THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Op. No. 2018-UP-340 (S.C. Ct. App. filed July 25, 2018)
Appellate Case No. 2019-000535

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

v.

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

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

Respondent would re-state and consolidate the questions presented as follows:

I. Did the court of appeals correctly affirm the denial of a new trial and reject, just as the circuit court rejected, a claim that a juror intentionally concealed information during voir dire?

II. Does the record contain any evidence Mr. Blandin would not have been able to murder his wife if he had been arrested the day before the murder, as he should have been?

INTRODUCTION

Lilia Blandin was stabbed to death by her husband in December of 2011. The facts are haunting. Lilia called 9-1-1 and said Mr. Blandin punched her and threatened to kill her. The police came to the home but did not arrest Mr. Blandin. He murdered Lilia the next day.

This is precisely why South Carolina has a mandatory investigation statute for domestic violence. S.C. Code Ann. § 16-25-70(A). It is also precisely why that same statute says officers may be liable for gross negligence. § 16-25-70(I).

The key dispute at trial was credibility. The two Sheriff's deputies who refused to arrest Mr. Blandin denied knowing Mr. Blandin assaulted Lilia and threatened to kill her. Lilia's mother disputed this with her testimony and with other evidence. The jury resolved this dispute in the plaintiff's favor and issued a verdict accordingly.

On appeal, the disputes are different. First, the Sheriff claims his lawyer was denied accurate information during voir dire. Second, the Sheriff claims the verdict cannot stand because even though Mr. Blandin would probably have spent time in jail if he had been arrested, the Sheriff says Mr. Blandin still might have killed Lilia whenever he was released. The lower courts rejected these arguments. This Court should reject them too.

STATEMENT OF THE CASE

Lilia Blandin called 9-1-1 around 10:15 in the morning on December 9, 2011; the day before she was killed. (R.p.327, lines 13-15). Lilia explained her husband assaulted her the night before, that he threatened to kill her, that she fled her home and slept in her car, and that one of her children remained in the house. Her first words to the dispatcher were:

> Yes, I need some help because my husband has been arrested for domestic violence and he's out of jail and he – he's at my house now and he – I take my clothes. I tried to leave the house so I don't have to stay with him, and I tried to get my stuff from it, and he beat me on the stomach and told me he was going to kill me. Now my baby is on the second floor and I have to go get her, but I don't want to go inside because I know he's going to put me in that room and he's going to beat me up.

(R.p.843). Mr. Blandin had two prior arrests for CDV. (R.pp.606 & 882).

Two Sheriff's deputies responded to the Blandin home. They claimed Lilia denied being assaulted and that they did not know Mr. Blandin threatened to kill her. (R.p.393, lines 8-19; p.397, lines 4-8; p.456, line 12 - p.457, line 5). At trial, the deputies were questioned about the mandatory investigation statute and about a standing local "general order" covering criminal domestic violence investigations and arrests. (R.pp.869-877). The deputies claimed the general order did not apply because Lilia supposedly had not mentioned being assaulted or threatened. (R.p.430, line 16 - p.431, line 20; p.452, line 21 - p.453, line 6).

Madel Rivero is Lilia's mother. She directly disputed the deputies' version of events. Ms. Rivero witnessed part of Lilia's interaction with the deputies: she even asked one of them why nothing was happening to Mr. Blandin. (R.p.524, line 8 - p.525, line 12). Ms. Rivero insisted she and Lilia told the deputy Lilia had been assaulted. *Id.* She said the deputy responded by saying that was Lilia's "version" and that Lilia had no "evidence." *Id.*

It is not disputed that Mr. Blandin stabbed Lilia to death at her place of employment around 1:15 p.m. the following day; December 10, 2011. (R.p.126, ¶48).

Summary of proceedings prior to verdict

Ms. Rivero filed this lawsuit two years later, in December of 2013. (R.p.114). She brought a claim for wrongful death as well as a survival action. The complaint generally alleged the deputies failed to properly investigate Lilia's allegations and that the deputies were grossly negligent in failing to arrest Mr. Blandin. The complaint also alleged the deputies wrote false statements in the supplemental report of their investigation. (R.p.134, ¶84 - p.137, ¶92). They only wrote a report after Lilia had been murdered. (R.p.442).

The case was tried over 4 days in the Fall of 2015. (R.p.249). The jury found the Sheriff's deputies had been grossly negligent, awarded $750,000 on the survival action, and awarded $500,000 for wrongful death. (R.pp.1-2). The court ultimately reduced the awards to $300,000 each pursuant to the damages limit in the Tort Claims Act. (R.p.9).

