

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 28 2020

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Donald B. Hocker, Circuit Court Judge

Case No. 2019-001514

Martha Foster Watts,

Appellant,

v.

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

Respondent.

RECORD ON APPEAL
VOLUME II

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1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF LAURENS

3 Martha Foster Watts,
4
5 Appellant,

6 vs. Transcript of Record
7 2015-CP-30-00624

8 Ricky W. Chastain, Sheriff Laurens County,
9 South Carolina.

10
11 December 19, 2018
12 Laurens, South Carolina

13 B E F O R E:

14 The Honorable DONALD B. HOCKER

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

16 Tom Thompson, Representing the Appellant
17 James Brian, Representing the Appellant
18 Rusty Harter, Representing the Laurens County
19 Sheriff's Office
20 Sandy Cruickshanks, Laurens County Attorney

21
22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, II

24 THE COURT: All right. We're on the
25 record this afternoon. This is the matter of

1 Martha Foster Watts vs. Laurens County Sheriff's
2 Department. The plaintiff has filed a motion for
3 new trial, or in the alternate, judgement NOV.

4 Before we start with the arguments, even
5 though I know all four of you very well, starting
6 to my right, Mr. Cruickshanks, would identify
7 yourself for the court reporter and just work your
8 way on down.

9 MR. CRUICKSHANKS: May it please the
10 court, Your Honor, I'm Sandy Cruickshanks, Laurens
11 County attorney.

12 THE COURT: All right. Spell your last
13 name for the court reporter, please.

14 MR. CRUICKSHANKS: Everybody knows how to
15 spell that.

16 THE COURT: She may not.

17 MR. CRUICKSHANKS:
18 C-r-u-i-c-k-s-h-a-n-k-s.

19 THE COURT: Thank you.

20 MR. HARTER: Rusty Harter with the firm
21 of Chapman, Harter & Harter. I represent Laurens
22 County Sheriff's Office. That's H-a-r-t-e-r.

23 THE COURT: Mr. Thompson.

24 MR. THOMPSON: I'm Tom Thompson. I'm
25 from Laurens. I represent the plaintiff, Martha

1 Watts.

2 MR. BRIAN: James Brian from Laurens. I
3 Represent the plaintiff, also.

4 THE COURT: Very good.

5 All right. Mr. Thompson, this is your
6 motion. As I indicated to the lawyers, if both
7 sides would just highlight your respective points,
8 I will take it under advisement. We'll read
9 anything that's already been submitted. If
10 there's anything else that needs to be submitted
11 by either side, I'll allow that to happen as
12 well.

13 MR. THOMPSON: Could you stand there?

14 THE COURT: You can stand wherever you
15 fell more comfortable.

16 MR. THOMPSON: It will be easier.

17 Judge, as you'll recall this case, I know
18 you were provided all the details, it was a
19 situation where a surveillance video was
20 ultimately introduced into evidence, and the
21 plaintiff had objected to that surveillance video
22 coming in in limine, and you overruled us and
23 allowed it to come in anyway.

24 This is a motion for a new trial made on
25 the grounds of the unfair prejudice resulting from

1 the admission and use of the prejudicial
2 surveillance video at trial.

3 Additionally -- in addition to the fact
4 that the video came in, we are also arguing that
5 defense counsel, during summation of his case to
6 the jury, violated some guidelines as set forth by
7 the Court with reference to what could be said
8 about the video during final arguments.

9 Rule 90-1(a) as our rules of evidence
10 requires the authentication or identification as a
11 condition preceding to admissibility. And we
12 argue that this copy of a copy was not properly
13 authenticated, and we submit that the Court acted
14 beyond its discretion by admitting the inherently
15 prejudicial and unauthenticated evidence.

16 We contend that prejudice occurred when
17 there's a reasonable possibility that the
18 wrongfully admitted evidence influenced the jury's
19 verdict.

20 Now, as I said earlier, we contend that
21 the video should have never come in based on our
22 motion in limine, where we submitted to the Court
23 a rather detailed motion which was supported by a
24 memorandum.

25 In this case, it's our position that this

1 is an incomplete copy of the surveillance footage
2 that was available. It's incomplete because the
3 Sheriff's Department or the South Carolina Highway
4 Patrol acting as a law enforcement agency in
5 connection, to some extent, with the Sheriff's
6 Department selected what portions of the video
7 surveillance that he recorded. And during the
8 course of that, there was selective fast
9 forwarding, there was some intentional omission of
10 parts of the original.

11 THE COURT: Can I just stop you one
12 minute, Mr. Thompson?

13 MR. THOMPSON: Yes.

14 THE COURT: All right. I remember -- you
15 all correct me if I'm wrong. I remember that
16 there was a surveillance video that was a part of
17 the scrap metal business where the accident took
18 place. Now, are you saying that there's another
19 video that was --

20 MR. THOMPSON: Maybe I can make it
21 clearer?

22 THE COURT: Maybe you can.

23 MR. THOMPSON: They should have produced
24 the original video from the scrap place.

25 THE COURT: Okay.

1 MR. THOMPSON: They contended that there
2 was no way to download that. If that was the
3 case, they should have confiscated whatever they
4 needed to confiscate to get the original, because
5 it's only with the original available to the Court
6 and the attorneys to compare that against the copy
7 which they made.

8 THE COURT: Okay.

9 MR. THOMPSON: So what was brought to
10 court was a copy of a copy. The officer, Duncan,
11 went out there with a camera.

12 THE COURT: Right.

13 MR. THOMPSON: And took a picture of this
14 video running through a monitor, and he selected
15 when it would begin, when it would end, and he had
16 Mr. Kagle there fast forwarding it this way and
17 this way. And we contend that what he has is a
18 copy of a copy, is what he brought to court. And
19 the law says you have to bring the original,
20 unless the original is lost at no fault of the
21 party offering it into evidence. We're saying,
22 one of the most powerful agencies in the state
23 could have downloaded that loop, or gotten that
24 loop of tape and had it for the Court to compare
25 against a copy, if a copy was going to be used.

1 But they should have used the original.

2 THE COURT: Did the patrolman testify for
3 the reason why he took video of a video of the
4 video?

5 MR. THOMPSON: In his opinion, it could
6 not be gotten off of that thing. But Mr. Kagle
7 who owned the thing and installed it, at one point
8 on cross-examination, indicated he thought that it
9 could be taken out.

10 THE COURT: Okay.

11 MR. THOMPSON: And gotten it.

12 THE COURT: Okay.

13 MR. THOMPSON: But all I'm saying, they
14 had to confiscate the whole piece of equipment.
15 They got to that thing within four to five days
16 after the incident.

17 THE COURT: Okay.

18 MR. THOMPSON: You know, we did not get
19 the video, the copy of the copy, until mediation
20 several years later.

21 So what we're saying is, on top of the
22 omissions that were caused by the fast forwarding,
23 so on and so forth, there was also a reflection on
24 the copy of the officer himself. There was also a
25 glare on it. There was ghost-like images on it.

PROOF OF SERVICE FOR RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Donald B. Hocker, Circuit Court Judge

Case No. 2019-001514

Martha Foster Watts,

Appellant,

v.

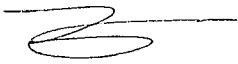
Ricky W. Chastain, Sheriff
Laurens County, South
Carolina,

Respondent.

PROOF OF SERVICE

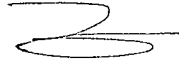
I certify that I have served the Appellant's Record on Appeal, via email on August 5, 2020, to the attorneys of record, Russell W. Harter, Jr., Chapman, Harter & Harter and A. Cruickshanks, IV.

Dated: August 5, 2020


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Attorney for Appellant

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

August 5, 2020



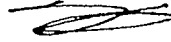
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Aug 28 2020

SC Court of Appeals

Respectfully submitted this 4th day of February 2020.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case Number: 2019-001514

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SC Court of Appeals

Martha Foster Watts, Appellant,

v.

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

APPELLANT'S MOTION FOR EXTRA TIME TO FILE INITIAL BRIEF

Appellant, by counsel, moves the Court for extra time to file her Initial Brief as follows:

1. Appellant's Initial Brief is due to be filed February 7, 2020.
2. Appellant requires an additional thirty days to properly prepare her brief due to the complexity of the issues on appeal and due to undersigned counsel's litigation schedule and other demands of his law practice.
3. No prior extension of time to file the brief has been granted by the court.
4. No party will be prejudiced in any way by granting this extension of time.
5. Undersigned has received consent of opposing counsel, for the requested extension.
6. This request is made in good faith and for no improper purposes.

WHEREFORE, Appellant moves the Court for an extension of time to file her Initial Brief, through March 9, 2020.

- 717 -
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December 31, 2019

Ms. Joy E. Holston
118 Sandy Beach Drive
Prosperity, South Carolina 29127

RE: **Martha Foster Watts, Appellant v. Ricky W. Chastain, Sheriff Laurens County, South Carolina**
Case No. 2015-CP-30-00624

Dear Ms. Holston:

I received the Court transcript in connection with the above matter from Cheryl Smith on or about December 24, 2019.

After reviewing the transcript prepared by Ms. Smith, I learned that you served as Court reporter in the matter on February 12, 2019 for a post trial motion, I need the post-trial motion hearing transcribed, please forward me your statement for any advance fee you would require.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

I hope to hear from you in the immediate future.

Sincerely,

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TJT/cav

CC:

S.C. Court Administration
1015 Sumter Street, #200
Columbia, South Carolina 29201

✓ Clerk, Court of Appeals
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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case Number: 2019-001514

Martha Foster Watts, Appellant,

v.

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

AMENDED NOTICE OF APPEAL

Martha Foster Watts appeals from the attached Judgement of the Honorable Donald B. Hocker dated April 20, 2018. Appellant received written notice of the Final Judgement on December 31, 2019. Appellant also appeals from the attached Order Denying Plaintiff's Post-Trial Motions entered by the Honorable Donald B. Hocker, dated August 5, 2019. Appellant received written notice of the Order on August 7, 2019. Appellant's original Notice of Appeal was filed on September 5, 2019.

Dated: December 31, 2019

s/ Thomas J. Thompson

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Donald B. Hocker, Circuit Court Judge

Case Number: 2015-CP-30-00624

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SC Court of Appeals

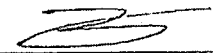
Martha Foster Watts, Appellant,


v.

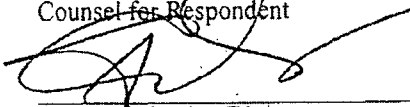
Ricky W. Chastain, Sheriff
Laurens County, South Carolina, Respondent.

AGREEMENT TO ORDER LESS
THAN THE ENTIRE TRANSCRIPT

The undersigned agree that the following portions of the proceedings will not be ordered from the court reporter: Selection and swearing of the jury;


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9/30/2019

September 26, 2019

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September 24, 2019

Ms. Cheryl A. Smith
Post Office Box 80032
Simpsonville, South Carolina 29680

RE: **Martha Foster Watts, Appellant v. Ricky W. Chastain, Sheriff Laurens County, South Carolina, Respondent.**
Appellate Case No. 2019-001514

Dear Ms. Smith:

I have your letter of September 18, 2019 with reference to the transcript in connection with the above.


The matter should be captioned as I have set same forth above.

I need the entire transcript, approximately 420 pages, I realize you may have transcribed portions of the record, but I will have a problem organizing all of that together with a partial transcript from you, so my client is prepared to pay for a full transcript without the jury selection, voir dire, qualification and selection processes.

I will be sending you a letter under separate cover executed by all counsel of record with reference to ordering less than the full transcript.

I have enclosed your requested deposit of \$700.00.

Sincerely,


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Attorney for the Appellant

TJT/cav

CC:
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1015 Sumter Street, #200
Columbia, South Carolina 29201

Rec'd 9/24

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Donald B. Hocker, Circuit Court Judge

Case Number: 2015-CP-30-00624

Martha Foster Watts, Appellant,

v.

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

NOTICE OF APPEAL

Martha Foster Watts appeals from the attached final judgement of the Honorable Donald B. Hocker dated August 5, 2019. Appellant received written notice of the of the order on August 7, 2019.

Dated: September 5th, 2019

s/ Thomas J. Thompson

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The redacted March 18, 2018 *de bene esse* video deposition of Barton Holmes was played in open court at trial on April 17, 2018 (T. p. 75). It is submitted as a video disk contemporaneously herewith.

1 STATE OF GEORGIA
2 COUNTY OF HARRIS

3
4 CERTIFICATE

5
6 The foregoing transcript of the proceedings
7 was taken before me as a Registered Professional
8 Reporter and reduced to this transcript under my
9 direction and supervision, and I certify that it
10 is a true and correct transcript of the
11 proceedings to the best of my ability.

12 This 26th day of March, 2018.

13
14
15
16 Betsy Peterson
17 Betsy J. Peterson, CRR, RPR, CCR
18 GBCR Certificate No.: B-2187
19
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21
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25



1 don't know that I actually moved that in. I did
2 not question the deponent --

3 MR. BRYAN: You handed it to him.

4 MR. HARTER: Excuse me. Excuse me, Mr. --
5 but Exhibit No. 1 is the notice of the
6 deposition, and I think you have it.

7 (Proceedings concluded at 4:28 p.m.)

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MR. BRYAN: Have you read it?

MR. HARTER: You -- do you have any further questions, Mr. Thompson?

MR. THOMPSON: No.

MR. HARTER: There's one lawyer --

MR. THOMPSON: I understand that.

MR. HARTER: -- that's supposedly appearing for the plaintiff at this deposition to ask questions.

MR. THOMPSON: And that's what has been taking place.

MR. HARTER: Okay.

MR. THOMPSON: We're through. No further questions.

MR. HARTER: I -- I don't have any questions -- Barton Holmes, thank you very much again for being here today and for --

THE WITNESS: Thank you, sir.

MR. HARTER: -- your service. Okay?

THE WITNESS: Thank you, sir.

MR. HARTER: This concludes the deposition.

(Video off)

(A discussion was held off the record.)

MR. HARTER: Defense Exhibit No. 1, I believe, is the notice of the deposition. I

1 or, Barton, to this exhibit that you're holding in
2 your hand.

3 A. Yes, sir.

4 Q. I'm not going to ask you to listen to the
5 trans -- to the tape of that recording. But if
6 anybody has a question about it, they could listen
7 to the tape and review the transcript to determine
8 whether it's accurate or not. Right?

9 A. Absolutely, yes, sir.

10 Q. And you're not asking that -- that we or
11 anybody present the tape to you right now to review
12 it. But you haven't reviewed or ever listened to
13 the tape, have you?

14 A. No, sir, I've never listened to the tape.

15 Q. Okay. But it is what it is. In other
16 words, if the tape says what's in the transcript,
17 the transcript's accurate. If the tape says
18 something different than the transcript, then maybe
19 it's not. Correct?

20 A. You put it a little bit better than I
21 explained, but yes, I agree.

22 MR. HARTER: Thank you, sir.

23 MR. BRYAN: Mr. Harter, have you -- have
24 you read --

25 MR. HARTER: No. No, wait a minute.

1 MR. HARTER: I object to --

2 A. I don't know how many other ways I can
3 answer that. I --

4 Q. Well, you can read it through, or we can
5 play the transcript for you. And you can comment
6 that it -- it's either not -- it's either accurate
7 or it's not accurate.

8 A. I don't -- I don't think that's necessary.

9 Q. Well, then, you have to answer the question.

10 A. I -- I believe I've already said I would
11 have no reason to believe it's not accurate. I
12 believe it's accurate.

13 Q. Okay.

14 A. I don't --

15 MR. BRYAN: That's number what?

16 MR. THOMPSON: 3.

17 MR. BRYAN: 3? Plaintiff's Exhibit 3.

18 MR. THOMPSON: That's all. Answer any
19 questions --

20 MR. HARTER: That's all the -- your
21 questions, Mr. Thompson?

22 MR. THOMPSON: Yes.

23 EXAMINATION

24 BY MR. HARTER:

25 Q. Okay. Let me just go back, Mr. Holmes --

1 toward that location from Laurens toward Clinton,
2 what is visibility like back as you approach that
3 area?

4 A. Again, it's not drawn to scale, so I guess
5 that's up for debate. But typically it would be
6 a -- a open four-lane road with a paved center
7 median at a slight downgrade. There is a crest of
8 the hill, but -- and again, depending on your scale,
9 it's back to the left of the diagram a couple of
10 hundred yards.

11 Q. Okay. Barton, were you aware of any traffic
12 or vehicles that were traveling in the right-hand
13 lane as on -- headed toward Clinton on 76?

14 A. None that I can remember. Again, just
15 generally speaking, traffic was extremely light.

16 Q. Barton, you can resume your seat.

17 Thank you very much for being available today
18 and cooperating with us to schedule this testimony
19 here at Fort Benning, Georgia. And I thank you,
20 sir, for your service.

21 A. Thank you, sir, happy to be here.

22 MR. HARTER: That's all -- all the
23 questions that I have.

24 THE WITNESS: Yes, sir.

25 EXAMINATION

1 A. Okay. No, I mean, I -- I believe that
2 what's included in here is our conversation.

3 Q. So you're saying it is an accurate
4 transcript --

5 MR. HARTER: Object.

6 Q. -- transcription.

7 A. To the best of my knowledge, yes, sir.

8 Q. All right.

9 A. I know sometimes during the transcription
10 process there's discrepancies in words and things
11 like that, but, I mean, I -- I don't think the
12 substance would change.

13 MR. BRYAN: If he needs time to look --

14 Q. But -- but you're saying that you believe it
15 is an accurate transcription.

16 A. Yes, sir. Again, I -- I cannot remember --
17 I mean, this was in 2013. I -- I can't tell you
18 exactly what I said. But as I remember the events,
19 I would have no reason to believe that what's in
20 here -- same as what I'm telling you today --
21 wouldn't be true. So...

22 Q. And I'm offering you the right to read it
23 through.

24 A. No, sir, I'm -- I'm good.

25 Q. So you are agreeing it's accurate.

1 to take care. Can we step outside? Y'all stay
2 here. Let's go off the record.

3 (Video off)

4 (Brief break)

5 (Video on)

6 BY MR. THOMPSON:

7 Q. Mr. Holmes, I'm going to hand you again
8 Plaintiff's Exhibit No. 3, which is your interview
9 with Corporal Duncan, and ask you whether or not if
10 that is an accurate transcription of your interview
11 with the corporal.

12 A. Yes, sir.

13 Q. You think -- you're saying it's all
14 accurate.

15 A. Oh, I have -- I have no reason to believe
16 that it's not. I don't -- I don't really know
17 what's involved in the transcription process, but --

18 Q. Well, I suspect you could --

19 MR. HARTER: Go ahead and finish your
20 answer, please. Go ahead.

21 A. I mean, that's -- I would have no reason to
22 believe it's not.

23 Q. Okay. Well, then, you need to look at it
24 and tell me if it is or it isn't, or we can play the
25 tape for you.

1 A. -- period, but during my training I have not
2 been permitted to leave the base, no, sir.

3 Q. Okay. Now, according to our calculations,
4 you -- you would be through with your -- your next
5 round of training here on or about April the 18th?

6 A. I don't actually have orders cut for
7 Airborne school. So I could be in Airborne hold for
8 a week; I could be there three weeks; I could go
9 immediately the following Monday. That's what's
10 been proposed. But until I have those -- those
11 official Army orders, it's really all speculation.
12 Things change all the time.

13 Q. But there is a possibility you could be
14 available in Laurens during the week of April the
15 16th.

16 A. No, sir, there's not. Immediately following
17 Airborne, I get on an Army bus and drive straight to
18 Fort Bragg. I'm not permitted any sort of leave or
19 anything like that. Don't even get to see my
20 family. I go straight there.

21 Q. Okay.

22 A. I wish -- I wish I did have time to go back
23 to Laurens. Trust me, I would love -- love to see
24 my family.

25 MR. BRYAN: There's something else I've got

1 Do you recall what your response was to that
2 question?

3 A. Are you asking me if I wanted to be truthful
4 to the investigation?

5 Q. Do you recall what you -- what your response
6 was?

7 A. I don't remember verbatim, but obviously I
8 would say that yes, I would want to provide the
9 truth.

10 Q. All right. And you further indicated that
11 what might have been relevant at -- at one time
12 would not necessarily be relevant at another time.
13 And I don't know what you meant by that.

14 A. I'd -- I'd probably need some more context
15 to maybe try to help you out, but I'm not saying I
16 didn't make that statement. I'm not really sure how
17 that fits in.

18 Q. All right. I think you've answered it
19 sufficiently, to my satisfaction.

20 Now, you say you've been at Fort Benning and you
21 haven't been off the base. But you have been,
22 haven't you? You've been home.

23 A. I indicated initially when you asked me that
24 we did have a holiday block leave --

25 Q. Yeah.

1 No. 5 for the plaintiff.

2 (Plaintiff's Exhibit 5 was marked for
3 identification.)

4 Q. Do you recognize that?

5 A. This would still be my vehicle, yes, sir.

6 Q. And that is the -- shortly after the
7 collision with the king vehicle?

8 A. I believe that all of these photos that
9 you've marked were taken by the MAIT team a couple
10 days after the incident when they -- when they
11 interviewed me.

12 Q. All right. Now, when we took your
13 deposition back in August of '17 --

14 A. Yes, sir.

15 Q. -- I believe you stated you were in your
16 vehicle when the second vehicle -- when the watts
17 vehicle hit the rear of the king vehicle. Is that
18 true?

19 A. Yes, sir, that's correct.

20 Q. Okay. All right. And do you recall the --
21 you -- I asked you this question: "And when you
22 gave your statement to Corporal Duncan or whatever
23 his rank was, you certainly wanted to give him the
24 truth of the matter as you saw it; right?" question
25 mark. That's on page 41, line 10.

1 MR. HARTER: Well, what I think happens is
2 that you ask him a question to see if there's
3 any contradiction; then you confront him with
4 the deposition; and then the deposition is
5 marked as a court's exhibit.

6 MR. THOMPSON: Okay.

7 MR. HARTER: But I think you need to ask
8 him the question first.

9 MR. THOMPSON: Yeah.

10 (A discussion was held off the record.)

11 MR. BRYAN: I don't see but one, though.

12 MR. THOMPSON: That's the problem --

13 MR. BRYAN: Here it is. That's it right
14 there, the same one, or is it? Here's two.
15 Here's two of the same thing.

16 MR. THOMPSON: Got to make sure that --

17 MR. BRYAN: Just use these two. That's the
18 same.

19 MR. THOMPSON: Some of them look -- all
20 right. They're the same.

21 MR. BRYAN: That's the same -- two of the
22 same one. Is that the same picture?

23 MR. THOMPSON: Yeah.

24 BY MR. THOMPSON:

25 Q. All right, Mr. Holmes. Another photograph,

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(Video on)

BY MR. THOMPSON:

Q. Mr. Holmes, let me hand you Plaintiff's Exhibit No. 4 and ask you do you recognize that.

(Plaintiff's Exhibit 4 was marked for identification.)

A. Yes, sir, I do. That would be my vehicle and I guess the damage that was sustained during the -- the first wreck.

Q. Does that accurately portray or reflect the damage your patrol vehicle received as a result of the collision with the King vehicle on August 15 --

A. Yes, sir.

Q. -- 2013?

A. Yes, sir.

Q. Okay. Thank you. You can put it down.

MR. THOMPSON: I'd like to -- I've got the original of this deposition. I have also a copy. Put either one in that you want.

MR. HARTER: I'm sorry. What, now?

MR. THOMPSON: I'm going to ask him some questions concerning his deposition.

MR. HARTER: Okay.

MR. THOMPSON: And I can either put a copy in here or I can put the original in.

1 MR. HARTER: well, he can --

2 A. Sir, sometimes -- I think I'm answering your
3 question. Sometimes things in life aren't just
4 black and white, yes or no. There's obviously a lot
5 of moving pieces to this, a lot of emotions involved
6 in this, and I'm just trying to handle it as
7 delicately as I can. I'm not trying to be smart.
8 I'm just trying to give you what I feel about this.

9 Q. All right. I'm -- I'm going to ask you one
10 more time, and that'll be it. Do you take any
11 responsibility for the first accident with the king
12 car?

13 A. I was -- I was a party in that first
14 accident. So obviously on paper I am involved in
15 that incident. But I do not believe that my actions
16 were reckless or that I did anything wrong to
17 contribute to that. I believe that I did everything
18 that was required of me in that situation, which is
19 why I believe that I wasn't cited for the -- for the
20 accident.

21 MR. THOMPSON: All right. Let me take a
22 short recess. Maybe we can wrap this thing up
23 here.

24 (Video off)

25 (Brief break)

1 I am regretful for what happened, I do not believe
2 that I was acting in a reckless manner or a manner
3 that would endanger the public or anything like
4 that. Obviously, it was not my intention, you know,
5 for -- for something like this to happen, but I
6 don't believe that I did anything personally to
7 contribute to the -- the actions that followed.

8 Q. You -- you had nothing -- no responsibility.

9 A. I don't believe that I acted in a reckless
10 manner.

11 Q. I didn't ask you that question. I said you
12 take no responsibility.

13 A. I was obviously a -- a driver in that --
14 that first -- that first traffic collision. But,
15 again, I don't believe that my actions led to
16 subsequent actions by other people.

17 Q. I'm just -- just still asking you if you --
18 a "yes" or "no" --

19 MR. HARTER: He's answered that. He's
20 answered that.

21 Q. I think --

22 A. I'm -- I'm trying to answer it as eloquently
23 as I can. It's --

24 Q. Well, I'm trying to get a "yes" or "no"
25 answer.

1 accidents where air bags are deployed, sometimes
2 just the dust and -- and the smells associated with
3 the air bag can cover things up. But I had no
4 reason to believe that she was impaired in any way
5 or -- or anything like that. Again, at that point
6 my primary focus was just on her well-being because
7 she had been involved in an accident.

8 Q. And she gave you no indication of being
9 impaired?

10 A. No, sir, she did not.

11 Q. Other than --

12 A. Other than the -- the severe pain she was
13 in.

14 Q. Right.

15 A. So...

16 Q. Right. Now, do you accept any
17 responsibility for that first collision with the
18 King car?

19 A. Obviously, highway patrol ruled it as two
20 separate incidents.

21 Q. I'm asking --

22 A. I know.

23 Q. -- you personally.

24 A. I know. I'm -- I'll get there, I promise.

25 They ruled it as two separate incidents. And while

1 Q. Okay. So you don't know the number of
2 whites or strobe lights?

3 A. No, sir, I wouldn't.

4 Q. Or blue?

5 A. No, sir, I wouldn't.

6 Q. Or red?

7 A. No, sir, I wouldn't.

8 Q. Okay.

9 A. I just knew that there were a lot of them
10 out there, so...

11 Q. Okay. Now, any time you are making a turn
12 in an emergency situation, isn't it correct that
13 the -- you've got to attempt to do that in such a
14 manner as to protect other people utilizing the
15 highways?

16 A. Yes, sir, that's correct.

17 Q. Would that be paramount?

18 A. Safety of the public is paramount, yes, sir.

19 Q. Okay. Now, when you went over and saw
20 Ms. Watts' vehicle and saw her in there, you did not
21 detect the odor of any alcohol, did you?

22 A. I didn't. And, again, her air bag had
23 deployed.

24 Q. Yeah.

25 A. And for those people who are familiar with

1 that did --

2 Q. Right.

3 A. -- arrive on the scene.

4 Q. And -- and -- an EMS vehicle came to the
5 scene?

6 A. There was an ambulance there. And, again, I
7 don't have specific numbers, but fire is also
8 dispatched with EMS in Laurens County. So they
9 would've been there --

10 Q. And fire was there.

11 A. Yes, sir.

12 Q. And all these vehicles had some color lights
13 on them that were flashing at the time. Is that
14 correct?

15 A. Yes, sir, that's correct.

16 Q. And when we took your deposition, it's my
17 recollection that you -- you didn't remember how
18 many reds or how many blues or how many whites.

19 A. Were -- were there total --

20 Q. Yeah.

21 A. -- or --

22 Q. Yeah.

23 A. -- or I mean -- yes, sir, there's no way I
24 could've known that. I don't think any reasonable
25 person would have any clue.

1 Q. Okay. So they used the equipment to
2 download it.

3 A. I believe so. But, again, I've -- I'm not
4 trained in using that equipment. So I think that's
5 what they were doing, but you'd have to ask them.

6 Q. Okay. And you don't know what the download
7 looked like, consisted of.

8 A. I -- I couldn't tell you what information
9 is -- is gathered from that.

10 Q. Right. You don't know.

11 A. No, sir, I don't.

12 Q. All right. Hold on just a second.

13 All right. Now, after both of these collisions
14 occurred, you remained on the scene for some period
15 of time, did you not?

16 A. Yes, sir, I did.

17 Q. And a number of different agencies responded
18 to the scene, did they not?

19 A. Yes, sir, that's correct.

20 Q. Would I -- would I be correct in saying that
21 more police cars came to the scene?

22 A. Yes, sir, they did. I don't have an exact
23 number for you --

24 Q. Right.

25 A. -- but there were a number of other officers

1 vehicle, I believe. If you go to page 13, line 17.

2 A. Yes, sir.

3 Q. You see it there, where Duncan is asking you
4 about the black box?

5 A. Line 17? Yes, sir, I'm on it.

6 Q. So you and he did discuss the downloading of
7 the black box.

8 A. They hooked up their machine to the little
9 port under my steering wheel --

10 Q. Yes.

11 A. -- and that's --

12 Q. And you had no objection --

13 MR. HARTER: No, wait -- go ahead, finish.

14 Q. I thought you --

15 A. I don't know why I would object. I mean...

16 Q. I know. Are you through?

17 A. Yes, sir.

18 Q. So he did download it.

19 A. I believe they tried to and there was an
20 issue with the download. But, again, it wasn't my
21 investigation. I just -- they asked if they could
22 plug it in. I allowed them to. So I don't know
23 what they found from it.

24 Q. Okay.

25 A. You'd have to consult the MAIT report.

1 A. And -- and video evidence is not required in
2 a speeding case in the state of South Carolina.

3 Q. I know that. But I -- I'm not asking you
4 about this particular accident. I'm asking you
5 about your duties out there and what you were
6 looking for.

7 A. Right. And, again, I did not make any DUI
8 arrests this particular night. But, again, our
9 presence out there was not solely DUI enforcement.
10 It was -- it was traffic safety. So any unsafe --

11 Q. All right.

12 A. -- unsafe practices driving.

13 Q. But you admit, then, that your car was not
14 equipped to stop an impaired driver and comply with
15 the videotaping law.

16 A. My car did not have a camera, no, sir.

17 Q. And -- and that is -- that would render it
18 unable to be used in the stopping of an impaired
19 driver. Is that not correct?

20 A. Again, I'm not an attorney. I'm just a
21 police officer. But I'm aware that there is certain
22 case law that would make that difficult.

23 Q. Okay. Make it difficult. All right.

24 Now, you also talked with Sergeant Duncan
25 concerning the downloading of the black box on your

1 needed to, but I wouldn't say the purpose of us
2 being out there was to solely make DUI arrests.
3 Again, it was a -- it was a traffic safety thing.
4 South Carolina has a very high traffic fatality
5 rate, and we were just trying to do our part to cut
6 down on that.

7 Q. But I'm saying were -- was one of your
8 objectives, if you found an impaired driver, to
9 arrest him and get him off the road?

10 A. I -- I would say so, yes, sir.

11 Q. Okay. But your car was not equipped with a
12 dash cam.

13 A. Right. And in that situation we would call
14 over a highway patrol unit, and they would handle
15 the field sobriety testing and -- and things of that
16 sort. That was kind of our standard procedure for
17 that.

18 Q. But aren't you familiar with the requirement
19 that a video cam has to be initiated not later than
20 the putting on of the blue light in a DUI case?

21 A. Sir, I'm aware there's certain case law, but
22 I've already indicated that the reason for my
23 vehicle stop was not suspected drunken driving, it
24 was speeding.

25 Q. I understand that.

1 traffic. And so I do remember having to wait a
2 period of time to get out on the radio, because the
3 way our radios work is only one -- one person can
4 transmit at a time.

5 Q. All right. Now, you say your vehicle was
6 not equipped with a dash cam. Right?

7 A. No, sir, it was not.

8 Q. But you had a camera of your own that you
9 occasionally used.

10 A. Yes, sir, that's correct.

11 Q. And you were on the lookout for impaired
12 drivers, were you not?

13 A. Again, our -- our typical saturations were
14 obviously impaired drivers, unsafe drivers, just,
15 you know, basically trying to promote traffic
16 safety, cut down on accidents and --

17 Q. Well, were --

18 A. -- fatal collisions.

19 Q. Go ahead. Finish up.

20 A. Yes, sir. I'm -- I'm done.

21 Q. Sorry about that.

22 were you out there to make arrests for driving
23 under the influence if the occasion arose?

24 A. If there was an impaired driver on the road,
25 then I was more than ready to -- to do what we

1 me.

2 MR. THOMPSON: We've been through this
3 before.

4 MR. HARTER: The tape will show,
5 Mr. Thompson --

6 MR. THOMPSON: I know what it'll show. We
7 object to any testimony by this witness based on
8 what someone else told him or what some report
9 contained that was not prepared by him.

10 MR. HARTER: Well, we'll -- the trial judge
11 will deal with that, but you --

12 MR. THOMPSON: I understand that.

13 MR. HARTER: Excuse me, now. Let me talk.
14 The trial judge will deal with that, and you've
15 opened the door to it. But we'll deal with it
16 at trial.

17 MR. THOMPSON: Yeah.

18 BY MR. THOMPSON:

19 Q. So how many times did you call the
20 dispatcher?

21 A. Again, I remember -- again, when I'm
22 referring to talking to dispatch, I'm referring to
23 the -- the one series of radio transmissions where I
24 called in the wreck. But, again, as I previously
25 stated, the radio was -- was kind of full with radio

1 Q. All right. But you're basing that, in fact,
2 on what someone else has told you, then.

3 A. What the published MAIT report concluded,
4 yes, sir.

5 Q. Something that somebody else prepared and
6 had told you.

7 A. Yes, sir.

8 MR. THOMPSON: All right. Well, we --

9 A. The document prepared by highway patrol.

10 MR. THOMPSON: -- we object --

11 MR. HARTER: Wait a minute, now. You can't
12 interrupt him while he's talking, Mr. Thompson.

13 MR. THOMPSON: I know what I can do.

14 MR. HARTER: Well, I -- I know what -- I
15 don't think you can.

16 MR. THOMPSON: Well, is he through?

17 MR. HARTER: Well, you have to wait until
18 he finishes talking, and --

19 THE WITNESS: Yes, sir, I --

20 MR. HARTER: -- and you don't know he's
21 through.

22 THE WITNESS: I'm done. I'm willing to
23 answer --

24 MR. THOMPSON: I thought he was.

25 THE WITNESS: -- whatever that you have for

1 then within five or 10 seconds the second collision
2 occurred. I don't see where you're getting out of
3 your car in that statement.

