THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge
Case No.: 2007-CP-42-1966

Appellate Case No.: 2011-202268

Raquel Martinez, Employee, Petitioner,

v.

Spartanburg County, Employer,
And S.C. Association of Counties
Self-Insurance Fund, Carrier,
Respondents.

BRIEF OF PETITIONER

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STATEMENT OF THE CASE

The Petitioner, Raquel Martinez, filed a W.C.C. Form 50, Employee's Notice of Claim and Request for a Hearing, on April 21, 2006 alleging she sustained a mental stress injury on April 4, 2005. (A., Vol. 1, p. 483). The Respondents, Spartanburg County, employer, and the South Carolina Association of Counties Self-Insurance Fund, carrier, filed a W.C.C. Form 51, Employer's Answer to Request for Hearing, on May 12, 2006 denying the claim. (A. Vol. 1, p. 484).

The claim was heard before Commissioner G. Bryan Lyndon in Spartanburg, South Carolina on September 6, 2006. The Commissioner issued his Decision and Order on November 20, 2006. (A. Vol. I, pp. 35 - 57). Without performing any legal analysis, the Commissioner ruled "[u]nder § 42-1-160, S.C. Code Ann. (1976), [Martinez] did not sustain a mental injury by accident arising out of and the course of her employment..." (A. Vol. 1, p. 57).

Martinez timely filed a W.C.C. Form 30, Request for Commission Review, on December 1, 2006. (A. Vol. 1, pp. 480 – 481. Without performing any legal analysis, the Appellate Panel issued its Decision and Order on May 22, 2007 summarily affirming the Commissioner's Decision and Order. (A. Vol. 1, pp. 32 – 34).

Martinez timely filed an appeal to the Court of Common Pleas on June 5, 2007. (A. Vol. 1, pp. 477 – 479). The Circuit Court Judge issued an Order reversing and remanding the Decision and Order to the Commission for "further review consistent with this Order" on February 25, 2009. (A. Vol. 1, pp. 13 – 33). The Circuit Court Judge began his Order by noting:

> As referenced in Able Communications, Inc. v. SCPSC, 290 S.C. 409, 351 S.E.2d 151 (1986), the finding of Fact of an administrative body must be sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by substantial evidence and whether the law was properly applied. Where material facts are in dispute, the administrative body must make specific, expressed findings of fact. Id. *citing* Aristizabal v. Woodside-Division of Dan River, 268 S.C. 366, 234 S.E.2d 21 (1977). A recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing Court to address the issues. Id.

(A. Vol. 1, p. 21). The Circuit Court Judge found:

> In his Order, the Single Commissioner made three Findings of Fact which were relevant to the decision. Finding of Fact 14 was "investigating the death of a child, even the child of a former Sheriff's deputy, was not an unusual or extraordinary condition of [Martinez's] employment"; 15 was [Martinez] failed to prove she encountered an unusual or extraordinary condition in her employment on April 4, 2005; and 16 was [Martinez] failed to prove the accident investigation of April 4, 2005 was the proximate cause of her mental breakdown. The Single Commission gave no basis for his factual conclusion in Finding of Fact 14, and as to Finding of Fact 15 and 16, he simply stated to each of those two Findings of Fact that "this finding is based on all the evidence in the record."

(A. Vol. 1, p. 20). First, addressing the unusual or extraordinary requirement for a mental stress injury, the Circuit Court Judge noted "although stress may be inherent in a given job, a combination of stressful events may still be unusual and extraordinary and, therefore, compensable." (A. Vol. 1, p. 24). Furthermore, the Circuit Court Judge ruled that "a fatal flaw occurs in the analysis when the Commission focuses on the ordinary aspects of the Claimant's employment to the exclusion of an examination of the extraordinary, and the consequent use of these ordinary aspects to support the conclusion that the injury is not compensable." (A. Vol. 1, p. 24). Next, addressing the issue of causation, the Circuit Court Judge noted in Finding of Fact 16, the Commissioner found Martinez failed to prove the crime scene investigation of April 4, 2005 was "the" proximate cause of her mental breakdown. (A. Vol. 1, p. 26). The Circuit Court Judge commented:

> While there are cases that use the phrase "the" proximate cause in discussing the legal standard for establishing causation in a workers' compensation claim, these cases do not limit the well-established rule of causation in workers' compensation claims that has existed for over fifty (50) years. That fact that a claimant may have suffered from a pre-existing mental condition does not preclude Workers' Compensation benefits for a mental injury. Doe v. S.C. Dept. of Disabilities, *supra.*; Ellision v. Frigidair Home Products, [371 S.C. 159], 638 S.E.2d 664 (S.C. 2006). A work-related accident which aggravates or accelerates a pre-existing condition, infirmity or disease is also compensable. Mullinax v. Winn-Dixie, [318 S.C. 431], 458 S.E.2d 76, *citing* Brown v. R.L. Jordan Oil Co., [291 S.C. 272], 353 S.E.2d 280 (1987).

(A. Vol. 1, p. 28 – 29). The Circuit Court Judge concluded, "Here, even though the orders from the Commission give a summary of some of the testimony presented during the hearing, no basis for the Findings of Facts 14, 15, and 16 is provided and, thus, this Court is left to speculate if the proper analysis was applied by the Commission and whether the factual conclusions upon which the law was applied has a substantial basis in the record." (A. Vol. 1, pp. 21 – 22).

The Respondents timely filed a Notice of Appeal to the Court of Appeals on March 16, 2009. (A. Vol. 1, p. 476). The Court of Appeals issued its Decision on June 15, 2011 reversing the Circuit Court Order. (A. Vol. 1, pp. 1 – 11). The Court of Appeals found the Commissioner's Decision and Order was sufficiently detailed to enable review and pointed to findings of fact 5, 6, 7, 10, and 11 of the Commissioner's Decision and Order as providing the "underlying reasons" supporting the Commissioner's conclusions. The Court of Appeals made a crucial finding of fact for the Commission:

> While we empathize with the undoubtedly difficult nature of Martinez's job, we find Martinez's argument unpersuasive. Despite the tragic nature of the accident, the Single Commissioner found that based on Martinez's testimony, Martinez and Anthony Johnson friendship was not such a close degree as to render the investigation an unusual and extraordinary condition of employment.

(A. Vol. 1, p. 6). The Court of Appeals declined to address the issue of causation. (A. Vol. 1, p. 6).

Martinez timely filed a Petition for Rehearing on June 27, 2011. (A. Vol. 1, pp. 586 – 590). The Petition was denied on October 6, 2011.

Martinez timely filed a Petition for Writ of Certiorari on November 2, 2011. The Petition was granted on February 7, 2013. By Order dated March 13, 2013 the time for serving and filing the Brief of Petitioner and additional copies of the Appendix was extended to April 12, 2013.

