

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington Circuit Court Judge

Case No. 2011-CP-10-3651
Case No. 2010-SC-87-2381

Hoang Berry.....Petitioner,

v.

Stokes Import Collision.....Respondent

APPENDIX

April 1st, 2013

Jason G. Soper
2129 Dorchester Road
N. Charleston, SC 29405
(843) 747-6634
Attorney for Petitioner (76352)

Clay Walker, Esquire
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Columbia, SC 29260
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Attorney for Respondent

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Hoang Berry, Appellant,

v.

Stokes Import Collision Center, Respondent.

Appellate Case No. 2012-207187

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2013-UP-007
Submitted December 3, 2012 – Filed January 9, 2013

AFFIRMED

Jason G. Soper, of Soper Law Firm, LLC, of Charleston,
for Appellant.

Harry Clayton Walker, Jr. and Robert Lawrence Reibold,
of Walker & Reibold, LLC, of Columbia, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Berry's argument concerning the ineffectiveness of the court provided interpreter during trial: *Kleckley v. Nw. Nat'l Cas. Co.*, 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000) (noting an issue must be raised to and ruled upon by both the trial court and an intermediate appellate court to be properly preserved for review).
2. As to Berry's argument concerning the circuit court's failure to provide her an interpreter during her appeal: *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (noting an issue that is raised for the first time on appeal is not preserved for appellate review).

AFFIRMED.¹

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington Circuit Court Judge

Case No. 2011-CP-10-3651
Case No. 2010-SC-87-2381

Hoang Berry..... Appellant,

v.

Stokes Import Collision..... Respondent

PETITION FOR REHEARING FROM ORDER AFFIRMING CIRCUIT COURT

PLEASE TAKE NOTICE that the Appellant, by and through her undersigned attorney, moves before this Honorable Court to reconsider the Court's Ruling in its Order filed January 9th, 2013.

With regard to the Motion for Rehearing, the Appellant respectfully submits that the Court reconsider and alter or amend its Order of January 9th, 2013. This motion is made pursuant to the South Carolina Appellate Rules of Practice, Rule 221.

STATEMENT OF THE CASE

On November 9th, 2010 the Appellant filed a Complaint against Stokes Import Collision Center in the Small Claim Court of Charleston County. There was a bench trial on May 2nd, 2011. An Order of Disposition was filed on May 3rd, 2011 in favor of Stokes Import Collision.

Finally, a Return was prepared and signed by the Honorable James Turner on June 3rd, 2011.

An Appeal was filed on May 23rd, 2011 in the Court of Common Pleas. The Appellant appeared in front of the Honorable Kristi L. Harrington on November 21st, 2011. On the 15th of December a judgment was entered in favor of Stokes Import Collision. The Order of Magistrate Turner was affirmed and the Appellants appeal was denied.

Appellant filed a Notice of Appeal to the Court of Appeals on February 1st, 2012. On January 9th, 2013 an Order affirming the lower court was filed with the South Carolina Court of Appeals.

ARGUMENTS

The Appellant respectfully offers and argues the following reasons why the Court of Appeals should reconsider its ruling in regard to the abovementioned case.

- a. As to the Court's Order stating Ms. Berry's argument concerning the ineffectiveness of the court provided interpreter during trial was denied because the issue was not properly preserved for review.

An individual should be aware of his or her rights and duties as a litigant. The Appellant didn't fully understand her rights and duties as a *pro se* litigant. The Appellant, a *pro se* litigant, was not able to understand what her responsibilities were due to the difficulties a language barrier creates.

- b. As to the Court's Order stating Ms. Berry's argument concerning the circuit court's failure to provide an interpreter during her appeal was denied because an issue that is raised for the first time on appeal is not preserved for appellate review.

Again, Appellant respectfully argues that she didn't fully understand her rights and duties as a *pro se* litigant. An individual should be aware of his or her rights and duties as a litigant in a case. Due to the language barrier between Appellant and the courts, she was not aware of her responsibilities.

It is respectfully submitted that the Court reconsider and amend its ruling to reflect a remand. Although this Court found that the issues raised in the Appellant's Final Brief were not

properly preserved for review, the Appellant respectfully requests this Court remand her case so that she may have equal access to justice.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jason G. Soper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jason G. Soper
2129 Dorchester Road
N. Charleston, SC 29405
843.747.6634 tel
843.554.6126 fax
SC Bar# 76352
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011-CP-10-3651

Hoang BerryAppellant,

v.

Stokes Import CollisionRespondent.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

Respondent Stokes Import Collision hereby submits its Return to Appellant's Petition for Rehearing. As discussed below, Appellant's Petition for Rehearing should be denied.

Argument

Appellant filed a Petition for Rehearing pursuant to Rule 221, SCACR. Appellant argues that this Court should waive its error preservation requirements because Appellant's language difficulties allegedly prevented her from understanding her responsibility to preserve issues for appeal. Appellant then requests that this case be remanded.

The petition should be denied. Appellant's pro se status provides no basis for ignoring issue preservation requirements. Additionally, the sole relief available to Appellant under Rule

221, SCACR, is a rehearing. Remand is not available, and would not be appropriate for a number of reasons.

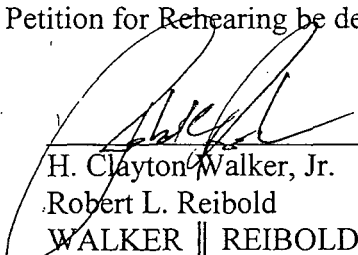
I. Appellant, Like any Litigant, Was Required to Preserve Error for Review.

Appellant cites no authority in support of her argument, and Appellant's pro se status provides no basis for ignoring the requirements of issue preservation. A pro se litigant is held to the same standards as in an attorney. *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (the court will not hold a layman to any lesser standard than is applied to an attorney).

II. Remand Is Inappropriate.

Appellant has requested remand, although she does not specify whether she seeks remand to the trial court or the intermediate appellate court. Such relief is inappropriate. Rule 221(a), SCACR, authorizes a petition for rehearing. Even if Appellant's petition were granted, Appellant would receive, at most, a new hearing before this Court. Moreover, it would be inappropriate to order remand before the other reasons for affirmance presented in Respondent's brief are addressed.

Respondent respectfully requests that the Petition for Rehearing be denied.



H. Clayton Walker, Jr.
Robert L. Reibold
WALKER || REIBOLD
Post Office Box 61140
Columbia, South Carolina 29260
(803) 454-0955

ATTORNEYS FOR RESPONDENT

2/11, 2013

The South Carolina Court of Appeals

Hoang Berry, Appellant,

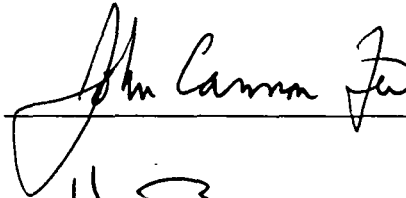
v.


Stokes Import Collision Center, Respondent.

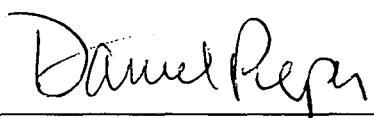
Appellate Case No. 2012-207187

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ C.J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

Jason G. Soper

Robert Lawrence Reibold

Harry Clayton Walker, Jr.

FILED
21 Jul 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 22 2013

S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington Circuit Court Judge

Case No. 2011-CP-10-3651
Case No. 2010-SC-87-2381

Hoang Berry..... Appellant,

v.

Stokes Import Collision Center.....Respondent

RECORD ON APPEAL

August 20th 2012

Jason G. Soper, Esquire
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ORDER OF
DISPOSITION

Hoang Berry
926 Ashley Hall Rd
Charleston, SC 29407

PLAINTIFF(S)

Vs

FILED IN CHARLESTON COUNTY

Stokes Import Collision
Center
3570 Ashley Phosphate Road
North Charleston, SC 29423

MAY 03 2011

SMALL CLAIMS COURT

DEFENDANT(S)

IT IS ORDERED that the above referenced civil case shall reflect a disposition of:

- Settled
- Dismissed
- Default Judgment
- Find for the Plaintiff for Summons and Complaint (Transcript of Judgment will be issued ten (10) days from the court date.)
- Find for the Plaintiff for Claim and Delivery (Pick Up Order issued the day of court.)
- Find for Defendant
- Transferred to another Court

On, May 3, 2011, the party/parties to this action presented testimony and arguments. Based on the above information and findings of fact, an award was made to the Plaintiff/Defendant in the amount of \$ _____, plus filing fees of \$ _____, for a total of \$ _____.

IT SO ORDERED

JUDGE

Charleston County
Small Claims - North
4045 Bridge View Drive P. O. Box 70235
North Charleston, SC 29405
Phone: (843) 202-6650 Fax: (843) 202-6652

May 3, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE SMALL CLAIMS COURT
CASE NO: 2010-SC-87-2381
COMMON PLEAS: 2011-CP-10-3651

HOANG BERRY)


Plaintiff Appellant)

-versus-)

STOKES IMPORT COLLISION CENTER)

Defendant - Respondent)

RETURN

 THIS MATTER is an appeal from the Charleston County Small Claims Court.

The plaintiff filed her complaint on November 9, 2010 alleging a failure by the defendant to complete repairs sustained in an automobile collision. The defendant, Stokes denied the claim.

The bench trial was scheduled for May 2, 2011. The first language of Berry is Vietnamese and the delay was due to difficulty in securing a translator which she required. The court ruled in favor of the defendant, Stokes by written order issued on May 3, 2011. This appeal was filed and served on the trial court on May 26, 2011.

FACTUAL BACKGROUND

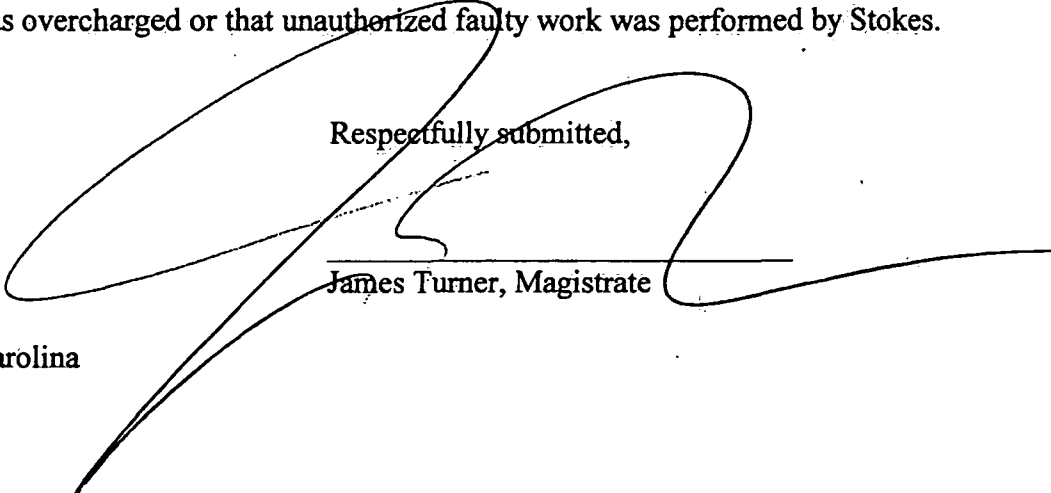
The Berry vehicle was involved in an automobile collision and declared a "total loss" after evaluations. Berry insisted that the vehicle be repaired instead because it was of sentimental value. Berry authorized various repairs by Stokes which conformed to written prepared estimates.

Stokes submitted into evidence the business records and supporting documentation concerning the repairs. Witnesses who handled the transaction also testified.


CONCLUSION

The court as the trier of fact determined that Berry could not prove claims by the preponderance of the evidence that she was overcharged or that unauthorized faulty work was performed by Stokes.

Respectfully submitted,


James Turner, Magistrate

North Charleston, South Carolina
June 3, 2011



JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

38



HOANG BERRY

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/decision of the Mag. is affirmed & appeal denied

CASE NO: 2011CP1003651

Hoang Berry VS Stokes Import Collision

This judgment was entered on the 15th day of December, 2011, and a copy mailed first class on Monday, December 19, 2011, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

10-SC-87-2381

Case No: _____
 Filed: _____
 Served: _____
 Default: _____
 Hearing: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

4045 BRIDGE VIEW DRIVE
PO BOX 70235
NORTH CHARLESTON, SC 29405

HOANG BERRY

STOKES IMPORT COLLISION CENTER

Plaintiff

vs.

Defendant

Street Address

Street Address

City

State

Zip

City

State

Zip

Phone

Phone

AGENT:

W.E. STOKES

c/o Stokes Volkswagen Corporation

3491 Ashley Phosphate Rd.

North Charleston SC 29418

SMALL CLAIMS COURT
SUMMONS

DATE: November 9, 2010

TO: STOKES IMPORT COLLISION CENTER, Defendant

YOU ARE SUMMONED and required to answer the allegations of the attached complaint within thirty (30) days from the first day after receipt of the summons. Your answer must be received by the magistrate's court located at 4045 BRIDGE VIEW DRIVE, North Charleston, South Carolina 29405.

If you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached complaint, plus interest and costs. Your answer must be filed in writing to the Small Claims Court prior to the expiration of the thirty (30) days. A clerk is available to assist you at the Small Claims Court from 8:30 a.m. to 4:30 p.m., Monday through Friday.

The Court will mail you a hearing date on this claim at the time your answer is received. If you have witnesses, books, receipts or other writings bearing on this claim, you must bring them with you at the time of the hearing or they will not be considered. If you wish to have witnesses called to court, see the Clerk of the Small Claims Court for assistance.

If you have a claim against the Plaintiff arising out of the same matter, you must file it with the Court at the time you file your answer.

Case No: 10-SC-87-2381

Filed: _____
Served: _____
Default: _____
Hearing: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

4045 BRIDGE VIEW DRIVE
PO BOX 70235
NORTH CHARLESTON, SC 29405

IN THE SMALL CLAIMS COURT *W.E. STOKES*

Hoang Berry
Plaintiff

Street Address

City State Zip

Phone

Stokes Impact Collision Center
Defendant
3570 Ashley Phosphate Rd
Street Address
N. Char SC 29423
City State Zip
843 552 0453
Phone

COMPLAINT

I, the plaintiff in this civil action, make the following claim against the defendant:

- 1.) I believe that the defendant is a resident of Charleston County.
- 2.) Check a, b, or c to indicate type of suit and supply documents required.
 - a. () This is a suit on a note; Two (2) copies of note attached. Defendant has defaulted in payment of said note with balance of \$ _____ now due and payable.
 - b. () This is a suit on account; Two (2) copies of statement attached. Sign as affiant swearing to statement and have your signature notarized.

SWORN and subscribed before me this _____ day of _____, 20 _____

Attached to this complaint is a statement of account which I swear to be true and correct, with no part of the balance having been paid.

NOTARY PUBLIC, State of South Carolina
My Commission Expires: _____

Affiant's Signature (Plaintiff)

c. (X) OTHER. This is a claim based on the following facts: (Describe Complaint)
(attach supplement if necessary)

FILED IN CHARLESTON COUNTY

SEE ATTACHED

NOV 09 2010

SMALL CLAIMS COURT

3.) I believe because of the above information, that I am entitled to, and request a judgment for \$4,415.18 and/or other relief:

(List any costs resulting from this action (Example: court costs, legal fees, interest)

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

H. Berry
Date

NOV 09 2010
Signature of Plaintiff or Attorney

Hoang Berry

Statement of Claim

This statement of claim is for Hoang Berry to pursue John Woods of Stokes Import Collision Center against false claims of repairs and fraud of Mrs. Hoang Berry.

After Mrs. Berry was involved in an auto collision, she took the vehicle to Stokes Import Collision Center where Mr. John Woods served as the adjuster for her claim (job #164860).

Mr. Woods was not honest in his dealings with Mrs. Berry concerning repairs for her vehicle. Her vehicle, a 1993 Honda Accord (valued around \$3000) was total in her accident but Mr. Woods, knowing the vehicle had sentimental values to Mrs. Berry, convinced her to rebuild the vehicle wrecked at a total cost of \$4715.18. The following is a list of problems Mrs. Berry had to deal with when she took her vehicle to Mr. John Woods of Stokes Import Collision Center.

1. Mr. Woods was told to make an estimate on the vehicle but do not do any work to the vehicle without authorization by Mrs. Berry. But he went ahead and authorized the repairs and billed it to Mrs. Berry.
2. There were charges that were over-charged such as the paint job, which was charged 14 hours to paint a bumper and side fender.
3. The following components still do not work or damaged after it left Mr. Wood's shop:
 - a. Cruise Control – charged for "cruise control actuator"
 - b. Air Conditioner
 - c. Radio
 - d. Rear seats show signs of neglect, scratches and tears.
 - e. Her prior maintenance records were lost by the center
 - f. Passenger airbag was not properly set into place
4. Upon receiving her vehicle, Mr. Berry drove it around but had to get the vehicle towed when her steering wheel turned hot during operations due to faulty wiring. She was charged towing fees for this occasion too.
5. Each time she took the vehicle into the shop, the vehicle was held there for over 1 month while they neglect to tell her an exact time frame.
6. Multiple requests by Mrs. Berry to attain documents/receipts of parts and components ordered for vehicle repairs were denied because Mr. Woods claimed that they were "secrets" and could not be given to her.
7. Her and her daughter's phone calls to the Collision Center were ignored. Also on multiple occasions, the plaintiffs were told that they would receive a phone call concerning the matter but never received any calls to address the growing problems of the vehicle.



