

RECEIVED

SEP 16 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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ARGUMENT FROM APPELATE

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THE STATE,

RESPONDENT

V.

Edward Lee Joseph Washington

APPELLANT

APPELATE CASE NO 2019-000976

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## ISSUE #4

### ERROR BY TRIAL JUDGE Exhibit A:

Defense counsel argued that the felony DUI charge be dismissed pursuant to City of Rock Hill v. Suchenski, 374 S.C. 12646, S.E. 2d 879 2007, And S.C. Code Ann. 56-5-29.53.

Counsel correctly pointed out that this statute requires that a recording of a DUI must begin no later than the activation of the officer's blue lights and continue throughout the duration of the incident. Officers Guyett and Jordan's Body worn cameras both died while they were at the hospital with APPELATE at least nine minutes prior to the blood draws. Counsel argued that the reason the statute requires video is to ensure that juries can see the entire interaction between law enforcement and the suspect.

Counsel further pointed out Suchenski dealt with the same situation which occurred in APPELATE'S case, the officer's video recording ran out of tape and that resulted in a dismissal of the DUI charge in Suchenski. Officer Jordan admitted that he never submitted an affidavit explaining why he did not have the complete video recording of his interaction with APPELATE. (see pg. 115 lines 13-15 of transcript) However, Officer Guyett submitted an affidavit explaining his failure to produce the entire video recording because the APPELATE

was taken to the hospital for medical treatment and blood draw, the trial judge did not make a specific ruling on Jordan's failure to produce a complete video of his interactions with APPELATE. In *State vs. Manning*, 400 S.C. 257, 261, 734 S.E.2d 314 (Ct. App. 2012), this court found that the trial judge properly denied the defendant's motion to dismissal of the felony DUI. In *Manning* this court found that it was physically impossible for the officer to videotape the defendant's conduct at the incident site because the defendant had already been transported away from the scene for medical treatment prior to the officer's arrival. Id. At 266, 734 S.E.2d at 31. However, the officer in *Manning* still failed to submit an affidavit which this court found would have been grounds for dismissal unless another exception applied. The *Manning* court held that because the officer was investigating a traffic accident and the defendant was arrested at the hospital, the failure to produce video or an affidavit was not a ground for dismissal. Here GUYETT had video at the incident and also at the hospital. Unlike in *Manning* GUYETT was on the scene at the same time as the APPELATE a placed APPELATE under arrest ~~at~~ the scene. Although APPELATE was ostensibly taken to the hospital for the purpose of medical treatment GUYETT also admitted that he took the APPELATE to the hospital for the purpose of getting a blood sample from him. The video did not cut off until approximately nine minutes until the blood draw had taken place and the explanation given by GUYETT at the motion to suppress was that his body camera died. (see pg. 94 lines 11) (pgs 95, 1, 4, 5)

This was a completely different reason than the reason he gave in his sworn affidavit. In the affidavit,

Guyett claimed that it was physically impossible to video record APPELATE because he was taken to the hospital. This was clearly false because Guyett did have at least some video of APPELATE in the hospital. The failure to produce the complete video of APPELATE's conduct at the hospital including the blood draw was not because of Guyett's reason given in the affidavit. Therefore, the affidavit was insufficient to excuse Guyett's failure because the reason given in the affidavit was false. The trial judge erred in denying defense counsel's motion to dismiss APPELATE's felony DUI charge. On pg. 130 of the transcript, lines 3-5, the trial judge states the arresting officer did submit an affidavit as to why his body camera was not working that he believed complied with the requirements. This is false.

See City of Rock Hill vs. Suchenski, 374 S.C. 12, 646 S.E.2d 874 (2007)

In Roberts the supreme court returned to the Suchenski decision and found that unexcused noncompliance with 56-5-2953 mandates dismissal for a DUI charge. As evidenced by this court's decision in Suchenski the legislature clearly intended for a per se dismissal in the event a law enforcement agency violates the mandatory provisions of 56-5-2953. Notably the legislature specifically provided for the dismissal of a DUI charge unless the law enforcement agency can justify its failure to provide a videotape of a DUI arrest. The term dismissal is significant as it explicitly designates a sanction for an agency's failure to adhere to the requirements of 56-5-2953.