FACTS

We can all be thankful for our dedicated public servants who risk their lives performing difficult jobs to protect public safety. The Commission described some of the difficult jobs Martinez performed over her twenty-eight (28) year law enforcement career. Martinez does not dispute her record; she is proud of it. What Martinez disputes is that her service disqualifies her from receiving the workers' compensation benefits she not only so desperately needs but is entitled to based on the "substantial evidence on the whole record" for her mental injury.

As is so often the case in law and life, unless all the facts are considered, the conclusions reached can be wrong. Martinez contends it is the evidence left out of the Commissioner's findings that established the crime scene investigation she performed on April 4, 2005 was unusual or extraordinary when compared to any investigation she had ever performed before.

No one disputes on April 4, 2005 Martinez was dispatched to investigate a fatal motor vehicle accident. No one disputes that, difficult as investigating fatal accidents can be, that is the job of a crime scene investigator. This fatal accident, however, was unusual or extraordinary because it involved Martinez's friend and a former fellow police officer, Anthony Johnson, who had tragically backed his patrol car over and crushed his two (2) year old infant daughter in his driveway. It was Martinez's relationship with Officer Johnson and the horrible death of an innocent child that changed everything, made it impossible for Martinez to turn the crushed infant into an "object" she could distance herself from emotionally, and caused Martinez to suffer an immediate and devastating mental injury.

Her supervisor, Captain Denton, described the scene when he arrived:

> I observed our former officer, Officer Johnson, in his carport. The door was open, he was balled up, crunched up. Obviously, probably the most distraught I've ever seen anybody. He actually wanted to take his own life and attempted to do that prior to us getting there, however, his weapon was taken from him...

(A. Vol. 1, p. 134). Captain Denton graphically described the gruesome details of the tragedy:

> [The officer] had backed over – evidently backed over his daughter, who I believe at the time was either two or just under the age of two, and essentially, it had crushed her. If you can imagine taking a watermelon or something like that and running it over with a car, that's essentially what you have, but it's a human being.

(A. Vol. 1, p. 133 – 134). Captain Denton testified it was the worst crime scene emotionally he'd ever seen for two (2) reasons:

> Well, first of all, having known the officer and having a child run over by a vehicle, or the person having a child run over by a vehicle or the person you know causing the death of that, I've never encountered that. As far as ranking the grotesqueness of it, it's a child. It was run over by a police car. It was an accident. If I had to rank it as far as my feeling, my emotion, it would be the worst.

(A. Vol. 1, p. 135). These are the same two (2) reasons Martinez claims made the investigation usual or extraordinary when compared to any prior investigation she had ever performed.

The combination of circumstances was not simply rare, Captain Denton testified it was the only time in his career he'd investigated a violent crime where he personally knew the person involved:

> Q: In your 20–plus years in law enforcement, how many times have you investigated a crime scene where you knew the victim?
>
> A: I can't - I can't think of any violent crimes, burglaries, property crimes, I can probably name a few, but violent crimes where a person – either suicide or been killed, I can't – I can't recall any.

(A. Vol. 1, p. 142). He testified it was unusual or extraordinary for Martinez:

> Q: ... Well let me ask you this: as a 20-plus year veteran of the Sheriff's Office with 70 to 75 percent of your time spent in death investigations and as [Martinez's] supervisor, would you say that the April 4th, 2005, investigation involving your former

employee, A.J., killing his two-year-old child would have been an extreme situation in [Martinez's] employment?

A: Yes.

Q: Was this a scene that was out of the ordinary?

A: Yes.

(A. Vol. 1, pp. 147 -148).

At the hearing the Respondents objected to Captain Denton being asked if the crime scene investigation was unusual and extraordinary on the grounds the question called for a legal conclusion. The Commissioner overruled the objection as untimely and stated:

> Well, actually, he's already said – he's already answered the question and it's on the record. He said that he thinks it's unusual and extraordinary. In fact, he said in his entire career he thinks it's one of the most unusual.

(A. Vol. 1, p. 149). In Finding of Fact 10, however, the Commission instead found, Captain Denton testified "the child's death was a terrible sight" but Martinez was performing her "ordinary job." (A. Vol. 1, pp. 55 – 56). What the Commission left out was what Captain Denton actually said. When Respondents' counsel cross examined Captain Denton about Martinez performing her ordinary job that day, Captain Denton was very specific when he responded:

Q: In fact, everything she did out there as far as her activities at the scene in doing a crime scene investigation was a part of her ordinary duties that day?

A: If you remove the condition of the child itself and knowing the officer, remove that condition and that would be true.

Q: Well, you have to – forensic investigators have to investigate deaths of children, don't they?

A: Sure.

Q: So the fact that she was investigating a child doesn't take it out of her ordinary investigations, does it?

A: I don't think the whole – you get the whole story until you add the condition that existed, and the whole truth is that, that condition existed that day, and I think it was extraordinary because of that.

Q: Because...

A: I don't think it was ordinary that day.

Q: Pardon?

A: I don't think it was an ordinary job for anybody that day, and I think –

Q: But what she did was her job, was it not?

A: What she did was her job. Ordinary, if you're talking about, you know, had it been anywhere else that day, it would have been ordinary. But it wasn't anywhere else, and that's –

Q: Well, as far as the child is concerned – let's take the father out of it. If some other child has been run over, would you consider that to be extraordinary?

A: That's not what happened.

Q: Well, I'm not asking you – I'm saying assume. If it was some other person's child that had been run

over, they would that – and she investigated the child, would there be anything unusual or extraordinary about that?

A: No.

Q: So it boils down to the fact that this [child's father] was a former employee of the Spartanburg County's Sheriff's Department?

A: It boils down – that's half of the fact. The other half of the fact is, again, it's an infant that was run over by a police car that was driven by a former employee whom we were friends with. That's the whole fact.

(A. Vol. 1, p. 151 – 153). This is precisely the argument Martinez is making: that the "substantial evidence on the whole record" established the crime scene investigation involved a friend and former fellow police officer running over and crushing his infant daughter and that changed everything.

In Finding of Fact 11 the Commission attempted to bolster his finding Martinez was performing her "ordinary job," by finding the Sheriff's Department "had no rule prohibiting employees from going to accident scenes where they knew the victim and that forensic investigators were "required to work the accident scene." (A. Vol. 1, p. 56). There may not have been a policy prohibiting such an investigation, but to find such investigations were required again is not what Captain Denton actually said. Upon learning the investigation involved her friend and former fellow officer, Martinez, for the first time in her career, asked to be excused from the investigation. (A. Vol.

