

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Kristi L. Harrington, Circuit Court Judge

CASE NO. 2015-CP-10-5379  
Appellate Tracking Number 2017-002317

RECEIVED  
MAY 22 2018  
SC Court of Appeals

William Sean Irvin, Jr., as Personal Representative of the Estate of  
Jonathan Edward Irvin, Deceased, .....Appellant,

v.

City of Folly Beach, South Carolina Department of Highways and Public Transportation,  
Daniel Wilcutt, and Mitchell Dewitt Rabon, Jr., *Defendants,*  
*of whom* Mitchell Dewitt Rabon, Jr., is *the* ..... Respondent.

RECORD ON APPEAL

May 17, 2018

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 - CP-10-5379

William Sean Irvin, et al.

City of Folly Beach, et al.

PLAINTIFF(S)

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

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

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: Defendant Mitchell Rabon Jr.'s Motion for Summary Judgment, filed 3/8/17, is granted. Defendant Rabon demonstrated that there is no genuine issue of material fact as to the claims against him.

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

FILED  
 2017 JUN -8 PM 12:18  
 JULIE J. ARTHUR  
 CLERK OF COURT

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

SCRCP Form 4C (12/2016)

2151

6/1/2017



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

FORM 4

JUDGMENT IN A CIVIL CASE

**FILED**

CASE NO. 2015 - CP-10-5379

William Sean Irvin, et al.

City of Folly Beach, et al.

PLAINTIFF(S)

2017 OCT 11 AM 9:05

DEFENDANT(S)

Submitted by:	JULIE ARMSTRONG CLERK OF COURT	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
		or <input type="checkbox"/> Self-Represented Litigant	

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

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

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: Plaintiff's Motion for Reconsideration of Order Granting Summary Judgment to Defendant Rabon is denied. Plaintiff's Motion does not raise grounds sufficient to warrant reconsideration of the Court's Order. Plaintiff further failed to serve the Court with a copy of the Motion pursuant to SCRPC 59(g).

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 WILLIAM SEAN IRVIN, JR., AS )  
 PERSONAL REPRESENTATIVE OF )  
 THE ESTATE OF JONATHAN )  
 EDWARD IRVIN, DECEASED, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF FOLLY BEACH; SOUTH )  
 CAROLINA DEPARTMENT OF )  
 HIGHWAYS AND PUBLIC )  
 TRANSPORTATION; DANIEL WILCUTT )  
 AND MITCHELL DEWITT RABON, JR. )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. ~~2016~~-CP-10-5379  
 2015

SECOND AMENDED  
 CONSENT SCHEDULING ORDER

FILED  
 2017 OCT -5 PM 3:03  
 JULIA J. ARTHUR  
 CLERK OF COURT

This matter comes before the Court upon the consent of all parties seeking an amended scheduling order pursuant to Rule 40, South Carolina Rules of Civil Procedure, as further time is needed to prepare this case for trial, including the depositions of the parties and other witnesses, and other discovery matters. Based upon the consent of the parties, as evidenced by the signatures of their attorneys below, the following amended schedule is established for the above captioned matter.

1. Plaintiff to identify all experts by March 1, 2018.
2. Defendants to identify all experts by April 1, 2018.
3. Discovery to be completed by July 1, 2018.
4. Mediation to be held by July 15, 2018.
5. Trial not before August 15, 2018.

AND IT IS SO ORDERED on this 2<sup>nd</sup> day Oct., 2017.

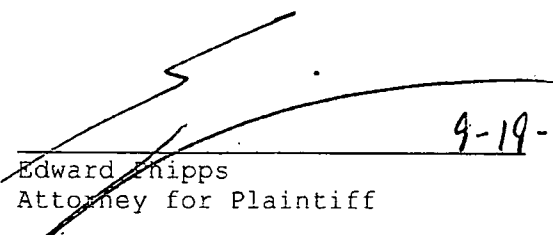
*Order will not be amended any further without a status conf. with the Chief Judge.*

*DL Jefferson*  
 DEADRA L. JEFFERSON  
 CHIEF ADMINISTRATIVE JUDGE

Irvin v. City of Folly Beach, et al.  
Case No.: 2016-CP-10-5379  
Second Amended Consent Scheduling Order

WE CONSENT:

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edward@phippfirm.com

  
Edward Phipps  
Attorney for Plaintiff

9-19-17

Irvin v. City of Folly Beach, et al.  
Case No.: 2016-CP-10-5379  
Second Amended Consent Scheduling Order

WE CONSENT:

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Charleston, SC 29422  
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(FAX) 843-766-8103  
[roy@maybanklaw.com](mailto:roy@maybanklaw.com)

*Roy P. Maybank*  
*By [Signature]*  
*With express permission*  
Roy P. Maybank  
Attorney for SC Dept. of  
Transportation

*30/6*  
*AKA*

Irvin v. City of Folly Beach, et al.  
Case No.: 2016-CP-10-5379  
Second Amended Consent Scheduling Order

WE CONSENT:

Young Clement Rivers, LLP  
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(FAX) 843-579-1335  
[tanderson@vcrlaw.com](mailto:tanderson@vcrlaw.com)

*Victoria L. Anderson*  
*By [Signature]*  
*with express permission*  
Victoria L. Anderson  
Attorneys for City of Folly Beach

*[Handwritten initials]*

Irvin v. City of Folly Beach, et al.  
Case No.: 2016-CP-10-5379  
Second Amended Consent Scheduling Order

WE CONSENT:

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(TEL) 843-576-2800  
(FAX) 843-577-3369  
[Dcobb@TurnerPadgett.com](mailto:Dcobb@TurnerPadgett.com)

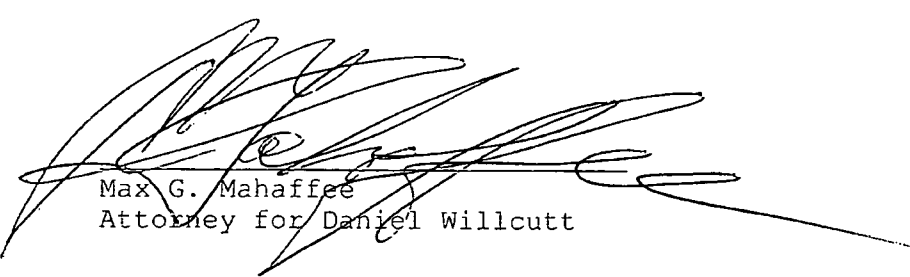
By David S. Cobb  
*[Handwritten signature]*  
With express permission

David S. Cobb  
Attorney for Mitchell Dewitt Rabon, Jr.

Irvin v. City of Folly Beach, et al.  
Case No.: 2016-CP-10-5379  
Second Amended Consent Scheduling Order

WE CONSENT:

Grimball & Cabaniss, LLC  
P.O. Box 816  
Charleston, SC 29402-0816  
(TEL) 843-722-0311  
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Max G. Mahaffee  
Attorney for Daniel Willcutt

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
WILLIAM SEAN IRVIN, JR., as Personal )  
Representative for the Estate of )  
JONATHAN EDWARD IRVIN, deceased. )

Plaintiff,

v.

CITY OF FOLLY BEACH, SOUTH )  
CAROLINA DEPARTMENT OF MOTOR )  
VEHICLES, DANIEL WILCUTT, and )  
MITCHELL DEWITT RABON, JR., )

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
C/A NO. 2015-CP-10-5319

SUMMONS

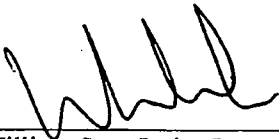
2015 OCT -6 PM 3:11  
JULIE J ARNSTRONG  
CLERK OF COURT

FILED

TO THE ABOVE NAMED DEFENDANTS:

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 said Complaint upon the subscriber, William Sean Irvin, Jr., 1230 Folly Road, Charleston, SC 29412, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

By:   
William Sean Irvin, Jr.  
1230 Folly Road  
Charleston, SC 29412  
Telephone: (843) 224-8274  
PLAINTIFF - PRO SE

Charleston, South Carolina  
Dated 10/06, 2015

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
WILLIAM SEAN IRVIN, JR., as Personal )  
Representative for the Estate of )  
JONATHAN EDWARD IRVIN, deceased. )  
Plaintiffs, )  
v. )  
CITY OF FOLLY BEACH, SOUTH )  
CAROLINA DEPARTMENT OF MOTOR )  
VEHICLES, DANIEL WILCUTT, and )  
MITCHELL DEWITT RABON, JR., )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
C/A NO. 2015-CP-10- 0379

COMPLAIN (Jury Trial Dep...)  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2015 OCT -6 PM 3:11  
FILED

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

- 1.) The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina, and is the duly appointed personal representative of the estate of Jonathan Edward Irvin, deceased.
- 2.) That upon information and belief, Defendants City of Folly Beach (hereinafter "Defendant Folly") and Defendant South Carolina Department of Transportation (hereinafter "Defendant SCDOT") are either a governmental entity, political subdivision, or agency in the State of South Carolina, liable for loss arising from negligence and/or gross negligence of their agents and employees, not otherwise exempt under the provisions of the South Carolina Tort Claims Act, Title 15-78-10, et. seq., Code of Laws of South Carolina (1976, as amended.).
- 3.) That upon information and belief, Defendant Daniel Wilcutt, (herein referred to as "Defendant Wilcutt") is a citizen and resident of Charleston County, South Carolina.

4.) That upon information and belief, Defendant Mitchell Dewitt Rabon, Jr., (herein referred to as "Defendant Rabon") is a citizen and resident of Charleston County, South Carolina.

5.) That the auto collision that is the subject of this action occurred in Charleston County, State of South Carolina.

6.) That this Court has jurisdiction over the parties and the subject matter of this action.

7.) That on or about October 5, 2013, at approximately 6:00 PM, Decedent Jonathan Edward Irvin (hereinafter "Decedent") was operating his motorcycle Westbound on East Cooper Avenue, approaching the intersection of East Second Street in the City of Folly Beach, South Carolina.

8.) That at or about the same time above, Defendant Wilcutt was operating his vehicle traveling Southbound on East Second Street approaching the intersection of East Cooper Avenue.

9.) That Defendant Wilcutt, while attempting to make a left turn from East Second Street onto East Cooper Avenue, failed to yield right-of-way to Decedent who was traveling Westbound on East Cooper Avenue. As a result, Decedent attempted to avoid the collision, lost control of his motorcycle, struck a portion of Defendant Wilcutt's vehicle and then struck the rear-end of Defendant Rabon's vehicle which was parked illegally in the right-of-way on the right shoulder.

10.) That at the intersection of East Second Street and East Cooper Avenue, the Stop Sign which governed Defendant Wilcutt's direction of travel was obscured by vegetation, which caused Defendant Wilcutt to drive into the intersection without stopping, whereupon, Defendant

Wilcutt's vehicle crossed the path of the Decedent resulting in the chain of events laid out above on October 5, 2013, which collision caused Decedent's violent and painful death.

11.) That at the intersection of East Second Street and East Cooper Avenue, the rights-of-way adjacent to the intersection which affected Defendant Wilcutt's visibility in his direction of travel was obscured by vegetation, which caused Defendant Wilcutt to drive into the intersection without seeing Decedent traveling Westbound on East Cooper Avenue, whereupon, Defendant Wilcutt's vehicle crossed the path of the Decedent resulting in the chain of events laid out above on October 5, 2013, which collision caused Decedent's violent and painful death.

12.) That at the intersection of East Second Street and East Cooper Avenue, there existed in the rights-of-way adjacent to the intersection, an absence, condition, or malfunction of a sign, signal, warning device, illumination device, guardrail, or median barrier which was not corrected by Defendants Folly and/or SCDOT, whom are responsible for its maintenance, within a reasonable time after actual or constructive notice, which allowed Defendant Rabon to park illegally in the right-of-way, whereupon, the resulting collision of the above-laid events on October 5, 2013 caused Decedent's violent and painful death.

13.) The aforesaid collision and the resulting death and damages to decedent Jonathan Edward Irvin were directly and proximately caused by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of Defendant Wilcutt in the following particulars:

- a. In failing to keep a proper lookout while operating the vehicle;
- b. In failing to maintain control of the vehicle;
- c. In failing to use due care;
- d. In failing to properly observe the road and traffic conditions;
- e. In failing to obey traffic laws and/or signs;

- f. In failing to properly maintain the vehicle;
- g. In failing to apply brakes or use the steering mechanism to avoid the collision;
- h. In operating the vehicle without using due care and without regard for safety and rights of Decedent;
- i. In operating the vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- j. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- k. In negligently and carelessly operating the vehicle in such a manner to cause the vehicle to have a collision.
- l. In any other such manner that Plaintiff may become aware of through discovery and/or at trial;
- m. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and

14.) That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendant Wilcutt, as is set forth more fully above, Decedent Jonathan Edward Irvin lost control of his motorcycle, was hit, knocked, slammed and forced from the roadway and he and his motorcycle impacted with Defendant Rabon's parked vehicle, causing death to Decedent Jonathan Edward Irvin.

15.) The aforesaid collision and the resulting death and damages to decedent Jonathan Edward Irvin were directly and proximately caused by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of Defendant Rabon in the following particulars:

- a. In failing to use due care;
- b. In failing to properly observe the road and traffic conditions;

- c. In failing to obey traffic laws and/or signs;
- d. In operating the vehicle without using due care and without regard for safety and rights of Decedent;
- e. In operating the vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- f. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- g. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.
- h. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and

16.) That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendant Rabon, as is set forth more fully above, Decedent Jonathan Edward Irvin impacted with Defendant Rabon's parked vehicle, causing death to Decedent Jonathan Edward Irvin.