Furthermore, it is instructive that the legislature has not mandated videotaping in any other criminal context. Despite the potential significance of video taping oral confessions, the legislature has not required the State to do so. By requiring a law enforcement agency to videotape a DUI arrest the legislature intended strict compliance with provisions with 56-5-2453 and in turn, promulgated a severe sanction for non compliance.

See Roberts 343 S.C. at 346 713 S.E. 2d 885

See Transcript for affidavit of failure to produce video tape of DUI (APPEAL TRANSCRIPT)

## ERROR BY TRIAL JUDGE EXHIBIT B:

ON Pg. 130 of the transcript, lines 2 and 3 and 4, the trial judge states "that there is no requirement that an affidavit be submitted immediately." The arresting officers took two and a half years after the incident two fill out an affidavit involving section 56-5-2953. In the Town vs. Mt. Pleasant vs. Roberts the judge concluded that the towns failure to comply with the requirements a decade after the enactment of section 56-5-2953 was unreasonable, and constituted a violation of the statute. In this case it took the arresting officer two and a half years two fill out the affidavit.

SEE Town of Mt. Pleasant vs. Roberts (393 S.C. 332 713 S.E. 2d 278)

## Error By Trial Judge Exhibit C:

On pg. 130 of the transcript, lines 15-17, the trial judge states that "being that there is no video of the APPELLATE'S blood draw he does not find it to be a violation of the statute 56-5-2953". This statute states that everything involved with a DUI case has to be recorded. An abuse of discretion occurs when the trial court's ruling is based on an error of law. In this case the trial judge abused his discretion by allowing the prosecution to proceed in pursuing prosecution for felony DUI after the requirements were not met for section 56-5-2953.

SEE STATE VS. McDONALD 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)

## Error By Trial Judge Exhibit D:

ON PG. 403 OF THE TRANSCRIPT LINE ONE, THE TRIAL JUDGE DENIED THE APPELLATE'S DEFENSE MOTION FOR DIRECT VERDICT. THE APPELLATE'S DEFENSE ARGUED THAT IT WAS IN TWO DIFFERENT AREAS ON THE ELEMENTS OF THE CHARGE THAT THE STATE HAD NOT BEEN ABLE TO COME UP WITH CONCRETE EVIDENCE FOR ONE ELEMENT IN PARTICULAR HAPPENS TO BE SPEEDING OF THE VEHICLE. THE APPELLATE'S DEFENSE ARGUED THAT NONE OF THE WITNESSES WERE ABLE TO COME UP WITH AN EXACT SPEED OR ANYWHERE CLOSE TO AN EXACT SPEED.

IN THE EXCEEDINGLY RARE CASE WHEN IT IS WITHOUT LEGAL SIGNIFICANCE THAT SPEED WAS A CONTRIBUTING FACTOR IN AN AUTOMOBILE COLLISION AND THE RECORD CONTAINS NO EVIDENCE OF OTHER REALISANT OR WRONGFUL ACTS BY THE SPEEDING DRIVER, THE JUDGE MAY GRANT A SPEEDING DRIVER'S DIRECT VERDICT MOTION; THERE WOULD BE NOTHING FOR THE JURY TO RESOLVE BECAUSE, AS A MATTER OF LAW, ANY EXCESSIVE SPEEDING COULD NOT HAVE CAUSED THE ACCIDENT. (SEE ATTACHED DOCUMENTS OF EVIDENCE OF SPEED)

SEE Black vs. Coxia 2011 WL 11734675 3d S.C. APP S.E. 2d (JUNE 17, 2011)

SEE Wright ex rel. Estate of Wright vs. Colleton County Sheriff Dept. 2014 WL 2575434 4 S.C. APP JAN 08 2014 S.E. 2d

ON PG. 440 OF THE TRANSCRIPT, THE PROSECUTOR STATES THAT (NOW I'M NOT GOING TO SIT HERE AND TELL YOU THAT HE SUBSERVED TO HIT THE VICTIM; THAT'S NOT THE CASE, I'M NOT SAYING THAT. HE DIDN'T INTENTIONALLY PLOW DOWN AN INNOCENT MAN. I HONESTLY DON'T BELIEVE THAT!) THIS PROVES THAT THE RECORD CONTAINS NO EVIDENCE OF OTHER REALISANT OR WRONGFUL ACTS BY THE SPEEDING DRIVER.

