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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas, Twelfth Judicial Circuit

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-000303
Civil Action No. 2017-CP-21-01375

April Jones, ...Respondent,

v.

Tim Ringer, individually and as employee/agent of Wal-Mart Stores Inc. d/b/a Wal-Mart Store #630, Wal-Mart Stores, Inc, and Wal-Mart Stores East, L.P., ...Defendants,

of which

Walmart Stores, Inc. and Wal-Mart Stores East, L.P. are the.....Appellants.

RECORD ON APPEAL
VOLUME VII

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1 Q Would you tell the ladies and gentlemen of the jury what
2 is neuropathy?

3 A So one of the problems that diabetes causes when your
4 sugars are high over a period of time, your nerves begin to
5 not work properly. You begin to lose the ability to sense
6 pain, you can lose the ability to sense temperature, you can
7 develop numbness and tingling and burning sensations in your
8 foot. You have a harder time sensing potentially when
9 something is wrong.

10 Q So some diabetes mellitus -- type 2 diabetes mellitus,
11 for an extended period of time, is likely to have neuropathy
12 in their lower extremities; is that fair?

13 A It is certainly possible. I don't know about likely, but
14 it certainly is a risk factor, yes.

15 Q Understood. And someone with diabetic neuropathy is
16 going to have limited sensation in their lower extremities
17 where they won't feel pain, they won't feel -- they won't feel
18 the same way as someone without that neuropathy in their feet
19 would; is that fair?

20 A Correct, yes.

21 Q That neuropathy is going to reduce sensation, in your
22 opinion?

23 A Yes.

24 Q It's going to reduce sensation on the soles of your feet?

25 A Yes.

1 Q Is it possible that you could -- that someone with
2 diabetic neuropathy could step on something and not realize
3 it?

4 A It is.

5 Q Is it possible that someone with diabetic neuropathy
6 could have something in their shoe, a pellet, for a long
7 period of time and just simply not know it because they can't
8 feel it?

9 A Yes.

10 Q If Ms. Jones has uncontrolled diabetes, diabetic
11 neuropathy, and she stepped on a screw, is it possible that it
12 was in her shoe for a significant period of time before she
13 realized it?

14 A That is a possibility.

15 Q Talking about diabetes, I want to hear from you, Doctor,
16 about how that affects a patient's risk of lower extremity
17 complications. You see a lot of patients with diabetes in
18 your practice; correct?

19 A I do.

20 Q And do those patients with diabetes, are they at
21 increased risk of lower extremity complications up to and
22 including foot amputations?

23 A They are.

24 Q Up to and including above-knee amputations?

25 A They are.

1 Q When you treated Ms. Jones, you also came to the
2 realization that she had vascular disease; isn't that right?

3 A Yes.

4 Q And vascular disease, I heard you explain to the jury a
5 moment ago, if you think about the blood vessels in the legs
6 as a series of pipes, is it fair to say that vascular disease
7 is when those pipes are filled with crud to the extent they
8 become occluded or blocked off?

9 A Yes.

10 Q So Ms. Jones's pipes in her legs were filled crud; is
11 that fair?

12 A Yes, that's -- that's fair, yes.

13 Q I know it's a little inartful, and I apologize.

14 A Yeah.

15 Q I apologize for that.

16 Ms. Jones's diagnosis of peripheral vascular disease,
17 does that indicate that the vessels in her legs are not
18 allowing sufficient blood to go from the heart to her lower
19 extremities?

20 A Yes.

21 Q And so the blood is not making it from her heart, down
22 her thigh, into her calf, and into her feet; is that right?

23 A It's not making it at the same rate that it would had she
24 not had the blockages, yes.

25 Q She's got limited perfusion; is that fair?

1 **A** Yes.

2 **Q** Perfusion meaning she's not getting the blood that should
3 get down to her feet. She's not getting that blood down there
4 because of her peripheral vascular disease?

5 **A** Correct.

6 **Q** And if a person's lower extremities are not getting the
7 blood that they need, they're not getting the oxygen and blood
8 they need in those lower extremities, does that increase the
9 risk of a patient to have a foot amputation?

10 **A** It does.

11 **Q** Does it increase the risk to have a toe amputation?

12 **A** It does.

13 **Q** Does it increase the risk of having an above-knee
14 amputation?

15 **A** It does.

16 **Q** Ms. Jones has pulmonary hypertension; is that correct?

17 **A** That, I don't know. I'd have to look at my notes.

18 **Q** Okay. I'm looking at -- well, I'll leave that for a
19 moment.

20 What is pulmonary hypertension, Dr. Player?

21 **A** Pulmonary hypertension is an elevation in the pressure
22 within the vessels that go from the right side of the heart to
23 the lungs. So if you think of the heart as having -- it's got
24 four chambers. It's basically two sides. The right side
25 pumps the blood to the lungs where you exchange your oxygen

1 and your carbon dioxide, and it diverts back to the left side
2 of the heart, which then pumps and pushes the blood to the
3 rest of the body.

4 So pulmonary hypertension would be an increase in blood
5 pressures on the right side of the heart.

6 Q Okay. If a patient is dealing with that condition, is
7 that going to affect the way blood is able to flow from the
8 essential vascular system to your extremities?

9 A No.

10 Q Okay. I'll leave that point there. Thank you.

11 Ms. Jones had, in her prior medical history, a
12 nephrectomy procedure; is that correct?

13 A I believe so, yes.

14 Q Okay. And what is a nephrectomy?

15 A It's when you take a kidney out.

16 Q Okay. So Ms. Jones's right kidney had been removed at
17 some point in the past; correct?

18 A Yes.

19 Q And as a result or, you know, perhaps that procedure was
20 necessary because of the fact that she had end stage renal
21 disease; is that right?

22 A I'm not sure that's why she had the nephrectomy.

23 Q Okay. Okay. Are you aware that Ms. Jones had end stage
24 renal disease?

25 A Yes.

1 Q And if you could, Dr. Player, explain to the ladies and
2 gentlemen of the jury what end stage renal disease is.

3 A So it's basically permanent kidney failure. It's -- the
4 kidneys filter your blood, remove the toxins from the blood,
5 and then you pee it out, basically. Over time, a variety of
6 conditions can cause your kidneys not to function as well and
7 they get to the point where they no longer will filter the
8 toxins in the blood. And then it can even proceed to the
9 point where you no longer make urine. That, therefore,
10 requires you to go on dialysis to purify your blood, since
11 your kidneys are no longer doing it on its own.

12 Q Thank you, Dr. Player.

13 And you're aware that Ms. Jones had been ordered by her
14 doctors to go to dialysis; correct?

15 A Yes.

16 Q Do you know how often Ms. Jones was going to dialysis?

17 A I believe it's three days a week.

18 Q Okay. Do you know if she was making those appointments
19 regularly?

20 A That, I don't know.

21 Q Ms. Jones also had hypertension, high blood pressure;
22 correct?

23 A Yes.

24 Q And if you could, just explain for all of us, what is
25 hypertension?

1 **A** Basically, it's a higher level of pressure within the
2 arteries in your body. It -- you know, normal blood pressure
3 is 120 over 80, I believe is what most people consider normal
4 blood pressure. Hypertension is anything significantly higher
5 than that, either the top number or the bottom number.

6 **Q** And if someone has uncontrolled hypertension, would that
7 affect their risk of lower extremity complications?

8 **A** Indirectly, yes.

9 **Q** Okay. Could you explain what you mean by indirectly?

10 **A** Well, the hypertension itself would not affect the flow
11 to the feet, but it does cause you to have higher risk of
12 development of peripheral vascular disease.

13 **Q** Understood.

14 We talked a lot about Ms. Jones's health challenges, the
15 diseases that she had been diagnosed with, the condition that
16 she was -- that she should have been treating back when you
17 saw her in 2015.

18 Do those health challenges work together and become
19 multipliers to exacerbate or worsen a person's health, the
20 risk of poor healing?

21 **A** Yes.

22 **Q** So we talked about diabetes, vascular disease, the
23 nephrectomy in the past, her end stage renal disease, her
24 hypertension. All of these conditions -- some more than
25 others -- worked as multipliers to make for problematic wound

1 healing in her lower extremities; is that fair?

2 **A** Yes.

3 **Q** When you have this multiplier going on, in any patient --
4 in Ms. Jones, in any patient, does that increase the patient's
5 risk of limb loss?

6 **A** Yes.

7 **Q** Limb loss being amputation.

8 **A** Yes.

9 **Q** Okay. Now, you examined Ms. Jones just three days after
10 the incident at Walmart; is that right?

11 **A** Yes.

12 **Q** And you found that she had an ulceration at the plantar
13 aspect of the base -- at the base of her second toe; is that
14 fair?

15 **A** Yes.

16 **Q** And also at the second metatarsal; is that right?

17 **A** Yes.

18 **Q** And, Dr. Player, how does a foot heal? You know,
19 metatarsal, I have heard the word before but I can certainly
20 use your expert advice here. Could you point to me -- point
21 to the ladies and gentlemen of the jury where the metatarsal
22 would be on this toy foot?

23 **A** Right there. Mid to end of the foot. Kind of just
24 beyond your arch.

25 **Q** Okay.

1 **A** The metatarsal joint, what's called the proximal phalanx,
2 and that joint is the ball of your foot -- is the ball of your
3 toe. So it's the junction where I was describing would be
4 right along here. The metatarsal runs from about here to
5 here, joining the toes there.

6 **Q** Thank you, Dr. Player.

7 And on this foot, could you show us -- this seems a
8 little more common sense, but could you show us where the arch
9 of the foot would be?

10 **A** Right there.

11 **Q** The arch would be --

12 **A** Closer to the ankle.

13 **Q** Closer to the ankle than the metatarsal?

14 **A** The met -- the first portion of the metatarsal joins what
15 are called the tarsal bones, which are the bones that form the
16 arch. So it's part of the arch. It would be the archway. It
17 would be the downward of the arch, heading towards the end of
18 the foot.

19 **Q** When you examined Ms. Jones's foot three days after she
20 was in Walmart, you also noted dorsal tenderness; is that
21 right?

22 **A** Mm-hmm.

23 **Q** Where is dorsal tenderness?

24 **A** Dorsal is on the top of your foot.

25 **Q** Okay.

- 1 **A** So she had pain on the top of the foot.
- 2 **Q** Okay. You also noted pain with tenderness.
- 3 **A** Mm-hmm.
- 4 **Q** That's pretty straightforward. So she's had pain on the
5 metatarsal below the second toe, she's got pain on the top of
6 her foot, and she's got pain in the ankle when you examined
7 her three days afterwards; is that right?
- 8 **A** I believe so. I'd have to look at my notes, but yes.
- 9 **Q** So when you examined her foot just three days after she
10 was in Walmart, you noted that there was necrotic appearing
11 skin and subcutaneous tissue on the foot; is that right?
- 12 **A** Yes.
- 13 **Q** So just three days after she was in Walmart, she had
14 necrotic skin and subcutaneous tissue on her foot?
- 15 **A** Yes.
- 16 **Q** As a result of the condition of her foot, you decided to
17 do a surgical debridement, operative procedure; is that right?
- 18 **A** Yes.
- 19 **Q** And the preoperative notes, we describe the size of the
20 wound on her foot as 1.8 centimeters by 1.0 centimeters.
- 21 **A** I believe that's correct.
- 22 **Q** And that wound was an ulceration on the plantar aspect at
23 the base of the second toe. I'd like you to put a sticker
24 where that ulcer was on here. Any color would be just fine.
- 25 **A** Any color?

