUMENT

I. THE TRIAL JUDGE PROPERLY EXERCISED HIS DISCRETION AS THE THIRTEENTH JUROR BY GRANTING A NEW TRIAL AFTER THE JURY FOUND THE DECEASED PASSENGER WAS MORE AT FAULT THAN THE DEFENDANT DRIVER WHO PLED GUILTY TO INVOLUNTARY MANSLAUGHTER AND DUI.

South Carolina's "thirteenth juror" doctrine is well established as the standard for granting a new trial in state-law actions. *Norton v. Norfolk S. Ry. Co.*, 567 S.E.2d 851, 854 (S.C. 2002); *Folkens v. Hunt*, 387 S.E.2d 265, 267 (S.C. 1990); *Sorin Equip. Co. v. The Firm, Inc.*, 474 S.E.2d 819, 822 (S.C. Ct. App. 1996). "South Carolina's thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" *Norton*, 567 S.E.2d at 854 (quoting *Folkens*, 387 S.E.2d at 267). In ruling on a new trial motion as the thirteenth juror, the trial judge may weigh the evidence and rely on his or her view of the circumstances. *Sorin Equip. Co.*, 474 S.E.2d at 822. As the "thirteenth juror," the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *Norton*, 567 S.E.2d at 854.

The Supreme Court explained in *Folkens*,

The effect is the same as if the jury failed to reach a verdict.... When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

387 S.E.2d at 267 (citing *S.C. State Highway Dep't v. Townsend*, 217 S.E.2d 778, 781 (S.C. 1975)).

Where the verdict is contrary to the fair preponderance of the evidence, the trial judge not only has the discretion but also has the duty to grant a new trial. *Jessup v. Hansen*, 344 S.E.2d 618, 620 (S.C. Ct. App. 1986). A trial judge's order granting or denying a new trial upon the facts is reviewed for an abuse of discretion and will not be disturbed unless the decision is wholly

unsupported by the evidence, or the conclusion reached was controlled by an error of law. *Folkens*, 387 S.E.2d at 267. This Court's review is limited to the consideration of whether evidence exists to support the trial court's decision to grant a new trial. *Id.*

Judge Newman's decision to exercise his discretion as the thirteenth juror and grant a new trial is not "wholly unsupported by the evidence" or controlled by an error of law. The evidence was undisputed that Defendant was reckless and that his reckless conduct caused Corey's death. On this point, the defense conceded. The only questions presented to the jury were the amount of comparative fault, if any, and damages. (R. 458:23-475:16).

Judge Newman ruled the evidence did not support the jury's finding that Corey was more at fault than Defendant Cameron. (R. 9). This ruling is clearly supported by the factual record and was not an abuse of discretion.

Defendant admitted that he was liable to the Estate of Corey Stringfellow for actual and punitive damages. (R. 124:2-14). Defendant testified that he acted on an urge to go fast; he did not announce his intentions to anyone in the vehicle; and the decision to drive recklessly was his alone. (*Id.* at R. 145:17; 146:8-9; 208:8-11). Defendant Cameron and Thompson both testified that up until Defendant got the urge to gun it, Defendant had not been driving recklessly. (*Id.* at R. 142:8-9; 145:22-146:3; 206:19-25; 207:7-11). Defendant further testified that from his perspective Corey could not have known that he was about to floor the BMW sports car through the quiet Wildwood neighborhood. (*Id.* at R. 126:7-11).

Defendant and Thompson also testified that it was their plan to go buy marijuana and Corey was not part of this plan. (*Id.* at R. 164:10-18; 167:6-10). Rather, Defendant "made" Corey ride along and because Corey was the little brother he did what Defendant asked. (*Id.* at R. 164:16-

18). Defendant also testified that Corey did not have an equal right to control the operation of the BMW and did not in fact attempt to control the vehicle. (R. 126:20-25).

Judge Newman's decision to grant a new trial was based solely upon the lack of evidence supporting the jury's verdict. The Order explicitly states "the jury's finding that the negligence of the Decedent exceeded that of the Defendant, whom admitted and was found to be reckless, on the basis that the Decedent contributed to his death by riding as a passenger is clearly against the fair preponderance of the evidence." (R. 9). Judge Newman not only had the discretion to grant a new trial under the thirteenth juror doctrine, but an obligation to do so based upon this record. *Jessup*, 344 S.E.2d at 620.

Travelers attempts to establish a logical rationale for the jury's verdict by arguing that the jury could have imputed Cameron's recklessness to Corey and then added Corey's negligence to arrive at 51%. App. Int. Br. at 16-19. The standard of review is not whether this Court can engage in the type of construct suggested by Travelers to support the jury's finding. Rather, the standard of review is whether the Trial Judge's decision to exercise discretion to grant a new trial as the thirteenth juror is wholly unsupported by the evidence. *Folkens*, 387 S.E.2d at 267. Here, the evidence overwhelmingly supports Judge Newman's decision.

Appellant Travelers also argues that the lower court's decision to grant a new trial was controlled by errors of law. First, Travelers argues that Judge Newman somehow misapplied the law of comparative negligence, which allows jurors to compare all forms of negligence. App. Int. Br. 19-22. Judge Newman clearly recognized that the jury had the right to allocate fault, as this is exactly what the Trial Court instructed the jury. (R. 462:11-465:2). Judge Newman, however, correctly concluded that the evidence presented at trial does not support the jury's finding that Corey's negligence or recklessness exceeded Defendant's reckless conduct. (R. 9).

Travelers also argues that Judge Newman ruled as a matter of law that the negligence of a passenger can never exceed the negligence of an at fault driver. App. Int. Br. at 22- 23. Travelers misconstrues Judge Newman's ruling. The Trial Court's ruling was based solely upon the evidence presented to the jury at this trial and is not the result of the application of a legal principle that a passenger could never be more at fault than a driver.

Lastly, Travelers argues that comments made by Judge Newman at oral argument indicated that the Trial Court granted a new trial based upon speculation as to what the jury was thinking. Id. at 23-24. The Trial Court's written Order contains no such speculation and clearly awards a new trial based upon the evidence presented, nothing more and nothing less. Additionally, the Trial Court's written Order, not its oral statements made during argument, is the final order. *First Union Nat'l Bank of S.C. v. Hitman, Inc.*, 411 S.E.2d 681, 682 (S.C. Ct. App. 1991), aff'd, 308 S.C. 421, 418 S.E.2d 545 (1992) ("No order is final until it is written and entered."); *Ford v. State Ethics Comm'n*, 545 S.E.2d 821, 823 (S.C. 2001) ("Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly."); *Badeaux v. Davis*, 522 S.E.2d 835, 839 (S.C. Ct. App. 1999) ("A judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling."); *Parag v. Baby Boy Lovin*, 508 S.E.2d 590, 592 (S.C. Ct. App. 1998) ("To the extent the written order may conflict with the prior oral ruling, the written order controls.").

II. RESPONDENT'S RULE 59 MOTION FOR NEW TRIAL FIRST MADE IN OPEN COURT FOLLOWING THE RETURN OF THE JURY'S VERDICT AND SUBSEQUENTLY FILED WITHIN TEN (10) DAYS THEREAFTER AS REQUESTED BY THE TRIAL JUDGE WAS TIMELY.