8. The only settlement that they were offered was to take the amount lost and put it towards deductions of a vehicle purchased on their lot.

Mrs. Hoang Berry is seeking to reclaim the \$4715.18 that she had to pay for her vehicle.

X Hoang Berry

09-27-2010

X Toan Dao

09/27/2010

Preparer's Name

9/27/10
Notary of SC
Verlecia McElveen

VERLECIA McELVEEN
Notary Public - State of South Carolina
My Commission Expires August 08, 2014

SALES DRAFT

STOKES MAZDA VOLKSWAGEN
3570 ASHLEY PHOSPHATE RD
N CHARLESTON, SC 29418
TERMINAL 1146454

OKES IMPORT COLLISION CENTER

3570 Ashley Phosphate Rd
PO BOX 40909
N Charleston, SC 29423-0909
Phone: 843 552-0453
Fax: 843 552-0623
License #:

221211224995
01/22/2010 13:07:44

VISA
XXXXXXXXXX
AUTH. TRANS. ID. 160022619627396
INVOICE 52001 H02
AUTH. CODE 01521B

SALE TOTAL \$4415.18

CUSTOMER COPY

CHARLESTON, SC 29407

Insurance Co: SELF PAY
Claim # SELF PAY
Repair Order # 164860
Re: 1993, HOND ACCORD SE

Dear KIM BERRY :

Enclosed is the documentation for the repair work performed on your vehicle.
The following is a breakdown of the billing and payments received:

Repair Order Amount:	\$	4715.18
Supplement Amount ¹ (1):	\$	0.00
Supplement Amount ¹ (2):	\$	0.00
Supplement Amount ¹ (3):	\$	0.00
Total Amount:	\$	4715.18
Less Payment Received:	\$	300.00
Current Balance Owed:	\$	4415.18

Please review your records and issue payment for the current balance due. Thank you for your prc attention to this matter.

Sincerely,



MANAGER

Insured:
Owner:
Address:

Cellular:
Evening:

Inspect
Location:

Insurance
Company:

1993 HOND
VIN: JHMCI
Air/Condit
Cruise Cor
Body Side
Electric C
Power Stee
Power Lock
AM Radio
Cassette
Premium Ra
Passenger
Bucket Sea
Aluminum/A

NO.

- 1
- 2
- 3
- 4
- 5*
- 6#
- 7*
- 8

¹Refers to costs for repairs not identified in the original estimate.

ESTIMATE OF RECORD
1993 HOND ACCORD SE 4-2.2L-FI 4D SED H/MIST Int:TAN

NO.	OP.	DESCRIPTION	QTY	EXT.	PRICE	LABOR	PAINT
9		Refn underside hood					1.5
10		Aim headlamps				0.5	
11		AIR CONDITIONER & HEATER					
12#	Repl	RCY Air conditioning lines, steel	1		75.00	1.0 M	
13*	Repl	RCY Condenser	1		Incl.	m 1.0	
14		Evacuate & recharge				m 1.4 M	
15*		Refrigerant recovery				m 0.0 M	
16**	Repl	A/M R134A Conversion kit	1		24.99		
17#	Repl	Freon 134a	1		22.50		
18#	Repl	Coolant	1		15.00		
19#	Subl	Hazardous Waste	1		5.00	X	
20#	Rpr	Pull and align unibody				3.0 F	
21#	Repl	Cover Car / Mask for Overspray	1		10.00		0.2
22#	Repl	Flex Additive	1		12.00		0.1
23#		Corrosion Protection	1		10.00		
24		RESTRAINT SYSTEMS					
25*	Repl	RCY Driver air bag +25%	1		125.00	m 0.5 M	
26*	Repl	RCY Psngr air bag +25%	1		125.00	m 1.0 M	
27*	Repl	RCY Control module 4 door & wagon +25%	1		Incl.	m 0.5 M	
28		COOLING					
29*	Repl	Upper hose	1		24.35	m 0.2	
30	Repl	P/S belt	1		19.83	m 0.4	
31		STEERING GEAR & LINKAGE					
32*	Repl	RCY P/S pump +25%	1		50.00	m Incl. M	
33		Deduct for Overlap				-0.2	
34		WINDSHIELD					
35	Repl	RT Washer nozzle 4 door DX, Japan built	1		5.85		
36	Repl	LT Washer nozzle 4 door DX, Japan built	1		5.85		
37#	Subl	CLEARVIEW WINDSHIELD REPLACEMENT	1		222.78	X	
38		FENDER					
39	Repl	LT Molding DX, LX & EX	1		25.05	0.3	
40		ELECTRICAL					
41*	Repl	RCY RT FRT SPEED SENSOR +25%	1		43.75	m Incl. M	
N 42#	Subl	ALIGN, ENGINE IDLE, RADIO CODE	1		424.66	X	
43*	Repl	RCY Actuator assy +25%	1		62.50	m Incl.	
44*	Repl	RCY Tray +25%	1		25.00	0.3	
45		OTHER CHARGES					
46#		Towing	1		175.00		
47#		Storage	5		0.00		
Subtotals ==>					2071.61	33.0	14.0

Line 42 : REPAIR A/C SYSTEM, INSTALL CRUISE CONTROL ACTUATOR AND ADJUST

at 04:10 PM

Job Number: 164860

ESTIMATE OF RECORD

1993 HOND ACCORD SE 4-2.2L-FI 4D SED H/MIST Int:TAÑ

Parts		1244.17
Body Labor	25.6 hrs @ \$ 40.00/hr	1024.00
Paint Labor	14.0 hrs @ \$ 40.00/hr	560.00
Mechanical Labor	4.4 hrs @ \$ 95.00/hr	418.00
Frame Labor	3.0 hrs @ \$ 55.00/hr	165.00
Paint Supplies	14.0 hrs @ \$ 26.00/hr	364.00
Sublet/Misc.		652.44
Other Charges		175.00

SUBTOTAL		\$ 4602.61
Sales Tax	\$ 1608.17 @ 7.0000%	112.57

GRAND TOTAL		\$ 4715.18
ADJUSTMENTS:		
Deductible		0.00

CUSTOMER PAY		\$ 0.00
INSURANCE PAY		\$ 4715.18

STOKES COLLISION CENTER DOES NOT, AND WILL NOT RECOGNIZE ANY FORM OF "PAINT CAPPING". ALL PAINT AND MATERIALS WILL BE CALCULATED BY "ACCEPTED INDUSTRY METHODOLOGIES". ANY PAINT AND MATERIALS NOT PAID BY AN INSURANCE COMPANY DUE TO A "SELF IMPOSED PAINT CAP" OR "PRE-SET THRESHOLD" WILL BECOME THE RESPONSIBILITY OF THE VEHICLE'S OWNER. VEHICLES WILL NOT BE RELEASED WITHOUT A "CONFIRMED FINAL PRICE" FROM INSURANCE COMPANY. THE OWNER OF THE VEHICLE WILL BE HELD RESPONSIBLE FOR ANY AND ALL PAYMENTS NOT RECEIVED FROM THE INSURANCE COMPANY.

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Unless otherwise noted all items are derived from the Guide AOG4420, CCC Data Date 01/11/2010, and the parts selected are OEM parts manufactured by the vehicle's Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor information provided by MOTOR may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. Non-Original Equipment Manufacturer aftermarket parts are described as AM, Qual Repl Parts or Comp Repl Parts which stands for Competitive Replacement Parts. Used parts are described as LKQ, Qual Recy Parts, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries. Some 2010 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The Pathways estimator has a complete list of applicable vehicles. Parts numbers and prices should be confirmed with local dealership.

COUNTY OF

Hoang Berry

Plaintiff(s)

vs.

STOKES Import Collision

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-10-3651

FILED IN CHARLESTON COUNTY
MAY 26 2011
SMALL CLAIMS COURT

(Please Print)

Submitted By: Hoang Berry

Address:

[Redacted Address]

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | | | |
|---|--|---|--|--|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-CP-__ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slanded/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) | | |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstated Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input checked="" type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) | | |
| <p>Special/Complex /Other</p> <table border="0"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) </td> </tr> </table> | | | | <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) |
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Submitting Party Signature:

[Handwritten Signature: Hoang Berry]

Date: 16 May 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2011-CP-10-3657

Huang Berry

-SC-

PLAINTIFF

- VERSUS -

APPEAL

Stokes Impact Collision

DEFENDANT

FILED
2011 MAY 23 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

I, Huang Berry, PLAINTIFF DEFENDANT IN THIS CIVIL ACTION MAKE THE FOLLOWING CLAIM.

1. I BELIEVE THAT THE PLAINTIFF DEFENDANT RESIDES IN CHARLESTON COUNTY AND IS WITHIN THE JURISDICTION OF THIS COURT.

2. I MAKE THIS APPEAL BASED ON THE FOLLOWING ERRORS COMMITTED BY THE LOWER COURT SEE ATTACHMENT

I want all the bill from Mr John
Mr John say all the parts he buy to
put in my car belong to him and he
insure my car engine my car I will
have a lot of money I have half my book
a larger motor in my car

3. I BELIEVE, BECAUSE OF THE ABOVE INFORMATION, THAT I AM ENTITLED TO AND REQUEST: \$ 4415.18

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

DATED: 16 May 2011

SIGNED: X HD Berry

ADDRESS OF PLAINTIFF

ADDRESS OF DEFENDANT

Huang Berry

Stokes Impact Collision Center
3570 Ashley Phosphate Road
North Charleston SC 29423

TELEPHONE (BUSINESS)

843 552 0453
TELEPHONE (BUSINESS)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2011 -CP-10- 3657

Huang Berry

-SC-

FILED
2011 MAY 23 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PLAINTIFF

- VERSUS -

APPEAL

Stokes Impact Collision

DEFENDANT

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North Charleston SC 29423

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FILED IN CHARLESTON COUNTY

MAY 26 2011

SMALL CLAIMS COURT

Deposition of Audio Recording of Hearing

1 IN THE SMALL CLAIMS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY
4 HEARING BEFORE HONORABLE JAMES TURNER
5 VOLUME I MAY 3, 2011

6 BERRY,

7 Plaintiff,

8 vs.

CASE NO. SC872010002381

9 STOKES IMPORT COLLISION CENTER,

10 Defendant.

11
12 DATE: MAY 3, 2011

COPY

13 LOCATION:

SMALL CLAIMS COURT
NORTH CHARLESTON, SOUTH CAROLINA

14 REPORTED BY:

15 RONDA K. BLANTON, RPR
16 NCRA REGISTERED PROFESSIONAL REPORTER
17 CLARK & ASSOCIATES, INC.
18 P.O. BOX 73129
19 CHARLESTON, SC 29415
20 843-762-6294
21 WWW.CLARK-ASSOCIATES.COM
22
23
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25

Deposition of Audio Recording of Hearing

1 P R O C E E D I N G S

2 MALE VOICE: (Inaudible.) The water had
3 gotten in the carburetor. You have anywhere, trying to
4 start.

5 THE COURT: Now you saw that? You saw
6 water in the carburetor?

7 MALE VOICE: Right. (Inaudible.) We ended
8 up taking the carburetor apart. (Inaudible.) And when
9 we took it apart, we noticed the water in there and
10 corrosion and everything where it was sitting.

11 THE COURT: Okay. Okay. Now, I mean,
12 'cause, you know, listen to this, Major makes the point
13 in his answer, you know. Maybe there was a lot of heavy
14 rain and stuff. Water could have gotten in there. What
15 you think about that?

16 MALE VOICE: Well, gas cap was missing; and
17 the gas cap door was open. With heavy rain, it could
18 have went in that way too.

19 THE COURT: Okay. Okay. But how do you
20 feel like it went in? Do you feel like it went in after
21 the hole in the gas tank or what?

22 MALE VOICE: Well, that's what we feel like
23 it was because, like I said, the hole was drilled right
24 there.

25 THE COURT: Uh-huh.

Deposition of Audio Recording of Hearing

1 MALE VOICE: (Inaudible.) And we were told
2 that, you know, there was water in the trunk. The hole
3 in the gas tank lined up with the hole in the trunk.

4 THE COURT: Okay. But assuming that she
5 had a gas cap and there wasn't a hole in the gas tank,
6 no matter how bad the storm is, chances are the water's
7 not gonna get in.

8 MALE VOICE: (Inaudible.)

9 THE COURT: Okay. All righty. And
10 everything that you did on this bill that you charged --
11 (Inaudible.) Related to that?

12 MALE VOICE: Yes, sir.

13 THE COURT: 'Cause I see some spark plugs
14 on there.

15 MALE VOICE: Oh, I -- we replaced the spark
16 plugs too. We did that because we -- (Inaudible.) We
17 couldn't get it started. We checked. We pulled them
18 out. We noticed fluid all over them. We thought at
19 first it was flooded out with gasoline. (Inaudible.)
20 But it wasn't.

21 THE COURT: Yeah.

22 MALE VOICE: And then after we noticed
23 that, then I went ahead -- that's when we checked the
24 fuel sample, and it had water in it.

25 THE COURT: Okay. And -- and tell us just

Deposition of Audio Recording of Hearing

1 so we're clear why you replaced the plugs.

2 MALE VOICE: I replaced the plugs, like I
3 said, when I -- (Inaudible.) We thought they were
4 flooded out and -- (Inaudible.) Doesn't really have
5 nothing to do with what he did. I mean, they weren't --

6 THE COURT: That's the point.

7 MALE VOICE: Right.

8 THE COURT: Okay. So probably he shouldn't
9 be asking for -- (Inaudible.) For the spark plugs.

10 MALE VOICE: Yeah. Right.

11 THE COURT: That's why I asked the
12 question. Now, the fuel filter, tell me about that.

13 MALE VOICE: Okay. The fuel filter's in
14 the carburetor.

15 THE COURT: Yeah.

16 MALE VOICE: And water goes through that,
17 too, it -- it stops that up.

18 THE COURT: Okay. All right. I'll buy
19 that, and you put a little -- (Inaudible.)

20 MALE VOICE: I put -- (Inaudible.) Yeah,
21 we just had to -- checking all the water -- (Inaudible.)
22 Just a little so we added -- (Inaudible.)

23 THE COURT: All right. But, again, that
24 probably wouldn't mean a charge for -- (Inaudible.)

25 MALE VOICE: (Inaudible.)

Deposition of Audio Recording of Hearing

1 THE COURT: Okay. And if you were supposed
2 to do a head lamp and a -- (Inaudible.)

3 MALE VOICE: Yes, he has -- (Inaudible.)

4 THE COURT: Okay. Anything else that would
5 be important to tell me about this? I mean, once you --
6 (Inaudible.) Car was running and she drove it off?

7 MALE VOICE: Yeah. Once we got it done,
8 she came, picked it up.

9 THE COURT: Hasn't complained to you since
10 that it was acting wrong.

11 MALE VOICE: (Inaudible.)

12 THE COURT: All right. Okay. Do y'all
13 want to ask him anything else? You can ask questions of
14 anything I did.

15 (Inaudible.)

16 MALE VOICE: To tell you the truth, I can't
17 say if it was freshly done that day or a week ago or a
18 month ago or three months ago.

19 THE COURT: Well, I think what he wants to
20 know, Mr. Cash, did it look like it was a hole that was
21 actually drilled in there?

22 MALE VOICE: Oh, yeah, it was definitely
23 drilled. It wasn't just in there.

24 THE COURT: Okay. Okay. Anything else you
25 want to ask him real quick?

Deposition of Audio Recording of Hearing

1 (Inaudible.)

2 THE COURT: All right. We thank you. You
3 can step down. I think you can be released if you need
4 to be. I don't know if we need to keep you any longer
5 unless you just want to stay. All right. Thank you.

6 (WHEREUPON, the witness was excused.)

7 THE COURT: You had another witness.

8 (Inaudible.)

9 THE COURT: Okay. All right. Let me get
10 from -- (Inaudible.) And I'll talk to you. You stay
11 out there. Raise your right hand.

12 A Witness,

13 having been first duly sworn, testified as follows:

14 THE COURT: Okay. The question I have some
15 things that -- (Inaudible.) Have a seat. All right.
16 Tell me your side of this.

17 MALE VOICE: (Inaudible.)

18 THE COURT: Right. Right.

19 MALE VOICE: (Inaudible.)

20 THE COURT: Yeah. It sounds like you did a
21 good job. Yeah, I mean, I think she agreed.

22 MALE VOICE: (Inaudible.)

23 THE COURT: Yeah. I can't imagine that was
24 easy either.

25 MALE VOICE: Right. (Inaudible.)

Deposition of Audio Recording of Hearing

1 THE COURT: I mean, given the age and all
2 that of the car, that's a lot of work.

3 MALE VOICE: Right.

4 THE COURT: Yeah.

5 MALE VOICE: (Inaudible.)

6 THE COURT: Uh-huh.

7 MALE VOICE: (Inaudible.)

8 THE COURT: Right. Right.

9 MALE VOICE: (Inaudible.)

10 THE COURT: You're asking two questions on
11 that one. One, I want to make sure you're telling me
12 you never drilled any holes in that trunk.

13 MALE VOICE: (Inaudible.)

14 THE COURT: Nor anybody that was helping
15 you.

16 MALE VOICE: (Inaudible.)

17 THE COURT: Okay. And -- and, two, I'm
18 curious that you -- (Inaudible.) How the water got in
19 the trunk.

20 MALE VOICE: (Inaudible.)

21 THE COURT: What did she say?

22 MALE VOICE: (Inaudible.)

23 THE COURT: Uh-huh.

24 MALE VOICE: (Inaudible.)

25 THE COURT: Did the -- (Inaudible.) The

Deposition of Audio Recording of Hearing

1 gas?