1 Q I'll represent to you, Doctor, these stickers are about 2
2 centimeters in diameter. So I will ask you, you say the wound
3 was 1.8 centimeters. Is that measuring the width of the
4 wound?

5 A Well, I would have measured in two dimensions, so width
6 and length, yes.

7 Q Okay.

8 A So it was, obviously, a slightly oval-shaped wound based
9 on the measurements.

10 Q Slightly oval-shaped wound; that is, if this sticker is
11 on her foot, if you observed a 1.8 centimeter wound and this
12 is 2 centimeters, is that about the -- roughly the same as the
13 size of the ulcer that you debride?

14 A If the sticker is 2 centimeters, yes.

15 Q Okay. Now, when you did the debridement, that's a
16 surgical process; correct?

17 A Yes.

18 Q You noted that there was pretty limited bleeding in
19 Ms. Jones's foot when you did the procedure; correct?

20 A I would have to look at my note, but I would assume so.

21 Q Okay. If the notes describe limited bleeding, would that
22 be connected to vascular disease or -- let me state it another
23 way. Could vascular disease cause limited bleeding during a
24 surgical procedure on someone's foot?

25 A Yes.

1 Q And bleeding is necessary for the healing process?

2 A Correct.

3 Q So if there's limited bleeding, does that suggest to you,
4 Doctor, that we may have a problem healing this wound because
5 we're not getting sufficient blood flow from the heart down
6 through the leg to the area that you just operated on?

7 A Yes.

8 Q In fact, after you did the procedure, you brought in a
9 vascular specialist; right?

10 A Yes.

11 Q And you brought in a vascular specialist to see what
12 could be done to get more blood down Ms. Jones's leg, to her
13 foot, to help that healing process?

14 A Correct.

15 Q And she needed more blood than she was already getting
16 because she had vascular disease in her leg; right?

17 A Yes.

18 Q And the vascular specialist did an exam called an
19 arteriogram; is that right?

20 A He -- she had -- I believe she had a CT scan which was an
21 arteriogram that demonstrated blockages, and then the vascular
22 surgeon did an arteriogram and attempted to improve the blood
23 flow at the same time.

24 Q Thank you.

25 So that CT scan, that arteriogram, that found blockages

1 that were preventing blood to get down into her foot, down
2 into her extremity; right?

3 **A** Correct.

4 **Q** Now, the screw, the nail, that didn't cause the blockages
5 in her foot, did it?

6 **A** No.

7 **Q** That preexisted the screw, the nail, whatever happened.
8 Those blockages preexisted that, that incident; right?

9 **A** Yes, sir.

10 **Q** Now, when you did the debridement, you were debriding an
11 ulcer; correct?

12 **A** An ulcer or a wound, yes.

13 **Q** Okay. Now, a wound of this size, an ulcer of this size,
14 that -- an ulcer that size, that's bigger than you would
15 expect from a puncture wound; correct?

16 **A** From a puncture wound itself, yes.

17 **Q** You testified earlier that, typically, the infection
18 process begins -- if infection sets in, begins where the wound
19 is. Is that your testimony?

20 **A** Yes, yes.

21 **Q** Okay. And when you saw Ms. Jones, she had -- her toe,
22 her second toe was infected; correct?

23 **A** The foot was infected, not so much the toe.

24 **Q** Now, the first surgical procedure that she had in July
25 was an amputation of the second toe, the second metatarsal;

1 correct?

2 **A** Well, that was the second surgical procedure. The
3 debridement was first, and then the toe amputation was second.

4 **Q** I apologize. After the debridement, the first amputation
5 was of the second toe and the second metatarsal?

6 **A** Yes.

7 **Q** Okay. And that would have been right around where you
8 placed this green dot on her foot?

9 **A** Right. So the second toe would be removed, and the bone
10 would be cut probably a little bit towards the middle part of
11 the foot, beyond the dot.

12 **Q** Now, when that surgical procedure took place in mid July
13 of 2015, a few weeks after you first saw -- a couple of weeks
14 after you first saw Ms. Jones, her second toe was mummified at
15 that point; isn't that right?

16 **A** I believe that's how I described it, yes.

17 **Q** I don't know if mummification of a second toe is a
18 medical term or if that's -- I'm just picturing watching, you
19 know, movies, I have probably wasted a few hours watching, but
20 what does mummification mean in medical terms?

21 **A** Basically the alive soft tissue -- so say this is the
22 toe. The alive soft tissue shrinks down and becomes hard,
23 leathery, and black. You can actually thump it in areas,
24 thump it. It's got no blood flow to it at all. So the entire
25 digit is completely gangrenous and dead.

1 So you can picture it as if you see a mummy, basically,
2 pictures of a mummy where, basically, you're left with a
3 little bit of dead tissue on top of a bone -- on top of bones.

4 **Q** So you described her second toe as mummified on July 15,
5 less than three weeks after you first saw her.

6 **A** Yes.

7 **Q** We talked a lot about Ms. Jones's pre-existing diseases:
8 Diabetes, peripheral vascular disease, hypertension, her end
9 stage renal disease, and how those are multipliers and
10 complicating factors of her wound healing process; correct?

11 **A** Yes.

12 **Q** And I understand Ms. Jones has had this cascade of
13 amputations. She started with second toe, she had forefoot
14 amputation that healed quite nicely; right?

15 **A** I did not see her after that.

16 **Q** Okay. After the forefoot, she had a right above-knee
17 amputation. And, Doctor, in your professional opinion, to a
18 reasonable degree of medical certainty, Ms. Jones's
19 pre-existing disease -- the diseases we have talked about, the
20 diseases we have walked through here -- hypertension,
21 diabetes, the occlusion in her leg where she's not getting
22 blood flow down to her feet -- those pre-existing diseases,
23 those caused or contributed to cause the right second toe
24 amputation; isn't that right?

25 **A** Yes.

1 Q And those caused or contributed to cause the right
2 forefoot amputation; correct?

3 A Yes.

4 Q And those same pre-existing diseases caused or
5 contributed to cause the right above-knee amputation; correct?

6 A Yes.

7 Q You see a lot of diabetics in your practice, don't you,
8 Dr. Player?

9 A Yes.

10 Q And do diabetics often struggle to deal with trophic
11 ulcers on their feet?

12 A They do.

13 Q And what is a trophic ulcer?

14 A It's basically a pressure sore that you can develop.
15 Over time, in diabetics, the arch can begin to collapse and it
16 alters where you bear your weight on your foot. So the foot's
17 designed with the arch to distribute your weight equally
18 across your foot so no one site has more pressure than the
19 other. In diabetics in particular, the ligaments can begin to
20 collapse so you basically begin to develop, like, a flat foot,
21 and it alters where you normally are designed to bear your
22 weight. And so you can develop sores because of abnormal
23 weight-bearing than the way the foot was designed.

24 Q So if someone has flat feet, their arch is collapsed,
25 does that make them more prone to have trophic ulcers,

1 pressure ulcers on their feet?

2 **A** Yes.

3 **Q** And where is -- where do most people bear their weight on
4 their feet?

5 **A** Your heel and the balls of your feet.

6 **Q** Okay. The balls of your feet. Is more of the weight
7 borne on one side of the balls of the feet or on the big toe
8 side or on the little toe side?

9 **A** The big toe side carries more weight-bearing because it's
10 a bigger bone. So it's relatively eventually distributed but
11 because the big toe is bigger relative to the other toes, it
12 would individually carry more weight bearing than the other
13 toes.

14 **Q** So those weight-bearing areas, you know, the ball of the
15 foot up by the big toe near the second toe, is that more
16 likely to have a trophic ulcer, a pressure ulcer in somebody
17 who is diabetic with flat feet with a collapsed arch?

18 **A** You can see it over the entire foot. I mean, they get --
19 you see it sometimes by the pinky toe. Sometimes you see it
20 by the big toe. So it can be really at any point.

21 **Q** When you looked at Ms. Jones's foot, you saw ulceration;
22 correct?

23 **A** Yes.

24 **Q** And you can't rule out if that ulceration was simply a
25 pressure trophic ulcer, can you?

1 **A** Not knowing her history, no.

2 **Q** Okay. All you know is she came to your office and said,
3 "I stepped on a nail. Here's the screw. I got problems."

4 **A** Yes.

5 **Q** Thank you very much, Dr. Player.

6 THE COURT: Any redirect?

7 MR. WILLEY: Yes, if it pleases the Court, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WILEY:

10 **Q** Bad flashbacks of high school biology there. I
11 apologize.

12 I was not going to belabor how fragile Mrs. Jones is and
13 was, but we have heard in the past 38 minutes she had medical
14 issues; right?

15 **A** Yes, yes.

16 **Q** And you know about all that. You know about all of her
17 medical issues.

18 **A** Yes.

19 **Q** All right. I mean, you're here because you're her
20 treating physician. I mean, you examined her. You treated
21 her. You, quite intimately, removed a part of her body;
22 right?

23 **A** Yes.

24 **Q** You're not some doctor we brought in from out of town to
25 say what we wanted to say. You know this lady.

1 **A** Yes, yes.

2 **Q** Knowing all of this stuff that was wrong with her, you
3 considered all of that, didn't you, when you came to your
4 opinion about what caused the amputations?

5 **A** Yes.

6 **Q** I mean, you didn't leave any of that out; right?

7 **A** No.

8 **Q** And considering all that, you told us earlier that you
9 came to the conclusion that what caused this cascade of
10 events, what the precipitating event that caused these
11 amputations was, was stepping on a nail.

12 **A** Yes.

13 **Q** You heard opposing counsel ask you a bunch of times is
14 this possible, is that possible, all a manner of things that
15 might be possible, and you said, Yeah, sure, that's possible
16 over and over. And that makes sense; right? Lots of things
17 are possible. But not once did opposing counsel ask you,
18 correct me if I'm wrong, is it more likely than not that
19 diabetes caused the amputation.

20 **A** I'm sorry; could you repeat the question?

21 **Q** Did opposing counsel ever ask you whether it was your
22 opinion, more likely than not, that diabetes caused the
23 amputation?

24 **A** No.

25 **Q** In fact, didn't he use the lawyer's trick, caused or

1 contributed to cause? It's a compound question and I didn't
2 object because I hate to interrupt people, but I want to pin
3 you down on that for a second. He asked you if these
4 underlying conditions caused or contributed to cause the
5 amputations. You said that they contributed; right?