Summary of post-trial motions and arguments

The Sheriff filed multiple post-trial motions in October of 2015, shortly after the jury's verdict. (R.pp.10-11) (listing seven motions). A month later, in November of 2015, the Sheriff filed an additional post-trial motion. (R.p.195).

This last motion for a new trial claimed two of the jurors had not given accurate responses during voir dire when the venire was asked whether anyone had been a victim of criminal domestic violence. See (R.p.35, lines 13-15). This argument came about after a member of the jury contacted the Sheriff's lawyer a few weeks after the verdict and claimed these jurors discussed domestic violence during the jury's deliberations. (R.pp.48-62).

Ms. Rivero opposed the admission of any testimony about deliberations as being barred by Rule 606, SCRE. (R.p.203). She also argued the evidence showed nobody on the jury had been a victim of criminal domestic violence. For example, the Sheriff's key piece of evidence was an incident report from June of 2015 involving the jury foreperson—Juror Burns. Ms. Rivero noted the report described that event as a "nonviolent" incident where Juror Burns' husband grabbed a phone out of her hand. (R.pp.82-83).

The circuit court conducted a hearing December 17, 2015. (R.p.213). The Sheriff abandoned the allegation of concealment as to one juror but expressed a desire to examine Juror Burns. (R.p.224, line 24 - p.225, line 7).

In addition to the arguments of counsel and the parties' filings, the court considered the transcript of voir dire, the sworn statement of the juror who contacted the Sheriff's lawyer, sworn statements from the officers who responded to the nonviolent incident involving Juror Burns, and the recording of Juror Burns' 9-1-1 call. (R.p.16).

Summary of the circuit court's post-trial rulings

The circuit court ultimately issued three formal orders denying the post-trial motions.

The first order dealt with voir dire and found the information presented to the court showed Juror Burns had not been a victim of criminal domestic violence. (R.p.6). The court favorably cited this Court's decision in *State v. Kelly* for the proposition that the voir dire question would not have elicited the information that was allegedly concealed. (R.p.7). The court also explained it had reviewed the materials submitted by the parties and that after careful consideration it did not believe an additional evidentiary hearing was needed. *Id.*

The circuit court's second post trial order dealt with the other post trial motions. (R.pp.9-15). The court found causation-in-fact based on testimony about the cycle of domestic violence and on testimony that Mr. Blandin would likely still have been in jail on December 10th and thus unable to murder his wife on that date if the deputies had arrested him the day before. (R.p.14).

The final post-trial order addressed issues not pertinent to the appeal. (R.p.112-113).

Summary of the appeal to the court of appeals

The Sheriff argued three issues to the court of appeals. In addition to the arguments about Juror Burns and that causation supposedly required proof Mr. Blandin would not simply have murdered his wife later if he had been arrested and gone to jail, the Sheriff argued the gross negligence standard did not apply. That issue has been abandoned here.

The court of appeals affirmed the circuit court in a unanimous, unpublished opinion. (App.pp.1-9). The court explained the voir dire question—whether anyone had been a victim of criminal domestic violence—was ambiguous because the word "criminal" could cause a juror to believe a prior domestic altercation had to at least result in an arrest. (App.p.4). On causation, the court echoed the circuit court's explanation that if Mr. Blandin had been in jail on December 10th he would not have been able to murder his wife. (App.p.6). The court also cited cases explaining causation is ordinarily a jury question. (App.pp.5 & 8).

STANDARD OF REVIEW

Ms. Rivero agrees questions of law are reviewed de novo, but this case does not ultimately involve questions of law. An appellate court applies the abuse of discretion standard to a circuit court's decision granting or denying a new trial based on an allegation

of juror misconduct. *State v. Kelly*, 331 S.C. 132, 141-142, 502 S.E.2d 99, 104 (1998). The circuit court has "broad discretion" to assess such allegations. *State v. Aldret*, 333 S.C. 307, 313, 509 S.E.2d 811, 814 (1999) (citing *Kelly*).