4 A. Again, I think I answered the question,
5 like, with the pertinent information relative to,
6 like, he was talking more about vehicle positioning
7 and things like that. I mean, again, I was sitting
8 in my driver's seat trying to get out on the radio.
9 I don't -- I don't see the discrepancy, or I --
10 maybe I'm not understanding your question.

11 Q. Well, would you agree with the five to 10
12 seconds between the two collisions?

13 A. Again, I think we've already discovered that
14 after I was just involved in an accident and based
15 on what the MAIT team determined that it was
16 actually --

17 Q. Well, no, what --

18 MR. THOMPSON: I object to any testimony --

19 A. -- that it was actually --

20 MR. HARTER: Let him finish his answer,
21 Mr. Thompson. Go ahead.

22 A. -- it was a considerable more of time --
23 more amount of time. So obviously my perception of
24 time was a little off, but I don't think my facts
25 are.

1 MR. HARTER: Yeah.

2 Q. "She was moving... pushed the Charger a
3 considerable distance. And the white vehicle after
4 the impact veered off left into the fence, you know,
5 across the westbound lane of travel and into the
6 fence of the scrap yard. I finished calling it in
7 to dispatch, checked the driver of the Charger and
8 asked if she was okay. She was obviously a little
9 bit shaken up, but she said she was fine at that
10 time -- at that moment. And I then went over to the
11 white car and helped try to get that lady stable.
12 Her doors were crumpled up enough that we had to
13 actually, like, break the door to get her out. EMS,
14 my first backup unit arrived probably a minute, two
15 minutes later. It was quick. EMS was on the scene
16 within five."

17 All right. I thought on direct you indicated
18 that you had gotten out of your car and checked on
19 MS. --

20 MR. BRYAN: King.

21 Q. -- King, yes, before the second collision
22 occurred.

23 A. Yes, sir, that's what I said.

24 Q. But when you gave your version to Corporal
25 Duncan, you say you were getting out of your car and

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identification.)

Q. Let me see here. I'd ask you to turn to page 7.

A. I'm there.

Q. All right. And ask you to go to the bottom and where -- do you see line 24?

A. Yes, sir.

Q. Let me read it. This is your -- this is what you said.

A. Yes, sir.

Q. "The vehicle," comma, "the Charger, continued on maybe 30 more feet in the No. 1 lane and stopped in the lane. Radioed dispatch to tell them I had been involved in a 10-50. And I was getting out of my car probably five or 10 seconds after the initial impact whenever the second -- the white Chevrolet, white Chevy vehicle driven by the elderly lady came in. She was moving, and it didn't even look like she hit her brakes and ran directly into the back of the Charger."

And then if you would drop down to --

MR. HARTER: Wait a minute, now. You haven't read the whole --

MR. THOMPSON: Okay. I'll read the whole thing to him if you want.

1 A. I was --

2 Q. -- investigators?

3 A. I was interviewed by Corporal Duncan, who at
4 the time was a part of the MAIT team. So yes, sir.

5 Q. And you -- you remember that it was
6 recorded?

7 A. He advised me that it was recorded, yes,
8 sir.

9 Q. Yes. And this happened on August the 20th,
10 2013?

11 A. I can agree with that. I don't know the
12 exact number of days, but it was a period of time
13 after.

14 Q. And it was five days after this collision --

15 A. I can --

16 Q. -- or collisions. Right?

17 A. I can agree with that, yes, sir.

18 Q. All right. We have transcribed the
19 recording of your conversation or questioning and
20 answering with Corporal Duncan. And I'm going to
21 hand you --

22 A. Yes, sir.

23 Q. -- a copy of the transcript marked
24 Plaintiff's Exhibit 3.

25 (Plaintiff's Exhibit 3 was marked for

1 A. I -- based on the fact of how she struck my
2 vehicle, yes, sir.

3 Q. She must have been extremely close, then.

4 MR. HARTER: Object to form.

5 A. I'm not sure I understand the question.

6 Q. All right. If you're in Lane 1 ahead of her
7 and she's behind you, and you make a left-hand
8 turn -- sharp left-hand turn to do a U-turn, you
9 would've cleared the roadway before she could've hit
10 you, wouldn't you?

11 A. Again, I'm not a -- like, a reconstruction
12 specialist, so I don't know all that's in play right
13 there. But, yes, she was behind me.

14 Q. Okay.

15 A. Now --

16 Q. Let me make sure that I understand your
17 prior testimony and what you pointed out to
18 Mr. Harter. The -- the collision between your car
19 and the King car did not happen in the median.

20 A. No, sir.

21 Q. All right.

22 A. I mean, it was very close to the median but
23 still I would say in the No. 1 lane.

24 Q. All right. Now, do you recall discussing
25 this case with the MAT -- MAIT team --

1 A. It would have been in the -- the back rear
2 quarter panel, just behind my tire, in that piece of
3 body work right there.

4 Q. And the car afterwards was drivable?

5 A. Yes, sir. This, I believe, was taken a
6 couple days after the accident, but I -- I was able
7 to drive my vehicle until they had it scheduled for
8 the body shop.

9 Q. All right. But Plaintiff's Exhibit No. 2 is
10 an accurate portrayal of how your car looked like
11 after it was struck by the King car. Right?

12 A. Yes, sir, that's correct.

13 Q. That's before you had it to the body shop.
14 Right?

15 A. Correct, yes, sir.

16 Q. Okay. And you were able to drive the car on
17 out of there.

18 A. Yes, sir, that's correct.

19 Q. As was Ms. King, or do you know?

20 A. That I'm not sure.

21 Q. Okay. You can put that down now.

22 A. Okay.

23 Q. Thank you.

24 Now, it's your testimony that Ms. King was
25 behind you in your lane, the No. 1 lane?

1 A. -- but it was more than one, yes, sir.

2 Q. Okay. And the brakes.

3 A. And the brakes, yes, sir.

4 Q. And that was it.

5 A. Probably, yes, sir.

6 Q. Okay. Now -- just bear with me. I --

7 A. Yes, sir.

8 Q. -- thought I had three of each copied here,
9 but maybe I don't.

10 (A discussion was held off the record.)

11 MR. BRYAN: He needs to change the disk.

12 MR. THOMPSON: Do it, yeah.

13 (Video off)

14 (Brief break)

15 (Video on)

16 BY MR. THOMPSON:

17 Q. All right. Thank you. I'm going to hand
18 you Plaintiff's Exhibit No. 2 and ask you, isn't
19 that the vehicle you were driving the night of
20 August 15, 2013?

21 (Plaintiff's Exhibit 2 was marked for
22 identification.)

23 A. Yes, sir, that's correct.

24 Q. Could you -- could you show the jury where
25 your car was hit by Ms. King's car?

1 Q. Was it a few seconds?

2 MR. HARTER: Let him finish his answer,
3 Mr. Thompson.

4 A. It -- it would've been a few seconds, but,
5 again, I can't give you a specific time.

6 Q. All right.

7 MR. THOMPSON: Now he's thrown me off my
8 thought process. Good job.

9 MR. HARTER: Sorry.

10 MR. THOMPSON: Good job.

11 MR. HARTER: You were interrupting him
12 while he was talking.

13 Q. Now, other than the blue lights, what other
14 warning devices did you engage in that maneuver to
15 go after the speeder?

16 A. Obviously the -- the warning lights that are
17 equipped with any vehicle, your brake lights. My --
18 again, my headlights were on. My brake lights were
19 functioning. So those would've obviously gotten
20 brighter as I applied my brake.

21 Q. Okay. So your brake lights and your blue
22 lights, two sets of blue lights?

23 A. I can't remember the exact number of blue
24 lights I had on that vehicle --

25 Q. Yes.

1 your car?

2 A. I identified on the radar that the radar
3 indicated that he was traveling in excess of the
4 speed limit. I visually confirmed and identified
5 the vehicle that I was clocking. And so legally
6 that's all --

7 Q. You -- you had all the evidence you needed,
8 didn't you --

9 A. Yes, sir.

10 Q. -- to charge him with speeding?

11 A. Yes, sir.

12 Q. Okay. And then you -- you -- you took a --
13 a left-hand turn. Right?

14 A. Yes, sir, that's correct.

15 Q. And the -- right before you turned, the only
16 lights that you had on were your back blue lights.

17 A. Prior to the turn I would've activated all
18 of them, but that would've included my backup
19 lights, yes, sir.

20 Q. When you say "prior to the turn," how long
21 prior to the turn are we talking about?

22 A. I mean, it was -- I can't give you an
23 actual --

24 Q. Was it --

25 A. -- amount of time. It was fairly --

1 driver. Is that what this says?

2 A. That's what it says.

3 Q. Okay.

4 A. I don't understand your question, if there
5 is one.

6 Q. Okay. And I don't see anything in here
7 where you say you put on your rear blue lights to
8 warn a following vehicle.

9 A. Okay. You're correct. There's nothing in
10 there. But I believe it's been brought up at other
11 times, so I figured it was --

12 Q. You figured what?

13 A. It was worth mentioning, so...

14 Q. All right. Now, at that point, when you
15 clocked him at 69 or 70 miles per hour in a
16 40-mile-an-hour zone limit, what was left to
17 complete the -- your duties as an officer who was
18 going to charge somebody with speeding? Was it just
19 catching up with him and stopping him?

20 A. I want to make sure I understand your
21 question.

22 Q. I'm -- I'm -- okay. Let me rephrase it.
23 Maybe that was a bad question.

24 what additional evidence did you need to charge
25 him with speeding than what you had before you in

1 said, "Activated his blue lights before the vehicle
2 in question passed him in an attempt to alert the
3 driver." It doesn't say back lights, top lights.
4 what lights are you referring to there?

5 A. I just -- I just tried to explain it in more
6 detail, but I don't know any other way to --

7 Q. Okay.

8 A. -- explain it.

9 Q. All I'm asking you is that your report
10 doesn't break the blue lights down into two
11 different categories of lights.

12 A. Again, I wrote this report, again, not as an
13 investigative report. It was -- it was the -- the
14 basic facts that I'd just laid out. Again, we
15 weren't investigating it. So this wasn't going to
16 be used by anybody at the sheriff's office to
17 investigate the incident.

18 Q. well, didn't you want to accurately put in
19 writing what had happened the night before?

20 A. Oh, absolutely, sir. But, again, I -- that
21 was -- I wasn't trying to mince words or -- or be
22 inaccurate.

23 Q. But as I read it here, you're putting --
24 you're saying you're activating your blue light to
25 alert the speeder, in an attempt to alert the

1 yes, sir.

2 Q. Okay. Now, you have in there that you were
3 traveling in the No. 1 lane. And you -- and the --
4 you can look at it --

5 A. Yes, sir.

6 Q. And that you activated a blue light after
7 you clocked a speeder. Is that not correct?

8 A. That's basically what it says, yes, sir.

9 Q. And that you -- you put the blue light on
10 to -- to do what, to alert the speeder that you
11 had --

12 A. My vehicle --

13 Q. -- reason to believe --

14 A. My vehicle had a couple of settings for
15 the -- the blue lights. The first setting turns on
16 the rear blue lights, and so that would've been
17 to -- to let people behind me or around me know that
18 I was slowing down and performing some type of
19 police action. Then obviously once I clicked them
20 over, as I was making my U-turn over, that would've
21 activated all of my blue lights, which would've
22 given 360 coverage that would've obviously alerted
23 the person coming towards me that they were probably
24 going too fast or doing something wrong.

25 Q. All right. In looking at your report, it

1 (Plaintiff's Exhibit 1 was marked for
2 identification.)

3 Q. Let me hand you Plaintiff's Exhibit 1 and
4 ask you if you can identify that, please.

5 A. Yes, sir. This was the incident report that
6 I generated regarding the -- the vehicle accident.

7 Q. Who did you consult to prepare this
8 document?

9 A. I wouldn't have consulted with anybody.
10 Again, this was just an -- an in-house department
11 report, basically documenting that I had had an
12 accident.

13 Q. Okay. So -- so you prepared this.

14 A. Yes, sir, I did.

15 Q. And --

16 A. As per our policy, so...

17 Q. Okay. And you prepared it in line with your
18 recollection of what had occurred that -- the night
19 before. Right?

20 A. Yes, sir, I would agree with that.

21 Q. And it is written in the third person. Even
22 though you wrote it, it sounds like someone else
23 wrote it.

24 A. That's the way that we're -- we're
25 instructed or trained to write our police reports,

1 was with Ms. King --

2 Q. Yes.

3 A. -- and then the separate one --

4 Q. Right.

5 A. -- between King and Watts.

6 Q. I understand.

7 A. Yes, sir.

8 Q. You -- you look at it as two separate
9 accidents, I take it.

10 A. Yes, sir.

11 Q. All right. Now, that night, after the
12 highway had been cleared off and you were released
13 from the accident scene, did -- did you make any
14 handwritten notes about what had occurred that
15 night?

16 A. I don't believe so, no, sir. I think the
17 only thing that I did after the incident was drove
18 my vehicle back to the sheriff's office. And at
19 some point -- and I can't remember if it was that
20 night or the next morning -- I completed or at least
21 submitted my -- my incident report, but that was
22 typed. So I don't believe I made any -- any notes
23 or anything like that.

24 MR. THOMPSON: Could you mark this, please,
25 Plaintiff's Exhibit 1? Okay. I can do that.

1 Q. And -- and you were operating within the
2 scope of your authority on August 13 -- August 15, I
3 mean, 2013. Is that correct?

4 A. Yes, sir, that's correct.

5 Q. Okay. All right. Let me see here.

6 Now, you worked a total of six years with the
7 Laurens County Sheriff's Department, I believe. Is
8 that not right?

9 A. Approximately. It's somewhere around there,
10 yes, sir.

11 Q. And -- and during that six-year period that
12 you worked for Laurens County, were you involved in
13 any other motor vehicle accidents which involved a
14 car that -- that you were driving, a sheriff's car,
15 that had an accident?

16 A. None that I can recall. I believe there
17 were a few deer collisions --

18 Q. Okay.

19 A. -- which are still investigated as
20 accidents, but I believe this was the only one like
21 this.

22 Q. But the accident with Ms. Watts on August
23 15, 2013, was the only car-on-car accident, Watts
24 and Knight -- I mean King.

25 A. Right. Yeah, technically, I think my part

1 A. Yes, sir, that's correct.

2 Q. And I further believe you have stated that
3 your primary job was a school resource officer. Is
4 that not correct?

5 A. That's correct, yes, sir.

6 Q. Okay. But then you -- you became involved
7 with this traffic program, DUI's and speeders and
8 that type of thing.

9 A. Yes, sir, that's correct.

10 Q. And you did that normally after your school
11 hours.

12 A. Typically, yes, sir, was when that program
13 operated.

14 Q. If the schoolteachers were working on August
15 15, 2013, at Hickory Tavern School, would you have
16 worked out there that day?

17 A. We were there at the school any day that
18 school was in session, so yes, sir.

19 Q. Okay. Okay. And I believe you've testified
20 on direct that on August 15, 2013, you were a duly
21 deputized deputy sheriff for Laurens County. Right?

22 A. Yes, sir, that's correct.

23 Q. And you were hired when Sheriff Chastain was
24 the sheriff. Right?

25 A. Yes, sir, that's correct.

1 A. About once every month and a half or two
2 months I get a 10-minute phone call. I've opted to
3 communicate with my wife during those periods of
4 time. So it's been about two -- two times since
5 November. So...

6 Q. Did they take your cell phone away from you?

7 A. Yes, sir, they do. We do not have access to
8 our phones.

9 Q. And how many times have you been off base
10 since you've been here?

11 A. Zero.

12 Q. Zero times.

13 A. Yes, sir.

14 Q. Okay. Do you have civilian clothes with you
15 here?

16 A. No, sir, I do not.

17 Q. You don't have any civilian clothes with
18 you.

19 A. No, sir.

20 Q. Okay. Now --

21 A. None that I have access to, so...

22 Q. All right. Now, when this accident happened
23 back in August 15, 2013, I believe you had worked
24 with the sheriff's department for approximately
25 three years. Right?

1 nothing to do with the military, does it?

2 A. I don't believe so.

3 Q. No. Nothing to do with the fact that you're
4 in the military now.

5 A. No, sir, other than the questions you're
6 asking me about my military service.

7 Q. Right. I understand.

8 Now, you're going to graduate from your current
9 class on the 23rd, is it, of March?

10 A. Yes, sir, next Friday. It's the infantry
11 basic course.

12 Q. And how much furlough or free time will you
13 have?

14 A. None, unfortunately. I -- I'll spend the
15 weekend here in the barracks and begin my Airborne
16 training that following Monday.

17 Q. You would not be able to come back to
18 Laurens in April.

19 A. Again, I'm not allotted any period of leave.

20 Q. Okay.

21 A. That would have to be taken up with my chain
22 of command, but it's nothing that I can do. So...

23 Q. Since you've been down here November 19 of
24 2017, have you been able to communicate with people
25 that are not on the base?

1 contact.

2 Q. But you didn't leave any word with him
3 personally.

4 A. I can't recall the exact conversations,
5 so...

6 Q. Well, you would -- you --

7 MR. HARTER: Wait a minute, now,
8 Mr. Thompson. His attorney -- you're asking him
9 about communications with his lawyer.

10 MR. THOMPSON: I'm just asking him when he
11 told you.

12 MR. HARTER: Well, that's communications
13 between us.

14 MR. THOMPSON: I'm not asking for the
15 substance of the communications. I'm asking --

16 MR. HARTER: You are.

17 MR. THOMPSON: -- what he told you.

18 MR. HARTER: I object, attorney-client
19 privilege.

20 BY MR. THOMPSON:

21 Q. Okay. He objects, but you can answer
22 anyway. I'm just asking you --

23 A. Again, sir, I -- I don't recall.

24 Q. All right. Okay. All right. All right.
25 Now, the accident that we've been discussing has

1 A. It would've been at some point in October.
2 Again, I can't remember the exact dates because
3 they -- they were changing class availability and
4 things like that. I can't recall a specific date,
5 though.

6 Q. Well, you knew on August the 7th, '17, that
7 you would be going somewhere in the near future, did
8 you not?

9 A. Again, I didn't have a date. But obviously
10 I had -- I had signed up, yes, sir.

11 Q. And you knew that this case was pending in
12 court, didn't you?

13 A. Yes, sir, I did. And, again, I apologize if
14 it caused you an inconvenience or you think I
15 handled it improperly, but the -- the case had
16 been -- had been bumped a number of times, and I was
17 just trying to move forward with my life. But,
18 again, I apologize if it caused the court any
19 inconvenience.

20 Q. Okay. When did you tell Mr. Harter that
21 you -- you were in the military or you were going in
22 the military?

23 A. I can't recall the specific date, but I know
24 that whenever I left I left a copy of my orders with
25 my family. So -- but I believe they had been in

1 it says, "Pay entry base date." Do you see that?

2 A. Yes, sir.

3 Q. And it shows August 7, 2017.

4 A. Yes, sir, that's correct.

5 Q. So you were -- you were being paid to be in
6 the military during the course of the deposition.
7 Right?

8 A. That's when I signed my initial enlistment,
9 but I didn't actually start being paid until the
10 20th of November, when I reported to Fort Benning.

11 Q. Okay. So --

12 A. So --

13 Q. But why didn't you tell me about that when I
14 asked you about your military?

15 A. I'm not trying to be flippant, but for me at
16 that point to claim that I was in the military, to
17 me, is like a stolen valor kind of thing. I don't
18 think I deserved to be able to say that, so...

19 Q. Okay. I'll take that back.

20 A. Yes, sir.

21 Q. And you've been down here at Fort Benning
22 since sometime in November. Right?

23 A. Yes, sir, that's correct.

24 Q. And -- and when did you know you were going
25 to be sent down to Fort Benning, Georgia?

1 Q. Okay. You recall the deposition we took of
2 you back on August the 15th, 2017?

3 A. Yes, sir, I do.

4 Q. Okay. Have you read that deposition since
5 then?

6 A. I've -- I've read over it, yes, sir.

7 Q. And when was that?

8 A. I received a copy of it a period of time
9 after the deposition --

10 Q. Yes.

11 A. -- and then I just briefly looked over it
12 today before I walked in here.

13 Q. Today. Okay. Do you -- do you recall that
14 I asked you about your military service in that
15 deposition and -- and you indicated that you -- you
16 had no military experience?

17 A. I don't recall that question.

18 Q. All right.

19 A. But even if I said no, I mean that would
20 still be accurate because I had just sworn in. I
21 hadn't actually begun anything, so...

22 Q. Let me hand you Plaintiff -- I mean
23 Defendant's Exhibit No. 2.

24 A. Yes, sir.

25 Q. And down there on the lower left-hand side

1 BY MR. THOMPSON:

2 Q. All right, Barton. My name is Tom Thompson,
3 and we have met before.

4 A. Yes, sir, we have.

5 Q. I want to ask you a few -- I want to ask you
6 a few questions about this accident we've been
7 talking about today.

8 A. Yes, sir.

9 Q. Are you clear-minded today?

10 A. Yes, sir, I am.

11 MR. THOMPSON: What's going on?

12 (A discussion was held off the record.)

13 MR. BRYAN: Take it down.

14 BY MR. THOMPSON:

15 Q. Okay. You say you're clear-minded today?

16 A. Yes, sir, I am.

17 Q. Were you on duty last night?

18 A. I got about nine hours of sleep last
19 night --

20 Q. All right.

21 A. -- so I -- I'm doing well.

22 Q. Okay. You're not taking any type of
23 medications today that would interfere with your
24 ability to understand what we're doing today?

25 A. No, sir, not at all.

1 obviously traveling behind me towards Clinton.

2 Does that answer your question, sir?

3 Q. Yes, sir, it does.

4 And now, if we could, let's look at Defense --
5 Defendant's Exhibit No. 4, and I'm going to ask you
6 to describe what that depicts.

7 A. Okay. Obviously for this one it's the same
8 orientation. The right side of the paper is towards
9 Clinton. The left side of the paper is towards
10 Laurens. After the -- the impact between my vehicle
11 and Ms. King's vehicle, I was stationary in the
12 paved median with -- again, my vehicle was oriented
13 towards Laurens. I basically did a 180-degree turn.
14 And Ms. King's vehicle was located in the No. 1 lane
15 facing towards Clinton, slightly offset behind my
16 vehicle.

17 Q. Okay. And your headlights were pointed what
18 direction?

19 A. Headlights were pointed in the direction
20 indicated by the arrow. So my headlights would have
21 been pointing in this direction towards Laurens, and
22 her headlights would have been pointed this
23 direction towards Clinton.

24 Q. Okay. And at that point in time where we're
25 talking about now, if you're -- if you were looking

1 the jury -- and you can use that pointer, step out
2 of the way --

3 A. Yes, sir.

4 Q. -- and let the jury see the diagram.

5 Describe to the jury how the first accident happened
6 between your vehicle and Ms. King, if you will.

7 A. Yes, sir.

8 Q. Okay?

9 A. As I previously said, I was traveling -- if
10 this direction is towards Clinton and this direction
11 is towards Laurens, I was traveling in the No. 1
12 lane right there towards Clinton. The vehicle that
13 I observed traveling that was speeding that was
14 traveling towards me was over in this No. 1 lane
15 traveling towards Laurens.

16 Q. Stay on the diagram, now. Okay? The
17 videographer says stay --

18 A. Oh, yes, sir. I apologize.

19 So I was going to make a U-turn across the
20 median to catch up with the speeding vehicle.
21 This -- this block "H" represents my vehicle and the
22 approximate position it was in at the time of impact
23 with Ms. King's vehicle. It impacted the back left
24 quarter panel of my vehicle with somewhere in the --
25 the front left portion of her vehicle. She was

1 show those to the jury.

2 MR. HARTER: Mr. Teague, can you help me
3 maybe?

4 Q. And what I'd like to do first, if we could,
5 Barton, is if you could maybe step to the side for a
6 second --

7 A. Would you like me to take this with me?

8 Q. -- take your mic and maybe step to the side
9 for a second.

10 A. I can't move it.

11 MR. HARTER: And, Mr. Teague, I'm going to
12 let you see if you can put this up on the screen
13 back there for us. That side is your tape.
14 Just tape it over on this side, if you will.

15 Q. And, Barton, I'd like for you, if you will,
16 to take this pointer and if you could maybe describe
17 to the jury, first of all --

18 MR. TEAGUE: why don't I just hold it.

19 MR. HARTER: -- how -- here are some other
20 clips if you want to --

21 MR. TEAGUE: Clip it on the top?

22 MR. HARTER: You can clip it at the top if
23 you want to, yeah. Here you go.

24 BY MR. HARTER:

25 Q. And what I want you to do is describe for

1 A. At this point I had obviously indicated to
2 dispatch that -- that there was a multiple-vehicle
3 wreck and to send EMS and fire. And, again, I don't
4 remember the exact period of time, but those units
5 did arrive. I stayed with Ms. Watts until they --
6 until they extracted her from the vehicle. But
7 they -- they arrived and did their job.

8 Q. Okay. Now, can you tell us the time
9 interval between the two impacts, Barton?

10 A. I believe that initially I -- I've always
11 thought of it in my head that it was -- it wasn't
12 like a -- a bam-bam sequence of events. There was a
13 period of time between them. I believe in my
14 statement to -- to Trooper Duncan after a week or so
15 after the accident I estimated 15 seconds or so. I
16 believe it's actually longer than that. But, again,
17 somebody that's involved in something like that, I
18 wouldn't be surprised if their sense of -- of time
19 was skewed. But there was a period of time between
20 the two collisions, time enough for me to get my
21 wits about me, you know, briefly pop out of my
22 vehicle, get back in, and remember waiting to key up
23 on the radio before the second incident happened.

24 Q. Okay. Now, if you don't mind, let's put
25 these exhibits up, if you will. And I'd like to

1 Ms. Watts hit the King vehicle and --

2 A. After --

3 Q. -- veered off to the left?

4 A. After the second incident, I exited my
5 patrol vehicle. And, again, the -- the vehicle
6 closest to me was Ms. King's vehicle. It was still,
7 I believe, partially in the No. 1 lane, partially in
8 the median, but still closest to me. And her window
9 was down. And I checked on her, asked her if she
10 was okay. And I can't remember her exact words but
11 basically led me to believe that she was -- she was
12 okay.

13 My attention then turned to the second vehicle
14 involved that was -- that came to rest in the fence.
15 I went over there to try to render aid. The driver
16 door was wedged shut, and so I had to use a
17 considerable amount of force to get that door open.
18 But whenever I opened the door, I saw Ms. Watts in
19 the vehicle. Her air bag had deployed. And -- and,
20 again, I'm not a trained paramedic or EMT, but it
21 appeared that she had an injury to her leg that was
22 causing her a great deal of pain.

23 Q. Okay. And I believe you -- did you indicate
24 other units, EMS, other units came to the scene
25 after that?

1 Ms. watts had her accident, were your blue lights
2 engaged on your patrol car?

3 A. I had the toggle switch turned on. There
4 was nothing -- and, again, like, whenever I --
5 whenever I briefly stepped out of my vehicle --
6 again, that's one of those things if your blue
7 lights aren't on I would have -- I would have
8 noticed because we have side marker lights that, you
9 know, would have let me know that. But I have no
10 reason to believe that my blue lights were not
11 functioning as they should have.

12 Q. Okay. Now, was Ms. King -- was -- was --
13 were the lights on in her vehicle at the time of
14 that impact?

15 A. Yes, sir, they were.

16 Q. Okay. And her vehicle would have been
17 facing toward Clinton. Is that right?

18 A. Yes, sir, that's correct.

19 Q. Okay. Now, at that time that Ms. Watts
20 struck the rear of the King vehicle, to your
21 knowledge, had there been any impact in the accident
22 that you and Ms. King had that would have damaged
23 the rear of the King vehicle?

24 A. No, sir, not to my knowledge.

25 Q. Okay. Barton, what did you do after

1 (Defendant's Exhibit 4 was marked for
2 identification.)

3 A. Yes, sir.

4 Q. Okay. Now, at the time Ms. Watts hit the
5 rear of the King vehicle, where were you physically,
6 if you remember?

7 A. At the time of the actual collision, I was
8 sitting in my patrol car facing the direction my
9 vehicle was facing.

10 Q. Okay. Were the lights on in your patrol
11 car --

12 A. Yes.

13 Q. -- at that time?

14 A. Yes, sir.

15 Q. I'm talking about the headlights, now.

16 A. Right. Because the interior dash lights on
17 my car were -- were on and functioning, so...

18 Q. And your car was actually headed back and/or
19 pointed back toward Clinton -- I mean toward
20 Laurens.

21 A. Pointed back towards Laurens, yes, sir.

22 Q. And you were sitting in the middle of the
23 road -- middle of the median.

24 A. In the middle of the median, yes, sir.

25 Q. Okay. Now, at that point in time, when

1 of where your vehicle was and where Ms. King's
2 vehicle was after y'all's accident and before --

3 A. The second accident?

4 Q. -- Ms. Watts struck the King vehicle.

5 A. Yes, sir. And, again, because it's not
6 drawn to scale, just anywhere on here --

7 Q. Correct.

8 A. -- is suitable?

9 Q. You understand the question, now, where --
10 how your vehicle and how Ms. King's vehicle was
11 positioned when the Watts collision occurred into
12 the rear of the King vehicle.

13 A. Yes, sir.

14 Q. Okay.

15 A. Stationary but facing that way. So you want
16 me to label this "H"?

17 Q. Please.

18 A. Okay. And, again, not exactly to scale, but
19 she was a little bit past my vehicle still in the
20 No. 1 lane.

21 Q. Okay. So Exhibit No. 4 is where your car
22 and the King vehicle ended up after your accident,
23 and those are the relative positions of the vehicles
24 at the time that Ms. Watts struck the rear of the
25 King vehicle. Is that right?

1 the left across the paved median, across the two
2 lanes of oncoming traffic, and came to rest in a
3 chain-link fence at a scrap yard across the street.

4 Q. Okay. Now, do you know if brakes were
5 applied or if that was just the squealing of tires
6 from --

7 MR. THOMPSON: He testified that the brakes
8 locked up.

9 A. Yeah, it was -- it was the squealing of
10 tires. Again, I'm not certified in accident
11 reconstruction. So that was just a personal
12 opinion, but --

13 Q. You heard tires squeal.

14 A. The -- yeah, tires squealing, sounds
15 typically associated with somebody applying the
16 brakes heavily.

17 Q. Okay. Or a vehicle skidding on pavement.

18 A. Yes, sir.

19 Q. Now, if you don't mind, take a look at this
20 diagram.

21 A. Yes, sir.

22 Q. And I want to ask you, if you will --
23 Barton, I want you to take that pen. And, now, in
24 this diagram I want you to identify the exact
25 location or the best approximation of the location

1 Q. Okay. You tried to motion to her to get out
2 of the roadway?

3 A. Yes, sir, I did. I -- and, again, it was --
4 I can't remember exactly what words were exchanged
5 or anything like that or if -- the extent of her
6 acknowledgment, but yes, sir.

7 Q. Okay. Now, what happened after that part?

8 A. Okay. After that, again, there was a period
9 of time where I was trying to get out on my in-car
10 radio to call the fact that I had been involved in
11 an accident in to our dispatch. As I was doing
12 that -- and, again, this is the part that's kind of
13 burned into my memory -- again, I was facing towards
14 Laurens in that paved median. The -- there wasn't a
15 lot of traffic on the road. And I just remember
16 a -- a vehicle traveling in the No. 1 lane, again,
17 probably going at or around the speed limit -- it
18 didn't seem to be going particularly fast -- but
19 basically traveling down the hill. And then
20 immediately before making impact with the rear of
21 Ms. King's vehicle, I heard, you know, locking up of
22 brakes and obviously the impact of Ms. Watts'
23 vehicle and the rear of Ms. King's vehicle. That
24 pushed Ms. King's vehicle forward in the road
25 towards Clinton, and Ms. Watts' vehicle veered off to

1 MR. THOMPSON: Could we identify that
2 exhibit for the record?

3 MR. HARTER: He's referring to Exhibit No.
4 1 (sic). That's the drawing in front of him is
5 Exhibit No. 1.

6 Q. Now, Exhibit No. 1 shows the position of the
7 King vehicle and your vehicle at the moment of
8 impact. Is that correct?

9 A. Yes, sir, at the moment of impact where --

10 Q. Okay.

11 A. -- the front left of her vehicle would've
12 made contact with the --

13 Q. Okay.

14 A. -- back left of mine.

15 Q. And that's not the way the vehicles were
16 positioned when the -- the -- the accident came to a
17 stop --

18 A. No, sir.

19 Q. -- and the wreck settled. Correct?

20 A. No, sir.

21 Q. Okay. All right. But after your collision
22 and -- with -- with Ms. King, when her vehicle made
23 impact with the left rear of your patrol car. Is
24 that correct?

25 A. Yes, sir.

1 make sure that I was okay and -- and everything like
2 that. Probably sat in my vehicle for a couple of
3 seconds to get my wits about me because I was just
4 obviously trying to figure out what was going on.
5 But, again, my vehicle came to rest facing back
6 towards Laurens. And her vehicle was slightly past
7 mine, again, facing towards Clinton. So looking out
8 of my vehicle, without turning around to the back, I
9 couldn't immediately see her right there.

10 I -- I opened my door momentarily, got out
11 really quickly, kind of motioned to her to try to
12 clear the No. 1 lane, because she had come to rest
13 in that No. 1 lane. Again, her lights were on and
14 everything like that. But, you know, it's not safe
15 for somebody to come to rest in the middle of the
16 road, so I was trying to get her to move.

17 Then my in-car radio, I was keying up on that
18 trying to get out. There was other radio traffic
19 going on because we were doing traffic saturation.
20 And so there was a period of time -- short period of
21 time where I was having to basically wait on the --
22 on the radio to become clear so that I could get out
23 and inform dispatch of what had happened.

