

Spring 2004

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Recommended Citation

Catoe, Christina J. (2004) "Coverage for Cops: Should Injuries Sustained by Off-Duty Sheriff's Deputies in Their Patrol Cars Compensable under the Workers' Compensation Act," *South Carolina Law Review*: Vol. 55 : Iss. 3 , Article 20.

Available at: <https://scholarcommons.sc.edu/sclr/vol55/iss3/20>

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COVERAGE FOR COPS:

SHOULD INJURIES SUSTAINED BY OFF-DUTY SHERIFF'S DEPUTIES IN THEIR PATROL CARS BE COMPENSABLE UNDER THE WORKERS' COMPENSATION ACT?

I. INTRODUCTION

Generally, injuries sustained by off-duty employees are not compensable under the South Carolina Workers' Compensation Act.¹ But what if an employee, injured while technically "off the clock,"² is still charged with being ready and available to respond to calls? The Supreme Court of South Carolina has indicated that any injury sustained is not compensable unless the employee is actually responding to a call.³ However, what if this employee is not only required to be ready and available to respond to calls, but is *also* operating a vehicle provided by his employer *and* is charged with active duties when operating this vehicle? This is the situation of Richland County deputy sheriffs. Consider a hypothetical illustration of this problem: an off-the-clock deputy sheriff is injured in a car accident while driving his county-issued patrol vehicle on a personal errand. The obvious clash between being technically "off the clock" and in the process of carrying out a personal errand but still being charged with the performance of active duties creates a workers' compensation dilemma. No appellate case law directly addresses this issue in South Carolina. However, several other jurisdictions have addressed the issue of injured off-the-clock law enforcement officers.⁴ Further, the South Carolina Workers' Compensation Commission recently denied coverage for an off-duty deputy sheriff's injuries sustained in a county patrol car.⁵

1. S.C. CODE ANN. §§ 42-1-10 to 42-19-50 (Law. Co-op. 1989 & West Supp. 2003); *see, e.g.*, *Sola v. Sunny Slope Farms*, 244 S.C. 6, 15, 135 S.E.2d 321, 326 (1964) ("Ordinarily, the employment relationship is suspended from the time the employee leaves his work until he resumes his work . . .").

2. "Off the clock," as used in this Comment, means the deputy is not working a regularly scheduled shift of duty. The term "off duty" is not used because deputies are never off duty when they are in their patrol cars, as will be apparent later in the text.

3. *See, e.g.*, *Fowler v. Abbott Motor Co.*, 236 S.C. 226, 234, 113 S.E.2d 737, 741 (1960) (noting that "[t]here is no evidence in this record that the claimant was answering any call in behalf of the employer.>").

4. *See, e.g.*, *Harris County Sheriff's Office v. Negrete*, 578 S.E.2d 579 (Ga. Ct. App. 2003) (upholding coverage for an off-duty deputy sheriff injured in his patrol car).

5. Withers, File No. 0201410 (S.C. Workers' Comp. Comm'n June 4, 2003) order of the Single Commissioner (on file with the South Carolina Workers' Compensation Commission). The Single Commissioner denied coverage to a Richland County deputy sheriff on the ground that the deputy's injuries "did not arise out of and did not occur in the course of her employment" with Richland County.

In South Carolina, as in many states, the purpose of the Workers' Compensation Act is to protect employees who are actually engaged in performing work for the benefit of their employers.⁶ South Carolina should examine the issue of injured off-the-clock deputy sheriffs in light of the Act's purpose and consider the factors that courts have considered important when deciding whether employees' injuries are covered under workers' compensation. South Carolina should then conclude that injuries sustained by an off-the-clock sheriff's deputy in a county patrol car should be compensable under the Act if the off-the-clock deputy was in fact performing duties for the benefit of his employer at the time of injury. Furthermore, coverage should extend to any law enforcement officer in South Carolina who is employed under policies, procedures, and duty requirements similar to those of a sheriff's deputy.

This Comment suggests that deputy sheriffs should be covered under workers' compensation at times when non-law enforcement officers would not be covered. In order to achieve a more thorough analysis of the issue, the Comment's scope is limited to the policies and procedures of the Richland County Sheriff's Department. Part II describes the general nature of Richland County deputy sheriffs' duties and illustrates why off-the-clock Richland County deputy sheriffs pose a special problem in workers' compensation law. Part III explains how current statutory and case law in South Carolina does not resolve this issue and reviews several factors that the courts have deemed important when deciding coverage for employees. Part IV briefly reviews relevant case decisions from other states and applies that law to deputy sheriffs. This Comment then argues for coverage of off-the-clock deputy sheriffs if certain conditions are satisfied, including: injury while operating patrol vehicles, adherence with all proper county procedure, and circumstantial evidence that the deputies were performing duties for the benefit of the county at the time of their injury. Lastly, Part V comments on public policy and how coverage would extend to all law enforcement officers in South Carolina who are employed under policy provisions similar to those of Richland County.

II. THE DUTIES OF A RICHLAND COUNTY DEPUTY SHERIFF

Richland County deputy sheriffs are, as a general rule, hired by the county to

Id. at 3. The off-the-clock deputy was injured while driving a county-issued patrol car to a personal appointment. *Id.* at 2. The deputy followed all proper police procedures regarding use of the car, remained available for responding to calls, and testified to actively "scouting" the route from the patrol vehicle. *Id.* at 2, testimony of Jessie Withers, Claimant, at Workers' Compensation Hearing in Columbia, South Carolina (Apr. 9, 2003). The denial of this coverage is currently on appeal to the Full Commission of the South Carolina Workers' Compensation Commission; the case could potentially reach the appellate courts of South Carolina. *See id.*, Workers' Compensation Appeal Form 30.