1, p. 75, 136). Captain Denton never said he was prohibited from excusing her, he testified:

> I don't know that I feel guilt. What I do know feel is I would attack an investigation or a situation, it doesn't always mean that's probably the right way for each person, depending on gender, depending on experience levels, depending on those kind of issues. And if I had taken that into account that afternoon, knowing what I know now, I probably would have let somebody else more experienced come out there and listened to the employee instead of deciding that regardless we were gonna do our job.

(A. Vol. 1, pp. 160 - 161). Captain Denton's testimony indicates he would have had discretion to let somebody else, somebody more experienced, perform the crime scene investigation.

In Findings of Fact 3, 5, and 6 the Commission found Martinez's duties as a forensic investigator "required her to collect evidence in homicide, suicide, and death cases on a regular basis" and exposed her to "blood and guts" and "the worst trauma imaginable" investigating "approximately 100-150 death cases," including "24 suspicious death/homicide cases" and participation "in 24-26 autopsies." The Commissioner also found, when Martinez was still in training to become a police officer and riding with another officer, she "had been to an investigation ... in which a child's head had been run over by a dump truck." And, the Commissioner also found, when Martinez was a patrol officer, a

teenager had died in her arms following an automobile accident. While these findings may be supported by some of evidence in the record, they left out the crucial fact Martinez testified she had never known the persons involved in any those prior cases:

> It's hard to believe that – that I can recall in all 28 years I have never had to deal with someone in a violent situation or in a violent death – I have never had to deal with someone that I actually knew...

(A. Vol. 1, p. 83). More than that, Martinez not only knew Officer Johnson, he was a fellow police officer who served with her and backed her up on the "thin blue line" when danger threatened.

Martinez never claimed Officer Johnson was her "best friend" or even a "close friend." She never claimed she had met his wife or daughter, visited their home, or socialized with them as found by the Commissioner in Finding of Fact 4. What Martinez claimed was:

> I considered [him] a friend, not to mention a co-police officer. We kind of stick together like a thin blue line, if y'all have ever heard that expression. We deal with things all the time that regular people don't see, so you get very close to your workers.

(A. Vol. 1, p. 29). When questioned further by the Commissioner what she meant, Martinez explained:

> It's really us against them and – ... this is the way I feel, anyway as a police officer. I can be in the middle of a park full of people, and if somebody jumps me to hurt me, then I've got to defend myself, but if there's somebody in uniform near me, I know that I'm not going to die because

> somebody's gonna be there to back me up. That person. I don't know about all the other 99 behind me, but that police officer has a bond that's going to make them help a fellow officer. That's just it. If you ever hear a bunch of lights and sirens going in one direction and more than one or two patrol cars, you know it's a fight that an officer has got and they're trying to get help to him as fast as they can.

(A. Vol. 1, pp. 115 - 116). Trying to belittle the significance of their friendship in Finding of Fact 4 the Commission found Martinez and Officer Johnson worked different zones on the same shift, two (2) nights a week and they "... would occasionally see each other at shift changes." (A. Vol. 1, p. 54). That might be true as far as it goes, it just doesn't go far enough. It leaves out what else Martinez actually said:

> The county was cut into like eight pieces, and each one was a zone; [Officer Johnson] was assigned another zone. Sometimes we had two to a zone. Sometimes we didn't have but one person working two zones. So, a lot of times if you were in this zone here and there was call in this this zone that you're not sure about it, it might be a bad call or whatever or just sounds suspicious, you go that way to go back up the officer that responds to the call. That way you don't have 20 minutes, you know, when they get into a fight or whatever to get there; you're already close to them. So, that's why I said that we backed each other up. Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if he got into fights or if I got into fights, we would respond. He would be there and I would be there.

(A. Vol. 1, p. 111) Martinez and Officer Johnson had a special bond of friendship that is forged between two (2) police officer who backed each other up when danger threatened in the line of duty.

The Commissioner also completely left out Martinez's testimony explaining how this relationship changed everything that day she was called to investigate the tragic accident involving her friend's infant daughter at his home:

> I think the difference is that like when you go to a burn scene, this is – and it sounds cold, but you get through it the way you get through it this is no longer a person; this is an object. And you have to keep a distance when you do these. I think [Officer Johnson's] case, or the child's case, was different because I have never seen it with anyone that I knew or that I couldn't turn her into an object. I couldn't just say that's just a little girl over there. I couldn't do that. You can't do that.

(A. Vol. 1, pp. 93 - 94).

Captain Denton testified Martinez had always performed her job diligently, dependably, and without any emotional problems of any kind. (A. Vol. 1, p. 136 - 137). To her credit and despite her misgivings, Martinez performed her duties that day as well. She worked the crime scene for four (4) hours. (A. Vol. 1, p. 77). She took the unusual step of putting up screens to block the view of "ghoulish" scene. (A. Vol. 1, pp. 98 - 99). She gathered evidence, took measurements, and moved the body so it could also be photographed by the Highway Patrol fatality team. (A. Vol. 1, pp. 87 - 91).

The worst part for her emotionally was having to climb under the car searching for evidence:

> I had to get underneath [the car] to take – see if I see any evidence of where the child was underneath the vehicle, and there were clumps of her hair and skin on the tire and on the asphalt, and then on the part of the – I don't know the undercarriage of the car very well, but the biggest part, I guess is going to be the gasoline tank. There were fingerprints, and there was the impression of a hand, I should say, not the whole hand but, just the little-bitty fingerprints dragging across the gasoline tank.

(A. Vol. 1, pp. 78 - 79). It was that vision of those "little-bitty fingerprints" that would later become her recurring nightmare.

In Finding of Fact 9 the Commission makes it sound like Martinez never mentioned the investigation of April 4, 2005 until four (4) months later. (A. Vol. 1, p. 55). What the Commissioner left out was the undisputed testimony the crime scene investigation had an immediate and devastating impact on Martinez. Captain Denton testified he immediately, "specifically that day," noticed a dramatic change in Martinez. (A. Vol. 1, pp. 137 - 139). That night she began having the nightmares about the "itty-bitty fingerprints." (A. Vol. 1, p. 78). She began having crying spells and told her parents about the little girl's death. (A. Vol. 1, p. 120). A couple of days later, on April 7, 2005, her family physician, Dr. John Wieder, noted for the first time in his records "[t]here is a lot of stress on [Martinez's] job..." (A.

Vol. 1, p. 170). Over the following weeks her condition and job performance deteriorated. Captain Denton asked two (2) chaplains to counsel Martinez but she testified:

> ...that didn't work, and it kept bothering me. I couldn't sleep at night. It would always be about the little girl, about the fingerprints under the tank.