24 Does that answer your question, sir?

25 Q. Yes.

1 representing the --

2 A. The direction of my turn.

3 Q. -- the head -- I mean where the -- the --
4 the front of the vehicle is.

5 A. Yes, sir.

6 Q. Okay. Fine.

7 A. Trying to.

8 Q. Okay.

9 A. All right. And then obviously her vehicle
10 right...

11 Q. And if you will, put a "K." Okay. Thank
12 you. And we will show that in a minute.

13 MR. HARTER: Madam Court Reporter, can we
14 put an exhibit sticker on -- on this, please?

15 (Defendant's Exhibit 3 was marked for
16 identification.)

17 MR. HARTER: I'm going to use one of your
18 stickers. Okay?

19 THE COURT REPORTER: Yeah, that's what I --
20 that's what I wanted you to do.

21 MR. HARTER: Thank you.

22 BY MR. HARTER:

23 Q. All right. Now, what did you do after this
24 collision between you and Ms. King occurred?

25 A. Basically, first off, I obviously checked to

1 want to make sure we just show how y'all's vehicles
2 came together. We're going to talk about where they
3 ended up later. But where metal met metal. Okay?

4 A. Do you want me to draw it on a particular
5 section of this so we can reuse it or just anywhere?

6 Q. No, just where it ended up.

7 A. Okay.

8 Q. I mean where the vehicles impacted together.

9 A. Okay.

10 Q. I hope I got that straight for you.

11 A. Am I allowed to do, like, a two-stage thing
12 like --

13 Q. Any way you want to do it, but --

14 A. Okay.

15 Q. -- let's just draw where the -- where the --

16 A. Okay.

17 Q. -- where the metal met metal right now.

18 A. Okay.

19 Q. Okay?

20 A. All right. How would you like me to label
21 my vehicle?

22 Q. You can put "H" in the block where your
23 vehicle was.

24 A. Okay.

25 Q. Okay. And you've drawn an arrow

1 paved median? And -- and can you orient yourself on
2 76 with -- with regard to the direction of Laurens
3 and Clinton?

4 A. Yes, sir, I can.

5 Q. Okay. If you will, Barton, for the jury --
6 and we'll show this in a few minutes. But if you
7 will, at the time of the impact between your vehicle
8 and Ms. King's vehicle, can you please take this
9 marker and -- and identify the position of your
10 vehicle and the position of Ms. King's vehicle at
11 the time of the impact in that collision?

12 A. So --

13 Q. At the location. I'm sorry --

14 A. The location?

15 Q. Yes.

16 A. So -- so where I was on -- like, still
17 moving or where we both came to rest?

18 Q. No, no, where -- where the impact occurred,
19 right where -- where -- where --

20 A. Okay.

21 Q. -- metal met metal.

22 A. Yes, sir.

23 Q. Okay?

24 A. I'm -- I'm not an artist, so I apologize.

25 Q. Okay. And -- and what -- to be clear, I

1 visibility clear as you approach where this accident
2 happened?

3 A. Approaching where our vehicles came to a
4 rest, I would say a couple hundred yards back there
5 is a crest in the hill. But where we came to a
6 stop, I mean, it's -- it's a slight downgrade, but
7 it's a fairly open, straight stretch of road.

8 Q. Good visibility?

9 A. Other than it being dark, it was good
10 visibility, yes, sir.

11 Q. And, of course, did you have your headlights
12 on at the time?

13 A. Yes, sir. My -- my headlights, tail lights
14 were on, and, again, my blue lights were activated.

15 Q. And the vehicle that Ms. King -- you later
16 learned Ms. King was operating, I mean, she had her
17 lights on?

18 A. Yes, sir, her lights were on. And I believe
19 once she came to a stop she activated her flashers
20 there in the No. 1 lane in the middle of the road.

21 Q. Okay. Barton, I'm going to ask you if you
22 can look at what -- a rendering here of -- and this
23 is not to scale, but it is a drawing that we
24 prepared. And does it correctly identify the number
25 of lanes on 76? Does it correctly identify a -- a

1 paved center median, and so I was going to activate
2 my rear blue lights and execute a -- a U-turn across
3 the paved median to catch up with the speeding
4 vehicle.

5 As I was doing that, I applied my brake,
6 activated my rear blue lights, and began to make
7 my -- began to make my U-turn. I believe I was
8 already going slightly under the speed limit
9 whenever I saw this vehicle. So I can't recall my
10 exact speed, but it was -- it was pretty slow. It's
11 not like I slammed on the brakes and abruptly
12 turned.

13 But as I was making my U-turn, the -- the
14 vehicle that was behind me made contact with my left
15 rear quarter panel and basically -- and this is my
16 own words -- but basically did a pretty perfect pit
17 maneuver on me that spun me around 180 degrees. I
18 came to a stop in the center of the paved median
19 facing the opposite direction, so back towards
20 Laurens, the opposite direction that I was
21 traveling. And her vehicle came to a stop in the
22 No. 1 lane slightly past my vehicle facing Clinton.

23 Q. Okay. Now, as you approach where this
24 accident happened, are you looking -- is there a
25 crest of the hill that obstructs visibility, or is

1 Ned Kemp's Barber Shop and the -- and the liquor
2 store that's just past that on the right, going down
3 that slightly sloping hill, again, towards Clinton
4 and the country club, that area. I was traveling in
5 the No. 1 lane.

6 Q. Okay. And -- and what happened, Barton?

7 A. I observed a vehicle coming -- traveling
8 towards me in the opposite lanes of travel. So that
9 vehicle would've been coming from Clinton to
10 Laurens. It -- traveling at a high rate of speed.
11 I believe my radar indicated it was traveling
12 approximately 69 miles an hour in what would have
13 been a 40-mile-per-hour zone at that time. Again,
14 it was dark. I think the only distinguishing
15 feature that I could really tell, other than it
16 being the only vehicle traveling on that stretch of
17 road towards me, was that it had HID headlights.

18 Q. And now tell me what happened between you
19 and Ms. King's vehicle.

20 A. So I observed the -- the vehicle that was
21 speeding coming towards me. I basically began the
22 steps to initiate a traffic stop on that vehicle for
23 speeding. I, again, was over the crest of the hill,
24 was traveling slightly, you know, down -- down that
25 hill, again, traveling in the No. 1 lane. It was a

1 high-definition camera that was for my own personal
2 use that was manually turned on. I would use it for
3 traffic stops and things like that, you know, once
4 it was safe to do so. But that was not -- not
5 running at the time of this incident.

6 Q. And so I just want to ask you, is there any
7 video or body cam or dash cam footage or video or
8 audio of -- of anything having to do with this
9 particular accident we're talk -- or series of
10 accidents we're talking about here?

11 A. No, sir, not to my knowledge.

12 Q. Okay. And were you in uniform at the
13 time --

14 A. Yes, sir.

15 Q. -- and on duty at the time of this accident?

16 A. Yes, sir, I was.

17 Q. Okay. And -- and now, Barton, I want to ask
18 you if we can kind of dive into some of the details
19 about this accident if you -- if you don't mind. Do
20 you remember -- and tell the jury kind of where you
21 were and what you were doing leading up to this
22 traffic collision.

23 A. Yes, sir, absolutely. I was -- I was
24 traveling on Highway 76 going from Laurens to
25 Clinton on Highway 76, approximately in the area of

1 prevention within the county. We would -- we would
2 do traffic safety checkpoints, saturation patrols,
3 things of that nature, to -- to help combat drinking
4 and driving and unsafe driving.

5 Q. And I think on the -- the date of this
6 accident was August 15, 2013, and this accident
7 happened sometime around 10:00 in the evening. Is
8 that correct?

9 A. I believe it was 10:30, 10:38, something
10 along those lines, yes, sir.

11 Q. Were you working in saturation or traffic
12 control at that time?

13 A. Yes, sir. We were conducting a
14 multijurisdictional traffic safety saturation.

15 Q. Okay. And were you operating a Laurens
16 County Sheriff's Office patrol car?

17 A. Yes, sir. I was operating my Laurens
18 County-issued patrol vehicle.

19 Q. And I want to go ahead and ask you. In that
20 patrol -- in that patrol car, did you have any kind
21 of in-car camera or dash camera that was operating
22 at the time?

23 A. There was no camera operating at the time in
24 the car. There was no department-issued camera that
25 was installed in there. I did have my own personal

1 Columbia. It just depended on what type of training
2 it was.

3 Q. But at some point and -- and during your
4 tenure at the sheriff's office, you were a certified
5 police officer?

6 A. Yes, sir, I was.

7 Q. Okay. And did you have training and
8 experience in emergency driving and handling of --
9 operation of vehicles law enforcement?

10 A. Yes, sir. We were required to be certified
11 in driving on a yearly basis. That was conducted
12 in-house at the -- in partnership with the Michelin
13 Test Track facility there in Laurens County.

14 Q. Okay. Now, you mentioned that you were a
15 road deputy. Is that right? Is that --

16 A. Yes, sir, that's correct.

17 Q. And -- and did you also -- did you also work
18 in traffic and --

19 A. Yes, sir.

20 Q. -- saturations at certain times?

21 A. I had a few, I guess, supplementary duties,
22 one of which I was involved in -- in the partnership
23 between the Laurens County Sheriff's Office, a few
24 other local agencies, and the South Carolina Highway
25 Patrol doing basically traffic safety and DUI

1 Q. which -- which middle school?

2 A. It was Hickory Tavern Middle School.

3 Q. Okay.

4 A. From there I was assigned to the criminal
5 investigations division. I helped with our evidence
6 collection and handling. And then I was actually
7 promoted to -- to investigator, investigated various
8 cases for the sheriff's office.

9 Q. And were you ever a D.A.R.E. officer?

10 A. I did receive D.A.R.E. training, which is
11 a -- the Drug Addiction Resistance Education
12 training that we teach to fifth-grade students in
13 Laurens County schools -- or we -- we used to teach
14 to fifth-grade students in Laurens County schools.

15 Q. Were you -- were you ever a resource or
16 D.A.R.E. officer at Laurens High School?

17 A. Not permanently assigned to Laurens High
18 School, but I worked there to supplement. I was
19 there a good bit.

20 Q. Okay. And -- and you mentioned law
21 enforcement training. Was that training at the
22 Criminal Justice Academy?

23 A. Some training was held at our home agency.
24 Some was held at other -- other local agencies.
25 Some was held at the Criminal Justice Academy in

1 that gets me when I'm done.

2 Q. Okay. Good. Now, as you well know, we're
3 here today, and this case involves an automobile
4 accident that occurred on August the 15th of 2013 in
5 Laurens County.

6 A. Yes, sir.

7 Q. And you were a sheriff's deputy working with
8 the sheriff's office at that time. Right?

9 A. Yes, sir.

10 Q. Okay. And tell the jury a little bit about
11 when you became employed with the sheriff's office
12 and -- and what jobs, positions you held there when
13 you were there at the sheriff's office.

14 A. I first became employed with the sheriff's
15 office -- I'm drawing a blank. It was 2010 or 2011.
16 It was early in the year when I went to the academy.
17 But I worked at the -- the detention center in
18 Laurens for a couple of months before I was sent to
19 the police academy in Columbia, South Carolina.
20 From there I was assigned to the uniform patrol
21 division. I worked night shift in the uniform
22 patrol division. I held a position as a school
23 resource officer working at a middle school in
24 Laurens County, as well as supplementing our
25 strength at the -- at the high school.

1 A. And then to Fort Bragg, which is in North
2 Carolina.

3 Q. Will you -- Barton, are you married?

4 A. I am married to Shannon Holmes, my wife.
5 She's an assistant principal in the Greenwood school
6 system.

7 Q. And did you say you were from Laurens, South
8 Carolina?

9 A. I reside in Laurens, yes, sir.

10 Q. And what is your permanent address in
11 Laurens?

12 A. My address is 108 Viewpoint Court. Again,
13 it's a Laurens address.

14 Q. And do you have family there?

15 A. My parents live in Laurens. My grandparents
16 live in Laurens. Extended family, yes, sir.

17 Q. Now, Barton, if you will, tell us a little
18 bit about your education background.

19 A. Okay. I do have -- I'm about three-fourths
20 of the way done with my bachelor's degree. I did
21 not complete it, but I will one day. I have law
22 enforcement experience, academy training, continuing
23 education with my law enforcement credit. And then
24 apparently what I'm doing in military converts to
25 some college credit as well. So we'll see where

1 Q. Will you tell us when you became -- when you
2 enlisted in the military, please?

3 A. My initial enlistment was in July of 2017.
4 I'm under the -- the National Guard Special Forces
5 program, and so I had to enlist in the Alabama
6 National Guard because that's the closest Special
7 Forces unit to South Carolina. But obviously
8 currently I'm on active-duty orders. When I finish
9 my training, I'll go back under guard status, but
10 for the time being I'm active duty.

11 Q. And when did you report to Fort Benning?

12 A. I believe it was the 20th of November, 2017.

13 Q. And have you been at Fort Benning since that
14 date?

15 A. We received a short period of time off
16 during the holiday period to come home, but I have
17 been here basically continuously since then.

18 Q. And you have your basic training graduation,
19 I think, next Friday. Is that right?

20 A. That's correct, yes, sir.

21 Q. And what -- where do you go after that? Do
22 you know?

23 A. I'll stay here at Fort Benning for another
24 three weeks to attend Airborne school.

25 Q. Okay. And then --

1 tell the jury a little bit about your training, what
2 type of training you're in at this time at Fort
3 Benning?

4 A. I enlisted in the Army under the Special
5 Forces program. So currently I'm attending the
6 infantry basic course, which I'm slated to graduate
7 next week. From there I will attend U.S. Army
8 Airborne training here at Fort Benning. And upon
9 completion of that, I will move to Fort Bragg to
10 begin my Special Operations training.

11 Q. And, Barton, I think I have a copy of your
12 orders here, but you will be involved in training
13 either at Fort Benning or Fort Bragg for
14 approximately 100 weeks. Am I reading those orders
15 correctly?

16 A. Depending on the needs of the Army, that
17 could change. That's why they put "approximate."
18 But it's going to be a little bit before I get to go
19 home.

20 Q. And you are in training right now as part of
21 the Special Forces in Airborne. Is that correct?

22 A. Yes, sir, that's correct.

23 Q. Okay. I'm sure we all appreciate your
24 service and your commitment.

25 A. Thank you, sir.

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LAWRENCE BARTON HOLMES

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HARTER:

Q. Barton, we're here today at Fort Benning to take your deposition in this case. As you know, my name is Rusty Harter. I'm going to be asking you some questions on direct. Okay?

A. Yes, sir.

Q. First of all, will you introduce yourself to the Court and jury and give us your full name, please, sir?

A. My name is Lawrence Barton Holmes. I'm 31 years old, resident of Laurens, South Carolina, currently in basic training at Fort Benning, Georgia.

Q. And as we sit here today, March the 16th, we're actually at Fort Benning, Georgia. Is that correct?

A. Yes, sir, that's correct.

Q. And you told us that you are in training here. Is that right?

A. Yes, sir, that's correct.

Q. Without going into too much detail, can you

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(Proceedings on March 16, 2018,
commencing at 2:36 p.m., as follows:)
(Defendant's Exhibits 1 and 2 were
marked for identification.)
(Video on)

VIDEOGRAPHER: This will be in the case
State of South Carolina, County of Laurens, in
the Court of Common Pleas, Civil Action
No. 15-CP-30-624. The case is Martha Foster
Watts, plaintiff, vs. Ricky W. Chastain,
Sheriff, Laurens County, South Carolina,
defendant. This will be the deposition of
Lawrence Barton Holmes. And if we could get the
attorneys to identify themselves for the record
and who they represent, please.

MR. BRYAN: James Bryan representing the
plaintiff, Marsha Foster Watts.

MR. THOMPSON: I'm Tom Thompson,
representing the plaintiff, Ms. Watts.

MR. HARTER: Rusty Harter, represent the
sheriff's office, Laurens County Sheriff's
Office.

THE VIDEOGRAPHER: Madam Court Reporter,
would you swear the witness, please?

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1 with any party to the case, any counsel in the case,
2 or any reporter or reporting agency from whom a
3 referral might have been made to cover this
4 deposition.

5 5) Causey Peterson Court Reporting, Inc.,
6 will charge its usual and customary rates to all
7 parties in the case, and a financial discount will
8 not be given to any party to this litigation.

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This 16th day of March, 2018.

s/Betsy J. Peterson
Betsy J. Peterson, CCR #B-2187

1 STATE OF GEORGIA

2 COUNTY OF HARRIS

3

4 COURT REPORTER'S DISCLOSURE STATEMENT

5

6 I, BETSY J. PETERSON, Georgia Certified
7 Court Reporter, Certificate No. B-2187, pursuant to
8 Article 10.B of the Rules and Regulations of the
9 Board of Court Reporting of the Judicial Council of
10 Georgia, make the following disclosure:

11 1) I am a Georgia Certified Court Reporter.
12 I am here as a representative of Causey Peterson
13 Reporting, Inc. I am not disqualified for a
14 relationship of interest under the provisions of
15 O.C.G.A. §9-11-28 (c).

16 2) Causey Peterson Reporting, Inc., was
17 contacted by the offices of Chapman, Harter &
18 Harter, P.A., to provide court reporting services
19 for this deposition.

20 3) Causey Peterson Reporting, Inc., will
21 not be taking this deposition under any contract
22 that is prohibited by O.C.G.A. §15-14-37 (a) and
23 (b).

24 4) Causey Peterson Reporting, Inc., has no
25 exclusive contract to provide reporting services

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1 then within five or 10 seconds the second collision
2 occurred. I don't see where you're getting out of
3 your car in that statement.

4 A. Again, I think I answered the question,
5 like, with the pertinent information relative to,
6 like, he was talking more about vehicle positioning
7 and things like that. I mean, again, I was sitting
8 in my driver's seat trying to get out on the radio.
9 I don't -- I don't see the discrepancy, or I --
10 maybe I'm not understanding your question.

~~11 Q. Well, would you agree with the five to 10
12 seconds between the two collisions?~~

~~13 A. Again, I think we've already discovered that
14 after I was just involved in an accident and based
15 on what the MAIT team determined that it was
16 actually --~~

~~17 Q. Well, no, what --~~

~~18 MR. THOMPSON: I object to any testimony --~~

~~19 A. -- that it was actually --~~

~~20 MR. HARTER: Let him finish his answer,~~

~~21 Mr. Thompson. Go ahead.~~

~~22 A. -- it was a considerable more of time
23 more amount of time. So obviously my perception of
24 time was a little off, but I don't think my facts
25 are.~~

1 Q. All right. But you're basing that, in fact,
2 on what someone else has told you, then.

3 A. What the published MAIT report concluded,
4 yes, sir.

5 Q. Something that somebody else prepared and
6 had told you.

7 A. Yes, sir.

8 MR. THOMPSON: All right. Well, we

9 A. The document prepared by highway patrol.

10 MR. THOMPSON: -- we object --

11 MR. HARTER: Wait a minute, now. You can't
12 interrupt him while he's talking, Mr. Thompson.

13 MR. THOMPSON: I know what I can do.

14 MR. HARTER: Well, I -- I know what -- I
15 don't think you can.

16 MR. THOMPSON: Well, is he through?

17 MR. HARTER: Well, you have to wait until
18 he finishes talking, and --

19 THE WITNESS: Yes, sir, I --

20 MR. HARTER: -- and you don't know he's
21 through.

22 THE WITNESS: I'm done. I'm willing to
23 answer --

24 MR. THOMPSON: I thought he was.

25 THE WITNESS: -- whatever that you have for

4-11-18

Townsend & Thompson

To: 'Russell W. Harter, Jr.' (rwhjr@chhlaw.net) (rwhjr@chhlaw.net); Lindsay Terrell
Subject: Watts vs. Laurens County Sheriff

After Jim and I again reviewed the transcript, we have another requested edit: page 57, lines 11-12; page 57, lines 22-25; and page 58, lines 1-7. I have sent you the pages in question; and the heavy lined out sections deal with this request.

Let me have your position.

Thomas J. Thompson
TOWNSEND & THOMPSON, ATTORNEYS
210 West Laurens Street
Post Office Box 215
Laurens, South Carolina 29360
(864)984-6554

*Perch line
as to
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April 10, 2018

Thomas J. Thompson, Esq.
P.O. Box 215
Laurens, SC 29360

James E. Bryan, Jr., Esq.
P.O. Box 756
Laurens, SC 29360

Re: ***Martha Foster Watts v. Laurens County Sheriff's Department***
Civil Action Number: 2015-CP-30-00624

Dear Gentlemen:

Thank you for your notice of April 10, 2018, indicating that you will use the video deposition of Barton Holmes at trial in your case in chief. In keeping with your notice and in keeping with our conversation of today, April 10, 2018, I am having the video edited in accordance with your edit requests and mine which I understand we have agreed to. I will also plan to have the equipment and personnel present to play the video deposition of Barton Holmes at 2:00 p.m. in Laurens, South Carolina consistent with your requests and instructions to me today.

I understand that you will pay the videographer for his or her time on Monday. If for any reason this is not correct, please let me know.


In the event you do not play the video deposition of Barton Holmes in your case in chief, I plan to play it in my case.

Because of your request to play the deposition at 2:00 p.m. on Monday, I will make arrangements as is outlined above.

Should this not be the case and/or should there be any misunderstanding, please let me know right away.

Warmest regards.

Yours very truly,
CHAPMAN, HARTER & HARTER, P.A.



Russell W. Harter, Jr.

RWHjr:ccb
cc: K. Lindsay Terrell, Esq.

1 ~~to take care. Can we step outside? Y'all stay~~
2 here. Let's go off the record.

3 (Video off)

4 (Brief break)

5 (Video on)

6 BY MR. THOMPSON:

7 Q. Mr. Holmes, I'm going to hand you again
8 Plaintiff's Exhibit No. 3, which is your interview
9 with Corporal Duncan, and ask you whether or not if
10 that is an accurate transcription of your interview
11 with the corporal.

12 A. Yes, sir.

13 Q. You think -- you're saying it's all
14 accurate.

15 A. Oh, I have -- I have no reason to believe
16 that it's not. I don't -- I don't really know
17 what's involved in the transcription process, but --

18 Q. Well, I suspect you could --

19 MR. HARTER: Go ahead and finish your
20 answer, please. Go ahead.

21 A. I mean, that's -- I would have no reason to
22 believe it's not.

23 Q. Okay. Well, then, you need to look at it
24 and tell me if it is or it isn't, or we can play the
25 tape for you.

1 A. -- period, but during my training I have not
2 been permitted to leave the base, no, sir.

3 Q. Okay. Now, according to our calculations,
4 you -- you would be through with your -- your next
5 round of training here on or about April the 18th?

6 A. I don't actually have orders cut for
7 Airborne school. So I could be in Airborne hold for
8 a week; I could be there three weeks; I could go
9 immediately the following Monday. That's what's
10 been proposed. But until I have those -- those
11 official Army orders, it's really all speculation.
12 Things change all the time.

13 Q. But there is a possibility you could be
14 available in Laurens during the week of April the
15 16th.

16 A. No, sir, there's not. Immediately following
17 Airborne, I get on an Army bus and drive straight to
18 Fort Bragg. I'm not permitted any sort of leave or
19 anything like that. Don't even get to see my
20 family. I go straight there.

21 Q. Okay.

22 A. I wish -- I wish I did have time to go back
23 to Laurens. Trust me, I would love -- love to see
24 my family.

25 ~~MR. BRYAN: There's something else I've got~~

1 ~~MR. HARTER: Well, what I think happens is~~
2 that you ask him a question to see if there's
3 any contradiction; then you confront him with
4 the deposition; and then the deposition is
5 marked as a court's exhibit.

6 MR. THOMPSON: Okay.

7 MR. HARTER: But I think you need to ask
8 him the question first.

9 MR. THOMPSON: Yeah.

10 (A discussion was held off the record.)

11 MR. BRYAN: I don't see but one, though.

12 MR. THOMPSON: That's the problem --

13 MR. BRYAN: Here it is. That's it right
14 there, the same one, or is it? Here's two.
15 Here's two of the same thing.

16 MR. THOMPSON: Got to make sure that --

17 MR. BRYAN: Just use these two. That's the
18 same.

19 MR. THOMPSON: Some of them look -- all
20 right. They're the same.

21 MR. BRYAN: That's the same -- two of the
22 same one. Is that the same picture?

23 ~~MR. THOMPSON: Yeah.~~

24 BY MR. THOMPSON:

25 Q. All right, Mr. Holmes. Another photograph,

1 (video on)

2 BY MR. THOMPSON:

3 Q. Mr. Holmes, let me hand you Plaintiff's
4 Exhibit No. 4 and ask you do you recognize that.

5 (Plaintiff's Exhibit 4 was marked for
6 identification.)

7 A. Yes, sir, I do. That would be my vehicle
8 and I guess the damage that was sustained during
9 the -- the first wreck.

10 Q. Does that accurately portray or reflect the
11 damage your patrol vehicle received as a result of
12 the collision with the king vehicle on August 15 --

13 A. Yes, sir.

14 Q. -- 2013?

15 A. Yes, sir.

16 Q. Okay. Thank you. You can put it down.

17 ~~MR. THOMPSON: I'd like to -- I've got the~~
18 ~~original of this deposition. I have also a~~
19 ~~copy. Put either one in that you want.~~

20 MR. HARTER: I'm sorry. What, now?

21 MR. THOMPSON: I'm going to ask him some
22 questions concerning his deposition.

23 MR. HARTER: Okay.

24 MR. THOMPSON: And I can either put a copy
25 ~~in here or I can put the original in.~~

1 me.

2 MR. THOMPSON: We've been through this
3 before.

4 MR. HARTER: The tape will show,
5 Mr. Thompson --

6 MR. THOMPSON: I know what it'll show. We
7 object to any testimony by this witness based on
8 what someone else told him or what some report
9 contained that was not prepared by him.

10 MR. HARTER: Well, we'll -- the trial judge
11 will deal with that, but you --

12 MR. THOMPSON: I understand that.

13 MR. HARTER: Excuse me, now. Let me talk.
14 The trial judge will deal with that, and you've
15 opened the door to it. But we'll deal with it
16 at trial.

17 MR. THOMPSON: Yeah.

18 BY MR. THOMPSON:

19 Q. So how many times did you call the
20 dispatcher?

21 A. Again, I remember -- again, when I'm
22 referring to talking to dispatch, I'm referring to
23 the -- the one series of radio transmissions where I
24 called in the wreck. But, again, as I previously
25 stated, the radio was -- was kind of full with radio

1 Q. All right. But you're basing that, in fact,
2 on what someone else has told you, then.

3 A. What the published MAIT report concluded,
4 yes, sir.

5 Q. Something that somebody else prepared and
6 had told you.

7 A. Yes, sir.

8 ~~MR. THOMPSON: All right. Well, we~~

9 A. The document prepared by highway patrol.

10 MR. THOMPSON: -- we object --

11 MR. HARTER: Wait a minute, now. You can't
12 interrupt him while he's talking, Mr. Thompson.

13 MR. THOMPSON: I know what I can do.

14 MR. HARTER: Well, I -- I know what -- I
15 don't think you can.

16 MR. THOMPSON: Well, is he through?

17 MR. HARTER: Well, you have to wait until
18 he finishes talking, and --

19 THE WITNESS: Yes, sir, I --

20 MR. HARTER: -- and you don't know he's
21 through.

22 THE WITNESS: I'm done. I'm willing to
23 answer --

24 MR. THOMPSON: I thought he was.

25 ~~THE WITNESS: -- whatever that you have for~~

1 then within five or 10 seconds the second collision
2 occurred. I don't see where you're getting out of
3 your car in that statement.

4 A. Again, I think I answered the question,
5 like, with the pertinent information relative to,
6 like, he was talking more about vehicle positioning
7 and things like that. I mean, again, I was sitting
8 in my driver's seat trying to get out on the radio.
9 I don't -- I don't see the discrepancy, or I --
10 maybe I'm not understanding your question.

11 Q. Well, would you agree with the five to 10
12 seconds between the two collisions?

13 ~~A. Again, I think we've already discovered that~~
14 ~~after I was just involved in an accident and based~~
15 ~~on what the MAIT team determined that it was~~
16 ~~actually --~~

17 Q. Well, no, what --

18 MR. THOMPSON: I object to any testimony --

19 A. -- that it was actually --

20 MR. HARTER: Let him finish his answer,

21 ~~Mr. Thompson. Go ahead.~~

22 A. -- it was a considerable more of time --
23 more amount of time. So obviously my perception of
24 time was a little off, but I don't think my facts
25 are.

-618-

From: Townsend & Thompson [mailto:~~tandt@backr618.net~~]
Sent: Monday, April 09, 2018 10:22 AM
To: 'Russell W. Harter, Jr.' (rwhjr@chhlaw.net) (rwhjr@chhlaw.net)
Subject: Watts vs. Laurens County Sheriff

Rusty,

Plaintiff desires to delete the following from the Holmes video deposition: page 57, lines 13-21; page 58, line 8-page 59, line 17; page 70, line 17-page 71, line 23; and page 74, line 25-page 75, line 5. I have enclosed copies of the pages in question.

Please let me have your position.

Thomas J. Thompson
TOWNSEND & THOMPSON, ATTORNEYS
210 West Laurens Street
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<Holmes Deposition - Scan of pages 58, 59,70, 71,74, 75.pdf>

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79
1 MR. BRYAN: Have you read it?
2 MR. HARTER: You -- do you have any further
3 questions, Mr. Thompson?
4 MR. THOMPSON: No.
5 MR. HARTER: There's one lawyer --
6 MR. THOMPSON: I understand that.
7 MR. HARTER: -- that's supposedly appearing
8 for the plaintiff at this deposition to ask
9 questions.
10 MR. THOMPSON: And that's what has been
11 taking place.
12 MR. HARTER: Okay.
13 MR. THOMPSON: We're through. No further
14 questions.
15 MR. HARTER: I -- I don't have any
16 questions -- Barton Holmes, thank you very much
17 again for being here today and for --
18 THE WITNESS: Thank you, sir.
19 MR. HARTER: -- your service. Okay?
20 THE WITNESS: Thank you, sir.
21 MR. HARTER: This concludes the deposition.
22 (Video off)
23 (A discussion was held off the record.)
24 MR. HARTER: Defense Exhibit No. 1. I
25 believe, is the notice of the deposition. I

78
1 or, Barton, to this exhibit that you're holding in
2 your hand.
3 A. Yes, sir.
4 Q. I'm not going to ask you to listen to the
5 trans -- to the tape of that recording. But if
6 anybody has a question about it, they could listen
7 to the tape and review the transcript to determine
8 whether it's accurate or not. Right? --
9 A. Absolutely, yes, sir.
10 Q. And you're not asking that -- that we or
11 anybody present the tape to you right now to review
12 it. But you haven't reviewed or ever listened to
13 the tape, have you?
14 A. No, sir, I've never listened to the tape.
15 Q. Okay. But it is what it is. In other
16 words, if the tape says what's in the transcript,
17 the transcript's accurate. If the tape says
18 something different than the transcript, then maybe
19 it's not. Correct?
20 A. You put it a little bit better than I
21 explained, but yes, I agree.
22 MR. HARTER: Thank you, sir.
23 MR. BRYAN: Mr. Harter, have you -- have
24 you read --
25 MR. HARTER: No. No, wait a minute.

80
1 don't know that I actually moved that in. I did
2 not question the deponent --
3 MR. BRYAN: You handed it to him.
4 MR. HARTER: Excuse me. Excuse me, Mr. --
5 but Exhibit No. 1 is the notice of the
6 deposition, and I think you have it.
7 (Proceedings concluded at 4:28 p.m.)
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1 show those to the jury.

2 MR. HARTER: Mr. Teague, can you help me
3 maybe?

4 Q. And what I'd like to do first, if we could,
5 Barton, is if you could maybe step to the side for a
6 second--

7 A. Would you like me to take this with me?

8 Q. -- take your mic and maybe step to the side
9 for a second.

10 A. I can't move it.

11 MR. HARTER: And, Mr. Teague, I'm going to
12 let you see if you can put this up on the screen
13 back there for me. That side is your tape.
14 Just tape it over on this side, if you will.

15 Q. And, Barton, I'd like for you, if you will,
16 to take this pointer and if you could maybe describe
17 to the jury, first of all --

18 MR. TEAGUE: Why don't I just hold it.

19 MR. HARTER: -- how -- here are some other
20 clips if you want to --

21 MR. TEAGUE: Clip it on the top?

22 MR. HARTER: You can clip it at the top if
23 you want to, yeah. Here you go.

24 BY MR. HARTER:

25 Q. And what I want you to do is describe for

25

1 the left across the paved median, across the two
2 lanes of oncoming traffic, and came to rest in a
3 chain-link fence at a scrap yard across the street.
4 Q. Okay. Now, do you know if brakes were
5 applied or if that was just the squealing of tires
6 from --

7 ~~MR. THOMPSON: He testified that the brakes~~
8 ~~locked up.~~

9 A. Yeah, it was -- it was the squealing of
10 tires. Again, I'm not certified in accident
11 reconstruction. So that was just a personal
12 opinion, but --

13 Q. You heard tires squeal.

14 A. The -- yeah, tires squealing, sounds
15 typically associated with somebody applying the
16 brakes heavily.

17 Q. Okay. Or a vehicle skidding on pavement.

18 A. Yes, sir.

19 Q. Now, if you don't mind, take a look at this
20 diagram.

21 A. Yes, sir.

22 Q. And I want to ask you, if you will --

23 Barton, I want you to take that pen. And, now, in
24 this diagram I want you to identify the exact
25 location or the best approximation of the location

21

1 representing the --
2 A. The direction of my turn.
3 Q. -- the head -- I mean where the -- the --
4 the front of the vehicle is.
5 A. Yes, sir.
6 Q. Okay. Fine.
7 A. Trying to.
8 Q. Okay.
9 A. All right. And then obviously her vehicle
10 right...
11 Q. And if you will, put a "K." Okay. Thank
12 you. And we will show that in a minute.
13 MR. HARTER: Madam Court Reporter, can we
14 put an exhibit sticker on -- on this, please?
15 (Defendant's Exhibit 3 was marked for
16 identification.)
17 MR. HARTER: I'm going to use one of your
18 stickers. Okay?
19 THE COURT REPORTER: Yeah, that's what I --
20 that's what I wanted you to do.
21 MR. HARTER: Thank you.
22 BY MR. HARTER:
23 Q. All right. Now, what did you do after this
24 collision between you and Ms. King occurred?
25 A. Basically, first off, I obviously checked to

23

1 MR. THOMPSON: Could we identify that
2 exhibit for the record?
3 MR. HARTER: He's referring to Exhibit No.
4 1 (sic). That's the drawing in front of him is
5 Exhibit No. 1.
6 Q. Now, Exhibit No. 1 shows the position of the
7 King vehicle and your vehicle at the moment of
8 impact. Is that correct?
9 A. Yes, sir, at the moment of impact where
10 Q. Okay.
11 A. -- the front left of her vehicle would've
12 made contact with the --
13 Q. Okay.
14 A. -- back left of mine.
15 Q. And that's not the way the vehicles were
16 positioned when the -- the -- the accident came to a
17 stop --
18 A. No, sir.
19 Q. -- and the wreck settled. Correct?
20 A. No, sir.
21 Q. Okay. All right. But after your collision
22 and -- with -- with Ms. King, when her vehicle made
23 impact with the left rear of your patrol car. Is
24 that correct?
25 A. Yes, sir.