17.) That Defendants City of Folly Beach and SCDOT were individually, jointly, and/or concurrently careless, willful, wanton, negligent, reckless, and grossly negligent at the time and place above-mentioned in any one or more of the following particulars:

- a. in failing to inspect the right-of-way and the area around the stop sign to insure that the stop sign would not be obstructed by vegetation;
- b. in failing to inspect and maintain the rights-of-way adjacent to the intersection to insure that motorists visibility would not be obstructed;
- c. in failing to maintain the right-of-way free of vegetation so that the operator of a vehicle traveling Southbound on East Second Street would have a reasonable opportunity to see the stop sign before entering the intersection;
- d. in failing to maintain the rights-of-way adjacent to the intersection free of vegetation so that the operator of a vehicle traveling Southbound on East

Second Street would have a reasonable opportunity to see a motorist travelling Westbound on East Cooper Avenue;

- e. in failing to place and maintain the stop sign in accordance with S.C. Department of Transportation Manual and Specifications for placing and maintaining traffic control signs;
- f. in failing to place and maintain a sign, signal, warning device, illumination device, guardrail, or median barrier in accordance with S.C. Department of Transportation Manual and Specifications for placing and maintaining traffic control signs, signals and/or warning devices;
- g. In any other such manner that Plaintiff may become aware of through discovery and/or at trial;
- h. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and

Any one of which was a direct or contributing proximate cause of the injuries and damages suffered by the Decedent herein, said acts being in violation of the laws and statutes of the State of South Carolina in such cases as made and provided.

18.) That as a direct and proximate result of the aforesaid acts of the Defendants Folly and SCDOT, either individually, jointly, or concurrently, the Decedent suffered great bodily harm and death, and the Decedent suffered loss of personal property and damage to his motorcycle.

#### SECOND CLAIM FOR RELIEF

(Wrongful Death of Jonathan Edward Irvin SC Code Ann § 15-51-10 and 15-78-170)

19.) Plaintiff incorporates all preceding paragraphs as fully set forth herein and further alleges as follows.

20.) Defendants knew or should have known that Decedent Jonathan Edward Irvin would suffer foreseeable injury, including death, as a result of the Defendants' failure to exercise ordinary care as described above.

21.) As a direct and proximate result of the Defendants' conduct, as aforesaid, Jonathan Edward Irvin lost his life and the beneficiaries under the Wrongful Death Act and the relevant portions of the State Tort Claims Act, for whom this action is brought, have experienced mental anguish, grief, suffering bereavement, loss of society, guidance and comfort. Funeral expenses were incurred and they have been otherwise seriously damaged in such amount as the jury may determine.

THIRD CLAIM FOR RELIEF

(Survival Action – Decedent Jonathan Edward Irvin, SC Code Ann § 15-5-90 and 15-78-170)

22.) Plaintiff incorporates all preceding paragraphs as fully set forth herein and further alleges as follows.

23.) As a consequence of the events set forth in this Complaint, and as a direct and proximate cause of the negligence of the Defendants as aforesaid, Jonathan Edward Irvin was caused to sustain great conscious pain and suffering prior to his death, which injuries are compensable under South Carolina Code of Laws, Section 15-5-90 and 15-78-170.

24. Decedent Jonathan Edward Irvin was painfully and seriously injured as a result of the negligence and/or gross negligence of the Defendants, for which a claim is hereby made by his estate and administrators for full and complete compensation for his conscious pain and suffering.

WHEREFORE, the Plaintiff is entitled to judgment against the Defendants individually, jointly, or concurrently, for such settlement as is actionable for damages as the trier of fact may find, together with the cost and disbursements of this action, and for such other and further relief as the Court may deem just, equitable, and proper.

[signature on following page]

Respectfully Submitted,



By: \_\_\_\_\_

William Sean Irvin, Jr.  
1230 Folly Road  
Charleston, SC 29412  
Telephone: (843) 224-8274  
PLAINTIFF – PRO SE

Charleston, South Carolina  
Dated 10/6, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
Case No. 2015-CP-10-5379

William Sean Irvin, Jr., as Personal )  
Representative of the estate of )  
Jonathan Edward Irvin, deceased, )

Vs. )

City of Folly Beach, South Carolina )  
Department of Highways and Public )  
Transportation, Daniel Wilcutt, and )  
Mitchell Dewitt Rabon, Jr. )

Defendants. )

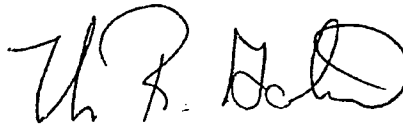
SUMMONS  
(Negligence—Jury Trial Demanded)

FILED  
2016 FEB -2 PM 4:09  
JULIE J. ANDERSON  
CLERK, CP COURT  
BY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.



February 2, 2016

Thomas R. Goldstein, #2186  
BELK, COBB, INFINGER & GOLDSTEIN, P.A.  
Post Office Box 71121  
Charleston, South Carolina 29415-1121  
(843) 554-4291; (843) 554-5566 fax  
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
Case No. 2015-CP-10-5379

William Sean Irvin, Jr., as Personal )  
Representative of the estate of )  
Jonathan Edward Irvin, deceased, )

Vs. )

City of Folly Beach, South Carolina )  
Department of Highways and Public )  
Transportation, Daniel Wilcutt, and )  
Mitchell Dewitt Rabon, Jr. )

Defendants. )

AMENDED COMPLAINT  
(Negligence—Jury Trial Demanded)

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2016 FEB -2 PM 4:09

FILED

The plaintiff, complaining of the defendants, above-named, alleges as follows:

1. The plaintiff is a citizen and resident of the County of Charleston, State of South Carolina, and is the duly appointed personal representative of the estate of Jonathan Edward Irvin, deceased at Case No. 2013-ES-10-01574.

2. The defendant City of Folly Beach is a municipality organized and existing pursuant to the laws of the State of South Carolina, located wholly within Charleston County. The defendant South Carolina Department of Highways and Public Transportation is a governmental agency of the State of South Carolina, and which is charged with the construction and maintenance of public roadways within the state road system.

3. The defendant, Daniel Wilcutt is a citizen and resident of Charleston County, South Carolina.

4. The defendant, Mitchell Dewitt Rabon, Jr., is a citizen and resident of Charleston County South Carolina.

5. The automobile collision that is the subject to this action occurred in Charleston County, State of South Carolina.

6. This Court has jurisdiction over the subject matter and the parties to this action.

7. On or about October 5, 2013, at approximately 6:00 p.m., the decedent, Jonathan Edward Irvin was operating his motorcycle Westbound on East Cooper Avenue, approaching the intersection of East Second Street in the City of Folly Beach, South Carolina.

8. As the decedent, Johnathan Edward Irvin, approached the intersection of East Cooper Avenue and East Second Street, the defendant, Wilcutt, was operating his vehicle traveling Southbound on East Second Street, approaching the intersection of East Cooper Avenue and East Second Street.

9. The defendant, Wilcutt, attempted to make a left turn from East Second Street onto East Cooper Avenue, failed to yield the right-of-way to the Decedent, Irvin, who was traveling in a westerly direction along East Cooper Avenue, which is the favored roadway, the intersection being controlled by traffic control devices requiring vehicles on East Second Street to stop and yield to vehicles on East Cooper. The defendant Wilcutt attempted to make a left hand turn onto East Cooper, failed to obey the stop sign and pulled into the path of the decedent, Irvin. The Decedent, Irvin, attempted to avoid the collision, struck the defendant's, Wilcutt's, vehicle, lost control of the motorcycle, and then struck the rear-end of the defendant, Rabon's, vehicle which was parked illegally in the right-of-way on the right shoulder of East Cooper Avenue.

10. That at the intersection of East Second Street and East Cooper Avenue, the Stop Sign, which controlled the movement of the defendant's, Wilcutt's direction of travel was obscured by vegetation, which caused the defendant, Wilcutt, to drive into the intersection without stopping, whereupon, the defendant, Wilcutt's, vehicle crossed the path of the Decedent, resulting in the chain of events laid out above on October 5, 2013, which collision caused the Decedent's violent and painful death.

11. That at the intersection of East Second Street and East Cooper Avenue, the right-of-way adjacent to the intersection which affected Defendant's, Wilcutt's, visibility in his direction of travel was obscured by vegetation, which caused the defendant, Wilcutt, to drive into the intersection without seeing Decedent traveling Westbound on East Cooper Avenue, whereupon, Defendant's, Wilcutt's, vehicle crossed the path of the Decedent resulting in the chain of events set forth above on October 5, 2013, which collision caused the Decedent's violent and painful death.

12. That at the intersection of East Second Street and East Cooper Avenue, there existed in the rights-of-way adjacent to the intersection, an absence, condition, or malfunction of a sign, signal, warning device, illumination device, guardrail, or median barrier which was not corrected b Defendants, Folly Beach and/or the South Carolina Department of Highways and

Public Transportation, which are responsible for its maintenance, within a reasonable time after actual or constructive notice, which allowed the Defendant, Rabon, to park illegally in the right-of-way, whereupon the resulting collision of the above-described events on October 5, 2013, caused Decedent's violent and painful death.

13. The aforesaid collision and the resulting death and damages to decedent Jonathan Edward Iryin, including pain and suffering in the period of time between the infliction of Decedent's grievous injuries and his death, were directly and proximately caused by one or more of the following negligent, grossly negligent, careless reckless, willful, and wanton and unlawful acts, and/or omissions of the Defendant, Wilcutt, in the following particulars:

- a. In failing to keep a proper lookout while operating a motor vehicle;
- b. In failing to maintain proper control of his vehicle;
- c. In failing to use due care;
- d. In failing to observe the road and traffic conditions;
- e. In failing to obey traffic laws and/or signs;
- f. In failing to maintain properly the vehicle;
- g. In failing to apply brakes or use the steering mechanism to avoid the collision;
- h. In operating the vehicle without using due care and without regard for safety and rights of Decedent;
- i. In operating the vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- j. In failing to exercise the degree of care and caution that reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- k. In negligently and carelessly operating the vehicle in such a manner to cause the vehicle to have a collision;
- l. In attempting to make a left turn across a favored roadway without ascertaining that the turn could be safely completed;
- m. In any other such manner that the plaintiff may become aware of through discovery and/or trial;
- n. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina.

14. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendant, Wilcutt, as is set forth more fully above, the Decedent, Jonathan Edward Irvin, lost control of his motorcycle, hit the defendant's vehicle, lost control of his motorcycle and forced from the roadway, impacting the Defendant's, Rabon's, illegally parked vehicle, causing excruciating pain and suffering prior to his ultimate death.

15. The aforesaid collision and the resulting death and damages to decedent Jonathan Edward Irvin, both in his short and painful survival and ultimate wrongful death, were directly and proximately caused by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendant, Rabon, in the following particulars:

- a. In failing to use due care;
- b. In failing to observe properly the road and traffic conditions;
- c. In failing to obey traffic laws and/or signs;
- d. In operating the vehicle without using due care and without regard for safety and rights of Decedent;
- e. In operating the vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- f. In failing to exercise the degree of care and caution that reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- g. In any other such manner that Plaintiff may become aware of through discovery and/or at trial; and
- h. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and

16. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendant Rabon, as is set forth more fully above, Decedent Jonathan Edward Irvin impacted with Defendant Rabon's parked vehicle, causing death to Decedent Jonathan Edward Irvin.

17. That Defendants City of Folly Beach and SCDOT were individually, jointly, and/or concurrently careless, willful, wanton, negligent, reckless, and grossly negligent at the time and place above-mentioned in any one or more of the following particulars:

- a. In failing to inspect the right-of-way and the area around the stop sign to insure that the stop sign would not be obstructed by vegetation;
- b. In failing to inspect and maintain the rights-of-way adjacent to the intersection to insure that motorists' visibility would not be obstructed;
- c. In failing to maintain the right-of-way free of vegetation so that the operator of a vehicle traveling Southbound on East Second Street would have a reasonable opportunity to see the stop sign before entering the intersection;
- d. In failing to maintain the rights-of-way adjacent to the intersection free of vegetation so that the operator of a vehicle traveling Southbound on East Second Street would have a reasonable opportunity to see a motorist travelling Westbound on East Cooper Avenue;
- e. In failing to place and maintain the stop sign in accordance with S.C. Department of Transportation Manual and Specifications for placing and maintaining traffic control signs;
- f. In failing to place and maintain a sign, signal, warning device, illumination devise, guardrail, or median barrier in accordance with S.C. Department of Transportation Manual and Specifications for placing and maintaining traffic control signs, signals, and/or warning devices;
- g. In any other such manner that Plaintiff may become aware of through discovery and/or at trial;
- h. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and

Any one of which was a direct or contributing proximate cause of the injuries and damages suffered by the Decedent herein, said acts being in violation of the laws and statutes of the State of South Carolina in such cases as made and provided.

18. That as a direct and proximate result of the aforesaid acts of the Defendants Folly and SCDOT, either individually, jointly, or concurrently, the Decedent suffered great bodily harm, pain and suffering, and death, and the Decedent suffered loss of personal property and damage to his motorcycle.

#### SECOND CLAIM FOR RELIEF

(Wrongful Death of Jonathan Edward Irvin SC Code Ann §15-51-10 and 15-78-170)

19. Plaintiff incorporates all preceding paragraphs as fully set forth herein and further alleges as follows.

20. Defendants knew or should have known that Decedent Jonathan Edward Irvin would suffer foreseeable injury, including death, as a result of the Defendants' failure to exercise ordinary care as described above.