2 MALE VOICE: (Inaudible.)

3 THE COURT: Yeah. And I can believe that.

4 It's just, you know, Cash is testifying there's a hole

5 in the gas tank; and that concerns me. You don't want

6 to -- (Inaudible.) Put the pictures on the table

7 because I want to take them too and look at them.

8 MALE VOICE: (Inaudible.)

9 THE COURT: Yeah.

10 MALE VOICE: (Inaudible.)

11 THE COURT: Okay. When you were working on

12 the vehicle, you didn't notice those holes.

13 MALE VOICE: (Inaudible.)

14 THE COURT: Yeah.

15 MALE VOICE: (Inaudible.)

16 THE COURT: But they weren't in the gas

17 tank.

18 MALE VOICE: (Inaudible.)

19 THE COURT: Yeah. But I understand you

20 weren't especially looking for that.

21 MALE VOICE: (Inaudible.)

22 THE COURT: Yeah. Okay.

23 MALE VOICE: (Inaudible.)

24 THE COURT: And you never had any reason to

25 crank up the car or run it?

Deposition of Audio Recording of Hearing

1 MALE VOICE: (Inaudible.)
2 THE COURT: Okay.
3 MALE VOICE: (Inaudible.)
4 THE COURT: Okay.
5 MALE VOICE: (Inaudible.)
6 THE COURT: Okay.
7 MALE VOICE: (Inaudible.)
8 THE COURT: But, I mean, during that time,
9 you were working on it, did you -- did you crank it up,
10 drive it?
11 MALE VOICE: I drove it from --
12 (Inaudible.) Back into the -- (Inaudible.)
13 THE COURT: You didn't take it on the road?
14 MALE VOICE: (Inaudible.)
15 THE COURT: Okay. All right. It would
16 crank up every time. You didn't have to jump it?
17 MALE VOICE: (Inaudible.)
18 THE COURT: Okay.
19 MALE VOICE: (Inaudible.)
20 THE COURT: Yeah. Okay.
21 MALE VOICE: (Inaudible.)
22 THE COURT: Uh-huh.
23 MALE VOICE: (Inaudible.)
24 THE COURT: Yeah.
25 MALE VOICE: (Inaudible.)

Deposition of Audio Recording of Hearing

1 THE COURT: Uh-huh.

2 MALE VOICE: (Inaudible.)

3 THE COURT: Okay. So maybe it was a trip

4 not a -- (Inaudible.)

5 MALE VOICE: (Inaudible.)

6 THE COURT: Okay. All right.

7 MALE VOICE: (Inaudible.)

8 THE COURT: Uh-huh.

9 MALE VOICE: (Inaudible.)

10 THE COURT: What kind of -- I mean,

11 security do you have?

12 MALE VOICE: I have -- (Inaudible.)

13 THE COURT: Yeah. Just shot some --

14 (Inaudible.)

15 MALE VOICE: (Inaudible.)

16 THE COURT: Where was that -- (Inaudible.)

17 MALE VOICE: (Inaudible.)

18 THE COURT: Was it there?

19 MALE VOICE: Yeah, yeah.

20 THE COURT: Okay. Okay.

21 MALE VOICE: (Inaudible.)

22 THE COURT: Yeah, sure.

23 MALE VOICE: (Inaudible.)

24 THE COURT: I mean, you keep the car locked

25 up in something; or how did you secure it?

Deposition of Audio Recording of Hearing

1 MALE VOICE: (Inaudible.)

2 THE COURT: Yeah.

3 MALE VOICE: (Inaudible.)

4 THE COURT: So it was outside, not inside,
5 not behind a fence or anything.

6 MALE VOICE: Right.

7 THE COURT: Did -- did you ever check your
8 surveillance cameras to see if somebody ever tried to
9 break in or anything like that?

10 MALE VOICE: (Inaudible.)

11 THE COURT: Yeah.

12 MALE VOICE: (Inaudible.)

13 THE COURT: Oh, okay.

14 MALE VOICE: (Inaudible.)

15 THE COURT: All right. So you don't
16 know -- (Inaudible.) I got you.

17 MALE VOICE: (Inaudible.)

18 THE COURT: Yeah.

19 MALE VOICE: (Inaudible.)

20 THE COURT: Right.

21 MALE VOICE: (Inaudible.)

22 THE COURT: Is it out of gas? I mean, was
23 it empty on the -- (Inaudible.)

24 MALE VOICE: (Inaudible.)

25 THE COURT: Okay.

Deposition of Audio Recording of Hearing

1 MALE VOICE: (Inaudible.)
2 THE COURT: Okay.
3 MALE VOICE: (Inaudible.)
4 THE COURT: It might not have been working.
5 MALE VOICE: Right.
6 THE COURT: Yeah.
7 MALE VOICE: (Inaudible.)
8 THE COURT: Yeah. Yeah. Just in case.
9 Yeah.
10 MALE VOICE: (Inaudible.)
11 THE COURT: Maybe somebody else did.
12 MALE VOICE: (Inaudible.)
13 THE COURT: Syphon the gas out.
14 MALE VOICE: Right.
15 THE COURT: (Inaudible.)
16 MALE VOICE: (Inaudible.)
17 THE COURT: Yeah.
18 MALE VOICE: (Inaudible.)
19 THE COURT: (Inaudible.)
20 MALE VOICE: (Inaudible.)
21 THE COURT: That's all right.
22 MALE VOICE: (Inaudible.)
23 THE COURT: Uh-huh.
24 MALE VOICE: (Inaudible.)
25 THE COURT: Uh-huh.

Deposition of Audio Recording of Hearing

1 MALE VOICE: So, you know -- (Inaudible.)

2 THE COURT: Do that -- (Inaudible.)

3 MALE VOICE: (Inaudible.)

4 THE COURT: Yeah, uh-huh.

5 MALE VOICE: (Inaudible.)

6 THE COURT: Uh-huh.

7 MALE VOICE: (Inaudible.)

8 THE COURT: Uh-huh.

9 MALE VOICE: (Inaudible.)

10 THE COURT: Uh-huh.

11 MALE VOICE: (Inaudible.)

12 THE COURT: Uh-huh.

13 MALE VOICE: (Inaudible.)

14 THE COURT: Yeah.

15 MALE VOICE: (Inaudible.)

16 THE COURT: Uh-huh.

17 MALE VOICE: (Inaudible.)

18 THE COURT: Uh-huh.

19 MALE VOICE: (Inaudible.)

20 THE COURT: Yeah.

21 MALE VOICE: (Inaudible.)

22 THE COURT: Uh-huh.

23 MALE VOICE: (Inaudible.)

24 THE COURT: Yeah.

25 MALE VOICE: (Inaudible.)

Deposition of Audio Recording of Hearing.

1 THE COURT: Uh-huh.

2 MALE VOICE: (Inaudible.)

3 THE COURT: Uh-huh.

4 MALE VOICE: (Inaudible.)

5 THE COURT: Uh-huh.

6 MALE VOICE: (Inaudible.)

7 THE COURT: Really?

8 MALE VOICE: (Inaudible.)

9 THE COURT: Okay.

10 MALE VOICE: (Inaudible.)

11 THE COURT: Uh-huh.

12 MALE VOICE: (Inaudible.)

13 THE COURT: Uh-huh. I got -- I got all

14 that.

15 MALE VOICE: (Inaudible.)

16 THE COURT: Okay.

17 MALE VOICE: (Inaudible.)

18 THE COURT: All right. (Inaudible.)

19 MALE VOICE: (Inaudible.)

20 THE COURT: Okay. She's got a little --

21 (Inaudible.)

22 MALE VOICE: (Inaudible.)

23 THE COURT: Uh-huh.

24 MALE VOICE: (Inaudible.)

25 THE COURT: Right.

Deposition of Audio Recording of Hearing

1 MALE VOICE: (Inaudible.)

2 THE COURT: Okay.

3 MALE VOICE: (Inaudible.)

4 THE COURT: Uh-huh.

5 MALE VOICE: (Inaudible.)

6 THE COURT: Uh-huh.

7 MALE VOICE: (Inaudible.)

8 THE COURT: You had no reason to drill into
9 the trunk.

10 MALE VOICE: (Inaudible.)

11 THE COURT: Uh-huh.

12 MALE VOICE: (Inaudible.)

13 THE COURT: Okay. What is that --

14 (Inaudible.) That you did. There's not a computer or
15 something?

16 MALE VOICE: (Inaudible.)

17 THE COURT: All right. We'll walk around
18 to the -- (Inaudible.) When we get to it, I'll look at
19 it. Okay. That just shows the work you did.

20 MALE VOICE: Right.

21 THE COURT: Okay. Well, in the --

22 (Inaudible.) You know, your work was fine so -- I don't
23 know if I need to look at that.

24 MALE VOICE: (Inaudible.)

25 THE COURT: Uh-huh.

Deposition of Audio Recording of Hearing

1 MALE VOICE: (Inaudible.)
2 THE COURT: How did you get the trunk off
3 if you didn't drill?
4 MALE VOICE: (Inaudible.)
5 THE COURT: Okay. So it was a condition
6 that -- (Inaudible.)
7 MALE VOICE: Yeah.
8 THE COURT: Okay.
9 MALE VOICE: (Inaudible.)
10 THE COURT: Okay. (Inaudible.)
11 MALE VOICE: (Inaudible.)
12 THE COURT: All right. Okay. All right.
13 Anything else that we need to -- (Inaudible.) That we
14 need to talk about?
15 MALE VOICE: (Inaudible.)
16 THE COURT: Okay. Did you want to say
17 something?
18 FEMALE VOICE: (Inaudible.)
19 THE COURT: Yes.
20 FEMALE VOICE: (Inaudible.)
21 THE COURT: Yeah.
22 FEMALE VOICE: That's why I -- (Inaudible.)
23 THE COURT: Okay. Yeah. Well --
24 (Inaudible.) Okay. What I want to do is keep those and
25 look at them and think about it for a couple days. And

Deposition of Audio Recording of Hearing

1 let me kind of tell you what I'm thinking about, you
2 know, what the issues are legally anyway. And it might
3 be three. I started to say two. It might be three that
4 come to mind right now.

5 You know, the first theory is that Major
6 during the course of his work drilled holes in the trunk
7 and punctured the gas tank; and that's caused the
8 problems. Now, of course, he adamantly denies that. He
9 says he didn't do that. So I want to look at pictures
10 and, you know, get some idea of what I think about that
11 'cause at the end of this all, obviously, he has got two
12 prove two things.

13 One, is that he was at fault of this and it
14 was something that he did. And, obviously, if he
15 drilled a hole in the gas tank -- (Inaudible.) And then
16 whatever he did has got to be what caused the problem.
17 (Inaudible.) And, you know, then it gets a little
18 trickier. Because what's -- you got this issue about
19 the gas cap being off. Now, water could get in that
20 way. Certainly it would be a lot easier than the --
21 (Inaudible.) Gas tank. And there are two things we
22 gotta think about.

23 And then the last issue is, you know,
24 legally, I don't know that you can ever say as a
25 business owner whether -- (Inaudible.) Or not. You

Deposition of Audio Recording of Hearing

1 know, I'm just kind of working on this car as a project.
2 I got these regular cars so this one I'm not gonna lock
3 up and protect. I kind of think any time that you got
4 somebody's car, you gotta take measures to protect it as
5 best you can. Now, you can't guarantee its safety; but,
6 you know, given where you are and some of the activity
7 that you testified to because when you're -- when you're
8 telling me all that and I'm listening to you, there's a
9 thought running through my mind that somebody tried to
10 break in this car and get gas.

11 And is that your fault? No, but if you left
12 it out in the open knowing that them kind of things
13 happen around Beaufort Street, maybe -- (Inaudible.)
14 Yeah, I'm sure.

15 (Inaudible.)

16 THE COURT: This thing could happen any
17 time you have it. (Inaudible.)

18 (Inaudible.)

19 THE COURT: The whole time.

20 MALE VOICE: (Inaudible.)

21 THE COURT: Yeah. All right. So it wasn't
22 outside until the -- (Inaudible.)

23 MALE VOICE: (Inaudible.)

24 THE COURT: How many nights was it left
25 out, just approximately?

Deposition of Audio Recording of Hearing

1 MALE VOICE: (Inaudible.)
2 THE COURT: Okay.
3 MALE VOICE: (Inaudible.)
4 THE COURT: Uh-huh.
5 MALE VOICE: (Inaudible.)
6 THE COURT: Yeah.
7 MALE VOICE: (Inaudible.)
8 THE COURT: Uh-huh.
9 MALE VOICE: (Inaudible.)
10 THE COURT: Uh-huh.
11 MALE VOICE: (Inaudible.)
12 THE COURT: How did you get the water out
13 of the trunk?
14 MALE VOICE: (Inaudible.)
15 THE COURT: Okay. You just vacuumed it
16 out.
17 MALE VOICE: (Inaudible.)
18 THE COURT: All right. Okay. 'Cause, you
19 know, that's a little bothersome to me too is that it
20 came in with water in the area.
21 MALE VOICE: (Inaudible.)
22 THE COURT: And that worries me about, you
23 know, obviously, it would have been a different story if
24 he got the trunk, you know, bone dry. But you're
25 getting it with water in it so really there's a lot to

Deposition of Audio Recording of Hearing

1 think about. Yes?

2 FEMALE VOICE: (Inaudible.)

3 THE COURT: You know how the water got in
4 the trunk?

5 FEMALE VOICE: (Inaudible.)

6 THE COURT: I think you testified maybe the
7 sealant area around it had rusted or something so it
8 just got in or whatever, I guess, blew when the rain
9 came.

10 FEMALE VOICE: (Inaudible.)

11 THE COURT: Yeah.

12 FEMALE VOICE: (Inaudible.)

13 THE COURT: And now --

14 FEMALE VOICE: (Inaudible.)

15 THE COURT: Now, you say it had a hole in
16 it; but, yeah, did you know that it didn't have a hole
17 in it when you brought it to him?

18 FEMALE VOICE: Yes, sir, Your Honor.

19 (Inaudible.) I called him -- (Inaudible.)

20 THE COURT: Yeah.

21 FEMALE VOICE: (Inaudible.)

22 THE COURT: How often did you normally
23 drive that car?

24 FEMALE VOICE: I would say -- (Inaudible.)

25 THE COURT: Yeah. Yeah. It wasn't your

Deposition of Audio Recording of Hearing

1 regular car.

2 FEMALE VOICE: Yeah.

3 THE COURT: Uh-huh.

4 FEMALE VOICE: My means -- (Inaudible.)

5 THE COURT: I was just wondering if
6 somebody -- I mean, where did you keep the car? At your
7 house?

8 FEMALE VOICE: Yes.

9 THE COURT: And you live on Garfield?

10 FEMALE VOICE: Yes.

11 THE COURT: And you never had any attempted
12 break-ins of the car?

13 FEMALE VOICE: (Inaudible.)

14 THE COURT: Okay. Because, you know, those
15 things happen no matter where you live.

16 FEMALE VOICE: (Inaudible.)

17 THE COURT: Uh-huh.

18 FEMALE VOICE: (Inaudible.) The trunk.

19 THE COURT: Uh-huh.

20 FEMALE VOICE: (Inaudible.) Under the
21 trunk.

22 THE COURT: Uh-huh.

23 FEMALE VOICE: (Inaudible.)

24 THE COURT: Yeah. That's why I want to
25 study the pictures. So, I mean, you hear what he's

Deposition of Audio Recording of Hearing

1 telling me. He's adamant that he didn't drill into the
2 trunk; and I know you feel like he did, and I know --
3 (Inaudible.) That you felt like it was drilled. It
4 just worries me that -- it worries me that somebody
5 might have been trying to get in the car to get the gas
6 but -- okay.

7 So give me a few days. Those are the kind of
8 things I'm thinking about. You got the burden of proof.
9 You just -- (Inaudible.) So that's the way it works;
10 and let me study the pictures, and I hope to have a
11 decision for you sent out by the end of the week. Now,
12 if I decide that I agree with you -- (Inaudible.) Has
13 admitted on the stand if we do end up charging
14 Mr. Major, we're not gonna charge him for spark plugs;
15 and you're not gonna charge him for -- (Inaudible.)
16 Okay. All right. So give me a few days. Let me think
17 about it, and sorry y'all had trouble with this thing;
18 but I'm glad at least -- (Inaudible.) Part of it worked
19 out well.

20 FEMALE VOICE: (Inaudible.)

21 THE COURT: Yeah. That's -- that's a plus
22 'cause I'm sure that was not easy because it's always
23 difficult for the -- (Inaudible.) To restore these old
24 cars. I mean, I know you know that. How long you had
25 it?