Despite the lower court's admonition that challenging the timeliness of the post-trial motion on appeal is a "waste of time," Travelers nevertheless argues that the post-trial motion was both premature and late. App. Int. Br. at 8-10. As to being premature, Travelers contends that

Respondent made the motion prior to the jury being discharged. As to being late, Travelers contends that Respondent's filed motion made within ten (10) days of the jury being discharged was late because the Trial Court did not grant permission for the Respondent to file the motion within ten (10) days.

Respondent's motion was timely because the motion was first made after the jury was discharged and remade within ten (10) days of the jury's discharge as permitted and directed by the Trial Court. Judge Newman explained that in his view the jury was discharged once the jury returned a final verdict and that his practice is to keep the jurors in the courtroom to view the post-trial proceedings because they are interested and invested in the process. (R. 530:25-531:7).

The issue of whether a jury is discharged is a factual question. The South Carolina Supreme Court in *State v. Myers*, 459 S.E.2d 304, 305 (S.C. 1995) explained, "[i]t is not so much what is said in passing as what is actually done and acted upon that determines the question of discharge." *Id.* The issue in *Myers* was whether a jury that had received "formal discharge" instructions could reassemble to continue deliberating after questions were raised about its verdict during post-trial motions. The Supreme Court recognized that a jury may be tacitly discharged without receiving formal instructions and would not be permitted to continue deliberating because of outside interference. *Id.* The Court also concluded that a jury could continue deliberating even after being "formally discharged" if, after such announcement, the jury remains an undispersed unit, within control of the court, with no opportunity to mingle with or discuss the case with others. *Id.*

Here, after the jury verdict was published and the parties given an opportunity to poll the jurors, the Trial Court asked whether Respondent wished to make any post-trial motions. The jury was still sitting in the jury box, but as Judge Newman explained, they had been tacitly discharged. Once the jury was exposed to Respondent's post-trial motions argument, the jury could not have

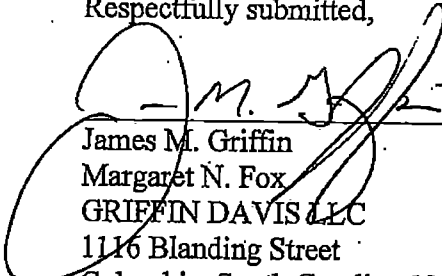
reconvened for further deliberations. Their work was completed. The Trial Judge further explained in his Order that Respondent was granted ten (10) days in which to file any written motions and briefs. (R. 7-8). Respondent thereafter filed a written motion within ten (10) days from the jury's discharge with the Trial Court's permission. (R. 23-32).

The Trial Court correctly ruled that Respondent's post-trial motion was timely made and correctly observed that pursuing this issue on appeal is a waste of time.

CONCLUSION

Judge Newman properly exercised his discretion as the thirteenth juror by granting Respondent's timely motion for a new trial. Respondent therefore requests that this Court affirm the Trial Court's Order and remand this case for a new trial.

Respectfully submitted,



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March 20, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001803
Case No. 2015-CP-40-07181

Ex parte: The Travelers Home and Marine Insurance Company.....Appellant,

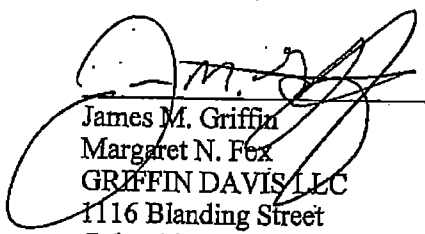
In Re: William Gresham as Personal Representative of the Estate of
John Corey Stringfellow Respondent,

v.

Cameron Thomas Stringfellow, ...Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with
Rule 211(b) SCACR and with the August 13, 2007 Order of the South Carolina
Supreme Court.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, ... Respondent,

v.

Cameron Thomas Stringfellow, ... Defendant.

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Appellant The Travelers Home and Marine Insurance Company ("Appellant"), respectfully submits this reply and response to Respondent's Initial Brief. Respondent's brief contains several legal assertions and factual statements that necessitate a response or clarification from Appellant. Appellant respectfully submits this reply for the Court's consideration.

ARGUMENTS

I. THE TRIAL COURT ERRED PROCEDURALLY BY HEARING RESPONDENT'S UNTIMELY MOTION FOR A NEW TRIAL WHEN RESPONDENT DID NOT MAKE THE MOTION AFTER THE DISCHARGE OF THE JURY AND DID NOT REQUEST AN ADDITIONAL TEN DAYS WITHIN WHICH TO MAKE HIS POST-TRIAL MOTION.

Rule 59(b) of the South Carolina Rules of Civil Procedure states that "[t]he motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." Rule 59(b), SCRPC. Respondent argues that his motion "was timely because the motion was first made after the jury was discharged and remade within ten (10) days of the jury's discharge as permitted and directed by the Trial Court." (Resp. Brief p. 12). The record, however, reveals that Respondent did not comply with the requirements of Rule 59(b) and the motion for a new trial is therefore procedurally barred.

A. Respondent's motion was made prior to the jury's discharge.

Respondent argues that the jury was discharged prior to his oral motion because the trial judge considered them discharged after they returned the verdict. (Resp. Brief p. 12). Although the trial judge indicated at the post-trial motions hearing that he considers the jury discharged when they return the verdict, he also admitted that he "keeps them":

THE COURT: Well, a lot of judges, when the jurors return a verdict, they immediately discharge the jury, particularly in criminal cases. And I keep them and let them – because they are usually quite interested. They have invested all that time; they want to know what the sentence is. But they are discharged when

they return their verdict and I usually invite them to stay. But I always say something to the effect of, Thank you very much.”

(R. p. 530, line 25 – p. 531, line 9). The trial transcript shows that, after the reading of the verdict, the trial judge asked the forelady if it was the verdict of the entire jury, to which the forelady responded affirmatively. (R. p. 498, lines 2-6). The trial judge made no other statements to the jury before asking if counsel wanted to poll the jury. Counsel declined, although Respondent’s counsel requested to view the verdict form. (R. p. 498, lines 7-15). There was no thanking of the jury by the trial judge or any invitation to stay. The trial judge then asked counsel if there were any post-trial motions. (R. p. 498, line 16). Respondent’s counsel answered, stating “Yes, Your Honor. At this time, we would move ...” and argued his motions for a judgment notwithstanding the verdict and for a new trial. (R. p. 498, line 17 – p. 500, line 25). After Respondent’s motions the trial judge addressed the jury, thanking them for their service and ultimately stating “You are done with jury duty” and “Y’all are good to go”. (R. pp. 501-502).