21. As a direct and proximate result of the Defendants' conduct, as aforesaid, Jonathan Edward Irvin suffered pain and suffering and ultimately lost his life, and the beneficiaries under the Wrongful Death Act and the relevant portions of the State Tort Claims Act, for whom this action is brought, have experienced mental anguish, grief, suffering bereavement, loss of society, guidance and comfort. Funeral expenses were incurred and they have been otherwise seriously damaged in such amounts as the jury may determine.

### THIRD CLAIM FOR RELIEF

(Survival Action Decedent Jonathan Edward Irvin, SC Code Ann §15-5-90 and 15-78-170)

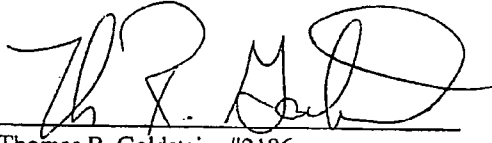
22. Plaintiff incorporates all preceding paragraphs as fully set forth herein and further alleges as follows.

23. As a consequence of the events set forth in this Complaint, and as a direct and proximate cause of the negligence of the Defendants as aforesaid, Jonathan Edward Irvin was caused to sustain great conscious pain and suffering prior to his death, which injuries are compensable under South Carolina Code of Laws, Section 15-5-90 and 15-78-170.

24. Decedent Jonathan Edward Irvin was painfully and seriously injured as a result of the negligence and/or gross negligence of the Defendants, for which a claim is hereby made by his estate and administrators for full and complete compensation for his conscious pain and suffering.

WHEREFORE, the Plaintiff is entitled to judgment against the Defendants individually, jointly, or concurrently, for such settlement as is actionable for damages as the trier of fact may find, together with the cost and disbursement of this action, and for such other and further relief as the Court may deem just, equitable, and proper.


Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T.R. Goldstein', written over a horizontal line.

February 2, 2016

Thomas R. Goldstein, #2186  
BELK, COBB, INFINGER & GOLDSTEIN, P.A.  
Post Office Box 71121  
Charleston, South Carolina 29415-1121  
(843) 554-4291; (843) 554-5566 fax  
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Docket No.: 2015-CP-10-5379
	)	
WILLIAM SEAN IRVIN, JR., AS	)	
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF JONATHAN	)	
EDWARD IRVIN, DECEASED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANT MITCHELL DEWITT
CITY OF FOLLY BEACH, SOUTH	)	RABON, JR.'S ANSWER
CAROLINA DEPARTMENT OF	)	(Jury Trial Demanded)
HIGHWAYS AND PUBLIC	)	
TRANSPORTATION, DANIEL	)	
WILCUTT, AND MITCHELL DEWITT	)	
RABON, JR.,	)	
	)	
Defendants.	)	
	)	

FILED  
 2016 FEB 18 PM 3:12  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 by 

Defendant Mitchell Dewitt Rabon, Jr. ("Defendant") answers and respectfully shows unto the Court:

**FOR A FIRST DEFENSE**

1. Except as specifically admitted, qualified, or explained, Defendant denies the allegations and demands strict proof of each allegation.
2. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations of Paragraphs 1-3.
3. Defendant admits the allegations of Paragraph 4.
4. Defendant admits only so much of the allegations of Paragraphs 5-24 as allege an automobile accident occurred on October 5, 2013 during the daylight hours when Jonathan Edward Irvin struck the rear of Defendant Rabon's parked vehicle. Defendant denies the remaining allegations at this time and demands strict proof of each allegation.

**AS AN ADDITIONAL DEFENSE**  
**(Comparative Negligence)**

5. FURTHER ANSWERING, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Because Plaintiff's negligence or willfulness may be greater than the alleged negligence or willfulness of one or more adverse parties, Plaintiff may be barred from recovery.

**AS AN ADDITIONAL DEFENSE**  
**(Comparative Negligence)**

6. FURTHER ANSWERING, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

**AS AN ADDITIONAL DEFENSE**  
**(Statutory Defense)**

7. FURTHER ANSWERING, S.C. Code Ann. §15-38-15 applies to this lawsuit.

**AS AN ADDITIONAL DEFENSE**  
**(Reservation of Rights)**

8. FURTHER ANSWERING, Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery about the allegations of this lawsuit. Defendant gives notice of the intent to assert any further affirmative defenses that any investigation supports, including, but not limited to, defenses that the action is barred in whole or in part by any applicable

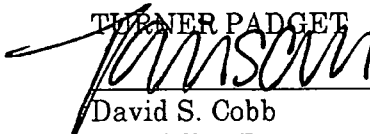
statute, contract, release, covenant, or the doctrine of laches. Thus, Defendant reserves the right to amend this pleading to assert any such defenses.

**AS AN ADDITIONAL DEFENSE**  
**(Punitive Damages)**

9. FURTHER ANSWERING, any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

TURNER PADGET



\_\_\_\_\_  
David S. Cobb  
Post Office Box 22129  
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Direct: 843-576-2803  
Fax: 843-577-1629  
[dcobb@turnerpadget.com](mailto:dcobb@turnerpadget.com)

Charleston, South Carolina

February 17, 2016

ATTORNEYS FOR DEFENDANT  
MITCHELL DEWITT RABON, JR.

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

Docket No.: 2015-CP-10-5379

WILLIAM SEAN IRVIN, JR., AS )  
PERSONAL REPRESENTATIVE OF )  
THE ESTATE OF JONATHAN )  
EDWARD IRVIN, DECEASED, )

Plaintiff, )

v. )

CERTIFICATE OF SERVICE

CITY OF FOLLY BEACH, SOUTH )  
CAROLINA DEPARTMENT OF )  
HIGHWAYS AND PUBLIC )  
TRANSPORTATION, DANIEL )  
WILCUTT, AND MITCHELL DEWITT )  
RABON, JR., )

Defendants. )

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2016 FEB 18 PM 3:12  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

On February 17, 2016, I mailed a copy of Defendant Mitchell Dewitt Rabon, Jr.'s Answer and discovery requests to:

Thomas R. Goldstein  
Post Office Box 71121  
Charleston, South Carolina 29415  
Attorney for Plaintiff

  
Heather Hagen

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. ~~2016-CP-10-800~~

2015-CP-10-5379

WILLIAM SEAN IRVIN, JR., AS )  
PERSONAL REPRESENTATIVE OF )  
THE ESTATE OF JONATHAN )  
EDWARD IRVIN, DECEASED, )

Plaintiff, )

v. )

CITY OF FOLLY BEACH; SOUTH )  
CAROLINA DEPARTMENT OF )  
HIGHWAYS AND PUBLIC )  
TRANSPORTATION; DANIEL WILCOTT )  
AND MITCHELL DEWITT RABON, JR. )

Defendants. )

ANSWER OF DEFENDANT RABON TO  
PLAINTIFF'S AMENDED COMPLAINT  
(JURY TRIAL DEMANDED)

2016 MAY -4 PM 1:40  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY S

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TO THE PLAINTIFF AND HIS ATTORNEY THOMAS R. GOLDSTEIN:

The Defendant Mitchell Dewitt Rabon, Jr. ("this Defendant"), by and through the undersigned attorney, timely answers, moves and otherwise pleads to the Plaintiff's Amended Complaint as follows:

**FOR A FIRST DEFENSE**

1. The Defendant Mitchell Dewitt Rabon, Jr. ("this Defendant") lacks knowledge and information sufficient to form a belief and thus denies paragraphs 1, 2, 3, 8, 10, 11, 12, 13, 14, 17, and 18, which puts the Plaintiff to the required burden of proof.

2. This Defendant admits the allegations in paragraphs 4, 5 and 7 as to his citizenship and residency being in Charleston County, SC; that there was an accident in Charleston County; and

that an accident occurred on October 5, 2013 on or near the time and place alleged involving the decedent who was operating a motorcycle.

3. As to paragraph 6, it alleges matters of law rather than of fact and thus no response is needed or necessary; however, to the extent that a response is indeed needed or necessary, it is denied, and the Plaintiff is put to the required burden of proof.

4. As to paragraph 9, this Defendant denies any allegation that he did anything negligent which caused or contributed to the accident and any injuries or damages to the decedent and/or the Plaintiff; however, to the remainder of that paragraph, this Defendant lacks knowledge and information sufficient to form a belief and thus denies those allegations, putting the Plaintiff to his required burden of proof.

5. This Defendant denies paragraphs 15, 16, 20, 21, 23 and 24 thus putting the Plaintiff to his required burden of proof as to those allegations.

6. As paragraphs 19 and 22 attempt to repeat and reallege matters to which a response has been, or will be, made or given, no response is needed and/or necessary; however, to the extent that a response is needed and/or necessary, those paragraphs are denied, putting the Plaintiff to his required burden of proof.

7. This Defendant denies each and every allegation of the Plaintiff's Complaint not specifically and expressly admitted

above.

**FOR A SECOND DEFENSE**

8. This Defendant would allege and assert S.C. Code Ann. §15-38-15 as being applicable to this litigation.

**FOR A THIRD DEFENSE**

9. Whatever injuries and damages, were suffered by the Plaintiff and the Plaintiff's decedent, were due to, caused by and were the direct and proximate result of the negligence, recklessness, willfulness and wantonness of the Plaintiff's decedent which exceeded 50% and thus the Plaintiff cannot recover for any claimed injuries and damages, or in the alternative, if the Plaintiff decedent's negligence, recklessness, willfulness and wantonness does not exceed 50%, then the Plaintiff can receive only a pro-rata share for any injuries and damages, being reduced to the extent of his negligence, all of which is pursuant to the doctrine of comparative negligence in South Carolina, aAll of which were the direct and proximate cause of the accident and of whatever injuries and damages, were sustained by the Plaintiff through Plaintiff's decedent or otherwise.

**FOR A FOURTH DEFENSE**

10. Any award of punitive damages would violate constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South

Carolina Constitution because, among other reasons, the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages which may have been suffered or which could be awarded.

WHEREFORE, having fully responded to the Plaintiff's Amended Complaint, this Defendant prays that the same be dismissed and for such other and further relief as this court deems just and proper in favor of this Defendant, including the assessment of attorney's fees and costs pursuant to S.C. Code Ann. §§15-36-10, et seq, commonly referred to as the S. C. Frivolous Civil Proceedings Sanctions Act.

GRIMBALL & CABANISS, L.L.C.

BY: 

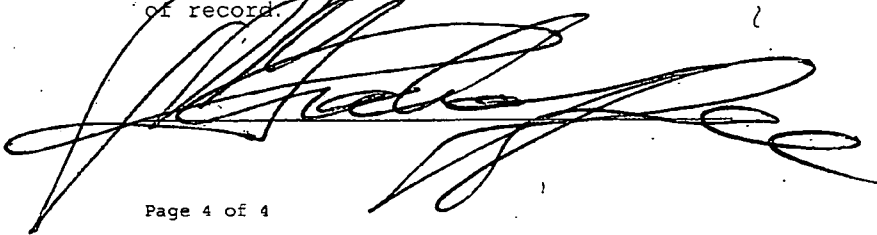
MAX G. MAHAFFEE  
ATTORNEYS FOR THE DEFENDANT  
MITCHELL DEWITT RABON, JR.  
P. O. BOX 816  
CHARLESTON, SC 29402-0816  
Tel: (843) 722-0311  
Fax: (843) 722-1374

Charleston, South Carolina

May 2, 2016

CERTIFICATE OF SERVICE

I certify that on May 2, 2016  
I mailed or delivered a true copy of the  
foregoing pleading(s) to each counsel  
of record.

  
Page 4 of 4

2015-CP-10-5379

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 WILLIAM SEAN IRVIN, JR., AS )  
 PERSONAL REPRESENTATIVE OF )  
 THE ESTATE OF JONATHAN )  
 EDWARD IRVIN, DECEASED, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF FOLLY BEACH, SOUTH )  
 CAROLINA DEPARTMENT OF )  
 HIGHWAYS AND PUBLIC )  
 TRANSPORTATION, DANIEL )  
 WILCUTT, AND MITCHELL )  
 DEWITT RABON, JR., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

Docket No.: 2015-CP-10-5379

2017 MAR -8 PM 12:06  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

FILED

DEFENDANT MITCHELL DEWITT  
 RABON, JR.'S NOTICE OF MOTION  
 AND MOTION FOR SUMMARY  
 JUDGMENT

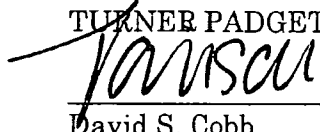
TO PLAINTIFF AND ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT, as soon as counsel may be heard, Defendant Mitchell Dewitt Rabon, Jr. ("Defendant") will move for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant moves because no genuine issue exists about any material fact and Defendant is entitled to summary judgment as a matter of law. Defendant so moves because his legally parked vehicle was struck by Jonathan Edward Irvin. Plaintiff (William Sean Irvin, Jr.) testified that the Rabon vehicle was parked "not on the paved surface" and was parked "off the road."

S.C. Code Ann. § 56-5-2530 allowed Defendant Rabon to parked his vehicle at that spot. That code section says a vehicle can be parked unless it is "within thirty feet upon the approach to any flashing signal, stop sign, yield sign, or traffic control signal located at the side of a roadway." (emphasis added). The testimony and the photographs of the scene clearly show that Rabon parked his vehicle some distance

past any nearby stop sign, and not "upon the approach" to any such stop sign.  
Thus, Defendant is entitled to summary judgment.

TURNER PADGET



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David S. Cobb  
Post Office Box 22129  
Charleston, South Carolina 29413-2129  
Direct: (843) 576-2803  
Fax: (843) 577-1629  
[dcobb@turnerpadget.com](mailto:dcobb@turnerpadget.com)  
ATTORNEYS FOR DEFENDANT  
MITCHELL DEWITT RABON, JR.