Deposition of Audio Recording of Hearing

1 FEMALE VOICE: (Inaudible.)

2 THE COURT: Okay. All right. So I'm
3 gonna -- I mean, you putting in -- (Inaudible.) Car.

4 MALE VOICE: (Inaudible.)

5 THE COURT: You got a quote.

6 MALE VOICE: (Inaudible.)

7 THE COURT: All right.

8 MALE VOICE: (Inaudible.)

9 THE COURT: Someone was -- (Inaudible.)

10 MALE VOICE: (Inaudible.)

11 THE COURT: (Inaudible.)

12 MALE VOICE: (Inaudible.)

13 THE COURT: (Inaudible.)

14 MALE VOICE: (Inaudible.)

15 THE COURT: (Inaudible.) Right. Not just
16 material.

17 MALE VOICE: Correct. (Inaudible.)

18 THE COURT: How much was the material?
19 (Inaudible.)

20 MALE VOICE: (Inaudible.)

21 THE COURT: Do you know about how much the
22 material is gonna cost?

23 MALE VOICE: (Inaudible.)

24 THE COURT: Okay. Okay. Okay. You
25 haven't done that for me.

Deposition of Audio Recording of Hearing

1 FEMALE VOICE: (Inaudible.)

2 THE COURT: Oh, you don't really want to do
3 that.

4 FEMALE VOICE: (Inaudible.)

5 THE COURT: Okay.

6 FEMALE VOICE: (Inaudible.)

7 THE COURT: Okay.

8 FEMALE VOICE: (Inaudible.) I was --
9 (Inaudible.)

10 THE COURT: You said that -- (Inaudible.)
11 Christine.

12 FEMALE VOICE: (Inaudible.)

13 THE COURT: I see that in the picture.

14 FEMALE VOICE: (Inaudible.)

15 THE COURT: Okay. Well, I guess he did all
16 that work on the outside. He probably figured, you
17 know, that would enhance it. Okay. But, I mean, that's
18 your call. It's your car. All right. Give me a few
19 days. Let me think on it, but there's several issues;
20 and I want to spend some time on it, think about that.

21 (Inaudible.) I don't want to make a snap decision.

22 (Inaudible.) All right. Thank you. Appreciate it.

23 Appreciate y'all's patience. I don't think I need to
24 see that. I think that goes more to the work you did.

25 MALE VOICE: (Inaudible.)

Deposition of Audio Recording of Hearing

1 THE COURT: No. I'll look at it if you
2 want me to.

3 MALE VOICE: (Inaudible.)

4 THE COURT: All right. I'll --
5 (Inaudible.) I'll look at it. (Inaudible.) Yeah.
6 Leave them just in case I don't have -- yeah, leave that
7 'cause that's the different price.

8 MALE VOICE: (Inaudible.)

9 THE COURT: Okay. Yeah. Just --
10 (Inaudible.) We'll look at it.

11 MALE VOICE: (Inaudible.)

12 THE COURT: You mean the whole --
13 (Inaudible.)

14 MALE VOICE: (Inaudible.)

15 THE COURT: Doesn't sound like she wants to
16 do that. All right.

17 MALE VOICE: (Inaudible.)

18 THE COURT: No, because she believes you
19 did good work. Not -- not -- not an issue. Okay --

20 (End of Recording.)

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25

1 THE COURT: Berry versus Stokes.

2 Yes, ma'am

3 MS. BERRY: The reason I come here today is
4 because the last one --

5 THE COURT: I don't know who you are.

6 MS. BERRY: My name is Hoang Lee Berry.

7 THE COURT: All right.

8 MS. BERRY: The reason I appealed that day
9 because I'm not communicating with the first judge. I
10 thought that I give all to him picture, everything and
11 he looked at that, but he not.

12 And also I have some --

13 THE COURT: I don't have the other party here.
14 Where is the other party?

15 THE CLERK: They did receive notice, Your Honor.
16 They are listed as pro se defendants. That's all I
17 know.

18 THE COURT: Stokes Import Collision Center is
19 listed as a pro se?

20 THE CLERK: They are.

21 THE COURT: And they did receive notice. When
22 did they receive notice?

23 THE CLERK: They received notice at 3570 Ashley
24 Phosphate Road, North Charleston, South Carolina.

25 THE COURT: All right. Ms. Berry, I'm happy to

1 hear from you briefly.

2 MS. BERRY: So what can I do now, Your Honor?

3 THE COURT: Well I don't know. What are you
4 here for?

5 MS. BERRY: I'm here because I want to sue them.

6 THE COURT: Show who?

7 MS. BERRY: The Stokes Honda.

8 THE COURT: I'm sorry?

9 MS. BERRY: The manager of Stokes Honda
10 Collision.

11 THE COURT: Manager of who?

12 MS. BERRY: The manager from Stokes Honda.

13 THE COURT: Okay. What do you want to show
14 them?

15 MS. BERRY: Because I asked them on the receipt
16 and everything. Also when he put the air bag in, they
17 not completely correctly. Then he put super glue
18 around it and that's unsafe. And I told him I'm not
19 accept them, but he do it right in front of me anyway.

20 So I have some pictures for accident.

21 THE COURT: Didn't you show the other judge all
22 of that information?

23 MS. BERRY: I give that all to the judge to look
24 at it. And also --

25 THE COURT: So you told the same judge, you told

1 that judge those same things?

2 MS. BERRY: Yes, ma'am.

3 THE COURT: All right.

4 MS. BERRY: And that's one the battery, and he
5 don't do the battery. Also he jammed on the park, and
6 damaged park. And also my car don't have air
7 conditioning, my car have air conditioning and cruise
8 control and they not there.

9 And he charged something he not done correctly.
10 So maybe he thinking I'm female, he doesn't know. So
11 he overcharge for painting for \$1,500 on the hood and
12 two vents. So that's why \$1,500.

13 THE COURT: All right. I'm going to review the
14 file. I will issue my order. Good luck to you, ma'am.
15 Happy Thanksgiving.

16 MS. BERRY: So what can I do now?

17 THE COURT: I'm going to issue an order whether
18 or not I rule in your favor, or whether or not I
19 affirm.

20 MS. BERRY: Also, you know, my car only 72,000
21 miles on it.

22 THE COURT: Okay.

23 MS. BERRY: But the car --

24 THE COURT: Ms. Berry, I have ruled. I'm done
25 in your case. I will issue an order. Good luck to

1 you, ma'am. Thank you.

2 MS. BERRY: So if you rule not right, can I
3 appeal again?

4 THE COURT: You may. Once my order is issued
5 you have ten days. It's very important that you appeal
6 it within ten days. Do you understand that?

7 MS. BERRY: That's not just dismiss the case.

8 THE COURT: I haven't issued my order yet.

9 MS. BERRY: You want to keep all the material?

10 THE COURT: I'm sorry?

11 MS. BERRY: I want to leave you material, you
12 can look at it?

13 THE COURT: No, ma'am. I do not need to review
14 that. The previous judge reviewed all of that.

15 MS. BERRY: Why they didn't show up?

16 THE COURT: Ma'am, I don't know. I can't speak
17 for them.

18 MS. BERRY: So that means that they are not
19 correctly, ma'am. I come to this country. I know
20 freedom means, and how the court operates, ma'am.

21 THE COURT: And you do because you're here
22 today. I have issued my ruling, my order. We are
23 moving on to the next case. Thank you and good luck
24 to you.

25 MS. BERRY: Thank you so much, ma'am. And you

1 have a wonderful holiday. And hopefully I can see you
2 again.

3 (Whereupon, the proceedings in this matter
4 before the Court were adjourned.)