On PG. 442 the transcript states, on lines 20-22, the Prosecution States "The witnesses on scene are saying he's doing 70 MPH. I get it, they're lay people, they can't say exactly."

(See attached documents)

This proves that the State could not come up with an exact speed by reasonable doubt as the Prosecution claimed on PG. 408 lines 7-8 in the transcript.

"Find that the State has proven by reasonable doubt the defendant was speeding, traveling in excess of the posted 40 miles per hour speed limit in this case. And then that was the proximate cause of death of the victim in this case?"

Under Evidence if the defendant was traveling at a speed slightly above posted limit on a protected highway it was not a contributing factor in a mishap which occurred when Plaintiff's decedent after stopping, proceeded to cross a four lane highway from private entrance shop. Code 1962 § 10-1951

SEE: Tubbs by Owen vs. Bowie 417 S.E. 2d 550, 552 4 S.C. APP. Oct 1992

SEE: Clark vs. Carwell 529 S.E. 2d 528, 536 S.C. March 13, 2000

SEE: Black vs. Cayia 2011 WL 11734675 44 S.C. APP June 17, 2011

SEE: Cape vs. Eckert 327 S.E. 2d 367, 369 S.C. APP Feb 27, 1985

SEE: attached documents witness statement



# Statement

Department of Public Safety

Statement of:  Victim  Witness  Defendant

Date and Time 10-29-2016 Case file number 201602610

Incident location 670 Hwy 544

Statement of (name) X Olivia Malle

DOB [redacted] Hgt 5'04" Wgt 130 Hair brown Eye color hazel

Home address 1030 Piedmont residence blvd. (Room 21)

Telephones: Home ( ) Work ( ) Cell ( 802 ) 881-5212

I, \_\_\_\_\_, do hereby give freely and voluntarily this statement to \_\_\_\_\_ and \_\_\_\_\_

who have identified themselves to be police officers of the Coastal Carolina University Department of Public Safety. I have been advised that I do not have to make this or any statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, and that if I am financially unable to obtain an Attorney, the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am \_\_\_\_\_ years old and reside at \_\_\_\_\_

I have a(n) \_\_\_\_\_ grade education, and I can read and write.

- Unlawful for a Person to Knowingly File a False Police Report: It is unlawful for a person to knowingly file a false police report. Any person violating the provisions of this section is guilty of a misdemeanor if a misdemeanor is reported and guilty of a felony if a felony is reported and upon conviction must be imprisoned and/or fined. S.C. § 16-17-722
- Unlawful to Make False Complaint: It is unlawful for any person to knowingly make a false complaint, or after notice of a criminal investigation, to give false information to any law enforcement officer concerning the alleged commission of any crime by another... Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed two hundred dollars or by a term of imprisonment not to exceed thirty days. S.C. § 16-17-725

By signing below, I certify that I have read the provision of the above sections (S.C. § 16-17-722 and S.C. § 16-17-725) and understand its contents. In addition, I certify I have read the above statement, and it is true and correct to the best of my knowledge.

Statement: Ryan, Erin, Adrianna and I were standing on the side of the street in front of the coop. We wanted to go and get some food ~~from the coop~~ - at Hicks.

Ryan crosses the street, hes running and in the last lane he gets hit by a car. His body goes flying and the car keeps going straight. Not sure for how long - I was ~~not~~ waiting to see Ryans body.

I was waiting for him to just pop up and say hes okay. I ran over after him I see he was shredded to pieces. People were tying his leg up and trying to stop the bleeding everywhere I tried to talk to him and was holding his head.