A deferential standard of review also applies to causation-in-fact. This is ordinarily a question of fact for the jury. *Hill v. York County Sheriff's Dep't*, 313 S.C. 303, 308, 437 S.E.2d 179, 181 (Ct. App. 1993). A circuit court "is required" to submit causation to the jury as long as more than one reasonable inference can be drawn from the evidence. *Graham v. Whitaker*, 282 S.C. 393, 398, 321 S.E.2d 40, 43 (1984). Here, and at the directed verdict stage, the evidence is viewed in the light most favorable to the plaintiff, Ms. Rivero. *Steinke v. S.C. Dep't of Labor, Lic. & Reg.*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999).

ARGUMENTS

As noted above, the circuit court and the court of appeals have rejected the Sheriff's arguments. This Court should reject them as well, for two main reasons.

First, asking whether anyone has been a victim of "criminal domestic violence" is not a good question if what the Sheriff's lawyer really wanted to know was whether anyone had ever gotten into an argument with their spouse and called the police. It was a poor question for seeking this sort of information and there is no showing of an abuse of discretion.

Second, there is ample evidence of causation. Causation requires a reasonable inference that Mr. Blandin would not have murdered Lilia on December 10th but-for the deputies' failure to arrest him. That is supported by common sense and by the record, as even the Sheriff's own expert agreed it was not likely Mr. Blandin would have been released by the next morning if he had been arrested. (R.p.779, line 5 - p.782, line 18).

It is difficult to follow the Sheriff's argument that the court of appeals reversed the circuit court. The judgment was affirmed, not reversed. It would not matter if the court of appeals employed slightly different analysis than the circuit court. Precedent explains a judgment will be affirmed as long as the result is right, even if the reasoning is wrong.

The argument that causation cannot be established without evidence that Mr. Balndin's arrest would have completely removed his motive and opportunity to murder Lilia is not even properly before the Court. The Sheriff's causation argument at the directed verdict stage was different. This argument on appeal did not appear until after trial.

I. The court of appeals correctly affirmed the denial of a new trial because Juror Burns did not intentionally conceal information during voir dire and there was no abuse of discretion.

The court of appeals correctly affirmed the circuit court's decision to deny a new trial. Juror Burns did not intentionally conceal information and the record does not show the circuit court abused its discretion. The Sheriff's arguments are either contradicted by the record or by precedent.

a. There was no intentional concealment. Asking about CDV is not the same as asking whether anyone has called the police after an argument.

Multiple cases describe the principles governing a motion for a new trial based on a juror's qualification to sit on a case.

The general test requires the moving party to show the fact of the juror's disqualification, that the grounds for disqualification were not known prior to the verdict, and that the moving party was not negligent in failing to discover the disqualification before the verdict. This general test appears in several cases including *Gray v. Bryant*, 298 S.C. 285,

288, 379 S.E.2d 894, 896 (1989) and *Thompson v. O'Rourke*, 288 S.C. 13, 14, 339 S.E.2d 505, 506 (1986). The circuit court cited both of these cases. (R.p.6).

This general test also explains the meaning of "disqualification." Disqualification does not mean the juror was disqualified as a matter of law. A new trial is required when the information would have supported a challenge for cause or would have been a material factor in the complaining party's use of peremptory strikes. Again, relevant authorities include *Gray* and *Thompson*. See *Gray*, 298 S.C. at 288, 379 S.E.2d at 896 (quoting *Thompson*).

A new trial motion based on voir dire is a specific application of the general "juror disqualification" test. In *State v. Woods*, this Court explained a new trial is required when a juror "intentionally" conceals information that would have supported a challenge for cause or been a material factor in the use of peremptory strikes. 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). *Woods* cited *Thompson* as authority for that rule.

Woods also defines "intentional concealment." It is predominantly an objective standard, because this Court said intentional concealment occurs when the voir dire question "is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." 345 S.C. at 588, 550 S.E.2d at 284. In other words, "intentional concealment" occurs when a voir dire question is reasonably straightforward and when the subject matter of the question is so significant that a juror's failure to respond does not make sense and is unreasonable.

The voir dire question at issue—"Is there anyone among you who has been a victim of criminal domestic violence?" (R.p.35)—is not a good question if what the sheriff really wanted to know was whether anyone in the venire had ever gotten into an argument with

their spouse and called the police. Criminal Domestic Violence is a legal term describing various statutory offenses. S.C. Code Ann. §§ 16-25-20(A)-(D) (giving the elements of CDV 1st through 3rd). The venire members were not given definitions or asked direct questions such as whether they ever felt threatened by a spouse or had been injured by a spouse.

This case is similar to *State v. Sparkman* and *Lynch v. Carolina Self Storage Centers*. Both of those cases dealt with voir dire questions that did not have straightforward application to the information that was allegedly concealed.