Charleston, South Carolina

March 7, 2017

State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways. 32 ALR4th 728.

**§ 56-5-2525. Towing company which tows motor vehicle without owner's knowledge to notify police department.**

Any towing company which tows away another's motor vehicle without the owner's knowledge and stores it shall immediately notify the police department of the municipal corporation where such vehicle was parked or the sheriff or county police department in counties having such departments if the vehicle was parked outside the limits of a municipal corporation of the location from which the vehicle was towed, the name of the company which towed it and the place where it is stored.

Any towing company failing to give such notice within one hour of the time the vehicle was towed away shall not be entitled to any compensation for the towing and storing operations. The provisions of this section shall be posted in a conspicuous place in all public areas on the premises of the towing company.

**HISTORY:** 1981 Act No. 73, § 1.

**§ 56-5-2530. Stopping, standing or parking prohibited in specified places; exceptions.**

(A) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

- (1) Stop, stand or park a vehicle:
  - (a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
  - (b) On a sidewalk.
  - (c) Within an intersection.
  - (d) On a crosswalk.
  - (e) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings.
  - (f) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic.
  - (g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel.
  - (h) On any railroad tracks.
  - (i) On any controlled-access highway.
  - (j) In the area between roadways of a divided highway, including crossovers.

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- (k) At any place where official traffic-control devices prohibit stopping.
- (2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge passengers:
- In front of a public or private driveway.
  - Within fifteen feet of a fire hydrant.
  - Within twenty feet of a crosswalk at an intersection.
  - Within thirty feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway.
  - Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite to any fire station within seventy-five feet of the entrance when properly signposted.
  - At any place where official traffic-control devices prohibit standing.
- (3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:
- Within fifty feet of the nearest rail of a railroad crossing.
  - At any place where official traffic-control devices prohibit parking.
- (B) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

**HISTORY:** 1962 Code § 46-483; 1952 Code § 46-483; 1949 (46) 466; 1979 Act No. 105 § 3.

**Research and Practice References—**

- 7A Am Jur 2d, Automobiles and Highway Traffic §§ 271 et seq.  
 8 Am Jur 2d, Automobiles and Highway Traffic §§ 895 et seq.  
 60A CJS, Motor Vehicles §§ 329 et seq.  
 61A CJS, Motor Vehicles § 714(1).  
 3 Am Jur Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 341-363, 431-434 (complaints or declarations in actions for damages in automobile accidents involving parked or disabled vehicles).  
 3A Am Jur Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 971-979 (specific allegations in complaints or declarations in actions for damages in automobile accidents involving parked, standing, or disabled vehicles).  
 26 Am Jur Proof of Facts 2d 575, Feasibility of Stopping or Parking Vehicle Off Roadway.

**Annotations—**

Parking illegally at or near street corner or intersection as affecting liability for motor vehicle accident. 4 ALR3d 324.

**Cross references—**

General duties and powers of Highways and Public Transportation, see §§ 57-3-610 to 57-3-730, 57-3-750, 57-3-760.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
  
Docket No.: 2015-CP-10-5379

WILLIAM SEAN IRVIN, JR., AS )  
PERSONAL REPRESENTATIVE OF )  
THE ESTATE OF JONATHAN )  
EDWARD IRVIN, DECEASED, )

Plaintiff, )

v. )

CITY OF FOLLY BEACH, SOUTH )  
CAROLINA DEPARTMENT OF )  
HIGHWAYS AND PUBLIC )  
TRANSPORTATION, DANIEL )  
WILCUTT, AND MITCHELL )  
DEWITT RABON, JR., )

Defendants. )

CERTIFICATE OF SERVICE

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2017 MAR -8 PM 12:06

FILED

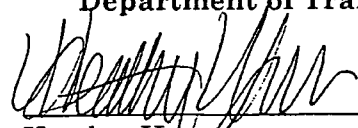
On March 7, 2017, I mailed a copy of Defendant Mitchell Dewitt Rabon, Jr.'s Notice of Motion and Motion for Summary Judgment to:

Thomas R. Goldstein  
Post Office Box 71121  
Charleston, South Carolina 29415-1121  
Attorneys for Plaintiffs

Max Mahaffee  
Post Office Box 816  
Charleston, South Carolina 29402  
Attorneys for Daniel Wilcutt

Duke Highfield  
Post Office Box 993  
Charleston, South Carolina 29402  
Attorneys for City of Folly Beach

Roy P. Maybank  
Post Office Box 12579  
Charleston, South Carolina 29422  
Attorney for South Carolina  
Department of Transportation

  
\_\_\_\_\_  
Heather Hagen

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. ~~2016 CP-10-800~~

2015-CP-10-5379

WILLIAM SEAN IRVIN, JR., AS )  
PERSONAL REPRESENTATIVE OF )  
THE ESTATE OF JONATHAN )  
EDWARD IRVIN, DECEASED, )

Plaintiff, )

v. )

CITY OF FOLLY BEACH; SOUTH )  
CAROLINA DEPARTMENT OF )  
HIGHWAYS AND PUBLIC )  
TRANSPORTATION; DANIEL WILCUTT )  
AND MITCHELL DEWITT RABON, JR. )

Defendants. )

**ANSWER OF DEFENDANT "WILCUTT"  
TO PLAINTIFF'S AMENDED  
COMPLAINT (JURY TRIAL DEMANDED)**

BY

CP

JULIE J. ARMSTRONG  
CLERK OF COURT

2016 MAY 16 PM 1:00

FILED

TO THE PLAINTIFF AND HIS ATTORNEY THOMAS R. GOLDSTEIN:

The Defendant Daniel Wilcutt, who is incorrectly named as his real name is Daniel Willcutt ("this Defendant"), by and through his undersigned attorney, timely answers, moves and otherwise pleads to the Plaintiff's Amended Complaint as follows:

**FOR A FIRST DEFENSE**

1. The Defendant Daniel Wilcutt, whose real name is Daniel Willcutt ("this Defendant"), lacks knowledge and information sufficient to form a belief and thus denies paragraphs 1, 4, 7, 8, and 12, which puts the Plaintiff Estate on behalf of the decedent to the required burden of proof.

2. This Defendant admits the allegations in paragraphs 2, and 5 as to his citizenship and residency being in Charleston

County, SC; that there was an accident in Charleston County; and that an accident occurred on October 5, 2013 on or near the time and place alleged involving the decedent who was negligently and recklessly operating a motorcycle.

3. As to paragraph 6, it alleges matters of law rather than of fact and thus no response is needed or necessary; however, to the extent that a response is indeed needed or necessary, it is denied, and the Plaintiff is put to the required burden of proof.

4. This Defendant denies paragraphs 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 23, & 24 including any allegation anywhere in the Amended Complaint that this Defendant did anything negligent which caused or contributed to the accident and any injuries or damages to the decedent and/or the Plaintiff, putting the Plaintiff to the required burden of proof.

5. As paragraphs 19 and 22 attempt to repeat and reallege matters to which a response has been, or will be, made or given, no response is needed and/or necessary; however, to the extent that a response is needed and/or necessary, those paragraphs are denied, putting the Plaintiff to his required burden of proof.

6. This Defendant denies each and every allegation of the Plaintiff's Complaint not specifically and expressly admitted above.

**FOR A SECOND DEFENSE**

7. This Defendant would allege and assert S.C. Code Ann.

§15-38-15 as being applicable to this litigation.

**FOR A THIRD DEFENSE**

8. Whatever injuries and damages, were suffered by the Plaintiff and the Plaintiff's decedent, were due to, caused by and were the direct and proximate result of the negligence, recklessness, willfulness and wantonness of the Plaintiff's decedent which exceeded 50% and thus the Plaintiff cannot recover for any claimed injuries and damages, or in the alternative, if the Plaintiff decedent's negligence, recklessness, willfulness and wantonness does not exceed 50%, then the Plaintiff can receive only a pro-rata share for any injuries and damages, being reduced to the extent of his negligence, all of which is pursuant to the doctrine of comparative negligence in South Carolina, and all of which were the direct and proximate cause of the accident and of whatever injuries and damages, were sustained by the Plaintiff through Plaintiff's decedent or otherwise including without limitation the following negligence, recklessness, wilfulness, intentional acts and wantonness in one or more of the following particulars:

- (a) In failing to have, and to keep, a proper lookout;
- (b) In failing to yield the right of way which this Defendant had established;
- (c) In failing to have his vehicle equipped with good and efficient brakes, lights and equipment, or if so equipped, in failing to use such brakes, lights and equipment properly and promptly;
- (d) In failing to take the last clear chance and opportunity to avoid the accident and any injuries

and damages;

- (e) In failing to turn aside or to use due care to avoid the collision;
- (f) In failing to warn or to signal;
- (g) In failing to have, and to keep, his vehicle under proper control;
- (h) In speeding and/or traveling too fast for conditions at such a high rate of speed upon a street or highway when the decedent knew or should have known that such actions would be dangerous to the Plaintiff and others like this Defendant who were lawfully operating their vehicles upon the road;
- (i) In being under the influence of alcohol and/or drugs;
- (j) In so acting or failing to act so as to assume the risk of all dangers attendant to such actions or inactions; and
- (k) In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there prevailing.

All of which were the direct and proximate cause of the accident and of whatever injuries and damages were sustained by the Plaintiff Estate and its decedent.

**FOR A FOURTH DEFENSE**

9. Any award of punitive damages would violate constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because, among other reasons, the determination of

punitive damages does not bear any reasonable relationship to the amount of actual damages which may have been suffered or which could be awarded.

**FOR A FIFTH DEFENSE**

10. The sole proximate or other cause of the accident was that of Plaintiff's decedent in one of the particulars set forth in the Third Defense above and such other actions or inactions of the decedent.

**FOR A SIXTH DEFENSE**

11. This Defendant lacks knowledge and information sufficient to form a belief as to the Estate being duly and timely established so as to bring and to sustain this action.

**FOR A SEVENTH DEFENSE**

12. This Defendant moves this Court pursuant to S.C. Code §15-36-10, et seq., commonly referred to as the South Carolina Frivolous Civil Proceedings Sanctions Act, once this Defendant has met the required burden of proof under that Act, allowing this Defendant to collect from the Plaintiff the attorney's fees and costs incurred, or to be incurred, by this Defendant, with an appropriate judgment being entered against the Plaintiff.

WHEREFORE, having fully responded to the Plaintiff's Amended Complaint, this Defendant prays that the same be dismissed and for such other and further relief as this court deems just and proper in favor of this Defendant, including the assessment of attorney's fees and costs pursuant to S.C. Code Ann. §§15-36-10, et seq.

commonly referred to as the S. C. Frivolous Civil Proceedings  
Sanctions Act.

GRIMBALL & CABANISS, L.L.C.

BY: 

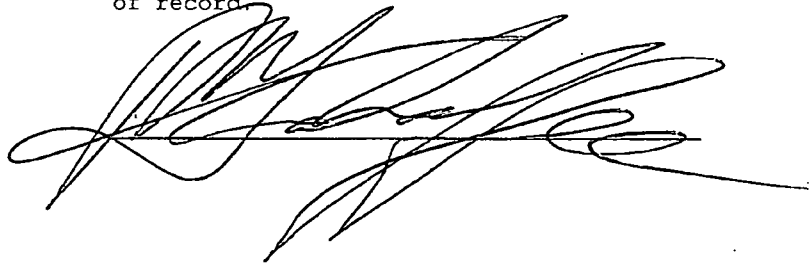
MAX G. MAHAFFEE  
ATTORNEYS FOR THE DEFENDANT  
DANIEL WILCUTT [WILLCUTT]  
P. O. BOX 816  
CHARLESTON, SC 29402-0816  
Tel: (843) 722-0311  
Fax: (843) 722-1374

Charleston, South Carolina

May 13, 2016

CERTIFICATE OF SERVICE

I certify that on May 13, 2016  
I mailed or delivered a true copy of the  
foregoing pleading(s) to each counsel  
of record.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )


IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 2015-CP-10-5379

William Sean Irvin, Jr., as Personal )  
Representative of the Estate of )  
Jonathan Edward Irvin, Deceased, )  
 )  
Plaintiff, )

vs )

**AFFIDAVIT OF WILL IRVIN**

City of Folly Beach, South Carolina )  
Department of Highways and Public )  
Transportation, Daniel Wilcutt, and )  
Mitchell Dewitt Rabon, Jr., )  
 )  
Defendants. )

  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2017 MAY 16 PM 1:01  
FILED

Personally appeared before me, Will Irvin, who being duly sworn, does depose and say:

I am the personal representative for the estate of my brother. The Charleston County Probate Court appointed me personal representative in place of my mother because pursuing this claim was too painful and distressing for her. As personal representative, I undertook an investigation into the cause of my brother's death on October 5, 2013.

On October 5<sup>th</sup> my brother was driving his Kawasaki motorcycle along East Cooper Avenue on Folly Beach, South Carolina. At approximately 6:00 p.m. he approached the intersection of East Cooper and Second Street. East Cooper Street is the favored roadway, and entry onto East Cooper from Second Street is controlled by stop signs. In other words, my brother had the right-of-way. As my brother approached the intersection, the defendant, Wilcutt, made a left turn from Second Street on to East Cooper and into my brother's path. My brother slammed on the brakes, swerved to try to avoid the Wilcutt vehicle, but struck it. After striking the Wilcutt vehicle, my brother (and his motorcycle) slid down East Cooper Street and struck a Honda Ridgeline parked on the shoulder of East Cooper in the same direction of travel as my brother. The impact of both vehicles caused my brother terrible injuries. While he was lying on the roadway, a Good Samaritan nearby rushed

to his side, and using her training in C.P.R., performed mouth-to-mouth resuscitation on my brother until E.M.S. arrived. As a result of her efforts, my brother was alive and semi-responsive at the time E.M.S. transported him. He died later in the hospital.

