

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

Martha Foster Watts,  
Plaintiff,

ORDER DENYING PLAINTIFF'S POST  
TRIAL MOTIONS

-vs-

C.A. NO.: 2015-CP-30-00624

Ricky W. Chastain, Sheriff Laurens  
County, South Carolina,  
Defendant.

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FACTS AND BACKGROUND

SC Court of Appeals

This is a claim arising out of a motor vehicle collision that occurred on August 15, 2013 in Laurens County, South Carolina at approximately 10:30 p.m. The Plaintiff, at that time, was traveling on Highway 76 and collided with another vehicle that had been involved in an earlier collision with a Laurens County Sheriff's Deputy. The Plaintiff alleges personal injuries and asserts a negligence claim against the Sheriff. The Laurens County Sheriff's Office denied liability in the claim and further alleged comparative fault on behalf of the Plaintiff.

This action was tried before me with a jury on April 16, 2018. The jury returned with a verdict in favor of the Defendant on April 19, 2018. The Plaintiff filed this Notice of Motion and Motion for a New Trial or Judgment NOV pursuant to Rules 59(b) and Rule 60(b)(3) of the South Carolina Rules of Civil Procedure on April 27, 2018. The Defendant filed a response to the Plaintiff's Motion on June 21, 2018. The Court set this matter for oral arguments on December 19, 2018 and the parties were allowed additional time to submit additional memoranda and/or selected portions of the trial transcript.

The Plaintiff submitted supporting memoranda dated December 19, 2018 and February

12, 2019. The Defendant filed a response to the Plaintiff's Motion on June 21, 2018 and an additional Memorandum in Opposition to the Plaintiff's post-trial motions dated February 6, 2019.

The Plaintiff raised an issue with respect to the admissibility of a surveillance video that was captured from a nearby recycling business located adjacent to the scene of the accident on Highway 76. The Plaintiff claims that the surveillance video was improperly admitted into evidence at trial. The Plaintiff contended that the video shown to the jury at trial was a copy of the original but not the original. The Plaintiff raised admissibility issues under SCRE Rules 1001, 1002 and Rule 403. The Plaintiff also argued that defense counsel made a prejudicial and improper closing argument.

The Defendant asserts that the surveillance video was admissible under SCRE Rules 401, 901, 1001, 1002, 1003 and Rule 1004. The Defendant further contends that the closing argument of counsel was not improper and/or was not prejudicial so as to warrant or justify a new trial.

#### STANDARD OF REVIEW

"In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Id.*; *See, Crossley v. State Farm Mutual Auto. Ins. Co.*, 307 S.C. 354, 357, 415 S.E.2d 393, 395 (1992). The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision. *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994).

#### DISCUSSION

I have reviewed the memoranda of law submitted by the parties, I have considered the

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arguments of counsel and I have reviewed the surveillance video and portions of the transcript as relate to the issues before me.

The surveillance video was the subject of a lengthy *in camera* hearing. The surveillance video in question captured part of the accident which is the subject of this claim on a camera mounted at Dixie Iron Metal Recycling. The owner of that business, Matt Cagle, testified that he found his fence laying on the ground and then learned from a trooper about the accident.

As to the issue of authenticity, Mr. Cagle testified that he set up the camera equipment in 2013, and that the system recorded video and not audio. He stated that his equipment recorded on a Lorex EC02 recording system and on a DVR with a hard drive inside. He stated that the hard drive cannot be physically removed and that it is located in the building in the main office of his business in a corner. He described that there was a monitor for the system mounted in the office and that the system could be reviewed using a mouse or a remote. He stated that the recording device runs continuously 24/7 and there had been no problem with the monitor, nor had there been anyone that had tampered in any way with or altered the equipment between the time of the incident and the time when a member of the MAIT Team came to his business to record from the video.

Trooper Duncan, with the South Carolina Department of Public Safety MAIT Team, brought a tripod to Mr. Cagle's business and set up a camcorder to record the images off of the monitor. Mr. Cagle testified that the images shown on the video equipment at trial accurately portray and represent the images that were on his recording system when Trooper Duncan came to his place of business. Mr. Cagle testified that the equipment recorded 24 hours a day and that the video was fast forwarded to the portion of the video which was relevant to the accident.