The Order admits that the motion was “promptly made after the jury returned its verdict”. (Order, R. p. 8). Although the trial judge may equate returning a verdict with discharge, these are clearly two separate events and Rule 59(b) makes no reference to the return of the verdict in relation to the timeliness of a motion for a new trial. *See* Rule 59(b), SCRCP. *See also Green By & Through Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994) (holding that a court applying the SCRCP must give the words “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule”) and *State v. Dawkins*, 32 S.C. 17, 10 S.E. 772 (1890) (recognizing the return of a verdict and discharge as independent events, stating “[a]fter a jury have rendered their verdict, and have been discharged, we know of no authority by which they can be reimpaneled) (distinguished on other grounds by

State v. Myers, 318 S.C. 549, 459 S.E.2d 304 (1995)). Black's Law Dictionary defines "discharge" as "[t]he relieving of a witness, juror, or jury from further responsibilities in a case." Black's Law Dictionary (10th ed. 2004). The trial transcript clearly shows that the jury was not relieved of further responsibilities in this case until after the Respondent's untimely motion for a new trial when the trial judge said "You are done with jury duty" and dismissed them. (R. p. 501, line 19 – p. 502, line 16) Several cases suggest that a jury is discharged when it is dismissed. See State v. Myers, 318 S.C. 549, 459 S.E.2d 304 (1995) (finding jury formally discharged when dismissed to custody of clerk) and Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 274, 670 S.E.2d 1, 5 (Ct. App. 2008) (noting post-trial motions were made "[f]ollowing the dismissal of the jury"). The record is clear that the jury in the instant matter was not dismissed until after Respondent's motion.

Respondent cites State v. Myers, 318 S.C. 549, 459 S.E.2d 304 (1995) in support of his argument that whether a jury is discharged is a factual issue and that the jury in the instant case was "tacitly" discharged when he made his motion. However, Myers actually supports Appellant's position that the jury was not discharged at the time of Respondent's motion. The issue on appeal in Myers was whether a jury could be reassembled after being formally discharged. The Supreme Court of South Carolina held that despite the fact that the judge had "dismissed the jury to the custody of the clerk", formally discharging them, the jury could be recalled and reassembled because the jury had "remained an essentially undispersed unit, and was subjected to no outside influence during the two minute interval between discharge and reassembly." Myers, 318 S.C. at 552, 459 S.E.2d at 305. In the instant matter, there was no formal discharge by the judge, there was no dispersing of the jury, and there was no "outside influence" as the jury was still sitting in the jury box.

In its opinion, the Myers court quoted the Summers v. United States, 11 F.2d 583 (4th Cir. 1926) decision. The Summers case also involved a formal discharge of a jury by the judge, who explicitly stated “You are now discharged.” Summers, 11 F.2d at 585. The Summers court recognized that a jury is usually discharged by an announcement by the court to the effect that the jury is “discharged” but noted that without an announcement a jury could be “tacitly” discharged if they were allowed to mingle with bystanders after rendering their verdict. However, the court noted,

[o]n the other hand, it may remain undischarged and retain its functions, though discharge may have been spoken by the court, if, after such announcement, it remains an undispersed unit, within control of the court, with no opportunity to mingle with or discuss the case with others, and particularly where, as here, the very case upon which it has been impaneled is still under discussion by the court, without the intervention of any other business.

Summers v. United States, 11 F.2d 583 at 586 (4th Cir. 1926).

Prior to Respondent’s motion in the instant matter no words of discharge to the jury were spoken by the court, the jury remained in the jury box as an “undispersed unit” within the court’s control, the jury had no chance to mingle or talk about the case with other people, and the very case the jury was impaneled on was being discussed by the court and counsel. Even had the trial judge formally discharged the jury in the instant matter, which the transcript clearly indicates he did not, Summers and Myers dictate that the jury would still have been undischarged at the time of Respondent’s motion. Respondent also suggests that his motion was timely because, by arguing the untimely post-trial motion in front of the jury, the jury could no longer be reconvened and was therefore discharged. (Resp. Brief pp. 12-13). This argument’s circular reasoning is unpersuasive and admits that, at the time the motion was made, the jury was not discharged.

B. Respondent failed to request ten days within which to file post-trial motions.

Although the trial court's order indicates that the judge "granted counsel's request for leave to file formal motions and briefs within ten (10) days" (Order, R. p. 7) and that "Plaintiff's counsel requested ten (10) days leave to file formal motions and briefs" (Order, R. p. 8), a review of the trial transcript clearly shows that no such request was ever made. After the verdict was published but before the jury was discharged the court engaged in the following colloquy with counsel:

MR. GRIFFIN: . . . And then after that, Your Honor, we would request a new trial based on the 13th juror doctrine as a result of the Court's findings of directed verdict on recklessness and that this verdict was against the weight of the evidence and the result of confusion or passion or prejudice.

THE COURT: It's an interesting issue. You know, these issues are pretty complex. And I think I will take the matter under advisement and give you all an opportunity to brief the issue and will address that later.

MR. GRIFFIN: Thank you, Your Honor.

MS. O'BRIEN: Your Honor, how much time do we have to brief the issue?

THE COURT: How much time you need?

MS. O'BRIEN: No more than ten days.

THE COURT: Mr. Griffin?

MR. GRIFFIN: That's fine.

THE COURT: Ten days.

(R. p. 500, lines 6-25). There is absolutely no request by Respondent's counsel seeking additional time to file formal motions. The judge indicated that he was taking the motions under advisement and the ten day time frame is referenced solely in relation to the judge's inquiry regarding how much time the parties would need to comply with his request that they submit written briefs on the motions that were made. Furthermore, the request for ten days to submit briefs was actually made by counsel for Appellant. Respondent's counsel made no requests to

the court. Respondent's Motion¹ For Judgment Notwithstanding The Verdict Or In The Alternative For A New Trial admits that "Plaintiff previously made an oral motion for jnov and for a new trial immediately following the jury's verdict" and that "[t]he court thereafter invited the parties to brief these motions within ten (10) days of the verdict." (R. p. 23 fn. 1).

The South Carolina Supreme Court held in Boone v. Goodwin, 314 S.C. 374, 444 S.E.2d 524 (1994) that in order to comply with Rule 59(b), SCRPC "[a] party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion." The record in the instant matter is clear that Respondent's motion was made prior to the discharge of the jury and Respondent's counsel did not make a request seeking ten days within which to make motions. Respondent's brief does not address Boone, in which the Court reversed a trial court's order granting a new trial on the grounds that the plaintiff failed to move for a new trial until two days after the jury verdict despite the fact that the trial judge entertained and granted the untimely motion. The Court held that the motion did not comply with Rule 59(b) and the order granting a new trial was reversed. The Boone decision makes it clear that the trial judge's acceptance of an untimely motion is irrelevant to the determination of its timeliness. Furthermore, Rule 6(b), SCRPC explicitly prohibits the court from adjusting the time period provided in Rule 59.

In the instant matter, Respondent made a motion for a new trial before the jury was discharged and did not request ten days within which to make post-trial motions. As the record clearly indicates, the parties were given ten days to brief the motion that was improperly made. Rule 59(b) strictly limits the time frame for motions for a new trial. Respondent's motion was untimely under the plain language of the rule and the order granting it should be reversed.