In *Sparkman*, members of the venire were asked whether they had been victims of a "serious crime." 358 S.C. 491, 494, 596 S.E.2d 375, 376 (2004). One of the jurors did not disclose that he had been assaulted 40 years earlier, explaining when asked that he did not even remember the event until after the deliberations began. *Id.* at 495, 596 S.E.2d at 376. This Court explained the term "serious crime" was ambiguous. *Id.* at 497, 596 S.E.2d at 377. The same can fairly be said of a question about criminal domestic violence. The venire was given no explanation about criminal domestic violence and what it involved.

Lynch turns on similar reasoning. There, the venire was asked whether anyone had a close social or personal relationship with any of the attorneys or had a business relationship with any of the law firms. 409 S.C. 146, 155, 760 S.E.2d 111, 116 (Ct. App. 2014). The claimed basis for a new trial was that one of the jurors did not disclose her ex-husband had been represented by another lawyer in one of the law firms. *Id.* The court of appeals did not doubt that this information would have been material in using peremptory strikes but explained "the responsibility ... falls on the attorneys to request precise voir dire questions that are reasonably comprehensible to the average juror." *Id.* at 156, 760 S.E.2d at 117.

The same thing can fairly be said of this question that specifically asked about *criminal* domestic violence. Asking about criminal domestic violence is simply not the same as asking whether anyone has gotten in an argument with their spouse and called the police.

b. The Sheriff's arguments are either contrary to the record or contrary to precedent.

First, the Sheriff claims, as he has repeatedly claimed, that the circuit court should have held an "evidentiary hearing."

The circuit court *had* an evidentiary hearing. The Form 4 order lists of all the materials the circuit court received and reviewed at that hearing. (R.p.16). These included the recording of Juror Burns' 9-1-1 call, the transcript of the 9-1-1 call, the police report, and sworn statements from the responding officers. The circuit court specifically mentioned it reviewed these things. (R.p.6). Then, the circuit court found this evidence demonstrated Juror Burns was not a victim of criminal domestic violence. *Id.* The circuit court explained it was respectfully denying the request to conduct a *further* evidentiary hearing because the court's review of these materials made a further hearing unnecessary. (R.p.7).

Circuit court judges have "broad discretion" in assessing this sort of new trial motion and the circuit court's decision on this sort of motion is reviewed for abuse of discretion. *Kelly*, 331 S.C. at 141-142, 502 S.E.2d at 104. The finding that Juror Burns was not a victim of criminal domestic violence is plainly supported by the record. The incident report describes the event as "nonviolent." (R.p.82). One officer noted Juror Burns did not seem threatened in any way and that there was no evidence of "any domestic violence." (R.p.101). The other officer said Juror Burns specifically denied any physical violence. (R.p.103).

Second, the Sheriff continues to insist that the circuit court should have called Juror Burns for questioning, but "intentional concealment" is principally an objective test. *Woods* describes the test by first referencing "the average juror." The circuit court certainly has the discretion to question a juror in this sort of situation, but the argument that the circuit court is required to examine the juror was specifically rejected in *Lynch*. 409 S.C. at 159 n.2, 760 S.E.2d at 119 n.2. Again, the Sheriff cannot demonstrate the circuit court abused its discretion by declining to haul Juror Burns into court after determining all the evidence revealed the incident to be minor and that further inquiry was unnecessary.

Third, the Sheriff claims the court of appeals has impermissibly "reversed" the circuit court because the circuit court found the voir dire question "clear and unambiguous" (R.p.6) and the court of appeals described the question as "ambiguous." (App.p.4).

Here again, Respondent does not understand this argument. The court of appeals affirmed the circuit court's judgment. It did not reverse. Appeals are taken from "orders" and "judgments," not from reasons given in orders. Rule 220(c), SCACR, explains a "judgment" may be affirmed on any ground appearing in the record. Precedent similarly explains that an appellate court is not bound by the reasoning below and that "a right decision on the wrong ground will be affirmed." *State v. Goodstein*, 278 S.C. 125, 128, 292 S.E.2d 791, 793 (1982) (quoting other precedents).

Also, there is no meaningful difference between the circuit court's analysis and the reasoning the court of appeals employed. The circuit court favorably cited *Kelly* for the proposition that the question to the venire would not have elicited the information the complaining party believed was intentionally concealed. (R.p.7). The court of appeals

basically found the same thing when it found the word "criminal" could cause a juror to believe a prior domestic incident had to at least result in an arrest. (App.p.4).