6. *See, e.g.*, *Smith v. Fulmer*, 198 S.C. 91, 96, 15 S.E.2d 681, 683 (1941) ("The primary purpose of a workmen's compensation act is to protect the workman who actually does the work.") (quoting *Marchbanks v. Duke Power Co.*, 190 S.C. 336, 363, 2 S.E.2d 825, 836 (1939)).

patrol the roadways within the county and respond to police business.⁷ A deputy's workplace is the entire county, and his office is the patrol car that he drives. In Richland County, deputy sheriffs are considered to be on duty twenty-four hours a day, although they are "periodically relieved from the routine performance of it."⁸ Thus, although deputy sheriffs work regularly scheduled shifts of duty, they are still required to act as law enforcement officers at all times when the need arises. This state of continual on-duty status begins the moment that they take the oath of a deputy sheriff.⁹

Deputy sheriffs must be prepared at all times to respond to orders from supervisory officers as well as to requests for assistance from private citizens.¹⁰ Deputies who are technically off the clock are "not relieved from the responsibility of taking proper police action in any matter coming to their attention."¹¹ Even when deputies are off the clock, they may be called to backup other officers and respond to emergency situations.¹² They may also be required, whether on or off the clock, to attend court on official business.¹³ The responsibilities of a deputy sheriff, therefore, are not limited to those duties performed on his regular on-the-clock shift.

Richland County deputy sheriffs are permitted, and even encouraged, to use their patrol vehicles when they are not on regular duty.¹⁴ The county pays for the maintenance of these vehicles and for gasoline (via a gas card) used in its patrol cars, regardless of whether the deputy uses the car on or off the clock.¹⁵ The county also insures these vehicles.¹⁶ All deputies operating county patrol vehicles are specifically considered on duty and must follow the usual police policies and

7. Interview (name of interviewee confidential), Richland County Sheriff's Dep't, in Columbia, S.C. (Oct. 17, 2003) [hereinafter Interview].

8. RICHLAND COUNTY SHERIFF'S DEP'T, POLICY AND PROCEDURE GUIDELINES Procedure No. 105 (rev. June 2001) [hereinafter POLICY MANUAL].

9. See S.C. CODE ANN. § 23-13-20 (Law. Co-op. 1989 & West Supp. 2002). All deputy sheriffs are required by statute to take the following oath: "I . . . solemnly swear . . . that during my term of office as county deputy, I will . . . be alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violator of them, [and] will conduct myself at all times with due consideration to all persons . . ." *Id.* This chapter in the South Carolina Code of Laws, prescribing certain duties of deputy sheriffs, illustrates one of the ways that deputy sheriffs differ from the majority of the state's work force. See S.C. CODE ANN. §§ 23-13-10 to -550 (Law. Co-op. 1989 & West Supp. 2002). Of course, Chapter 13, unlike the policies of Richland County, applies to all deputy sheriffs in South Carolina. Notably, deputy sheriffs are generally considered "constitutional officers" because they are contemplated in the South Carolina Constitution as offshoots of the sheriff. See S.C. CONST. art. V, § 24.

10. POLICY MANUAL, *supra* note 8, at Procedure No. 105.

11. *Id.*

12. *Id.* at Procedure No. 703 (II)(F) (rev. June 2003).

13. Interview, *supra* note 7. For example, deputies often testify in traffic court cases against defendants to whom they formerly issued citations.

14. POLICY MANUAL, *supra* note 8, at Procedure No. 703 (II)(A); Interview, *supra* note 7.

15. Interview, *supra* note 7.

16. *Id.*

procedures.¹⁷ When a deputy places a county patrol vehicle in use, he is required to radio the central dispatch office, give his current location, and notify the attendant that the car is being used.¹⁸ When he arrives at his destination, he must again radio dispatch and advise the attendant that he is exiting the vehicle.¹⁹ While in county patrol vehicles, deputies are under a duty to maintain this communication with the central dispatch office, constantly monitor the police radio, be available to answer calls, respond to requests for assistance, and serve as backup to officers working regular shifts.²⁰

Deputies operating patrol vehicles, whether on or off the clock, are not permitted to visit liquor stores, adult entertainment clubs, or bars for personal reasons.²¹ They are also not permitted to use the patrol car if they plan to engage in hunting or fishing activities, and they are not allowed to drive the vehicle outside of the county unless they have obtained special permission to do so.²² Deputies are further restricted in what clothing they may wear in the vehicle.²³ Deputies may only wear shirts with collars or tee shirts bearing the Sheriff's Department logo.²⁴ Slacks are mandatory, and if the slacks are blue jeans, they must not have any holes or stains.²⁵ In addition, deputies are required to keep in their possession their badges, guns, issued keys, and issued identification cards.²⁶ Therefore, deputies remain under some county control whenever they operate county patrol vehicles.