At trial there was also testimony from Al Duncan of the South Carolina Department of

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Public Safety who was at that time a member of the Multidisciplinary Accident Investigation Team. Al Duncan testified that he set up a camcorder on a tripod in front of Mr. Cagle's monitor and recorded the parameters of the time frame related to the accident and the time frame which is the basis of the claim. He indicated that it was useless to record every single thing on the video and the surveillance video was advanced to the time just before and during this collision.

Trooper Duncan recorded onto a Sony handheld DVD and that system recorded to a hard drive within the camcorder. Officer Duncan then testified that the information was taken back to the office, loaded into his computer, and saved into the M drive of the MAIT Team which is a secure hard drive system. Trooper Duncan testified that the disc admitted into evidence at trial fairly represented the recording made from Mr. Cagle's monitor as to the events which relate to this incident. Trooper Duncan explained further that the recording was a constant recording and an exact picture of what was taken off of Mr. Cagle's surveillance monitor, and what was recorded onto his camcorder was put into the MAIT Team hard drive without any edits. He states that nothing was taken out of the video itself and that it is a complete recording from the time the button was pressed until the recording button was stopped. The video played at trial was in real time and there were no breaks, interruptions or alterations.

The video admitted at trial complies with Rule 1001, 1002, 1003 and 1004. Rule 1001 indicates that an original of a photograph includes the negative or any print therefrom and the video recorded by Al Duncan is actually a print of the images shown on Matt Cagle's Recycling Center surveillance video. It is a duplicate of the same. Furthermore, under Rule 1003 a duplicate is admissible to the same extent as an original unless there is a genuine question as to the authenticity of the original, or unless the circumstances would make it unfair to admit a duplicate in lieu of the original. There is no legitimate and/or genuine question raised here as to

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the authenticity of the original. Further, under Rule 1004, an original is not required, and other evidence is admissible if the original is lost or destroyed. It should be noted here that the original was never in the possession of the Laurens County Sheriff's Office and it is no longer available for the reasons that were fully explained at trial.

Rule 401 clearly defines relevant evidence as any evidence which has the tendency to make the existence of any fact that is of consequence more probable or less probable than it would be without that evidence. Relevant evidence is admissible under Rule 402 and here the video in question provided information and evidence as to the position of the vehicle, the timing of the two collisions at issue, the roadway conditions, and whether or not motorists had their lights on. These were all contested issues at trial and the video is clearly relevant to all of those issues. Specifically the surveillance video showed that there was a gap of approximately 41 seconds between the two collisions that occurred, and this time differential was a highly contested and important issue in this case.

The surveillance video received into evidence at trial was authentic and relevant, and it was not prejudicial to any party.

As an additional ground for a new trial and/or JNOV, the Plaintiff contends that defense counsel made an improper argument and told the jury what the video showed. The video was played during closing arguments and defense counsel invited the jury to use their 24 eyes to interpret what it showed. Counsel specifically said "You may see, find things much different than me. I invite you to do that." Attorneys are allowed and expected to argue inferences that can be drawn from the evidence. Considerable latitude is given to counsel in an effort to draw inferences and deductions from the evidence and this latitude allows counsel to state his or her own version of the testimony and to comment on the weight it should be given. *See Lesley v.*

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*American Sec. Ins. Co.*, 261 S.C. 178, 199 S.E.2d 82 (1973); *State v. Johnson*, 306 S.C. 119, 410 S.E.2d 547 (1991); *State v. Caldwell*, 300 S.C. 494, 388 S.E.2d 816 (1990); *State v. Hough*, 325 S.C. 88, 480 S.E.2d 77 (1997). There was no prejudice in defense counsel's closing argument and any remarks by counsel did not deprive the Plaintiff of a fair trial.

**CONCLUSION**

Based on the arguments submitted, a review of the evidence, and after considering arguments of counsel, I find the Plaintiff's Motion For A New Trial or Judgment NOV pursuant to Rule 59(b) and Rule 60(b)(3) should be and same are respectfully denied.

IT IS SO ORDERED.



Donald B. Hocker, Judge

Lauren, South Carolina

Dated: 8-5-19

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