The ambulana came and I watched / looked at the white sheet ~~and~~ for I fel like 30 mins until I ended

Signature of person making statement \_\_\_\_\_

Witness \_\_\_\_\_ Witness signature X Olivia Malle

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

AFFIDAVIT

ORIGINAL

Personally appeared before me, one Det. J. Scott  
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure  
under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on  
the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Sought from the individual identified as Edward Lee Joseph Washington are samples of blood taken  
at the direction of law enforcement pursuant to this search warrant, or taken at the time of  
admittance to Conway Medical Center of October 29, 2016

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

An individual who is currently admitted or in police custody at Conway Medical Center in Conway, SC and  
has been identified under the name of Edward Lee Joseph Washington. Washington was involved in a  
vehicle collision that resulted in a death that is currently being investigated by the Conway Police Dept.  
Edward Lee Joseph Washington is a black male having the date of birth of 09-22-1985 and South  
Carolina driver license number 100476335.

REASON FOR AFFIANT'S BELIEF THAT THE  
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On October 29, 2016 the subject was traveling West on Hwy 544 in lane two heading towards the City of  
Conway. The subject struck a pedestrian that was walking across the roadway resulting in the pedestrian's  
death. The subject did drive away from the scene but did return thinking someone threw a bottle at his  
windshield. SMPO Guyett stated that the subject has a strong odor of alcohol coming off his breath, and  
his eyes are blood shot and glassy. According to a witness that observed the collision, she stated that the  
subject's vehicle appeared to be traveling at least 70 MPH when contact was made. The speed limit on  
Hwy 544 in that section is 40 MPH. It was determined that the subject's speed was a contributing factor  
of the collision. It is this affiant's belief that the blood samples will determine any impairment due to  
alcohol and / or drugs.

*Highway*

*↑ 42 MPH / 38 MPH*

~~WING~~ *AD ABOUT SPEED*  
*WING*

Sworn to and Subscribed before me  
this 29th day of Oct 2016

*Jane Mackey* (L.S.)  
Signature of Judge

*[Signature]*  
Affiant  
Address 1600 9th Ave  
Conway SC 29526  
Phone 843-248-1790

Det. J. Scott

- ~~1. Mr. Scott did you arrive to the scene of the incident mentioned at hand? YES~~
2. And where was the defendant when you arrived on the scene? on the scene
3. Where was the defendant's car do you know? on the scene
4. Before arriving to the scene of the incident, did you hear the dispatch over the radio? YES
5. What did you hear over the radio from the dispatch?
6. Did you hear anything about a hit and run over the radio dispatch? No
7. Mr. Scott you did type up the Affidavit, signed by Judge Mackey, correct? YES
8. In that Affidavit, you state that the defendant was involved in a vehicle collision that resulted in a death correct? YES
9. Not a hit and run correct? YES
10. Also in that same Affidavit, you state that according to a witness, she stated that the defendant's vehicle appeared to be traveling at least 70 MPH when contact was made. You also state that it was determined that the defendant's speed was a contributing factor correct? YES

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Show speeds from Highway Patrol

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# Statement

Department of Public Safety

Statement of:  Victim  Witness  Defendant

Date and Time 10-29-16 1. a.m. Case file number 2016022010

Incident location Circle K gas station 544 (across from Coastal club)

Statement of (name) Kelcee Cramer

DOB [redacted] Hgt 5'5" Wgt 120 Hair Brown Eye color Hazel

Home address 634 Hwy 544 Rm 101

Telephones: Home ( 619 ) 886-0480 Work (            ) Cell (            )

I, Kelcee Cramer, do hereby give freely and voluntarily this statement to

\_\_\_\_\_ and \_\_\_\_\_

who have identified themselves to be police officers of the Coastal Carolina University Department of Public Safety. I have been advised that I do not have to make this or any statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, and that if I am financially unable to obtain an Attorney, the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am \_\_\_\_\_ years old and reside at \_\_\_\_\_

I have a(n) \_\_\_\_\_ grade education, and I can read and write.