II. THE TRIAL COURT'S ORDER GRANTING A NEW TRIAL IS WHOLLY UNSUPPORTED BY THE EVIDENCE AND CONTROLLED BY ERRORS OF LAW.

In the event that Respondent's motion is found to comply with Rule 59(b), SCRCP, which Appellant disputes, the trial court's order granting a new trial based on the thirteenth juror doctrine should be reversed. As fully set forth in Appellant's brief, the trial court's order is unsupported by the evidence and controlled by errors of law. *See* App. Brief pp. 10-23. The trial court found that "the jury's finding that Decedent was fifty-one percent (51%) at fault and Defendant was forty-nine percent (49%) at fault is not supported by the evidence." (Order, R. p. 9). The trial court based this decision on the fact that Defendant "admitted he was reckless and that his recklessness caused the accident." (*Id.*). At the hearing, the trial judge stated that "no reasonable jury could reach that decision deciding that the passenger was more at fault than the driver. And no evidence was presented that would give the jury a basis to make that decision." (R. p. 539, lines 21-25). However, evidence and law giving the jury a reasonable basis to make their decision was presented.

The statement of facts in the trial court's order and Respondent's brief, both prepared by counsel for Respondent, contain several factual assertions that are not supported by the record. The Order states that "[t]he evidence was undisputed that the Decedent was not present when Defendant and Thompson consumed alcohol both at the Stringfellow residence and while attending a local movie." (Order, R. p. 6). Respondent's brief states that "[t]he evidence was undisputed that Corey did not have any knowledge of how much alcohol Defendant consumed the night of the accident" and that there was "no evidence that Corey knew that Defendant had consumed any marijuana." (Resp. Brief p. 4). These statements ignore the testimony that Decedent was hanging out with Defendant and Thompson at the Stringfellow residence after

they returned from the movie while they were drinking alcohol and, Defendant assumes, smoking marijuana. (R. p. 157, line 20 - p. 158, line 3; p. 204, lines 5-17). Defendant also testified it was possible he smoked pot with both Decedent and Thompson that night. (R. p. 155, lines 8-18).

Respondent's brief also mischaracterizes the testimony regarding the search for a source for marijuana, stating that Thompson arranged it and Decedent was not part of the plan, completely overlooking all the testimony regarding Decedent's active role in this process. (Resp. Brief p. 3 and p. 9). Defendant testified that Decedent made the phone calls and arranged the deal to buy more marijuana. (R. p. 165, lines 10-20; p. 180, line 7 - p. 181, line 3). Thompson also ultimately admitted on cross-examination that Decedent made the calls to locate the marijuana and the address for where the marijuana was located was texted to Decedent's phone. (R. p. 218, lines 2-12; p. 216, lines 16-19). The evidence regarding Defendant's and Decedent's THC levels was introduced without any objection by Respondent's counsel. (R. p. 356, lines 7-14 and Defendant's Ex. 104, R. pp. 598-604).

Respondent claims that Defendant and Thompson made Decedent ride with them when Defendant's testimony was clear that Decedent was not forced but willingly entered the vehicle driven by Defendant. (R. p. 180, lines 7-11). Thompson also testified that they "were all hanging out together" and "we were all going, and then [Decedent] just got in the car with us." (R. p. 206, lines 17-18; p. 223, lines 11-13). Respondent also asserts that Defendant did not announce his intentions to drive fast to anyone in the vehicle, which he did testify to on direct examination, but Respondent fails to mention that Defendant was impeached on cross-examination by his prior deposition testimony in which he stated that he thought he had told the occupants of his intention to drive fast but was not sure. (R. p. 125, lines 14-20; p. 146, lines 4-9; p. 182, line 10 - p. 183,

line 8). Respondent also fails to recognize that opening and closing arguments are not considered evidence and the record clearly shows that the jury was specifically instructed on this issue. (R. p. 58, lines 19-22; p. 459, lines 15-19; p. 460, line 18 – p. 461, line 2). Furthermore, there was no objection by Respondent’s counsel to Appellant’s opening argument. (R. p. 102, line 6 – p. 111, line 6).

The trial court ruled that “[t]he jury’s finding that the negligence of the Decedent exceeded that of the Defendant, whom admitted and was found to be reckless, on the basis that the Decedent contributed to his death by a [sic] riding as a passenger in the vehicle is clearly against the fair preponderance of the evidence”. (Order, R. p. 9). This holding completely ignores the evidence presented to the jury regarding Decedent’s independent acts of negligence in assuming the risk and the evidence supporting imputing the Defendant’s admitted recklessness to the Decedent under the joint enterprise doctrine. As discussed more fully in Appellant’s brief, the evidence supporting the joint enterprise doctrine and assumption of the risk defenses, in addition to the judge’s charges on these issues, provided the jury with the basis to make this allocation and to reasonably determine that Decedent’s overall negligence slightly exceeded Defendant’s. *See App. Brief pp. 12-18.*

Respondent’s brief does not address nor dispute the affirmative defenses presented to the jury other than to suggest that it is not proper to identify the “logical rationale” for the jury’s verdict that the trial judge failed to acknowledge because that is not the standard of review. (Resp. Brief p. 10). The trial judge stated in open court that “no reasonable jury could reach that decision deciding that the passenger was more at fault than the driver. And no evidence was presented that would give the jury a basis to make that decision.” (R. p. 539, lines 21-25). The trial judge then held:

As to the new trial based on the 13th juror, it seems to me as if, in addition to there being no reasonable basis for which the jury could come to that conclusion, basically, the jurors seemingly- or I can't speculate what they decided, but they didn't apply the law or were confused by the law or just didn't apply it

(R. p. 540, lines 3-9). Pointing out that evidence and law were in fact presented to the jury that provides a reasonable basis for their verdict clearly falls within the standard of review and reveals that his decision was wholly unsupported by the evidence and/or controlled by errors of law. Despite the trial judge's speculation to the contrary, the jury was provided with evidence and instructed on law that fully supports their unanimous verdict and it should be reinstated.

The trial judge's decision to grant a new trial was also based on an incorrect conclusion of law that a passenger's negligence can never exceed the negligence of a driver. The trial judge stated at the motions hearing that he knew that a passenger could be fifty percent comparatively negligent, but the question was whether a passenger could be fifty-one percent comparatively negligent. (R. p. 532, lines 22-23). He found that a passenger could not be more negligent than a driver. Despite Respondent's attempts to limit this statement to the facts of this particular case, the trial judge did not make any qualifications and stated it as general proposition of law. There is no law in South Carolina that that a passenger's negligence cannot exceed a driver's. *See App. Brief pp. 21-22.* Furthermore, the trial judge also appeared to be under the impression that, as a matter of law, the Defendant's admitted recklessness outweighed any negligence of Decedent. South Carolina's comparative negligence system allows for the comparison of all forms and degrees of negligence and, therefore, Defendant's admission of recklessness does not prevent a jury from finding the Decedent's negligence exceeded the Defendant's. *See App. Brief pp. 18-22.*