(A. Vol. 1, pp. 78, 141). She became vulnerable to other emotional stresses in her life. On April 19, 2005 her family physician's office note said she was upset and crying because her cousin had died from AIDS. He prescribed Xanax and took her out of work for "a few days." (A. Vol. 1, pp. 170 - 172). When she attempted to returned to work on April 29, 2005, however, she passed out and had to be taken to the emergency room and admitted to the hospital for four (4) days because of uncontrollable high blood pressure. (A. Vol. 1, p. 173). While the death of her former ex-husbands cousin was temporally related, her family physician suspected there was something else bothering Martinez and pondered in his office note on May 26, 2005:

> But I am really at a loss as to explain why this girl's blood pressure is running so high. There has got to be either we are missing the boat somewhere or she is not taking her medicine. It has got to be one or the other, and I have a feeling I am missing the boat on something.

(A. Vol. 1, p. 176). Martinez attempted to return to work again on June 7, 2005 but her family physician reported panic attacks and stress at work. (A. Vol. 1, p. 179).

The stress, panic attacks, and nightmares relentlessly took their toll. On August 7, 2005 Martinez suffered a complete mental breakdown. Martinez's father described what he found when he was called to his daughter's home early that morning:

> It was about 6:00 to 6:30 in the morning. I got a call from her next-door neighbor, she called and said, 'Mr. Martinez, Raquel is going up and down in the front yard, and she's talking weird. I mean, something is wrong with her. I think its good for you to come and look and it.' So I did. I got in my car and went over there. As soon as I got there, I saw something was really bad because the car windshield was smashed to pieces. So I continued going to her house door, knock on the door, and it wasn't locked. I opened the door, and I knew right away that something was real bad. It looked like a hurricane came through it. Everything was everywhere. The glass back door was to pieces, one of the window screens was all smashed. I mean it was a mess. So I went through the house asking, 'Raquel, Raquel, where are you?' And I could not find her, so I went outside and looked in the yard. I didn't see her, so I told the next-door neighbor, I said, 'Please call 911 because I'm gonna go and find – and try to find Raquel. But when I find her, I want somebody here.' So I took my car, I went around the neighborhood, and I could not find her. So when I was coming back, a lady said, 'Hey, sir, are you looking for somebody?' I said, "yes, ma'am." She said, "Well, there's a young lady behind these bushes."

(A. Vol. 1, pp. 121 - 122). Martinez kept saying, "I want this little girl to be with me. I want her here. I want her here." (A. Vol. 1, p. 124). Her mother testified Martinez was mumbling about the imaginary little girl's hair in the

ambulance and brushing the imaginary little girl's hair at the hospital. (A. Vol. 1, pp. 128 - 129).

Martinez was admitted to the hospital for psychotic delusions, including the delusion she was traveling on a steamboat down the Mississippi River with the imaginary little girl. (A. Vol. 1, pp. 122, 195). She was discharged from the hospital to out-patient care but quickly had to be "stepped up" back to in-patient care. (A. Vol. 1, p. 285). In group counseling her treating psychiatrist, Dr. Ralph Castriotta, realized "because of [Martinez's] work as a police officer, she feels reluctant to open up in group in case there are some people in some way related to open cases she's working on." (A. Vol. 1, p. 279). Having noted the absence of a policy precluding investigations when employees knew the victim, it is certainly surprising the Commission left out Captain Denton's testimony there was a policy prohibiting police officers from discussing death cases. (A. Vol. 1, pp. 144 - 145).

In private, individual counseling provided to address her reluctance to discuss her job in group sessions, Martinez immediately opened up about the investigation:

> When I asked her why she was overtaking her medicines she returns to discussing a case she had several months back when a 2 year old was run over inadvertently by a police officer who ran over his own child. That would

> have been distressing but she knew the police officer and she had little support from her supervisor.

(A. Vol. 1, pp. 279 - 280).

The most blatant omission of crucial facts from the Commission's Decision and Order is the medical opinion testimony of Martinez's treating doctor, psychiatrist, and clinical psychologist and the Respondents' consulting psychiatrist. Martinez continued to receive follow-up care and all of her doctors related her mental breakdown to the crime scene investigation performed on April 4, 2005. On April 18, 2006 Dr. Diehl stated his opinion:

> I am writing in response to your request about two issues related to Ms. Martinez and her psychiatric difficulties. She did experience a significant traumatic work related situation which occurred on April 4, 2005. This situation involved investigation of a death which was of a young child and the death was a result of her father's moving of a car. The father was a former Spartanburg County Deputy and current Greenville County deputy. The severity of injuries along with the personal involvement regarding the father were certainly an unusual and fairly unique set of circumstances. It would be my impression that Ms. Martinez had been functioning quite well in her employment situation with the Sheriff's Department for six years and prior to that in Probation and Parole in South Carolina for about ten years. While she experienced the recent death of a cousin, this individual has serious medical problems and was really considered to have a terminal prognosis. Based on these factors, it is my opinion that her current psychological difficulties and impairment in work functioning were precipitated by the work related stressor on April 4, 2005.

(A. Vol. 1, p. 317). On May 3, 2006 her family physician, Dr. Weider, put all the pieces together, and said:

> Raquel comes back to the office today after a long absence she is no longer with the Sheriff's Department due to some very severe emotional problems that occurred during an investigation... She has been hospitalized for emotional problems after the investigation of a former deputy who ran over his little two-year-old girl in their driveway accidently and it was just the last straw for Raquel.

(A. Vol. 1, p. 180). On June 16, 2006, Dr. Sherbondy stated his opinion:

> The above referenced patient is currently under my care for Major Depressive Disorder the Post Traumatic Stress Disorder. It is my professional opinion that the patient's current condition is directly related to the incident that occurred in April of 2005 while employed with the Sheriff's Department. Ms. Martinez investigated the accidental death of a two year old child whose death occurred while her father was moving a car.

(A. Vol. 1, p. 295).

Apparently not satisfied with the unanimous opinions of Martinez's treating psychiatrist, clinical psychologist, and family physician, the Appellants sent Martinez for an independent psychiatric evaluation by Dr. John F. Abess. Dr. Abess report states he asked Martinez the crucial question:

> ... why, given her familiarity with death, death investigations, and forensic autopsies, that she had a difficult time with this specific investigation. She stated, 'It was horrible because it was an accident. He (the officer) had virtually taken his eyes off the child for a few seconds. I knew the father. Seeing him breaking down and when moving the child - it was like a broken doll - when you moved her, it sounded like you were tumbling

over some block, it was not rigid like a skeleton so to speak - I remember having to get under the patrol car and on the gasoline tank were her finger marks.

(A. Vol. 1, p. 324). In response to specific written questions posed by the Respondents' counsel, Dr. Abess stated his opinion:

1) WHAT IS YOUR DIAGNOSIS OF MS. MARTINEZ'S PSYCHIATRIC CONDITION?