More importantly, while in their patrol cars deputies are required to actively survey their surroundings for suspicious activity, violations of the law, and for people who are wanted by the county.²⁷ This is in addition to their duty to remain physically and mentally prepared to respond to a call.²⁸ Physical preparedness includes having all necessary items in the patrol car.²⁹ Mental preparedness includes a host of things, including alertness and recognition of surroundings.³⁰ Deputies are subject to discipline or termination if they do not perform any of their required duties.³¹ Thus, a deputy sheriff who is operating his patrol vehicle performs essentially the same duties for his employer as if he were working on a regularly scheduled shift.

17. POLICY MANUAL, *supra* note 8, at Procedures No. 105, 703 (II)(F).

18. Interview, *supra* note 7.

19. *Id.*

20. POLICY MANUAL, *supra* note 8, at Procedures No. 105, 703; Interview, *supra* note 7.

21. See POLICY MANUAL, *supra* note 8, at Procedure No. 703 (II)(G)(2).

22. *Id.* at Procedure No. 703 (II)(G)(3-4).

23. *Id.* at Procedure No. 703 (II)(H)(2-4).

24. *Id.* at Procedure No. 703 (II)(H)(2).

25. *Id.*

26. *Id.* at Procedure No. 703 (H)(1).

27. Interview, *supra* note 7. "Wanted" means individuals who have outstanding warrants on them or whose pictures and other information are distributed to all deputy sheriffs. *Id.*

28. See POLICY MANUAL, *supra* note 8, Procedure No. 105; Interview, *supra* note 7.

29. Interview, *supra* note 7.

30. *Id.*

31. *Id.*

III. THE CURRENT LAW IN SOUTH CAROLINA

A. Workers' Compensation Law Generally

For an injury to be compensable under the South Carolina Workers' Compensation Act, the injury must be an accidental one that "aris[es] out of and in the course of" employment.³² Although the elements arising "out of" and arising "in the course of" employment overlap, both are required for an injury to be compensable.³³ An injury "arises out of" employment "when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury."³⁴ The risk "must be peculiar to the work and not common" to the general public.³⁵ "[I]f the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment."³⁶

"The phrase 'in the course of the employment' refers to the time, place, and circumstances under which the accident occurred."³⁷ An injury occurs in the course of employment "when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto."³⁸

B. South Carolina Case Law

There are no appellate cases that directly address workers' compensation coverage of off-the-clock deputy sheriffs injured while operating county patrol cars. Surprisingly, there is also no case law at the appellate level dealing with *on*-the-clock deputies injured in their patrol cars. Even case law in South Carolina relating generally to employees whose primary duties involve operating vehicles is relatively scarce. A few South Carolina cases involving injuries sustained by employees in vehicles that are provided by an employer address the issue indirectly. Some cases deal with various employees, including law enforcement officers, who are on duty or subject to call twenty-four hours per day, while other cases involve employees whose main duties involve driving vehicles.³⁹ Although all of these cases appear

32. S.C. CODE ANN. § 42-1-160 (Law. Co-op. 1989 & West Supp. 2002).

33. *Gray v. Club Group, Ltd.*, 339 S.C. 173, 186, 528 S.E.2d 435, 442 (Ct. App. 2000).

34. *Id.* at 187, 528 S.E.2d at 442 (quoting *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965)).

35. *Id.*

36. *Id.*

37. *Id.* at 187, 528 S.E.2d at 443.

38. *Id.* at 188, 528 S.E.2d at 443.

39. *See, e.g., Nelson v. Yellow Cab Co.*, 343 S.C. 102, 538 S.E.2d 276 (Ct. App. 2000) (discussing whether a cab driver was covered under the South Carolina Workers' Compensation Act).

to approach the issue of injured off-duty deputy sheriffs, none directly tackle it.

*Walker v. City of Columbia*⁴⁰ examines coverage of an off-the-clock police officer. In *Walker*, the supreme court affirmed a workers' compensation award for a City of Columbia police officer who, at the time of his injury, was off the clock, not in uniform, and at his home outside the jurisdictional limits of Columbia.⁴¹ Walker was injured while assisting a deputy sheriff in a struggle with an unruly man who was resisting arrest.⁴²

The court referred to the City of Columbia's police policy manual for guidance in determining whether Walker was in the performance of the duties of his employment when he rendered assistance to the deputy.⁴³ One relevant section of the policy manual stated that "[a]ny member of the department who fails to take effective police action or who fails to aid and protect his fellow officer in time of danger or under circumstances where danger might reasonably be impending . . . is subject to dismissal."⁴⁴ Another relevant section stated that "[m]embers of the department shall always be subject to duty although periodically relieved of the routine performance of such duty. They shall at all times respond to the lawful orders of superior officers, other proper authorities, and to the call of civilians in need of police assistance."⁴⁵

The chief of police testified at the workers' compensation hearing that the term "fellow officer" as used in the policy manual included any police officer, not just a City of Columbia police officer.⁴⁶ He also testified that the manual required an officer to come to the assistance of a fellow officer at any time whether inside or outside of the city limits.⁴⁷ Finally, he testified that he considered his officers to be on duty twenty-four hours a day.⁴⁸ The court concluded, based upon this evidence, that "Walker, although outside the area in which he normally worked, was nevertheless engaged in the performance of the duties of his employment."⁴⁹ Therefore, the court found no error in the workers' compensation award.⁵⁰

Another South Carolina case that approaches the problem of injured off-the-clock deputy sheriffs is *Compton v. Town of Iva*.⁵¹ As in *Walker*, in *Compton* the court considered whether the employee's injuries, which ultimately resulted in his death, arose out of and in the course of his employment.⁵² The town of Iva

40. 247 S.C. 241, 146 S.E.2d 856 (1966).