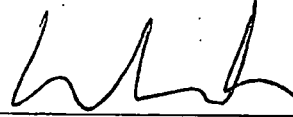
The defendant, Rabon, seeks to be dismissed from this case because he claims he was “legally parked.” However the physical evidence shows that his vehicle was not legally parked as he was too close to the intersection of East Cooper and Second Street. (At my deposition on February 17<sup>th</sup>, counsel asked me what the measurements were, and I told him I did not know. As a result I went out and measured, and now I have evidence of the actual distance.) Parking is permitted on the shoulder of East Cooper, but cars cannot be within twenty feet of a “crosswalk.” § 56-5-2530. Folly Beach has a parking ordinance that basically copies the state statute. § 72.01. Every intersection has a crosswalk, whether it is painted or not. § 56-5-500:

A “crosswalk” is:

- (1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on the opposite sides of the highway measured from the curbs or in the absent of curbs from the edges of the traversable roadway. (See attached crosswalk schematic and see attached dimensional drawing from Corner with added crosswalk.)

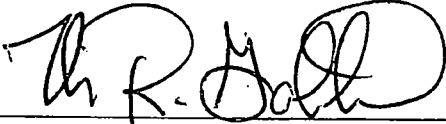
Even though we have not conducted discovery (the defendants’ depositions are scheduled for Friday, May 19<sup>th</sup>), apparently the defendant is claiming he was more than twenty (20) feet from the center of the intersection. This is not the right measurement. The correct measurement is from the crosswalk, and the reason for the rule is obvious. There is no question but that the defendant’s vehicle was too close to the intersection as measured from either the crosswalk or the “center point of the curve or corner of an intersection.” The drawing made by the investigating officer on the scene (attached here for the Court’s convenience) shows the Rabon vehicle to be within 10 – 15 feet from the crosswalk and thus illegally parked.

Further your deponent says naught.



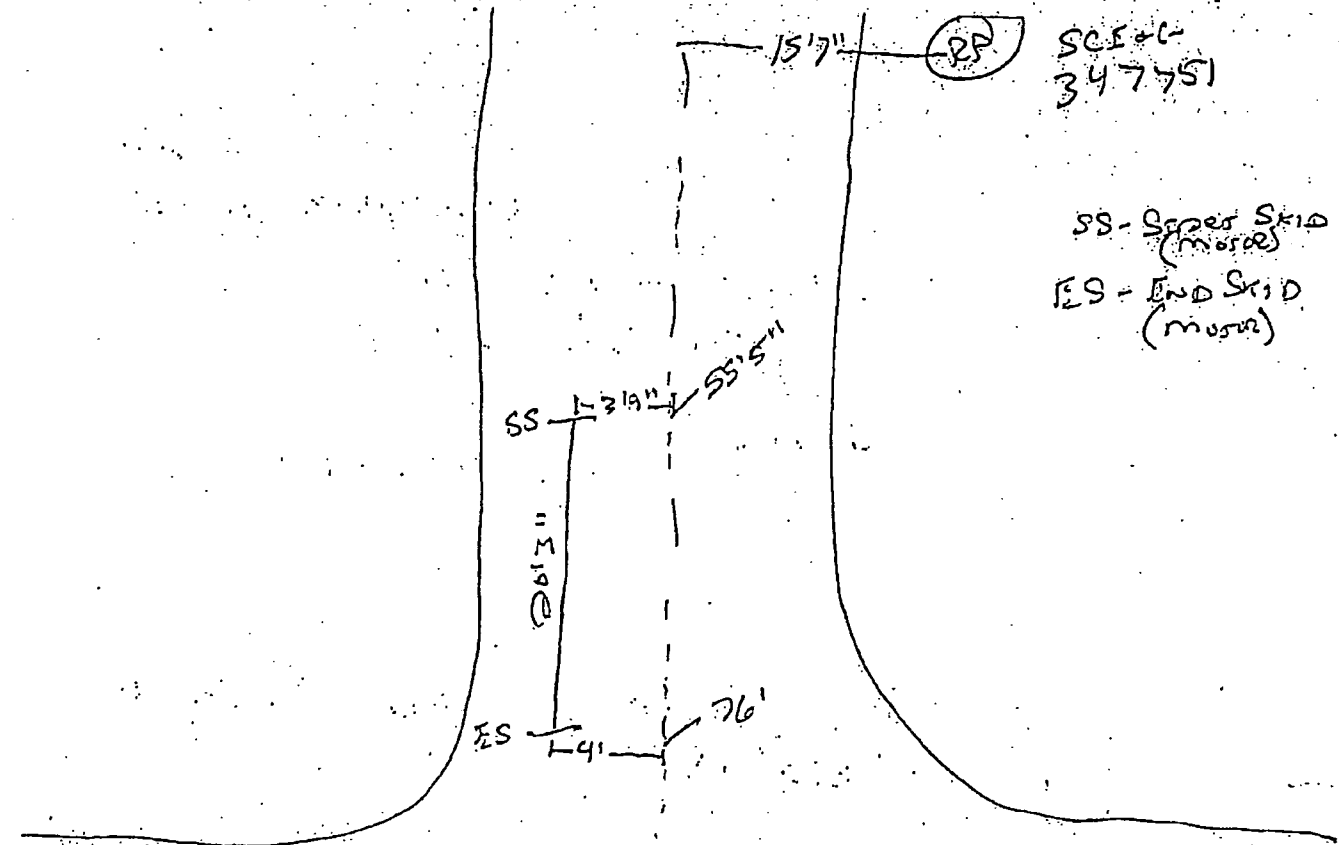
Will Irvin, Personal Representative

PERSONALLY APPEARED BEFORE ME  
THIS 15<sup>th</sup> DAY OF MAY, 2017



Notary Public For South Carolina

My Commission Expires April 16, 2020

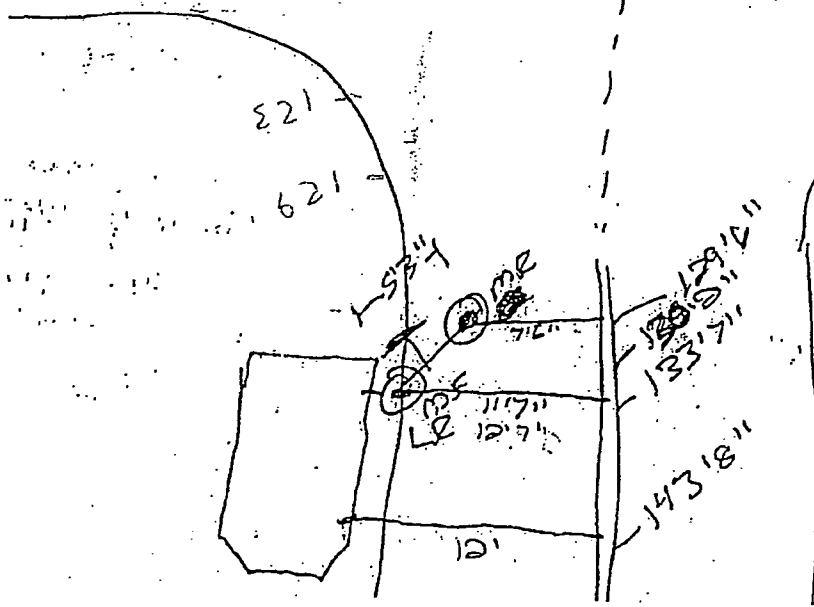


SCF + C  
347751

SS - Super Skid  
(mosaic)  
ES - End Skid  
(mosaic)

Charleston County Coroner  
Irvin, Jonathan Edward

Claim # 40513B372



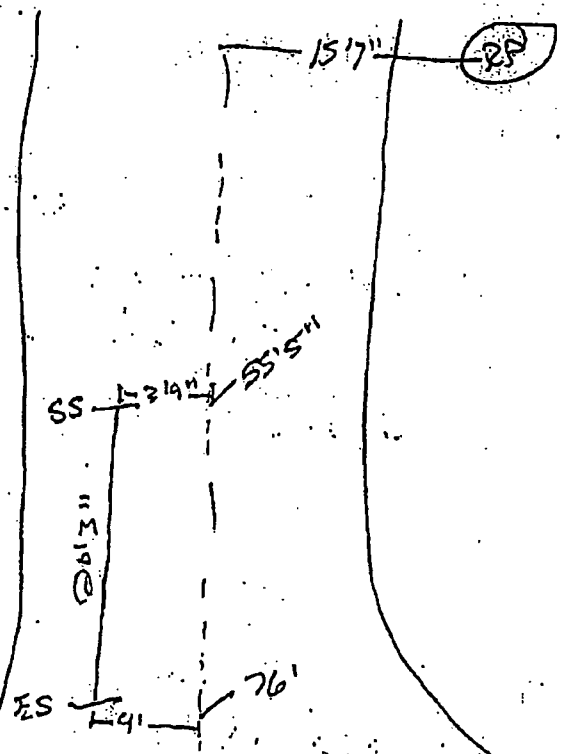
~~Don~~ Recd  
DUNLOP KSS  
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0/32-00  
28 P51

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Front DUNLOP D410/17  
80/90-81mk 48H  
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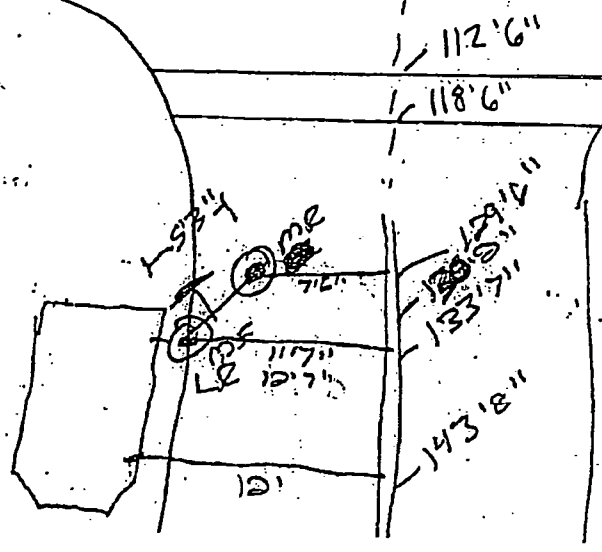
SCF 66  
347751

SS - Super Skid  
(moose)  
ES - End Skid  
(moose)