1 paved median? And -- and can you orient yourself on
2 76 with -- with regard to the direction of Laurens
3 and Clinton?

4 A. Yes, sir, I can.

5 Q. Okay. If you will, Barton, for the jury --
6 and we'll show this in a few minutes. But if you
7 will, at the time of the impact between your vehicle
8 and Ms. King's vehicle, can you please take this
9 marker and -- and identify the position of your
10 vehicle and the position of Ms. King's vehicle at
11 the time of the impact in that collision?

12 A. ~~At the location.~~

13 Q. ~~At the location.~~ I'm sorry --

14 A. The location?

15 Q. Yes.

16 A. So -- so where I was on -- like, still
17 moving or where we both came to rest?

18 Q. No, no, where -- where the impact occurred,
19 right where -- where -- where --

20 A. Okay.

21 Q. -- metal met metal.

22 A. Yes, sir.

23 Q. Okay?

24 A. I'm -- I'm not an artist, so I apologize.

25 Q. Okay. And -- and what -- to be clear, I

1 want to make sure we just show how y'all's vehicles
2 came together. We're going to talk about where they
3 ended up later. But where metal met metal. Okay?

4 A. Do you want me to draw it on a particular
5 section of this so we can reuse it or just anywhere?

6 Q. No, just where it ended up.

7 A. Okay.

8 Q. I mean where the vehicles impacted together.

9 A. Okay.

10 Q. I hope I got that straight for you.

11 A. Am I allowed to do, like, a two-stage thing
12 like --

13 Q. Any way you want to do it, but --

14 A. Okay.

15 Q. -- let's just draw where the -- where the --

16 A. Okay.

17 Q. -- where the metal met metal right now.

18 A. Okay.

19 Q. Okay?

20 A. All right. How would you like me to label
21 my vehicle?

22 Q. You can put "H" in the block where your
23 vehicle was.

24 A. Okay.

25 Q. Okay. And you've drawn an arrow

10

1 A. And then to Fort Bragg, which is in North
2 Carolina.
3 Q. ~~Will yes~~ Barton, are you married?
4 A. I am married to Shannon Holmes, my wife.
5 She's an assistant principal in the Greenwood school
6 system.
7 Q. And did you say you were from Laurens, South
8 Carolina?
9 A. I reside in Laurens, yes, sir.
10 Q. And what is your permanent address in
11 Laurens?
12 A. My address is 108 Viewpoint Court. Again,
13 it's a Laurens address.
14 Q. And do you have family there?
15 A. My parents live in Laurens. My grandparents
16 live in Laurens. Extended family, yes, sir.
17 Q. Now, Barton, if you will, tell us a little
18 bit about your education background.
19 A. Okay. I do have -- I'm about three-fourths
20 of the way done with my bachelor's degree. I did
21 not complete it, but I will one day. I have law
22 enforcement experience, academy training, continuing
23 education with my law enforcement credit. And then
24 apparently what I'm doing in military converts to
25 some college credit as well. So we'll see where

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April 4, 2018

Thomas J. Thompson, Esquire
Townsend & Thompson
P. O. Box 215
Laurens, South Carolina 29360

James E. Bryan, Jr., Esquire
P. O. Box 756
Laurens, South Carolina 29360

Re: *Martha Foster Watts vs. Ricky W. Chastain, Sheriff, Laurens County*
Civil Action No.: 2015-CP-30-624

Dear Gentlemen:

With respect to Barton Holmes' video deposition, I propose to publish my direct examination contained on pages 6 through 34. I propose to edit out portions of Pages 10, 19, 20, 21, 23, 25, 31, 78, 79 and 80, as indicated on the attached copy of those pages.

I assume you will want us to publish your cross-examination in its entirety from Page 35, Line 1 through Page 77, Line 23. I also would propose to publish my re-direct from Page 77, Line 24 through Page 78, Line 22.

Please let me know of any objections or any request to edit any portions of the video deposition so that we may address that well in advance of trial.

Should you have any questions, please contact me.

Warmest personal regards.

Yours very truly,

Russell W. Harter, Jr.

/pfs
Enclosures
cc: K. Lindsay Terrell, Esquire

were passing stationary blue lights; see page 20 where defense counsel testified lights were stationary at 58:09; see page 21 where defense counsel testified to stationary blue lights; see page 22 where defense counsel testified there were lights on the King and Barton Holmes motor vehicles; see page 22 where defense counsel testified vehicles were moving through the area without difficulties; and see page 23 where defense counsel testified the lights were stationary. Plaintiff's counsel did object on two (2) occasions to defense counsel's improper testimony, and since the objections were overruled, Plaintiff was not in a position to ask for curative instructions. Curative instructions are only given, when the objection to an argument is sustained; however, Plaintiff stated her ground for the objections, i.e. Defendant was testifying to what, in its opinion, the video depicted which the Court had previously ruled to be "out of bounds".

Respectfully submitted,

s/ Thomas J. Thompson

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ATTORNEY FOR PLAINTIFF

Laurens, South Carolina
February 12, 2019

both we're both entitled to argue and point to the jury references of what is – interpretation of that is. And that's –

THE COURT: Well, yeah. **You can't give your own interpretation.** They can interpret it. You can point out certain things that the video shows, but

MR. HARTER: **I think we can suggest interpretations** for it.

THE COURT: Well, let's just get – let's get into it. And I'm confident that if Mr. Bryan or Mr. Thompson feels like you're crossing the line, then, you know, let them take the appropriate course of action or lack thereof.

(Tr. 4/19/2018 in camera pp 5-7)

In the exchange above, defense represents to the Court that the video “shows the real time”. This statement overtly misleads the Court because “real time” was never defined at trial. ‘Accurate’ is a reasonable meaning of “real time”. But it is unrefuted that the time shown on the video does not correspond to the times of the collisions. The time stamp on the video is 20 minutes later than the collisions, as Plaintiff’s counsel pointed out, in the above exchange. Hence the time on the video is not accurate. And, it is further established that the playback speed on the video is not consistent, but speeds up and slows down at various point. Hence the playback speed is not accurate.

Thereafter, in closing argument, the defense repeatedly misled the jury with testimony about the video. The Defendant in its closing argument clearly testified about the video in direct contravention of the Court's restrictions.

See page 19 where counsel testified Barton Holmes at 58:07 made a U-turn; see page 20 where counsel testified that the Holmes and King vehicles came to a stop at 58:09; see page 20 where defense counsel testified that the vehicles headed to Clinton

MR. THOMPSON: It's just 20 minutes off.

MR. HARTER: The **seconds are shown on the video**, and the testimony has been that it records real time. And time is important. **But it shows the real time. It does.** I mean, that was what ---

THE COURT: Well, yeah. I mean, you can point out the time, but you can't tell them, hey, we've got 41 seconds between -- I mean, let them make that -- reach that conclusion.

MR. HARTER: Well, I plan to tell that that, Judge. We'll tell you, I plan to tell them that there's an interval of 41 seconds between this series of events and this series of events, and **it clicks off on the video. You see it.**

THE COURT: Well, you can point out, all right, this, there's the time; there's time, but you can't -- I'm not going to allow you to tell them there's 41 seconds different.

MR. THOMPSON: One other point. There's a lot of **flashing lights on that video**, and I don't think Mr. Harter could testify to what those flashing lights mean because we haven't had an expert get on the stand and say this light represents this and that.

THE COURT: Okay. **They're going to have to reach their own conclusion as far as what that video -- what that video means.** I know we're in a gray area here. I can appreciate that. We're in a gray area as far as how far either side can do with respect to this -- with respect to this video.

MR. HARTER: And I will tell you, it's been my experience, Judge, and I'm sure yours, too, jurors are smart, you know. And if you get in there and say this tree is green and it's red they'll blow you out of the water, you know. So my point is, it's admitted into evidence, there was no qualification about that, and I think we're

contained images, skips, overruns, etc. that would not have been on the original, Matt Cagle saw the copy for the first time during the course of his testimony and pointed out to the Court certain aspects of the video content that were the result of the copying process undertaken by South Carolina Highway Patrol Officer Duncan.

3. The copy of the surveillance video which was utilized during the trial contained ghost images of an unidentified man standing in the room reflected on the playback screen throughout the video; ghost images were also a part of this copy; the time stamp obscured the images throughout the video; there were shifts and speed ups; there were deletions and cut backs and also two (2) separate cameras were merged in to a single video production and as a consequence the proffered copy was confusing, unhelpful, unreliable and most likely caused speculation.

IMPROPER CLOSING ARGUMENT

Prior to closing argument Plaintiff sought a ruling preventing the defense from commenting on the video.

THE COURT: ... I don't think you're entitled to add to the video anything that the video does not show, okay?"

(Tr. 4/19/2018 in camera, p 4)

...

THE COURT ... But if the video does not show something, then you certainly cannot, because it almost would be testifying, and certainly you cannot do that.

...

THE COURT ... But now as far as I know that there has been some mention about time, you can't argue to the jury the time, because that's not shown on the video. So I'll allow you to argue what is on the video, but if it's not on the video, then you can't add to it.

MR HARTER: The time is shown on the video, Judge.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)
)
 Martha Foster Watts,)
 Plaintiff,)
)
 v.)
)
 Ricky W. Chastain, Sheriff)
 Laurens County, South Carolina)
 Defendant.)

IN THE COURT OF COMMON PLEAS

**PLAINTIFF'S SUPPLEMENTAL
 MEMORANDUM OF LAW SUPPORTING
 HER MOTION FOR A NEW TRIAL
 UNDER RULE'S 59 AND 60**

2015-CP-30-00624

The Plaintiff, by undersigned counsel, offers the following Supplemental Memorandum in Support of her Motion for a new trial under Rule's 59 and 60:

INADMISSIBILITY OF SURVEILLANCE VIDEO

Plaintiff in her Memo of December 19, 2018 provided the Court with her position on the issue of inadmissibility of the surveillance video and the basis for her objection and will not again repeat same, but invites the Court to re-visit the subject memo and Plaintiff now provides the Court with this Supplemental Memorandum touching on the salient reasons warranting the granting of a new trial due to the Court's admitting the surveillance video in to evidence, coupled with defense counsel's improper testimony during its closing argument by telling the jury what the surveillance video reflected notwithstanding the Court's pre-argument ruling and over objection of Plaintiff.

Plaintiff believes that her points on the following factors where made in unequivocal terms:

1. The original surveillance video was destroyed, as same was taped over after the lapse of a six (6) month period and consequently this Court could not compare the proffered copy to the original.
2. The surveillance video admitted by the Court was not a copy of the original but a copy of a copy, therefore, in the absence of the original no one, to include Matt Cagle could authenticate the copy. Stated another way the copy

their deliberations, and deduce from it whatever they might find pertinent to their deliberations. The probative value of the video clearly outweighed any prejudice the Plaintiff might try to concoct.

CONCLUSION

The surveillance video was properly admitted into evidence and counsel's argument was proper. Therefore, pursuant to the South Carolina Rules of Evidence and Plaintiff's Motion for a New Trial of Judgment NOV should be denied and dismissed as a matter of law.

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.

s / Russell W. Harter, Jr.
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Greenville, South Carolina
February 6, 2019

defense counsel's closing argument.

V. LASER POINTER

Contrary to Plaintiff's allegations, defense counsel did not use a laser pointer to point to the screen while the video was playing, but even in he had, it would have been entirely appropriate and permissible to point and direct the jury to relevant events, just as it would if he were using a still black and white photograph and a yard stick. In any event, that red laser pointer wasn't a magic wand that somehow changed what was shown on the screen to the jury. Contrary to what Plaintiff seems to suggest, it is not customary to expect an attorney to detail to opposing counsel his/her intentions as to what exhibits he or she is going to refer to in a closing argument and how counsel plans to draw the jury's attention to that evidence. Furthermore, both of Plaintiff's counsel (Mr. Thompson then Mr. Bryan) interrupted the defense in closing argument, but neither objected to the defense counsel using a laser pointer.

VI. CURATIVE INSTRUCTION

Not that it was necessary; however, even in the event it is deemed to have been appropriate, Plaintiff, upon information and belief, never requested a curative instruction. *See Brown v. Stewart*, 348 S.C. 33, 52, 557 S.E.2d 676, 686 (Ct. App. 2001) (holding appellant failed to preserve the issue of an improper closing argument, where, after the Court sustained appellant's objection, appellant did not request a curative instruction or move to strike)

VII. REQUEST TO RE-WATCH VIDEO DURING DELIBERATIONS

The jury is always allowed to review the evidence during deliberations and the surveillance video was properly admitted into evidence; therefore, it was certainly appropriate and permissible for the jury to re-watch the video during deliberations. In fact, it was in the interest of both parties to allow the jury the opportunity to review the video in the privacy of

Later in the argument when the video was played for the jury the dialogue of counsel appears on Page 23 and the comments of counsel are: “vehicle movement”, “lights”, “58:07 coming up”, “lights stationary”, “47 is coming up”.

There is nothing improper about the closing argument of defense counsel and the transcript and video itself confirm that.

III. THE IMAGE WAS OF SUFFICIENT QUALITY AND THE PROBATIVE VALUE OUTWEIGHED ANY PREJUDICE.

The jury was free to interpret the video on their own, just as the defense and the Plaintiff were free to argue their positions of what the video shows and/or does not show. The jury was free to determine the weight of the video. The image was a surveillance video from a local business not a high definition blockbuster motion picture; however, the video clearly shows evidence to dispute the Plaintiff’s biggest arguments in the case that of whether lights were on and present at the time Ms. Watts was in an accident and how much time there was between the two collisions. Therefore, the probative value of the video clearly outweighs any possible prejudice the Plaintiff might try to conjure up. In fact, the only prejudice the Plaintiff can argue is that the video doesn’t support their claim.

IV. LARGE SCREEN AND SCREEN PLACEMENT

To the extent Plaintiff now insinuates some alleged ground for a new trial because defense counsel tried to sway the jury by using a “large screen placed in such a manner that the Court was behind the screen and could not see. . .”, her argument is without merit. Defense counsel played the video for the jury on the screen provided by the Clerk of Court. Furthermore, defense counsel placed the screen in front of the jury with the permission of the Court and Plaintiff’s counsel voiced no objection to the placement of the screen prior to and/or during

The Plaintiff's Memorandum lifts out isolated comments during the closing argument of defense counsel, but in doing so, the Plaintiff's Memorandum does not provide the full context of what was argued and/or said when. We invite the Court to review the full transcript of defense counsel's closing argument which is included on Pages 3 through 25 and which is attached to this Memorandum. Attorneys are actually allowed and expected to argue in their closing. 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 way that it should be given. *See Lesley v. 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).

In defense counsel's closing argument, prior to teeing up the surveillance video, counsel referenced the video and invited the jury to give their interpretation to its contents. At Page 20 through 21, the wording of counsel's argument simply invited the jury to make a determination as to what they saw and/or would see from the video. [Pages 20-21] On Page 22 of the Transcript of Defense Counsel's Closing Argument, again counsel invited the jury to use their "...trained eyes, 24 eyes" and clearly said "You may see fine things much different than me. I invite you to do that."

Prior to showing the video, defense counsel said on Page 22:

"But I offer this to you as evidence that I submit would indicate that there were lights on out there, there was a significant time delay between those two impacts, that other vehicles moved through the area without any difficulty, and that Ms. Watts's vehicle sometime, multiple seconds later, you figure out when that is, she collides with the King vehicle."

centerline in opposite lanes of traffic at 10:58:47-49. Further, it showed relevant and critical evidence to dispute the Plaintiff's testimony that no one had any lights on (If there were lights on, she should, would and could have seen them but she did not see any lights.). The video clearly shows that there are numerous lights on various vehicles before and at the time Ms. Watts's vehicle is shown crossing the highway and hitting the fence.

The video accurately represents the time between when lights can be seen swinging wide at 10:58:07 and when they become stationary at 10:58:09 and when Ms. Watts' vehicle pushes Ms. King's vehicle forward and then crosses and leaves the roadway at 10:58:47-49. The video was played in real time and 60 seconds were in each minute. The video fairly and accurately represented the time and confirms that there was approximately a gap of 41 seconds between the two collisions which was an important and highly contested issue in this case. That evidence clearly contradicts the Plaintiff's claim that the collision occurred two to ten seconds apart on a dark road with no lights.

II. THE PLAINTIFF'S ALLEGATION OF AN IMPROPER CLOSING ARGUMENT ARE UNFOUNDED.

To suggest that there was an improper argument by defense counsel that had a persuasive effect as to the outcome, is an insult to the trial jury that attentively weighed the evidence and the testimony in this case. The surveillance video was admitted as evidence in the trial and it was not simply referenced as a demonstrative aid.

The Court clearly instructed the trial jury that arguments of counsel are not evidence and should not be considered as such. The very purpose of a closing argument is to allow counsel to argue inferences from the facts in evidence, to draw analogies, and to suggest conclusions that reasonably relate to the case and that are within the common life experience of jurors.

Cagle's Recycling Center surveillance video. Likewise, it is a duplicate of the same. Further, under Rule 1003 it is clear that 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 the authenticity of the original. Further, Rule 1004 says that an original is not required and other evidence is admissible if the original is lost or destroyed. Here the original was never in the possession of the Defendant and it is no longer available for reasons explained by testimony at trial. Further, under Rule 1004 the original is not obtainable or available through any judicial process. Further, as the record clearly indicates the surveillance video of Matt Cagle's Recycling Center was not and has never been in the possession and/or under the custody and/or control of the Sheriff's Office. The Plaintiff's arguments about inaccuracies, skips and/or whether or not the original is available is totally without merit.

The video was admitted into evidence and the trial Judge correctly ruled on its admissibility. 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. Here the video shows significant information and evidence as to the position of the vehicle, the timing between the two collisions at issue, the roadway conditions, and whether or not the motorists involved had their lights on. These were all contested issues at trial and it is hard to fathom how and/or why this video could not be considered relevant given the issues. The surveillance video did not show the actual impact of the first accident: however, at approximately 10:58:07 p.m. it showed that lights swung wide then they became stationary at 10:58:09 p.m. Then it later showed sparks when two vehicles collided and Ms. Watts's vehicle is shown as it crosses the

surveillance video. [Page 106] Trooper Duncan also explained discrepancies that can exist between times noted on an accident report and a video and pointed to the fact that times are not exact. [Page 113-114] Trooper Duncan, before the jury, testified that the video he recorded is accurate, that it is an accurate recording from Cagle's surveillance video, that there were no breaks and no interruptions, no alterations and no changes and is reliable. [Page 116]

ARGUMENTS

I. THE TRIAL JUDGE CORRECTLY RULED THAT THE SURVEILLANCE VIDEO WAS PROPERLY AUTHENTICATED, AND HE DID NOT COMMIT AN ERROR IN ADMITTING IT INTO EVIDENCE.

The video admitted into evidence by the trial judge was properly authenticated. Authentication was completely satisfied under Rule 901 in that the video in question was what the proponent claimed it to be. It was established that the video shown to the trial jury was an accurate and complete image of the events that occurred on the night of the accident on Highway 76 as relates to this incident. It was in real time and it in no way had been altered and/or edited. To the extent the Plaintiff argues in her Memorandum that there were "inaccuracies", that assertion is fully contradicted by the testimony of witnesses *in-camera* and at trial. Further, to the extent the Plaintiff suggests there was jumping and/or skips on the video, that assertion is disingenuous. Witnesses indicated that the surveillance video was advanced and/or fast forwarded to the point where the video surveillance picked up the events which are the subject of this claim. The events related to the accident as taken from the surveillance video were shown and recorded continuously and in real time without any skips or jumps.

The video admitted by the trial judge at trial complies with Rules 1001, 1002, 1003 and 1004. Rule 1001 indicates that an original of a photograph includes the negative or any print therefrom. The video recorded by Al Duncan is actually a print of the images shown on Matt

confirms that there was no sound on the surveillance video. [Page 52] He also verified that the equipment he used was in fact reliable. [Page 53]

Trooper Duncan also confirmed that all transfers from his camcorder to his computer and from his computer to the DPS hard drive were personally done by him. [Page 55] In responding to questions from the Court, Trooper Duncan stated "I know that what I saw on the video lines up with the information that I had about the crash at that time and I found out as I continued on with the investigation". [Page 66] Trooper Duncan goes on to explain that time references on the Accident Report may not be entirely accurate but he states "...But from what I saw, the information gathered in that video reflects perfectly the evidence that's on the roadway and what took place in the crash." [Page 69]

Trooper Duncan again also testified before the trial jury consistent with his testimony *in-camera*. He explained that he went to Cagle's place of business, set up his camcorder and recorded from the surveillance system recording the movie that it captured. He testified that he gathered what evidence was important and that he had Cagle fast forward to start the video and then the video was started in real time to collect the information needed. [Page 100] Trooper Duncan confirms that the video footage from 10:00 to 11:00 are real time numbers. [Page 100-101] Before the trial jury Trooper Duncan again explained that the information off of the surveillance video went into the hard drive of his camcorder and then into the hard drive of the MAIT Team. He confirms that there was no editing of the video after it was taken. [Page 101-102] He confirmed that the disc played at trial is an accurate depiction and representation of what he recorded with and from his equipment. [Page 103] He further, and again, explained that Mr. Cagle was not familiar with how to transfer the information onto a thumb drive, jump drive or any type of card, so in an effort to preserve evidence he used his camcorder to tape from Cagle's

of the monitor of Cagle's surveillance system and recorded the parameters of what time frame they were looking for to capture evidence from the video. The images from Channel 5 were recorded off of Mr. Cagle's monitor in his business. [Page 43-44] Trooper Duncan also recorded information from the camera on Channel 6. [Page 45] What might be referred to as skips involves getting to the "meat and potatoes" of what they were looking to capture. Trooper Duncan explains that they did not need to capture everything prior to the time frame relevant to the event or anything beyond the time frame relevant to the event they were looking for. He claims that due to constraints on data it was not appropriate to record everything and/or information that would be "useless" to the investigation. Trooper Duncan further explains that Mr. Cagle fast forwarded to the time frame they were looking for and then he started recording prior to getting to the exact location they wanted. [Page 45-47] Trooper Duncan explained *in-camera* that he had a Sony hand held DVD recorder and it did not record on a tape or SD card or disc. It recorded to a hard drive within the camcorder and that information was taken back to the office, loaded into his computer and saved into the M drive of the MAIT Team. It was saved as evidence of their investigation and it was saved into a secure hard drive system. [Page 47-48] Trooper Duncan stated that the disc received as evidence fairly represents the recording made from Cagle's monitor as to the events related to the incident. [Page 49] Trooper Duncan explained in reviewing Channel 5 from the recording that it was a constant recording and it is an exact picture of what was taken off of Cagle's surveillance monitor [Page 49-50] He explained that the recording from Channel 5 and Channel 6 is an accurate portrayal of what he recorded onto his camcorder and what he put into the MAIT Team hard drive without any edits. [Pages 49-51] He confirms that nothing was taken out and that the video itself is a complete recording from the time the button was hit until the recording button was stopped. [Pages 51-52] He

monitor. [Page 32] He testified that the images shown on the disc from Channel 5 and Channel 6 of the video equipment accurately portray and represent images that were on his recording system when Trooper Duncan came to his place of business.

He testified that the time has always been correct and that it was on time a few nights ago when reviewed with Plaintiff's counsel on August 15, 2013. [Pages 33-34]

Matt Cagle's testimony in the presence of the jury appears on pages 78-94. In testimony before the jury Matt Cagle again was consistent with the testimony he had given *in-camera*. He again states that the surveillance video on Channel 5 beginning at 10:57:23 is recording in real time. [Page 81] He states that the recording system is a Lorex EC02 and that there are no physical cassettes or tapes that can be removed. [Page 83-84] He again states that there were no issues or problems with the equipment and that the images are a clear and accurate representation of what was on his recording equipment and what he looked at after the accident occurred. [Pages 85-87]. Mr. Cagle indicated that the time shown on the video has been correct since he put in the system in 2013. Mr. Cagle said that he fast forwarded the surveillance video to the point where he (Duncan) wanted to start [Page 93]

Al Duncan testified *in-camera* as to his recording of the surveillance video. Trooper Duncan was employed with the South Carolina Highway Patrol and retired in 2017. He was a member of the Multidisciplinary Accident Investigation Team. [Page 41-42] Trooper Duncan joined the MAIT Team in 2008. [Page 42] On August 20, 2013, Trooper Duncan went to the Recycling Center and met Matt Cagle. Upon arrival he looked at the footage and realized that there were cameras facing the direction of the crash. Mr. Cagle was not familiar with a way to get data off of the hard drive system on to any type of disc or thumb drive and so as to preserve evidence and prevent it from being lost, Trooper Duncan set up a camcorder on a tripod in front

they captured traffic flowing up and down Hwy 76. [Pages 11-12] He states that he looked at the recording and that the equipment recorded in real time and on the date indicated, and that in reviewing the surveillance video he saw a car with sparks flying and striking his fence. He describes the relevant parts of the video beginning at 10:57 and he states that the system records just video and not audio. [Pages 13-15] He states that the camera records in exact real time and it has a timer and date. [Page 16] He further testified that he installed the equipment himself and he maintains the equipment. [Page 16] The equipment was installed in early 2013 and it records on a Lorex EC02 recording system onto a DVR with a hard drive inside. He states that the hard drive cannot be physically removed and it is located in the building in the main office in a corner. He describes that there is a monitor for the system that is mounted in the office and that the system can be reviewed using a mouse or a remote. [Pages 17-18] The recording device runs continuously 24-7 and there has been no problem with the monitor nor has anyone tampered in any way, or altered the equipment between the time of the incident and when Officer Duncan came to his place of business to record from the video. He states that there was no obliterating of the images, only that there was glare created when the video was copied. He states that the video plays continuously in real time and that Channel 5 records images going toward Clinton. [Page 25 - 29]. In the *in-camera* hearing Mr. Cagle testified that Trooper Duncan brought a tripod to his business location and set up a camcorder to record the images off of the monitor. He states that there was no alteration or change to anything having to do with the system between the time he discovered the damage to his fence and the time that Trooper Duncan brought his camcorder and recorded from his surveillance video. He states that after recording the surveillance video will loop and then erase. [Page 30-31] He confirmed that the surveillance video which he viewed *in-camera* and in Court is an accurate representation of the duplication of what was on his

recording itself or any counterpart intended to have the same effect by a person executing or issuing it. A photograph includes the negative or any print therefrom. Data stored in a computer or similar device shown to reflect the data accurately is the same as an original. Under Rule 1001 a duplicate is a counterpart produced by the same impression as the original or from the same matrix, or by means of photography including enlargements or mechanical or electronic recording or by other relevant techniques which accurately reproduce the original.

Rule 1002 provides that to prove the content of a writing, recording or photograph, the original is required but with several and numerous exceptions.

Rule 1003 provides that a duplicate is admissible to the same extent as the original unless (1) a genuine question is raised as to the authenticity as the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004 provides that the original is not required when the original is lost or has been destroyed unless lost or destroyed by the proponent of the evidence. Further, Rule 1004 provides that the original is not required if it cannot be obtained by any judicial process or procedure.

DISCUSSION OF TESTIMONY

Trooper Kelly Anderson testified *in-camera* that she brought, at the request of the defense, a disc that includes the information taken off of the DPS hard drive. Trooper Anderson testified that she made a copy onto a disc from the DPS hard drive and that it contains video of the Sheriff's Office vehicle, the Dodge Charger, and surveillance video. She reviewed the disc and it contained what she described as coming off of the DPS hard drive. [Pages 5-8]

Matt Cagle testified *in-camera* at Pages 10-39. Mr. Cagle testified that he operated Dixie Iron Metal Recycling facility back in August of 2013 and that he had cameras focused toward Highway 76 from his business. He indicated that the cameras were mounted by him and that

lengthy and detailed *in camera* hearing, finding that it was in fact admissible. Notwithstanding the surveillance video, there was other substantial evidence which supported a defense verdict and that evidence included testimony from witnesses that they in fact had lights on their vehicle at the time Mrs. Watts collided into the rear of Ms. King's car. There was also other substantial evidence to show the significant sight distance that Mrs. Watts had as she approached the scene where she collided into the rear of Ms. King's vehicle. The surveillance video corroborated much of the testimony at trial. The surveillance video was not property of the defendant nor any other party to this case and it was obtained by the South Carolina MAIT team as part of its investigation.

Rule 102 of the South Carolina Rules of Evidence provides that the rules of evidence are to be construed so as to allow for a fair trial so that the truth may be ascertained and so that proceedings may be justly determined.

SCRE 103 provides that errors as to rulings to admit or exclude evidence will not be the basis of error unless a substantial right of a party is affected.

Rule 401 defines evidence that has a tendency to make the existence of any fact that is of consequence more probable or less probable than it would be with or without that evidence.

Rule 402 provides that all relevant evidence is admissible except as otherwise provided.

Rule 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by unfair prejudice.

Rule 901 provides that authentication as a condition precedent to admissibility is satisfied by evidence that is sufficient to support a finding that the matter in question is what its proponent claims.

Rule 1001 provides that an original of a writing or recording is the writing itself or

the surveillance video was either not relevant or that its probative value was outweighed by its prejudicial impact.

The plaintiff's motion also claims that the closing argument of defense counsel was improper.

The central issues in this claim involve whether or not the Defendant was negligent, whether or not Plaintiff Ms. Watts had an opportunity to avoid the collision and, specifically, whether or not there were lights on any of the vehicles involved other than Mrs. Watts's vehicle. Another central issue in the case was the question as to the time interval between the two collisions that occurred.

The surveillance video which was admitted into evidence and it provided information that was unbiased, accurate, and helpful to the jury in arriving at the truth.

We would invite the Court to view the surveillance video that was marked as Exhibit 6 at trial for a complete and accurate account of its contents.

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

The surveillance video was admitted into evidence only after the Court conducted a

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)
)
 Martha Foster Watts,)
)
 Plaintiff,)
)
 vs.)
)
 Laurens County Sheriff's Department,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT

**DEFENDANT'S MEMORANDUM IN
 OPPOSITION TO PLAINTIFF'S
 MOTION FOR A NEW TRIAL
 PURSUANT TO RULES 59 AND 60**

Civil Action Number:
 2015-CP-30-00624

BACKGROUND

This action was tried before a jury on April 16, 2018 to April 19, 2018. On April 19, 2018 the jury returned a verdict in favor of the Defendant. Specifically the jury found that the Defendant was not negligent. The plaintiff then filed this motion for a new trial and/or judgment notwithstanding the verdict on April 27, 2018. The Plaintiff's motion for the new trial and/or judgment notwithstanding the verdict is made pursuant to Rule 59(b) and 60(b)(3), SCRPC. 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. After oral arguments, the plaintiff submitted a written memorandum dated December 19, 2018. The court allowed defense counsel time to produce a transcript and file a response to that memorandum.


The plaintiff's memorandum raises issues with respect to the admissibility of a surveillance video from a nearby recycling establishment that captured footage at the time of the accident which is the subject of this claim. The grounds for the plaintiff's motion as relates to the surveillance video alleged that it was inaccurate, that the original was not presented, and that

CONCLUSION

On the basis of all of the above and foregoing, and the Court's file, Plaintiff requests that the Court grant Plaintiff's Rule 59 and 60 motion for a new trial.

Respectfully submitted,

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December 20, 2018
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certainty. The circumstances include a law enforcement person's image floating over the video; the defendant is law enforcement; and Cagle testified that he fast forwarded and made other changes to the resulting video image in order to help law enforcement (Duncan). These amount to tampering, not authentication.

"(9) Process or System. **Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.**" 901(a) SCRE. Cagle's and Duncan's testimony show that the process created an inaccurate result (fast forwarding through the original while Duncan's camera recorded the images playing on Cagle's monitor).

5. RESULTING PREJUDICE

The speeding up, slowing down and deleted portions of the video, along with the ghost image of Duncan, are very significant alterations from the original, and there is a reasonable probability that these alterations unfairly prejudiced the Plaintiff at trial.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence" Rule 403 SCRE; *State v. Ward*, at *1 (citation and internal quotation marks omitted). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." *Tr.* (citation omitted).

edits make the video inaccurate, confusing to the jury, unreliable and, therefore, inadmissible under Rule 901.

... Rule 901(a), SCRE (**The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims ... [T]he burden to authenticate evidence is not high and requires only that the proponent of the evidence offer a satisfactory foundation from which the jury could reasonably find the evidence is authentic**).

***State v. Brooks*, 2015-001384, 2017 WL 4810804, at *1 (S.C. Ct. App. Aug. 2, 2017)**

(emphasis added) (quotation marks and brackets omitted).

Rule 901 lists many ways for authenticating evidence and the adequacy of those attempted by Defendant are ruled out below:

"(1) Testimony of **Witness With Knowledge. Testimony that a matter is what it is claimed to be.**" 901(a) SCRE. Cagle had knowledge, but his testimony showed that the video is not what it was claimed to be. It was not an exact copy of the original surveillance footage. He testified that he fast forwarded, slowed down, rewind and shifted the monitor at various points while the original was being copied. He and Duncan both testified that the video included Duncan's image which was not on the original.