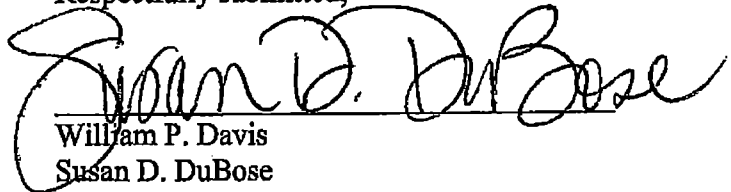
Respondent's brief cites a line of cases holding that a written order controls to the extent that there is an inconsistent prior oral ruling to imply that it is not proper to examine the motions

hearing transcript in the instant matter. (Resp. Brief p. 11). However, there is no inconsistent prior oral ruling in this case. The trial judge ruled at the post-trial motions hearing to grant a new trial based on the thirteenth juror doctrine and provided his reasons for doing so at the hearing. He then requested that Respondent's counsel prepare an extensive written order with the reasons he had stated. (R. p. 541, lines 4-24). The transcript of the motions hearing details the basis for the trial judge's ruling and is not inconsistent with the written order. See Badeaux v. Davis, 337 S.C. 195, 522 S.E.2d 835 (1999) (finding no inconsistency in judge's comments from bench and written order). See also Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008) (reviewing hearing transcript in detail when reviewing circuit judge's grant of new trial under thirteenth juror doctrine). Although the trial judge was not required to provide the reasons for his ruling, he did so, and they reveal that his ruling is wholly unsupported by the evidence and controlled by errors of law.

CONCLUSION

Based on the arguments and authorities set forth above and in Appellant's Brief, the order of the court below should be reversed and the jury's verdict reinstated.

Respectfully submitted,



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March 15, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, ... Respondent,

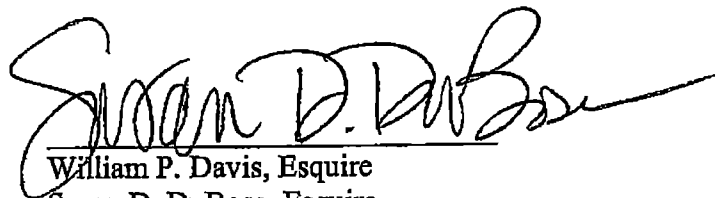
v.

Cameron Thomas Stringfellow, ...Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b),
SCACR.

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MAR 19 2018
SC Court of Appeals



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
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Ex parte: The Travelers Home and Marine Insurance Company.....Appellant,

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of John Corey Stringfellow, ... Respondent,

v.

Cameron Thomas Stringfellow, ...Defendant.

PROOF OF SERVICE

I, Susan Drake DuBose, of Baker, Ravenel & Bender, L.L.P., Attorneys for Appellant, hereby
certify that, on this 19th day of March 2018, I have served the Final Reply Brief of Appellant by U.S.

Mail to Respondent's counsel of record at the address shown below:

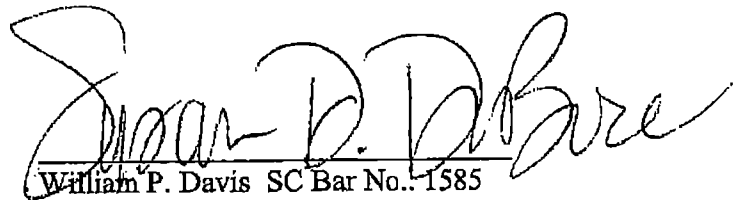
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001803
Case No. 2015-CP-40-07181

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

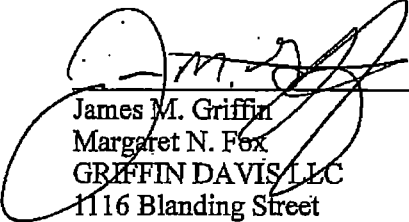
In Re: William Gresham as Personal Representative of the Estate of
John Corey Stringfellow Respondent,

v.

Cameron Thomas Stringfellow, ... Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with
Rule 211(b) SCACR and with the August 13, 2007 Order of the South Carolina
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ex parte: The Travelers Home and Marine Insurance
Company, Appellant,

In Re: William Gresham as Personal Representative of
the Estate of John Corey Stringfellow, Respondent,

v.

Cameron Thomas Stringfellow, Defendant.

Appellate Case No. 2017-001083

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Opinion No. 5666
Submitted June 3, 2019 – Filed July 17, 2019

AFFIRMED

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HILL, J.: This appeal follows the trial of a wrongful death and survival action. Sixteen-year-old John Corey Stringfellow (Corey) died from injuries sustained as a passenger in a family car being driven by his older brother, Cameron. Evidence at

trial indicated that, while their parents were out of town, Corey and Cameron left home around 1:00 a.m. to obtain marijuana from a friend's house. Both had smoked marijuana earlier, and Cameron—set to graduate from high school the next week—had been drinking alcohol and had taken Xanax. On the way back home, Cameron began speeding through their residential neighborhood, struck a parked car, and then a tree, resulting in Corey's death. It was estimated they had been traveling in excess of ninety miles-per-hour. Toxicology reports revealed Cameron's blood alcohol level to be 0.186. Corey had no trace of alcohol in his system, but both brothers had significant levels of tetrahydrocannabinol (THC)—the active ingredient in marijuana.

Cameron later pled guilty to manslaughter and driving under the influence. Corey's Estate brought this action against Cameron. At trial, the Stringfellow's underinsured motorist carrier, The Travelers Home and Marine Insurance Company (Travelers), assumed Cameron's defense, alleging Corey was comparatively negligent and engaged in a joint enterprise with Cameron.

The trial court granted the Estate's motion for a directed verdict on the ground that Cameron's conduct was reckless and a proximate cause of Corey's death. The only issue left for the jury was whether Corey had been comparatively negligent.

The jury found Corey 51% negligent, barring his Estate from any recovery. Immediately after the verdict was published—and while the jury was still in the jury box—the trial court asked for any post-trial motions. The Estate moved for, among other things, a new trial under the thirteenth juror doctrine. The trial court took the motion under advisement and released the jury. After a hearing several weeks later on the Estate's motion, the trial court invoked the thirteenth juror doctrine and granted the motion for a new trial on the wrongful death portion of the Estate's claim. Travelers now appeals.

I.

Travelers first asks us to deem the Estate's new trial motion void because it was made before the jury was discharged. Travelers focuses on the following language of Rule 59(b) of the South Carolina Rules of Civil Procedure (SCRCP): "The motion for a new trial shall be made *promptly after the jury is discharged*, or in the discretion of the court not later than 10 days thereafter." Rule 59(b), SCRCP (emphasis added). Travelers insists the Estate's motion was untimely because it was made before the jury's discharge and no motion was made after the jury was discharged. The trial court rejected Travelers' interpretation, and so do we.

Interpretation of a rule is a question of law we review de novo. Our role in interpreting a statute or court rule is to determine what the legislature intended to accomplish. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The best evidence of this intent is the words used, and often what the legislature meant is readily revealed by the plain meaning of those words. See *Smith v. Tiffany*, 419 S.C. 548, 555–56, 799 S.E.2d 479, 483 (2017). But meaning can be obscured rather than revealed if words are isolated and cut off from context. We are interpreting a rule, not a dictionary entry, and how words are arranged often determines meaning; as Mark Twain explained, it's "the difference between the lightning-bug and the lightning."