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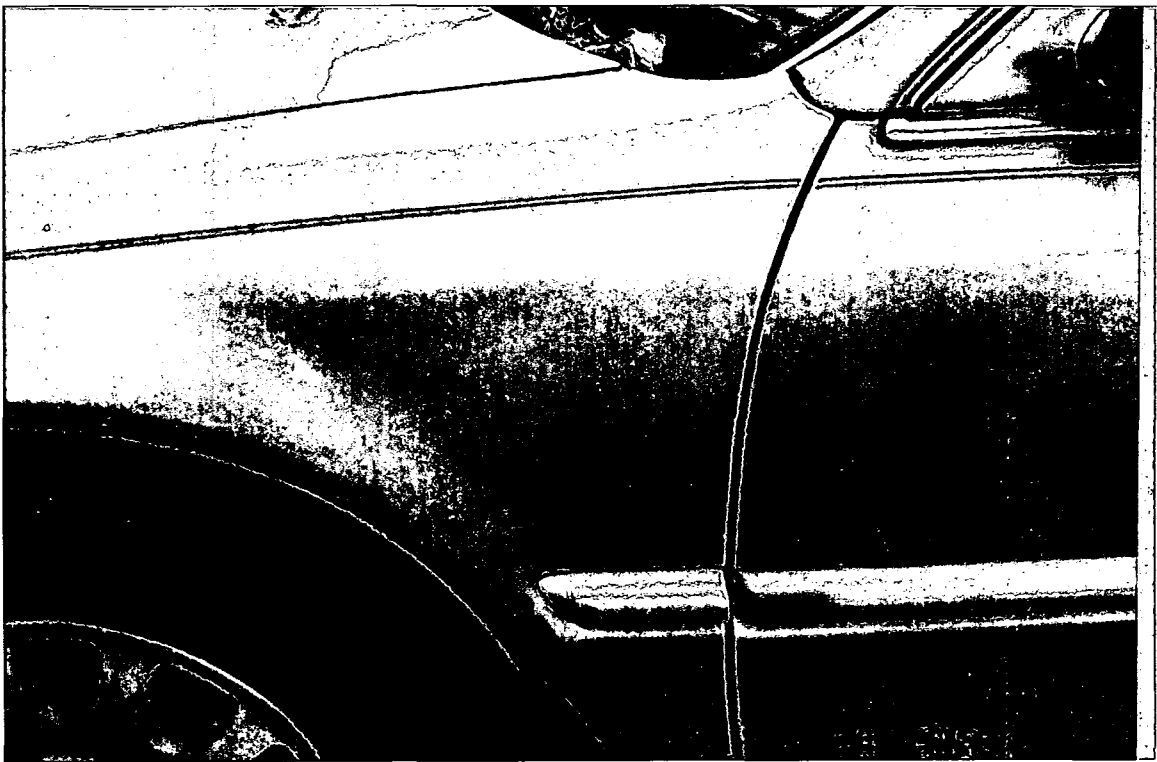
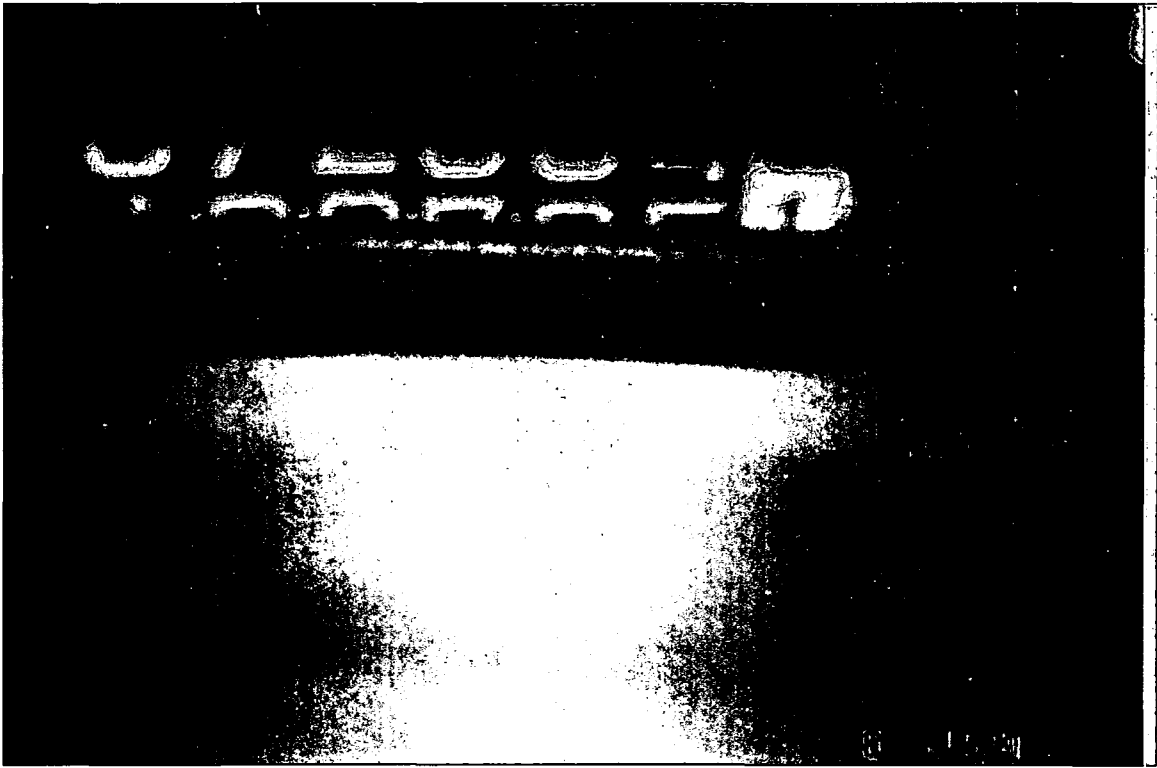
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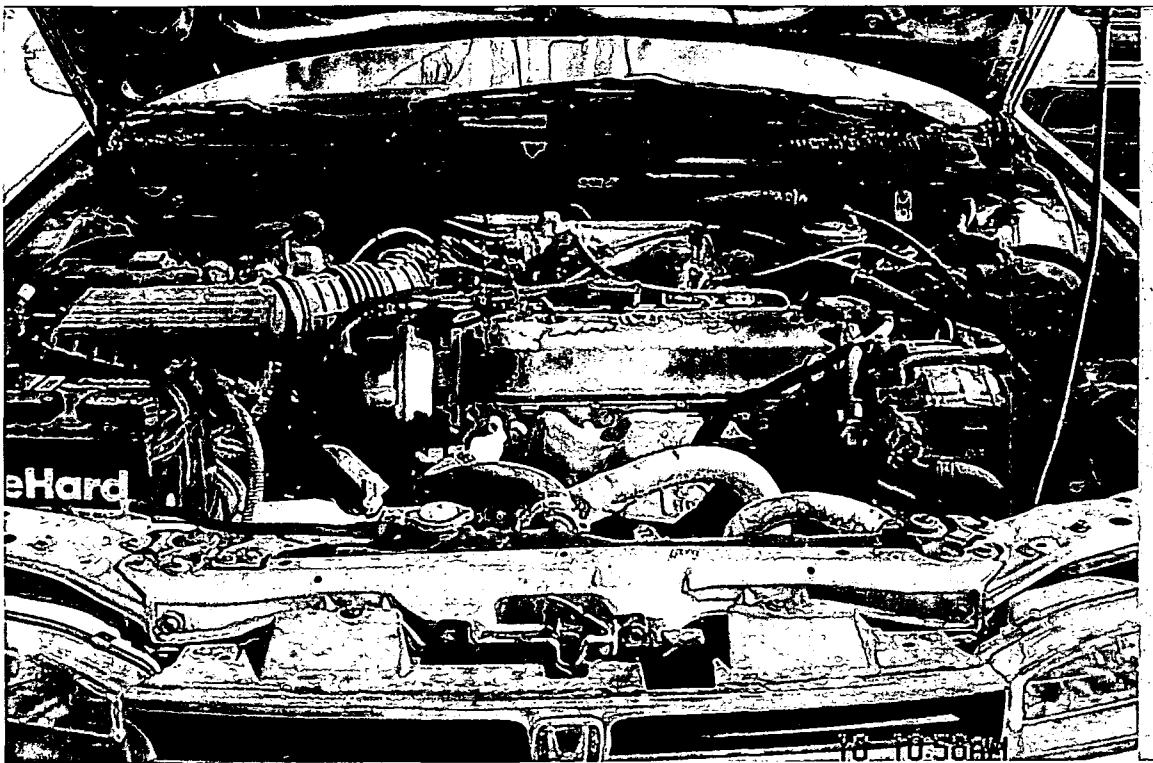
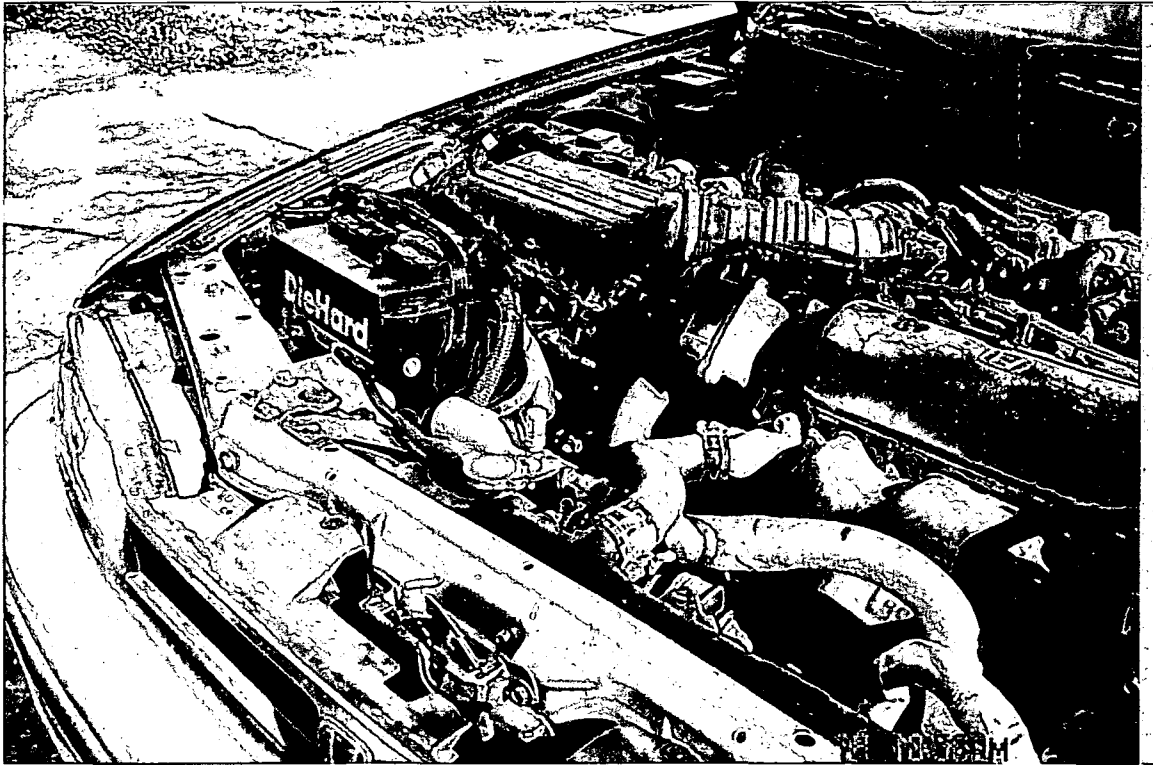
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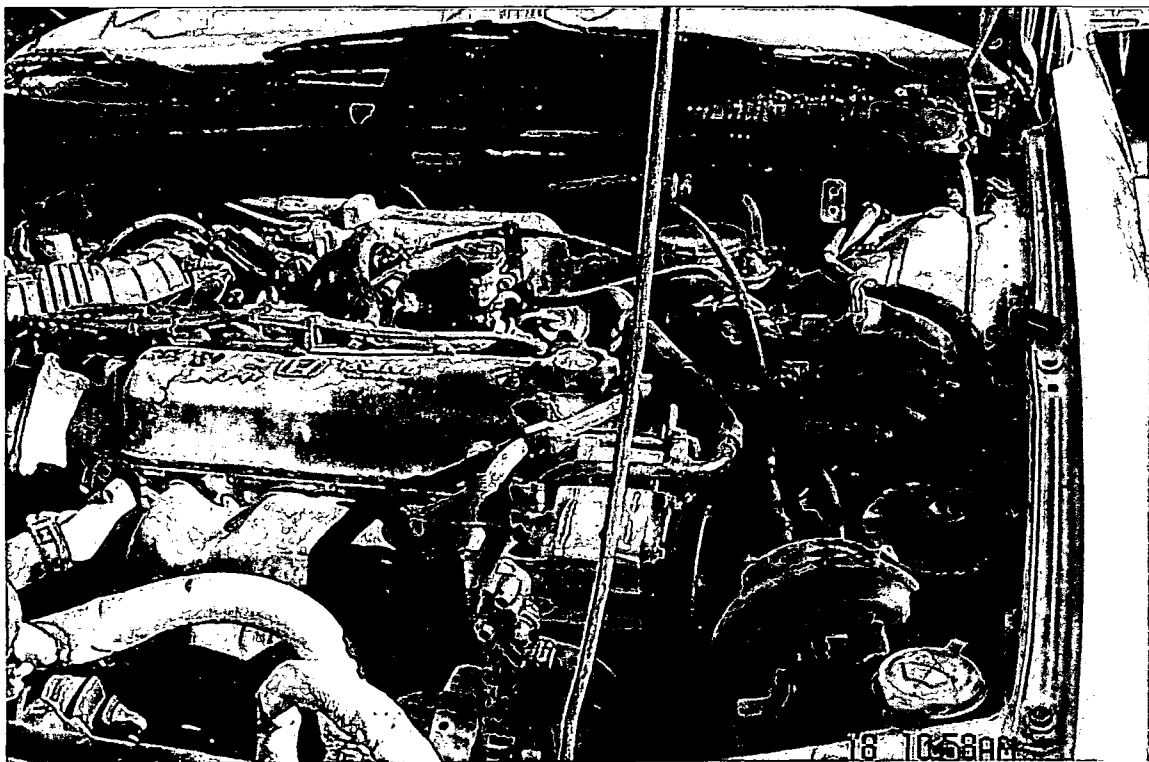
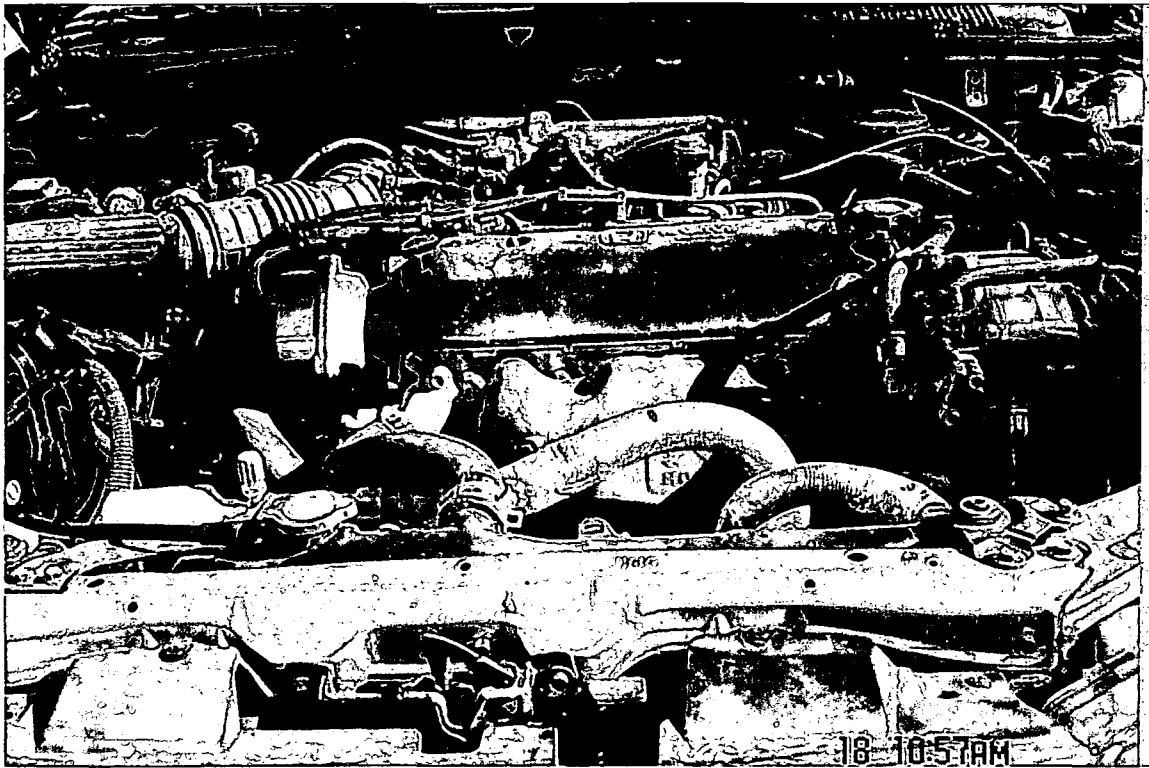
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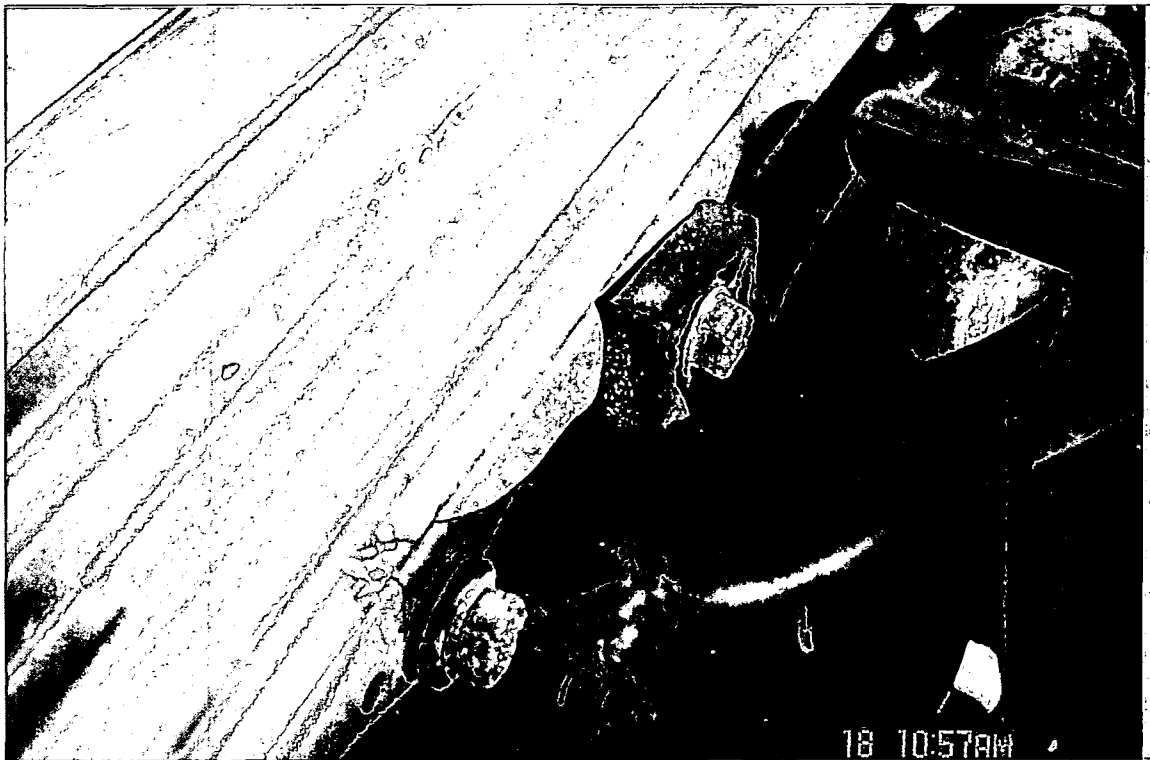
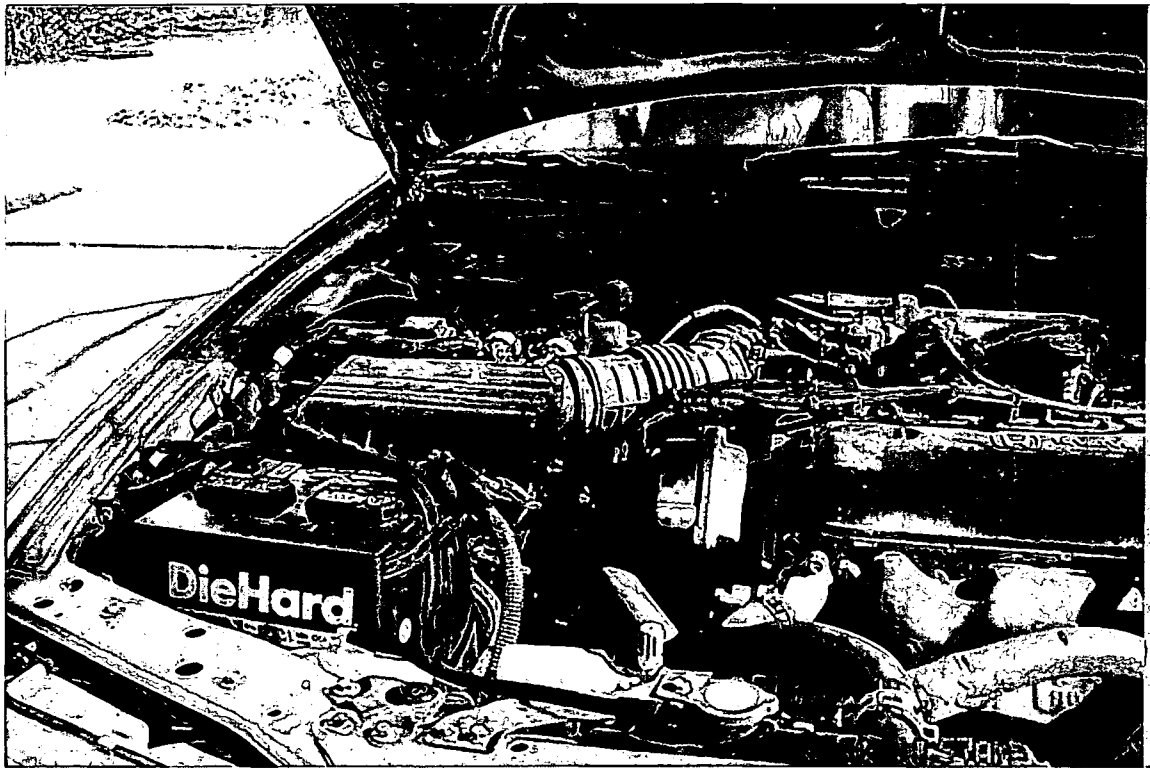
APPELLANT'S EXHIBITS

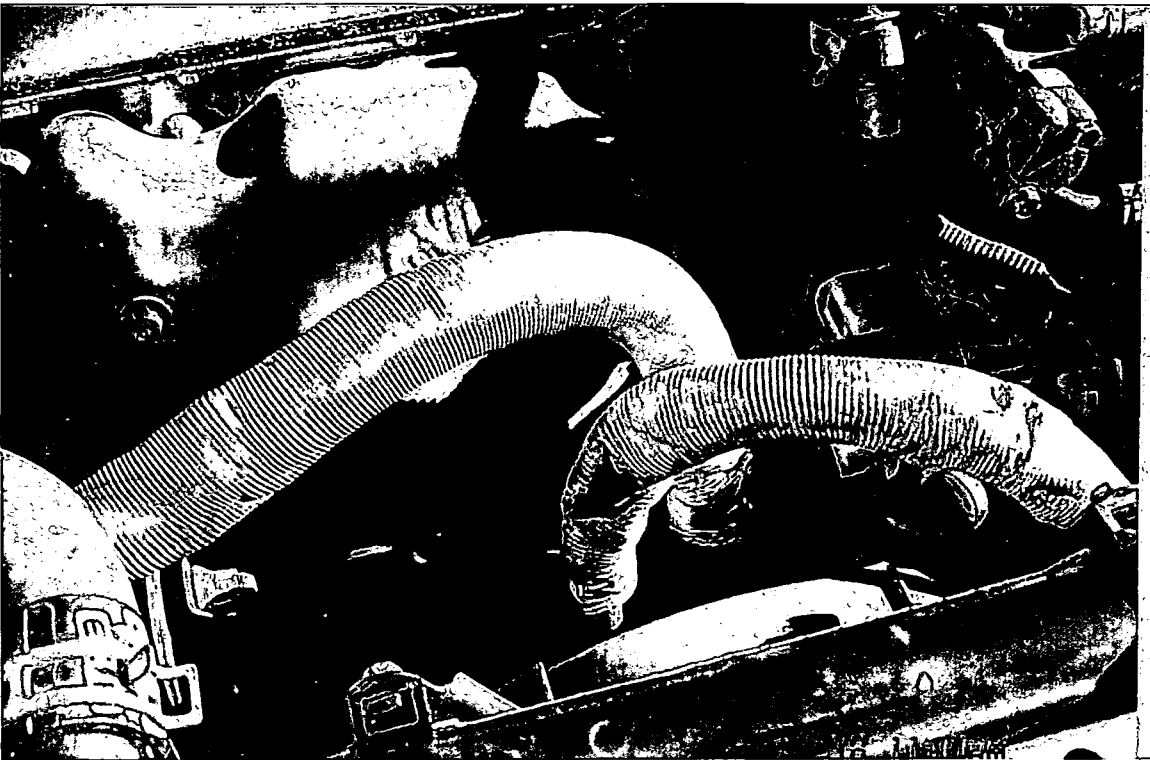
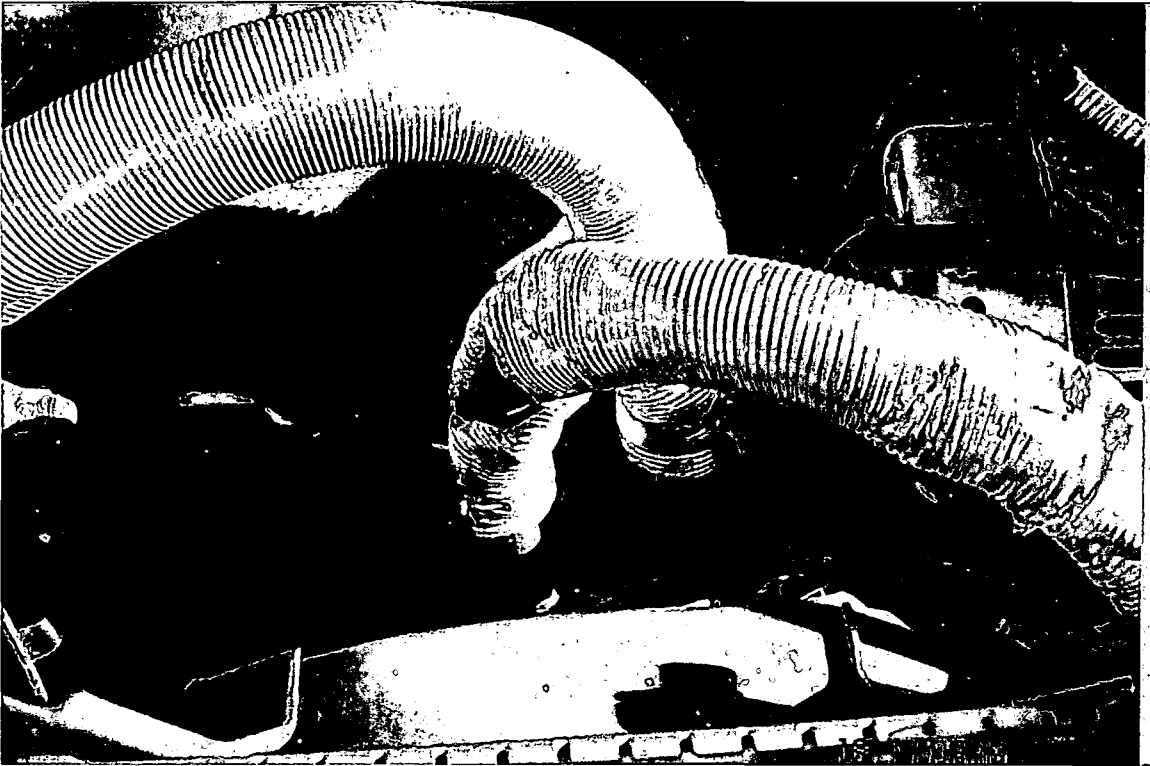
Pictures of Appellant's Vehicle