- Unlawful for a Person to Knowingly File a False Police Report:** It is unlawful for a person to knowingly file a false police report. Any person violating the provisions of this section is guilty of a misdemeanor if a misdemeanor is reported and guilty of a felony if a felony is reported and upon conviction must be imprisoned and/or fined. S.C. § 16-17-722
- Unlawful to Make False Complaint:** It is unlawful for any person to knowingly make a false complaint, or after notice of a criminal investigation, to give false information to any law enforcement officer concerning the alleged commission of any crime by another. Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed two hundred dollars or by a term of imprisonment not to exceed thirty days. S.C. § 16-17-725

By signing below, I certify that I have read the provision of the above sections (S.C. § 16-17-722 and S.C. § 16-17-725) and understand its contents. In addition, I certify I have read the above statement, and it is true and correct to the best of my knowledge.

Statement I was pulling out of the circle K on 544 when I saw a young man crossing the street & a car coming about atleast 70 mph & clipped the guy about 15-25 ft in the air and I watched it all happen until he hit the ground. I was the first to approach the scene & well for someone to call all someone was hit. He never said a word. Was still twitching when I was there, had a pulse but was going faint fast, eyes partly open. Took my jacket to tie on his leg for tourniquet, ripped off shirt to see further abdominal injuries. As we started to loose him, we started CPR all the way until the EMT got there to pronounce his time of death.

Signature of person making statement Kelcee Cramer

Witness \_\_\_\_\_ Witness signature Kelcee Cramer

Case number 2016026010

Page 2 of 2 pages.

Statement of (name) Kelcee Cramer

(Statement continued)

shortly after the gentlemen had been hit we thought the car drove off, but then a gentleman started screaming who hit my car & started swinging on everyone & hit a man who worked at the gas station, then someone <sup>came</sup> an officer pulled up and told him to get on the ground and he took it from ~~the~~ <sup>me</sup> there.

Signature of person giving statement

Kelcee Cramer

Date

10-29-16

Witness

CCU OPS - 1710

Witness signature

Kelcee Cramer

**SOUTH CAROLINA HIGHWAY PATROL  
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM  
MAIT Case Notes**



**MAIT Case # DL-164-16**

**Investigator: Cpl. TJ Luther**

**Notes:**

**ANALYSIS NOTES:**

**System Status At Non-Deployment**

**Driver's Belt Switch Circuit Status: UNBUCKLED**

**Ignition Cycles At Non-Deployment 31773**

**Ignition Cycles At Investigation 31774**

**Maximum SDM Recorded Velocity Change (MPH) -2.49 along the X-Axis.  
Algorithm Enable to Maximum SDM Recorded Velocity Change (msec) 100**

**One Non-Deployment Event was recorded complete and written correctly to the EEPROM.**

**This particular EDR records 5 sec of pre-crash data at a 1 sec resolution rate. It also records 8 sec of pre-crash braking data at a 1 sec resolution.**

**Event Record 1 (Non-Deployment):**

**\* The vehicle speed indicated 5 sec before Algorithm Enable (AE) was 42 mph with a open brake switch. The brake switch remained open throughout the 8 sec before AE. The vehicle speed indicated 1 sec before AE was 32 mph.**

**Final Analysis:**

**The data involved in this General Motors SDM was recorded and written correctly within the vehicle's safety system micro-computers. To ensure a complete analysis, the data was reviewed in the Bosch 17.0 and found to be matching.**

ORIGINAL-CORRECTED

FATAL

Arrived 12/5

SOUTH CAROLINA DPS/OHS & DMV USE ONLY		Page # 1	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)		# Of Units 02	Amended - Attach Copy of Original Report <input checked="" type="checkbox"/>	Number 0042	Arrived 0050
---------------------------------------	--	----------	--	--	---------------	--	-------------	--------------