41. *Id.* at 244, 146 S.E.2d at 857.

42. *Id.* at 244-45, 146 S.E.2d at 858.

43. *Id.* at 248, 146 S.E.2d at 859.

44. *Id.* (quoting CITY OF COLUMBIA POLICE MANUAL Section 405).

45. *Id.* at 248, 146 S.E.2d at 859-60.

46. *Walker v. City of Columbia*, 247 S.C. 241, 248, 146 S.E.2d 856, 60 (1966).

47. *Id.*

48. *Id.*

49. *Id.* at 249, 146 S.E.2d at 860.

50. *Id.*

51. 256 S.C. 35, 180 S.E.2d 645 (1971).

52. *Id.* at 37, 180 S.E.2d at 646.

employed Compton as a policeman.⁵³ On the date of his death, he was technically off duty, was not in uniform, and had turned in his badge and gun because he was planning to resign from the department in two days.⁵⁴

In the town of Iva, each policeman was “on call and subject to duty on a twenty-four hour basis.”⁵⁵ They were not required to wear uniforms when performing off-duty service.⁵⁶ Importantly, the policemen often “performed law enforcement duties beyond the town limits by aiding county law enforcement officers, state patrolmen, or policemen from surrounding towns.”⁵⁷

On the evening of the accident, although he was technically off duty, Compton was assisting another Iva policeman in keeping watch over a troublesome night spot in the town.⁵⁸ He was killed later that night as a passenger in the police car of a highway patrolman.⁵⁹ The two had been on the way to assist in an accident outside the Iva town limits.⁶⁰

The Supreme Court of South Carolina, in approving the custom whereby Iva police assisted other law enforcement officers beyond the town limits, stated that “[t]he Town of Iva, having acquiesced in the custom and [having] received benefits from the custom,” could not preclude Compton’s beneficiaries from claiming compensation simply because Compton was outside the town limits.⁶¹ Accordingly, the court upheld the workers’ compensation award to Compton’s beneficiaries.⁶²

Although *Walker* and *Compton* come close, they do not directly resolve the issue of whether injuries sustained by off-the-clock deputy sheriffs are compensable under workers’ compensation. *Walker* involves an off-the-clock police officer but not injuries sustained in a patrol car. *Compton* deals with injuries sustained by an off-the-clock law enforcement officer in a patrol car but does not address injuries occurring while on a personal errand. Furthermore, neither case specifically involves a deputy sheriff. Therefore, it is appropriate to look to the factors that South Carolina courts have considered when determining whether a person is covered under workers’ compensation.

53. *Id.* at 38, 180 S.E.2d at 646.

54. *Id.* at 38–39, 180 S.E.2d at 646.

55. *Id.* at 38, 180 S.E.2d at 646.

56. *Id.*

57. *Compton v. Town of Iva*, 256 S.C. 35, 38, 180 S.E.2d 645, 646 (1971). This reciprocal form of law enforcement was “performed for the purpose of promoting the public welfare of the citizens of the Town [of Iva];” it assured them that officers from other jurisdictions would assist the policemen in Iva when necessary. *Id.* at 38–39, 180 S.E.2d at 646.

58. *Id.* at 39, 180 S.E.2d at 647.

59. *Id.* at 40, 180 S.E.2d at 647.

60. *Id.*

61. *Id.* at 41, 180 S.E.2d at 647–48.

62. *Compton v. Town of Iva*, 256 S.C. 35, 42, 180 S.E.2d 645, 648 (1971).

C. *Factors South Carolina Courts Consider when Deciding Coverage*

1. *Control By Employer*

Nelson v. Yellow Cab Co.,⁶³ in upholding a workers' compensation award to a cab driver, illustrates South Carolina's "control by employer" test for whether a person is an employee or an independent contractor for purposes of workers' compensation coverage.⁶⁴ In this case, the court looked at four elements of control by an employer: "(1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) right to fire; and (4) method of payment."⁶⁵ Examples of control by the employer in this case included a company dress code, a required method of charging fares to customers, a requirement to listen and respond to the cab radio, and company maintenance of the cab.⁶⁶ The court also found it important that Yellow Cab had the right to fire Nelson for violations of its requirements.⁶⁷ The control principle provides that if the employee is not free to do much of what he could otherwise do, he is an employee and not an independent contractor.⁶⁸

2. *Means of Transportation Furnished By Employer*

*Bailey v. Santee River Hardwood Co.*⁶⁹ supports the idea that an employer who allows an employee to use a company-owned vehicle has extended the scope of the employment relationship in such a way as to invoke the protection of the workers' compensation law during his travel.⁷⁰ The *Bailey* court extended recovery under workers' compensation to employees injured while on their way to work in a company van driven by another employee because they were in a vehicle provided by their employer.⁷¹

63. 349 S.C. 589, 564 S.E.2d 110 (2002).

64. *Id.* at 594, 564 S.E. at 113.

65. *Id.*

66. *Id.* at 596-97, 564 S.E.2d at 114.

67. *Id.* at 598, 564 S.E.2d at 115.

68. *See id.*

69. 205 S.C. 433, 32 S.E.2d 365 (1944).