Her primary psychiatric diagnoses are:

Post Traumatic Stress Disorder, Recurrent Episode, Chronic Bipolar I Affective Disorder

2) IN YOUR OPINION, DID SHE HAVE ANY OF THESE CONDITIONS PRIOR TO 4 APRIL 2005?

Claimant has evidence of Bipolar Mood Disorder existing prior to her related trauma although the diagnosis was not officially recognized.

3) IN YOUR OPINION WAS ANY OF MS. MARTINEZ'SPSYCHIATRIC CONDITIONS CAUSED OR AGGRAVATED BY THE ACCIDENT INVESTIGATION CONDUCTED BY MS. MARTINEZ ON APRIL 4, 2005?

Yes. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on April 4, 2005.

(A. Vol. 1, pp. 333 - 334).

ARGUMENT

Judicial review is guaranteed as a constitutional check on administrative adjudication of private rights. S.C. Constitution, Art. 1, § 22.

Administrative agencies, including the Workers' Compensation Commission, are required to follow the law as enacted by the Legislature and interpreted by the Courts. Judicial review from the decisions of the Workers' Compensation Commission is codified in § 42-17-60, S.C. Code Ann., 1976, of the Workers' Compensation Act, and governed by § 1-23-380(g), S.C. Code Anno., 1976, of the Administrative Procedures Act, which provides, "[t]he court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are ... affected by other error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record..." *See*: Lark v. Bi-Low, Inc., 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981).

As noted by the Circuit Court below, before judicial review of an administrative agency can be undertaken, the findings of fact of the administrative body must be sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by substantial evidence and whether the law was properly applied. Able Communications, Inc. v. SCPSC, *supra.* Where material facts are in dispute, the administrative body must make specific, expressed findings of fact. Id. *citing* Aristizabal v. Woodside-Division of Dan River, *supra.* The Circuit Court

noted a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing Court to address the issues.

While Courts may not substitute their judgment for that of the Commission on questions of fact, they may reverse the Commission when its decision is affected by an error of law or not supported by substantial evidence *on the whole record.* (Emphasis added). *See*: Sturkie v. Ballenger, 268 S.C. 536, 235 S.E.2d 120 (S.C. 1977); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E2d 679 (S.C. App. 2002); Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999); Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 SE2d 599 (S.C. App. 1999). The substantial evidence required to support a finding is not a mere scintilla of evidence, nor evidence viewed blindly from one side of the case, but is evidence which, *considering the record as a whole*, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. (Emphasis added). Etheredge v. Monsanto Co., *supra.*; Gibson v. Spartanburg School District #3, 338 S.C. 510, 526, S.E.2d 725 (S.C. App. 2000). As this case poignantly illustrates, it is not evidence cherry picked from the record while other crucial evidence is blindly ignored, that must be considered.

This appeal involves the compensability of a purely mental injury, sometimes called a "mental-mental" injury, under the Workers' Compensation Act. South Carolina Courts had no trouble interpreting the

term "accident," as defined in § 42-1-160, S.C. Code Anno., 1976 as amended, to include physical-mental injuries when proper medical evidence established the mental injury was caused by a compensable physical injury. *See*: Kennedy v. Williamsburg County, 242 S.C. 477, 512 (S.C. 1963)(schizophrenia caused by compensable assault on prison guard); Getsinger v. Owens-Corning Fiberglas Corp., 335 S.C. 77, 515 S.E.2d 104 (S.C. App. 1999)(depression caused by chronic pain from compensable leg injury). Purely mental injuries were later held compensable if they were caused by unusual or extraordinary conditions of the employment. *See*: Stokes v. 1st National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988) *cert. granted, aff'd* 306 S.C. 46, 410 S.E.2d 248 (S.C. 1991)(mental breakdown caused by unusual and extraordinary conditions of employment during corporate merger); Powell v. Vulcan Materials Co., 299 S.C. 325, 384 S.E.2d 725 (S.C. 1989)(mental breakdown caused by unusual and unexpected verbal altercation with supervisor). In 1996 the South Carolina Legislature codified the Court's decisions by amending the statutory definition of an "accident" to provide:

> Stress arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury is not a personal injury unless it is established that the stressful employment conditions causing the mental injury were extraordinary and unusual to the normal conditions of the employment.

§ 42-1-160, S.C. Code Anno., (Supp. 2002).

Although the question of compensability for a purely mental injury appeared to have been resolved, two (2) issues have repeatedly arisen. The first issue is, in deciding whether conditions of employment were unusual or extraordinary condition, whether the focus on the ordinary conditions of the employment in general or on the conditions of the employee's particular employment. And, the second issue is, in deciding causation, does the unusual or extraordinary condition of employment have to be the sole cause of the mental injury. Both of these questions arise again in this appeal.

I. THE COURT OF APPEALS SHOULD HAVE AFFIRMED THE DECISION OF THE CIRCUIT COURT BECAUSE THE COMMISSION'S FINDING OF FACT AND RULING OF LAW THE CRIME SCENE INVESTIGATION OF APRIL 4, 2005 WAS NOT UNUSUAL OR EXTRAORDINARY WAS AFFECTED BY AN ERROR OF LAW AND NOT SUPPORTED BY SUBSTANTIAL EVIDECE ON THE WHOLE RECORD.

The proof required to establish whether the conditions of employment were unusual or extraordinary worked its way up through the appellate process in the case of Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (S.C. 2000). In *Shealy* an undercover police informant infiltrated a bar to gather information about drug trafficking. The drug dealing became suspicious of the undercover agent and, as described in the decision, there was, "a high tension confrontation involving guns." Later, an actual plot to murder the undercover agent was reported. While under the threat, the Sheriff's Department ended the undercover drug program depriving the

undercover agent of police protection and the right to carry a firearm. The undercover agent suffered a mental breakdown and was hospitalized for depression, suicidal thoughts, post-traumatic stress disorder, and acute alcoholism.

The Commission found the risk of discovery and retaliation are usual and ordinary conditions of employment for an undercover police agent and denied the claim. The Circuit Court and Court of Appeals affirmed on the ground the findings were supported by substantial evidence. Shealy v. Aiken County, Op. No. 98-UP-573 (S.C. App. filed December 16, 1998).

The Supreme Court, granted certiorari and reversed. The Supreme Court ruled the unusual and extraordinary rule is a subjective test. The condition or combination of conditions alleged to have caused the mental injury are compared to the conditions of the employee's particular employment. The Court held:

> This Court has never applied an objective standard of reasonable employment when considering whether a worker was exposed to unusual or extraordinary work conditions, but rather has compared the conditions to the worker's particular employment.