According to Travelers, the meaning of Rule 59 is plain: a motion for new trial is a nullity unless it is made promptly after the jury is discharged or—if the judge allows—not later than ten days after the jury is discharged. In Travelers' view, any motion made outside these points has no effect. See *Boone v. Goodwin*, 314 S.C. 374, 376, 444 S.E.2d 524, 525 (1994) ("We hold a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion.").

We decline to parse the language of Rule 59 in the manner Travelers requests. The purpose of the rule is to promote finality of judgments by requiring parties to move for a new trial promptly after they learn of an adverse verdict. Counting a party's new trial motion made in the brief period between return of the verdict and the jury's discharge as timely prejudices no one and advances the interests served by Rule 59.

Some post-trial motions—such as those seeking to correct or clarify an inconsistent verdict—must for practical reasons be made before the jury is discharged, or they are forever lost. Nothing in Rule 59(b) states or implies that a new trial motion is barred if it is made before the jury is discharged. The drafters understood it was the end of the trial that started the clock. See Note to 1986 amendment to Rule 59(b), SCRCF ("In jury trials, post-trial motions are made promptly *at the end of trial*, or at the time the court, upon motion, may grant an additional ten days to make them.") (emphasis added). They did not dwell on the nuances of when the jury is officially discharged (nuances that might cause quibbles over, for example, whether jurors whose service in one case has ended but remain in the jury pool for selection in other cases have been "discharged" within the meaning of Rule 59). This understanding was informed by what practicing lawyers know: once the verdict is in, the bell has rung, and the reflex rises in losing counsel to move for a new trial, an instinct confirmed here by the trial court's invitation. We are reminded that a rule, like a

statute, is not to be read "in an atmosphere of sterility, but in the context of what actually happens when human beings go about the fulfillment of its purposes." *Bolton v. Doe*, 266 S.C. 344, 349, 223 S.E.2d 187, 189 (1976).

We must reject literal interpretations that are literally absurd. Our courts have read rules setting time limits in the light of common sense. *See, e.g., Hamm v. S.C. Pub. Serv. Comm'n.*, 287 S.C. 180, 181–82, 336 S.E.2d 470, 471 (1985) (rejecting construction of statute providing that appeals of agency rulings must be commenced within thirty days after decision that would preclude consideration of when ruling was actually received: "While a literal reading [of the statute] suggests the thirty days to appeal runs from the time the decision is made, we believe the statute must be read to allow a party thirty days after notice of a decision to bring an appeal. However clear the language of a statute may be, the court will reject that meaning when it leads to an absurd result not possibly intended by the legislature").

Courts elsewhere have rejected the version of "gotcha" Travelers promotes. Federal Rule 59(b) starts the clock for a new trial motion upon "entry of judgment" rather than the discharge of the jury, and in 2009 was amended to give parties 28 days rather than 10 to move for a new trial. Nevertheless, the principle in play is the same: whether a premature motion for new trial counts. Most courts agree it does. *See, e.g., Dunn v. Truck World, Inc.*, 929 F.2d 311, 312–13 (7th Cir. 1991) ("[W]e must decide whether the loser may file a motion for a new trial before the entry of judgment. If this is the question, then the answer is easy. It may. Rule 59 says that the motion must come 'not later than 10 days after entry of the judgment.' A pre-judgment motion satisfies this requirement."); *Hilst v. Bowen*, 874 F.2d 725, 726 (10th Cir. 1989) ("Although Rule 59 motions are to be served not later than ten days after entry of judgment, courts and commentators generally agree that this ten-day limit sets only a maximum period and does not preclude a party from making a Rule 59 motion before a formal judgment has been entered"); *Douglas v. Union Carbide Corp.*, 311 F.2d 182, 184 (4th Cir. 1962) ("The wording of Rule 59(b) was designed to be broad enough to permit the motion to be made both before and after the entry of judgment."); *Southall v. State*, 796 S.E.2d 261, 267 (Ga. 2017) ("[W]e conclude that a prematurely filed motion for new trial that sufficiently identifies the judgment involved becomes fully effective upon entry of that judgment."); *Kor Xiong v. Marks*, 668 S.E.2d 594, 600 (N.C. Ct. App. 2008) (Rule 59 motion may be made before entry of judgment); *Shamrock, Inc. v. Fed. Deposit Ins. Corp.*, 629 N.E.2d 344, 348 (Mass. Ct. App. 1994) (same); *see also* 11 Wright & Miller, *Federal Practice & Procedure*, § 2812 (3d ed. 2019) ("[T]here is nothing to prevent making a motion for a new trial before judgment has been entered.").

We join these authorities and hold a Rule 59(b), SCRCP, new trial motion made after the verdict has been returned but before the jury has been discharged is timely.

II.

Travelers' next argument—that the trial court erred in invoking the thirteenth juror doctrine—fares no better. The thirteenth juror doctrine empowers a trial court who believes the verdict is contrary to the evidence to "hang" the jury, thus necessitating a new trial. *Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004) ("The effect is the same as if the jury failed to reach a verdict, and thus, the circuit court is not required to give any reason for granting the new trial."). The doctrine arms the trial court with "the veto power to the Nth degree." *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313, 195 S.E. 638, 641 (1938). The trial court is not required to explain or justify its decision to invoke the doctrine, and—because it is obligated to see that justice is done—it is duty-bound to grant a new trial if the evidence does not support the verdict. *Folkens v. Hunt*, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990). We must uphold a trial court's thirteenth juror decision unless it is "wholly unsupported by the evidence." *Worrell*, 186 S.C. at 314, 195 S.E. at 641.

The trial court found the jury's verdict that Corey was 51% negligent was "against the fair preponderance of the evidence." Plenty in the record backs up the trial court's conclusion. Cameron admitted he was at fault and reckless, and his guilty pleas corroborated his fault. He also testified he had been driving safely before he alone made the decision to race through a twenty-five mile-per-hour zone, admitting he was "gunning it."

Travelers argues the evidence about Corey's involvement was conflicting. Of course it was; had it not been, the jury would not have been needed. And "where, as here, the circuit court applied the correct legal standard for granting a new trial, and conflicting evidence exists on the contested issues, a circuit court's decision to sit as a thirteenth juror and grant a new trial absolute is inviolable." *Trivelas*, 357 S.C. at 553, 593 S.E.2d at 508.

We therefore affirm the well-reasoned rulings of the experienced trial judge.

AFFIRMED.¹

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

WILLIAMS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181
Opinion No. 5666 (S.C. Ct. App. filed July 17, 2019)

Ex parte: The Travelers Home and Marine Insurance Company Appellant,

In Re: William Gresham as Personal Representative of the Estate
of John Corey Stringfellow, ... Respondent,

v.

Cameron Thomas Stringfellow, ...Defendant.