70. *Id.*

71. *Id.* at 437, 32 S.E.2d at 366. This case was decided under South Carolina's "going and coming" rule, which generally holds that injuries sustained by an employee on his way to or from work are not compensable under the workers' compensation act. *Gray v. Club Group, Ltd.*, 339 S.C. 173, 188, 528 S.E.2d 435, 443 (Ct. App. 2000). Because of public policy, South Carolina recognizes a number of exceptions to this rule:

(1) Where . . . the means of transportation is provided by the employer, *or the time that is consumed is paid for or included in the wages*; (2) [w]here the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment; (3) [t]he way used is inherently dangerous and is either (a) the exclusive way of ingress and egress to and from his work; or (b) [is] constructed and maintained by the employer; or (4) [t]hat such injury incurred by a workman in the course of his travel to his place of work and not on

*Medlin v. Upstate Plaster Service*⁷² stands for essentially the same proposition, but adds that as long as the employer agreed to provide the transportation to the employee, the employee's injuries sustained in the employer-furnished vehicle are compensable under the Workers' Compensation Act.⁷³

3. Actually Engaged

Several cases support the rather intuitive proposition that an employee is covered under workers' compensation as long as he is actually engaged in the performance of duties for the benefit of his employer. One such case is *Gallman v. Springs Mills*,⁷⁴ which held that "the controlling consideration was that in actual fact the employee, at the time of the accident, was engaged in the performance of some duty for his or her employer."⁷⁵ *Beam v. State Workmen's Compensation Fund*⁷⁶ similarly held that "[i]t is sufficient [for workers' compensation coverage] if the employee is engaged in a pursuit or undertaking consistent with his contract of hire and which in some logical manner pertains to . . . his employment."⁷⁷ *Fowler v. Abbott Motor Co.*⁷⁸ rejected coverage for an injured employee at least partly because there was no evidence that "he was charged with the performance of any duty in behalf of the employer."⁷⁹

4. Risk Reasonably Incident To Employment

The fact that an employee is subjected to a risk that should be apparent to and contemplated by his employer in the performance of his duties weighs in the employee's favor when the courts decide if he is covered under workers'

the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from work.

Id. at 188–89, 528 S.E.2d at 443 (quoting *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95–96, 495 S.E.2d 447, 449 (1998)). A fifth exception allows compensation where an employee sustains an injury while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work. *Id.* at 189, 528 S.E.2d at 443. The first and second exceptions are relevant to the issue of a deputy sheriff being injured in his patrol vehicle, but these exceptions only apply if the employee is on his way to work or is leaving work. They do not deal with employees who are using employer-provided vehicles at times other than these.

72. 329 S.C. 92, 495 S.E.2d 447 (1998). *Medlin* was also decided under the "going and coming" rule. *See id.*

73. *Medlin*, 329 S.C. at 96, 495 S.E.2d at 450.

74. 201 S.C. 257, 22 S.E.2d 715 (1942).

75. *Id.* at 260, 22 S.E.2d at 716.

76. 261 S.C. 327, 200 S.E.2d 83 (1973).

77. *Id.* at 332, 200 S.E.2d at 86.

78. 236 S.C. 226, 113 S.E.2d 737 (1960).

79. *Id.* at 234, 113 S.E.2d at 742.

compensation.⁸⁰ In sustaining a workers' compensation award to an employee who was injured while exiting her employer's premises, the court in *Holston v. Allied Corp.*⁸¹ held that "the injury . . . resulted from a risk reasonably incident to her employment and [thus] 'arose out of' the employment."⁸² Similarly, in *Turner v. Campbell Soup Co.*,⁸³ the Supreme Court of South Carolina, in attempting to determine if there was a causal connection between an employee's fall and her employment, stated that the employment must have "subjected the workman to a special danger which in fact resulted in injury."⁸⁴ *Eargle v. South Carolina Electric & Gas Co.*⁸⁵ also held:

[T]hat the accident happens upon a public . . . street, . . . and that the danger is one to which the general public is likewise exposed, is not conclusive against the existence of a causal relationship [to the employment], if the danger be one to which the employee, . . . in connection with his employment, is subjected peculiarly . . .⁸⁶

5. Benefit To Employer

In South Carolina, benefit to the employer is an essential factor in deciding that an employee's injuries are compensable.⁸⁷ The state supreme court in *Fountain v. Hartsville Oil Mill*⁸⁸ found that an employee was not covered under workers' compensation because "the [employer] received no benefit whatsoever and had no interest in the employee's actions."⁸⁹ Later, in *Hicks v. Piedmont Cold Storage*,⁹⁰ the court reaffirmed the importance of a benefit to the employer when it held that "the *key factor* in determining . . . entitlement to compensation . . . is whether the work benefitted the employer."⁹¹ The dissent also noted that employees had been covered in many previous cases even if "the benefit to the employer was only slight or indirect."⁹²

80. See *Williams v. S.C. State Hosp.*, 245 S.C. 377, 140 S.E.2d 601 (1965).

81. 300 S.C. 174, 386 S.E.2d 793 (Ct. App. 1989).

82. *Id.* at 177, 386 S.E.2d at 795.

83. 252 S.C. 446, 166 S.E.2d 817 (1969).

84. *Id.* at 449, 166 S.E.2d at 818.