Shealy, 535 S.E.2d at 443. In reaching the conclusion the combination of conditions alleged to have caused the undercover agent's mental injury were unusual and extraordinary, the Court did not dispute that death threats, confrontations with violent drug dealers, or fear of disclosure and retaliation

are all part of the conditions of the general employment of an undercover police agent. The Supreme Court concluded, however, knowing there was a plot to be murdered by drug dealers willing and able to carry out the threat was, itself, "certainly extraordinary" and, at the same time, "to be stripped of the police protection" constituted an extraordinary condition of the undercover agent's particular employment. Shealy, 535 S.E.2d at 444.

The issue worked its way up through the appellate process again in Doe v. Dept. of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (S.C. 2008). In *Doe* a licensed practical nurse worked in a community home for emotionally disturbed patients. The LPN was trained and had to deal with aggressive patients in her employment. As part of a downsizing program, however, the Department of Disabilities changed the population mix in the LPN's community home from one consisting of passive patients to a mix of passive and aggressive patients resulting in a dramatic increase in the level of violence in the home. The LPN began receiving psychiatric care and was hospitalized for severe depression.

The Commission found changes in the types of patients assigned to an LPN, changes in the level of level of care patients require, and having to deal with aggressive patients were all usual and normal conditions of an LPN's general employment and denied the claim. The Circuit Court reversed the Commission on the ground the substantial evidence on the whole established

the mix of passive and aggressive patients was unusual and extraordinary when compared to the LPN's normal working conditions. The Court of Appeals, however, reversed the Circuit Court on the grounds the Commission's findings were supported by substantial evidence. Doe v. Dept. of Disabilities, 364 S.C. 411, 615 S.E.2d 785 (S.C. App. 2005).

The Supreme Court again granted certiorari and reversed the Court of Appeals. In reaching the conclusion the change in the patient mix in the home was unusual and extraordinary, the Court did not dispute LPN's are trained and have to deal with aggressive patients, that patients are sometimes moved from one facility to another, or that the level of care patients require can change. Again, however, the Court concluded the new mix of passive and aggressive patients causing the home to become "more chaotic" and to a "significant increase" in violent behavior was unusual and extraordinary when compared to the normal conditions of the LPN's particular employment. Doe, 660 S.E.2d 262. In a separate concurring opinion, Chief Justice Toal pointed out the "fatal flaw" in the Court of Appeals' reasoning:

> The reasoning of the single commissioner shares a fatal flaw with that employed by the court of appeals in reinstating the single commissioner's decision. In my view, that fatal flaw is the focus on the ordinary aspects of Petitioner's employment to the exclusion of an examination of the extraordinary, and the consequent use of those ordinary aspects to support the conclusion that Petitioner's injury is not compensable.

* * *

> In my view, both the single commissioner and the court of appeals failed to consider whether the changed conditions of Petitioner's employment were, for her, unusual or extraordinary, and similarly failed to evaluate how the changed conditions affected Petitioner. I believe this was error under *Stokes* [*supra.* 410 S.E.2d 248 (S.C. 1991)], and based on this error of law, I would reverse.

Doe, 660 S.E.2d 260, 263.

Martinez is mindful the issue again worked its way up through the appellate process more recently in the case of Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012). In *Bentley* a police officer alleged he suffered a mental injury because he fatally shot a suspect in the line of duty. The officer "confirmed he knew he would sometimes be required to use deadly force on the job," received annual training on the use of firearms and deadly force, and there was a Sheriff's Office policy authorizing the use of deadly force. Undisputed testimony, however, established a police office having to actually use deadly force was a rare occurrence making it unusual and extraordinary. Fearing a slippery slope, the Court declined to define unusual or extraordinary solely in terms of the frequency of the occurrence happening. The Court held:

> We hold that Appellant's testimony that he "might be in a situation where he might have to someone," similar testimonies by Sheriff Wright that officers were aware of the possibility they might be required to shoot and kill, Appellant's training in the use of deadly force, and the department's policy addressing when deadly force should be used constitutes substantial evidence supporting the Appellate Panel's conclusion that the October 21, 2009

> incident was not extraordinary and unusual, but was a standard and necessary condition of a deputy sheriff's job.

Id., 730 S.E.2d at 303.

Justices Hearn and Beatty in their dissenting opinion questioned the majority opinion equating the mere possibility of an event occurring with it being unusual and ordinary. They argued such an interpretation is contrary to the plain language of the statute and improperly conflates the standard of compensability for mental-mental injuries with the concept of foreseeability. Id., 730 S.E.2d at 304. They would have held, "that Deputy Sheriff Bentley's mental injuries – injuries which are admitted and indisputably resulted from this necessary yet regrettable event – are compensable because while shooting and killing a suspect in the line of duty may have been something he was trained to do, it was clearly an unusual and extraordinary part of his job as a law enforcement officer." Id., 730 S.E.2d at 305.

It is respectfully submitted *Bentley* is distinguishable. Deputy Bentley shot an unknown suspect. He did not shoot and kill a friend and fellow police officer with whom he'd served, side by side backing each other up when danger threatened in the line of duty. Having to investigate a horrible death of an infant child involving a friend and fellow police office as occurred in this case was not a rare occurrence, it was unique in the combined in the combined forty-eight (48) years of law enforcement experience of both Martinez and Captain Denton, the only law enforcement witnesses who

testified. There is no evidence Martinez was foresaw or was ever trained how to investigate violent crimes involving fellow officers or their families.

In the present case, the Commission's Decision and Order was affected by an error of law because it improperly focused on the usual and normal conditions of Martinez's employment to the exclusion of the unusual and extraordinary circumstances surrounding the crime scene investigation she performed on April 4, 2005 and failed to consider the effect those conditions had on Martinez. Doe, *supra.*, 660 S.E.2d at 263. The Commissioner never found, one way or the other, whether a "special bond" was formed between Martinez and Officer Johnson because of their service as fellow officers or what effect that relationship may have had on Martinez. The Commission never found "Martinez's and Anthony Johnson's friendship was not of such a close degree as to render the investigation an unusual and extraordinary condition of employment," that was an improper finding of fact made by the Court of Appeals based on disputed evidence. Maybe, through some inexplicable process of reasoning, the Commission on remand will be able to find a way to explain how it could find a bond of friendship cannot develop between police officers, soldiers, firemen, or any of our dedicated public servants who face life and death situations serving together in the line of duty, but there is no good reason for the Courts to make such a finding for them.