6 **A** Yes.

7 **Q** But you would not point to any one of these things and
8 say that caused -- the hypertension caused the amputation,
9 would you?

10 **A** No.

11 **Q** The wounds you saw three days after she stepped on the
12 nail, bigger; right? Bigger than just a pinprick? In fact --

13 MR. WILLEY: Where's the foot? Can I approach?

14 THE COURT: Yes, sir.

15 BY MR. WILLEY:

16 **Q** This does not look like your foot. So I'm looking at
17 this foot now. The wound, quite as big as the sticker. Isn't
18 that what you said? It's a small --

19 **A** Yeah, if the sticker is 2 centimeters, it was smaller.

20 **Q** It was smaller. All right.

21 **A** By about a third.

22 **Q** Yeah.

23 **A** I guess. Because if it was 1.8 by 1.0, then one of the
24 dimensions is going to be half as wide as the sticker, and one
25 of the dimensions is going to be a little shorter than the

1 sticker.

2 Q So a little smaller than the sticker, bigger than a
3 pinprick. You step on a nail, screw, railroad spike,
4 whatever, you get a wound, it gets infected, does the size of
5 that wound grow over time?

6 A It can if you're not going to heal properly, yes.

7 Q And she didn't heal properly, did she?

8 A No, she did not.

9 Q So it's no surprise at all to you that the wound, when
10 you saw it three days afterward, was bigger than it would have
11 been on day one?

12 A Correct.

13 Q So nothing unusual there; right?

14 A I don't think so, no.

15 Q All consistent with her stepping on a nail, just like you
16 said earlier and just like she said; right?

17 A Yes.

18 Q So considering everything you considered, you came to the
19 opinion that it's more likely than not that the nail -- the
20 puncture wound from the nail is what caused everything that
21 happened afterwards?

22 A It started the cascade, yes.

23 Q It started the cascade.

24 Without that, she would have been that fragile glass
25 sitting on the shelf for years to come, we can only speculate;

1 right?

2 **A** Yes.

3 **Q** But somebody knocked her off and she broke.

4 I want to talk about the screw for a second. You are a
5 doctor. I think you said you do not have a shop at your house
6 and that's not really, like, your thing.

7 **A** That's not my thing.

8 **Q** You were there to diagnose Ms. Jones; right?

9 **A** Yes.

10 **Q** Not to diagnose fasteners?

11 **A** Correct.

12 **Q** Did it matter to you whether it was a framing nail or a
13 pallet nail or a masonry nail or a Phillips head screw or a
14 straight blade -- what we caused to call a comet or a star
15 drive? Did you -- did it matter to your diagnosis what kind
16 of fastener it was?

17 **A** No.

18 **Q** She stepped on a piece of metal in her foot. You don't
19 actually write your medical records, like, by hand, do you?
20 You dictate them?

21 **A** I dictate them, yes, yes.

22 **Q** And you probably review them later.

23 **A** Yes, yes.

24 **Q** And you review them, I would hope, for those things that
25 matter; right?

1 **A** All things matter.

2 **Q** Well, if you write "hyperthermia" instead of
3 "hypothermia," that's a big difference; right?

4 **A** Yes, yeah.

5 **Q** In your medical records -- and I have been through
6 them -- you're welcome to look through them, if I may
7 approach -- I have seen the word "nail" hundreds of times. I
8 have seen the word "screw" once. I don't think I have seen it
9 another time.

10 If you want to look through and see if you can find it...

11 Is that the sort of thing, when you were reading your
12 dictated medical records, you would have said, "Oh, my God,
13 that wasn't a Phillips head screw; it was a straight blade
14 screw. Nurse, you better get this corrected because we have
15 the wrong kind of screw down"?

16 **A** No.

17 **Q** You didn't?

18 **A** No.

19 **Q** Because that wasn't what you were there to do. You were
20 there to take care of her wound and assess it, whether it was
21 a nail or right-handed thread, left-handed thread, or whatever
22 screw, it wasn't really relevant; was it?

23 **A** Correct.

24 **Q** I appreciate your time, Doctor.

25 THE COURT: All right. You may step down.

1 MR. WILLEY: Your Honor, if I may, I would love for the
2 doctor to be able to get back to his hospital, if we can --

3 THE COURT: Any objection to him being excused?

4 MS. BOYD: No objection, Your Honor.

5 Thank you, Dr. Player.

6 THE COURT: You're free to leave. Thank you.

7 THE WITNESS: Thank you.

8 MR. WILLEY: Thank you, Doctor.

9 Thank you, Your Honor.

10 THE COURT: All right. Might counsel approach the bench
11 for a moment.

12 BENCH CONFERENCE

13 (A bench conference was held off the record and outside of
14 the hearing of the jury and others.)

15 (Open court resumes as follows:)

16 THE COURT: Mr. Foreman, ladies and gentlemen of the
17 jury, thank you for being here and thank you for your time.
18 Once again, I'm going to reiterate: Do not do any independent
19 investigation. Don't go into Walmart trying to do
20 investigation about the facts of this matter. Do not look
21 on -- you can look up anything on the Google nowadays. Don't
22 do that. You can look up legal research, incidents,
23 personalities, don't do that. I'm going to order that you not
24 do that. That would be improper. Do not do that in any
25 respect.

1 If anybody were to try to contact you about this case --
2 and I don't anticipate under any circumstance that anybody
3 would ever do that -- that's improper, and I would ask you
4 report it to me if that took place.

5 Do not discuss the case amongst yourselves or with anyone
6 else, and I'll see you at 9:30 in the morning. And be here a
7 little bit early so we start right on time and get that matter
8 straight.

9 I know y'all aren't working tomorrow. It might be a
10 tendency to stay up and watch late night TV like David
11 Letterman or something -- he's not even on, but some
12 late-night show that comes on nowadays. But don't do that
13 because these are important matters. You need alert. You
14 need to be awake. And we'll see you in the morning bright and
15 early, 9:30. 9:30 sharp.

16 Everyone remain seated as the jury exits the courtroom.

17 (The jury exited the courtroom at 4:48 p.m.)

18 (At 4:50 p.m., the above trial adjourned until November
19 9, 2021, at 9:30 a.m.)
20
21
22
23
24
25

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: April Jones v. Tim Ringer/Walmart

3 2017-CP-21-01375

4 DATE OF PROCEEDING: November 8, 2021 (Day 1 of 4)

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; **that said proceedings were transcribed**
9 **to the best of my ability from the audio recording and**
10 **supporting information**, and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14 

15 ____/s/ Bobbi Fisher____

16 Bobbi J. Fisher, RPR

17 NCRA Registered Professional Reporter (RPR)

18 Prepared: December 31, 2021

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

-----x

APRIL JONES,)

Plaintiff,)

VS.)

Transcript of Record
2017-CP-21-01375

TIM RINGER, WALMART STORE)

NO. 630, WALMART STORES,)

INC., and WALMART STORES)

EAST, LP,)

Defendants.)

-----x

Tuesday, November 9, 2021

JURY TRIAL - VOLUME 2 of 4

B E F O R E:

The Honorable Michael G. Nettles, Presiding Judge; and jury.

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Recorded by: Court Monitor/DCRP

Transcribed by: Bobbi Fisher, RPR

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COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:32 a.m.)

MATTERS OF LAW

MR. WILLEY: -- the Court to take judicial notice of.

THE COURT: All right.

MR. WILLEY: So, pursuant to 201, we would ask that the Court take judicial notice the plaintiff's age and life expectancy. So she's 52 years old, born in January of 1969, which, pursuant to the life expectancy table, gives her 30.90 more years to live.

THE COURT: All right. Of course there's no need to take judicial notice as far as the life expectancy, as far as the age. What do you have to say about that?

MS. BOYD: I have to say, she can testify to her age, Your Honor. I don't think the Court needs to take judicial notice of it.

THE COURT: Well, I think you can stipulate to it. Do you --

MS. BOYD: Yeah, we don't object that she's a certain age.

THE COURT: We can stipulate to that.

MS. BOYD: Okay.

THE COURT: Let's do that. Is that, indeed, her age? You have looked at her medical records.

MS. BOYD: I have, Your Honor, yes.

1 THE COURT: And you agree that's her age?

2 MS. BOYD: Yes, Your Honor.

3 THE COURT: And how old is she?

4 MS. BOYD: 53.

5 MR. WILLEY: 52.

6 MS. BOYD: Oh, 52. I apologize.

7 THE COURT: 52. With how many years?

8 MR. WILLEY: 30.90.

9 THE COURT: And of course that -- now, I would charge the
10 law on that. And, of course, she's -- she can testify to that
11 or no need to do that; she's already stipulated.

12 MR. WILLEY: Yeah, I just don't like asking women their
13 age on the stand, so...

14 THE COURT: All right. Well, that's awfully young.

15 The other thing that I did want to mention, sort of an
16 unusual motion, seeing how we have selected the jury and we
17 had a number of jurors remaining. I have never seen anybody
18 make that motion before, but, as I understand it, the statute
19 requires that you draw 75 -- at least 75, not have 75 seated.
20 That's my understanding of the law.

21 How many were drawn for this week?

22 THE CLERK: Probably about a hundred.

23 THE COURT: A hundred?

24 THE CLERK: I mean, we summonsed 150.

25 THE COURT: All right. Let the record reflect that

1 the -- that 150 were summoned.

2 How many actually showed up?

3 THE CLERK: Between 150 and 175. Something like that.

4 THE COURT: Between 150 and 175. And how many showed up?

5 THE CLERK: 56.

6 THE COURT: 56. All right. Just let the record reflect
7 that.

8 MR. WILLEY: So, Your Honor, I would just say that I
9 think there's a difference in the statute. It requires them
10 to be drawn and summoned. 150 to 175 were drawn. On the list
11 of 88 that were actually summoned, sent subpoenas, 22 of those
12 were unable to locate, which means they were not summoned,
13 because you can't summons somebody that you can't locate. So,
14 actually, only 66 were summoned based on the count that the
15 clerk gave.

16 And so, based upon that, the statute requires that that
17 many be drawn and summoned as a minimum, and so that was not
18 done.

19 THE COURT: Well, of course you're protected on the
20 record in that regard. In addition to that, I think that if
21 you make a motion like that, you ought to do it before we
22 select the jury rather than after. And, to some extent, that
23 might be a waiver, but I imagine there --

24 MR. WILLEY: Your Honor, there is a waiver provision in
25 the statute, and it's waived if you don't do it before the

1 final jury is impanelled, which is what I had to do it the way
2 I did.

3 THE COURT: Well, I think otherwise, and the appellate
4 courts will straighten us out in that regard.

5 All right. Anything further from defense?

6 MR. WILLEY: I have one more judicial notice matter.

7 THE COURT: Okay.

8 MR. WILLEY: So I'm asking the Court to take judicial
9 notice of Walmart's free cash flow pursuant to their Form 10-K
10 submitted to the SEC, which I can provide to the Court, that,
11 in the year of 2015, it was \$16.39 billion, with a "B". And
12 in 2021, it is \$25.81 billion.