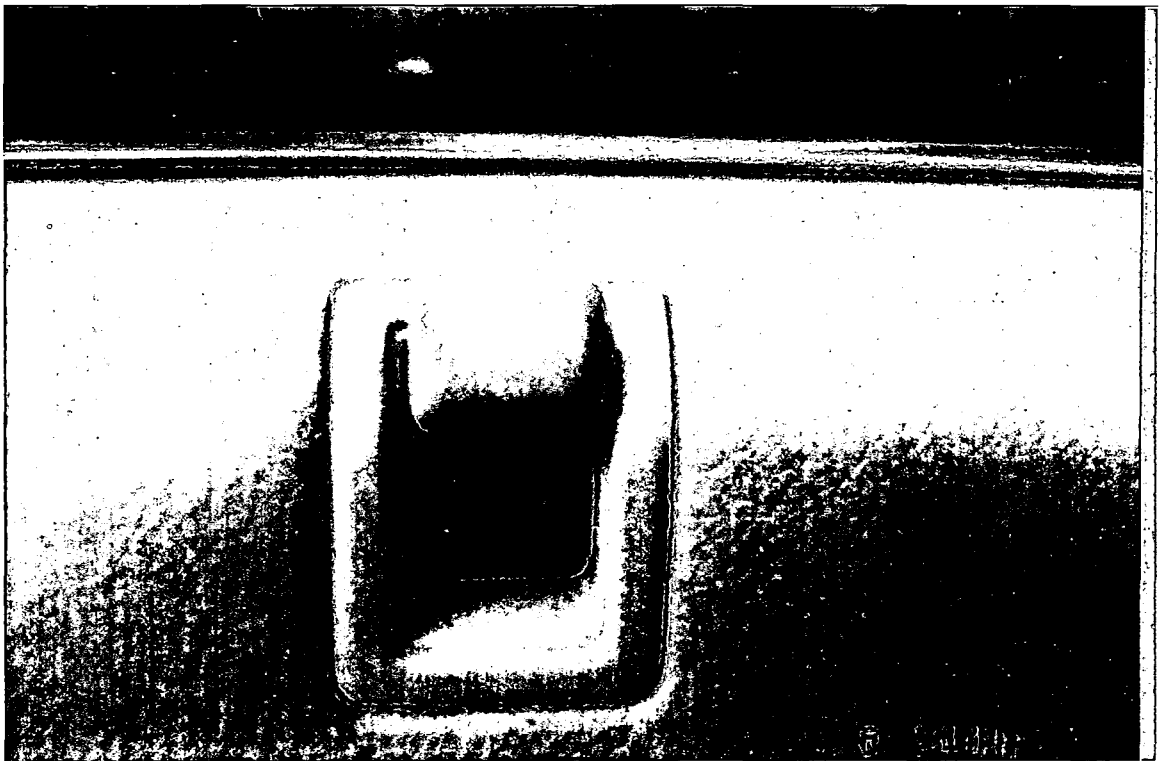


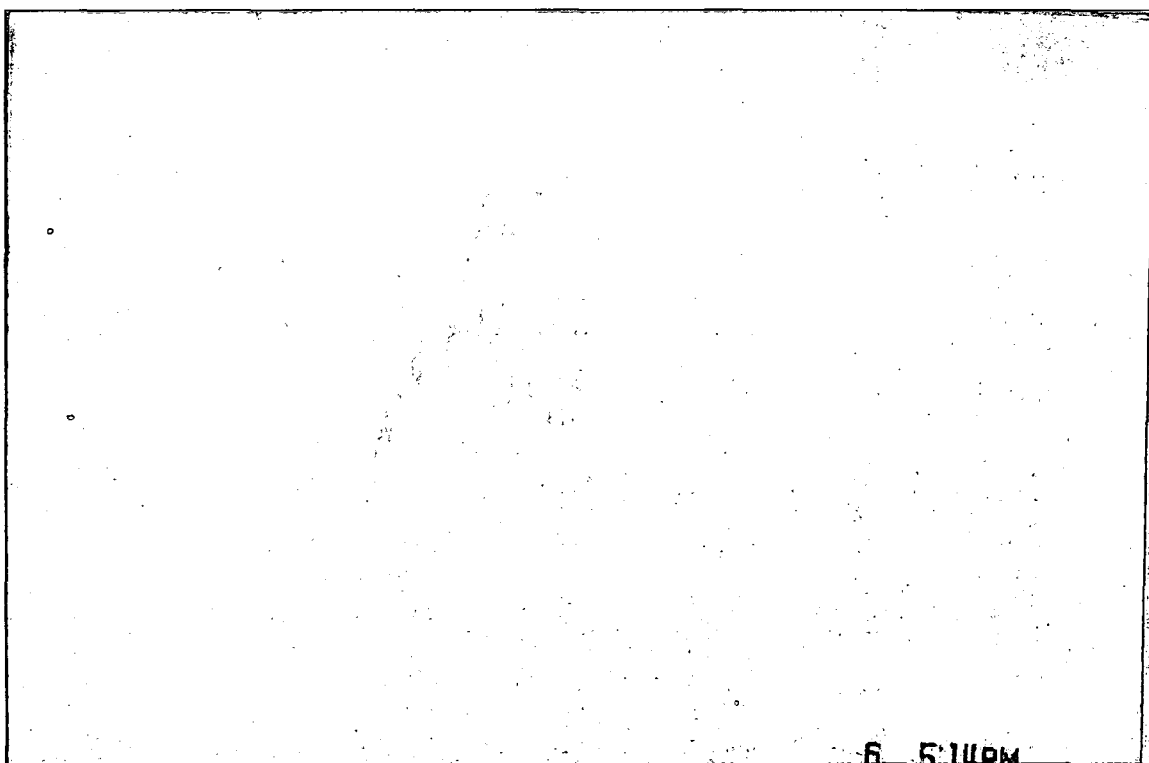
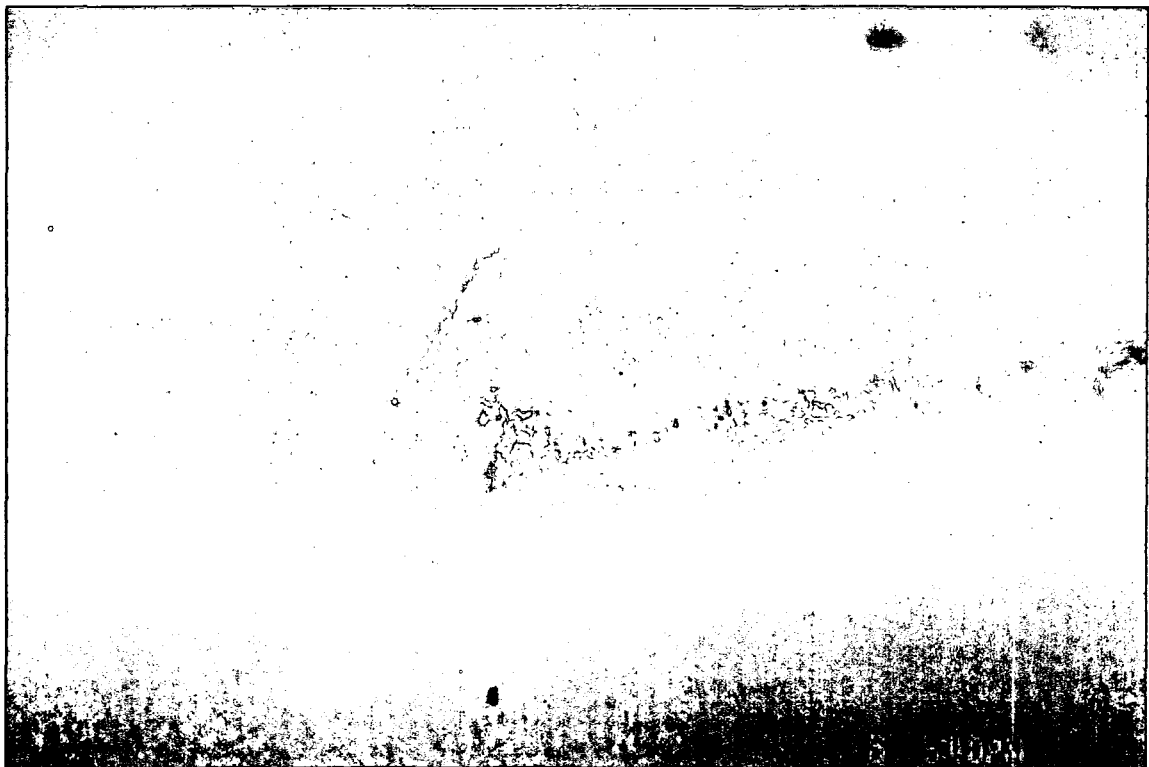