The Commission's Decision and Order is affected by an error of law because saying a finding is "based on all the evidence" is not a substitute for making detailed findings of fact and performing the required legal analysis. The Commission and the Court of Appeals committed the same "fatal flaw" of focusing on the usual and ordinary conditions of the job of a crime scene investigation, to the exclusion of other crucial evidence in the whole record, that was committed in Shealy, *supra.*, and Doe, *supra.* Focusing on Martinez's ordinary duties, to the exclusion of the relationship Martinez had with Officer Johnson and its effect on her that day investigating the death of his infant daughter, left them blind men from Indostan unable to make out the elephant in the room. John Godfrey Saxe, *The Blind Men and the Elephant.* No one disputes what Martinez did that day were part of her normal duties but, as Captain Denton testified, "that's half of the fact." Until you include the gruesome condition of the infant child and Martinez's relationship to Officer Johnson, you don't get the "whole fact." The substantial evidence on the whole record establishes that Martinez's friendship and service with Officer Johnson made the investigation unusual and extraordinary because it made it impossible for Martinez's to turn her friend's and a fellow police officer's crushed little girl into an object that she could distance herself from emotionally.

It is respectfully submitted the Circuit Court Judge got it right. The Decision and Order of the Commission improperly focused on the usual and normal aspects of Martinez's employment to the exclusion of the unusual and extraordinary circumstances surrounding the investigation she performed on April 4, 2005 and failed to perform any analysis of the effect such circumstances had upon her. It made findings based on some of the evidence to the exclusion of other crucial evidence. And, it performed not legal analysis. The decision of the Court of Appeals should be reversed and the claim remanded to the Commission for detailed findings of fact and rulings of law based on the law and the substantial evidence on the whole record.

II. THE COURT OF APPEALS SHOULD HAVE AFFIRMED THE DECISION OF THE CIRCUIT COURT BECAUSE THE COMMISSION'S FINDING OF FACT AND RULING OF LAW MARTINEZ FAILED TO PROVE THE INVESTIGATION SHE PERFORMED ON APRIL 4, 2005 WAS THE CAUSE OF HER MENTAL INJURY WAS AFFECTED BY AN ERROR OF LAW AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

Similarly, the second question, whether the unusual or extraordinary conditions of employment have to be the sole proximate cause of the mental injury, has previously worked it way up through the appellate process as well.

It has long been held in workers' compensation cases, "[a]n accident arises out of the employment when it arises because of it, as when the employment is a contributing proximate cause." Fowler v. Abbott Motor Co.,

236 S.C. 226, 113 S.E.2d 737 (S.C. 1960). It has long been held the aggravation, acceleration, or lighting up of a pre-existing or latent infirmity or weakened physical condition is compensable, even though the accident would not have caused an injury to a perfectly healthy individual. Ferguson v. State Highway Dept., 197 S.C. 520, 15 S.E.2d 775 (S.C. 1941); Heirs v. Brunson Const. Co., 221 S.C. 212, 70 S.E.2d 211 (S.C. 1952); Glover v. Columbia Hospital of Richland County, 236 S.C. 410, 114 S.E.2d 565 (S.C. 1960). This is the rule that was applied in heart attack cases from which the unusual and extraordinary rule was derived when there was pre-existing cardiac pathology that contributed to the heart attack. *See*: Kearse v. Carolina Wildlife Resources Dept., 236 S.C. 241, 146 S.E.2d 856 (S.C. 1960); McWhorter v. S.C. Dept. Of Ins., 252 S.C. 90, 165 S.E.2d 365 (S.C. 1969).

A problem has arisen in mental injury cases because two (2) Court decisions have been read together and misinterpreted to support a much narrower definition of proximate cause. The first decision is *Shealy, supra.*, which held "[i]n order for [a claimant] to recover workers' compensation benefits [for a purely mental injury], he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown." Shealy, *supra.*, 535 S.E.2d at 442. The second decision is Nawa v. Wackenhut Corp., 341 S.E.2d 800 (S.C. App. 1986) which

held South Carolina law "requires the employee's job be more than one factor, to any extent, in the injury or death. Id., 341 S.E.2d 801.

Nawa certainly proves the old adage, bad facts make bad law. The claimant, who had a pre-existing brain aneurysm, suffered a fatal stroke while having sexual intercourse with his wife at home. His family claimed stress at work was a factor contributing to his stroke and their lawyer claimed, if stress was a factor to any degree, the stroke was compensable. The Commission, Circuit Court, and Court of Appeals refused to adopt the expansive definition of proximate cause in place of the most probable standard normally applied and affirmed the denial of the claim. In reaching its decision the Court of Appeals noted the testimony of the claimant's supervisor disputing the claimant was under undue stress at work, the medical evidence a person with an aneurysm is always at risk for spontaneous rupture, the medical evidence that blood pressure raises 40% during sexual intercourse, the medical evidence aneurysms frequently rupture during intercourse, and expert medical testimony the claimant most probably would not have suffered the ruptured aneurysm had he not been having sexual relations. Clearly, the culprit in the case was the claimant having sex with his wife, not unusual or extraordinary stress at work.

It is respectfully submitted interpreting these cases together to require the unusual and extraordinary conditions of employment be the sole cause of

a mental injury is clearly wrong. The issue whether the aggravation of a pre-existing mental condition was compensable was raised in *Shealy*, but not preserved for appellate review. Shealy, *supra.*, 535 S.E.2d at 444 - 445. It was raised again, however, in *Doe.* The Court of Appeals reversed the Circuit Court on the ground there was substantial evidence supporting the Commission's finding the mental injury was not "caused or induced by" by the minor physical injuries the claimant sustained and there was substantial evidence "that other stressors in her life that were unrelated to work caused her mental injuries." The Supreme Court on certiorari reversed the Court of Appeals and held:

> Finally, the Court of Appeals observed that Claimant had non-work related stressors, including a prior bout with depression in 1980 and her father's cancer and death in December 1997, that 'could impact her mental injury.' There is no support in the record for the conclusion that any of these outside factors caused or even contributed to Claimant's disability. The only evidence of causation is that Claimant's mental injury was caused by her stress at work as stated by Dr. Lowe. Moreover, a history of pre-existing depression does not preclude workers' compensation benefits for a mental-mental injury. *See:* Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (S.C. 2006).

See also: Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E.2d 268 (S.C. App. 2006) (the right of a claimant to compensation for the aggravation of a pre-existing condition psychiatric condition arises where there is a dormant condition which has produced no disability but which becomes disabling by reason of

the aggravating injury) *citing* Anderson v. Baptist Med. Ctr., 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001).

It is respectfully submitted this Court has never intended for the use of the word "the" cause to be interpreted to mean "the sole" cause. The Supreme Court went on in Shealy, *supra.*, to cite Powell v. Vulcan Materials Co., *supra.*, and Gambrell v. Burleson, 252 S.C. 98, 165 S.E.2d 622 (S.C. 1969) both stating the claimant must only prove a causal connection between the injury and the subsequent condition in workers' compensation cases. *See also*: Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E.2d 491 (S.C. App. 2004). *Nawa* should read narrowly and limited to its unusual facts.