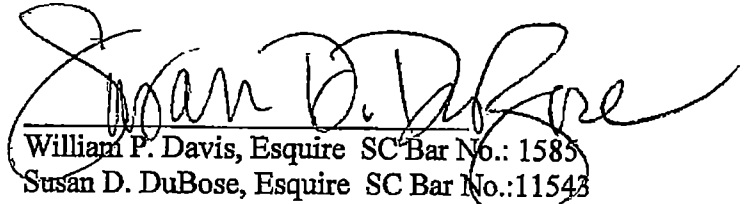
PETITION FOR REHEARING

Pursuant to Rule 221(a), *SCACR*, the above-named Appellant, The Travelers Home and Marine Insurance Company, respectfully petitions for a rehearing of the above-captioned appeal in which the Court filed its Opinion No. 5666 on July 17, 2019. This petition is based on the grounds that (1) this Court misapprehended the case law in holding that an appellate court is limited to overturning a trial judge's grant of a new trial pursuant to the thirteenth juror doctrine to cases where the trial court's decision "is wholly unsupported by the evidence", (2) this Court overlooked case law regarding an appellate court's duty to review any reasons provided by a trial judge for invoking the thirteenth juror doctrine, (3) this Court failed to address Appellant's argument that the trial judge's decision was based on errors of law, and (4) a review of the reasons provided by

the trial judge for invoking the thirteenth juror doctrine in the instant matter reveal that they were wholly unsupported by the evidence and controlled by errors of law.

This Petition is supported by the record in this matter and the memorandum filed contemporaneously herewith.

Respectfully Submitted this 18 day of August, 2019.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2017-001083
Case No. 2015-CP-40-07181
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MEMORANUM IN SUPPORT OF PETITION FOR REHEARING

Appellant The Travelers Home and Marine Insurance Company ("Appellant") has respectfully petitioned this Honorable Court pursuant to Rule 221, SCACR for a rehearing of the above-captioned appeal in which the Court filed its Opinion No. 5666 on July 17, 2019. Appellant submits this memorandum in support of its petition.

ARGUMENT

1. **THE COURT OF APPEALS ERRED IN HOLDING THAT IT WAS LIMITED TO OVERTURNING A TRIAL COURT'S GRANT OF A NEW TRIAL BASED ON THE THIRTEENTH JUROR DOCTRINE TO SITUATIONS WHERE THE TRIAL COURT'S DECISION "IS WHOLLY UNSUPPORTED BY THE EVIDENCE" AND FAILED TO ADDRESS APPELLANT'S ARGUMENT THAT THE DECISION WAS CONTROLLED BY ERRORS OF LAW**

The Court of Appeals misapprehended the standard of deference accorded to a trial court's use of the thirteenth juror doctrine to grant a new trial. The Court's opinion cites Worrell v. S.C. Power Co., 186 S.C. 306, 195 S.E. 638 (1938) as requiring that it "must uphold a trial court's thirteenth juror decision unless it is 'wholly unsupported by the evidence.'" (Opinion, p. 5). The Court also relies on Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2004) to describe the trial court's decision as "inviolable" where there is conflicting evidence on the contested issues in a case. (Opinion, p. 5). However, the Court overlooks the other basis for reversing a trial court's grant of a new trial under the thirteenth juror doctrine. As the Trivelas court states, "a circuit court's order granting or denying a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by the evidence **or the conclusion reached was controlled by an error of law.**" Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004) (emphasis added). *See also* Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008). This Court did not apply the appropriate standard of review to the trial court's grant of a new trial based on the thirteenth juror doctrine and failed to address Appellant's detailed arguments regarding the multiple errors of law upon which the trial court's decision was based. *See* App. Brief pp. 18-23 and App. Reply Brief pp.7-11. Therefore, Appellant respectfully requests a rehearing of this appeal.

2. THE COURT OF APPEALS ERRED IN FAILING TO EXAMINE THE REASONS PROVIDED BY THE TRIAL COURT FOR INVOKING THE THIRTEENTH JUROR DOCTRINE WHICH REVEAL THAT THE CONCLUSIONS OF THE TRIAL COURT ARE UNSUPPORTED BY THE EVIDENCE AND CONTROLLED BY ERRORS OF LAW

The Court of Appeals cites authority for the holding that “a judge is not required to explain the reasons for his decision” to grant a new trial pursuant to the thirteenth juror doctrine. However, the Court overlooks South Carolina case law which provides that, when a trial court does provide an explanation, it is subject to review on appeal. See Lane v. Gilbert, 383 S.C. 590, 681 S.E.2d 879 (2009) and Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008) (reviewing hearing transcript in detail when reviewing circuit judge’s grant of new trial under thirteenth juror doctrine). Although the trial judge in the instant matter was not required to provide the reasons for his ruling, he did so, and they reveal that his conclusions are wholly unsupported by the evidence and controlled by errors of law.

The trial court found that “the jury’s finding that Decedent was fifty-one percent (51%) at fault and Defendant was forty-nine percent (49%) at fault is not supported by the evidence.” (Order, R. p. 9). The trial court based this decision on the fact that Defendant “admitted he was reckless and that his recklessness caused the accident.” (Id.). The trial judge relied on Defendant’s admission of recklessness which “by definition is a higher degree of culpability and responsibility than negligence.” (Order, R. p. 9).

During the post-trial motions hearing, the trial judge stated that “no reasonable jury could reach that decision deciding that the passenger was more at fault than the driver. **And no evidence was presented that would give the jury a basis to make that decision.**” (R. p. 539, lines 21-25) (emphasis added). The trial judge concluded the hearing by granting a new trial under the thirteenth juror doctrine “based on common sense and application of the law and facts of this case”. (R. p. 541, lines 21-23). The transcript of the motions hearing and the Order

clearly reveal that the trial judge's decision to grant a new trial was based on conclusions unsupported by the evidence presented at trial and controlled by errors of law. The evidence presented and the law charged to the jury provided the reasonable basis to make their unanimous decision in this case.

A. The Trial Court's Conclusion of "No Basis" to Support the Jury's Decision is Wholly Unsupported By the Evidence

The transcript of the motions hearing reveals that the trial judge was under the mistaken belief that there was "no way that the jury could reasonably come to the conclusion they came to." (R. p. 539, lines 20-24). The trial judge's conclusion that "no evidence was presented that would give the jury a basis to make [the] decision" that a passenger was more at fault than a driver is completely unsupported by the evidence that was submitted in this case. (R. p. 539, lines 24-25).