Date 10-29-2016	Time of Collision 0041	County 26	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- PP	Collision Location (Rt. # / Name) 5 544 /	0- Main Line 2- Alternate 5- Spur	6- Connection 7- Business	Miles:	Dir. N E S W	In Near City or Town of: CONWAY
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Lane # / Dir. 2 / 4 S W	Distance Offset .01 Miles	Direction N E S W	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Base Intersection (Rt. # / Name) / FOUNDERS DR	0- Main Line 2- Alternate 5- Spur	6- Connection 7- Business 9- Other	GPS COORDINATES 00 00' 00.00"		
R.R. Id.	From N E S W	Ramp Only 1- Entrance 2- Exit	To N E S W	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Second Intersection (Rt. # / Name) / EDWARDS LN	0- Main Line 2- Alternate 5- Spur	6- Connection 7- Business 9- Other	Latitude 33 47 53.95	Longitude 79 01 06.92

F-421607	Driver/Pedestrian's Full Name WASHINGTON EDWARD LEE	F-421608	Driver/Pedestrian's Full Name BIELAWA RYAN EDWARD
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Unit # 01	Sex M	Race B	Street 401 PITTMAN ST	Unit # 02	Sex M	Race W	Street 124 BRONZE LOOP APT 34
DOB 09-22-1985	City, State, & Zip CONWAY SC 29526			DOB 01-25-1997	City, State, & Zip CONWAY SC 29526		

State SC	Driver's License # 100476335	Class D	Insurance Company: PROGRESSIVE	State NY	Driver's License # 598695341	Class D	Insurance Company:
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Year 2002	Body 4S	Vehicle Make SATU	VIN # 1GBZSS2892Z251139	Year	Body	Vehicle Make	VIN #
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State SC	Year 2016	License Plate # LN1926	Owner's D.L. # UNKNOWN	State	Year	License Plate #	Owner's D.L. #
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Home Telephone (843) 2485108	Owner's Full Name GREENE TALIB ABDUL MALIK	Home Telephone ( )	Owner's Full Name
------------------------------	--	--------------------	-------------------

Bus. Telephone ( )	Street 1705 FOSTER AVE	Bus. Telephone ( )	Street
--------------------	------------------------	--------------------	--------

Contributed To Collision Yes No	City, State, & Zip CONWAY SC 29526	Contributed To Collision Yes No	City, State, & Zip
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Estimated Speed 42	Speed Limit 40	CDL Req: Yes No	T/B S Req: Yes No	Alc/Drg info (see back): Yes No	Code 99	Summons # 0622468	Code 95	Summons # 0622468	Code 96	Summons #	Code	Towed By SQUEAKY'S	Yes No
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State	Year	License Plate #	Owner's D.L. #
-------	------	-----------------	----------------

Unit #	Sex	Race	Street	Home Telephone ( )	Owner's Full Name
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DOB	Birth Date	City, State, & Zip	Bus. Telephone ( )	Street
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State	Driver's License #	Class	Insurance Company:	Contributed To Collision Yes No	City, State, & Zip
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Year	Body	Vehicle Make	VIN #	Estimated Speed	Speed Limit	CDL Req: Yes No	T/B S Req: Yes No	Alc/Drg info (see back): Yes No	Code	Summons #	Code	Towed By	Yes No
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Dir. of Travel: Unit 1: N S E (W) Unit 2: S E W Unit 3: N S E W
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Unit 1 Dam. \$ 4000	Unit 2 Dam. \$ 0	Unit 3 Dam. \$	Prop. Dam. 1 \$	Prop. Dam. 2 \$
---------------------	------------------	----------------	-----------------	-----------------

Property Owner (Witness) CAREY PRESTON III G	Property Owner (Witness) CRAMER KELCEE
Address 220 LOW COUNTRY DR CONWAY	Address 634 HWY 544 CONWAY
State SC Zip: 29526 Phone: 2403970543	State SC Zip: 29527 Phone: 6168860480

Photo: Describe What Happened (Refer to Units by Number) (Y) N
--

UNIT 1 WAS TRAVELING NORTH BOUND AT A SPEED GREATER THAN THE POSTED SPEED LIMIT, IN LANE 2 OF 4 ON SC-544 IN MY JURISDICTION. UNIT 2 WAS A PEDESTRIAN CROSSING SC-544 IN AN EAST BOUND DIRECTION. UNIT 1 STRUCK UNIT 2 RESULTING IN DEATH TO UNIT 2. UPON FURTHER INVESTIGATION THE DRIVER OF UNIT 1 WAS FOUND TO BE INTOXICATED AND CHARGED WITH FELONY DUI AND DUS.