Unfortunately, this is not the interpretation urged by the Respondents throughout this appeal. (A. Vol. 2, pp. 520 – 521). It is impossible to tell whether it is the interpretation adopted by the Commission and the Court of Appeals. If their decisions are allowed to stand, however, it will add fodder to this erroneous interpretation of the law of causation in workers' compensation cases, an erroneous interpretation that will preclude the aggravation of a pre-existing mental conditions from being compensable virtually every case.

The Commission's Decision and Order, and Judge Few's concurring opinion below are affected by an error of law because they cherry picked excerpts from Martinez's medical records and excluded other crucial

evidence. This Court in *Bentley* decried the continued need for the unusual or extraordinary standard in mental injury cases because of "scientific and technological progress in medicine and psychology" has undermined the old policy argument that fostered the unusual and extraordinary rule. Bentley, *id.*, 370 S.E.2d at 299. This Court should not now turn its back on the same science and take judicial notice every mental health professional obtains a complete family, social, and medical history, including information about other emotional stresses in the patient's life but doesn't stop there and jump to conclusions. They consider the patient history together with the patient's course and response to treatment, relevant medical evidence, the results of any diagnostic tests that have been performed before reaching their diagnosis and opinions concerning the patient's condition based on their education, training, and experience. Their decisions make it sound like Martinez never mentioned the investigation of April 4, 2005 for four (4) months by leaving out other undisputed evidence the investigation of April 4, 2005 had an immediate and devastating impact on Martinez. The Commissioner left out Captain Denton's testimony he immediately, "specifically that day," noticed a dramatic change in Martinez. That it was that very night Martinez began having the nightmares about the "itty-bitty fingerprints." That in the days that immediately followed Martinez began having crying spells, told her parents about the infant's death, and for the time her family physician noted

"[t]here is a lot of stress on [Martinez's] job..." in his medical chart. That over the following weeks her condition and job performance deteriorated to the extent Captain Denton asked two (2) chaplains to counsel her. It is hardly surprising Martinez became vulnerable to other emotional stresses in her life and started suffering uncontrollable hypertension requiring hospitalization. While her former ex-husbands cousin did die of AIDS after the investigation, her family physician knew about that but still suspected there was something else bothering Martinez and said, "I have a feeling I am missing the boat on something." He documented panic attacks when Martinez attempted to return to work. All culminating her delusional break with reality on August 7, 2005. It may be true Martinez did not open up to her doctor, psychiatrist, and psychological counselors for several months about the investigation, but the Commissioner also left out the explanation for that as well. When Dr. Ralph Castriotta, realized "because of [Martinez's] work as a police officer, she feels reluctant to open up in group in case there are some people in some way related to open cases she's working on" and she was offered private, individual counseling, she immediately opened up about the investigation of April 4, 2005.

The most glaring omission from the Commissioner's findings of fact, however, is the blatant omission of the unanimous opinions of medical experts all of whom related Martinez's mental breakdown to the crime scene

investigation performed on April 4, 2005. Dr. Diehl stated his opinion, "...it is my opinion that her current psychological difficulties and impairment in work functioning were precipitated by the work related stressor on April 4, 2005." Dr. Weider stated his opinion, "[Martinez] has been hospitalized for emotional problems after the investigation of a former deputy who ran over his little two-year-old girl in their driveway accidently and it was just the last straw for Raquel." Dr. Sherbondy stated his opinion, "It is my professional opinion that the patient's current condition is directly related to the incident that occurred in April of 2005 while employed with the Sheriff's Department. Ms. Martinez investigated the accidental death of a two year old child whose death occurred while her father was moving a car." And even the Respondent's consulting psychiatrist stated his opinion, "Both [of Martinez's] Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on April 4, 2005." Reducing the substantial evidence to selected excerpts from Martinez's medical records to the exclusion of the unanimous opinions of the medical experts brings to mind Bob Newhart's comedy routine, "Aside from that Mrs. Lincoln, how did you enjoy the play?"

Again it is respectfully submitted the Circuit Court got it right. The Court should not be left "straining to speculate how Martinez failed to meet her burden of proof." Nor should the Court have to speculate how the

Commission applied the facts to the applicable legal tests. In light of Captain Denton's testimony Martinez performed her duties diligently, dependably, and without any emotional problems of any kind, the Court should not have to wonder, as Martinez does, what possible relevance it has that Martinez was molested as a six (6) year old child, forty- one (41) years ago; or that she was raped as a nineteen (19) year old teenager, twenty-eight (28) years ago; or that she took a mild tranquilizer for year and a half following a divorce, ten (10) years ago. The Court should not simply assume those findings did not improperly influence the Commissioner's rulings. Nor should the Court simply ignore those findings, as the Court of Appeals chose to do, because ignoring them will encourage similar findings in other cases and tacitly approve the misguided notion people like Martinez are somehow damaged goods unworthy of either compassion or compensation no matter what later befalls them. The Circuit Court correctly ruled the Commission's decision was affected by an error of law because it misinterpreted Sealy, *supra.*, and Nawa, *supra.*, to require Martinez prove the crime scene investigation of April 4, 2005 was "the" proximate cause of her mental injury. The Order of the Court of Appeals should be reversed and the claim remanded to the Commission for further findings of fact and rulings of law consistent with the established law of causation in workers' compensation cases.

CONCLUSION

For the foregoing reasons, it is respectfully submitted the Order of the Court of Appeals should be reversed as affected by errors of law and unsupported by substantial evidence on the whole record and the claims should be remanded to the Commission for further findings of fact and rulings of law consistent with the Court's decision.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge
Case No.: 2007-CP-42-1966

Appellate Case No.: 2011-202268

Raquel Martinez, Employee, Petitioner,

v.

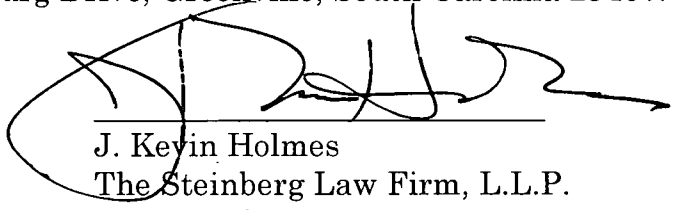
Spartanburg County, Employer,
And S.C. Association of Counties
Self-Insurance Fund, Carrier,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Petitioner's Brief on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 12, 2013, addressed to their attorneys of record, Richard B. Kale, Jr., Esquire, and Mitchell K. Byrd, Jr., Esquire, Willson, Jones, Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29407.

April 12, 2013



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CERTIFICATE OF COUNSEL

The undersigned certifies that the Petitioner's Brief complies with Rule 211(b), SCACR.

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