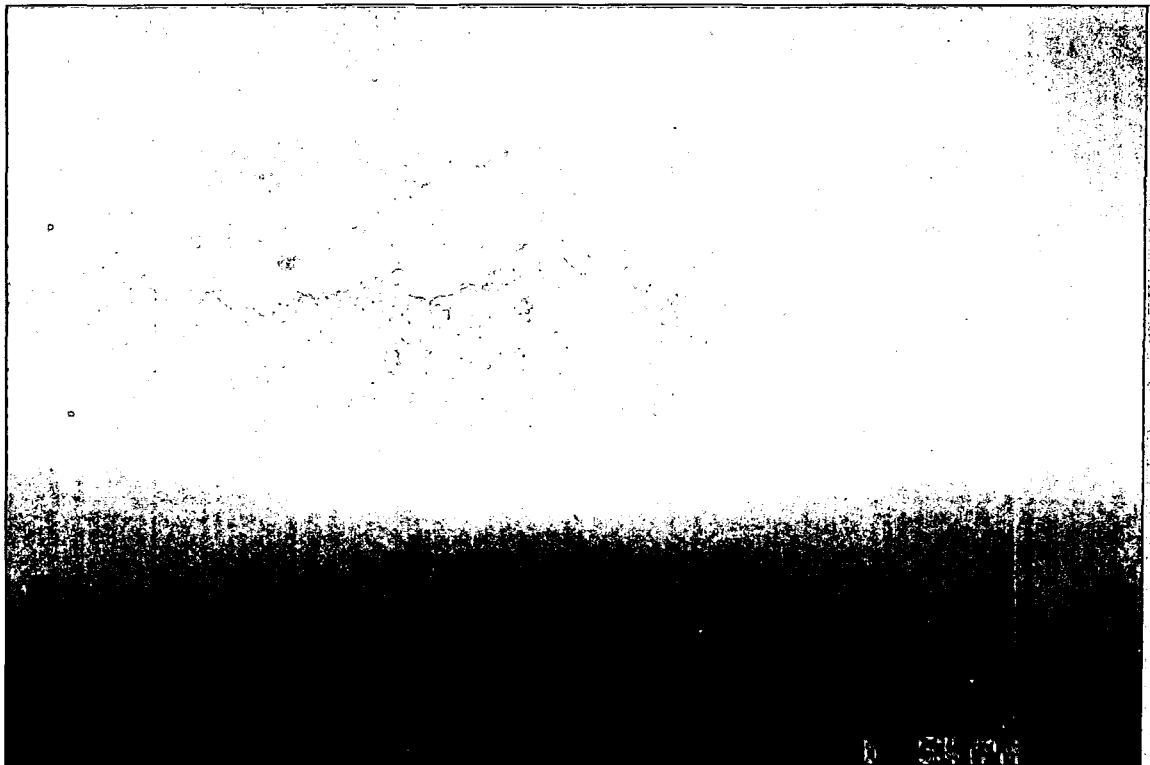




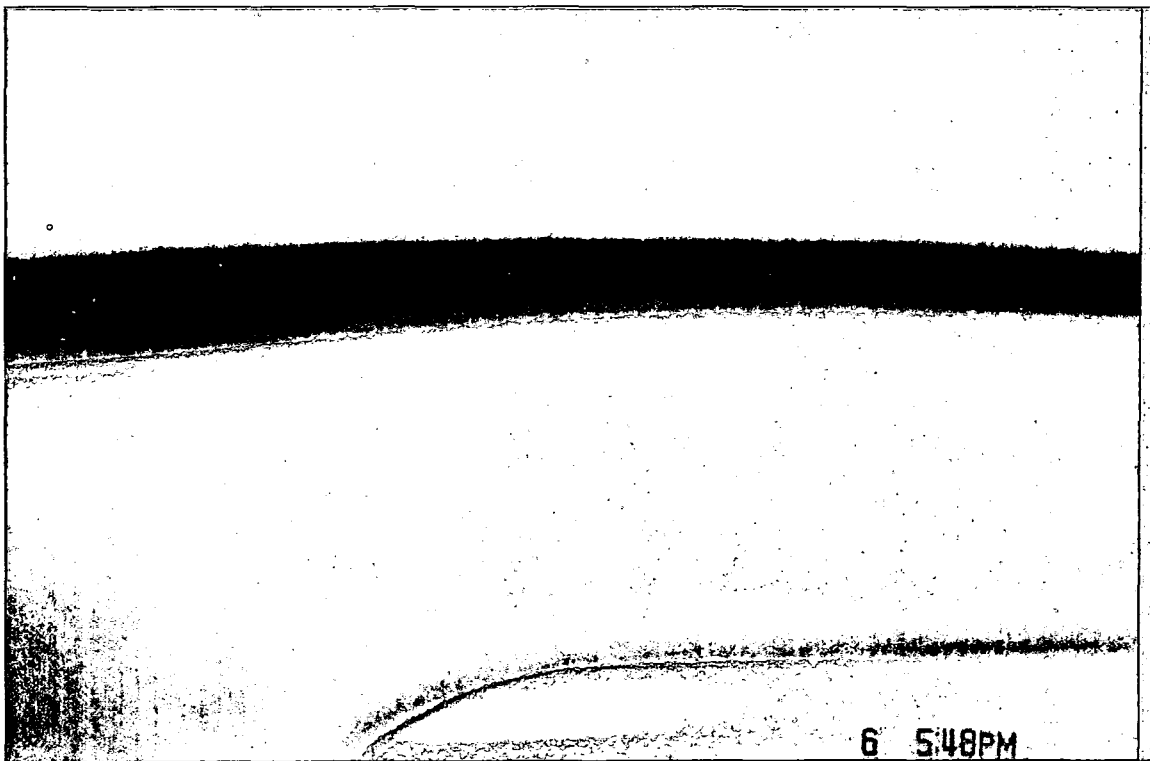




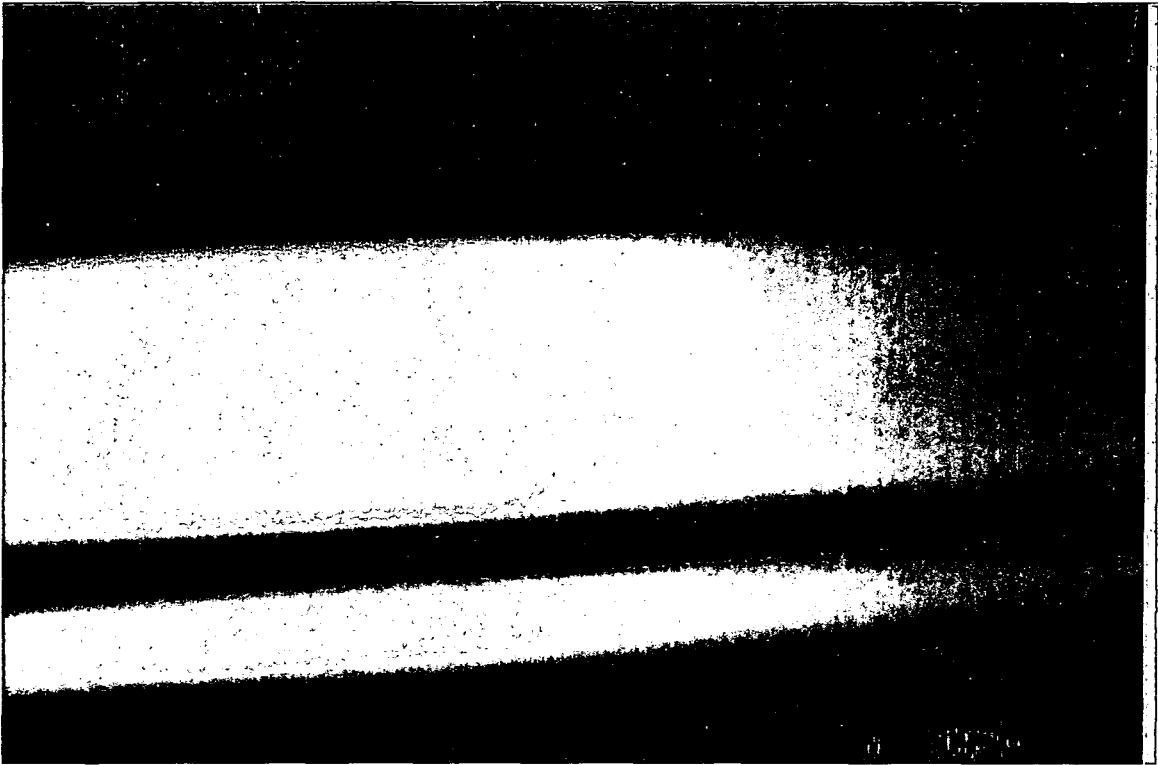


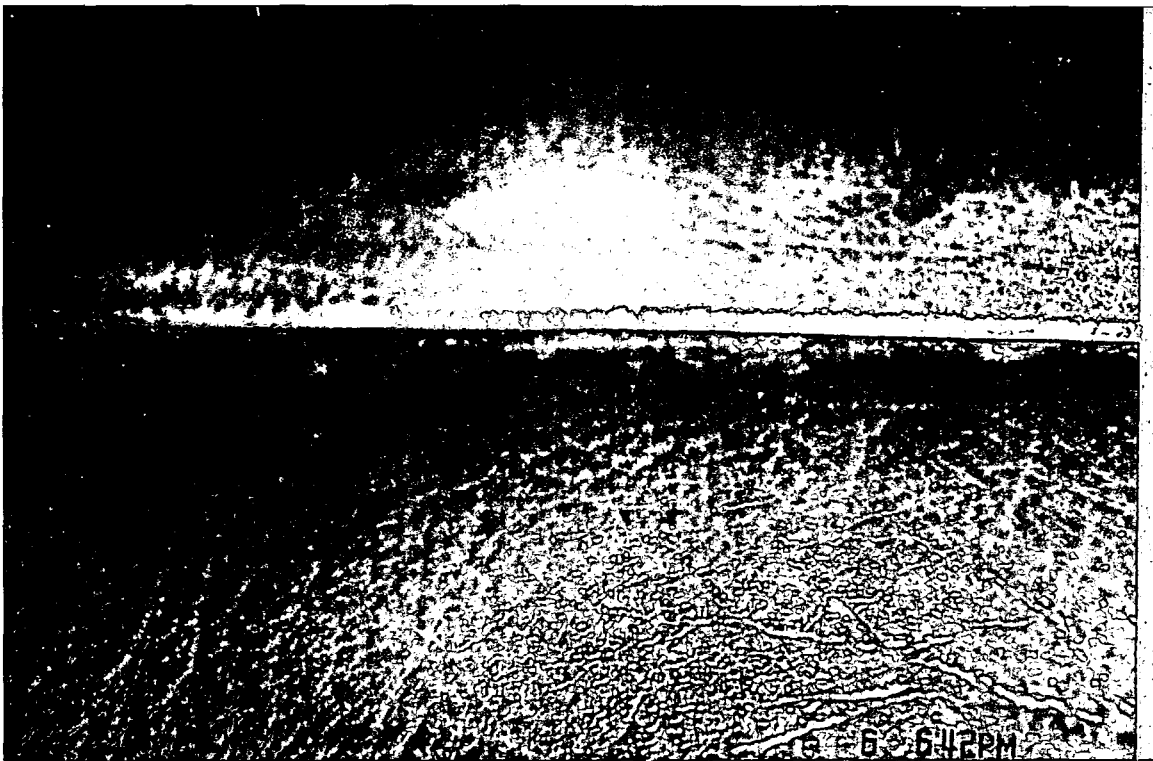
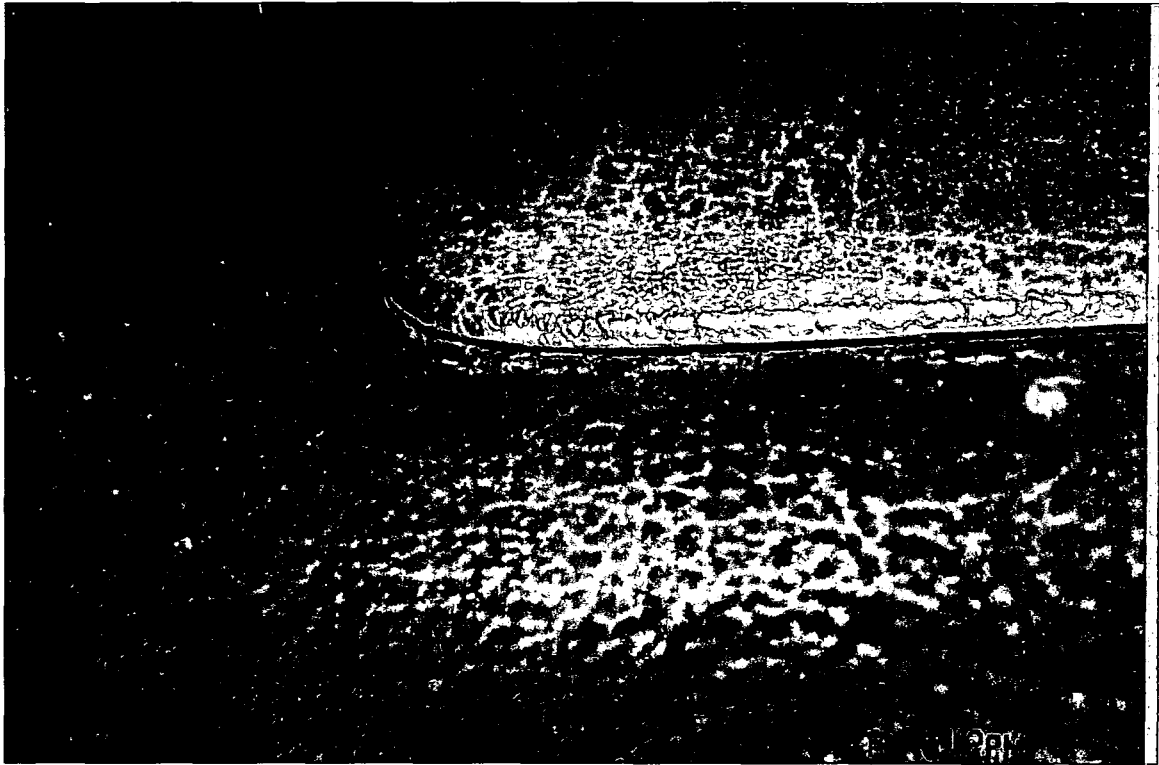


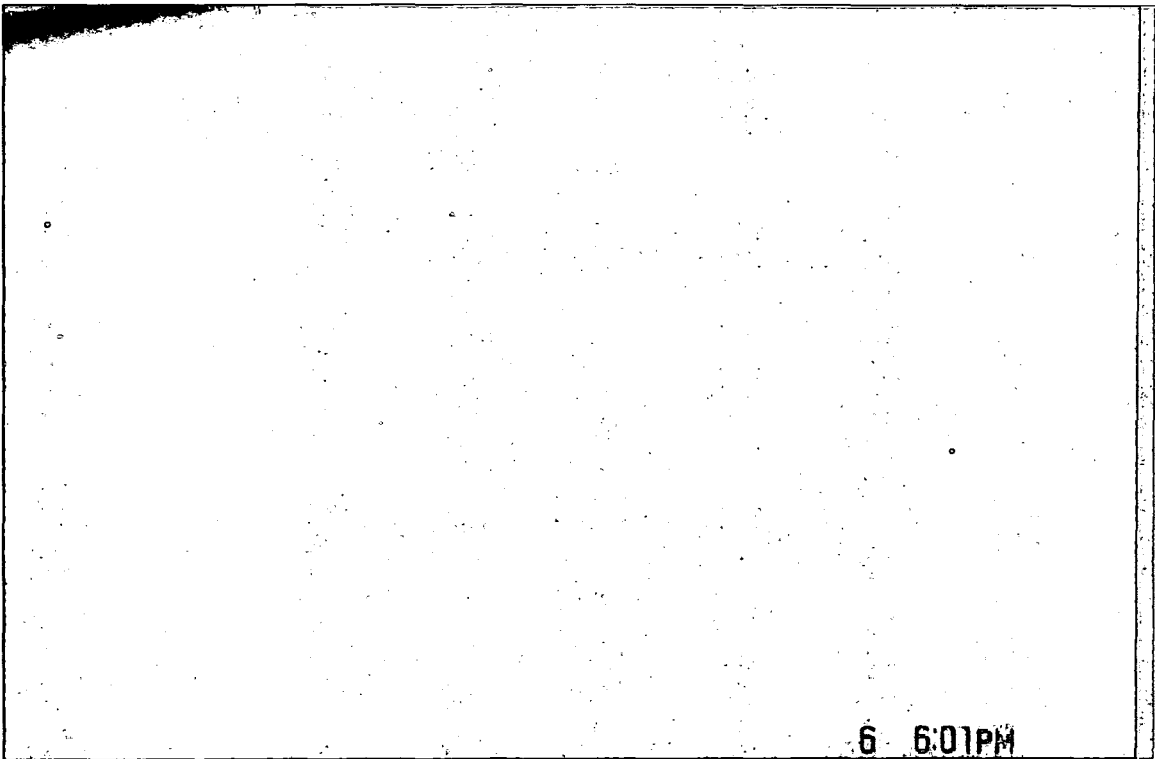
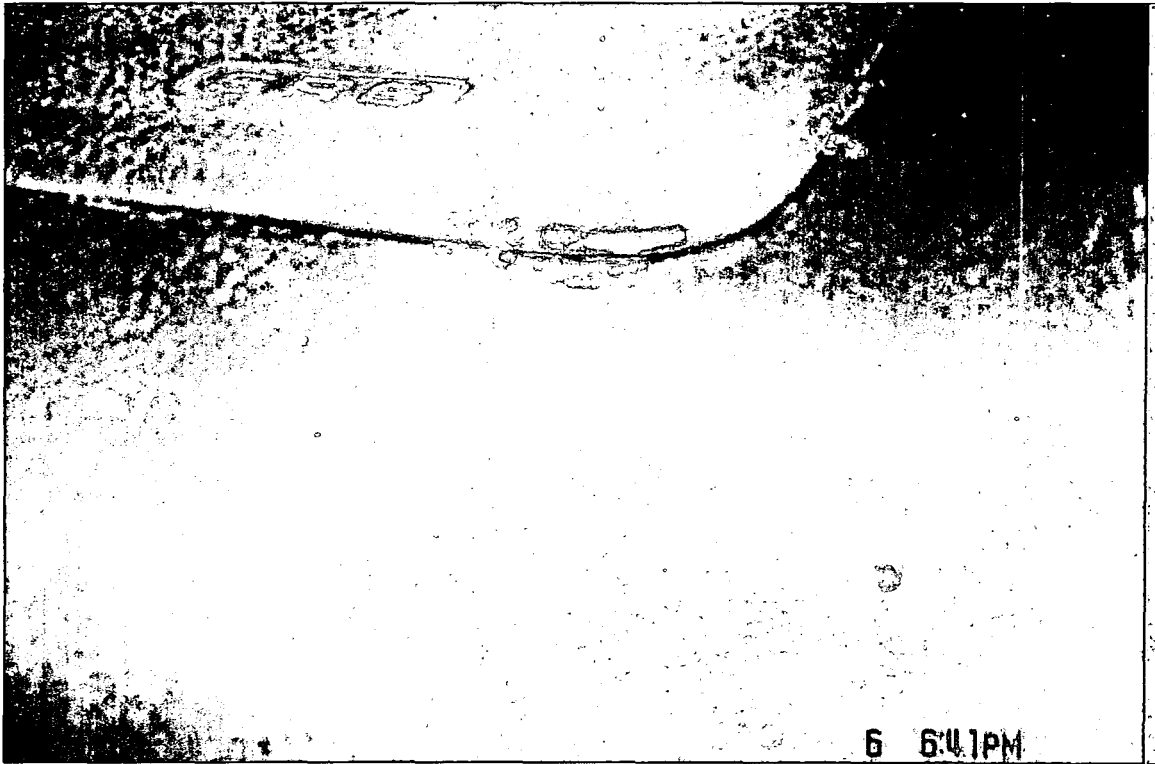
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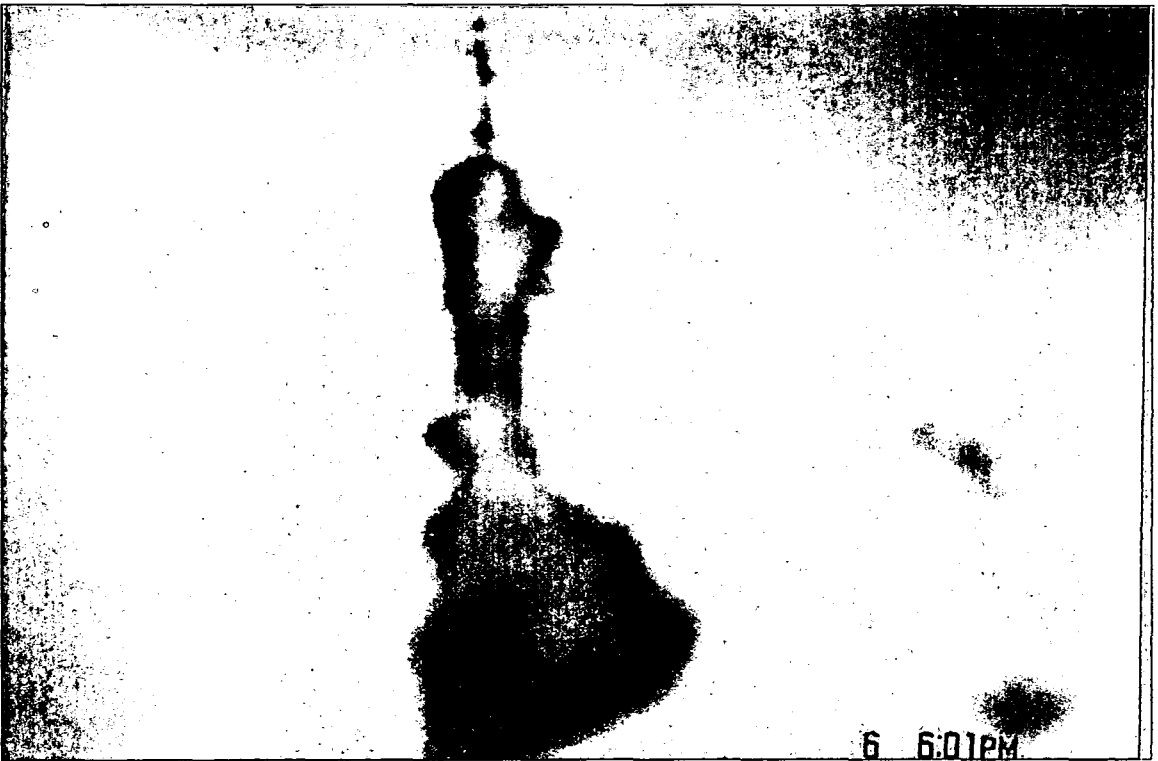