*Why Isn't the charges corrected?? HIT AND RUN!!!*

CORRECTED: TIME NOTIFIED, TIME OF COLLISION, LANE DIRECTION, UNIT DIRECTION.

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 WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name GUYETT - GLEN J.	Rank SMPO	Badge # 953	Jurisdiction Code 2602	Review Date 04-05-2017	Reviewer's Name Jaff Jordan	Rank JWJ	Internal Agency Code 2016026010
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Received Date: 04/24/2017 *Why Isn't RYAN DIRECT RESULTS not documents/collision report we back and forth the collision*

In a wrongful death action, motion by defendant for a direct verdict was granted by the General Sessions Court, Sumter County, and the plaintiff appealed. The Supreme Court held that under the evidence if the defendant was traveling at a speed slightly above the speed limit on a protected highway it was not a contributing factor in the mishap which occurred when plaintiff's decedent after stopping, proceeded to cross a four-lane highway from the private entrance of a shop. Defendant traveling on a favored highway was entitled to assume that the stopped vehicle entering the highway from a private drive or parking lot would wait to cross or enter the highway until it was safe to do so. Where defendant had seen the decedent stop defendant's actions here after increasing lanes checking for traffic approaching the intersection and not seeing decedent's vehicle until 30 feet away was not evidence of failure to keep a proper lookout.

See: Patsy Blandings vs. Richard Hammel 267 S.C. 352 228 S.E. 2d 271

## Error By Trial Judge Exhibit E:

The trial judge granted defendant's motion for a direct verdict. He concluded that the sole proximate cause of the accident was the negligence or contributory negligence on the part of the deceased. The lower court also held that if the defendant was negligent and his negligence was a concursing cause of the accident certainly more than half the negligence would be on the part of the plaintiff. We agree that the cause of the accident was the sole negligence of the deceased and affirm the judgment.

SEE Patsy Blandins vs. Richard Hammel 267 S.C. 352 228 S.E. 2d 251.

SEE attached document from Progressive auto insurance

Under the Sudden Emergency doctrine, whenever driver of an automobile is confronted with a sudden emergency brought about by the negligence of another and not his own, and is compelled to act instantly to avoid a collision or an injury, that driver is not guilty of negligence if he makes such a choice as a person of ordinary prudence placed in a like position might make, even though he did not make the wisest decision. (See attached document, Progressive auto insurance statements).

SEE Estate of Haley ex rel. Haley vs. Brown 634 S.E.2d 62, 70 S-C APP  
JULY 24, 2006 S.E.2d

SEE Jackson vs. United States 2018 WL 1755503 18 F. D.S.C. APP 12, 2018, S.E.2d

SEE Garrett vs. Steenwisk 2019 WL 6175109, 2 S-C APP. NOV 20, 2019 S.E.

This is as shown before me.  
on Sept 10, 2020  
E. L. Washington, Notary Public  
My Commission Expires July 27, 2026

Respectfully Submitted,  
Edward L. Washington  
Ed L. Wash...  
9/10/20

**PROGRESSIVE**<sup>®</sup>

Underwritten by Progressive Northern Insurance Company

*Mike Marshall*  
2024 Corporate Centre Dr. Ste 201  
Myrtle Beach, SC 29577  
Phone# 843-213-3956  
Fax# 844-268-4650  
Email [Michael.Marshall@progressive.com](mailto:Michael.Marshall@progressive.com)

July 12, 2020

Edward Washington #311014  
Broad River Correctional Inst.  
Wateree 284  
4460 Broad River Rd.  
Columbia, SC 29210

RE: Estate of Ryan Bielawa vs. Edward Washington  
Claim Number: 174111964  
Date of Loss: October 29, 2016

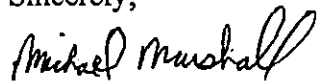
Dear Mr. Washington:

I received your letter dated July 3, 2020 regarding the above-mentioned accident and if Progressive Insurance considered it a hit & run.