13 And the Court, under 201, it's mandatory that the Court
14 take judicial notice if requested by a party and supplied with
15 the necessary information that is capable of accurate and
16 ready determination by resort to sources whose accuracy cannot
17 be reasonably questioned.

18 And I have for the Court here the Form 10-K signed by
19 Walmart's officers that were submitted to the SEC with that
20 information.

21 THE COURT: And I assume that that's for purposes of
22 punitive damages.

23 MR. WILLEY: There are two different ways that that's
24 relevant in the case. A 2015 number is relevant with respect
25 to measures that Walmart had within its capability to take to

1 prevent this incident. We will -- there will be testimony
2 that, for example, they don't have a designated, salaried
3 safety manager or anything like that. And, in addition to
4 that, punitive damages, obviously, as to the 2021 number,
5 because ability to pay is a factor.

6 THE COURT: I'll be glad to hear from defense with regard
7 to threshold questions as to whether or not punitive damages
8 are appropriate.

9 MS. BOYD: Your Honor, we assert that punitive damages
10 are not appropriate at this point. Plaintiff has not provided
11 any evidence, willful or wanton conduct on behalf of Walmart
12 or Tim Ringer, only allegations. There's been no evidence of
13 that at this juncture, and so it's not appropriate to look at
14 Walmart's ability to pay based on case law until you meet that
15 threshold, and we have not done so. Just simply maintaining a
16 punitive damages claim is not sufficient, Your Honor.

17 MR. WILLEY: Your Honor, there's no case law on that. We
18 can put in evidence that supports our claims and damages in
19 any manner and in any order that we want, and punitive damages
20 are an issue in the case until such time as they're not.
21 There's no mechanism under the rules for punitive damages to
22 be removed from the case at this juncture. And under Rule
23 201, taking judicial notice of facts with related to sources
24 whose accuracy cannot be reasonably questioned is not
25 discretionary; it's mandatory under subsection D.

1 And so I don't think that, based upon that argument,
2 there can be any -- any dispute that the Court must take
3 judicial notice of these facts.

4 THE COURT: All right. Anything further from defense?

5 MS. BOYD: We just believe, Your Honor, that it would be
6 highly prejudicial at this juncture to take judicial notice of
7 these documents and especially for the purposes of
8 establishing Walmart's ability to hire preventative or take
9 preventative measures. The case law doesn't -- there's no
10 duty to protect. There's no duty to hire or to get safety
11 managers. That's not appropriate argument before the Court.

12 And so to place these numbers in front of the jury would
13 inappropriately allow them to rely -- to rely on Walmart's
14 money to say they should have done more, but the case law
15 doesn't require them to go out and hire additional safety
16 experts. There's no industry standard for that. I just think
17 it would be highly prejudicial to the defendant because of
18 their high net worth, Your Honor.

19 THE COURT: All right. At this juncture, I don't think
20 there has been a showing that would warrant punitive damages
21 of this juncture. We will revisit that at the directed
22 verdict stage.

23 MR. WILLEY: And what's the ruling with respect to the
24 ability to --

25 THE COURT: Pardon?

1 MR. WILLEY: The ruling with respect to the ability to
2 have --

3 THE COURT: I'm not going to allow that. You're
4 protected on the record.

5 MR. WILLEY: Okay. And I'll mark these as Court's
6 exhibits.

7 THE COURT: Good.

8 (Court's Exhibit No. 4, Form 10-K, and Court's Exhibit
9 No. 5, 5-Year Financial Summary, were marked for
10 identification and received into evidence for appellate review
11 only.)

12 THE COURT: Anything from defense?

13 MR. BLAIN: Yes, Your Honor. Good morning.

14 THE COURT: Good morning.

15 MR. BLAIN: Last night, we filed a proposed order
16 pre-trial motions and sent that by email to the judge's law
17 clerk and also provided a copy to plaintiff's counsel. I just
18 wanted to offer up a paper copy of that proposed order.

19 THE COURT: I'll -- yes, I would like that. Thank you.

20 MR. BLAIN: One additional item, Your Honor.

21 THE COURT: Yes, sir.

22 MR. BLAIN: The defense would make a motion under Rule
23 615 of South Carolina Rules of Evidence to exclude the
24 witnesses from sitting in the courtroom and listening in to
25 testimony from Ms. Jones and others. Those witnesses should

1 not be able to hear the testimony, and we would ask they be
2 excluded from the courtroom during the ongoing trial and
3 ongoing testimony of the plaintiff's witnesses.

4 THE COURT: All right. What do you have to say about
5 that?

6 MR. WILLEY: That's untimely. We have already had
7 witnesses in the courtroom for part of the trial.

8 THE COURT: I think he's talking about moving forward.

9 MR. WILLEY: Yeah, but my point is, you don't get to have
10 witnesses in the courtroom when it's convenient for you and
11 then move to sequester them when it's not. That motion is
12 appropriately made at the beginning of trial and applies to
13 the entire trial.

14 THE COURT: Well, I'm asking about the merits of the
15 motion in general, regardless of the timeliness. Do you think
16 it's appropriate to sequester witnesses?

17 MR. WILLEY: We'll agree to it, as long as it applies to
18 both parties.

19 THE COURT: All right. Based on the agreement, I'm not
20 necessarily saying that was what my ruling was going to be,
21 but since y'all have agreed to it, that's fine. That's the
22 way it'll operate. And I'll ask that all of the witnesses who
23 intend to testify need to vacate the courtroom. And the order
24 not only requires that they not listen to the testimony of
25 other witnesses but that they not discuss their testimony with

1 other witnesses.

2 MR. WILLEY: Just to clarify, Your Honor, obviously, the
3 parties of the case -- Mr. Ringer and Ms. Jones -- should be
4 exempt from that.

5 THE COURT: The parties are always allowed to be here.
6 Anything further?

7 MR. WILLEY: Just if we could have a moment to explain to
8 our folks after, before the jury comes in.

9 THE COURT: Now is the time.

10 MR. WILLEY: Okay.

11 (Pause in the proceedings.)

12 THE COURT: All right. Let's have it quiet.

13 (Pause in the proceedings.)

14 THE COURT: Anything further from defense? I believe
15 Mr. Blain is still out.

16 MS. BOYD: No, Your Honor, not at this time.

17 THE COURT: Okay. Anything further from the plaintiff?

18 MR. WILLEY: (No audible response.)

19 THE COURT: We're ready for the jury.

20 (The jury entered the courtroom at 9:45 a.m.)

21 THE COURT: Mr. Foreman, ladies and gentlemen of the
22 jury. Thank you for being here and being here on time. We
23 had some legal matters that we needed to tend to, and I
24 appreciate your timeliness, but we had legal matters to tend
25 to. I didn't want you to think we were in here lollygagging.

1 We were conscious of the fact that y'all were here and respect
2 that.

3 Plaintiff, you're recognized. You may call your next
4 witness.

5 MR. WILLEY: Thank you, Your Honor. May it please the
6 Court. We call Tim Ringer.

7 THE COURT: Mr. Ringer, please come forward. I'm going
8 to ask, if you could, to place your left hand on the Bible and
9 raise your right hand as the clerk administers the oath.

10 TIM RINGER,
11 the witness, after having been duly sworn, was examined and
12 testified to as follows:

13 THE COURT: Mr. Ringer, come forward and have a seat in
14 the witness chair there. Pull up real close to that
15 microphone. Speak loud and clear and slowly. We want to hear
16 everything that you have to say. And if you feel comfortable
17 doing so, you may remove your mask so we can hear you better.

18 THE WITNESS: Wonderful.

19 THE COURT: And let's start with your full name.

20 THE WITNESS: My full name is Timothy Blake Ringer.

21 THE COURT: Thank you, Mr. Ringer.

22 Mr. Willey.

23 MR. WILLEY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. WILLEY:

1 Q Mr. Ringer, good to see you.

2 A Good morning.

3 Q You are here today in your capacity as the store manager
4 of the Walmart store on Beltline in 2015; is that correct?

5 A Correct.

6 Q And you're also here today in the capacity as a
7 representative for Walmart?

8 A Correct.

9 Q Okay. And there's no other individual person that's come
10 here to represent Walmart in this case; correct?

11 A Not to represent, no.

12 Q Okay. And so if Mr. Jefferies and I hadn't had you here
13 to speak for Walmart, we wouldn't have anybody to ask
14 questions of on behalf of Walmart; right?

15 A I couldn't speak to that.

16 Q Okay. Walmart didn't send any member of the Walton
17 family or its board or anybody like that to come here and
18 participate in this case; right?

19 A I don't see anyone here.

20 Q Okay. And as far as you know, they haven't participated
21 in this case since the beginning; is that fair?

22 A I would have no way of knowing.

23 Q Okay. Have you spoke to any member of the Walton family
24 about this case?

25 A No, sir.

1 Q Have you spoke to anybody on Walmart's corporate board
2 about this case?

3 A No.

4 Q Have you spoke to anybody in the corporate office of
5 Walmart about this case?

6 A Not that I recall.

7 Q And so, for purposes of today, you are Mr. Ringer -- Tim
8 Ringer and Walmart. Okay?

9 A Yes, I'm Tim Ringer who is being sued.

10 Q And you were here for my opening statement; right?

11 A Correct.

12 Q Okay. Was there anything that you -- and you had the
13 ability to see the presentation that I was giving in opening
14 on the screen over here; correct?

15 A It was up on the screen, yes, sir. I didn't follow it
16 slide by slide, but yes.

17 Q Was there anything in what you did follow of what I said
18 or what you saw that you disagreed with?

19 A There were points that I felt like I needed more clarity
20 on, but --

21 Q Okay.

22 A -- it was so quick and so fast.

23 Q Okay. Well, let's start with disagreement. Was there
24 anything in there that you just flatly disagreed with? You
25 saw and you said, "That's wrong, I didn't say that, I didn't

1 sign that," etc.?

2 **A** I saw statements I made in my deposition that, to me,
3 were taken out of context --

4 **Q** Okay.

5 **A** -- to make your point.

6 **Q** Okay. And what statements specifically was that?

7 **A** Statement in the fact that I was breaking Walmart policy
8 by having pallets on the floor.

9 MR. BLAIN: Your Honor, if I may?

10 THE COURT: Yes.

11 MR. BLAIN: Defense counsel can't see what he has written
12 on the board. Is it possible to --

13 THE COURT: Either that or you can --

14 MR. BLAIN: Okay.

15 THE COURT: -- have a seat over here, if you'd like.

16 BY MR. WILLEY:

17 **Q** Okay. So the part of the deposition about breaking
18 Walmart policy by having pallets on the floor, you felt like
19 was misconstrued?