85. 205 S.C. 423, 32 S.E.2d 240 (1944).

86. *Id.* at 432, 32 S.E.2d at 244.

87. See *Hicks v. Piedmont Cold Storage, Inc.*, 335 S.C. 46, 515 S.E.2d 532 (1999).

88. 207 S.C. 119, 32 S.E.2d 11 (1945).

89. *Id.* at 125, 32 S.E.2d at 13.

90. 335 S.C. 46, 515 S.E.2d 532 (1999).

91. *Id.* at 49, 515 S.E.2d at 533 (citing *Fountain v. Hartsville Oil Mill*, 207 S.C. 119, 32 S.E.2d 11 (1945)) (emphasis added).

92. *Id.* at 50, 515 S.E.2d at 534 (Toal, C.J., dissenting).

IV. THE LAW IN OTHER JURISDICTIONS AND APPLICATION OF THE LAW TO DEPUTY SHERIFFS

A. *The Law in Other Jurisdictions*

Because the law in South Carolina is not on point, it is appropriate to seek guidance from other jurisdictions who have addressed the issue. In *Guest v. Workmen's Compensation Appeals Board*,⁹³ the California Supreme Court upheld a workers' compensation award for a police officer who was injured on the way to his post at the county fair.⁹⁴ At the time of his injury, the officer was in uniform but was in a personal vehicle.⁹⁵

The California court, noting that the Workmen's Compensation Act was to be construed liberally for the purpose of extending benefits to injured employees, discussed the relevant factors that made Guest's injuries compensable.⁹⁶ First, the court found it important that the police policy manual stated that all officers were specifically considered on duty when wearing a uniform.⁹⁷ Second, the court noted that the officer was, in some aspects, under the control of his employer at the time of the injury because he was required to comply with the rules of the police department while in uniform.⁹⁸ Finally, the court found Guest conferred a benefit to his employer because he was carrying his gun, was traveling in the public streets, and was ready and prepared to render assistance to members of the public if needed.⁹⁹ This case demonstrates that California extends coverage to a police officer even when in a *personal* vehicle, at least when he is considered on duty and confers a benefit to his employer.¹⁰⁰

In *Mayor of Tullahoma v. Ward*,¹⁰¹ the Tennessee Supreme Court affirmed a workers' compensation award for a police officer who was injured when a drunk driver hit him as he walked down the street.¹⁰² The officer was in full uniform, had his gun, and was considered on duty by the town at all hours.¹⁰³ The supreme court found it important that Ward's place of work was the entire territory within the town's boundaries and that the town had a right to expect his services at any hour.¹⁰⁴ The court thus sustained the award to Ward, holding that "[i]f, while . . . patrolling

93. 470 P.2d 1 (Cal. 1970).

94. *Id.* at 2–3.

95. *Id.* at 2.

96. *Id.* at 3.

97. *Id.*

98. *Id.*

99. *Guest v. Workmen's Comp. Appeals Bd.*, 470 P.2d 1, 3 (Cal. 1970).

100. *See id.*

101. 114 S.W.2d 804 (Tenn. 1938).

102. *Id.* It is not clear from the opinion where the officer was going, but it seems that he might have been on the way home.

103. *Id.* at 805, 806.

104. *Id.* at 806–07.

the streets, a policeman slips on a banana peel, or falls into an open manhole, he is covered, as much as if he had been at the moment in pursuit of some offender.”¹⁰⁵

Florida has dealt even more extensively with the issue of injured off-the-clock police officers. In *Sweat v. Allen*,¹⁰⁶ the Florida Supreme Court found that the injuries of a deputy sheriff, sustained while he was walking from home to his post at the county jail, were compensable.¹⁰⁷ The factors that the court found relevant to extending coverage included that the officer was subject to duty at any hour, that “he was paid a straight salary . . . regardless of the number of hours he worked,” and that he was not “an ordinary workman going to work . . . [because] he was continuously intrusted with . . . duties . . . to protect the peace and safety of the community.”¹⁰⁸ Importantly, the court also held that Allen’s “personal life was subservient at all times to [the] call of official service; he was, so to speak, on guard twenty-four hours a day, with no increase in salary in proportion to the time devoted.”¹⁰⁹

Since *Sweat* was decided, Florida has adopted a statutory scheme to address the coverage of law enforcement officers.¹¹⁰ This statute essentially replaces the principles in *Sweat* with a new test for coverage.¹¹¹ The application of this statute is illustrated in *Palm Beach County Sheriff's Office v. Ginn*.¹¹² Ginn, a deputy sheriff, was off duty and driving a county patrol vehicle on a personal errand when he was injured.¹¹³ Although he testified that he had been monitoring the police radio, he apparently did not testify that he was actively “scouting” or patrolling his surroundings.¹¹⁴ The court denied coverage to this deputy sheriff because he was not, as stated in the Florida statute, “discharging that primary responsibility within the state in a place and under circumstances reasonably consistent with that primary responsibility.”¹¹⁵ “Primary responsibility,” according to the statute, includes “the prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.”¹¹⁶ While the court did not think that Ginn was preventing crime by operating a marked patrol car on the public streets, it is certainly arguable that he was deterring crime by his presence.¹¹⁷ It is interesting, however, that the statute does *not* require that a law enforcement officer be on duty

105. *Id.* at 807.

106. 200 So. 348 (Fla. 1941).

107. *Id.* at 349–50.