"(4) **Distinctive Characteristics** and the Like. Appearance, **contents**, substance, internal patterns, **or other distinctive characteristics, taken in conjunction with circumstances.**" 901(a) SCRE. One distinctive characteristic is the image of Trooper Duncan, that was admitted to be absent from the original, but permeates the in-court video, obscures the underlying image and distracts and confuses the viewer. The contents of the image under Duncan's image is not relevant because the accident is not captured on the black and white video and the lights shown cannot be identified with any

The defense hinged entirely on its version of the "significant" lapse of time and the contention that Holmes' vehicle had blue lights on after the first collision, giving enough warning to allow Mrs. Watts to have avoided the accident in question. Both of these points, (the interval and the blue lights) were the subject of conflicting statements and testimony by the three people who have personal knowledge of the collisions, having been in them. All three of them initially stated the interval to have been between 2 and 15 seconds. King and Watts initially stated that Holmes did not have his lights on. Five years passed before the case was tried and the recollection of this time became less certain. Thus, there is a "reasonable probability" per *Ward, et al, supra*, that the jury relied on Defendant's inaccurate video and the defense's improper closing argument in reaching its decision.

Cagle's unrefuted testimony as to fast forwarding, proved that the in-court copy did not run at actual speed or "real time" despite that the defense represented to the Court, that it dTr. **"The seconds are recorded on the video** and the testimony has been that it records real time. And time is important. **But it shows the real time. It does"** and "... **it clicks off on the video. You see it.**" (Tr. 4/19/2018 pp 5; 6)

Our Rules provide that, in this case, only the original (Rule 1001; 1002; 1003(3)) or a verifiably accurate copy (Rule 901(a)(9)) should have been admitted here, only if the defense had shown good faith in regard to preserving the original (Rule 1004); and only if its relevance had not been outweighed by prejudicial effect. (Rule 403) As shown herein, this video does not meet those requirements and the defense's commentary in closing argument compounded the prejudicial effect of the video.

The video is not an exact or fair and accurate copy of the original surveillance footage. Nor does it depict the crashes at issue. All of the speed changes and jump-cut

Still, the defense offered its interpretation of the video, including things that are not depicted, contrary to the Court's directives, as shown above. The defense told the jury that it was the parties' and others' vehicles which were represented by the lights on the video; he told them that the lights showed what those vehicles were *doing*; he told them to look at the video with their now "*trained eyes*" as "*detectives*" to see these things he had just described *which that are not depicted on the video* - identifiable parties' and non-parties' vehicles; moving vehicles; "stationary" vehicles; collisions; non-party vehicles moving "without difficulty" past the first collision; and a significant delay between the first and second collisions. All of this was overtly unfairly prejudicial to the Plaintiff.

The Court's response to Plaintiff's objections - that the defense could not comment on things that were not on the video - served only to suggest to the jurors that defense counsel's insinuations were correct - that those things *were* on the video and that the jurors would see those things if they used their "trained" eyes. Here, the Court's rulings on the Plaintiff's objections *compounded* the prejudice to the Plaintiff because the vehicles cannot be identified from the largely indecipherable video; the video begins twenty minutes **after** the collisions; and the collisions are not on the video.

In addition to all of this, defense counsel *twice* told the jury to see "**blue** lights" on what the Court will recall was a **black-and-white video**. These comments, interpretation and exhortations by the defense should not have been allowed over Plaintiff's timely objections; they violated the Court's directives; and they unfairly influenced the jury to rule against the Plaintiff.

You know, I'm going to tell you, I represent some radiologists sometimes, and radiologists look at this world where they look at images, you know. And they have findings on those images, and sometimes those images are so findings [sic]. But you look at them. **They know what to look for. And sometimes when you look at images the first time, you don't see them, you don't see anything.**

But then as you -- and, ladies and gentlemen, **y'all are detectives today** because you're looking for the truth, and that's what we want. ...

But **there are images in there that** I think are enlightening that will support and **prove** important facts in this case, and they will prove, I submit to you, that **there were lights on Ms. King 's vehicle, Barton Holmes had lights on,** and that **there was a significant** -- and you go with your calculations about the **time delay between** what this video shows as to what appears to be **the collision involving Barton Holmes and Ms. King and then the later collision involving Ms. Watts.**

But I'm trying to give you kind of the heads-up, the narrative, invite you to look at it again **with your trained eyes**, 24 eyes. You may see fine things much different than me. I invite you to do that. But I **offer this to you as evidence that** I submit would indicate that **there were lights on out there, there was a significant time delay between these two impacts,** that other vehicles move through the area **without any difficulty,** and that **Mrs. Watts' vehicle sometime, multiple seconds later,** you figure out when that is, she **collides with the King vehicle.**

....

...58:07 coming up. **Lights stationary.**

[PLAINTIFF'S COUNSEL] MR. BRYAN: Your Honor, we had specific directions about comments.

THE COURT: Again, he cannot add anything that is not depicted on the video.

(Tr. 4/19/2018 defense closing argument pp 19 line 20 - 23 line 21).

It is a matter of professionalism that one does his best to avoid objecting during closing argument, but Plaintiff was forced to do so twice, thereby preserving⁶ these issues for this motion for new trial.

⁶ See, e.g. *Davis v. Traylor*, 340 S.C. 150, 530 S.E.2d 385, 388 (Ct. App. 2000) (Contemporaneous objections are required to preserve such issues for review.)

vehicles as the collisions occurred.⁵ Defense counsel also implied that the jury had been "trained" to be "detectives" in the case and he asked the jury to try to see things that are not on the video:

MR. HARTER: ... You see lights, I'm going to suggest, moving in each direction on 76. Lights moving. At some point in time, and I'm going - to suggest to you it might be right around 58:07 that the video might show you some evidence that would indicate that **there was lights that panned around in this direction and made possibly a U-turn.** But you decide that.

[PLAINTIFF'S COUNSEL] MR. THOMPSON: Your Honor, we object to this testimony of Mr. Harter's about the video.

THE COURT: He can argue the video so long as he does not add anything to what the video may depict.

MR. HARTER: Just look at Section 58:07 and see what you think. See what you think. See if you see any **lights pan to the left.** And then after that, **immediately after that,** what happened in the King-Barton Holmes accident? **The vehicles came to a stop,** one facing toward Clinton, and one facing toward Laurens. I'm going to invite you to look to see if any of **the lights which would be evidence of vehicles moving up and down 76 stop.** I invite you to look and see if you see any **lights stop or become stationary.** And that may be around 58:09. Ladies and gentlemen, I want to ask you to pay attention to the video, the surveillance video after 58:09, and as you do, make your determination as to whether or not **you see vehicles drive in this direction** from Clinton -- from Laurens, I'm sorry, toward Clinton **passing those stationary blue lights.** How many vehicles do you see drive past **those stationary blue lights?** And then, ladies and gentlemen, I want to ask you to focus or look at a section of the video at or around 10:58:47 and/or 46 -- 49 and see if you find anything worthwhile or evidence that would indicate to you that **Mrs. Watts' vehicle veers off from this roadway and strikes a fence.**

⁵ (This treats the video as direct evidence, not demonstrative evidence. See *Clark v. Cantrell*, 339 S.C. 369, 383, 529 S.E.2d 528, 535 (2000) (Demonstrative evidence "explains or summarizes other evidence and testimony," "has secondary relevance to the issues at hand," and "is not directly relevant, but must rely on other material testimony for relevance").)

MR. HARTER: And I will tell you, it's been my experience, Judge, and I'm sure yours, too; jurors are smart, you know. And if you get in there and say this tree is green and it's red, they'll blow you out of the water, you know. So my point is, it's admitted into evidence, there was no qualification about that, and I think we're both we're both entitled to argue and point to the jury references of what is -- interpretation of that is. And that's ---

THE COURT: Well, yeah. **You can't give your own interpretation.** They can interpret it. You can point out certain things that the video shows, but

MR. HARTER: **I think we can suggest interpretations** for it.

THE COURT: Well, let's just get -- let's get into it. And I'm confident that if Mr. Bryan or Mr. Thompson feels like you're crossing the line, then, you know, let them take the appropriate course of action or lack thereof.

(Tr. 4/19/2018 in camera pp 5-7)

In the exchange above, defense represents to the Court that the video "shows the real time". This statement overtly misleads the Court because "real time" was never defined at trial. 'Accurate' is a reasonable meaning of "real time". But it is unrefuted that the time shown on the video does not correspond to the times of the collisions. The time stamp on the video is 20 minutes later than the collisions, as Plaintiff's counsel pointed out, in the above exchange. Hence the time on the video is not accurate. And, it is further established that the playback speed on the video is not consistent, but speeds up and slows down at various point. Hence the playback speed is not accurate.

Thereafter, in closing argument, the defense repeatedly misled the jury with interpretations of the video (offered by Defendant as direct evidence of material facts in dispute - whether Holmes' blue lights were on and the interval between collisions). Defense counsel suggested that the flashes of light in the video were the parties'

(Tr. 4/19/2018 in camera, p 4)

...
THE COURT ... But if the video does not show something, then you certainly cannot, because it almost would be testifying, and certainly you cannot do that.

...
THE COURT ... But now as far as I know that there has been some mention about time, you can't argue to the jury the time, because that's not shown on the video. So I'll allow you to argue what is on the video, but if it's not on the video, then you can't add to it.

MR. HARTER: The **time is shown on the video, Judge.**

MR. THOMPSON: It's just 20 minutes off.

MR. HARTER: The **seconds are shown on the video**, and the testimony has been that it records real time. And time is important. **But it shows the real time. It does.** I mean, that was what ---

THE COURT: Well, yeah. I mean, you can point out the time, but you can't tell them, hey, we've got 41 seconds between -- I mean, let them make that -- reach that conclusion.

MR. HARTER: Well, I plan to tell them that, Judge. We'll tell you, I plan to tell them that there's an interval of 41 seconds between this series of events and this series of events, and **it clicks off on the video. You see it.**

THE COURT: Well, you can point out, all right, this, there's the time, there's time, but you can't -- I'm not going to allow you to tell them there's 41 seconds different.

MR. THOMPSON: One other point. There's a lot of **flashing lights on that video**, and I don't think Mr. Harter could testify to what those flashing lights mean because we haven't had an expert get on the stand and say this light represents this and that.

THE COURT: Okay. **They're going to have to reach their own conclusion as far as what that video -- what that video means.** I know we're in a gray area here. I can appreciate that. We're in a gray area as far as how far either side can go with respect to this -- with respect to this video.

In addition to the inaccuracies described above, the video's relevance, if any, was very limited, because **the video begins twenty minutes after the collisions and does not depict either of the collisions at issue.** The defense argued to the jury that the video showed flashes of light from the vehicles in the collisions, as well as other vehicles on the road before, during and after the collisions. (Tr. 4/19/18 Harter closing argument pp 20-21) The defense argued that these lights, combined with the time stamp shown on the video, constituted evidence of a "significant delay" between the collisions. (Tr. p 22) This reference to the time on the video makes the proven inaccuracies as to *time* crucially important.

There is no dispute that the accident report shows that both collisions were called in by 10:38 p.m.⁴ and that it occurred at 10:37 p.m. Duncan testified to the contents of the accident report. (Tr. pp 110; 112); But the in-court video begins nearly twenty minutes after the collisions were already called in. Duncan testified that the video begins at 10:58 p.m. (Tr. Duncan, p 50)

Thus, per 403 SCRE and *Ward, supra*, the relevance of the video is far outweighed by its inaccuracies, compounded by defense counsel's interpretations of the video and references to information that was not conveyed by the video, in closing argument.

4. IMPROPER CLOSING ARGUMENT

Prior to closing argument, Plaintiff sought a ruling preventing the defense from commenting on the video.

THE COURT: ... I don't think you're entitled to add to the video anything that the video does not show, okay?"

⁴ This is shown as "2238" on the 24-hour clock used by law enforcement.

Cagle, **proved** that the in-court video is not an exact copy or a "duplicate" of the original surveillance within the meaning of the Rules because portions are missing and an image of Duncan is added. (Tr. Cagle in camera pp 12-13; 19-20; 28) He and Duncan proved that it does not qualify as a summary because the defense did not secure and provide the original for comparison even though the defense was well aware of the original soon after the collisions and the original could have been downloaded, before it recorded over itself. (Tr. Cagle pp 32-33; 36) (Tr. Duncan p 44) Nor is it a foregone conclusion that the original footage would have been admissible, as is required by Rule 1006.

Defendants did not carry their burden to prove that the loss/destruction of the original footage was through no fault of their own, per *Vaught v. Nationwide Mut. Ins. Co.*, 250 S.C. at 68–69, 156 S.E.2d at 628–29; *CitiMortgage, Inc. v. Johnson*, at *1.

Under Rule 901(a) the requirement of authentication is a "condition precedent to admissibility" that is not satisfied unless admissible evidence presented is "sufficient to support a finding that the matter in question is what its proponent claims." ***State v. Aragon***, 354 S.C. 334, 336–37, 579 S.E.2d 626, 627 (Ct. App. 2003). Plaintiff contends that the Court reversibly erred when it allowed the video into evidence without the original for comparison.

3. RELEVANCE

Per Rule 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. See, 403 SCRE; *State v. Ward*, at *1.

Before copies can be allowed in evidence, **"it is necessary for the party offering the evidence ... to establish the necessity and propriety of the receipt of the secondary evidence in place of the original"** and **"the sufficiency of this preliminary proof does not rest in the uncontrolled discretion of the trial judge[.]"** *Sample v. Gulf Ref. Co.*, 183 S.C. 399, 191 S.E. 209, 213 (1937) (citations omitted) (emphasis added) (cited on this point by *Vaught v. Nationwide Mut. Ins. Co.*, 250 S.C. at 69, 156 S.E.2d at 629).

Rule 1001 treats videos as photographs: "For purposes of this article **the following definitions are applicable: ... "Photographs" include ... video** tapes, motion pictures or other similar methods of recording information." 1001 SCRE. As a result, appellate decisions addressing admissibility of photographs also apply here.

Rule 1002 states: **"To prove the content of a ...recording, or photograph, the original ... is required..."** 1002 SCRE. Rule 1001(3) defines original: **"An 'original' of a ... recording is the ... recording itself..."** The same rule emphasizes accuracy in the process of duplication: **"A "duplicate" is a counterpart produced by ...techniques which accurately reproduces the original."** 1001(4) SCRE.

Rule 1006 could allow a "summary", but only if the original is too voluminous to be used in court, **and** the original is itself admissible **and** only after comparison with the original: "The contents of **voluminous** ...recordings, or photographs which **cannot conveniently be examined in court** may be presented in the form of a ...summary... **provided the underlying data are admissible** into evidence. **The originals shall be made available for examination or copying, or both, by other parties at reasonable time and place.** The court may order that they be produced in court." 1006 SCRE

within six months after the accident¹. No evidence was presented of any attempt **by the defense** to preserve that footage, or even to inquire about preserving it², even though Cagle testified that it could have been downloaded from his equipment.³

The best evidence rule requires the original, with exceptions that the defense video does not meet. Rule 1002 provides that the original should be entered into evidence. Rule 1003 allows a "duplicate" to be admitted "to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Rule 1004 allows a copy to be admitted if "[a]ll originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith". See, *Vaught v. Nationwide Mut. Ins. Co.*, 250 S.C. at 68–69, 156 S.E.2d at 628–29 (Copies are **only** admissible when "the primary evidence of the fact to be proved is satisfactorily shown to have been lost or destroyed **without the fault of the party desiring to prove the fact**") (emphasis added). Accord, *CitiMortgage, Inc. v. Johnson*, 2012-UP-510, 2012 WL 10862775, at *1 (S.C. Ct. App. Sept. 5, 2012).

Here, the Defendant knew of the existence of the surveillance footage soon after the collisions in 2013. Duncan based his opinions on the video, according to Duncan's "case notes" dated August 20, 2013, only days after the wreck. Holmes testified that Duncan showed him the video and Holmes changed his mind about the interval between collisions, based on Duncan's having shown the video to him.

¹Cagle testified that it was set up to record over itself about every 6 months. (Tr. Cagle in camera p 36)

² State investigator Duncan testified that he made inquiries about copying the footage to a thumb drive or by other means. (Tr. Duncan p 44) No evidence shows the Defendants made any such inquiry.

³ (Tr. Cagle pp 32-33)

Moreover, Cagle admitted that he did all of the fast forwarding, rewinding, slowing and speeding up of playback in order to help Trooper Duncan.

[BRYAN] Q All right. The jumping of sometimes two seconds and four seconds and other changes in the speed, who did that? Did he [DUNCAN] do it or did you do it?

A That would be me.

Q You did it?

A Uh-huh.

Q Did he ask you to do it?

A No, sir. **I was just trying to get to whatever time he needed** recorded or when the accident happened.

(Tr. pp 35-36)

"[BRYAN] Q And when you sped it up either two-second or four-second increments, he told you to do it?

[CAGLE] A No, sir. **I actually done it to get it to that time that he wanted.**"

(Tr. p 38)

There can be no dispute that evidence may not be altered or manipulated so as to favor one side of the litigation; nor can there be any doubt that Trooper Duncan was a defense witness. Even though Duncan was not employed by the Defendants, Cagle's actions show that he was attempting to help the law enforcement side of this litigation and, in doing so, helped to create an inaccurate video.

2. THE ORIGINAL

Plaintiff was prevented from comparing the original footage with the copy for authentication purposes, because **the defense did absolutely nothing to preserve the original surveillance footage** and, instead, allowed it to be automatically recorded over

evidence when it intended to use copies at trial. "A party has a duty to preserve evidence during litigation and at any time before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation." ***Nucor Corp. v. Bell*, 251 F.R.D. 191, 194, 2008 WL 2721264 (D.S.C. 2008).**

These omissions of **up to sixteen seconds at a time** are significant alterations, in part because the defense turned on whether the interval between the two collisions was 2 to 15 seconds, as Holmes, King and Watts recalled in initial interviews, 5 years before trial, or, whether the interval was as it appears on the in-court video - 41 seconds.

At trial, the defense argued to the jury that there was a **"significant ... time delay between ... the collision involving Barton Holmes and Ms. King and then the later collision involving Ms. Watts"**, and, referring to the video: " I offer this to you as evidence that ... there was a **significant time delay between these two impacts[.]**" (Tr. 4/19/2018 Harter p 22)

Cagle testified to **additional inaccuracies** in the in court video. The time and date show at the top of the screen on the original surveillance footage, but they show across the middle of the image on the in-court video. (Tr. Cagle p 34) Cagle also testified that the in-court video included **images that were not on the original** surveillance video - images of Trooper Duncan reflected on the monitor while he copied the surveillance video. (Tr. Cagle pp 27-28) The process of copying the surveillance as it played on the monitor also created a glare that was not on the original footage. (Tr. p 28) Trooper Duncan also admitted that his image was superimposed over the surveillance footage. (Tr. Duncan. p 44)

discretion of the trial court." ***State v. Halcomb***, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct.App.2009). But there are limits on the Court's discretion one of which is inherently prejudicial, inaccurate evidence offered when the proponent failed to show good faith with regard to securing and preserving the original and allowed the original to be destroyed. Evidence may be admissible if "there is sufficient proof that the evidence is what it purports to be and has not been altered in any material respect." *State v. Brockmeyer*, 406 S.C. 324, 343, 751 S.E.2d 645, 655, (2013) (citations omitted). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." ***State v. Ward***, 2014-UP-012, 2014 WL 2575436, at *1 (S.C. Ct. App. Jan. 8, 2014) (citation and internal quotation marks omitted).

Defense witness Cagle testified to facts proving that the copy is altered from the original surveillance footage because of Cagle's fast forwarding through it during initial copying by Trooper Duncan. (Tr. Cagle pp 19-20; 28)

Cagle testified that the video slows down and speeds up because he fast forwarded, rewound and changed the speed while the surveillance was playing on the monitor as Trooper Duncan was making the video ultimately shown in court. (Tr. p 19-20; 28) Some images on the original were edited out as a result of Cagle's having fast forwarded through them during copying. (Tr. pp 19-20; 28) Cagle admitted the video was "skipping a little bit" and "jumping two seconds" at a time, or four, eight or sixteen seconds at a time because he had fast forwarded through the original while it was being recorded. (Tr. pp 19-20; 28) Trooper Duncan also testified that the in court video "skips or jumps" because he did not need to record much of the surveillance before and after the collisions. (Tr. p 46) No testimony was offered to address the defense duty to preserve original

video above time/date stamp]; 38 [rewound to specific point and recorded only part of original] & Duncan p 44 [method of recording, preserved only time frames he was looking for, Duncan's reflection in recording]);

The defense's *use* of the video at trial additionally prejudiced Plaintiff's case and created the "reasonable probability" that the video, video-based testimony and improper closing argument unfairly "influenced the jury's verdict" per the Rules and authorities cited herein.

Plaintiff further contends that she preserved these issues by raising them in her motion in limine (denied); by her requests that the Court limit counsel's use and commentary on the video prior to closing argument; and by her objections to the improper comments in closing argument.

1. INACCURACIES

The video admitted into evidence at trial was **a copy of a copy** of an incomplete third-party surveillance video. It should not have been admitted into evidence because it did not meet the requirements of the best evidence rule and authentication.

Rule 1002, SCRE provides that the original should be entered into evidence; Rule 1004, SCRE allows an exception to the original requirement and it permits a copy to be admitted if "[a]ll originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith". And, see, *Vaught v. Nationwide Mut. Ins. Co.*, 250 S.C. 65, 68–69, 156 S.E.2d 627, 628–29 (1967) (Secondary evidence is only admissible when "the primary evidence of the fact to be proved is satisfactorily shown to have been lost or destroyed without the fault of the party desiring to prove the fact") (emphasis added). "[W]hether to admit evidence under the 'best evidence rule' is ... addressed to the

Rule 901(a), SCRE states “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims”); and, see, *Deep Keel, LLC v. Atl. Private Equity Grp ., LLC*, 413 S.C. 58, 64–65, 773 S.E.2d 607, 610 (Ct.App.2015) (stating that authentication requires the proponent to a "satisfactory foundation from which the jury could reasonably find that the evidence is authentic." *Breland v. S.C. Dep't of Transp.*, 2014-000168, 2016 WL 757496, at *1 (S.C. Ct. App. Feb. 24, 2016) (citations and punctuation omitted) collecting cases). Accord, *State v. Brooks*, 2015-001384, 2017 WL 4810804, at *1 (S.C. Ct. App. Aug. 2, 2017).

A Court acts beyond its discretion by admitting inherently prejudicial and unauthenticated evidence at trial. "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." *State v. Ward*, 2014-UP-012, 2014 WL 2575436, at *1 (S.C. Ct. App. Jan. 8, 2014) (citation and internal quotation marks omitted).

SUMMARY OF ARGUMENT

Plaintiff contends that the defense video should not have been admitted in evidence at trial over Plaintiff's motion in limine to exclude it, per *Breland* and *Ward*, *supra*. There is a "reasonable probability" that it unfairly influenced the jury in favor of the defense because Defense witnesses testified to unrefuted facts establishing that:

The video is an incomplete copy of non-party surveillance footage. The incompleteness is due to selective fast-forwarding during copying from the original footage, thereby intentionally omitting portions of the original from the copy used in court. (Tr. Cagle pp 32-34 [not full monitor view]; 36 [some

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2015-CP-30-00624

Martha Foster Watts,)
Plaintiff,)
v.)
Ricky W. Chastain, Sherriff)
Laurens County, South Carolina)
Defendant.)

**PLAINTIFF'S MEMORANDUM OF LAW
SUPPORTING HER MOTION FOR A
NEW TRIAL UNDER RULES 59 AND 60**

NOW COMES Plaintiff, by undersigned counsel, and offers the following Memorandum of Law Supporting Her Motion for a New Trial under Rules 59 and 60 SCRPC:

STANDARD OF REVIEW

This Rule 59 and/or 60 motion for a new trial is made on the grounds of unfair prejudice resulting from the admission and use of defense's inherently prejudicial surveillance video at trial. Such motions are addressed to the sound discretion of the trial court. See, e.g., *Davis v. Traylor*, 340 S.C. 150, 156–57, 530 S.E.2d 385, 388–89 (Ct.App.2000) (noting an “abuse of discretion” standard applies to a trial court's decision regarding both the exhibiting and admission of demonstrative evidence. Abuse of discretion occurs if there is an error of law and resulting prejudice. See, e.g., *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 312–13, 628 S.E.2d 496, 514 (Ct.App.2006). Here, Plaintiff objected in limine and in this motion post trial, that the video fails to meet the requirements for authentication of a copy and is inherently unfairly prejudicial to the Plaintiff.

heard testimony from all of the witnesses in the case and was allowed to review all of the evidence in the case during deliberations. Further, the jury was properly instructed on the law by the judge, without any objection from the plaintiff. Plaintiff's allegations are unfounded and baseless.

8. TRANSCRIPT

The transcript in this case will clearly show that defense counsel went above and beyond to authenticate the video by providing testimony from three witnesses.

CONCLUSION

The surveillance video was properly admitted into evidence and counsel's argument was proper. Therefore, pursuant to the South Carolina Rules of Evidence and Plaintiff's Motion for a New Trial of Judgment NOV should be denied and dismissed as a matter of law.

Respectfully submitted,

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June 21, 2018.
Greenville, South Carolina

evidence, and defense counsel made it very clear that they should rely on their interpretation and memory of the evidence and testimony and theirs alone. To suggest that the jury took counsel's closing argument to be unsworn testimony is actually an insult to the twelve (12) members of the trial jury.

Any and all comments made by defense counsel during closing were proper under the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence.

5. CURATIVE INSTRUCTION

Not that it was necessary; however, even in the event it is deemed to have been appropriate, plaintiff, upon information and belief, never requested a curative instruction. *See, Brown v. Stewart*, 348 S.C. 33, 52, 557 S.E.2d 676, 686 (Ct. App. 2001) (holding appellant failed to preserve the issue of an improper closing argument, where, after the court sustained appellant's objection, appellant did not request a curative instruction or move to strike).

6. REQUEST TO RE-WATCH VIDEO DURING DELIBERATIONS

The jury is always allowed to review the evidence during deliberations and the surveillance video was properly admitted into evidence; therefore, it was certainly appropriate and permissible for the jury to re-watch the video during deliberations. In fact, it was in the interest of both parties to allow the jury the opportunity to review the video in the privacy of their deliberations, and deduce from it whatever they might find pertinent to their deliberations. The probative value of the video clearly outweighed any prejudice the plaintiff might try to concoct.

7. THE JURY WAS NOT IMPROPERLY SWAYED

Plaintiff's allegations that the surveillance video and/or defense counsel's closing argument improperly swayed the jury are completely unfounded and without merit. The jury

were using a still black and white photograph and a yard stick. In any event, that red laser pointer wasn't a magic wand that somehow changed what was shown on the screen to the jury. Contrary to what plaintiff seems to suggest, it is not customary to expect an attorney to detail to opposing counsel his/her intentions as to what exhibits he or she is going to refer to in a closing argument and how counsel plans to draw the jury's attention to that evidence. Furthermore, both of plaintiff's counsel (Mr. Thompson then Mr. Bryan) interrupted the defense in closing argument, but neither object to defense counsel using a laser pointer.

4. DEFENSE COUNSEL'S COMMENTS

a. "REAL TIME" WAS MISLEADING

As noted before, the relevant parts of the video were in real time. Regardless if the surveillance video clock was twenty minutes ahead, i.e. 10:58 instead of 10:38, it was still in real time because there were sixty seconds in a minute on August 13, 2013, as recorded on August 13, 2013 and on the recording of August 20, 2013. Defense counsel's comments were in no way misleading to the jury and the plaintiff's argument as to this point makes no sense. The plaintiff was free to submit evidence that the clock was wrong, which they didn't and couldn't. The fact is there was absolutely no evidence presented to suggest that there were not sixty seconds in a minute as to the relevant sections of the video that was played at trial. Thus, defense counsel's comments were in no way misleading and were absolutely accurate given the time stamp on the video.

b. UNSWORN TESTIMONY AND UNFAIRLY DIRECTED JURY TO RELY ON VIDEO AS IF ACCURATE AND AUTHORITATIVE

Any comments made by defense counsel in closing were proper argument. The jury was instructed by the Court and reminded by defense counsel that opening and closing arguments are not evidence. Further, it is the jury's responsibility to determine the weight and credibility of the

took in camera testimony before allowing the video to be shown to the jury. The video evidence question is clearly relevant under SCRE 401 and further is admissible relevant evidence under SCRE 402.

Further, the record plainly shows that the surveillance video in question was properly authenticated under SCRE 901 in every respect. Under Rule 901, the requirement of authentication or identification as a condition precedent to the admissibility of such evidence is satisfied when the evidence is sufficient to support a finding that the matter in question is in fact “what its proponent claims”. There is no rational or reasonable argument to rebut the fact that the surveillance video showed the section of Highway 76 before, during, and after events which were at issue in this case and the video, without question, clearly shows the conditions at the accident scene at the time Ms. Watts struck the rear of Ms. King’s vehicle.

2. LARGE SCREEN AND SCREEN PLACEMENT

To the extent plaintiff now insinuates some alleged ground for a new trial because defense counsel tried to sway the jury by using a “large screen placed in such a manner that the Court was behind the screen and could not see...”, her argument is without merit. Defense counsel played the video for the jury on the screen provided by the Clerk of Court. Furthermore, defense counsel placed the screen in front of the jury with the permission of the Court and plaintiff’s counsel voiced no objection to the placement of the screen prior to and/or during defense counsel’s closing argument.

3. LASER POINTER

Contrary to plaintiff’s allegations, defense counsel did not use a laser pointer to point to the screen while the video was playing, but even if he had, it would have been entirely appropriate and permissible to point and direct the jury to relevant events, just as it would if he

there was an approximate gap of 41 seconds between the two collisions which was an important and highly contested issue in this case, and that evidence clearly contradicts the plaintiff's claim that the collision occurred 2-10 seconds apart on a dark road with no lights.

f. THE IMAGE WAS OF SUFFICIENT QUALITY AND THE PROBATIVE VALUE OUTWEIGHED ANY PREJUDICE.

The jury was free to interpret the video on their own, just as the defense and the plaintiff were free to argue their positions of what the video shows and/or does not show. The jury was free to determine the weight of the video. The image was a surveillance video from a local business not a high definition blockbuster motion picture; however the video clearly shows evidence to dispute the plaintiff's biggest arguments in the case, that of whether lights were on and present at the time Ms. Watts was in an accident and how much time there was between the two collisions. Therefore, the probative value of the video clearly outweighs any possible prejudice the plaintiff might try to conjure up. In fact, the only prejudice the plaintiff can argue is that the video doesn't support their claim.

g. THE DISC ADMITTED INTO EVIDENCE AND SUBMITTED TO THE JURY WAS PROPERLY AUTHENTICATED AND ADMISSIBLE.

The video that was shown at trial was authenticated pursuant to the South Carolina Rules of Evidence and the South Carolina Rules of Civil Procedure. The South Carolina Rules of Evidence state as their purpose that these rules are to be construed to secure fairness in the administration of justice to eliminate unjustified expense and delay and, most of all, so that in the end the truth may be ascertained and proceedings "justly determined". The Plaintiff simply complains because this evidence which was, in fact, persuasive and truth-telling did not support the Plaintiff's allegations. Further, pursuant to SCRE 103, to insure that the video evidence was admissible and properly authenticated, the Court carefully conducted an in camera review and

d. THE VIDEO DID NOT SHOW THE ENTIRETY OF BOTH THE CRASHES IN ISSUE BUT DID SHOW RELEVANT FACTS SURROUNDING THE CRASHES IN ISSUE, I.E. WHETHER LIGHTS WERE ON, AND IT DID SHOW MOST OF THE COLLISION BETWEEN THE PLAINTIFF AND MRS. KING. IT ALSO PROVIDED RELEVANT, ACCURATE, AND TRUTHFUL EVIDENCE AS TO THE TIME OF EVENTS.

The surveillance video did not show the actual impact of the first accident nor the initial impact of the second accident; however, at approximately 10:58:07 it showed that lights swung wide then they became stationary at 10:58:09 pm. Then it later showed sparks when two vehicles collided and Mrs. Watts's vehicle is shown as it crossed the center lane, and opposite lanes of traffic, at 10:58:47-49. Further, it showed relevant and critical evidence to dispute the plaintiff's testimony that no one had any lights on. (If there were lights on she should, would, and could have seen them, but she did not see any lights). The video clearly shows that there are numerous lights on various vehicles before and at the time Ms. Watts's vehicle is shown crossing the highway and hitting a fence.

The plaintiff was provided more than ample time and opportunity to present evidence to negate the defendant's argument and to attack the authenticity, credibility and reliability of the video.

e. THE SURVEILLANCE VIDEO FAIRLY AND ACCURATELY REPRESENTED THE TIME BETWEEN WHEN LIGHTS BECAME STATIONARY AND WHEN THE PLAINTIFF'S VEHICLE HIT MS. KING'S VEHICLE AND CROSSES THE ROAD.

As noted above, the video accurately represents the time between when lights can be seen swinging wide (10:58:07) and then become stationary (10:58:09) and when Ms. Watts vehicle pushes Ms. King's vehicle forward, and then crosses and leaves the roadway (10:58:47-49). As the testimony indicated, the video was playing in real time and sixty seconds were in each minute; therefore, the video fairly and accurately represented the time. The video confirms that

record over itself and that is certainly no fault at all of the defendant's. The Court correctly concluded that the video recording was admissible and authentic pursuant to the South Carolina Rules of Evidence.

b. THE SUBSTANCE OF THE VIDEO WAS NOT ALTERED OR EDITED.

The substance of the video was not altered or edited. Upon information and belief, both Mr. Cagle and Corporal Duncan testified that the substance of the video was exactly what was shown on the surveillance monitor that was recorded by the surveillance system on August 13, 2013 and then recorded by Corporal Duncan's video camera on August 20, 2013.

c. THE PLAYBACK SPEED OF ALL RELEVANT EVENTS IS ACCURATE AND IN REAL TIME.

Contrary to plaintiff's allegations, the playback speed of all relevant events was accurate and in real time. Plaintiff seems to take issue with the fact that as Mr. Cagle and Corporal Duncan testified, they rewound the surveillance recording and fast forwarded closer to the time when Ms. Watts's vehicle can be seen crossing the road and hitting the fence. Upon information and belief, Mr. Cagle testified that he rewound the surveillance video then fast forwarded it closer to the relevant time period. Specifically, the Channel 5 video was left alone to play out beginning at 10:54:42 pm and the Channel 6 video was left alone to play at 10:54:40 pm. Upon information and belief, Corporal Duncan testified that this was done to conserve space on the MAIT team hard drive. There was no need to preserve what was recorded the entire day(s) before the incident.