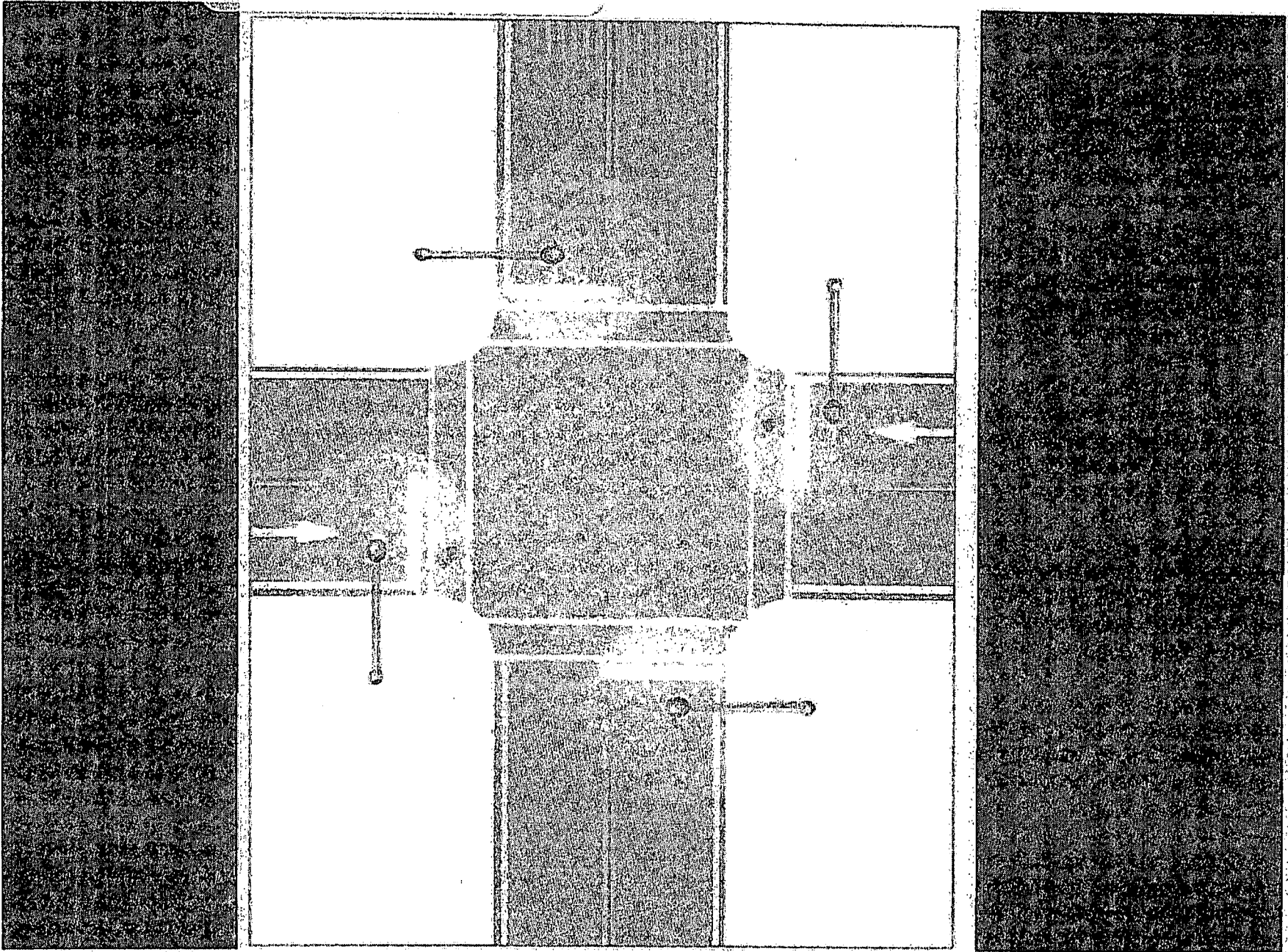


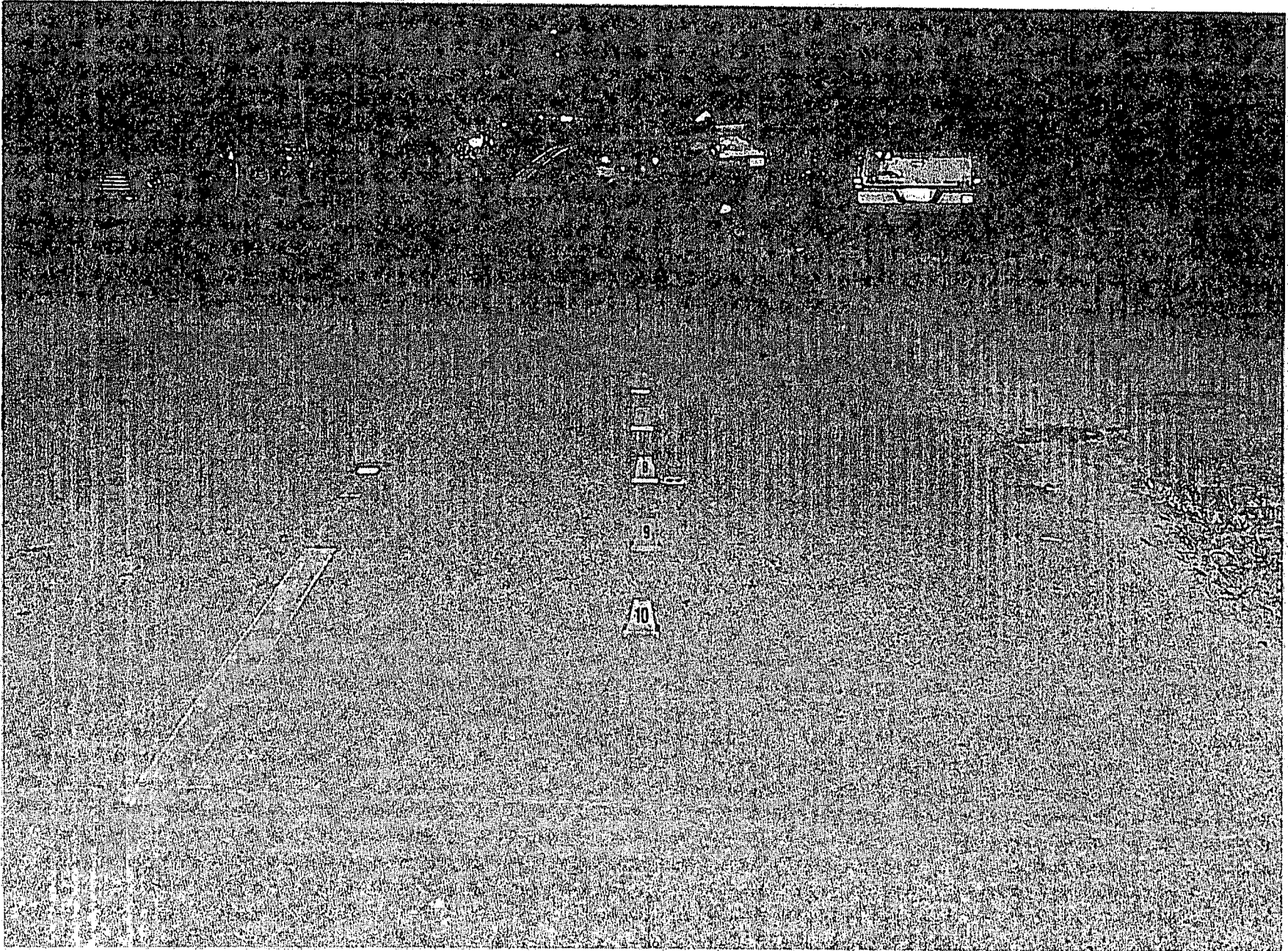
Charleston County Coroner  
Irvin, Jonathan Edward  
00049

Crosswalk



~~170/80P150/K 17S~~ 170/80P150/K 17S  
 6/32-03  
 28 P21  
 Front Du-lop D(104)F  
 80/90-03 170/K 48H  
 6/32-03  
 28 P21





STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 2015-CP-10-5379

William Sean Irvin, Jr., as Personal )  
Representative of the Estate of )  
Jonathan Edward Irvin, Deceased, )  
 )  
Plaintiff, )

vs )

**MOTION FOR RECONSIDERATION**

City of Folly Beach, South Carolina )  
Department of Highways and Public )  
Transportation, Daniel Wilcutt, and )  
Mitchell Dewitt Rabon, Jr., )  
 )  
Defendants. )

FILED  
2017 JUN 28 PM 12:28  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

TO: DAVID COBB, ATTORNEY FOR MITCHELL DEWITT RABON, JR.:

Please take notice that the plaintiff will move ten days after notice hereof, or as soon thereafter as counsel may be heard, for an Order vacating the Form Order granting summary judgment to the defendant, Mitchell D. Rabon, Jr., said Order dated June 1, 2017, filed June 8, 2017, and received by counsel for the plaintiff on June 19, 2017. This motion for reconsideration is based on three grounds: (1) the Court failed to file an Order making findings of facts and conclusions of law as Required by Rule 52, South Carolina Rules of Civil Procedure; (2) the Court applies the wrong standard for summary judgment; and (3) the Court failed to allow plaintiff an opportunity to conduct discovery.

**Rule 52**

Rule 52 requires a trial court's findings of fact and conclusions of law when making a ruling that ends a case. The purpose of the rule is obvious—without findings of fact or conclusions of law, an aggrieved party is denied an opportunity for judicial review because both the parties and a

reviewing court must grope in the dark as to the reasons for the trial court's ruling. Here, the parties cannot seek judicial review of a form order because the form order does not explicitly rule on the issue, and under Rules 52 and 59, the plaintiff is required to bring this omission to the Court's attention. *Halsbersberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (Ct. App. 1999) ("The Berry's did not bring this omission to the master's attention by way of Rule 52(b) or 59( e) motion and are effectively precluded from arguing the issue before this court. See *Talley v. S. C. Higher Education Tuition Grants Comm.* 289 S.C. 483, 347 S.E.2d 99 (1986) "). As discussed below, the Form Order does not discuss the standard of review on summary judgment or the status of the evidence in the case.

#### **Standard of Review**

South Carolina is a *scintilla* state. "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801 (2009)" *Turner v. Milliman*, 392 S.C. 116, 708 S.E.2d 766 (2011). There are too many cases in South Carolina to cite for the standard of review, and the standard is so well known that citation to case law is unnecessary. The evidence here demonstrates that there is a palpable difference of opinion as to whether the defendant's motor vehicle was or was not parked too close to the intersection of East Cooper and 2<sup>nd</sup> Street. The photographs of the vehicle are in the record, and plaintiff contends that these photos clearly show the vehicle parked too close to the intersection. Rather than relying on what appears obvious in the photo, the plaintiff's personal representative used the coroner's drawing, which omitted the crucial measurement from the

intersection of 2d Street, to pull a measuring tape from the known coordinates to the site of the defendant's vehicle. (The defendant objected to these measurements on the ground that only an expert can use a measuring tape, a spurious argument. No education or specialized training is required to use a tape measure.) These measurements—from known locations, derive almost the exact distance to the defendant's vehicle. Based on the measurements, the plaintiff's personal representative filed an affidavit with the Court, which stated in applicable part:

The defendant, Rabon, seeks to be dismissed from this case because he claims he was "legally parked." However the physical evidence shows that his vehicle was not legally parked as he was too close to the intersection of East Cooper and Second Street. (At my deposition on February 17<sup>th</sup>, counsel asked me what the measurements were, and I told him I did not know. As a result I went out and measured, and now I have evidence of the actual distance.)

The correct measurement is from the crosswalk, and the reason for the rule is obvious. There is no question but that the defendant's vehicle was too close to the intersection as measured from either the crosswalk or the "center point of the curve or corner of an intersection." The drawing made by the investigating officer on the scene (attached here for the Court's convenience) shows the Rabon vehicle to be within 10 – 15 feet from the crosswalk and thus illegally parked.  
(Affidavit of William Irvin)

Without discussing the well-known standard of review, this evidence exists in the record, and the Court, in evaluating defendant's motion for summary judgment cannot weigh competing testimony but must accept the plaintiff's evidence as being true. Thus it is impossible to justify granting summary judgment in this case based on the record as it is developed.

#### **Discovery**

The plaintiff has scheduled the defendant's deposition twice. Twice it has been rescheduled to accommodate the needs of the parties and/or their lawyers. The defendant's deposition is

currently scheduled for July 24<sup>th</sup> at noon. To date, the defendant, Rabon, has not answered even standard interrogatories. In short, the plaintiff has not begun meaningful discovery, and a motion for summary judgment cannot be used as a shield to exclude a party from participating in discovery. Rule 56(f) specifically addresses this. Moreover the case law is clear that a court cannot employ the “drastic remedy” of summary judgment without affording the nonmoving party an opportunity to build a case through discovery. “Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Cunningham v. Anderson County*, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013), *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009), *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2004).

#### Conclusion

Based on the totality of circumstances, the plaintiff respectfully submits that the Court’s decision on Rabon’s motion for summary judgment is premature and did not apply the correct legal standard. If the court is going to impose the “drastic remedy,” then the Court is required to address the facts and the applicable law in order that an aggrieved party can determine whether to seek judicial review or not.

Respectfully submitted,

PHIPPS LAW FIRM, LLC

---

Edward L. Phipps  
Rachel K. Phipps  
Phipps Law Firm  
155 King Street, 2nd Floor  
Charleston, SC 29401  
ATTORNEYS FOR PLAINTIFF

June 28, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 WILLIAM SEAN IRVIN, JR., AS )  
 PERSONAL REPRESENTATIVE OF )  
 THE ESTATE OF JONATHAN )  
 EDWARD IRVIN, DECEASED, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF FOLLY BEACH, SOUTH )  
 CAROLINA DEPARTMENT OF )  
 HIGHWAYS AND PUBLIC )  
 TRANSPORTATION, DANIEL )  
 WILCUTT, AND MITCHELL )  
 DEWITT RABON, JR., )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 Docket No.: 2015-CP-10-5379

FILED  
 2015 AUG 23 AM 11:52  
 JULIE J. ARNOLD  
 CLERK OF COURT

**DEFENDANT MITCHELL DEWITT  
 RABON, JR.'S MEMORANDUM IN  
 OPPOSITION TO PLAINTIFF'S  
 MOTION FOR RECONSIDERATION  
 OF ORDER GRANTING RABON  
 SUMMARY JUDGMENT**

Defendant Mitchell Dewitt Rabon, Jr. ("Rabon") respectfully submits this memorandum opposing Plaintiff's Motion for Reconsideration of the Order by the Honorable Kristi Lea Harrington granting Defendant Rabon summary judgment. The accident that gave rise to this lawsuit occurred on October 5, 2013 on East Cooper Avenue on Folly Beach, South Carolina. Plaintiff asserted that a motorcycle driven by Jonathan Edward Irvin was contacted by a vehicle driven by Defendant Daniel Wilcutt, which entered East Cooper Avenue from a side street and failed to yield the right-of-way to Irvin. That impact, according to Plaintiff, knocked the Irvin motorcycle out of control and it collided with the parked vehicle owned by Defendant Rabon, which all parties admit was parked off of the paved roadway.

Plaintiff filed a pro se Complaint on October 16, 2015 that made various claims against all of the listed defendants. With regards to Defendant Rabon, Plaintiff alleged in Paragraph 9 of the first Complaint that Rabon "parked illegally in the right-of-way on the right shoulder." The Amended Complaint filed on February 2, 2016 made only general allegations of negligence against Rabon in Paragraph 15, but did not offer any specific example. When Plaintiff (the brother of

Jonathan Edward Irvin) was deposed on February 17, 2017, he admitted that Rabon was parked off the roadway. Deposition of Plaintiff, page 68, lines 22-25. Plaintiff also indicated that he was not aware of any specifics regarding the allegation that Rabon was “parked illegally.” Id., page 70, lines 12-17.

To date, Plaintiff has not provided any expert report or affidavit with any fact showing Defendant Rabon was parked illegally or contributed to the accident other than being the point where Irvin contacted something after his motorcycle went out of control. Further, the only affidavit submitted at the summary judgment hearing was an affidavit of Plaintiff that attempted to create an issue of fact against Rabon by having Plaintiff offer certain opinions based on Plaintiff superimposing a generic drawing of an intersection on top of the police report for this accident and Plaintiff's interpretations of what calculations the investigating officer made. Clearly, Plaintiff could not qualify as an accident reconstruction expert because he is not an accident reconstruction expert or an engineer and has no such qualifications. In addition, Plaintiff admitted that he did not take any measurements at the scene on the night of the accident before Rabon's vehicle was moved, nor has anyone made any comparisons or calculations of the actual intersection.