20 **A** Yes.

21 **Q** Okay. Was there anything else?

22 **A** I don't recall at this time. I wasn't taking notes.

23 **Q** Okay. You don't recall anything else in the opening,
24 though, that you needed more clarity on other than this
25 statement that you felt was taken out of context?

1 **A** There were other points that I wasn't sure on from a
2 timeline standpoint, but...

3 **Q** Okay. Do you remember specifically what parts of the
4 timeline that you weren't sure on?

5 **A** You know, honestly, if I knew I was going to be asked
6 questions about what you said and not about what took place
7 outside of the courtroom, I probably would have taken notes to
8 that, but I'm not prepared to speak a whole lot about that.

9 **Q** Okay. Well, you weren't actually in the store on June 26
10 of 2015, were you?

11 **A** No, I was not.

12 **Q** Okay. So everything that you know about the incident is
13 from the documents and the videos and the same sources that we
14 have and that the jury had; right?

15 **A** Correct.

16 **Q** Okay. You didn't have any personal observations of the
17 incident or the plaintiff or the store on the day of; correct?

18 **A** Correct.

19 **Q** Okay. So was there anything in that presentation with
20 respect to the documents and the testimony and the videos that
21 you thought was inaccurate or different than what you had seen
22 throughout the course of this case?

23 **A** In your presentation?

24 **Q** Yep.

25 **A** I think that you are incorrect in acknowledging some of

1 the things that were seen on the video of the sales floor.

2 Q Okay. Can you be more specific?

3 A Based off of the video and the path that Ms. Jones took
4 within the store, Ms. Jones never passed any type of wooden
5 pallet --

6 Q Okay.

7 A -- in her entire time into the store or leaving the
8 store.

9 Q Okay.

10 A There was no wooden pallet that she passed. There was
11 none in the pathway that she traveled.

12 Q Okay. Anything else?

13 A And for you to put information out there to where this
14 was delayed, this was delayed, this was delayed and try to tie
15 that to me, it's not true.

16 Q What do you mean, delayed?

17 A You kept saying in your opening statements how Walmart
18 was delaying this and delaying this and delaying this and
19 delaying this.

20 Q Right.

21 A You show a piece of paper with my signature on that I
22 don't even know -- I couldn't read what it was.

23 Q Okay.

24 A And it was as if you're saying that I was involved in
25 those decisions to make delays on a court case, which, you

1 know, I personally didn't get to make those type of decisions.

2 Q Okay. Well --

3 A You tried to paint me as being the person making
4 decisions to delay a court case that I did not do.

5 Q Well, Walmart made the decisions.

6 A Yeah, but you are trying to paint me as being a party to
7 that.

8 Q Well, you're here today and as part of this case as
9 Walmart. Is there somebody else at Walmart that made those
10 decisions?

11 A Those are decisions that I would not make.

12 Q Okay.

13 A But, you know, you're -- I'm being sued as well.

14 Q Right.

15 A You're suing Walmart and you're suing me.

16 Q Understood. And you're telling me that you didn't get to
17 make any decisions with respect to the litigation in this
18 case?

19 A I didn't have any decisions made as far as these
20 postponements.

21 Q Okay. That decision was made by someone else at Walmart?

22 A That would have been made at a different level from
23 myself, yes.

24 Q Okay. Who would have made that decision?

25 A That, sir, I couldn't tell you.

1 Q Okay. But they're not here?

2 A Sir?

3 Q They're not here? No one in this courtroom?

4 A I don't know who that made decision.

5 Q Okay. But you didn't make it?

6 A No.

7 Q Anything else?

8 A Not at this time.

9 Q Okay. Mr. Ringer, you're no longer the manager of the
10 Walmart on Beltline; right?

11 A Correct.

12 Q But at the time of these incidents, you were the store
13 manager; correct?

14 A Correct.

15 Q Okay. And as far as the operation of a Walmart store, is
16 store manager the apex, the top spot?

17 A Within that -- those four walls. I still have people
18 that I report to, of course.

19 Q Okay. And at that time when you were the manager of the
20 Walmart on Beltline, who did you report to? And title is
21 fine.

22 A I'm trying to remember who my supervisor at that point
23 was.

24 Q Titles are fine. I'm just trying to get a sense of the
25 chain.

- 1 **A** There was a -- I would report to a market manager.
- 2 **Q** Okay.
- 3 **A** Who would be over a number of different stores.
- 4 **Q** Okay. And as far as you said the four walls of that
- 5 store, that's your domain; correct?
- 6 **A** Correct.
- 7 **Q** And of course I would assume that extends into the
- 8 parking lot? That's part of your domain?
- 9 **A** Correct.
- 10 **Q** Okay. And at the time, as a store manager, it's your job
- 11 to ensure that Walmart policies are followed; right?
- 12 **A** Correct.
- 13 **Q** And it's your job to make sure that the employees in your
- 14 store are trained as to those policies; right?
- 15 **A** Correct.
- 16 **Q** And it would be your job to make sure that, more than
- 17 just being trained on those policies, that they actually
- 18 execute and follow those policies on a day-to-day basis;
- 19 right?
- 20 **A** I would oversee that, yes.
- 21 **Q** And Walmart has policies about cleanliness; right?
- 22 **A** True.
- 23 **Q** And they have policies about store safety?
- 24 **A** True.
- 25 **Q** And they have policies about what should be on the sales

1 floor and not be on the sales floor; right?

2 **A** True.

3 **Q** And it's your job to make sure that those policies are
4 enforced; correct?

5 **A** Yes.

6 **Q** Okay. And so, then, it would be your job as a store
7 manager to make sure that the store is inspected for the
8 safety of its customers; right?

9 **A** Yes.

10 **Q** Okay. And if that inspection finds something that is
11 unsafe, an unsafe condition on the floor, it's your job to
12 make sure that that would be cleaned up ultimately; right?

13 **A** Yes.

14 **Q** And --

15 MR. BLAIN: Your Honor, if I may.

16 THE COURT: You may approach the bench.

17 BENCH CONFERENCE

18 (A bench conference was held off the record and outside of
19 the hearing of the jury and others.)

20 (Open court resumes as follows:)

21 BY MR. WILLEY:

22 **Q** All right. Mr. Ringer, it would be your job to make sure
23 that everything that was unsafe on the floor, on the premises,
24 was removed; right?

25 **A** If it's brought to my attention. I mean, there's -- I'm

1 not the person that's going to hands-on every action within a
2 220,000 square foot facility.

3 Q But it's your job to make sure that that policy is
4 followed by your employees; correct?

5 A Ultimately, yes.

6 Q And, in fact, Walmart has a policy that's called TIPS; is
7 that right?

8 A TIPS as in towel-in-pocket?

9 Q Yeah, towel-in-pocket policy.

10 And what is that policy saying?

11 A That you keep a towel in your pocket in case there's a
12 spill on the floor. I don't know that it's actual policy. I
13 think it's a best practice.

14 Q Okay. And with respect to the store itself, ultimately,
15 it would be your job to make sure that the policies on
16 cleanliness are enforced; right?

17 A And that's a wide variety of policy when you refer to
18 cleanliness.

19 Q It would still be your job, no matter who in the store
20 ultimately carried out the policy; right?

21 A Yes. I mean, but there's different levels of
22 cleanliness.

23 Q Sure, sure. And the point here is really, you're the
24 general. Even else out on the Walmart floor is under your
25 direction and control, correct, as store manager?

1 **A** I am the store manager, and I have a team of managers
2 that work with me that I delegate through, and they also have
3 a responsibility in recognizing said things, along with every
4 associate.

5 **Q** All right. And with respect to the inspections,
6 associates that are out on the floor are supposed to be
7 looking for things that are unsafe; right?

8 **A** Yes.

9 **Q** And if they see anything that is unsafe, they are
10 supposed to remedy it; right?

11 **A** Yes.

12 **Q** In addition to that, there are regularly scheduled
13 inspections of maintenance throughout the day; correct?

14 **A** I'm not sure what you're referring to.

15 **Q** Okay. Isn't there a policy at Walmart that every so
16 often maintenance personnel or an associate is supposed to go
17 around the store specifically with the intention of looking
18 for unsafe conditions?

19 **A** Yes.

20 **Q** Okay. And tell the jury how often that's supposed to
21 occur.

22 **A** About every hour and a half and to two hours.

23 **Q** Okay. And how is that task assigned?

24 **A** Each associate knows that they're supposed to conduct a
25 safety sweep about every hour and a half to two hours of the

1 area that they work in. They're not necessarily going to
2 leave the area that they work in, but they will walk around
3 that area in a general walk just to identify if there's
4 something out of place or needs attention. You know, it's a
5 visual verification.

6 **Q** So every associate in the Walmart store is supposed to do
7 that in their area every hour and a half to two hours?

8 **A** Yes.

9 **Q** And, of course, if they find something that's unsafe,
10 they're supposed to remedy it; right?

11 **A** Yes. And if they identify it at any time, they're
12 supposed to remedy it?

13 **Q** Right. Now, these safety sweeps that everybody is
14 supposed to conduct every hour and a half to two hours, how
15 are they logged?

16 **A** There's no log.

17 **Q** Okay. So, like, when you go into, you know, a gas
18 station bathroom and they have got the thing on the back that
19 says this bathroom was last cleaned at X time by Y person,
20 there's nothing like that?

21 **A** No.

22 **Q** Okay. So in terms of actually making sure that these
23 safety sweeps occur, what's the mechanism? How do you make
24 sure that they occur?

25 **A** Myself and my management team also are consistently on

1 the floor, walking the sales floor, making sure that the
2 standards are maintained. On an average day in that store, I
3 would walk four to six miles a day, walking the sales floor
4 and the back room of the entire facility.

5 Q That's you personally?

6 A Personally, yes.

7 Q But there's no mechanism to ensure that the associates
8 are conducting their safety sweeps of their designated areas;
9 is that right?

10 A It's easy to see when you walk through whether or not
11 they're being done.

12 Q And is that --

13 A We go behind and we will visually verify that the area,
14 the store, is safe, it's clean, and it's in stock.

15 Q Okay. And so when you talk about visual verification,
16 are you saying that, if you walk through and you see something
17 that is not clean or that is unsafe, then you would assume
18 that that associate is not doing what they supposed to do with
19 respect to their safety sweeps?

20 A I would -- first and foremost, I would address the
21 situation, and then I would go find the associate that was
22 responsible for that area and address them with why or how did
23 you miss something like this.

24 Q Okay. And the associates that are conducting these
25 safety sweeps also have other responsibilities in the store;

1 right?

2 **A** Absolutely.

3 **Q** There is no designated safety department in a Walmart
4 store; is that fair?

5 **A** A safety department? No. We have a safety team.

6 **Q** Okay. Tell us about the safety team.