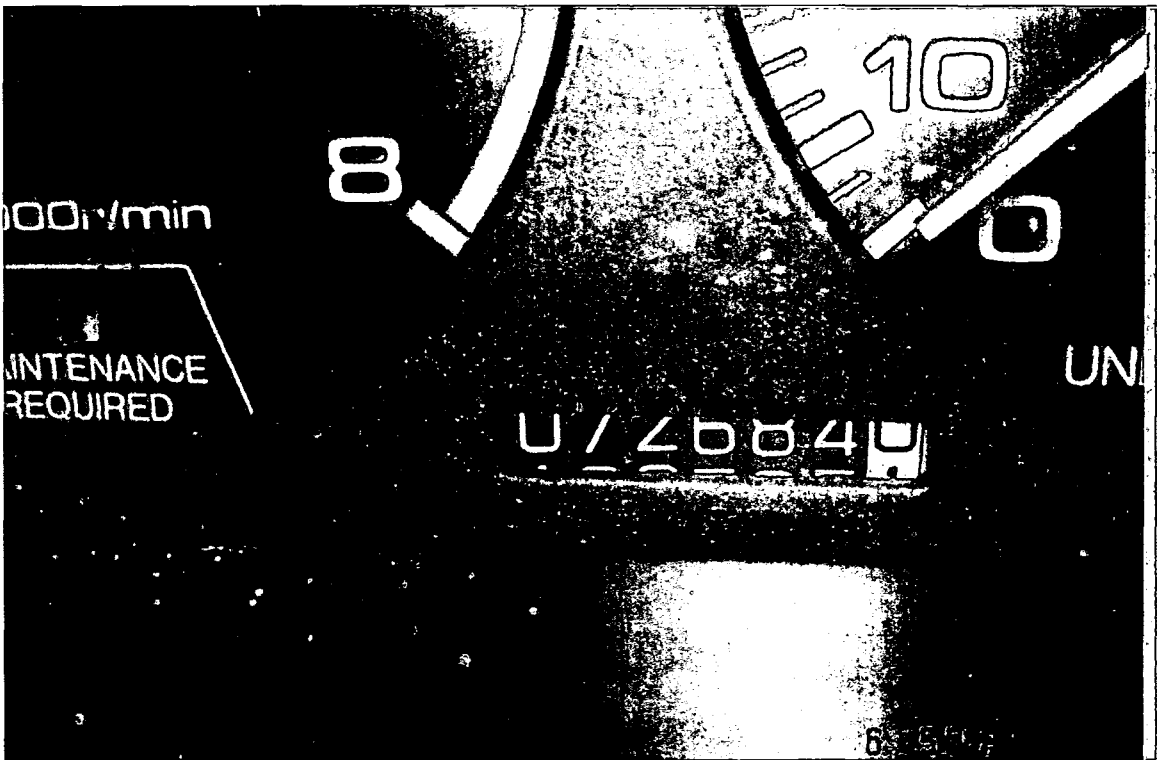
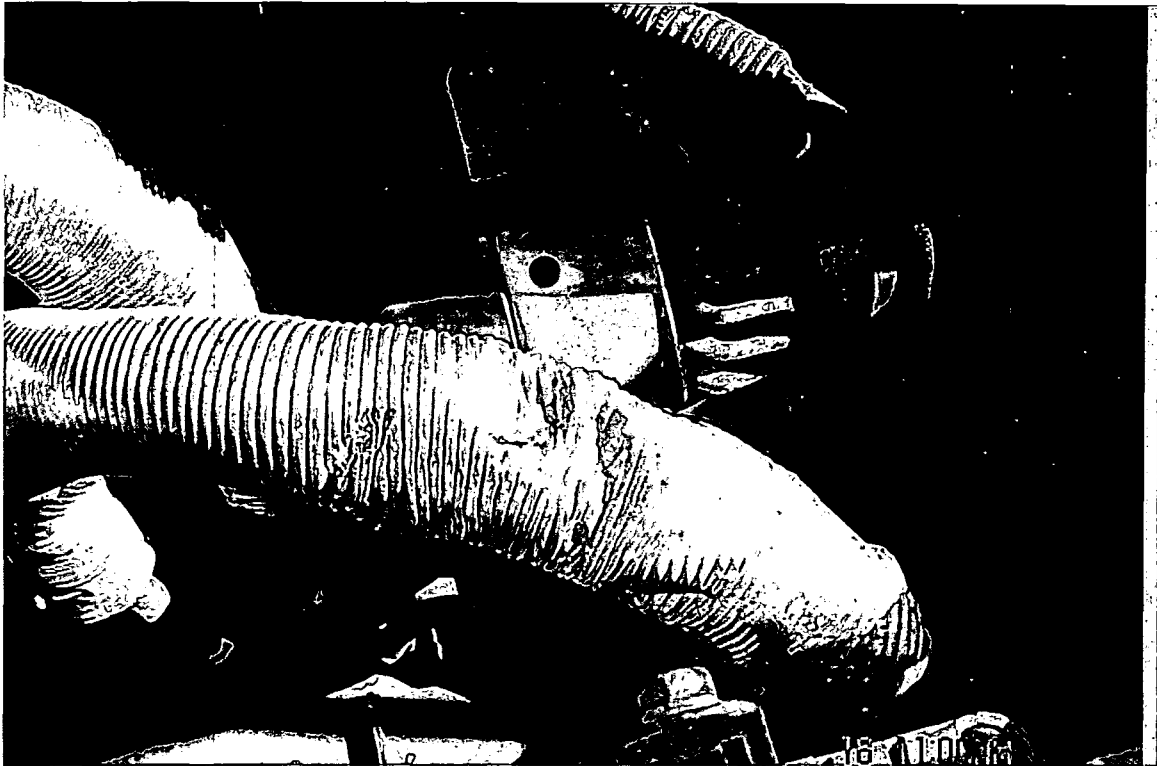
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington Circuit Court Judge

Case No. 2011-CP-10-3651
Case No. 2010-SC-87-2381

Hoang Berry..... Appellant,

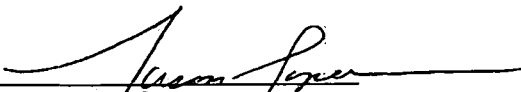
v.

Stokes Import Collision Center.....Respondent

CERTIFICATE OF COUNSEL

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

August 20th, 2012


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington Circuit Court Judge

Case No. 2011-CP-10-3651

Case No. 2010-SC-87-2381

Hoang Berry..... Appellant,

v.

Stokes Import Collision..... Respondent

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Should the Appellant's case be remanded for retrial based on fundamental fairness?

STATEMENT OF THE CASE

On November 9th, 2010 the Appellant filed a Complaint against Stokes Import Collision Center in the Small Claim Court of Charleston County. (R. p. 7). There was a bench trial on May 2nd, 2011. An Order of Disposition was filed on May 3rd, 2011 in favor of Stokes Import Collision. (R. p. 2). Finally, a Return was prepared and signed by the Honorable James Turner on June 3rd, 2011. (R. p. 3).

An Appeal was filed on May 23rd, 2011 in the Court of Common Pleas. (R. pp. 14-16). The Appellant appeared in front of the Honorable Kristi L. Harrington on November 21st, 2011. On the 15th of December a judgment was entered in favor of Stokes Import Collision. (R. p. 5). The Order of Magistrate Turner was affirmed and the Appellants appeal was denied.

FACTS

The Appellant took her vehicle to Stokes Import Collision Center after she was in an automobile accident. The Appellant's vehicle, a 1993 Honda Accord, was valued to be worth around three thousand (\$3000) dollars. Stokes Import Collision Center charged four thousand seven hundred fifteen (\$4,715.18) dollars and eighteen cents despite the value of the vehicle. (R. pp. 10-13). Furthermore, Stokes Import Collision failed to complete the repairs that it claimed were done.

***The transcript from the Small Claim Court provided little to no assistance in providing actual testimony due to the fact that most of the testimony was inaudible.*

ARGUMENTS

- I. That the Appellant's limited English proficiency deprived her of equal access to justice.

The Appellant has limited English proficiency. Although, there is documentation (Judge Turner's Return) that states an interpreter was present at the Charleston County Small Claim trial, the actual transcript does not show the quality of communication between the Appellant and the Court. (R. p. 3) (R. pp. 17-41). The Appellant believes and is concerned that there may have been a language barrier at both the bench trial in the Small Claim Court and at the appeal in Circuit Court.

The Circuit Court transcript does not make any reference to the presence of an interpreter for the hearing on December 15th, 2011. (R. pp. 42-47). In *Melton vs. Olenik*, 379 S.C. 45, 51 (Ct.App.2008), the Court found that

"[P]roceeding without the use of an interpreter prejudiced Kim. At the hearing, Melton attempted to explain the transaction and exchange of money. However, the testimony is confusing and at times incoherent, such that both attorneys and the judge often sought further clarification of Melton's statements."

The *Melton* Court reversed and remanded for a new hearing, stating further that "the court shall direct that a qualified interpreter must be present or alternatively, the court must make the necessary findings of waiver under the statute." *Melton*, 379 S.C. 45, 54 (Ct.App.2008). Although *Melton* can be distinguished in that the Appellant had an interpreter at the bench trial, based on the transcript the quality of communication between the Appellant and the Court is unclear. Furthermore, there was no interpreter present at the

Appellant's appeal in the Circuit Court. The following excerpts from the Appellant's appeal shows that a language barrier did and does exist.

For example:

Transcript of Record, November 21st, 2011, Court of Common Pleas

Ms. Berry: The reason I appealed that day because I'm not communicating with the first judge. I thought that I give all to him picture, everything and he looked at that, but he not.

And also I have some --

(Transcript, page 2, lines 8 - 12) (R. p. 43, lines 8-12)

...

Ms. Berry: I'm here because I want to sue them.

The Court: Show who?

Ms. Berry: The Stokes Honda

The Court: I'm sorry?

Ms. Berry: The manager of Stokes Honda Collision.

The Court: Manager of who?

Ms. Berry: The manager from Stokes Honda.

The Court: Okay. What do you want to show them?

(Transcript, page 3, lines 5- 14) (R. p. 44, lines 5-14)

This shows that the testimony is confusing and that the judge sought further clarification of the Appellant's statements.

Furthermore, Section §15-27-155(A) of the South Carolina Code (2005) states:

[W]henver a party of witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in

the best interest of the party or witness and that this action is in the best interest of justice.

Again, the Appellant's Circuit Court transcript does not make any reference to the presence of an interpreter nor does it address whether or not the Appellant may need one. (R. pp. 42-47). Therefore, based on the Appellant's concern regarding her communication with the Small Claim Court and the absence of an interpreter at the appeal in Circuit Court, it is in the best interest of justice that the Appellant's claim be remanded for retrial.

CONCLUSION

The Appellant's claim should be remanded for retrial. The language barrier was fundamentally unfair to the Appellant. Therefore, the Appellant's limited English proficiency deprived her of equal access to justice.

Respectfully Submitted,



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September 6th, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011 CP-10-365

Houng-Ben

Appellant

Stokes Import Collision

Respondent

DEED OF RESPONDENT

H. Clayton Walker, Jr.
Robert L. Retford
WALKER || RETFORD
Post Office Box 61140
Columbia, South Carolina 29260
(803) 454-0925

ATTORNEYS FOR RESPONDENT

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COUNTER STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT CORRECTLY DENY THE APPEAL WHERE THE STATUTE CITED BY APPELLANT IN SUPPORT OF REVERSAL IS INAPPLICABLE?
- II. SHOULD THE CIRCUIT COURT BE AFFIRMED WHERE THE APPELLANT SUFFERED NO PREJUDICE?
- III. DID THE APPELLANT PROPERLY PRESERVE HER ARGUMENT THAT AN INTERPRETER WAS REQUIRED AT THE CIRCUIT COURT HEARING?
- IV. ASSUMING ERROR, WHICH RESPONDENT DENIES, SHOULD THE APPELLANT BE LIMITED TO A NEW APPEAL RATHER THAN A NEW TRIAL?

COUNTER STATEMENT OF THE CASE

Appellant filed a Complaint against Respondent in the Small Claim Court of Charleston County on November 9, 2010, alleging that Respondent failed to properly complete repairs to Appellant's vehicle. A bench trial was held before Magistrate Judge James Turner on May 2, 2011, with an interpreter present. On May 3, 2011, Judge Turner issued a written order finding for the Respondent. Appellant then filed an appeal on May 23, 2011, in the Court of Common Pleas and the Magistrate's Return was filed with the Charleston County Circuit Court on June 7, 2011. The Appellant then appeared before the Honorable Kristi L. Harrington on November 21, 2011. Judge Harrington's order affirming the decision of the Magistrate and dismissing the appeal was filed December 15, 2011. Appellant then filed a Notice of Appeal to the Court of Appeals on February 1, 2012.

FACTS

Appellant was a customer of the Respondent who brought her vehicle to Respondent for repairs following an accident. (R. p. 8). Appellant subsequently sued the Respondent in Small Claims Court for allegedly defective repairs. (R. pp. 6-9). Respondent prevailed at Small

Claims Court (R. pp. 2, Order of Disposition filed May 3, 2011) and on appeal to the Circuit Court. (R. pp. 5).

Appellant's sole ground for this appeal is that Appellant's limited English proficiency deprived her of equal access to justice. (Initial Br. of Appellant p. 4) Appellant concedes that an interpreter was present at the Small Claims Court bench trial on May 2, 2011. (Id.) However, as indicated by the transcript, no interpreter was present at the appeal hearing in Circuit Court on November 21, 2011. (R. pp. 42-47). Importantly, the transcript also shows that Appellant never requested an interpreter to be present at the Circuit Court hearing and indicates that the Appellant was nevertheless able to communicate effectively with the Circuit Court Judge. (Id.)

STANDARD OF REVIEW

On appeal, a judge's decision whether to require an interpreter to be present at a hearing is analyzed under the abuse of discretion standard. Melton v. Olenik, 379 S.C. 45, 53, 664 S.E.2d 487, 492 (Ct. App. 2008). An abuse of discretion occurs when "a ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, amounted to error of law." Bridges v. Wyandotte Worsted Co., 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961).

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY DENIED THE APPEAL BECAUSE THE INTERPRETER STATUTE DOES NOT APPLY TO APPEALS.

The interpreter statute applies to trials, not appeals, and therefore is inapplicable here. As a basis for her appeal, Appellant argues the Circuit Court abused its discretion by failing to correctly apply the interpreter statute. That statute states:

[W]henever a party or witness to a civil legal proceeding does not sufficiently speak the English language to **testify**, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness.

S.C. Code Ann. § 15-27-155(A) (emphasis added).

The plain language of the interpreter statute shows that it applies exclusively to trials. The term “testify” means “to give evidence as a witness.” Black’s Law Dictionary (9th ed. 2009). Parties do not give evidence on appeal, they only present arguments based on the record below. Parties and witnesses give evidence at trial. Thus, the interpreter statute provides no basis for reversing the decision of the Circuit Court because it applies only to trials. See State v. Perez, 334 S.C. 563, 566, 514 S.E.2d 754, 755 n.3 (1999) (“The General Assembly recently enacted [S.C. Code § 15-27-155(A)] which address[es] interpreters and their qualifications **in trials** when a party or witness does not speak English well enough to testify.”) (emphasis added).

The location of the interpreter statute within the Code also shows it applies exclusively in the context of trials. Chapter 27 of Title 15, where the interpreter statute is found, is entitled “Trial and Certain Incidents Thereof.” Therefore, the General Assembly clearly expressed its intention that the interpreter statute should apply exclusively to trials.

Finally, the South Carolina Rules of Civil Procedure also indicate that the interpreter statute should apply only to trials. Rule 43(f), SCRCP, discusses appointing interpreters when a witness does not speak English sufficiently to testify. The title of Rule 43, SCRCP, is “Conduct of Trial.” This title indicates the proper context for the interpreter statute is at trial.

Because the statute on which Appellant relies did not apply during the Circuit Court appeal, there is no error and the Circuit Court must be affirmed.

II. THE CIRCUIT COURT SHOULD BE AFFIRMED BECAUSE THE APPELLANT SUFFERED NO PREJUDICE.

The Circuit Court did not abuse its discretion by not requiring an interpreter because the Appellant suffered no prejudice. An abuse of discretion occurs when “a ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, amounted to error of law.” Bridges v. Wyandotte Worsted Co., 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961).

Here, the Circuit Court did not prejudice the Appellant by not requiring an interpreter because both grounds for her appeal were meritless. Appellant’s statements to the Circuit Court showed she had at most two grounds for appeal: 1) she was not communicating with the Magistrate Judge, and 2) she did not provide all her evidence to the Magistrate Judge. (R. p. 43, line 8-11). However, it is uncontested that an interpreter was present at the trial in Small Claims Court. (Initial Br. of Appellant p. 4) Furthermore, Appellant subsequently confirmed to the Circuit Court that she had indeed provided all her evidence to the Magistrate. (R. p. 44 line 20 – p. 45 line 3). Thus, Appellant could not have succeeded on appeal even if an interpreter had been appointed.

III. APPELLANT FAILED TO PRESERVE THE ARGUMENT THAT AN INTERPRETER SHOULD HAVE BEEN AT THE CIRCUIT COURT HEARING BECAUSE THE ISSUE WAS NEVER RAISED TO THE CIRCUIT COURT.

This Court should affirm the Circuit Court’s order dismissing Appellant’s appeal because Appellant’s ground for reversal, that an interpreter should have been present at the Circuit Court hearing, was never raised to the Circuit Court. “It is axiomatic that an issue cannot be raised for the first time on appeal.” Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (internal citations omitted).

This Court's opinion in Melton, cited by the Appellant, provides no indication that parties with limited English proficiency are exempted from this Court's issue preservation requirements. In that case, the Court reversed an entry of default judgment and remanded for new proceedings because the trial court conducted a hearing without an interpreter and never made the factual findings required by S.C. Code Ann. § 15-27-155. Melton at 51, 664 S.E.2d at 490. However, in that case, both parties expressed concern with a language barrier before the Circuit Court proceeding, one party brought an interpreter with them to the hearing, and the other party objected to the use of that interpreter and requested an alternate qualified court interpreter. Id. at 50, 664 S.E.2d at 490. Furthermore, the appellant filed a Rule 59(e), SCRCP, motion after the hearing requesting the court address its lack of findings under S.C. Code Ann. § 15-27-155. Id. at 49, 664 S.E.2d at 480.

In the present case, Appellant never requested an interpreter before or during the Circuit Court hearing and did not file a Rule 59(e) motion regarding the factual findings under the interpreter statute. For this Court to rule on an issue, it must first be raised and ruled upon by the court below. Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733. Thus, this issue is not preserved for review and Melton provides no support for Appellant's argument. This Court should therefore affirm the Circuit Court's order on issue preservation grounds.

IV. THE APPELLANT IS NOT ENTITLED TO A NEW TRIAL BECAUSE AN INTERPRETER WAS PRESENT AT TRIAL.

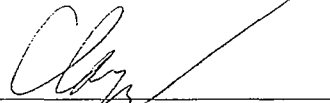
Even if the Court determines that the Circuit Court's Order dismissing the appeal should be reversed, she is at most entitled to a remand to the Circuit Court so it can make the factual findings under S.C. Code § 15-27-155(A) regarding whether an interpreter should be waived. Appellant concedes that an interpreter was present at the trial in Small Claims Court and

therefore has no grounds to request a new trial. (Initial Br. of Appellant p. 4). Furthermore, as discussed above, a remand to the Circuit Court is unnecessary because the Appellant suffered no prejudice.

CONCLUSION

For the foregoing reasons, the Court should affirm the ruling of the Circuit Court.

Respectfully submitted,



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August 24, 2012

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