108. *Id.* at 350.

109. *Id.*

110. FLA. STAT. ANN. § 440.091 (West 2002).

111. *See id.*

112. 570 So. 2d 1059 (Fla. Dist. Ct. App. 1990).

113. *Id.* at 1060.

114. *Id.*

115. *Id.* at 1060–61 (quoting FLA. STAT. ANN. § 440.091 (n.d.)).

116. *Id.* at 1060 (quoting FLA. STAT. ANN. § 440.091 (n.d.)).

117. It is, in fact, likely that the reason deputy sheriffs are often permitted to operate patrol vehicles while off the clock is that the sheriff thinks people who see a marked patrol car will effectively be deterred from committing an offense, such as speeding.

for his injuries to be compensable.¹¹⁸

Georgia has directly dealt with the compensability of injuries sustained by off-the-clock deputy sheriffs. *Harris County Sheriff's Office v. Negrete*,¹¹⁹ decided in February 2003, held that injuries sustained by a technically off-duty deputy sheriff in his patrol car while on a personal errand were compensable under Georgia's workers' compensation scheme.¹²⁰ The court found several factors relevant to the compensability of Negrete's injuries, including the fact that he was on call twenty-four hours per day, was required to maintain communication with the dispatch office, and was required to actively patrol his surroundings when in the patrol car.¹²¹ The court also found it relevant that the sheriff testified at the workers' compensation hearing that there was no significant difference between a deputy's duty while on regular patrol and while on a personal errand in the patrol car.¹²² The court held that "the crux of the matter is the factual finding . . . that the deputy was conducting a law enforcement function at the time of the collision, that function being the *active patrol of his route*."¹²³

B. Application of the Law to Richland County Deputy Sheriffs

These other states, especially Georgia, realize the unique nature of the duties of law enforcement officers and have decided to make injuries they sustain off the clock compensable, at least in the circumstances presented above. These courts generally emphasize the benefit to the employer and the fact that the employer itself considered the officer on duty at the time of his injuries. They also stress the importance of covering an officer who is patrolling, even if he is not actually in pursuit of a suspect. Another relevant factor is that an officer is at all times entrusted with a duty to protect the community and that his personal life is subservient to this duty. Finally, it is important that when in a patrol car, the officer's duties are essentially the same as those of an on-the-clock officer. South Carolina should look to the above cases for guidance in this area and consider the issues they raise when deciding if an off-the-clock deputy sheriff's injuries are compensable.¹²⁴

118. FLA. STAT. ANN. § 440.091 (West 2002).

119. 578 S.E.2d 579 (Ga. Ct. App. 2003).

120. *See id.*

121. *Id.* at 580.

122. *Id.*

123. *Id.* at 581 (emphasis added).

124. Many South Carolina cases indicate that this state tends to follow North Carolina if there are any cases on point with the issue before the court. *See, e.g., Strawhorn v. J.A. Chapman Constr. Co.*, 202 S.C. 43, 49-50, 24 S.E.2d 116, 119 (1943) (citing North Carolina cases construing statutory provisions similar to those of South Carolina). There are no reported North Carolina cases directly on point dealing with the issue of injured off-the-clock deputy sheriffs.

South Carolina cases such as *Walker v. City of Columbia*¹²⁵ and *Compton v. Town of Iva*,¹²⁶ discussed in Part III, indicate that South Carolina courts lean toward coverage of off-the-clock law enforcement officers, at least if the officer is injured while actually performing a law enforcement function. However, no South Carolina case addresses the issue of whether an off-the-clock Richland County deputy sheriff is covered under workers' compensation if he is operating his patrol car, is on a personal errand, and is following all department procedures. Therefore, it is appropriate to apply other relevant factors that the South Carolina courts use to determine workers' compensation coverage.

The first such factor is control by employer. Deputy sheriffs are under a significant amount of control by the county when they operate patrol vehicles, regardless of whether they are on or off the clock. They are specifically considered on duty when they operate patrol cars. They are required to follow all department procedures, including maintaining communication with dispatch, being ready and prepared to respond to calls or police emergencies, actively patrolling the route, and having certain items in the car with them. Further, the county maintains that all patrol cars and the deputies are required to comply with a dress code when in the car. In addition, deputies are subject to discipline if they do not comply with all of these requirements. Richland County deputy sheriffs are under a considerable amount of control by the county when operating patrol vehicles.

The second factor to consider is whether the mode of transportation is provided by the employer. Deputy sheriffs are provided with a county patrol car as a part of their employment contract. In addition, the county maintains all patrol cars, pays for the gasoline, and insures the vehicles regardless of whether the deputy uses the car on or off the clock.

The third factor that South Carolina deems relevant is whether or not the employee was actually engaged in the performance of a duty for the benefit of his employer at the time of his injury. As discussed in Part III, a deputy sheriff is required to perform a number of duties while in the car, such as communicating with dispatch, monitoring the police radio, and actively patrolling his route. Unless it is shown that a deputy was *not* performing any active duties while in the car, it should be sufficient as proof if the trier of fact believes that he was performing active duties at the time of the accident.

The fourth factor for consideration involves whether the employee is subjected to a risk reasonably incidental to his employment which contributed to the occurrence of the injury. Deputies are permitted and encouraged to use their patrol vehicles when they are off the clock, and the obvious risk of being injured in those patrol cars is foreseeable and contemplated by the county. The county essentially assumes this risk when it allows and encourages the use of patrol cars off the clock. The county itself has "expanded the range of the employment and the attendant

125. 247 S.C. 241, 146 S.E.2d 856 (1966).