7 **A** A safety team is a team of Walmart associates that have
8 voluntarily stepped up to be part of the safety team. We have
9 a safety team leader that is mentored by Sally, a member of
10 management. They have weekly meetings. They do weekly tours
11 of the store. There are weekly and monthly checklists that
12 they would go through. There are safety topics that are sent
13 down weekly from our corporate office, different points of
14 many different aspects that they meet on, they discuss.

15 The safety team members also will do independent work
16 throughout the week, things as important as making sure spill
17 stations are supplied with the paper towel, Spill Magic,
18 brooms, gloves, things like that. They help in inspecting of
19 fire exit doors. There's multiple things that they'll do as
20 well.

21 **Q** And how is all of that logged?

22 **A** There are weekly meetings that are held that record the
23 people that attend to meetings, and it will cover the meeting
24 topics that were covered that day, points that were brought up
25 from the safety team that they may have seen or feel like

1 needs to be addressed, and it's just a log of the meeting that
2 they have weekly.

3 Q So the only log of that is just a weekly meeting where
4 they go over topics; is that fair?

5 A Where they go over the topics and discuss anything that
6 they may have identified in the store or that someone may have
7 brought to their attention.

8 Q Okay. But as far as throughout the course of the day,
9 what the safety team is -- if they're cleaning up anything or
10 doing anything, that's not logged separately anywhere, is it?

11 A We don't log every spill that's cleaned up, no.

12 Q Okay. With respect to -- you mentioned a safety lead?

13 A Yes.

14 Q Okay. Who was that person in June of 2015 for your
15 store?

16 A I have no idea.

17 Q Okay. Who was the asset protection manager in June of
18 2015?

19 A Jenny Wright.

20 Q Tell the jury what asset protection is.

21 A Asset protection is a part of our business that deals
22 both with protection of assets, and they also are involved
23 with the safety and security within the store.

24 Q And is the asset protection manager a salaried position?

25 A Yes.

1 Q And the safety team lead is a volunteer position?

2 A It is a person that we have identified that has higher
3 capabilities. They're an hourly associate. Sometimes they're
4 an hourly supervisor. Sometimes they're an hourly supervisor.
5 Sometimes they're not an hourly supervisor. These are people
6 that we have seen that have potential to do more, and it's
7 a -- actually a building block or steppingstone to allow them
8 to have more exposure to understand the, you know, bigger
9 points of the business itself.

10 Q But Walmart doesn't pay them anymore to be the safety
11 team lead; right?

12 A No.

13 Q Okay.

14 A They are allowed extra hours per week to work, and
15 they're compensated through overtime pay.

16 Q With respect to the store budget, there's not a separate
17 budget broken out at all for safety; isn't that right?

18 A Not in the P&L that I review, no.

19 Q Showing you what we'll mark as Plaintiff's exhibits.

20 (Plaintiff's Exhibits 2-A and 2-B were marked for
21 identification.)

22 BY MR. WILLEY:

23 Q Mr. Ringer, what is this?

24 A Appears to be a floor plan of a Walmart store.

25 Q Okay. And this is the floor plan of Store No. 630;

1 correct?

2 **A** Yes.

3 **Q** Okay. And this is a floor plan that your attorneys
4 produced that would have been the floor plan at the time of
5 this incident; correct?

6 **A** It appears to be, yes.

7 **Q** Okay. And the area that we're interested in before this
8 incident is this area; correct? The vestibule and grocery
9 section.

10 **A** Correct.

11 **Q** Plaintiff's Exhibit 2-B is a blow-up of that section.
12 Does that appear to be a fair and accurate representation of
13 it?

14 **A** Can you turn -- my reference point --

15 **Q** There you go.

16 **A** Okay, yeah. Okay. Because you had it turned sideways
17 and it was throwing my reference point off. Okay. Yes.

18 **Q** Okay.

19 MR. WILLEY: At this time, Plaintiff would move Exhibits
20 2-A and 2-B into evidence.

21 THE COURT: Any objection from defense?

22 MR. BLAIN: No objection, Your Honor.

23 THE COURT: They're into evidence.

24 (Plaintiff's Exhibit 2-A and 2-B, Floor Plans, were
25 received into evidence.)

1 BY MR. WILLEY:

2 Q Mr. Ringer, I showed some video clips in my opening, and
3 you had the opportunity to see those video clips?

4 A Yes.

5 Q Okay. Did you have any dispute about what I was saying
6 about those video clips as far as where the plaintiff was
7 entering and where she was walking?

8 A No.

9 Q Okay. In other words, those video clips were what
10 Walmart produced, it appeared to you?

11 A Yes.

12 MR. WILLEY: Okay. And I have marked on a flash drive
13 the 17 video clips produced by Walmart and would offer them
14 into evidence.

15 MR. BLAIN: No objection.

16 (Plaintiff Exhibit No. 3, Thumb Drive/Video Clips, was
17 marked for identification and received into evidence.)

18 BY MR. WILLEY:

19 Q Mr. Ringer, one of the department safety policies that
20 were produced in this case...

21 (A discussion was held off the record between counsel.)

22 BY MR. WILLEY:

23 Q Mr. Ringer, this is the Department Safety Solutions
24 general information from Walmart; is that correct?

25 A Yes.

1 Q Okay. And it's heavily redacted, but the unredacted
2 portion deals with safety related to pallets; right?

3 A I'm reading it now, sir Give me a moment.

4 Q Okay. Take your time.

5 A (Reviewing document.) It speaks about pallets. It
6 speaks about ladders. It speaks about carts. It speaks about
7 shrink wrap, cardboard. It speaks about preventing trips and
8 falls. It speaks about multiple things other than just
9 pallets.

10 Q Okay. But this is, in fact, Walmart Department Safety
11 Solutions' policies; right?

12 A This is general information, yes.

13 Q Okay. And a portion of it is redacted but the portion
14 that's not deals with certain aspects of Walmart's policies;
15 correct?

16 A Yes.

17 Q Okay.

18 MR. WILLEY: Your Honor, at this time, we'd move
19 Plaintiff's Exhibit 4 into evidence.

20 THE COURT: Any objection?

21 MS. BOYD: One second, Your Honor.

22 THE WITNESS: Are we speaking just about the front page
23 here? I mean, do I need to read through all these pages?

24 MR. WILLEY: You can look -- you're welcome to look
25 through it all. It's what you produced to me, so...

1 MS. BOYD: Your Honor, defense counsel specifically
2 provided an updated copy to Plaintiff's counsel at their
3 request that also removed the redaction by agreement to the
4 cuts and punctures section of this document, and I would ask
5 that any -- if that policy be entered into it, it be that
6 version so that that portion -- there be no misrepresentation
7 about what that portion encompasses, Your Honor.

8 THE COURT: Very good. All right. And subject to --

9 MR. WILLEY: I have got no objection.

10 THE COURT: -- subject to that objection -- that
11 objection is sustained. I'd ask that you put in the more
12 current one, unless you would like to be heard on that.

13 MR. WILLEY: Well, I think the cuts and punctures deals
14 with box cutters, which is not at issue in the case, and so
15 that's why we submitted the first version. But I have no
16 issue submitting -- replacing it with a more updated one.
17 We'll just have to print one.

18 THE COURT: Very good.

19 (Plaintiff's Exhibit No. 4, Walmart Department Safety
20 Solutions' policies, was marked for identification and
21 received into evidence.)

22 BY MR. WILLEY:

23 Q All right, Mr. Ringer. Have you had an opportunity to
24 review that?

25 A I'm getting close to the end.

1 Q Okay. Take your time.

2 A (Reviewing document.) All right.

3 Q You have had the opportunity to review it?

4 A Yes.

5 Q Okay. And these policies that have been entered into
6 evidence as Plaintiff's Exhibit 4, these were policies that,
7 as of June 2015, you were responsible for enforcing at the
8 Walmart on Beltline store; right?

9 A Yes.

10 Q Okay. And with respect to your duties as a store
11 manager, I think you have already told us you were responsible
12 for, you know, cleaning, monitoring maintenance, making sure
13 that those bucket of policies were actually executed; correct?

14 A Correct.

15 Q Okay. And the purpose of that is to make sure that the
16 store is safe for its customers; right?

17 A True.

18 Q Okay. I'm going to show you now is what I showed in the
19 opening, which is a copy of the amended complaint in this case
20 and Defendant's answer. And if you will, on that first
21 document, there are page numbers at the bottom. Just flip to
22 page 2. Are you there?

23 A Yes.

24 Q All right. Will you read No. 10? Paragraph 10 of the
25 complaint in this case.

1 **A** "As manager, Defendant Ringer's responsibility and duties
2 include but are not limited to cleaning, monitoring, and
3 maintaining the premise of Walmart Store No. 630 to ensure
4 that it is safe, clean, and not dangerous for customers,
5 patrons, and invitees."

6 **Q** And that's what we just talked about; right?

7 **A** Yes.

8 **Q** Okay. Now if you'll flip in Defendant's answer, which is
9 Defendant Tim Ringer and Walmart's answer to that complaint on
10 page 3 --

11 **A** The same?

12 **Q** The next document. The answer.

13 **A** This one? The second document?

14 **Q** Yes, sir. The one that says, "Defendant's answer."

15 **A** Page 3?

16 **Q** Yes. And read how Walmart responded to the allegations
17 of paragraph 10 of the complaint.

18 **A** So I assume No. 10 is what you want me to read?

19 **Q** Yes, sir.

20 **A** "Defendant's deny the allegations of paragraph 10."

21 **Q** Okay. And that's not accurate, is it? Those allegations
22 in paragraph 10, that you were responsible for the cleaning,
23 maintenance, monitoring and all those things you just
24 testified to.

25 **A** I don't follow you.

1 Q The allegations of paragraph 10 in the complaint, you
2 just admitted --

3 A This piece of paper?

4 Q Correct. "Complaint," at the top.

5 A Okay.

6 Q -- were the things that you were responsible for in that
7 store.

8 MR. BLAIN: Objection, Your Honor.

9 BY MR. WILLEY:

10 Q And we just spent --

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury, I'm going to ask you to retire to the jury room for one
13 moment.

14 (The jury exited the courtroom at 10:21 a.m.)

15 THE COURT: Yes, sir?

16 MR. BLAIN: Your Honor, the question -- the line of
17 questioning against Mr. Ringer is just improper. He's not a
18 lawyer. He doesn't understand, you know, the basis for
19 Walmart's objection, for Walmart's decision to deny that
20 particular paragraph in the complaint because it doesn't
21 necessarily apply. And it doesn't necessarily apply under the
22 law.

23 The law -- South Carolina law is very clear that a store
24 owner, like Walmart, does not have a duty to ensure the safety
25 of its patrons, and the -- this questioning against Mr. Ringer

1 has a potential to present potentially prejudicial information
2 to the jury if they're saying we're denying the entirety of
3 that particular allegation when it's clear from Walmart's
4 perspective that we are denying a specific part of the
5 allegation and how it sets forth improper duty that it is more
6 expansive than what is explained in the South Carolina case
7 law.