The trial judge's holding ignores the evidence presented to the jury regarding Decedent's independent acts of negligence, including assuming the risk, and the evidence supporting imputing the Defendant's admitted recklessness to the Decedent under the joint enterprise doctrine. The trial judge denied Respondent's directed verdict motion on the issue of the Decedent's fault and assumption of the risk and noted, when discussing the verdict form, that "of course the jury can still find that the [decedent] was more than 50 – or 50 percent or more." (R. p. 393, lines 15 – 20; p. 394, lines 4-8. The trial judge also denied the Respondent's motion for a directed verdict on joint enterprise. By denying these motions, the trial court found that there was "material evidence tending to establish the issue in the mind of a reasonable juror". *See Hurd v. Williamsburg County*, 353 S.C. 596, 609, 579 S.E.2d 136, 143 (Ct. App. 2003), *aff'd* 363 S.C. 421, 611 S.E.2d 488 (2005). The jury was subsequently charged on comparative negligence (R. p. 461, line 3 – p. 463, line 11) and the law regarding joint enterprise and the requirements for imputing the negligence of a driver to an occupant of the vehicle. (R. p. 463,

line 12 – p. 465, line 2). As discussed more fully in Appellant’s brief, the evidence supporting the joint enterprise doctrine and assumption of the risk defenses, in addition to the judge’s charges on these issues, provided the jury with the basis to reasonably determine that Decedent’s overall negligence slightly exceeded Defendant’s. *See App. Brief pp. 12-18.*

In this case, the trial judge concluded that “no evidence was presented that would give the jury a basis to make [the] decision” that a passenger was more at fault than the driver in an accident. (R. p. 539, lines 20-25). The trial court failed to consider the Decedent’s cumulative negligence when examining the evidence as the thirteenth juror. The reasonable explanation for the verdict is that the jury found the joint enterprise doctrine applied, imputed the Defendant’s recklessness to the Decedent, and then added a separate allocation for the Decedent’s independent acts of negligence to reach a total percentage of negligence attributable to the Decedent that exceeded Defendant’s. *See Berberich v. Jack*, 392 S.C. 278 at 289, 709 S.E.2d 607 at 613 (2011) (stating that purpose of comparative negligence scheme is to allow jury to “evaluate overall culpability of each party”) (emphasis added). Since the trial court’s conclusion that no evidence was presented that provides a basis for the jury’s verdict is not supported by the record then the order granting the new trial should be reversed. *See Youmans ex rel. Elmore v. S.C. Dep’t of Transp.*, 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct. App. 2008) (reversing grant of new trial as thirteenth juror on grounds that trial court’s finding that there was no evidence to support jury’s finding regarding comparative negligence was not supported by the record).

B. The Trial Court’s Conclusion of “No Basis” to Support the Jury’s Decision was Controlled by Errors of Law

Additionally, the record also reveals that the trial court’s decision to grant a new trial based on the thirteenth juror doctrine was based on several errors of law. First, the trial court incorrectly concluded that a passenger’s negligence can never exceed the negligence of a driver. The trial judge stated at the post-trial motions hearing that he knew that a passenger could be

fifty percent comparatively negligent, but questioned whether a passenger could be fifty-one percent comparatively negligent. (R. p. 532, lines 22-23). He then found that a passenger could not be more negligent than a driver. Despite Respondent's attempts to limit this statement to the facts of this particular case, the trial judge did not make any qualifications and stated it as general proposition of law. There is no law in South Carolina that a passenger's negligence cannot exceed a driver's. In fact, South Carolina allows for the comparison of all forms and levels of negligence, including imputed and independent acts of negligence, in the comparative negligence analysis. *See Berberich v. Jack*, 392 S.C. 278, 709 S.E.2d 607 (2011) and App. Brief pp. 21-22.

Furthermore, the trial judge's statements and order also reveal his belief that the Defendant's admitted recklessness, "by definition a higher degree of culpability and responsibility than negligence" (Order, R., p.9), outweighed any negligence of the Decedent as a matter of law. However, South Carolina's comparative negligence system allows for the comparison of ordinary negligence to recklessness. *See Berberich v. Jack*, 392 S.C. 278, 709 S.E.2d 607 (2011) (involving plaintiff who was found to have been 75% negligent despite the defendant's admitted recklessness). Noting the "broad spectrum of conduct" to be considered by a jury to "evaluate the overall culpability of each party", the South Carolina Supreme Court has specifically rejected the argument that a jury should be instructed that "heightened degrees of wrongdoing should be accorded greater weight than ordinary negligence." *Id.*, 392 S.C. at 294, 709 S.E.2d at 616. Therefore, Defendant's admission of recklessness does not prevent a jury from finding the Decedent's negligence exceeded the Defendant's under South Carolina law.

"[A]ll forms of conduct amounting to negligence in any form" are to be compared under South Carolina's comparative negligence system. *Berberich*, 392 S.C. at 293, 709 S.E.2d at 615 (stating that purpose of comparative negligence scheme is to allow jury to "evaluate overall culpability of each party"). This determination necessarily includes an analysis of a party's

independent acts of negligence in addition to any negligence imputed to the party by the acts of another. In the instant matter, the jury was presented with evidence and law to reasonably impute all of Defendant's recklessness to Decedent under the joint enterprise doctrine. The jury was also presented with evidence and law to support an additional allocation for Decedent's own negligence, which explains the slightly greater percentage of negligence attributed to the Decedent. Therefore, the trial judge's holding that Defendant's recklessness cannot outweigh Decedent's negligence as a passenger is not in line with South Carolina law and does not account for the joint enterprise and assumption of the risk defenses that were presented and charged to the jury.

The fact that the trial judge's decision was controlled by an error of law is also revealed in his statements regarding the jury's deliberations. At the post-trial motions hearing in this case and immediately before granting a new trial, the trial judge speculated regarding the quality of the jury's deliberations, stating:

[A]s to the new trial based on the 13th juror, it seems to me as if, in addition to there being no reasonable basis for which the jury could come to that conclusion basically, the jurors seemingly—or I can't speculate what they decided, **but they didn't apply the law or were confused by the law or just didn't apply it** or just decided they they didn't want to be involved on the process. And they decided they were not going to—that despite the evidence they were going to do the jury nullification, of sorts.

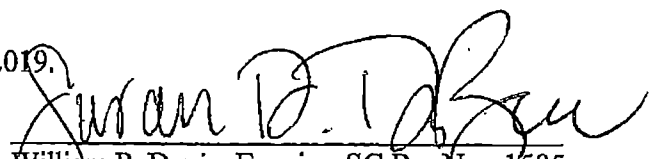
(R. p. 540, lines 3 – 13)(emphasis added). The record proves that there was a reasonable basis for the jury's verdict under South Carolina law. The jury in the instant matter was presented with evidence and instructed on law that fully supports their unanimous verdict and it should be reinstated. Additionally, granting a new trial due to suspicions regarding the quality of deliberations is improper. *See Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct. App. 2008) (holding it was improper for the trial court to use the

thirteenth juror doctrine to grant a new trial based upon the quality of jury deliberations and reversing order).

CONCLUSION

For the reasons set forth herein and in its Petition for Rehearing, Appellant respectfully requests that the Court of Appeals reconsider its opinion and reverse the trial court's grant of a new trial based on the thirteenth juror doctrine.

Respectfully submitted this 18th day of August, 2019.



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The South Carolina Court of Appeals

Ex parte: The Travelers Home and Marine Insurance
Company, Appellant,

In Re: William Gresham as Personal Representative of
the Estate of John Corey Stringfellow, Respondent,

v.

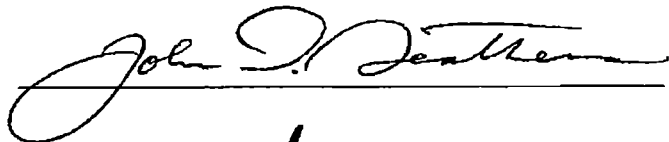
Cameron Thomas Stringfellow, Defendant.

Appellate Case No. 2017-001083

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

FILED

August 5, 2019

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