The question was straightforward in the sense that it directly referenced criminal domestic violence. It was also unclear, however, because prospective jurors were not given any explanation or definition of criminal domestic violence. It is also hard to see how there is any getting around the fact that the Sheriff should have requested a different question if the desired information was whether anyone in the venire had ever called the police on his or her spouse. Whether ambiguous or not, the question was not tailored to elicit this sort of information.

The Sheriff repeatedly says Ms. Rivero should have cross-appealed the circuit court's finding that the question was unambiguous. No authority supports this proposition. Ms. Rivero cannot cross-appeal from an order confirming a judgment in her favor. Only an aggrieved party can appeal. S.C. Code Ann. § 18-1-30; Rule 201(b), SCACR. It is difficult to understand how Ms. Rivero could have been aggrieved by the circuit court's ruling denying the Sheriff's motion for a new trial.

Ms. Rivero also does not disagree with the circuit court's basic reasoning. She would have no reason to appeal, even if she could appeal. As noted above, the question was a direct and straightforward reference to criminal domestic violence. That is manifestly different from asking whether anyone has called the police after an argument with his or her spouse.

Fourth, the Sheriff says it is not clear whether ambiguity in a voir dire question is a dispute of fact or of law. The sheriff relies on cases saying intentional concealment is "fact intensive." That language just means intentional concealment depends on the facts. It is

difficult to understand why determining whether a voir dire question is ambiguous would be different than determining whether a contract, a deed, a transcript, or a sentencing sheet are ambiguous. See (App.p.34) (citing cases). All of those are questions of law. It is hard to imagine what sort of "evidence" one would enter on the supposed "factual" question whether asking about criminal domestic violence is clear or ambiguous. The question is what it is.

To sum, the circuit court was affirmed, not reversed. There was no abuse of discretion. The courts below used the same basic analysis. The result is plainly correct. The voir dire question implied a crime occurred or that a prospective juror believe a crime had occurred. None of that applies here. (R.pp.101-103) (statements from responding officers). The juror's response was accurate. The courts below correctly denied a new trial.

II. The record contains ample evidence Mr. Blandin would not have been able to murder his wife if he had been arrested the day before the murder, as he should have been.

Causation only requires a reasonable inference that Mr. Blandin would not have murdered Lilia on December 10th but-for the deputies' failure to arrest him. Both the circuit court and the court of appeals properly found a jury question was presented here.

Section 16-25-70(A) of the South Carolina Code explains a law enforcement officer may arrest someone if the officer has probable cause to believe that person is committing or has freshly committed criminal domestic violence. It also says an officer "must complete an investigation ... even if [the officer] was not notified at the time the violation occurred." Other subsections set more guidelines for domestic violence investigations.

The statute concludes with subsection (I), which explains that in addition to the immunities provided in the Tort Claims Act, officers are not liable for actions taken under

the statute "unless the act, omission, or exercise of discretion constitutes gross negligence, recklessness, wilfulness, or wantonness."

The Sheriff claims that causation-in-fact, or "but-for" causation, and liability for committing gross negligence requires evidence that Mr. Blandin's arrest would have completely removed his motive and opportunity to murder Lilia. That argument is wrong, for at least two reasons.

First, the argument is not even properly before the Court. The Sheriff did not argue this at the directed verdict stage. There, the Sheriff argued Lilia's comparative negligence exceeded any negligence by the deputies and that Mr. Blandin's act of murdering Lilia was an intervening cause. Mr. Blandin taunted Lilia after the police failed to arrest him, sending threatening text messages, slashing her tires, and calling her workplace. The Sheriff pointed to these acts, emphasized Lilia had known about them, and characterized Mr. Blandin's act of killing Lilia as breaking the chain of causation between the deputies' gross negligence and Lilia's death. (R.p.678, line 14 - p.679, line 5 & p.800, line 10 - p.801, line 1).

There was no argument that Ms. Rivero needed to prove Mr. Blandin would have been incarcerated long enough to remove all of his motive and opportunity to kill his wife. The Sheriff specifically argued intervening cause and comparative fault. (R.p.800-801). Nothing more. It was not until the motion for jnov that the sheriff argued one could only speculate whether arresting Mr. Blandin would have prevented Lilia's murder. (R.p.173). This bars the Sheriff's argument from consideration "since only grounds raised in the directed verdict motion may properly be reasserted in [a] jnov motion." *In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001).