In Hall v. Fedor, 349 S.C 169, 561 S.E.2d 654 (Ct. App. 2002), the South Carolina Court of Appeals wrote that materials used to support or refute a summary judgment motion must be those which would be admissible at trial. In that case, the court supported the trial court's decision not to rely on an affidavit to defeat a summary judgment motion because the affidavit relied on inadmissible evidence.


In the current case, Plaintiff attempted to do the same thing. Any drawing or opinion by Plaintiff, who could never be qualified as an accident reconstruction expert at trial, would not be admissible at any trial. Thus, according to the Hall decision, the trial court properly granted Rabon summary judgment because Plaintiff's affidavit relied on evidence that would be inadmissible at trial, which cannot be used to refute a summary judgment motion. Further, Plaintiff's attempt at opinions regarding the “intersection” violate the mandates set forth in Watson Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010) or Rule 702, SCRE, which clearly exclude any opinions from unqualified individuals who lack the requisite

knowledge, skill, or experience to make the purported opinion reliable.

As a second basis for summary judgment to Rabon, Rabon's actions or inactions in parking his vehicle off the paved roadway could not, as a matter of law, constitute the proximate cause of any injury or damage to Irvin. As the Complaint and Amended Complaint alleged, Irvin hit the rear end of Rabon's parked vehicle after Defendant Wilcutt allegedly struck Irvin's motorcycle Irvin and caused Irvin to lose control of his motorcycle. Thus, it was clear from the evidence that Rabon's vehicle was simply the stopping point for Irvin and not the proximate cause of any injury or damage. In fact, Plaintiff's theory was that Defendant Wilcutt knocked Irvin's motorcycle out of control.

Accordingly, Judge Harrington properly granted Rabon summary judgment.

TURNER PADGET

  
\_\_\_\_\_  
David S. Cobb  
Post Office Box 22129  
Charleston, South Carolina 29413-2129  
Direct: (843) 576-2803  
Fax: (843) 577-1629  
[dcobb@turnerpadget.com](mailto:dcobb@turnerpadget.com)  
ATTORNEYS FOR DEFENDANT  
MITCHELL DEWITT RABON, JR.

Charleston, South Carolina

August 21, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 WILLIAM SEAN IRVIN, JR., AS )  
 PERSONAL REPRESENTATIVE OF )  
 THE ESTATE OF JONATHAN )  
 EDWARD IRVIN, DECEASED, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF FOLLY BEACH, SOUTH )  
 CAROLINA DEPARTMENT OF )  
 HIGHWAYS AND PUBLIC )  
 TRANSPORTATION, DANIEL )  
 WILCUTT, AND MITCHELL )  
 DEWITT RABON, JR., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 Docket No.: 2015-CP-10-5379

CERTIFICATE OF SERVICE

FILED  
 2017 AUG 23 AM 11:52  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

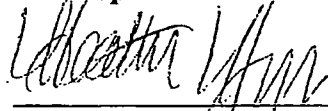
On August 22 2017, I mailed a copy of Defendant Mitchell Dewitt Rabon, Jr.'s Memorandum in Opposition to Plaintiff's Motion for Reconsideration to:

Edward L. Phipps  
 155 King Street, Second Floor  
 Charleston, South Carolina 29401  
 Attorneys for Plaintiffs

Max Mahaffee  
 Post Office Box 816  
 Charleston, South Carolina 29402  
 Attorneys for Daniel Wilcutt

Duke Highfield  
 Post Office Box 993  
 Charleston, South Carolina 29402  
 Attorneys for City of Folly Beach

Roy P. Maybank  
 Post Office Box 12579  
 Charleston, South Carolina 29422  
 Attorneys for South Carolina  
 Department of Transportation



Heather Hagen

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Common Pleas

Kristi L. Harrington, Circuit Court Judge

RECEIVED  
OCT 08 2017  
COURT OF APPEALS

CASE NO. 2015-CP-10-05379

William Sean Irvin, Jr., as Personal Representative of the Estate of  
Jonathan Edward Irvin, Deceased, .....Appellant,

v.

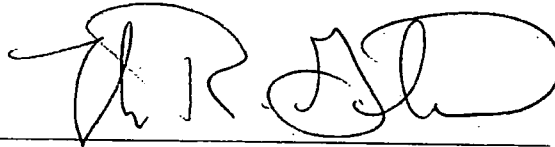
City of Folly Beach, South Carolina Department of Highways and Public Transportation,  
Daniel Wilcutt, and Mitchell Dewitt Rabon, Jr., of whom

Daniel Wilcutt is ..... Respondent.

**NOTICE OF APPEAL**

William Sean Irvin, Jr., as Personal Representative of the Estate of Jonathan Edward Irvin, Deceased, appeals the Orders of the Honorable Kristi L. Harrington dated June 8, 2017 (Order for summary judgment for defendant, Mitchell D. Rabon) and October 11, 2017, (Order denying reconsideration). Appellant received notice of the Order denying reconsideration on October 16, 2017.

November 2, 2017



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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Common Pleas

Kristi L. Harrington, Circuit Court Judge

RECEIVED  
NOV 06 2017  
SC Court of Appeals

CASE NO. 2015-CP-10-05379

William Sean Irvin, Jr., as Personal Representative of the Estate of  
Jonathan Edward Irvin, Deceased, .....Appellant,

v.

City of Folly Beach, South Carolina Department of Highways and Public Transportation,  
Daniel Wilcutt, and Mitchell Dewitt Rabon, Jr., of whom

Daniel Wilcutt is ..... Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certified that he served a true copy of the Notice of Appeal by serving a copy upon the respondent's (Rabon's) counsel of record, as well as all counsel of record at the following addresses (and by sending a copy to the Charleston County Clerk of Court for filing), by mailing a copy to each properly addressed with sufficient postage affixed thereto this 2<sup>nd</sup> day of November, 2017:

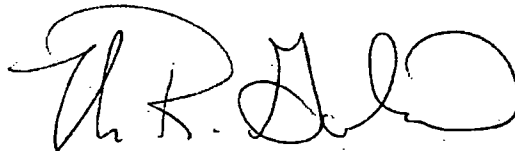
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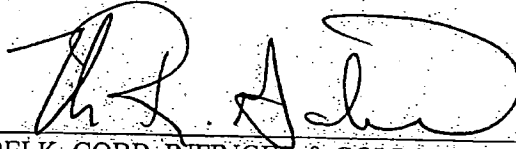
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November 7, 2017



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ATTORNEYS FOR S. C. DEPT. OF TRANS.

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON ) CASE NO. 2015-CP-10-05379

3

4 WILLIAM S. IRVIN, JR., )  
AS PR FOR ESTATE OF )  
5 JONATHAN E. IRVIN, ) Transcript of Record  
DECEASED, )

6 Plaintiff, )  
7 vs. ) Date: May 16, 2017

8 CITY OF FOLLY BEACH,  
9 ET. AL,

10 Defendants.

11 \* \* \* \* \*

12

13 B E F O R E:

14 The Honorable Kristi Harrington

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20 Denise J. Lauder, RPR

21 Ninth Judicial Circuit

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A P P E A R A N C E S

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ALSO PRESENT: Max G. Mahaffee, Esquire

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INDEX OF EXHIBITS

(No exhibits were offered or  
marked for identification.)

1 (The following proceedings were had May  
2 16, 2017, Charleston County Courthouse, Charleston  
3 County, South Carolina, in front of Judge Kristi  
4 Harrington.)

5 THE COURT: Who has a short motion?  
6 Mr. Cobb.

7 MR. COBB: Mine is probably about ten  
8 minutes.

9 THE COURT: That's fairly short.

10 MR. GOLDSTEIN: I would say one to two  
11 minutes.

12 THE COURT: All right. Is that the  
13 same motion?

14 THE CLERK: No, Your Honor. This is  
15 Case No. 2015-5379, Irvin versus City of Folly  
16 Beach.

17 THE COURT: All right. Mr. Goldstein,  
18 you represent Mr. Irwin?

19 MR. GOLDSTEIN: Correct, Your Honor.  
20 It's not my motion. It's Mr. Cobb's motion.

21 THE COURT: And, Mr. Cobb, you  
22 represent?

23 MR. COBB: I represent the Defendant,  
24 Mitchell Dewitt Rabon, Junior. He's listed last on  
25 the caption.

1 THE COURT: Okay. . . And who do you have  
2 with you, Mr. Goldstein?

3 MR. GOLDSTEIN: I'm sorry, Your Honor?

4 THE COURT: Who is with you?

5 MR. GOLDSTEIN: No one. This is  
6 Mr. Mahaffee -- they're all aligned against me;  
7 it's four against one.

8 THE COURT: All right. It's going to  
9 take longer to state your names probably for the  
10 record.

11 Mr. Cobb, what are we doing here today?

12 MR. COBB: This is the Defendant  
13 Rabon's summary judgment motion. This lawsuit  
14 arises from an accident in October of 2013, on  
15 Folly Beach, in which the deceased, Jonathan Edward  
16 Irvin, I-R-V-I-N, was on a motorcycle going down  
17 East Cooper Boulevard on Folly Beach.

18 The allegation in the Complaint is that  
19 a vehicle driven by the Defendant Daniel Wilcutt,  
20 W-I-L-C-U-T-T, came from a side street, made  
21 contact with the Irvin motorcycle, and then the  
22 Irvin motorcycle sort of wobbled down and then hit  
23 the parked vehicle owned by my client, Mr. Rabon.

24 I've got a photograph showing the -- I  
25 guess it's -- in the back part of what Tommy filed

1 yesterday was an affidavit of the PR, Will Irvin.

2 It shows --

3 MR. GOLDSTEIN: Do you want me to hand  
4 her mine?

5 Your Honor, may I approach?

6 THE COURT: You may.

7 MR. GOLDSTEIN: This is the photograph  
8 that he's making reference to.

9 THE COURT: Thank you.

10 MR. COBB: The vehicle driven by  
11 Mr. Rabon is the SUV that is parked off the side of  
12 the road. It literally was the brick wall that the  
13 motorcycle ran into. All right.

14 The Plaintiff is the PR of the estate  
15 that filed the lawsuit against the City of Folly  
16 Beach and against the Department of Highways and  
17 Public Transportation, against Mr. Wilcutt, and  
18 against Mr. Rabon.

19 In the Complaint, the allegations of  
20 negligence against Mr. Rabon are the vehicle was  
21 illegally parked. We deposed -- again, the  
22 accident was October 5, 2013; the Complaint was  
23 filed February 2, 2016. Will Irvin, the PR, was  
24 deposed February 17, 2017. And when asked about  
25 the allegation of the vehicle being illegally

1 parked, had no information.

2 I filed a summary judgment motion. I  
3 was under the assumption that, based on  
4 conversations, the claim would be somehow that the  
5 Rabon vehicle -- which was, again, parked off of  
6 the paved surface, and Mr. Irvin concedes that it  
7 was parked off the paved surface; and as you can  
8 see by the photograph, it clearly was several feet  
9 off of the paved surface -- the allegation was that  
10 somehow he was parked too close to the stop sign.

11 And so the summary judgment motion was  
12 filed based on the idea that the statute says you  
13 cannot be within a certain distance approaching a  
14 stop sign, and everybody concedes there is no stop  
15 sign in the vicinity of where he parked the  
16 vehicle.

17 So, yesterday, Mr. Goldstein provides  
18 the affidavit from Will Irvin that comes up with a  
19 theory that the vehicle was illegally parked  
20 because it was too close to a crosswalk. This  
21 affidavit does not destroy the summary judgment  
22 motion for several reasons: Number one is, Rule  
23 56, the rule governing affidavits for persons of  
24 summary judgment.

25 56(e) says that affidavit shall be made

1 on personal knowledge, shall set forth such facts  
2 as would be admissible into evidence, and shall  
3 show affirmatively that the affiant is competent to  
4 testify on the matters stated therein.

5                   Mr. Irvin, who said in February of 2017  
6 he had no information about distances or things  
7 like that, now claims to have gone out at some  
8 point after February 2017 and measured something,  
9 which would not have included the vehicle that  
10 night because they had been moved and had been  
11 moved for roughly three and a half years.

12                   The other information that is conveyed  
13 in the affidavit is some reference to the  
14 measurements made by the investigating officer.  
15 That's clearly hearsay and that's clearly under  
16 Rule 56(e) not admissible for the Court to  
17 consider, because Mr. Irvin is not qualified as an  
18 expert, as an accident reconstructionist, not  
19 qualified in any way to give any testimony  
20 regarding that.

21                   Now, the irony of all ironies is, as  
22 well -- which was not included in the affidavit, is  
23 that in the incident report, which would not be  
24 admissible if the case went to trial, the  
25 investigating officer clearly stated that

1 Mr. Rabon's vehicle was legally parked, but that's  
2 not included as part of the package that was  
3 submitted to you.

4 So that's the issue with regard to the  
5 negligence claim. The Plaintiff in this lawsuit,  
6 which has been filed for roughly 15 months, has not  
7 produced any testimony to show any negligence  
8 against Mr. Rabon; but, secondly, there is no  
9 testimony about proximate cause.

10 And, again, the only reason why  
11 Mr. Rabon's vehicle was involved in this incident  
12 is because that just happens to be what Mr. Irvin  
13 hit after he claims -- after the PR claims that he  
14 was hit by Mr. Wilcutt.

15 Now just for background information,  
16 Mr. Wilcutt, who is represented by Mr. Mahaffee --  
17 right?

18 MR. MAHAFFEE: Right.

19 MR. COBB: There are witnesses who say  
20 that version did not happen. There are witnesses  
21 who say Mr. Irvin was driving at an excessive speed  
22 and simply just lost control of his motorcycle; but  
23 for purposes of our thing today, you take in the  
24 light most favorable to the Plaintiff, there's no  
25 evidence that's admissible about any negligence

1 against Mr. Rabon; and there's certainly no issue  
2 about proximate cause because the Rabon vehicle  
3 just happened to be the stopping point.