126. 256 S.C. 35, 180 S.E.2d 645 (1971).

risks.”¹²⁷

The fifth important factor relates to the benefit conferred on the employer. *Hicks v. Piedmont Cold Storage*¹²⁸ held that “[t]he key factor in determining . . . entitlement to compensation . . . is whether the work benefitted the employer.”¹²⁹ Deputy sheriffs confer a palpable benefit upon the employer and the county when they operate patrol vehicles off the clock. This benefit is that the county has more patrol cars “on the beat” for the community to see. More patrol cars on the roadways deter crime. Moreover, the county has more deputies available who can quickly respond to calls and emergency situations. Thus, the employer benefits significantly from deputies using its patrol cars off the clock.¹³⁰

It is significant that, in addition to the employer’s benefit, the entire community benefits from off the clock deputies using the patrol vehicles. This illustrates that the job of a deputy sheriff is unique, since most employees who are “off the clock” are not in a position to confer a benefit related to their job upon the community. Deputy sheriffs have this unique opportunity, and South Carolina should encourage them to use their patrol cars off the clock by ensuring that they are covered under workers’ compensation when they do so.

Finally, “[t]he primary purpose of [the South Carolina Workers’ Compensation Act] is to protect the workman who actually does the work.”¹³¹ Thus, the Act should be liberally construed in favor of coverage of the injured employee.¹³² In light of this policy, off-the-clock Richland County deputy sheriffs injured in their patrol cars should be covered under South Carolina’s workers’ compensation law when there is at least circumstantial evidence¹³³ that the deputy was actually performing duties for the benefit of his employer at the time of his accident.¹³⁴

127. *Leeds v. City of Miami*, 122 So. 2d 474, 475–76 (Fla. 1960) (Terrell, J., dissenting).

128. 335 S.C. 46, 515 S.E.2d 532 (1999).

129. *Id.* at 49, 515 S.E.2d at 533 (citing *Fountain v. Hartsville Oil Mill*, 207 S.C. 119, 32 S.E.2d 11 (1945)) (emphasis added).

130. The county’s goals relating to the community are exemplified, at least in part, in the Richland County Mission Statement: “It is the mission of the Richland County Sheriff’s Department to improve the quality of life of the citizens of Richland County by maintaining a high standard of professional accountability, reducing the fear of crime, and reducing the fear of retaliation from . . . the criminal element within the county.” POLICY MANUAL, *supra* note 8, Procedure No. 100 (rev. Feb. 2000).

131. *Smith v. Fulmer*, 198 S.C. 91, 96, 15 S.E.2d 681, 683 (1941) (quoting *Marchbanks v. Duke Power Co.*, 190 S.C. 336, 363, 2 S.E.2d 825, 836 (1939)).

132. *See Peay v. United States Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993).

133. Many South Carolina cases hold that circumstantial evidence may be used to support awards in workers’ compensation cases. *See, e.g., Fowler v. Abbott Motor Co.*, 236 S.C. 226, 232, 113 S.E.2d 737, 740 (1960) (noting that “the circumstantial evidence need not reach such degree of certainty as to exclude every reasonable or possible conclusion other than that reached”).

134. A superficial problem with coverage is the “arising out of” requirement, mandated in addition to the “in the course of” requirement. *See supra* Part III. Because “arising out of” refers to the causal element of the accident that caused the injuries, it would appear that if a deputy’s injuries were caused by, for example, the negligence of another driver, the injuries would not be compensable since they were not actually *caused* by the employment. However, South Carolina cases generally do

V. CONCLUSION

Disallowing coverage for a Richland County deputy who is considered on duty when in his patrol car and is performing services for the benefit of his employer would be inconsistent with the South Carolina courts' liberal construction of the workers' compensation act. Disallowance of coverage would also be inconsistent with the public policy of encouraging deputies to use their patrol vehicles. This policy is reiterated by the policies and procedures established by Richland County. Furthermore, the community at large would suffer if deputies are discouraged, due to lack of workers' compensation coverage, from using their patrol cars when off the clock. South Carolina would be wise to encourage this coverage and thereby keep more deputies on the roadways.

The coverage argued for in this Comment is not limited to Richland County deputy sheriffs. Coverage should extend to all law enforcement officers who operate under similar policies and procedures. This could include deputy sheriffs from other counties in South Carolina, city police officers, town police officers, and highway patrolmen.

It is possible that a statutory scheme, perhaps similar in some ways to the one enacted by the Florida legislature, would be useful in South Carolina to guide the courts in approaching this sensitive issue. It is for the legislature to decide if a statutory scheme is appropriate for South Carolina.

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not indicate that this would be a barrier to coverage as long as the employee was actually performing duties for his employer at the time of the accident or if his employment required him to be at the place where he was injured. *See, e.g., Gray v. Club Group, Ltd.*, 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000) (emphasizing the fact that the employee, a courier, was paid for his time while he was driving in the car and that he was using the most direct route to the place where he was required to be). *But cf. Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 140 S.E.2d 173 (1965) (reversing a workers' compensation award for an employee at least partly because the employee's accident was caused by a faulty mechanism in his personal automobile).