Second, the argument that causation cannot be established without some certainty Mr. Blandin would not simply have murdered Lilia later if he had been arrested is counter to general tort law, counter to the mandatory investigation statute's purpose, and counter to the provision recognizing liability for gross negligence.

A circuit court "is required" to submit causation to the jury as long as more than one reasonable inference can be drawn from the evidence. *Graham*, 282 S.C. at 398, 321 S.E.2d at 43. Thus, causation only requires a reasonable inference that Mr. Blandin would not have murdered Lilia if he had been arrested.

The circuit court found reasonable inferences of causation were supported by testimony about the escalating cycle of domestic violence, the evidence that Mr. Blandin became violent when he was intoxicated, and the likelihood that Mr. Blandin would have been in jail the morning he murdered Lilia. (R.p.14). The circuit court also noted, correctly, that causation does not have to be shown with exact certainty. *Id.* This follows the common sense notion that although nobody can know with certainty what would have happened, it is reasonable to think arresting Mr. Blandin would have led to a different outcome.

Many states have enacted mandatory investigation and arrest statutes precisely because of the historical tendency not to enforce domestic violence laws. Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, but Is It Enough?*, 1996 U. Ill. L. Rev. 533 (1996). Other states impose liability when an abuser injures a family member soon after a failure to arrest. *Washburn v. City of Fed. Way*, 310 P.3d 1275 (Wash. 2013); *Calloway v. Kinkelaar*, 659 N.E.2d 1322 (Ill. 1995). The cases that come out the other way do so because of harder facts, not because of a non-existent requirement that the

plaintiff prove an arrest would have prevented any chance at future injury. *Alexander v. Town of Vernon*, 923 A.2d 748 (Conn. 2007).

Precedent already rejects a species of this same argument. Consider *Coleman v. Shaw*, a drowning case where the defendant argued the plaintiff could not prove having a lifeguard on duty (as regulations required) would have prevented the death. *Coleman* noted requiring proof the drowning would not have occurred would amount to requiring evidence that was "impossible to obtain" due to the very negligence at issue—the failure to have a lifeguard on duty. 281 S.C. 107, 114, 314 S.E.2d 154, 158 (Ct. App. 1984).

Here as well, the Sheriff is trying to benefit from the deputies' failure to do what they were required to do and is proposing a successful plaintiff must produce evidence that is impossible to obtain. Nobody can *prove* what would have happened if the deputies had arrested Mr. Blandin. It was reasonable, however, for the jury to infer Lilia would probably not have been murdered on December 10th if her husband had been arrested and incarcerated the day before, as he should have been.

The Sheriff believes causation is controlled by a court of appeals opinion where the at-fault driver had a valid driver's license but was driving an uninsured vehicle and caused a wreck. See *Thomas v. S.C. Dep't of Highways & Pub. Transp.*, 320 S.C. 400, 465 S.E.2d 578 (Ct. App. 1995). The plaintiff in that case sued the highway department claiming gross negligence in failing to repossess the uninsured vehicle's plates and registration.

The court of appeals found no causation between that alleged negligence—failing to repossess the vehicle's license plate—and the wreck, explaining the at-fault driver *had* a valid driver's license and that there was no evidence he would not have been operating the

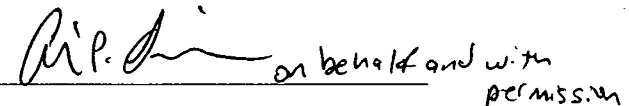
same uninsured vehicle or a different vehicle at the time of the wreck. *Id.* at 402, 465 S.E.2d at 580. That case actually hurts the Sheriff. The court of appeals analyzed causation *at the time of the wreck.*

The proper reading of *Thomas* is that even if the government had done all it could or should have done, those actions would not have changed the driver's ability to commit the act that caused the plaintiff's injury. Here, if the officers had done what the law required and arrested Mr. Blandin, there is a reasonable inference he would have been in jail on December 10th and would not have the ability to murder his wife. He was *already* on bond for a prior CDV arrest. The circuit court properly submitted this case to the jury. The jury did not have to enter a verdict in the plaintiff's favor, but it was reasonable for the jury to have done so.

CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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SEP 24 2019
S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Op. No. 2018-UP-340 (S.C. Ct. App. filed July 25, 2018)
Appellate Case No. 2019-000535

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

v.

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

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Petitioner with a copy of the *Brief of Respondent* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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