The time clock at the top of the screen from 10:54:42 pm on Channel 5 and 10:54:40 pm on Channel 6 through the remainder of the videos, shows that there are sixty (60) seconds in each minute; therefore, the playback speed concerning all relevant events is accurate and in real time.

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).

ARGUMENT

1. SURVEILLANCE VIDEO

- a. **THE VIDEO WAS AN EXACT COPY OF THE ORIGINAL AND (2) THE ORIGINAL WAS UNAVAILABLE DUE TO CIRCUMSTANCES BEYOND THE CONTROL OF THE DEFENDANT AND TO NO FAULT OF THE DEFENDANT.**

The defendant presented an exact copy of the original video that was taken by the MAIT team during the course of its investigation. The defendant presented testimony from witnesses including Trooper Anderson, Corporal Duncan, and Mr. Cagle, which fully authenticated the surveillance video that was from the business location of a private citizen where important events and evidence of the two collisions at issue in this case occurred. The equipment and the data recorded belonged to Mr. Matt Cagle, the operator of the recycling business. He testified and explained that his surveillance system did not record on a tape or disc and that it would eventually record over itself. Therefore, in order to preserve the video, Corporal Duncan of the South Carolina MAIT team went to the business on August 20, 2013, set up a video camera and recorded the monitor playing the surveillance video. The video recording was then uploaded to the MAIT hard drive and Trooper Anderson brought to the courtroom at trial an exact copy of the video recorded by Corporal Duncan on August 20, 2013. There was testimony both in the presence of the jury and out of the presence of the jury that the surveillance system was set up to

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)
)
 Martha Foster Watts,)
)
 Plaintiff,)
)
 vs.)
)
 Laurens County Sheriff's Department,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number:
2015-CP-30-00624

**DEFENDANT'S
RESPONSE TO PLAINTIFF'S MOTION
FOR A NEW TRIAL OR JUDGMENT
NOV**

The defendant, by and through its undersigned counsel, respectfully submits the following in response and opposition to Plaintiff's Motion for a New Trial or Judgment Notwithstanding the Verdict filed on April 27, 2018.

STATEMENT OF FACTS

This action was tried before a jury on April 16, 2018 to April 19, 2018. On April 19, 2018, the jury returned a verdict in favor of the defendant. Specifically, the jury found that the defendant was not negligent.

Present before the Court is Plaintiff's Motion for a New Trial or Judgment Notwithstanding the Verdict. The plaintiff's motion is based on the admission of the surveillance video into evidence and also the use of the surveillance video during defense counsel's closing argument. The plaintiff sets forth various reasons supporting her argument in paragraphs two (2) through eight (8) of their motion and the defendant will address each as set forth below.

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,

Respectfully submitted in good faith and not for any improper purpose.

TOWNSEND & THOMPSON
Registered Limited Liability Partnership

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Laurens South Carolina
April 27, 2018

Attorneys for Plaintiff

information and belief, had the Court known about the laser or seen it in use, the Court would have stopped it *sua sponte*, and the use of a laser improperly swayed the jury.

5. During Defendant's closing argument, its counsel, in addition to utilizing the laser, repeatedly made improper and/or interpretive comments on the video, i.e., "look there - those are Mrs. Watts' lights"; "watch the clock"; and "this is real time". Plaintiff's counsel objected that same were tantamount to Defendant's counsel testifying; but the Court overruled the objections, did not give a curative instruction to the jury to disregard them, and did not direct defense counsel to stop making such comments.¹

6. Defense counsel's comment that "this is real time" was inherently misleading and prejudicial because the owner of the video equipment on which the *original* recording was made, Matthew Cagle, testified to the effect that² on the day that the original recording was made, the time on the *recorder* was correct, but the video placed into evidence *played* twenty minutes fast. Worse, still, the copy shown to the jury omitted portions of the original; it replayed other portions more than once; and, the speed slowed down and speeded up irregularly throughout playback.

7. Defense counsel's commentary on the video by way of the laser pointer, and his verbal comments on the video during closing argument were the equivalent of defense counsel having offered unsworn testimony about the video and these comments unfairly directed the jury to rely on the video as if it were accurate and authoritative, thereby inviting the jury to defer to the video as the factfinder.

8. During deliberation, the jury requested to re-view the video; and the Court allowed the jury to review the video. This was error for the same reasons that it was error to admit the video into evidence, but it was independent error compounding the prejudicial effect of the first viewing, by allowing the jury to rely on the video in deliberations.

9. Individually, the events described herein improperly swayed the jury and caused it to reach a verdict that no reasonable jury could reach, but for the prejudice, or

10. The combined effect of two or more of the above events improperly swayed the jury and caused it to reach a verdict that no reasonable jury could reach, but for the combined prejudicial effect.

11. Grounds for this motion are preserved because Plaintiff timely objected to each of the prejudicial events described.

12. This motion may be supported by a verbatim transcript and memoranda of law.

¹ Undersigned has yet to obtain the verbatim transcript and these statements are taken from undersigned's recollection. They are not intended as exact quotes but to convey the substance of what was said.

² See note 1 above.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

Martha Foster Watts,)
 Plaintiff,)
)
 v.)
)
 Ricky W. Chastain, Sherriff)
 Laurens County, South Carolina)
 Defendant.)

**PLAINTIFF'S NOTICE OF MOTION
 AND MOTION FOR A NEW TRIAL
 OR JUDGMENT NOV
 2015-CP-30-00624**

TO: DEFENDANT AND HIS ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that ten days hence, or as soon as soon thereafter as counsel may be heard, the undersigned attorneys for Plaintiff, Martha Foster Watts, will appear before the Honorable Donald B. Hocker, Presiding Judge, and will move the Court for a new trial, pursuant to Rules 59(b) and 60(b)(3) SCRPC, or in the alternative, for a judgment *non obstante veredicto* on the grounds that one or more prejudicial errors occurred at trial; the jury was improperly and unfairly swayed and influenced thereby; and the jury's verdict was a direct result of this prejudicial error(s), as follows:

1. This case was tried to a jury before this Honorable Court from April 16, 2018 through April 19, 2018; the jury returned a verdict in Defendant's favor on April 19, 2018 and this motion is timely made within ten days thereafter.
2. Plaintiff objected to Defendant's use of a copy of a private business' surveillance video on the grounds that it was not an exact copy of the original; Defendant did not show that the original was unavailable through no fault of Defendant; the video was altered in substance and edited; the playback speed was inaccurate; it did not show the crashes at issue; it did not fairly and accurately represent the time between the first and second crash; the image was too blurry to be useful to the jury; and, as a result, it was inherently prejudicial to the Plaintiff. (Plaintiff's memorandum of law supporting her motion in limine is incorporated here as if fully set forth.
3. The Court ruled on Plaintiff's motion by allowing the video into evidence but ruled that there would be no "comments on the video". (Defendant had withdrawn the only expert witness who could have *testified* about the video.)
4. Defendant, during his closing argument, played the video for the jury on a large screen placed in such a manner that the Court was behind the screen and could not see defense counsel or the video during playback. Defense counsel used a red laser pointer to emphasize certain parts of the video during playback to the jury. Defense counsel did not disclose his intent to use the laser beforehand or seek permission to do so. On

CONCLUSION

Based on the matters described herein and attached hereto and based on the content of the videos in question, Plaintiff requests that the Court take action under Rule 37(d) and (b)(2), by granting Plaintiff's motion in limine and "refusing to allow the disobedient party to support or oppose designated claims or defenses, or **prohibiting him from introducing designated matters in evidence[.]**" SCRCP 37(b)(2)(B) (emphasis added). The prejudicial surveillance video Copy and Animation; all defense accident reconstruction evidence; and Holmes' and other testimony based on or derived from either video should be excluded at trial; and Plaintiff's attorneys' fees should be awarded for this motion.

Respectfully submitted,

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Attorneys for Plaintiff

Laurens South Carolina
April 2018, 18th day

In addition, a party is under a duty seasonably to supplement his response with respect to any question directly addressed to ... the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

SCRCP 26(e) (emphasis added).

Rule 33 required Defendants to answer each question "fully in writing under oath". SCRCP 33. Defendants did neither. They did not verify the answers and their counsel made general preliminary objections, which are frivolous and do not apply. They did not directly object to Interrogatories 4 and 5 nor production request 1; and they made no motion for a Rule 26(c) protective order. ("The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c)." SCRCP 37(d).) Thus, there is no excuse for Defendants' failure to provide the pertinent information in discovery under oath.

Rule 37 also provides that the Court may make such orders as are just, for Defendants' failures to provide the pertinent information, in a timely manner, so that Plaintiff could meaningfully use it to prepare for trial.

If a party ...fails ... to serve answers or objections to interrogatories submitted under Rule 33, or ... to serve a written response to a request ... submitted under Rule 34, ... the court ... on motion may make such orders in regard to the failure as are just, and among others **it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2)** of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust...

SCRCP 37(d) (emphasis added).

opportunity to depose Duncan (who created the copy of the surveillance video) and any other accident reconstruction witnesses they might attempt to offer.

To the present date, Defendants have never provided any expert witnesses' CV's; the details of any expert opinions; the details of the scientific method, software and calculations used to reach those opinions; the expert's testimony history as experts in other matters; nor other important information to which Plaintiff was and is entitled. This has prevented her from adequately preparing for trial.

SCRCP 26 allows Plaintiff to discover the identity of experts as well as "facts known and opinions held by experts" by any method of discovery. SCRCP 26(b)(4)(A). Rule 26 and the official comments to it, make clear that Defendants had a continuing duty to supplement their answers to provide the pertinent information as to intended expert witnesses, particularly because the prior answers misled Plaintiff to believe that no accident reconstruction expert would be called.

Rule 26(e) is amended to make applicable the language of Rule 33(b) on the duty to supplement the standard interrogatories to discovery requests under ... Rule 33 Interrogatories to Parties, Rule 34 Production of Documents and Tangible Things, and Rule 36 Request for Admission. Discovery requests under these rules are deemed to be continuing and the responding party must update the answers promptly when new information comes to the attention of the party, a representative of the party or counsel.

SCRCP 26, Official comment (emphasis added).

[T]here is an additional duty to provide supplemental information on expert witnesses and witnesses with knowledge of the facts of the case regardless of the form of the discovery request. The obligation to supplement prior discovery responses includes the duty to amend or supplement answers which are found to be incorrect or misleading ...

Id. (emphasis added).

mediation in this case, June 9, 2017, with no further documentation or explanation. (Note that Duncan copied the video on August 20, 2013,² meaning it had been available and withheld for nearly 4 years.) And, nothing has been disclosed as to the provenance of the Copy (e.g., whether the original recordings, from 2 separate surveillance cameras, were digital or analog; whether there was 1 or 2 playback machines; whether the playback machines were digital or analog; whether the format of Duncan's recorder was the same as the original recorder and/or the playback machine; whether Duncan's recorder had recently been serviced and calibrated; whether the original surveillance cameras and recorders had recently been serviced and calibrated; whether the original surveillance video or the Copy originally included sound and, if so, when and how that sound was edited out in the version produced by Defendants.)

Defendant's interrogatory answers are inadequate with regard to its purported experts, because they fail to specify any expertise of any individual and the pertinent information could only have been discovered if Plaintiff had deposed all 17 of the identified law enforcement persons, as well as the 6 additional law enforcement persons whose names appear in the "M.A.I.T. report"³ referenced in Defendant's discovery responses. This would have required a total of 23 depositions, just to find out the information that Defendants were required to provide in their answers to discovery. Such would be unreasonable and unreasonably expensive. Thus, Defendants buried their intended experts in the pile of law enforcement personnel who might be expected to testify to law enforcement facts and opinions. In doing so, Defendants effectively denied her the

² See, Duncan's M.A.I.T. Case Note, p 7.

³ The following 6 additional law enforcement personnel, though not named in discovery responses, are referenced in the M.A.I.T. report: Drew Devost; Matt Veal; D.W. Yongue; D.D. Kelly; Leroy Smith and M.R. Oliver.

parties and/or the subject motor vehicle collision." The Copy was referenced in Defendants' 7/17/2017 responses as "Video footage captured by camera at nearby business (See M.A.I.T. report)", but this video footage was not produced with them. No supplemental discovery response addressed or described the Animation or its purpose.

Duncan's expertise, method, equipment, software, and other "important facts" relevant to his opinions and conclusions from the Copy or the Animation, as to the time interval between the first and second crash, and the amount of time Mrs. Watts would have been able to see the first crash site on the roadway in front of her, as well as how these opinions and conclusions came to be, were never provided.

Defendants answered Interrogatory 4, as to expert witnesses, by denying that they had "retained" any, then by stating that "to the extent applicable", law enforcement and medical personnel identified in answer to Interrogatory 1, would testify in their "areas of expertise". The answer did not describe the expertise of the 17 law enforcement persons identified there and in answer to interrogatory 1, nor the several additional unidentified persons, presumably law enforcement persons, referenced in the various law enforcement reports provided.

Defendants answered Interrogatory 5 by making reference to their answer to Interrogatory 1 and to documents provided. The answer did not include a summary of important facts known to experts identified in prior answers; it did not include "written or recorded statements" of the experts' opinions; and it did not refer in any way to their experts.

Nowhere did Defendants' answers to discovery state an intent to offer experts in the area of accident reconstruction. Defendant provided the Copy (created by Duncan) at

method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Id.*, 401 S.C. at 74, 735 S.E.2d at 655 (citation omitted). Defendants cannot meet any of these requirements and, further, because of their failure to disclose this information in response to discovery, the expert testimony should be excluded under Rule 37 SCRCP.

'A trial court's decision on whether or not to impose discovery sanctions is reviewed for abuse of discretion." *Teseniar v. Profl Plastering & Stucco, Inc.*, 407 S.C. 83, 94, 754 S.E.2d 267, 273 (Ct. App. 2014) (citation omitted). "In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice." *Id.* (Citation omitted).

Plaintiff's discovery requests were submitted April 6, 2016, more than 2 years ago. Plaintiff's Interrogatory 4 (identical to Standard Interrogatory 6, 26 SCRCP) requested the names and addresses of expert witnesses; Interrogatory 5 (identical to Standard Interrogatory 7, 26 SCRCP) asked for a "summary sufficient to inform the other party of the important facts known" by witnesses or to provide a copy of their "written or recorded statements". Answers to these standard interrogatories should have included names and addresses of all expert witnesses, along with their written opinions as to important facts. (The only opinions received came in the oblique references to the interval between crashes, referenced in the Exhibits attached and discussed herein.)

Likewise, Plaintiffs Request for Production 1 sought "any and all photographs, plats, sketches, and/or other tangible physical evidence which in any way relate to the

"All expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical, or otherwise." *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

"[T]he court must make three inquiries. First, the court must determine whether "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Id.*, 401 S.C. at 74, 735 S.E.2d at 655 (citation omitted). Defendants' will not be able to show that expert accident reconstruction testimony is necessary under the facts in this case, because the jury will have sufficient ordinary knowledge of driving a vehicle at night. In order to allow defense experts to testify on these issues "the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (emphasis added). There is no basis for such a finding here.

"Second, the expert must have "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter," although he "need not be a specialist in the particular branch of the field." *Id.* Defendant's expert may have accident reconstruction qualifications, but they were never disclosed.

"Finally, the substance of the testimony must be reliable." *Id.* (emphasis added). As shown throughout this Memorandum, the Copy, the Animation and derivative expert testimony are all extremely unreliable. "It is this final requirement of reliability which is the central feature of the inquiry." *Id.* (citation omitted).

If scientific in nature, the court must determine its reliability per the following factors: "(1) the publications and peer review of the technique; (2) prior application of the

irrelevant to the actual facts in question, confusing and therefore unhelpful to the jury and unfairly prejudicial to Plaintiff. And, because Defendant's accident reconstruction expert was never disclosed, his animation video should not be allowed in evidence, nor any testimony about it.

We hold that a computer generated video animation is admissible as demonstrative evidence when the proponent shows that the animation is (1) authentic under Rule 901, SCRE; (2) relevant under Rules 401 and 402, SCRE; (3) a fair and accurate representation of the evidence to which it relates, and (4) its probative value substantially outweighs the danger of unfair prejudice, confusing the issues, or misleading the jury under Rule 403, SCRE.

Clark v. Cantrell, 339 S.C. 369, 384, 529 S.E.2d 528, 536 (2000) (some citations omitted) (emphasis added). The animation is not fair and accurate representation of the view of the road at night from Plaintiff's actual vantage point; and its prejudicial effect outweighs any probative value it might have.

[A]n animation is relevant when it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. Rules 401-402, SCRE; *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). An animation may be relevant when it relates to other admissible, material evidence and it will aid the trier of fact in understanding the related evidence.

Id., 339 S.C. at 386, 529 S.E.2d at 537 (citation omitted) (emphasis added). Because it is not a fair representation of the road at night, it cannot help the trier of fact and can only confuse the jury and prejudice the Plaintiff, and should be excluded.

3. EXPERT WITNESS EVIDENCE

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

SCRE 702 (emphasis added).

2. ANIMATED VIDEO

The second video is 12 seconds long and is entitled "3D Animation with Stopping Distance" ("Animation"). Like the Copy, this Animation was produced without any authenticating information and Defendants did not disclose any expert accident reconstruction witness qualified to create it or testify about it. It was received on November 7, 2017 by way of email from defense counsel's paralegal (attached as Plaintiff's Exhibit __), describing the animation as "information" "generated" by Duncan, purportedly based on "data" from Plaintiff's expert witness (surveyor). The Animation was produced without any contextual documentation from defense counsel, as to what discovery request this responds to, and without documentation from Duncan as to his opinions, method and software used in 'generating' the Animation, the raw "data" he used, or anything else. Defendants have not disclosed the purpose of this Animation or what it purports to demonstrate.

It is expected that they intend to offer it to show that Mrs. Watts had 12 seconds (the length of the Animation) in which to see and react to the King wreck scene, in the road in front of her. If so, this 12-second time period contradicts Duncan's other opinions based on the Copy (of the surveillance video). Defense evidence contradicting its other evidence would be improperly confusing and a waste of time.

Additionally, the spare Animation does not fairly and accurately depict the hilly terrain, signage, ambient lights, periodic oncoming headlights, adjacent fences and buildings in the approach to the accident site. It does not fairly and accurately depict Plaintiff's actual 3-dimensional view of the roadway, as a driver looking through a curved windshield, at night. It cannot be authenticated because these inaccuracies make it

footage at 4:31 appears to be a female shopper who first parks her shopping cart within the footage area and then apparently enters the restroom hallway (though this is supposition because she simply disappears from one frame photo to the next during the time lapse in between the capture of the images).

The greatest problem with the video footage is the choppy nature of the images. ... To base an already speculative argument on such video footage only stacks conjecture on top of speculation. Circumstantial evidence from which equally plausible but opposite inferences may be drawn is speculative and thus legally insufficient to support a finding.

Quiros v. Wal-Mart Stores, Inc., 5:12-CV-177-C, 2014 WL 12531507, at *3–4 (N.D. Tex. Jan. 6, 2014) (citation, brackets and quotation marks omitted) (emphasis added).

(b) Unfair Prejudice Due To Discovery Abuse

Discovery abuse provides additional grounds to exclude the Copy and all derivative testimony or evidence. It was not timely produced in response to Plaintiff's 4/6/2016 discovery requests, but was actually possessed by Defendants and withheld until the mediation in this case, more than a year later, and, indeed, a review of the properties data on the disk received by Plaintiff shows that the 88,042 KB video copy was created on 3/25/2016, 2 weeks before Plaintiff's discovery requested it.

To be clear, Plaintiff is aware of defense counsel's personal difficulties, which resulted in delayed initial discovery responses (received 7/7/2017) and supplemental responses (received 12/19/17). These personal difficulties do not reduce Defendants' responsibilities to provide the requested information in their eventual discovery responses. Plaintiff objects because the Copy was not produced with either set of responses. It was produced at mediation, without any authenticating information. Further, Defendants' discovery responses never identified an expert in the field of accident reconstruction. These problems are addressed in Point 3, below.

Due to an apparent oversight, the actual security video from the Berea Fire Department was erased before a copy was made. Thus, Plaintiffs seek to introduce this "video of a video" as evidence at trial.

...
Having reviewed the video, the Court agrees that, even if the video could be sufficiently authenticated, it should be excluded from trial pursuant to Rule 403. The probative value of the video is limited. Although it shows Riggsbee performing the demonstration, it does not show the most critical event in this case[.]

...
In contrast, the potential for unfair prejudice, confusing the issues and misleading the jury as a result of introducing this evidence is significant.

...
Additionally, there are significant time jumps (as much as 17 seconds) by the counters for some of the cameras, rendering the time counters shown on the security footage unreliable. Thus, the timing of the events captured on the video is, at best, confusing.

...
[T]he questionable reliability of the time-counters shown on the video further demonstrates that the confusing and potentially misleading nature of the video.

Mills v. Riggsbee, 93 Fed. R. Evid. Serv. 19, 2013 WL 6243951, at *1-4 (E.D. Ky. Dec. 3, 2013) (excluding video and related testimony at trial).

Not only are we left with a soundless video containing mere images, but also, as the district court noted, these images themselves are ambiguous due to the unreliable quality of the video. It is difficult to decipher from reviewing the video the true sequence of events.

Witt v. W. Virginia State Police, Troop 2, 633 F.3d 272, 277 (4th Cir. 2011) (denying police summary judgment in civil rights case, not directly addressing admissibility).

For video recordings, like tape recordings, the proponent should also show that the camera functioned properly, the operator was competent in operating the equipment, and the recording fairly and accurately represented the scene depicted.

United States v. Cejas, 761 F.3d 717, 723–25 (7th Cir. 2014) (citations omitted).

Plaintiff relies in large part upon video surveillance footage ... The video footage is not a continuous, flowing video; rather, it appears that it is a camera feed of repeating still shots. ... Plaintiff's argument also relies upon Plaintiff's interpretation of the footage as showing Price entering the restroom at 4:31. Yet, again, this is speculation because Plaintiff offers no evidence to support the supposition that the person is actually employee Price. ... The Court notes that the person on the

Under SCRE, a video is treated as a photograph, making appellate decisions about exclusion of photographs persuasive. "For purposes of this article the following definitions are applicable: ... "Photographs" include still photographs, X-ray films, video tapes, motion pictures or other similar methods of recording information." SCRE 1001 (emphasis added)

Rule 403, SCRE (Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.)

State v. Ward, 2014-UP-012, 2014 WL 2575436, at *1 (S.C. Ct. App. Jan. 8, 2014) (emphasis added) (citation and internal quotation marks omitted).

"Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." *Id.* (citation omitted). "The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Green*, 397 S.C. 268, 287, 724 S.E.2d 664, 673 (2012).

Additionally, the Copy is not likely to be helpful to the trier of fact because the copy does not show the crashes. It shows blurry shadows and headlights of unidentified vehicles as they pass the cameras (shown on the copy time stamp as "Ch 5" and "Ch 6") in the dark, obscured by the time stamp and ghost images. There is scant South Carolina case law addressing such videos, but there are many from other jurisdictions:

This matter is before the Court upon the motion *in limine* ... to preclude ... a videotape made by Plaintiff ... of the ... Fire Department security video monitor.

...
Three weeks after the accident, Plaintiff ... took a video camera to the Berea Fire Department and recorded the Fire Department's security video footage from the day of the accident.
...

Q. Okay. Now, can you tell us the time interval between the two impacts, Barton?

A. I believe that initially I - I've always thought of it in my head that it was - it wasn't like a bam-bam sequence of events. I believe in my statement to Trooper Duncan after a week or so after the accident I estimated 15 seconds or so.

(Holmes 3/16/2018 dep. p 30/8-15)

Q. Well, would you agree with the five to 10 seconds between the two collisions?

A. Again, I think we've already discovered that after I was just involved in an accident and based on what the MAIT team determined that it was actually --

(objection discussion omitted)

- it was a considerable more of time -- more amount of time.

(Id p 57/11-16 and 22-23)

Because Holmes' above-quoted testimony is the direct result of the prejudicial effect of the Copy, the above portions of Holmes' deposition testimony should also be excluded as testimony derived from the prejudicial and inadmissible Copy. See, e.g., *State v. Gordon*, 414 S.C. 94, 100, 777 S.E.2d 376, 379 (2015) (holding that if "the video ... is of such poor quality that its admission is more prejudicial than probative ... the remedy would be to redact the field sobriety test from the video and exclude testimony about the test.").

It is expected that Duncan and/or other defense "expert" witnesses intend to extrapolate from the 41-second interval conclusion, that the Plaintiff had sufficient time (41 seconds) to avoid the crash altogether. Thus, the speeding up and slowing down and deleted portions of the Copy are very significant alterations from the original, and they form the basis for other unreliable conclusions that would unfairly prejudice the Plaintiff at trial.

A: ...I've since learned, based on the video that was obtained, that it was 41 seconds between the two.

(Holmes 8/15/2017 dep. p 38/13-14)

Q: And who showed you the video?

A: I can't remember exactly the first time I saw it, but I was made aware of the video from Corporal Duncan with South Carolina Highway Patrol.

(Id p 38/25 -39/3)

Q: Okay. And you also indicated that that video assisted you with a time frame between the two accidents.

A: I wouldn't say it assisted me but, again, I was informed that there were 41 seconds between the two crashes.

Q: So, someone told you that: A: Yes sir."

(Id. p 39/9-14)

Q: Alright. So, when you told him 5 to 10 seconds, whether you did or didn't, that was not necessarily correct, is what you're telling me now?

(objection omitted)

A: Again, I would not necessarily agree with, I guess, the way you're phrasing the question, but I'll answer it. It's not that it's not truthful, or not accurate, it's just that, again, having gone through that situation, that was what it felt like. But, again, obviously, I have since learned that it was a longer period of time.

Q: And that's based on the video you saw.

A: Based on, I believe, the findings by South Carolina Highway Patrol, yes sir.

(Id. p 50/11-24)

Q: Okay and could you tell me again who showed you the video?

A: I can't remember the first time I saw it. But, again, in my interview with Corporal Duncan I know we made reference to it."

(Id. p 51/12-16)

Notably, a review of the above-referenced Holmes interview by Duncan on 8/20/2013 shows no reference to the video or the 41-second interval, so we cannot know exactly how Duncan informed Holmes of his 41-second conclusion and convinced him to change his own mind. (8/20/2013 Holmes interview attached as Plaintiff's Exhibit _)

Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 66–67, 773 S.E.2d 607, 611 (Ct. App. 2015). No 'internal consistency' or facial correspondence exists here.

Duncan used the Copy as the basis for his opinion that the interval between the first and second crash was significantly longer than Deputy Holmes' estimation of 5 to 10 seconds. (See, **Holmes interview by Duncan, 8/20/2013, pp 7-8 attached as Plaintiff's Exhibit __**; and see **Case Notes p 7**). Duncan concludes, based on the Copy, that the interval was actually 41 seconds, and he stated as much in an official interview with Ms. King, in an attempt to convince her of this longer interval. (See **9/10/2013 King Interview p 12 attached here as Plaintiff's Exhibit _**). (Duncan is not the interviewer, and on information and belief, appears only as "Male Voice", *id.*)

Unfair prejudice has actually already begun, because Deputy Holmes changed his own opinion as to his own experience based on the Copy. Holmes estimated the interval between crashes as 5-10 seconds, in his interview with Duncan on 8/20/2013 (5 days after the crash), when his recollection was likely to be fresh and accurate, but not likely to be under the immediate stress of the crash. But, by the time of his 2 depositions, he had been convinced by Duncan and repeated viewings of the Copy, to back off from his original 5-10 second estimate. In this way, the Copy has already resulted in unfair prejudice to Plaintiff, because it caused Holmes, who was present at the scene, to change his own mind about what he observed there. "Prejudice occurs when there is reasonable probability the wrongly admitted evidence *influenced the jury's verdict.*" *State v. Ward*, 2014-UP-012, 2014 WL 2575436, at *1 (S.C. Ct. App. Jan. 8, 2014) (emphasis added) (citation and internal quotation marks omitted).

Holmes testified:

finding that the matter in question is what its proponent claims.); Rule 901(b), SCRE (giving examples of authentication or identification that conform with the requirements of Rule 901(a) but stating these examples are by way of illustration only, and not by way of limitation); *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (stating the burden to authenticate evidence is not high and requires only that the proponent of the evidence offer a satisfactory foundation from which the jury could reasonably find the evidence is authentic).

State v. Brooks, 2015-001384, 2017 WL 4810804, at *1 (S.C. Ct. App. Aug. 2, 2017) (emphasis added) (quotation marks and brackets omitted). No such evidence can be presented because it is patently obvious that the Copy is not what its proponent claims. It is not an accurate representation of the events transpiring on 8/15/2013.

These alterations from the original mean that the Copy cannot be authenticated. Rule 901(b)(1), SCRE provides that evidence may be authenticated by a witness with knowledge who testifies that an item "is what it is claimed to be." But, because the ghost images and deletions appear on the Copy, no such testimony can be had. Rule 901(b)(4), SCRE provides that evidence may be authenticated based on "[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." These factors are not present here. Our case law expands on this in the context of the appearance of copied documents:

The specific and distinctive information on the face of the note, considered in connection with the mortgage, is sufficient to support a finding that the note was the one Atlantic executed in 2008. See *Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 398, 396 S.E.2d 369, 373-74 (1990) (finding admission proper under "the principle articulated in Fed. R. Evidence 901(b)(4)" where "[a]n examination of the[] documents establishes that [they] relate to the same subject, are internally consistent, [and] often refer to or answer each other"); 59A C.J.S. *Mortgages* § 991 (2009) (stating when promissory notes "correspond on their face with those recited in the mortgage, no further proof of their execution [or] their identity is required until defendant presents countervailing evidence")].

The Copy is riddled with ghost images of an unidentified man standing in a room reflected on the playback screen throughout the video (time stamp beginning CH 5, 08/15/2013, 10:48:36). These ghost images make the Copy inaccurate and confusing at best. The time stamp obscures the image throughout the video and on the whole, most of the image is too blurry to be helpful to the finder of fact.

As soon as it begins, the Copy shifts the view of the playback screen, which, in turn, shifts the image we see on the Copy; and the time stamp running continuously over the image speeds up for more than a minute (10:48:47 - 10:49:59). The time stamp shows jump cuts - deletions of the image by 2-second intervals (10:48:47 - 10:49:27), then by 4-second intervals for more than 5 minutes (10:49:28 - 10:54:40); then it slows down (at 10:54:41). At 11:00:22 it cuts back to 11:00:16 and begins there again. And, all through this period many headlights appear to pass by and the ghost images remain visible and moving around. The time stamp then shows a jump cut or edit (from 11:00 to 11:00:16) and 16 seconds are missing.

The footage from the second camera, "CH 6" appears to begin next, at approximately 10:46:46, running much faster than the previous footage. From 10:46:50 - 10:50:00 it makes jump cuts at 4-second intervals for 3 minutes, and these portions are missing, but even these cuts speed up and run by much faster. From 10:50:30 - 10:54:40 the Copy makes 8-second jump cuts; and all of these jump cuts are deletions from the original. Additionally, the image for CH 6 is even more blurry and unhelpful than on CH 5.

All of these speed changes and jump-cut edits make the Copy inaccurate, unhelpful to the jury, unreliable and, therefore, inadmissible under Rule 901 SCRE.

... Rule 901(a), SCRE (The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a

No specific information has been provided about the original surveillance equipment, Duncan's camera used on the business' premises to make the Copy, nor the equipment on which that Copy was *again* copied to the disk provided to Plaintiff's counsel some 4 years later. It is unknown whether the various pieces of equipment were compatible, or ever calibrated for accuracy at any point in the process. This is a significant barrier to authentication. See, e.g., *United States v. Oriach*, 222 Fed. Appx. 312, 315–16 (4th Cir. 2007) (noting the Detective "could not testify that the photographs were generated by a reliable imaging process"; he was "unable to testify from personal knowledge that the [original] photographs were actually taken at the specified date and time"; he "was not present on the scene at the time the [original] videotaping occurred" and, "the videotape itself contained an inaccurate date stamp"). "Thus, Detective Ramos had no first-hand knowledge of the date and time of the photographs, only the hearsay statements of the surveillance team[.]" *Id.* All of these flaws are also present here, plus more.

Plaintiff requests that the Court preview both videos addressed here. A viewing of the Copy shows indisputably, on its face, that the Copy is not an exact or fair and accurate copy of the original surveillance footage. Nor is it a fair and accurate representation of the crashes at issue. Notably, the video begins at 10:48:24 p.m. and both crashes (Holmes and King, then King and Plaintiff) were reported at "2238" on the 24 hour clock, or 10:38 pm; law enforcement was dispatched and departed at the same time, and arrived at 2251 or 10:51 pm. (PL-119-13 M.A.I.T Report, Bates Stamped 000004; and PL-119-13 Case Notes, p 57, SC Dept. of Public Safety form FR-10 attached here as Plaintiff's Exhibits __ and __) Thus, the Copy shows the incorrect time, or, if it is accurate, it begins 10 minutes after the reported time for both crashes.

8/15/2013. (Hereafter this law enforcement copy of the private surveillance video is referred to as "**the Copy**".)

As a preliminary problem, the Copy is not the original and Defendants have not shown that the original is lost or destroyed, and that this destruction occurred through no fault of their own. The best evidence rule applies here. "In particular, the question of whether to admit evidence under the 'best evidence rule' is ... addressed to the discretion of the trial court." *State v. Halcomb*, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct.App.2009). See also, Rule 1002, SCRE (providing the original should be entered into evidence); Rule 1004, SCRE (establishing an exception to the original requirement and permitting other evidence of the original to be admitted if "[a]ll originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith") (emphasis added). And, see, *Vaught v. Nationwide Mut. Ins. Co.*, 250 S.C. 65, 68–69, 156 S.E.2d 627, 628–29 (1967) (holding secondary evidence is only admissible when "the primary evidence of the fact to be proved is satisfactorily shown to have been lost or destroyed without the fault of the party desiring to prove the fact") (emphasis added).