Per your recorded statement you gave me and speaking with witnesses I didn't determine that this was a hit and run accident. You said you went down the road and turned around in an apartment complex and went back to the scene to find out what had happened.

If you should have any questions or concerns, please feel free to contact me at any time.

Sincerely,



Michael Marshall  
Sr. Litigation Specialist



Underwritten by Progressive Northern Insurance Company

*Mike Marshall*  
2024 Corporate Centre Dr. Ste 201  
Myrtle Beach, SC 29577  
Phone# 843-213-3956  
Fax# 843-448-7239  
Email [Michael\\_Marshall@progressive.com](mailto:Michael_Marshall@progressive.com)

Edward Washington HCO2111826227  
4150 J. Rueben Long Ave.  
Conway, SC 29526

RE: Estate of Ryan Bielawa vs. Edward Washington  
Date of loss: 10/29/16

Dear Mr. Washington,

I received your letter dated 11/9/18.

Progressive Northern Insurance found both you and Mr. Bielawa contributed to the accident equally since you both were under the influence and Mr. Bielawa wasn't crossing the street in the crosswalk.

The wording on the Covenant means that you are not liable to pay anything over the \$25,000 we paid on your behalf to resolve the claim & lawsuit.

As far as the police officer's report is concerned, you would need to contact him to discuss any questions you have.

If you should have any questions or concerns, please feel free to contact me any time.

With kind regards,

Michael Marshall  
Sr. Litigation Specialist

Claims Representative (Progressive)  
Mike Marshall

Mr. Marshall, explain your occupation as a Progressive auto insurance SR Litigation Specialist.

1. How long have you been a SR Litigation Specialist for Progressive auto insurance?
5. So basically, you would be, or the insurance company would be experts in accidents, hit and runs, etc? YES
4. How did you come to know about the defendant's situation? The victim's mother sued the insurance to the car was insured by that the defendant was driving which is progressive
5. The victim's mother, she sued progressive auto insurance because it's the insurance company the defendant's car was insured by correct? YES
6. Didn't the victim's mother demand a jury trial for that particular civil lawsuit? YES
7. Being that the victim's mother demanded a jury trial for the civil lawsuit, what was the results of that trial? The mother settled out and was paid \$25,000. There was no jury trial.
8. So the civil suit was settled by you (Progressive) and the law office of Michael O'Sullivan correct? YES
9. Progressive paid out \$25,000 for mother, but the insurance claim was \$25,000 per person and \$50,000 per accident bodily injury liability. The victim's mother was paid out \$25,000, why wasn't she paid out the \$50,000?
10. MR. MARSHALL, you did a full investigation on this matter correct? YES
11. You even did an investigation on hit and run in this matter correct? YES
12. In your investigation on hit and run, did you interrogate or interview any other witnesses other than the defendant? YES
13. How many other witnesses did you interview?
14. You also interviewed the defendant correct? YES
15. And what was Progressive auto insurance's ruling of the hit and run after that investigation? They determined no hit and run
16. Mr. Marshall in the complaint of the lawsuit, the facts of the complaint, did the victim's mother's attorney's mention that the defendant hit and ran in the complaint of the lawsuit at anytime? NO
17. Does the complaint state that the defendant fled the scene, which is a crime of negligence or recklessness? NO

Edward L. Washington #10104  
Broad River Correctional Inst.  
Nantuxito 284  
4400 Broad River Rd.  
Columbia, S.C. 29210



RECEIVED

SEP 16 2020  
SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS

1220 SENATE ST.

COLUMBIA, S.C. 29201

P.O. Box 111629

Columbia, S.C. 29211

RECEIVED

SEP 14 2020