4           If it had not been his vehicle, it  
5 would have been the vehicle in front of Mr. Rabon,  
6 it would have been the house that Mr. Rabon was  
7 parked in front of. So that's why we're moving for  
8 summary judgment. Thank you.

9           THE COURT: Mr. Goldstein.

10           MR. GOLDSTEIN: Your Honor, clearly --  
11 I'm taking Mr. Rabon's deposition on Friday, so I'm  
12 a little surprised that we moved for summary  
13 judgment before I've had an opportunity to conduct  
14 my deposition. But as you can see, the vehicle is  
15 clearly undisputedly parked in violation of the  
16 controlling parking ordinance. Both Folly Beach  
17 and the State of South Carolina has a parking  
18 ordinance.

19           Mr. Cobb helpfully provided a copy of  
20 the State statute attached to his motion for  
21 summary judgment, which Your Honor can read for  
22 yourself. Mr. Irvin is certainly not an expert on  
23 accident reconstruction, but he is competent to  
24 pull a measuring tape. And that's exactly what he  
25 did.

1                   He took the known measurements that  
2 have been known to the parties since the date of  
3 this death and simply drew in where the crosswalk  
4 would be and did a mathematical calculation, which  
5 you can see the car is at 130 feet. So all you  
6 have to do is subtract 180 feet from 130 to derive,  
7 approximately, 12 feet. So to the car --

8                   THE COURT: And what are we 12 feet  
9 from?

10                  MR. GOLDSTEIN: The crosswalk.

11                  THE COURT: So is it your position that  
12 the crosswalk is a traffic control signal?

13                  MR. GOLDSTEIN: Absolutely. You can't  
14 park within 20 feet of a crosswalk. That's the  
15 statute. So he's in violation of the statute. And  
16 that's why I attached the schematic of the  
17 crosswalk because the statute, which is included in  
18 our affidavit in opposition, defines where a  
19 crosswalk is -- is deemed to be.

20                  And the crosswalk, doesn't matter if  
21 it's painted or unpainted. The law requires that  
22 there be -- that vehicles yield to pedestrians  
23 within the crosswalk. The crosswalk is required to  
24 be six feet in width.

25                  THE COURT: In this photograph, where

1 is the crosswalk?

2 MR. GOLDSTEIN: There is no painted  
3 crosswalk. The statute puts the crosswalk there,  
4 whether it's painted or not; that's in the statute.  
5 The statute specifically says there is -- and the  
6 definition is in our affidavit.

7 Crosswalk is that part of -- it's  
8 56-5-500. That part of a roadway at an  
9 intersection included within the connection of the  
10 lateral lines of the sidewalk on the opposite side  
11 measured from curbs, or in the absence of curbs --  
12 that's us -- from the edge of a traversable  
13 roadway. And then attached to that is a pictorial  
14 demonstration of that statute, taking that statute  
15 and changing it into a schematic.

16 So the Defendant's vehicle was about 12  
17 feet from the crosswalk. The evidence in this case  
18 will show that the Defendant Wilcutt made an  
19 unlawful left turn in the path of the oncoming  
20 motorcycle, failed to yield the right-of-way.

21 The evidence will show there was impact  
22 between the decedent and the Wilcutt vehicle making  
23 a left turn. Now, I haven't taken his deposition  
24 yet; that's this Friday. So I don't know what he's  
25 going to say. I suspect he's going to say he

1 didn't see the motorcycle because of the  
2 vegetation, which is why the City of Folly Beach is  
3 named as a Defendant in the case.

4           So there is a genuine issue of material  
5 fact, and under South Carolina law I'm only  
6 required to provide a scintilla of evidence to  
7 survive summary judgment. And I have provided far  
8 more than a scintilla of evidence.

9           THE COURT: Anything further?  
10 Mr. Goldstein?

11           MR. GOLDSTEIN: I'm sorry, no, Your  
12 Honor. I'm sorry, I didn't hear you.

13           THE COURT: Mr. Cobb, anything further?

14           MR. COBB: I just want to -- as I  
15 understand it, Tommy can correct me, the --  
16 Mr. Irvin, who is not an accident  
17 reconstructionist, is the one who, on one of the  
18 exhibits attached to this affidavit, came up with  
19 the location of the crosswalk, this unpainted  
20 crosswalk. It's the second page of the drawing.

21           And so the rest of it is the  
22 documentation from the --

23           THE COURT: Does Mr. Irvin work for the  
24 Charleston County Coroner's Office?

25           MR. GOLDSTEIN: No. No. We used this

1 -- the only person who made measurements the date  
2 of the death was the coroner's fatality  
3 investigative team.

4 THE COURT: Who prepared this?

5 MR. GOLDSTEIN: That's from the  
6 coroner.

7 THE COURT: Okay.

8 MR. GOLDSTEIN: When there's a death,  
9 they call out a death fatality team to do the  
10 investigation. They made all these measurements.  
11 The only thing we did is, we took the fatality  
12 team's measurements and simply did the same  
13 calculation as to where a pedestrian would be  
14 allowed to cross East Cooper Avenue at the  
15 intersection of Second Street.

16 And whether you use the crosswalk or  
17 whether you ignore the --

18 THE COURT: Then you want me to impute  
19 and overlay the coroner's picture onto this, even  
20 though there is no crosswalk or any other traffic  
21 signals?

22 MR. GOLDSTEIN: Right. There is -- the  
23 only traffic signal are the stop signs on Second  
24 Street. So for purposes of surviving summary  
25 judgment --

1 THE COURT: You need me to take this  
2 schematic drawn by the coroner's office and overlay  
3 that on the visual that you presented, apply the  
4 statute and say that the crosswalk is a traffic  
5 signal?

6 MR. GOLDSTEIN: No. No. No. The --  
7 no. No. The parking statute says you can't park  
8 within 20 feet of a crosswalk; that's the point I'm  
9 trying to make. And he was 12 feet from --

10 THE COURT: Under 56-5-2535. I was  
11 looking at 56-2530. And you want me to look at  
12 A(2); is that correct?

13 MR. GOLDSTEIN: That's correct. And  
14 56-5-500, which defines crosswalk. So the  
15 schematic is nothing more than a pictorial  
16 representation of what the statute says. So you  
17 can --

18 THE COURT: According to you.

19 MR. GOLDSTEIN: No. According to  
20 56-5-500.

21 THE COURT: Where did you get the  
22 schematic?

23 MR. GOLDSTEIN: Oh, it's just out of  
24 any driver's manual. You just go online and put in  
25 crosswalk and that's the schematic.

1 MR. COBB: It's not even the schematic  
2 for that intersection.

3 MR. GOLDSTEIN: Okay. Well, then take  
4 the schematic and ignore it. Just take it out of  
5 the case, and let's -- I'll just go on the  
6 definition contained in 56-5-500.

7 THE COURT: But my understanding is the  
8 purpose of a crosswalk is to protect the  
9 pedestrians within a crosswalk, not for somebody  
10 lawfully on the road.

11 MR. GOLDSTEIN: Correct. But had the  
12 vehicle been a sufficient distance from the  
13 intersection of Second and East Cooper, then the  
14 decedent would not have impacted the car at the  
15 point he impacted, and probably could have  
16 survived. Or at least had a chance to survive --

17 THE COURT: There was no pedestrian  
18 involved in this case?

19 MR. GOLDSTEIN: No pedestrian involved.

20 THE COURT: All right. Mr. Cobb?

21 MR. COBB: If I can, real quick, the  
22 schematic that has the crosswalk in there, as I  
23 understand it, is what Mr. Irvin drew on top of  
24 what the coroner's file is. So there are two --  
25 and so Mr. Irvin, who is not an accident

1 reconstructionist person, somehow has calculated  
2 all of this stuff.

3 And it's all based off of whatever it  
4 is he did, after we took his deposition. So  
5 there's no -- he's not an expert accident  
6 reconstructionist.

7 And one of the biggest issues here is  
8 if, in fact, there is a requirement for a crosswalk  
9 in this intersection, is where they start and where  
10 they stop. Mr. Irvin is not qualified to make that  
11 determination.

12 THE COURT: So this is where your  
13 client's vehicle is; is that correct?

14 MR. COBB: Correct. He is the  
15 octagonal thing, whatever it is, down at the bottom  
16 of the page. The next page of the affidavit is the  
17 same thing with the addition of --

18 THE COURT: So the rear end of his  
19 vehicle would have been -- the front of his vehicle  
20 is pointing away from the crosswalk.

21 MR. COBB: Correct. It's a one-way  
22 street.

23 THE COURT: All right.

24 MR. COBB: So, you know -- and so  
25 that's the issue, that there is no proof from the

1 Plaintiff that's admissible in evidence.

2 THE COURT: We have exceeded the one  
3 minute you told me. I'll take the matter under  
4 advisement.

5 MR. GOLDSTEIN: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (These proceedings were concluded at  
8 2:32 p.m.)

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## 1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered  
4 Professional Reporter and Notary Public for the  
5 State of South Carolina at Large, do hereby certify  
6 that the foregoing transcript is a true, accurate,  
7 and complete record.

8 I further certify that I am neither related  
9 to nor counsel for any party to the cause pending  
10 or interested in the events thereof.

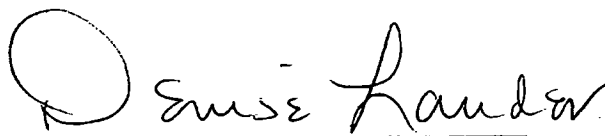
11 Witness my hand, I have hereunto affixed my  
12 official seal this 6th day of December, 2017 at  
13 Charleston, Charleston County, South Carolina.

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Carol Denise Lauder  
Registered Professional  
Reporter, CP  
My Commission expires  
August 2, 2017

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1 BY MR. COBB:

2 Q. I'm David Cobb. I represent Rabon, I represent  
3 the fellow who has ownership of the parked vehicle. And I  
4 just have a couple of questions for you.

5 Exhibit 2 is your drawing, not to scale, showing  
6 East Cooper, going from top to bottom of the page, and  
7 Second Street, going from left to right, correct?

8 A. Yes, sir.

9 Q. The vehicle that you have drawn in here, that's  
10 the Willcutt vehicle that you believe was going from  
11 Second Street crossing East Cooper, correct?

12 A. No, sir. Willcutt makes a left-hand turn.

13 Q. Makes a left-hand turn from Second Street onto  
14 East Cooper.

15 A. Yes, sir.

16 Q. All right. And your brother would have been on  
17 a motorcycle going the opposite direction on East Cooper?

18 A. Heading in this direction (pointing).

19 Q. Just use my red pen. Draw an arrow in the  
20 direction your brother would have been traveling.

21 A. (Witness complies.)

22 Q. According to what you testified. And, then, the  
23 vehicle owned by Mr. Rabon would have been parked on East  
24 Cooper, off the roadway, correct?

25 A. Yes.

1 Q. Could you just draw a box or can I just draw the  
2 box and have you agree with me, again this is not to  
3 scale, I'm just going to put a big R with a red box. That  
4 is where Rabon was parked, correct?

5 A. Yes, sir.

6 Q. All right. And I'm going to, I guess, we'll  
7 mark it. Charleston County sheriff's document, Bates 13.  
8 That appears to show the direction of travel that you  
9 believe your brother was going, correct?

10 A. Yes, sir.

11 Q. All right. And I'm not trying to trick you. I  
12 just want to establish that there was no stop sign on East  
13 Cooper heading in the direction in which your brother was  
14 going, until he got past the Rabon vehicle, at some point  
15 in time, correct?

16 A. Yes, sir.

17 Q. And the Rabon vehicle was parked past the  
18 intersection of Second Street and East Cooper, correct?

19 A. Yes.

20 Q. The only stop sign that was in this general  
21 area, there was a stop sign for traffic on Second Street,  
22 going in either direction onto East Cooper, correct?

23 A. Yes, sir.

24 Q. I indicated that by doing -- I'm going to color  
25 in two diagonals, just because I can't drawn octagons.

1 Those are the two stop signs, correct?

2 A. Yes, sir.

3 Q. Now, have you ever talked with the fellow,  
4 Rabon?

5 A. I do not believe I've ever spoken with him.

6 Q. Did you talk with anybody who either owned or  
7 occupied any of the residences that were around where your  
8 brother was?

9 A. I do not believe that I've spoken to anybody  
10 that owned the residences, or rented the residences, no,  
11 sir.

12 Q. Who is it that has explained to you that Rabon  
13 was parked illegally?

14 A. That was Jerry, Crash Team, in their report that  
15 he was within a right of way. And where that right of way  
16 is, exactly, and what the definitions and regulations are  
17 surrounding that, I'm not aware of the specifics.

18 Q. Have you ever taken any kind of chance or  
19 opportunity to look at what the actual statute is  
20 regarding where you can park a vehicle?

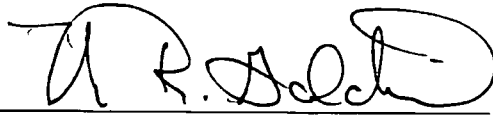
21 A. I did a little bit of research, but was  
22 overwhelmed, and I didn't focus on any discovery, so no.

23 Q. A couple of questions real quick. If your  
24 brother was in fact intoxicated, either by drugs or  
25 alcohol, at the time of the accident, you would agree with

CERTIFICATE OF COUNSEL

I certify that this designation contains no matter which is irrelevant to this appeal.

May 17, 2018



Thomas R. Goldstein, S. C. Bar No. 2186

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