8 THE COURT: Mr. Willey?

9 MR. WILLEY: Pleadings may be used at trial for any
10 purpose, and this is not just Walmart's answer. This is
11 Mr. Ringer's answer. But in addition to that, Mr. Ringer has
12 testified that he is here as a representative of Walmart. And
13 what we just established before the jury, in reading paragraph
14 10 of the complaint in the case, is that he agreed, and, in
15 fact, admitted to the jury the allegations of paragraph 10.

16 And then what we read from the answer is that, in the
17 answer, he and Walmart, who he is a representative of, denied
18 the allegations of paragraph 10.

19 THE COURT: All right.

20 MR. WILLEY: And so...

21 THE COURT: All right. Pleadings generally are not
22 admissible into evidence, and I think it's inappropriate to
23 talk about them and ask questions about them. These are legal
24 documents that lawyers draft. He was not consulted in the
25 drafting of the answer. I think it's inappropriate. I think

1 you need to ask him about the facts of the case. That's my
2 ruling. There will be no more discussion about the pleadings.
3 And you're protected on the record in that regard.

4 We're ready for the jury.

5 MR. WILLEY: One more, before we do that. I am getting
6 close to where I'm going to be talking about photos of
7 pallets, and I know you wanted us to discuss that.

8 THE COURT: Yes, let's do that.

9 MR. WILLEY: In lieu of having to send them out again.

10 THE COURT: Yes, yes.

11 MR. WILLEY: So we have removed all -- the photo
12 regarding the kite display that you found there may be
13 circumstantial evidence of.

14 And, actually, could I ask that Mr. Ringer leave the
15 room?

16 THE COURT: No. He's a party.

17 MR. WILLEY: Okay. We're going to -- we have removed
18 that -- the photographs, and I can show you the ones here that
19 it is not in them. And I'm going to question him about.

20 THE COURT: You need to show them to the defense. Let's
21 deal with them one at a time.

22 MR. WILLEY: Okay.

23 THE COURT: Hand him one and let's talk about it.

24 MR. BLAIN: I would object to Photo No. 1. It's not a
25 front of the kite display where the (indiscernible) happened.

1 It's just a pallet on the floor.

2 THE COURT: When was this picture taken?

3 MR. WILLEY: This photograph was taken in 2019.

4 THE COURT: And the accident happened when?

5 MR. WILLEY: The accident happened in 2015, but I am
6 using this photograph so that Mr. Ringer can describe and I
7 can show the types of pallets used in Walmart. What you'll
8 see is that there are multiple types of pallets used in
9 Walmart.

10 In addition to that, one of the elements that we have to
11 prove under punitives, in order to get punitives, is that the
12 conduct has not been remedied. And this is in the same store,
13 a pallet being left out on the sales floor.

14 THE COURT: Yes, sir.

15 MR. BLAIN: Your Honor, I think this is precisely the
16 type of motion addressed in limine, and it should be excluded
17 for a number of reasons.

18 Number one, it's the fruit of an improper Rule 34
19 inspection. We know that Plaintiff's counsel had retained
20 from the sales floor. We have a video of that. We don't have
21 video of every action, every conduct they did while on the
22 sales -- on the store. We don't know if any destructive
23 testing was done of this pallet. We don't know if it was
24 moved. We know they had gloves on. That might have been
25 circumstantial evidence that they were moving or manipulating

1 pallets like they did with the other pallets that we saw on
2 the video.

3 In addition to the Rule 34 analysis, this photo is
4 clearly -- should (indiscernible) under Rule 401 and Rule 403.
5 Under Rule 401, this photo is irrelevant. It's clearly taken
6 four years after the plaintiff's incident. It's clearly taken
7 in an area entirely distinct from the grocery action alley
8 where Ms. Jones allegedly found a nail in her shoe.

9 And showing a pallet in this condition, taken four years
10 after the incident, is prejudicial to the jury. It's going to
11 show -- what plaintiff's counsel is attempting to do is show a
12 policy and then show a violation of the policy that is
13 entirely irrelevant to the facts at issue here.

14 And so introducing this evidence -- introducing this
15 photograph is prejudicial to the defense, and we would ask
16 that it be excluded.

17 MR. WILLEY: So, that's actually not what I'm showing.
18 And I don't think that I said that, although that would also
19 be proper because punitives are still an element in the case,
20 and one of the elements of punitives is the repetitiveness of
21 the conduct, the continuing conduct, the continuing violation
22 of safety policies by the defendant. It's against their own
23 safety policy, which we'll get into with the testimony, to
24 leave pallets on the floor. This pallet was left on the sales
25 floor.

1 The bigger issue is that Walmart uses multiple types of
2 pallets, and you'll see blue pallets, which can be CHEP
3 pallets. You'll see red pallets, which are PECO pallets.
4 You'll see white pallets, which are wooden white vendor
5 pallets, which come from vendors; they don't come from
6 Walmart.

7 And this is important for the jury to understand the
8 different types of pallets that Walmart uses later in our
9 case, especially when we get into expert testimony. But it's
10 directly relevant. And Mr. Ringer will testify that, yes,
11 these are the types of pallets that Walmart uses and what type
12 of pallet this one is because it's very well-known at the
13 Walmart stores.

14 MR. BLAIN: Your Honor, in response to that, I would
15 simply suggest -- I would argue that the plaintiff has missed
16 a threshold question. There's been no showing and no evidence
17 that there was a pallet anywhere near the area of the store
18 where Ms. Jones was walking.

19 These photos show pallets. They don't show a loose
20 roofing nail or -- they're irrelevant and they're prejudicial,
21 and they have, you know, no consideration here. In fact, we
22 discussed -- in limine, we discussed what evidence the
23 plaintiff's experts should be entitled to testify to. If
24 these are being shown to -- these pallets are being shown to
25 demonstrate compliance with the ANSI standards, that's for

1 their expert to address, not for Mr. Ringer to address. Those
2 are simply irrelevant and they're prejudicial. We'd ask that
3 it be excluded.

4 We'd ask that the plaintiffs not be entitled to, you
5 know, the fruits of an improper inspection that clearly did
6 not comply with the Rules of Civil Procedure, Rule 34. If we
7 follow the rules and we were there and we had some idea of
8 what happened to lead up to this photo, that would be one
9 thing, but they can't be authenticated. We have no basis to
10 know who took that photo and what circumstances led to the
11 fact that it's in this condition on the floor.

12 MR. WILLEY: So two just quick things: One, I feel like
13 we're re-arguing the motion in limine. Fruit of a poisonous
14 tree is a criminal law doctrine, not a civil law doctrine.
15 Rule 34 doesn't require notice for access to a public place.
16 That's point one.

17 Point two is we are not going to be discussing ANSI
18 standards with Mr. Ringer. Mr. Ringer is simply going to
19 identify what types of pallets these are and what types of
20 goods come into a Walmart store on these pallets, which he is
21 very capable of doing. He did it in his deposition. He was
22 able to tell us what a PDQ is, etc. And that is what we are
23 going to be going through with Mr. Ringer. We are not going
24 to be talking about ANSI standards and this, that and, you
25 know, all that other.

1 THE COURT: All right. I'm going to sustain the
2 objection pursuant to Rule 34. We don't -- this took place
3 some four or five years after the event. There has not been a
4 threshold showing that she was near any of these type pallets.
5 There's no -- there's been no showing that this was -- any of
6 these pallets were near the area where she walked.

7 However, I am going to allow you to ask him on the stand
8 do they have wooden pallets. But the photographs are going to
9 be -- these photographs are going to be excluded.

10 MR. WILLEY: So, just to clarify on your ruling, I don't
11 think that I'm required to answer a threshold question about
12 showing she was near a pallet. I can't be made to prove my
13 case all at once. I have to do it in parts. And I'm happy to
14 proffer some testimony that there are pallets --

15 THE COURT: You certainly can do that.

16 MR. WILLEY: -- in the area, if that -- if that's the
17 basis. If the basis of your ruling is solely --

18 THE COURT: It's not that. It's -- primarily, the Rule
19 34 and the fact that there has been no showing, at this
20 juncture, that these pallets were near where she walked.

21 MR. WILLEY: Okay.

22 THE COURT: However, you can, at this juncture, you can
23 ask him if they have wooden pallets there. But I'm going to
24 primarily exclude them because they're in violation of the
25 Rule 34. I think that if you were going to go into the store

1 without notifying the opposing counsel and were to just take
2 pictures of the store in general, but those are pointed
3 photographs, they're investigative-type photographs. It's
4 different than just going in and taking pictures of the
5 general layout of the store. And that's my ruling and we can
6 proceed forward.

7 MR. WILLEY: Thank you, Your Honor.

8 THE COURT: Very good. All right.

9 All right. We're ready for the jury.

10 (The jury entered the courtroom at 10:34 a.m.)

11 BY MR. WILLEY:

12 Q All right. Mr. Ringer, before we broke, you were just
13 telling us that it is, in fact, your responsibility as far as
14 the cleanliness and the maintenance of the store in 2015;
15 right?

16 A Yes.

17 Q Okay. And we have looked at some pleadings and we have
18 looked at the Department Safety Solutions information;
19 correct?

20 A The general information, yes.

21 Q Okay. And, on the first page there, if you will, the
22 only bullet point -- the second -- read the bullet point for
23 us.

24 A Are you talking about down here?

25 Q Yeah -- yes, sir. Where it starts out --

1 **A** "Maintain"?

2 **Q** -- "maintain."

3 **A** "Maintain good housekeeping standards to prevent slips,
4 trips, and falls. Zone frequently to ensure a safe work and
5 shopping environment. Remove pallets from the sales floor,
6 along with shrink wrap, cardboard, and other debris in a
7 timely manner. Do not set pallets on end or lean them against
8 another rack or fixture. Remove in a timely manner. Do not
9 leave ladders, rocket carts, or blue carts unattended. Remove
10 in a timely manner."

11 **Q** And, if you would, read why those guidelines are
12 important, that top sentence.

13 **A** "The following guidelines, if practiced properly, will
14 prevent or reduce accidents in all departments or areas of the
15 facility. The safety of associates and customers is always a
16 first priority."

17 **Q** And as we -- well, through this, if we go to page 3,
18 there's a category called, "Always and everywhere." Does that
19 mean that these apply to the entire store? See it at the top
20 in blue?

21 **A** That wording would seem to mean that, yes.

22 **Q** Okay. And what does, in the general, the only unredacted
23 bullet point there say?

24 **A** "Avoid stepping on pallets. Remove the pallet from the
25 floor and stack in the designated location."

1 Q And keep reading, if you will.

2 A "Do not place pallets on the floor between 8 a.m. and 9
3 p.m. Remove or restock empty stack bases and pallets in a
4 timely manner. Do not leave unmanned pallet jacks,
5 power-lifting equipment, or stocking carts on the sales floor
6 except in designated areas or in receiving."