Duncan made the Copy with undisclosed equipment, "as well as possible" he says, but not *accurately*, on the premises of the private business that owned the surveillance equipment, which had not been secured in any way during the 5 days between the crash and his making the Copy. (See, **M.A.I.T. case notes, p 7, attached as Plaintiff's Exhibit**)

Importantly, Plaintiff has not been provided with *Duncan's Copy* made on 8/20/2013, but instead, was provided a digital disk copy of the Copy. It is unknown whether Duncan's Copy was an MP3, a DVD, a VHS analog tape, or some other format.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2015-CP-30-00624

Martha Foster Watts,)
Plaintiff,)
v.)
Ricky W. Chastain, Sherriff)
Laurens County, South Carolina)
Defendant.)

**PLAINTIFF'S MEMORANDUM OF LAW
SUPPORTING HER MOTION IN LIMINE**

NOW COMES Plaintiff, by undersigned counsel, and offers the following Memorandum of Law Supporting Her Motion in Limine:

ARGUMENT

Plaintiff's motion seeks to exclude, as unauthenticated and unfairly prejudicial, Defendants' two video items and all evidence derived from them; as well as all accident reconstruction expert evidence, for the same reasons, and also as undisclosed and withheld from discovery.

1. COPY OF PRIVATE SURVEILLANCE VIDEO

(a) Unfair Prejudice Due To Inaccuracy, Incompleteness And Lack Of Authentication

The first video is a copy of a private business's surveillance video, made by State Highway Patrol Investigator Cpl. A.L. Duncan¹ (hereafter "Duncan"), who copied the *playback* of the original footage on 8/20/2013, 5 days after the Plaintiff's wreck of

¹ There are 2 Duncans with the SC Highway Patrol M.A.I.T. who may be intended defense expert witnesses in this case, Cpl. A.L. Duncan and L/Cpl. M. E. Duncan. Defendants have not disclosed whether both are intended to testify as to the videos that are the subjects of Plaintiff's motion, and, therefore, all references herein to "Duncan" are deemed to apply to both Duncans.

INTERVIEW WITH: Sherell King

- 1 to the crash and after the crash?
- 2 KING: No, sir.
- 3 MALE VOICE: You wouldn't be surprised about that?
- 4 KING: No, sir.
- 5 MALE VOICE: If I told you that just before the crash
- 6 he was still in the fast lane and still
- 7 in front of you, would that surprise
- 8 you?
- 9 KING: No -- yes, sir. That really would.
- 10 MALE VOICE: If I told you that after the crash you
- 11 sat there in the roadway for
- 12 approximately 45 seconds before the
- 13 second crash happened would that
- 14 surprise you?
- 15 KING: Yes, sir.
- 16 MALE VOICE: That would?
- 17 KING: Uh-huh.
- 18 MALE VOICE: Okay. I'll be honest with you, I think
- 19 that pretty well answers the question
- 20 that we needed answered.
- 21 ANDERSON: Okay. Is there anything else that you'd
- 22 like to add, Ms. King? Something we may
- 23 have forgotten to ask you about that you
- 24 think would be important?
- 25 KING: Oh, no, ma'am.

Landra K. Brown, FTR-M
Nationally Certified Master Court Reporter

EXHIBIT 6

INTERVIEW WITH: Deputy L. B. Holmes

1 and stopped in the lane, radioed dis-
2 patch to tell them I had been involved
3 in a 1050 and I was getting out of my
4 car probably about 5 or 10 seconds after
5 the initial impact whenever the second,
6 the white Chevy vehicle driven by the
7 elderly lady came in. She was moving
8 and it didn't even look like she hit her
9 brakes and ran directly into the back of
10 the Charger, pushed the Charger forward
11 a considerable distance and the white
12 vehicle, after the impact, veered off
13 left into the fence, you know, across
14 the westbound lane of travel and into
15 the fence of that scrapyard. I finished
16 calling it into dispatch, checked the
17 driver of the Charger, asked if she was
18 okay. She was obviously a little shaken
19 up but she said she was fine at that
20 moment. And then I went over to the
21 white car and helped try to get that
22 lady stable. Her doors were crumpled up
23 enough that we had to actually like
24 break the door to get her out. EMS --
25 my first back-up unit arrived probably a

Sandra K. Brown, CTR-M
Nationally Certified Master Court Reporter

INTERVIEW WITH: Deputy L. B. Holmes

-7-

1 wise, maybe, maybe 50 yards or so of
2 applying my brake with that positioning,
3 or with that in the number 1 position
4 and then as I was about to make the turn
5 I flipped it over all the way to the
6 number three position which is all my
7 lights really, if anything to try to
8 alert the driver that I was trying to
9 stop him, maybe slow down so I wouldn't
10 have to chase him back in the city.

11 DUNCAN: Okay.

12 HOLMES: And then from the number 1 lane, I
13 started to make my turn over and it
14 happened pretty quick. I can't tell you
15 exactly where I was in my turn when I
16 felt the impact but basically it, you
17 know, traveling number 1 lane it made me
18 do a complete 180 or helped me complete
19 my turn into a 180 and I ended
20 stationary in the center median lane,
21 pretty much perfectly in the lane facing
22 back westbound towards Laurens.

23 DUNCAN: Okay.

24 HOLMES: The vehicle, the Charger, continued on
25 maybe 30 more feet in the number 1 lane

Pandra K. Brown, FTR-M
Nationally Certified Master Court Reporter

ORIGINAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY										Page #	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM				# Of Units	Amended - As of Original Report	Date	Time	
										1	TR - 310 (Rev. 7/2010)				62	Corrected	1238	2251	
Date		Time of Collision		Day		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- PP		Collision Location (Rt. # / Name)				Miles		Dir.		In (Near) City or Town of	
08-15-2013		2 23 30		30		3- SC Primary		6- PP		5 75 /				3.24		N E S W		LAURENS	
Lane # / Dir.		Distance Offset		Direction		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Basic Intersection (Rt. # / Name)				0- Main 1- Alternate 2- Spur		5- Connection 6- Business 7- Other		GPS COORDINATES 00 00 00.00"	
1 / 4 S W		.30		N E		3- SC Primary		5- County		/ GOODWOOD ROAD				2- Alternate 3- Spur		9- Other		DEGREES MINUTES SECONDS	
R.R. Id.		From		Ramp Only		To		1- Interstate 2- US Primary 3- SC Primary		Second Intersection (Rt. # / Name)				0- Main 1- Alternate 2- Spur		5- Connection 6- Business 7- Other		Latitude	
		N E		S W		N E		3- SC Primary		/ CALVIN BRIDGES ROAD				3- Spur		9- Other		34 29 24.10	
E-648681										E-648682									
Pedestrian's Full Name HOLMES LAWRENCE BARTON										Pedestrian's Full Name KING SHHERELL ELIZABETH LATONYA									
Unit #		Sex		Race		Street/R.F.D.				Unit #		Sex		Race		Street/R.F.D.			
01		M		W		508 WEMBERLY LN				02		F		B		100 COUNTRYSIDE CIR APT 6C			
1						SIMPSONVILLE SC 29581				1						CLINTON SC 29325			
State		Driver's License #		Class		Insurance Company				State		Driver's License #		Class		Insurance Company			
SC		101802410		D		SCCP & LT				SC		100462165		D		PROGRESSIVE NORTHERN			
Year		Body		Vehicle Make		VIN #				Year		Body		Vehicle Make		VIN #			
2008		2S		FORD		1ZVFT8ZH585152447				2008		4S		DODG		2B3KA43G98H181454			
State		Year		License Plate #		Owner's D.L. #				State		Year		License Plate #		Owner's D.L. #			
SC		2014		CGS2481		NONE				SC		2014		100462165		NONE			
Home Telephone		Owner's Full Name				Home Telephone		Owner's Full Name											
(864) 9061671		COUNTY OF LAURENS				(803) 5526485		KING SHHERELL ELIZABETH LATONYA											
Bus. Telephone		Street/R.F.D.				Bus. Telephone		Street/R.F.D.											
(864) 8713450		3 CATHERINE ST				()		100 COUNTRYSIDE CIR APT 5C											
Contributed To Collision		City, State, & Zip				Contributed To Collision		City, State, & Zip											
Yes		LAURENS SC 29380				No		CLINTON SC 29325											
Estimated Speed		Speed Limit		C.D.L. Req: Yes (No)		T/B S Req: Yes (No)		Alc/Drg Info (see back): Yes (No)		Estimated Speed		Speed Limit		C.D.L. Req: Yes (No)		T/B S Req: Yes (No)		Alc/Drg Info (see back): Yes (No)	
10		40		Yes (No)		Yes (No)		Yes (No)		20		40		Yes (No)		Yes (No)		Yes (No)	
Driver/Pedestrian's Full Name										State Year License Plate # Owner's D.L. #									
Unit # Sex Race Street/R.F.D.										Home Telephone Owner's Full Name									
1 M W 508 WEMBERLY LN										() ()									
Birth Date City, State, & Zip										Bus. Telephone Street/R.F.D.									
10-24-1988 SIMPSONVILLE SC 29581										() () 100 COUNTRYSIDE CIR APT 5C									
State Driver's License # Class Insurance Company										Contributed To Collision City, State, & Zip									
SC 101802410 D SCCP & LT										Yes No CLINTON SC 29325									
Year Body Vehicle Make VIN #										Estimated Speed Speed Limit C.D.L. Req: Yes No T/B S Req: Yes No Alc/Drg Info (see back): Yes No									
2008 2S FORD 1ZVFT8ZH585152447										20 40 Yes (No) Yes (No) Yes (No)									
Dir. of Travel: Unit 1: N S (E) W Unit 2: N S (E) W Unit 3: N S E W																			
										Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam. 2									
										\$2800 \$1600 \$ \$ \$									
										Property Owner/Witness Property Owner/Witness									
										Address City Address City									
										State Zip Phone State Zip Phone									
										Photo: Describe What Happened (Refer to Units by Number)									
										UNIT 1 AND UNIT 2 WERE TRAVELING EAST ON US 76 IN LANE # 1. THE DRIVER OF UNIT 1 (LAW ENFORCEMENT VEHICLE) WAS ATTEMPTING A U TURN EASTBOUND IN AN ATTEMPT TO APPREHEND A SPEEDING VIOLATOR TRAVELING WESTBOUND, WAS STRUCK BY THE FRONT OF UNIT 2 ON THE LEFT REAR PANEL.									
Violator																			
Unit 2 Unit 1																			
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																			
Investigating Officer's Name		Rank		Badge #		Jurisdiction Code		Review Date		Reviewer's Name		Rank		Internal Agency Code					
HUNTER - T L		CPL		A 6 4		H P O 2		08-22-2013		J T Murr		Sgt		13GW115918					

EXHIBIT 3

MAIT000004

AGENCY I.D.
90030000

LAURENS COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

CASE NUMBER

1,900,2595 PL-119-13

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM						
1. DVA - DEPARTMENTAL VEHICLE ACCIDENT (IN HOUSE)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	13		<input type="checkbox"/> Injury <input type="checkbox"/> Death <input type="checkbox"/> Property Damaged <input type="checkbox"/> Other						
2.		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> Injury <input type="checkbox"/> Death <input type="checkbox"/> Property Damaged <input type="checkbox"/> Other						
3.		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> Injury <input type="checkbox"/> Death <input type="checkbox"/> Property Damaged <input type="checkbox"/> Other						
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE							
20088 HIGHWAY 78 EAST, LAURENS, SC				29980								
INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	OFFICER	LOCATION NO.						
08/18/2013	2237		08/18/2013	2238	08/18/2013 2238	09						
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO REPORT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE			
HOLMES, LAWRENCE BARTON		OK	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	J	M	26	N	(804) 864-2037				
ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.						
PO BOX 68 (LCSO)			LAURENS	SC	29980	11						
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO REPORT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE			
			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	J	M							
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.						
VEHICLE INJURY (VICTIM) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO EXPLAIN -												
VICTIM (NO. 1) USING ALCOHOL: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK												
<input type="checkbox"/> TWO-WHEEL VEH. <input type="checkbox"/> ONE-WHEEL VEH. <input type="checkbox"/> DEFENSIVE PLASMY. <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown												
SUBJECT		SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
<input type="checkbox"/> SUSPECT		NO OFFENDER		J	M	00	U					
<input type="checkbox"/> RUNAWAY		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
<input type="checkbox"/> WANTED												
<input type="checkbox"/> WARRANT		ADDRESS										
<input type="checkbox"/> ARREST		CITY										
<input type="checkbox"/> MIA		STATE										
<input type="checkbox"/> UNKNOWN		ZIP CODE										
<input type="checkbox"/> MIA		LOCATION NO.										
SUBJECT (NO. 1) USING ALCOHOL: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		ARRESTED REASON OFFENSE DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST						
DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK TYPE:		TOTAL ARRESTED 0		08/18/2013 2237								

Offense:
DEPARTMENTAL VEHICLE ACCIDENT (IN HOUSE)

ON 08/18/2013 AT APPROXIMATELY 2237 DEPUTY HOLMES WAS RUNNING RADAR ON THE 20000 BLOCK OF HIGHWAY 78 EAST TRAVELING EAST BOUND, IN THE COUNTY OF LAURENS. DEPUTY HOLMES OBSERVED A VEHICLE, TRAVELING WEST BOUND, AT A HIGH RATE OF SPEED WHICH WAS VERIFIED BY HIS RADAR UNIT WHICH DISPLAYED THE VEHICLE IN QUESTION WAS TRAVELING 70 MILES PER HOUR IN AN AREA OF ROADWAY WITH A 30 MILE PER HOUR POSTED SPEED LIMIT. DEPUTY HOLMES, TRAVELING IN THE NUMBER 1 LANE EAST BOUND, ACTIVATED HIS BLUE LIGHTS BEFORE THE VEHICLE IN QUESTION PASSED HIM IN AN ATTEMPT TO ALERT THE DRIVER. THIS OCCURRED IN THE IMMEDIATE PROXIMITY OF THE LOCATION OF MC DANIEL'S LIQUOR STORE ON HIGHWAY 78 EAST. OVER THE NEXT 100 YARDS AND SHORT PERIOD OF TIME, DEPUTY HOLMES SLOWED HIS PATROL UNIT DOWN TO APPROXIMATELY 15 MILES PER HOUR AND BEGAN TO INITIATE A LEFT TURN IN AN ATTEMPT TO TURN AROUND ON THE VEHICLE EXHIBITING DANGEROUS AND EXCESSIVE SPEED. AS DEPUTY HOLMES INITIATED THE TURN, WHILE THE PATROL UNITS BLUE LIGHTS WERE ACTIVATED, HIS PATROL UNIT WAS STRUCK IN THE REAR DRIVERS SIDE QUARTER PANEL AND BUMPER AREA BY A GRAY IN COLOR DODGE CHARGER TRAVELING BEHIND HIM IN THE NUMBER 1 LANE. THIS ACTION CAUSED DEPUTY HOLMES' PATROL UNIT TO TURN 180 DEGREES INTO THE MEDIAN LANE WHILE THE DODGE CHARGER CAME TO A STOP IN THE NUMBER 1 LANE IN THE ROADWAY. DEPUTY HOLMES EXITED HIS PATROL UNIT TO CHECK FOR INJURIES TO THE OTHER MOTORIST AND INSTRUCT THEM TO MOVE THEIR VEHICLE FROM THE ROADWAY, HOWEVER, AS DEPUTY HOLMES WAS INITIATING THIS ACTION A WHITE IN COLOR VEHICLE, TRAVELING IN THE NUMBER 1 LANE STRUCK THE REAR OF THE DODGE CHARGER CAUSING BOTH VEHICLES EXTENSIVE DAMAGE. DEPUTY HOLMES ALERTED DISPATCH AND THE SHIFT SUPERVISOR

P TYPE (GROUP)		83-Motor Vehicle	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		TOTAL VALUE
R	Brand						
D	Color/Finish						
P	Date/Damaged	8030, 08					8000.00
R	Recovered						
B	Brand						
S	Station						
U	Unknown						
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADM. CLOSED	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
REASON FOR EXCEPTIONAL CLEARANCE:		1. <input type="checkbox"/> OFFENDER DEATH		2. <input type="checkbox"/> NO PROSECUTION		3. <input type="checkbox"/> EXTRAJURISDICTION	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER	
DEPUTY LAWRENCE B HOLMES		08/18/2013		238		SERGEANT WILLIAM C. JOHNSON	
						FOLLOW UP INVESTIGATION OFFICER	
						CHIEF OF POLICE CAPTAIN FREDRICK STEPHANE	
						08/18/2013 204	

EXHIBIT 2

VAIT000054

SOUTH CAROLINA HIGHWAY PATROL
 MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
 MAIT Case Notes



MAIT Case #	Investigator:
PL-119-13	A. D. Dewey

Date:	Notes:
	Investigation notes
8/30/13	ARRIVED on scene #0745 was unable to completely understand scene so I contacted cpl. Hutton to have him meet w/ me about details. I observed a video @ Recycling Ctr Roadside to the collision scene. (Also recorded their video as well as possible) In the video, (though the actual crash was not in frame) the headlights of the vehicles involved were discernible as they passed from one camera to the other. (0440 camera 1, 3:00 camera 2) - CRASH (0729 camera 1, 15:00 camera 2). Last sign of strobe lights from both video angles at the point of time the crash happens, no strobes are captured until the second ^{emergency} vehicle shows up. (2033 shows Deputy's strobes) Time between first collision and second collision is just under a minute. (41 seconds) A tire scuff was located @ just off center of the #1 lane and right of where the map evidence starts but not in lane. Believe to be deputy's

EXHIBIT 1

responses. It was produced at mediation, without any authenticating information. Further, Defendant's discovery responses never identified an expert in the field of accident reconstruction. These problems are addressed in a companion memorandum which discusses Defendant's animated video.

CONCLUSION

Based on the matters described herein and attached hereto and based on the content of the surveillance video, Plaintiff requests that the Court take action under Rule 37(d) and (b)(2), by granting Plaintiff's motion to suppress and refusing to allow the Defendant to support or oppose designated claims or defenses, or **prohibiting Defendant from introducing designated matters in evidence[.]**" SCRCP 37(b)(2)(B) (emphasis added). The prejudicial surveillance video; all defense accident reconstruction evidence; and Holmes' and other testimony based on or derived from the surveillance video should be excluded at trial.

Respectfully submitted,

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Laurens South Carolina
April 18, 2018

Attorney for Plaintiff

Plaintiff relies in large part upon video surveillance footage ... The video footage is not a continuous, flowing video; rather, it appears that it is a camera feed of repeating still shots. ... Plaintiff's argument also relies upon Plaintiff's interpretation of the footage as showing Price entering the restroom at 4:31. Yet, again, this is speculation because Plaintiff offers no evidence to support the supposition that the person is actually employee Price. ... The Court notes that the person on the footage at 4:31 appears to be a female shopper who first parks her shopping cart within the footage area and then apparently enters the restroom hallway (though this is supposition because she simply disappears from one frame photo to the next during the time lapse in between the capture of the images).

The greatest problem with the video footage is the choppy nature of the images. ... To base an already speculative argument on such video footage only stacks conjecture on top of speculation. Circumstantial evidence from which equally plausible but opposite inferences may be drawn is speculative and thus legally insufficient to support a finding.

Quiros v. Wal-Mart Stores, Inc., 5:12-CV-177-C, 2014 WL 12531507, at *3-4 (N.D. Tex. Jan. 6, 2014) (citation, brackets and quotation marks omitted) (emphasis added).

(b) Unfair Prejudice Due To Discovery Abuse

Discovery abuse provides additional grounds to exclude the Copy and all derivative testimony or evidence. It was not timely produced in response to Plaintiff's 4/6/2016 discovery requests, but was actually possessed by Defendant and withheld until the mediation in this case, more than a year later, and, indeed, a review of the properties data on the disk received by Plaintiff shows that the 88,042 KB video copy was created on 3/25/2016, 2 weeks before Plaintiff's discovery requested it.

To be clear, Plaintiff is aware of defense counsel's personal difficulties, which resulted in delayed initial discovery responses (received 7/7/2017) and supplemental responses (received 12/19/17). These personal difficulties do not reduce Defendant's responsibilities to provide the requested information in their eventual discovery responses. Plaintiff objects because the Copy was not produced with either set of

Three weeks after the accident, Plaintiff ... took a video camera to the Berea Fire Department and recorded the Fire Department's security video footage from the day of the accident.

...
Due to an apparent oversight, the actual security video from the Berea Fire Department ~~was erased before a copy was made.~~ Thus, Plaintiffs seek to introduce this "video of a video" as evidence at trial.

...
Having reviewed the video, the Court agrees that, even if the video could be sufficiently authenticated, it should be excluded from trial pursuant to Rule 403. The probative value of the video is limited. Although it shows Riggsbee performing the demonstration, it does not show the most critical event in this case[.]

...
In contrast, the potential for unfair prejudice, confusing the issues and misleading the jury as a result of introducing this evidence is significant.

...
Additionally, there are significant time jumps (as much as 17 seconds) by the counters for some of the cameras, rendering the time counters shown on the security footage unreliable. Thus, the timing of the events captured on the video is, at best, confusing.

...
[T]he questionable reliability of the time-counters shown on the video further demonstrates that the confusing and potentially misleading nature of the video.

Mills v. Riggsbee, 93 Fed. R. Evid. Serv. 19, 2013 WL 6243951, at *1-4 (E.D. Ky. Dec. 3, 2013) (excluding video and related testimony at trial).

Not only are we left with a soundless video containing mere images, but also, as the district court noted, these images themselves are ambiguous due to the unreliable quality of the video. It is difficult to decipher from reviewing the video the true sequence of events.

Witt v. W. Virginia State Police, Troop 2, 633 F.3d 272, 277 (4th Cir. 2011) (denying police summary judgment in civil rights case, not directly addressing admissibility).

For video recordings, like tape recordings, the proponent should also show that the camera functioned properly, the operator was competent in operating the equipment, and the recording fairly and accurately represented the scene depicted.

United States v. Cejas, 761 F.3d 717, 723–25 (7th Cir. 2014) (citations omitted).

they form the basis for other unreliable conclusions that would unfairly prejudice the Plaintiff at trial.

Under SCRE, a video is treated as a photograph, making appellate decisions about exclusion of photographs persuasive. "For purposes of this article the following definitions are applicable: "Photographs" include still photographs, X-ray films, video tapes, motion pictures or other similar methods of recording information." SCRE 1001 (emphasis added)

Rule 403, SCRE (Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.)

State v. Ward, 2014-UP-012, 2014 WL 2575436, at *1 (S.C. Ct. App. Jan. 8, 2014) (emphasis added) (citation and internal quotation marks omitted).

"Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." *Id.* (citation omitted). "The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Green*, 397 S.C. 268, 287, 724 S.E.2d 664, 673 (2012).

Additionally, the Copy is not likely to be helpful to the trier of fact because the copy does not show both crashes. It shows blurry shadows and headlights of unidentified vehicles as they pass the cameras (shown on the copy time stamp as "Ch 5" and "Ch 6") in the dark, obscured by the time stamp and ghost images. There is scant South Carolina case law addressing such videos, but there are many from other jurisdictions:

This matter is before the Court upon the motion *in limine* ... to preclude ... a videotape made by Plaintiff ... of the ... Fire Department security video monitor.

him to change his own mind. (8/20/2013 Holmes interview attached as Plaintiff's

Exhibit 7) Holmés testified at his video deposition on March 16, 2018 as follows:

Q. Okay. Now, can you tell us the time interval between the two impacts, Barton?

A. I believe that initially I - I've always thought of it in my head that it was - it wasn't like a bam-bam sequence of events. I believe in my statement to Trooper Duncan after a week or so after the accident I estimated 15 seconds or so.

(Holmes 3/16/2018 dep. p 30/8-15)

Q. Well, would you agree with the five to 10 seconds between the two collisions?

A. Again, I think we've already discovered that after I was just involved in an accident and based on what the MAIT team determined that it was actually --

(objection discussion omitted)

- it was a considerable more of time -- more amount of time.

(Id p 57/11-16 and 22-23)

Because Holmes' above-quoted testimony is the direct result of the prejudicial effect of the Copy, the above portions of Holmes' deposition testimony should also be excluded as testimony derived from the prejudicial and inadmissible Copy. See, e.g., *State v. Gordon*, 414 S.C. 94, 100, 777 S.E.2d 376, 379 (2015) (holding that if "the video ... is of such poor quality that its admission is more prejudicial than probative ... the remedy would be to redact the field sobriety test from the video and exclude testimony about the test.").

It is expected that Duncan and/or other defense "expert" witnesses intend to extrapolate from the 41-second interval conclusion, that the Plaintiff had sufficient time (41 seconds) to avoid the crash altogether. Thus, the speeding up and slowing down and deleted portions of the Copy are very significant alterations from the original, and

A: ...I've since learned, based on the video that was obtained, that it was 41 seconds between the two.

(Holmes 8/15/2017 dep. p 38/13-14)

Q: And who showed you the video?

A: I can't remember exactly the first time I saw it, but I was made aware of the video from Corporal Duncan with South Carolina Highway Patrol.

(Id p 38/25 -39/3)

Q: Okay. And you also indicated that that video assisted you with a time frame between the two accidents.

A: I wouldn't say it assisted me but, again, I was informed that there were 41 seconds between the two crashes.

Q: So, someone told you that?

A: Yes sir."

(Id. p 39/9-14)

Q: Alright. So, when you told him 5 to 10 seconds, whether you did or didn't, that was not necessarily correct, is what you're telling me now?

(objection omitted)

A: Again, I would not necessarily agree with, I guess, the way you're phrasing the question, but I'll answer it. It's not that it's not truthful, or not accurate, it's just that, again, having gone through that situation, that was what it felt like. But, again; obviously, I have since learned that it was a longer period of time.

Q: And that's based on the video you saw.

A: Based on, I believe, the findings by South Carolina Highway Patrol, yes sir.

(Id. p 50/11-24)

Q: Okay and could you tell me again who showed you the video?

A: I can't remember the first time I saw it. But, again, in my interview with Corporal Duncan I know we made reference to it."

(Id. p 51/12-16)

Notably, a review of the above-referenced Holmes interview by Duncan on 8/20/2013 shows no reference to the video or the 41-second interval, so we cannot know exactly how Duncan informed Holmes of his 41-second conclusion and convinced

Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 66–67, 773 S.E.2d 607, 611 (Ct. App. 2015). No 'internal consistency' or facial correspondence exists here.

~~Duncan used the Copy as the basis for his opinion that the interval between the~~
first and second crash was significantly longer than Deputy Holmes' estimation of 5 to 10 seconds. (See, **Holmes interview by Duncan, 8/20/2013, pp 7-8 attached as Plaintiff's Exhibits 4 and 5; and see Case Notes p 7**). Duncan concludes, based on the Copy, that the interval was actually 41 seconds, and he stated as much in an official interview with Ms. King, in an attempt to convince her of this longer interval. (See **9/10/2013 King Interview p 12 attached here as Plaintiff's Exhibit 6**).

Unfair prejudice has actually already begun, because Deputy Holmes changed his own opinion as to his own experience based on the Copy. Holmes estimated the interval between crashes as 5-10 seconds, in his interview with Duncan on 8/20/2013 (5 days after the crash), when his recollection was likely to be fresh and accurate, but not likely to be under the immediate stress of the crash. But, by the time of his 2 depositions, he had been convinced by Duncan and a viewing of the Copy, to back off from his original 5-10 second estimate. In this way, the Copy has already resulted in unfair prejudice to Plaintiff, because it caused Holmes, who was present at the scene, to change his own mind about what he observed there. "Prejudice occurs when there is reasonable probability the wrongly admitted evidence *influenced the jury's verdict*." *State v. Ward*, 2014-UP-012, 2014 WL 2575436, at *1 (S.C. Ct. App. Jan. 8, 2014) (emphasis added) (citation and internal quotation marks omitted).

Holmes testified at his deposition taken August 15, 2017 as follows:

... Rule 901(a), SCRE (The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.); Rule 901(b), SCRE (giving examples of authentication or identification that conform with the requirements of Rule 901(a) but stating these examples are by way of illustration only, and not by way of limitation); ~~*Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (stating the burden to authenticate evidence is not high and requires only that the proponent of the evidence offer a satisfactory foundation from which the jury could reasonably find the evidence is authentic).~~

State v. Brooks, 2015-001384, 2017 WL 4810804, at *1 (S.C. Ct. App. Aug. 2, 2017) (emphasis added) (quotation marks and brackets omitted). No such evidence can be presented because it is patently obvious that the Copy is not what its proponent claims. It is not an accurate representation of the events transpiring on 8/15/2013.

These alterations from the original mean that the Copy cannot be authenticated. Rule 901(b)(1), SCRE provides that evidence may be authenticated by a witness with knowledge who testifies that an item "is what it is claimed to be." But, because the ghost images and deletions appear on the Copy, no such testimony can be had. Rule 901(b)(4), SCRE provides that evidence may be authenticated based on "[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." These factors are not present here. Our case law expands on this in the context of the appearance of copied documents:

The specific and distinctive information on the face of the note, considered in connection with the mortgage, is sufficient to support a finding that the note was the one Atlantic executed in 2008. See *Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 398, 396 S.E.2d 369, 373-74 (1990) (finding admission proper under "the principle articulated in Fed. R. Evidence 901(b)(4)" where "[a]n examination of the[] documents establishes that [they] relate to the same subject, are internally consistent, [and] often refer to or answer each other"); 59A C.J.S. *Mortgages* § 991 (2009) (stating when promissory notes "correspond on their face with those recited in the mortgage, no further proof of their execution [or] their identity is required until defendant presents countervailing evidence")[.]

The Copy is riddled with ghost images of an unidentified man standing in a room reflected on the playback screen throughout the video (time stamp beginning CH 5, 08/15/2013, 10:48:36). These ghost images make the Copy inaccurate and confusing at best. The time stamp obscures the image throughout the video and on the whole, most of the image is too blurry to be helpful to the finder of fact.

As soon as it begins, the Copy shifts the view of the playback screen, which, in turn, shifts the image we see on the Copy; and the time stamp running continuously over the image speeds up for more than a minute (10:48:47 - 10:49:59). The time stamp shows jump cuts - deletions of the image by 2-second intervals (10:48:47 - 10:49:27), then by 4-second intervals for more than 5 minutes (10:49:28 - 10:54:40); then it slows down (at 10:54:41). At 11:00:22 it cuts back to 11:00:16 and begins there again. And, all through this period many headlights appear to pass by and the ghost images remain visible and moving around. The time stamp then shows a jump cut or edit (from 11:00 to 11:00:16) and 16 seconds are missing.

The footage from the second camera, "CH 6" appears to begin next, at approximately 10:46:46, running much faster than the previous footage. From 10:46:50 - 10:50:00 it makes jump cuts at 4-second intervals for 3 minutes, and these portions are missing, but even these cuts speed up and run by much faster. From 10:50:30 - 10:54:40 the Copy makes 8-second jump cuts; and all of these jump cuts are deletions from the original. Additionally, the image for CH 6 is even more blurry and unhelpful than on CH 5.

All of these speed changes and jump-cut edits make the Copy inaccurate, unhelpful to the jury, unreliable and, therefore, inadmissible under Rule 901 SCRE.

No specific information has been provided about the original surveillance equipment, Duncan's camera used on the business' premises to make the Copy, nor the equipment on which that Copy was *again* copied to the disk provided to Plaintiff's counsel some 4 years later. It is unknown whether the various pieces of equipment were compatible, or ever calibrated for accuracy at any point in the process. This is a significant barrier to authentication. See, e.g., *United States v. Oriach*, 222 Fed. Appx. 312, 315–16 (4th Cir. 2007) (noting the Detective "could not testify that the photographs were generated by a reliable imaging process"; he was "unable to testify from personal knowledge that the [original] photographs were actually taken at the specified date and time"; he "was not present on the scene at the time the [original] videotaping occurred" and, "the videotape itself contained an inaccurate date stamp"). "Thus, Detective Ramos had no first-hand knowledge of the date and time of the photographs, only the hearsay statements of the surveillance team[.]" *Id.* All of these flaws are also present here, plus more.

Plaintiff requests that the Court preview the surveillance video addressed here. A viewing of the Copy shows indisputably, on its face, that the Copy is not an exact or fair and accurate copy of the original surveillance footage. Nor is it a fair and accurate representation of the crashes at issue. Notably, the video begins at 10:48:24 p.m. and both crashes (Holmes and King, then King and Plaintiff) were reported at "2238" on the 24 hour clock, or 10:38 pm; law enforcement was dispatched and departed at the same time, and arrived at 2251 or 10:51 pm. (PL-119-13 M.A.I.T Report, Bates Stamped 000004; and PL-119-13 Case Notes, p 57, SC Dept. of Public Safety form FR-10 attached here as Plaintiff's Exhibits 2 and 3) Thus, the Copy shows the incorrect time, or, if it is accurate, it begins 10 minutes after the reported time for both crashes.

wreck of 8/15/2013. (Hereafter this law enforcement copy of the private surveillance video is referred to as "**the Copy**".)

As a preliminary problem, the Copy is not the original and Defendant has not shown that the original is lost or destroyed, and that this destruction occurred through no fault of Defendant. The best evidence rule applies here. "In particular, the question of whether to admit evidence under the 'best evidence rule' is ... addressed to the discretion of the trial court." *State v. Halcomb*, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct.App.2009). See also, Rule 1002, SCRE (providing the original should be entered into evidence); Rule 1004, SCRE (establishing an exception to the original requirement and permitting other evidence of the original to be admitted if "[a]ll originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith") (emphasis added). And, see, *Vaught v. Nationwide Mut. Ins. Co.*, 250 S.C. 65, 68–69, 156 S.E.2d 627, 628–29 (1967) (holding secondary evidence is only admissible when "the primary evidence of the fact to be proved is satisfactorily shown to have been lost or destroyed without the fault of the party desiring to prove the fact") (emphasis added).

Duncan made the Copy with undisclosed equipment, "as well as possible" he says, but not *accurately*, on the premises of the private business that owned the surveillance equipment, which had not been secured in any way during the 5 days between the crash and his making the Copy. (See, **M.A.I.T. case notes, p 7, attached as Plaintiff's Exhibit 1**)

Importantly, Plaintiff has not been provided with *Duncan's Copy* made on 8/20/2013, but instead, was provided a digital disk copy of the Copy. It is unknown whether Duncan's Copy was an MP3, a DVD, a VHS analog tape, or some other format.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

Martha Foster Watts,)
Plaintiff,)
v.)
Ricky W. Chastain, Sherriff)
Laurens County, South Carolina)
Defendant.)

**PLAINTIFF'S MEMORANDUM OF LAW
SUPPORTING HER MOTION TO SUPPRESS
(SURVEILLANCE VIDEO)
2015-CP-30-00624**

The Plaintiff, by undersigned counsel, offers the following Memorandum of Law Supporting Her Motion to Suppress:

ARGUMENT

Plaintiff's motion seeks to exclude, as unauthenticated and unfairly prejudicial, Defendant's surveillance video and all evidence derived from it; as well as all accident reconstruction expert evidence, for the same reasons; and additionally, the surveillance video should be suppressed due to Defendant's discovery violations, as hereinafter more particularly described.

COPY OF PRIVATE SURVEILLANCE VIDEO

(a) Unfair Prejudice Due To Inaccuracy, Incompleteness And Lack Of Authentication

The surveillance video is a copy of a private business's surveillance video, made by State Highway Patrol Investigator Cpl. A.L. Duncan¹ (hereafter "Duncan"), who copied the *playback* of the original footage on 8/20/2013, 5 days after the Plaintiff's

¹ There are 2 Duncans with the SC Highway Patrol M.A.I.T. who may be intended defense expert witnesses in this case, Cpl. A.L. Duncan and L/Cpl. M. E. Duncan. Defendant has not disclosed whether both are intended to testify as to the videos that are the subjects of Plaintiff's motion, and, therefore, all references herein to "Duncan" are deemed to apply to both Duncans.

Placeholder page for Defendant's Exhibit 6 -- a Video -- submitted to the Court of Appeals in the form of a video disk, contemporaneously herewith.

INTERVIEW WITH: Deputy L. B. Holmes

- 1 we're at.
- 2 DUNCAN: I understand. And when you went to make
3 your turn. I'm going to draw this out.
4 You got the median in the center. We'll
5 call that lane zero because in theory
6 you're not suppose to drive there. The
7 very first lane beside that one would be
8 the number 1 lane.
- 9 HOLMES: Yes, sir.
- 10 DUNCAN: And then there's the number 2 lane
11 because that is a four-lane stretch of
12 roadway with a gravel median,
13 essentially painted median but it's not
14 raised or anything. So you said you're
15 in the number 1 lane; am I understanding
16 you right?
- 17 HOLMES: That's correct.
- 18 DUNCAN: Right there by the median. And you
19 start to make your turn. Did you swoop
20 over into the number 2 lane to swing it
21 to make it around so you wouldn't have
22 to ---
- 23 HOLMES: To the best of my recollection I never
24 crossed into the number 2 lane just
25 because again, in my brief check in my

Sandra K. Brown, CTR-M
Nationally Certified Master Court Reporter

INTERVIEW WITH: Deputy L. B. Holmes

-16-

1 so.

2 DUNCAN: Right. Right. I understand. We talked
3 about traffic and how minor it was. The
4 speed limit there is 40 mile an hour.
5 Or you said it's a little more than
6 average. Not minor but a little more
7 than average because bingo is letting
8 out.

9 HOLMES: Yeah.

10 DUNCAN: Vehicle at 69 and you said about 50
11 yards you started putting on your rear
12 lights, applying the brakes and started
13 making ---

14 HOLMES: It was -- you have McDaniel's Liquor
15 Store at the top of the crest in the
16 hill and then there's a little parking
17 area and then there's a little parking
18 area and there's like a used car, U-Haul
19 rental place.

20 DUNCAN: Okay.

21 HOLMES: And I'd say the distance between those,
22 probably about 50 yards or so, but that
23 was the distance kinda that we're
24 talking so. Again, I didn't measure it
25 but using landmarks that's kinda where

Sandra K. Brown, CTR-M
Nationally Certified Master Court Reporter

INTERVIEW WITH: Deputy L. B. Holmes

1 know, most handheld radars are
2 stationary only. This one has a moving
3 option, so we have two of them that we
4 pass around and you know, when we're out
5 doing that stuff we just stick them in
6 the dash.

7 DUNCAN: Gotcha. Now, your vehicle is equipped
8 with a camera?

9 HOLMES: That -- my vehicle is not equipped with
10 a department issued camera that's on all
11 the time. That's a Contour Roam HD.
12 That's the camera I use for SWAT on my
13 helmet and I have it in there just in
14 case -- it's my personal camera.

15 DUNCAN: I understand.

16 HOLMES: Have to manually turn it on and
17 generally I get to that part after ---

18 DUNCAN: After the blue lights and the car is
19 pulled over?

20 HOLMES: --- a few other things happen, right.

21 DUNCAN: I understand.

22 HOLMES: So ---

23 DUNCAN: I understand.

24 HOLMES: --- I wish I would have had it on but
25 that's too much going on at the time,

Sandra K. Brown, CTR-M
Nationally Certified Master Court Reporter

INTERVIEW WITH: Deputy L. B. Holmes

1 anything back from ---

2 (CELL PHONE RING)

3 HOLMES: I haven't received it.

4 DUNCAN: Do you want to get that?

5 (OFF THE RECORD)

6 DUNCAN: Minor interruption while Caption
7 Richardson, wasn't it?

8 HOLMES: Yeah.

9 DUNCAN: All right. While he called. Anyway,
10 back to the black box. We spoke with
11 supervision, Captain Richardson and who
12 else did you talk to?

13 HOLMES: With (inaudible) Sharpton who is our
14 training officer.

15 DUNCAN: Yeah. And had permission to do a direct
16 download of the image of the box inside
17 the car. So we talked about your speed.
18 Did you have your seatbelt on at the
19 time?

20 HOLMES: I believe I did. I wear it all the
21 time.

22 DUNCAN: And you said it's not affixed radar
23 inside the car?

24 HOLMES: Yeah. We -- it's a handheld radar that
25 has a mounting platform on it and you

Sandra K. Brown, F.R.M.
Nationally Certified Master Court Reporter

INTERVIEW WITH: Deputy L. B. Holmes

1 HOLMES: I think it might be going out. My
2 little siren box probably, I sent the
3 email earlier in the year. I don't know
4 if it was a short or something like
5 that, but I had an issue with all three
6 different variations of my siren working
7 at the same time. But I sent that email
8 in and I believe, you know, the next
9 time they looked at it or whatever, it's
10 worked since then. I'm not exactly sure
11 what happened.

12 DUNCAN: I don't know if it's any problem with it
13 currently. That night everything seemed
14 to be functioning properly?

15 HOLMES: It seemed -- I hadn't noticed an issue
16 with it prior.

17 DUNCAN: Okay. All right. We're in the process
18 of trying to download the box in the
19 car. Is there any reason why we
20 shouldn't? Any reason? Do you have a
21 problem with us doing that? I hate to
22 jump through the hoops if we can do it
23 just off of you saying, "Here it is, go
24 ahead and do it." That's easier. We've
25 attempted to share -- did you get

Sandra K. Brown, FPR-M
Nationally Certified Master Court Reporter

INTERVIEW WITH: Deputy L. B. Holmes

- 1 HOLMES: Yes, sir.
- 2 DUNCAN: You drive it all the time?
- 3 HOLMES: All the time for about a year and three
4 months or so.
- 5 DUNCAN: And nobody picks it up and drives it or
6 anything else?
- 7 HOLMES: Not really.
- 8 DUNCAN: When was the last time you had any
9 service work done on it?
- 10 HOLMES: Had all the brakes tuned and pads
11 replaced probably two or three months
12 ago. I take that back. Had an oil
13 change the end of June as well, so.
- 14 DUNCAN: Anything out of the ordinary with the
15 way the car was driving or handling that
16 night? Anything different about it?
- 17 HOLMES: No. Nothing stands out.
- 18 DUNCAN: Everything on the vehicle work? All of
19 your lights and sirens and we had the
20 lights on awhile ago.
- 21 HOLMES: Might have a -- I think there's a bulb
22 on my right, the right alley light. I
23 think that bulb might be out. It comes
24 on when it wants to.
- 25 DUNCAN: When it wants to?

*Sandra K. Brown, C.V.R.-M.
Nationally Certified Master Court Reporter*

INTERVIEW WITH: Deputy L. B. Holmes

1 HOLMES: It's not on my way home but I mean,
2 that's a normal area that we try to
3 patrol just between Laurens and Clinton.
4 There's a few restaurants and bars in
5 Laurens that people tend to run back and
6 forth to, so we typically work that road
7 a good bit.

8 DUNCAN: Sure. WalMart is right there so it's a
9 very popular section.

10 HOLMES: Yeah. Yeah.

11 DUNCAN: Okay. And this particular day, did you
12 consider traffic to be average, minor,
13 major traffic out there that night?

14 HOLMES: For 10:00, 11:00 at night in Laurens at
15 that particular location I would say it
16 was a little more than you would
17 normally expect but it was just because
18 the bingo establishment by Wendy's was
19 just letting out and you figure they
20 draw half a crowd from Laurens, half
21 from Clinton, so they were trickling out
22 slowly but I mean, it wasn't heavy
23 traffic, you couldn't say.

24 DUNCAN: Okay. All right. That is your assigned
25 police vehicle?

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INTERVIEW WITH: Deputy L. B. Holmes

- 1 down through there and you observed a
2 vehicle traveling at about 69 miles an
3 hour; am I correct?
- 4 HOLMES: Yes, sir.
- 5 DUNCAN: How fast were you going at the time?
- 6 HOLMES: Again, I was just cruising down there to
7 meet -- to keep, you know, myself on the
8 road as much as possible so I could
9 encounter as many vehicles as possible,
10 so probably 35 or 40.
- 11 DUNCAN: Okay.
- 12 HOLMES: And whenever I was making the turn, I
13 put in my report, you know,
14 approximately 10 or 15 miles an hour
15 because I mean, it was slow enough to,
16 to, you know, make a turn like that.
- 17 DUNCAN: I gotcha.
- 18 HOLMES: Wasn't anything evasive or anything
19 about it. It was just normal, normal
20 driving.
- 21 DUNCAN: Okay. All right. How long, or how
22 familiar are you with that area?
- 23 HOLMES: Um ---
- 24 DUNCAN: Do you ride through it often? Is it on
25 your way home? Is it ---

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- 1 minute, two minutes later. It was
2 quick. EMS was on the scene within 5.
3 DUNCAN: Right. Okay. Okay. When you approached
4 the Dodge Charger no smells, odors and
5 you said she appeared to be shook up.
6 Other than that, nothing, no indications
7 out of the ordinary?
8 HOLMES: Nothing that -- nothing that stick out
9 to me. No, sir.
10 DUNCAN: When you approached the elderly lady in
11 the Oldsmobile, did anything stand out
12 on her, any odor, smells?
13 HOLMES: It had airbag deployment so, I mean, it
14 was just overwhelming, the dust and the
15 smoke from that deployment. Her -- I'm
16 not sure which vehicle -- it might have
17 -- well, it was obviously the white
18 vehicle, heavy fluid leaking all over
19 the place, so I mean, you had, you know,
20 all this associated with that.
21 DUNCAN: Right. Okay. Nothing that you'd
22 consider alarming or out of the
23 ordinary?
24 HOLMES: No. No, not at all.
25 DUNCAN: All right. You said you were traveling

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1 and stopped in the lane, radioed dis-
2 patch to tell them I had been involved
3 in a 1050 and I was getting out of my
4 car probably about 5 or 10 seconds after
5 the initial impact whenever the second,
6 the white Chevy vehicle driven by the
7 elderly lady came in. She was moving
8 and it didn't even look like she hit her
9 brakes and ran directly into the back of
10 the Charger, pushed the Charger forward
11 a considerable distance and the white
12 vehicle, after the impact, veered off
13 left into the fence, you know, across
14 the westbound lane of travel and into
15 the fence of that scrapyard. I finished
16 calling it into dispatch, checked the
17 driver of the Charger, asked if she was
18 okay. She was obviously a little shaken
19 up but she said she was fine at that
20 moment. And then I went over to the
21 white car and helped try to get that
22 lady stable. Her doors were crumpled up
23 enough that we had to actually like
24 break the door to get her out. EMS --
25 my first back-up unit arrived probably a

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1 wise, maybe, maybe 50 yards or so of
2 applying my brake with that positioning,
3 or with that in the number 1 position
4 and then as I was about to make the turn
5 I flipped it over all the way to the
6 number three position which is all my
7 lights really, if anything to try to
8 alert the driver that I was trying to
9 stop him, maybe slow down so I wouldn't
10 have to chase him back in the city.

11 DUNCAN: Okay.

12 HOLMES: And then from the number 1 lane, I
13 started to make my turn over and it
14 happened pretty quick. I can't tell you
15 exactly where I was in my turn when I
16 felt the impact but basically it, you
17 know, traveling number 1 lane it made me
18 do a complete 180 or helped me complete
19 my turn into a 180 and I ended
20 stationary in the center median lane,
21 pretty much perfectly in the lane facing
22 back westbound towards Laurens.

23 DUNCAN: Okay.

24 HOLMES: The vehicle, the Charger, continued on
25 maybe 30 more feet in the number 1 lane

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1 but I locked him at 69, traveling
2 westbound towards me, towards the City
3 of Laurens. So it was about -- it was
4 McDaniel's Liquor store right there. I
5 was in the number one lane and again, I
6 did check briefly. I saw other head-
7 lights around me. There's a vehicle
8 behind me. I'm fairly confident there
9 were vehicles in the number two lane
10 beside me. Well, not immediately beside
11 me but there around there, because bingo
12 had let out, the bingo place so there
13 was a little bit of traffic on the road.
14 My light switch in my car, lights and
15 siren switch, it's a three position
16 switch, kinda like yours except it
17 clicks over.

18 DUNCAN: Okay.

19 HOLMES: The first position is just my back
20 lights and I clicked it over to first
21 position and started to slow down so
22 that I could make a U-turn on the
23 vehicle because there were other
24 vehicles moving behind that car, make
25 sure traffic was clear. And distance

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1 that transpired that caused this whole
2 sequence of events.

3 HOLMES: I was patrolling the area, Highway 76
4 East. I think it's about the 20,000
5 block. It's the area between the
6 Laurens City limit sign which is about
7 Wendy's, Farmers Home Furniture, moving
8 east to about, really the Country Club
9 at the bottom of that hill where the
10 speed limit goes from 35 to 40 and then
11 up to 55. I was moving, moving radar,
12 was a removable hand-held unit that had
13 a moving mode in it.

14 DUNCAN: Okay.

15 HOLMES: I was traveling eastbound on 76 East.
16 Again, I don't, I can't remember
17 numerics exactly but it's the liquor
18 store that's at the top of the hill on
19 the right.

20 DUNCAN: Okay.

21 HOLMES: The first hill. I observed, it was a
22 vehicle with HID headlights because they
23 were different than everybody else's but
24 on the hill in front of me coming down.
25 I clocked him going 69, went up to 70

INTERVIEW WITH: Deputy L. B. Holmes

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1 enforcement as well?
2 HOLMES: That's correct. Sheriff's office with a
3 few other agencies has a multi-
4 jurisdictional grant that we work
5 alcohol, DUI-related stuff.
6 DUNCAN: All right. So the particular evening
7 we're talking about on August the 15th,
8 what time did you start your shift?
9 HOLMES: My normal shift ends at 4:00 and myself
10 and two other deputies met about 5:30 at
11 the sheriff's office to begin our
12 traffic saturation for that evening.
13 DUNCAN: Is that overtime for y'all?
14 HOLMES: Yes, sir, it's overtime.
15 DUNCAN: Must be nice. All right. So what time
16 did this crash that we're talking about
17 take place?
18 HOLMES: I believe I called into dispatch 10:38
19 p.m.
20 DUNCAN: Okay. So somewhere around 10:30, 11:00?
21 HOLMES: Yeah.
22 DUNCAN: Okay. If you would, in as much detail
23 as possible, where you were coming from,
24 what you were going to, what you saw,
25 smelled, heard, whatever the case was,

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- 1 enforcement experience you have; right?
- 2 HOLMES: Been with the county the whole time.
- 3 DUNCAN: I'm going to give you that. The email
- 4 address on the front of it is not
- 5 necessarily accurate.
- 6 HOLMES: Okay.
- 7 DUNCAN: But that is the case number. For some
- 8 reason, if you should need it, I don't
- 9 foresee you needing it, I'll get you a
- 10 copy of it at some point in time for the
- 11 sheriff's department. But the phone
- 12 numbers and all on there are very
- 13 accurate so you can call on that. All
- 14 right.
- 15 What is your job, your primary job with
- 16 the sheriff's department?
- 17 HOLMES: My primary position is the school
- 18 resource office at Hickory Tavern
- 19 School.
- 20 DUNCAN: Which is where we're at today.
- 21 HOLMES: Which is where we are sitting right now.
- 22 DUNCAN: All right. And your secondary job
- 23 through the agency, the law enforcement
- 24 obviously is primary for you, and your
- 25 job is assigned up here. You do traffic

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INTERVIEW WITH: Deputy L. B. Holmes

1 BY CORPORAL DUNCAN:

2 Today's date is August the 20th of 2013. It's
3 Corporal Aaron Duncan, South Carolina Highway
4 Patrol, Post A, MAIT Unit. It is approximately
5 10:44, 10:45 in the morning. This is in reference
6 to case number PL dash 0 -- excuse me, dash 119
7 dash 13. PL-119-13. It is a two unit collision.
8 Took place on August the 15th in Laurens County
9 involving a Laurens County Sheriff's Deputy and a
10 2006 Ford Mustang GT and a civilian in a 2008
11 Dodge Charger.

12 And if you would, sir, give me your full
13 name, your rank, your years in law enforcement
14 experience and if it differs than that of the
15 sheriff's department, tell me where all you worked
16 at.

17 HOLMES: Okay. Full name is Lawrence Burton
18 Holmes. I'm a deputy with the Laurens
19 County Sheriff's office. I was hired on
20 with the sheriff's office June, end of
21 June of 2010. So that would be
22 approximately three and some months.

23 DUNCAN: Give or take.

24 HOLMES: Yeah.

25 DUNCAN: Close enough. And that's the only law

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AGENCY I.D. SC0300000 LAURENS COUNTY SHERIFF'S OFFICE INCIDENT REPORT 13002595

INCIDENT TYPE: DVA - DEPARTMENTAL VEHICLE ACCIDENT (IN HOUSE). INCIDENT DATE: 08/15/2013. COMPLAINT NAME: HOLMES, LAWRENCE BARTON. VICTIM NAME: HOLMES, LAWRENCE BARTON. OFFENSE: DEPARTMENTAL VEHICLE ACCIDENT (IN HOUSE).

ON 8/15/2013 AT APPROXIMATELY 2237 DEPUTY HOLMES WAS RUNNING RADAR ON THE 20000 BLOCK OF HIGHWAY 76 EAST TRAVELING EAST BOUND, IN THE COUNTY OF LAURENS. DEPUTY HOLMES OBSERVED A VEHICLE, TRAVELING WEST BOUND, AT A HIGH RATE OF SPEED WHICH WAS VERIFIED BY HIS RADAR UNIT WHICH DISPLAYED THE VEHICLE IN QUESTION WAS TRAVELING TO MILES PER HOUR IN AN AREA OF ROADWAY WITH A 40 MILE PER HOUR POSTED SPEED LIMIT.

PROPERTY DAMAGE TABLE with columns for TYPE (GROUP), VALUE, JURISDICTION OF THEFT, and JURISDICTION OF RECOVERY. Includes reporting officer DEPUTY LAWRENCE B HOLMES and approving officer SERGEANT WILLIAM C. JOHNSTON.

LCSD - Watts 00001

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, II for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions, Laurens County, South Carolina.

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

January 8, 2020



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

1 into this until sometime after Christmas.

2 THE COURT: That's fine.

3 MR. HARTER: After the new year.

4 THE COURT: That's perfectly fine. I
5 appreciate you all's hard work on both sides, as
6 always.

7 MR. THOMPSON: Thank you.

8 (The hearing was concluded.)

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1 And since you have not seen Mr. Thompson's brief
2 before now, again, if you need to submit anything
3 additionally, I'll allow you to.

4 Mr. Thompson, same for you. Anything you
5 want to submit to me additionally, I'll be glad to
6 take a look at that.

7 MR. THOMPSON: If I understand the
8 procedure then, he will respond to my brief.

9 THE COURT: If he wants to.

10 MR. THOMPSON: If he wants to.

11 THE COURT: I'm not requiring him to.

12 MR. THOMPSON: I understand that. But if
13 he does that, then I would have an opportunity --

14 THE COURT: Sure.

15 MR. THOMPSON: -- to address any new
16 grounds he brings up.

17 THE COURT: Sure.

18 MR. THOMPSON: Okay.

19 THE COURT: Sure. And, again, this kind
20 of boils down to, you know, we're going to have
21 some time here before a decision is rendered, so
22 that affords you guys an opportunity to get
23 whatever else you need to get to me.

24 MR. THOMPSON: Yes, sir.

25 MR. HARTER: I probably won't be getting

1 man's brief. Okay? I don't know what's in there,
2 but I want to say this right now. Okay?

3 At some point, in one of their filings,
4 they suggested that I improperly used a laser
5 pointer to demonstrate things to the jury on the
6 video. I'm going to tell you, Judge, I don't
7 believe that happened, because I don't believe
8 this laser pointer would work on that screen that
9 we used in the courtroom that day.

10 And I have asked them, when they filed
11 this motion, to provide me with an affidavit of
12 somebody that saw me use this laser pointer in
13 that courtroom on that video, and I haven't seen
14 that.

15 THE COURT: Okay.

16 MR. HARTER: Okay? I've been practicing
17 law for a long time, Judge, and I think I know
18 what the parameters are for a proper argument. I
19 know we get involved in these cases from time to
20 time and things get cranking, but I'm going to
21 submit to you that there's absolutely no merit to
22 their position that there was improper argument in
23 that transcript. I'll be looking forward to
24 seeing that.

25 THE COURT: Okay. All right. Very good.

1 advisement, you got plenty of time to do this, if
2 you would go through this transcript.

3 MR. THOMPSON: I have.

4 THE COURT: And just designate for me the
5 page and line numbers that you believe --

6 MR. THOMPSON: It's in my brief.

7 THE COURT: Oh, it's in your brief.

8 MR. THOMPSON: Yes.

9 THE COURT: Okay.

10 MR. THOMPSON: It's in the brief, but I
11 also have his final argument. And I can double
12 check it against that and be glad to send that.

13 THE COURT: That's fine. If you want to
14 double check, sure.

15 MR. THOMPSON: We can collaborate and get
16 you the testimony you want.

17 THE COURT: I've got the transcript. If
18 it can be identified which page and lines contain
19 what you believe to be Mr. Harter's improper
20 statements and closing argument, just let me know
21 that. That would be helpful.

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Okay.

24 MR. HARTER: And let me make one more
25 point, Judge, just because I haven't seen this

1 truth.

2 I submit that this was a fair trial for
3 all of us, and there is no ground, or reason, or
4 basis to upset this jury verdict that
5 Laurens County has rendered in this case.

6 THE COURT: Okay. Thank you,
7 Mr. Harter.

8 Mr. Thompson, anything in response?

9 MR. THOMPSON: I would just say that they
10 chose what portions of the video they wanted to
11 copy, and there's no way to authenticate it
12 because of what is on the copy. That is, the
13 glare, the officer's image, and the speeding up
14 and the slowing down, that's not on the original
15 because we don't have the original to compare it
16 to.

17 THE COURT: Okay.

18 MR. THOMPSON: And we have addressed in
19 our brief the specific points that we assert where
20 Mr. Harter -- in our limited way believe that he
21 improperly commented on the video and that is all
22 in our brief, so I won't go over that line by line
23 right now.

24 THE COURT: Well, what may be helpful,
25 Mr. Thompson -- since I'm taking it under

1 And that transcript verifies exactly what
2 I said in this trial. And their motion or motions
3 for a Rule 60-(b), new trial, is based on fraud,
4 misrepresentation, or misconduct of an adverse
5 party, and I simply cannot allow that to stand
6 because my argument was well in keeping with the
7 evidence in this case, and you would have
8 certainly corrected me if that had not been.

9 And under Rule 101, the original, if the
10 original is not available, a copy is appropriate.
11 And this was a copy of the original. It was a
12 real time recording of the events. It showed
13 60 seconds to a minute and it certainly had
14 relevance and probative value here.

15 It had relevance as to how much time
16 elapsed between the two events. It had relevance
17 as to the position of the vehicles at the time of
18 the impact. It had relevance to whether or not
19 there were lights on at the time.

20 And, again, Judge, I know I'm repeating
21 myself, and I apologize if I have, but this was a
22 hard thought trial. That surveillance video is
23 what it is. That video has no friends to reward,
24 no enemies to punish, and it had information that
25 was valuable to the jury in their search for the

1 And there's no -- there's no dispute that
2 that was a copy. And you had heard testimony from
3 Duncan and you heard testimony from Kagle, this is
4 a copy of the original. And it's not -- the
5 Sheriff's Office didn't have the video. The video
6 was in possession of the highway patrol.

7 So there's no reason why the
8 Sheriff's Office would have it. There's no way
9 that that video was tampered with or altered. And
10 that's simply -- it's an accurate portrayal of
11 what happened out there on that roadway that
12 night.

13 And it's clearly admissible. It shows
14 what it shows. It is in real time and it is in
15 black and white. I'm going to suggest to you
16 that, to the extent there is any suggestion that I
17 made an improper argument, I would invite -- if
18 you don't mind, Judge, here is the transcript of
19 my argument.

20 THE COURT: Okay.

21 MR. HARTER: And I would invite
22 Mr. Thompson or Mr. Brian to show something in
23 that transcript which I said that is a
24 misrepresentation of anything that is in that
25 video. It simply did not happen.

1 the original of that surveillance video.

2 And, Your Honor, the video depicted the
3 condition of the road, the position of the vehicle
4 and the lights. It showed a 41 second lag time
5 between both of these accident.

6 And the applicable rules about admission
7 of evidence is, of course, governed by the civil
8 rules. And the rules provide that rules of
9 evidence are to be interpreted to do justice to
10 the parties and to leave to a truthful disposition
11 of a case.

12 Under Rule 402, relevant evidence is
13 evidence that is -- it tends to make the existence
14 of a fact more probable than not. And as to
15 Rule 901, authentication, the rule of
16 authentication is satisfied if the evidence is
17 what the proponent suggests that it is. And we
18 suggest that this is a copy of the surveillance
19 video that shows portions of this accident.

20 And you spent -- we spent a lot of time
21 in the in camera hearing on filtering through
22 these things. And there's no dispute -- there's
23 no doubt that that video was in real time,
24 60 seconds to a minute, and they were counted off
25 on the counter. 60 seconds to a minute.

1 hit the rear of Miss King's car, veer off to the
2 left, and hit the fence.

3 Now, that image, that video captured
4 pertinent parts of this accident. And based on
5 the MAIT team's investigation, they secured the
6 part of the video that was relevant that had
7 anything to do with this case. They told you in
8 their testimony that they fast forwarded to get to
9 the point where relevant information might be
10 available, and they didn't want to do that --
11 record the whole thing because they didn't need
12 the whole thing. They recorded what was relevant.
13 And we brought that from the highway patrol in
14 Columbia. They are the witness who brought that
15 from the hard drive and presented that at trial.
16 The video is what the video is.

17 THE COURT: Why didn't Duncan decide just
18 to pull the video out of the machine as opposed to
19 taking video of the video?

20 MR. HARTER: I can't answer that. I
21 don't know. But we discussed -- Judge, this was
22 hammered out very intently during the in camera
23 hearing that you had.

24 And under the rule, a copy is admissible,
25 if it's authentic. This was an authentic copy of

1 sections that had anything remotely to do with
2 this event and this time. It starts sometime
3 around 10:00-ish or 11:00.

4 Now, the recycling center owner said that
5 that video is copied over every 30 days, if I
6 remember correctly.

7 MR. THOMPSON: Six months.

8 MR. HARTER: But, in any case, the MAIT
9 team took a picture on their system, their
10 computer, and it was on the hard drive of the
11 highway patrol. And when this case went to trial,
12 and well in advance of trial, they had the
13 video -- they had the video and had seen it, knew
14 what it was, knew all the information about it.
15 The video showed part of the accident.

16 If you will recall, Judge, the video
17 shows that, at some point in time -- and, if you
18 don't mind, let me refer to my memo.

19 THE COURT: Sure.

20 MR. HARTER: On the video at 10:58:07,
21 the video shows lights panning across the road
22 like this and coming back in this other direction,
23 lights on. And then at 10:59 -- 10:58:09, all the
24 lights are stationary. And then at 10:58:49,
25 approximately 41 seconds later, you see a vehicle

1 positioned such that Mrs. King's vehicle is in the
2 median lane going toward Clinton and
3 Barton Holmes's patrol vehicle is in the opposite
4 direction sitting in the median headed back toward
5 Laurens. Both of those motorists, Thompson -- I
6 mean, King and Barton Holmes say they had their
7 lights on.

8 Those were the way that those vehicles
9 were positioned at the time Mrs. Watts came along
10 hit the rear of the King vehicle, veered off to
11 the left, and hit a fence.

12 Well, as you will recall, we called
13 Mr. Kagle who was the owner of that recycling
14 establishment. And what had occurred is that the
15 highway patrol, not the Sheriff's Office, the
16 highway patrol, the MAIT team investigated this
17 accident. And they went to that location five
18 days, I believe, after the accident and they asked
19 for surveillance video, and Kagle indicated he had
20 video. And, in fact, he had looked at the video
21 and saw how his fence had gotten damaged.

22 And then Corporal Duncan with the MAIT
23 team went to that establishment, went to the
24 recycling center and he wanted to see the video
25 and he set up a camera, and he recorded the video

1 Now, I do not remember the transcript
2 and/or facts as does Mr. Thompson. And I would
3 invite you, Judge, if there's any concerns about
4 that, I will be happy to order the transcript from
5 the whole trial if that will help you filter
6 through this.

7 But, first of all, let me turn to the
8 issue about the surveillance video, and I believe
9 I'm correct about this, but there was a recycling
10 place that had two cameras. Mr. Kagle owned and
11 operated that business. He had two cameras that
12 would catch traffic near and/or coming down to the
13 road between Laurens and Clinton and near his
14 gate.

15 And, as you will remember, the facts of
16 this case, Mrs. Watts indicated she was traveling
17 down the road. She saw no lights at all. It is
18 10:30 or eleven o'clock at night. She hits a car.
19 She sees no lights at all.

20 The way the dynamics of the accident
21 occurred, according to the witnesses, is that
22 Barton Holmes is traveling down the road and
23 making a u-turn in the road to go back and stop a
24 speeding motorist. He, unfortunately, has a
25 collision with Mrs. King. And the vehicles are

1 There are a lot of fine points in this
2 thing, and it would just be very difficult for
3 me --

4 THE COURT: Sure.

5 MR. THOMPSON: -- to hit on all of them.

6 THE COURT: Okay.

7 MR. THOMPSON: But I do have a memo for
8 the Court.

9 THE COURT: Okay. Very good. Thank you.

10 MR. THOMPSON: And that's all.

11 THE COURT: All right. Thank you,
12 Mr. Thompson.

13 Mr. Harter.

14 MR. HARTER: Thank you, Judge.

15 First of all, let me tell you, you know
16 we tried this case, as you know, back in April.
17 You probably remember that. We spent the better
18 part of a week here in this case. We had a jury,
19 I think, that was very attentive and paid
20 attention to the evidence and testimony. And you,
21 yourself, Judge, took, I think, great pains and
22 you were very considerate and deliberate and
23 thoughtful in all of your rulings in this case.
24 Regardless of the outcome, I think we all got a
25 fair trial.

1 boundaries. He got wound up in his argument and
2 it just went too far. We objected twice.

3 They are indicating, at this stage, that
4 since we didn't ask for curative instructions that
5 our objections would not be of any merit. There
6 wouldn't be a curative instructions if you didn't
7 sustain our objections. In other words, you just
8 say, as long as they're not adding to it, and just
9 went on.

10 THE COURT: Okay.

11 MR. THOMPSON: So I don't think we would
12 have to ask for curative instructions because you
13 didn't sustain our objections.

14 THE COURT: Okay.

15 MR. THOMPSON: And further -- let me see
16 here. There was a couple of other things. I
17 wanted to touch on one thing. That was that the
18 Court, by saying what it said when we made
19 objections, as long as he's not adding anything to
20 it, may have compounded the prejudice to our
21 client because the vehicles could not be
22 identified from the largely indecipherable video,
23 and that the jury could have taken the position
24 that what Mr. Harter said was accurate and that
25 the Court seemed to agree with him.

1 will help me because I want to pull out all my
2 notes.

3 Next thing, Mr. Thompson.

4 MR. THOMPSON: Okay. I'm going to skip a
5 lot of this. I'm going to hand you the hard copy
6 of this memo.

7 THE COURT: Okay.

8 MR. THOMPSON: As well as Mr. Harter.

9 THE COURT: Okay. But, I would like to
10 mention a few things. It is our understanding,
11 trying to argue to the jury, that there couldn't
12 be very little comment made on the video to the
13 jury, that the video was whatever it was, and
14 there could not be any interpretation of it by the
15 attorneys.

16 And it's our contention that Mr. Harter
17 did, in several instances, improperly refer to or
18 insinuate certain things from the video, such as,
19 "Don't you see those lights?" "Those are
20 Miss Watt's."

21 On two occasions he mentioned blue
22 lights. "Don't you see the blue lights," and it
23 was a black and white film. So that was improper
24 in our way of looking at this thing.

25 And we feel like he had overstepped his

1 The time on that video did not fall in line with
2 the two accident reports as far as when this
3 incident occurred. It was 20 minutes fast.

4 You may recall that. It would not be
5 the -- it was not the accurate time as to when the
6 accident happened.

7 THE COURT: I don't remember all the
8 specifics. I know that we spent a great deal of
9 time discussing the video and the various aspects
10 about the video. I do remember that. But I don't
11 remember all the specifics.

12 Before you continue, when did we try this
13 case because I want to pull -- when I start looking at
14 this, I want to pull my notes. Do you remember what
15 days we tried this?

16 MR. THOMPSON: It was April or may.

17 MR. HARTER: I believe the verdict was
18 rendered on -- we started the trial on April the
19 16th.

20 THE COURT: Of this year?

21 MR. CRUICKSHANKS: Yes, sir.

22 THE COURT: Okay.

23 MR. CRUICKSHANKS: And the verdict came
24 in on April the 19th of this year.

25 THE COURT: All right. Thank you. That