7 Q Okay.

8 A That refers to the slip/trip-and-fall section.

9 Q Right. And that is the policy at Walmart; correct?

10 A Yes.

11 Q Okay. And you would admit that pallets are not always
12 removed timely from the Walmart sales floor; right?

13 A In what we're discussing in this case, there's no pallets
14 on a sales floor.

15 Q Okay. But you would agree with me that pallets are not
16 always removed timely from the sales floor; correct?

17 A Sometimes it could be quicker than others, but people
18 react to them and get them off the sales floor.

19 Q With respect to Walmart displays, doesn't Walmart
20 actually display merchandise on the sales floor on pallets?

21 A There are displays that are made that come in on wooden
22 pallets.

23 Q Okay.

24 A They are provided by vendors, and, in some cases -- I
25 mean, there's -- there's different types of displays that come

1 in, and, quite frankly, we normally would refer to those as a
2 PDQ or a display and not a pallet.

3 Q And explain to the jury what a PDQ display is.

4 A PDQ, pretty darn quick. Right? It's a labor-saving
5 display that a vendor or a manufacturer would make that would
6 hold merchandise that's already premade, looks nice, clean,
7 neat, pretty colors, grabs your attention so that we don't
8 have to hand stack and build a display. It's a labor savings.
9 You can see that with chips, snacks, marshmallows. You
10 probably have recently seen it with pumpkins where the
11 heavy-duty cardboard bins of pumpkins would come in. They can
12 come in many, many formats.

13 Q Okay. And watermelons come in that format?

14 A Yes.

15 Q And those -- the bottom of those PDQs, if it's a
16 watermelon, is actually on the pallet on the bottom; right?

17 A Yes.

18 Q Okay. And if it's something smaller like chips or
19 something like that, it might be a half-pallet or something
20 similar?

21 A Pallets can come in -- they can be in different forms,
22 whether they're a 2 by 2, a 2 by 4, or a 4 by 4.

23 Q But, in any event, those pallets are all made with wood
24 and nails?

25 A Wood, nails, staples.

1 Q And, at what Walmart -- this may become important
2 later -- we have multiple kinds of pallets; correct?

3 A Yes.

4 Q Okay. We have CHEP pallets; right?

5 A Blue pallets, yes.

6 Q Blue. And they are the pallets that Walmart actually
7 leases that Walmart brings its palletized merchandise in on;
8 right?

9 A The merchandise that is palletized, yes. The majority of
10 our merchandise is not palletized.

11 Q Right. And then there are sometimes red pallets?

12 A PECO.

13 Q PECO pallets?

14 And what comes in on PECO pallets?

15 A Much of the similar-type stuff. It's just we don't have
16 the leasing rights to them.

17 Q Okay. And then there are the white wood pallets; right?

18 A Yes.

19 Q And these are pallets that are just naturally colored?

20 A Yes.

21 Q Okay. And they come from whatever vendor in general
22 sends merchandise; right?

23 A Correct.

24 Q So if we're getting in a display of watermelons, then
25 that bin and that pallet would have come from whoever sold

1 Walmart the watermelons; right?

2 **A** I would assume so. I receive it through our Walmart
3 distribution center.

4 **Q** And when that bin of watermelons comes in, that goes
5 directly out onto the sales floor?

6 **A** It can.

7 **Q** And the area that we are interested in for purposes of
8 where Ms. Jones traveled in those videos is the produce area
9 and the grocery action alley; right?

10 **A** Yes.

11 **Q** Okay. And just so everyone understands, the action alley
12 is where, when you first walk into a Walmart and it has all of
13 the displays in the middle of the aisle, and you can go down
14 either side; right?

15 **A** Correct.

16 **Q** Okay. And what type of merchandise is typically
17 displayed in the action alley?

18 **A** It can be seasonal merchandise. It can be high-volume
19 items. It's a large variety.

20 **Q** Okay. So let's stick there. So seasonal or high volume.
21 Isn't seasonal merchandise one type of merchandise that comes
22 in on white wood vendor pallets?

23 **A** Some does. Some doesn't.

24 **Q** Okay. And when seasonal merchandise does come in on
25 white wood vendor pallets and part of the PDQ, they get put

1 directly onto the sales floor with the pallet; right?

2 **A** In some cases. Not always.

3 **Q** And with respect to high-volume merchandise, high-volume
4 merchandise often comes in also on white wood vendor pallets;
5 right?

6 **A** Not necessarily.

7 **Q** You mentioned chips, for example. Is that a high-volume
8 merchandise? Does wallet sell a lot of chips?

9 **A** Yes.

10 **Q** Okay. And you did tell us that chips come in on -- often
11 on PDQ, on a white wood vendor pallet; right?

12 **A** They -- they can come -- generally, they don't come --
13 sometimes they'll come in on it.

14 **Q** Okay.

15 **A** Sometimes it will be shipped in separately. And the
16 chips to replenish it would come from a vendor who brings them
17 in the back door or would come from our stock that would be
18 delivered on a truck separate from the PDQ. So there's
19 sometimes they come in filled. Sometimes they don't come in
20 filled.

21 **Q** And if they come in filled, they would go out on the
22 sales floor, if I'm understanding you; right?

23 **A** If -- again, that's a decision that we make at the store.

24 **Q** Right.

25 **A** Number one, we want to make sure that it's in good shape

1 because sometimes you'll inspect it and, for whatever reason,
2 you decide it doesn't have a -- it doesn't look good, there
3 could be some safety aspects that would tell us to not put it
4 on a sales floor, and then we would have to remove the
5 merchandise from that display and build it on some other type
6 of fixture.

7 **Q** On the particular day at issue here, there were, in
8 fact -- or was, in fact, a chip display on the grocery action
9 alley; right?

10 **A** You know, when I looked at the video again, I don't know
11 if it's a chip or it could have been like a S'mores -- what we
12 always called a S'mores train.

13 **Q** Okay.

14 **A** But there is a 2 by -- it appears to be a 2 by 4 display,
15 PDQ display, that's sitting on top of what we refer to as a
16 stack base, which is a hard, plastic mold that we normally
17 build our displays on.

18 **Q** Right.

19 **A** And we chose to set it up on top of the stack base
20 because it makes for a much cleaner, much nicer presentation
21 for our customers when they come into the store.

22 **Q** But that is in the video that you reviewed of the day of
23 this incident in the grocery action alley; right?

24 **A** Yes, this is way down toward the back of the grocery
25 action alley that, actually, Ms. Jones never gets close to

1 that location.

2 Q Okay. That's fine.

3 But it's in the grocery action alley?

4 A Yes.

5 Q And in the grocery action alley, again, that's one long
6 aisle with high-volume seasonal merchandise situated along it,
7 that people are traversing back and forth regularly; right?

8 A Yes.

9 Q Is the action alley the most traversed part of the store?

10 A I guess, because most of your aisles are going to lead
11 off of it.

12 Q Right. Yeah. Fair; right? Yeah, it's common sense.

13 So it would be pretty important to keep that part of the
14 store particularly safe since that's where most of the
15 customers are going to be; right?

16 A Yeah, that's a focus point.

17 Q Are there any kind of increased inspections or safety
18 measures taken with respect to the grocery action alley?

19 A I can tell you that for me and my team, I have always
20 taught them -- especially the grocery action alley and the
21 entire grocery side and consumable side of our business -- of
22 our store, we spend more time focused on that part of our
23 store than we do any other part of the store because that's
24 where most the people shop. You want to make sure that it's
25 clean, that it's safe, that it's in stock, and that's what we

1 focus on, on a daily basis.

2 Q All right. And, in fact, in the video, I think when we
3 were reviewing it, you can see associates walking around in
4 that general area; right?

5 A As a matter of fact, I think I recall even seeing
6 somebody with a dust mop on the backside of it toward the meat
7 department that day, sweeping.

8 Q Right. The backside of the meat department?

9 A The backside toward the meat department.

10 Q Toward the meat department. Okay.

11 And the other types of things that you might have
12 displayed on the PDQ would be products that ship from Clorox;
13 right? They ship on PDQs sometimes?

14 A Only their -- I guess the Clorox brand pool chemicals
15 does. Like Clorox bleach that you pour in your washing
16 machine --

17 Q Sure.

18 A -- it doesn't come that way.

19 Q And when these items come in on the PDQ or on the half
20 pallet, they go directly out onto the sales floor with a
21 pallet; right?

22 A Again, just like we talked about with the other ones,
23 yes.

24 Q And those items all go in one of the two action alleys;
25 right?

1 **A** Yeah, actually that store has multiple action alleys. It
2 has more than two, but --

3 **Q** Okay. One of the action alleys.

4 **A** You would normally put them there or, based on the -- the
5 merchandise itself, it could go directly into a department and
6 not be in an action alley.

7 **Q** Okay. But in this store, at least, where its product
8 came in, it has gone into the action alley.

9 **A** If you're talking about the picture that you showed of
10 the pool chemicals, yes, it was an action alley probably over
11 near the toy department or garden center.

12 **Q** All right. And these white wood vendor pallets, when
13 they come in, they're wrapped; right?

14 **A** In cardboard. They have, like, a cardboard.

15 **Q** Sometimes they have shrink wrap?

16 **A** Sometimes both.

17 **Q** Okay. And sometimes that shrink wrap might be affixed
18 down with staples or little nails or something like that to
19 keep it in place?

20 **A** Sometimes. Nine times out of ten, it's just looped
21 around the pallet itself.

22 **Q** And so when they come in, they go out into the sales
23 floor, they get unwrapped, and then your folks are supposed to
24 carry off all the trash. Right?

25 **A** Take -- yeah, you take the trash to the back. You sweep

1 the floor and move on.

2 Q Okay. And it's well known -- and I think you agree --
3 that these types of pallets cause trash. Right? Wood
4 splinters, things fall off of them; is that fair?

5 A Anything made out of wood can splinter.

6 Q Okay. And if, you know, something falls off of it or out
7 of it in transit, your people are supposed to come around and
8 clean that up; right?

9 A Yes.

10 Q Okay.

11 MR. WILLEY: May we approach?

12 THE COURT: Yes.

13 BENCH CONFERENCE

14 (A bench conference was held off the record and outside of
15 the hearing of the jury and others.)

16 (Open court resumes as follows:)

17 BY MR. WILLEY:

18 Q All right. Mr. Ringer, you'll remember, during the
19 opening, that we looked at some requests to admit that you had
20 signed. And I think you indicated that it was kind of fast
21 and you couldn't tell if it was your signature or not; is that
22 right?

23 A I don't even know what you're talking about, a request to
24 admit is.

25 Q Okay. All right. Well...

1 MR. WILLEY: Let the record reflect I'm handing
2 Mr. Ringer defendant's responses to plaintiff's second request
3 to admit.

4 BY MR. WILLEY:

5 Q And if you'll flip to the back of those, the very last
6 two pages, you'll see some verifications, and it says,
7 Defendant -- No. 5, "Defendant understands that this
8 verification is sworn to and given under oath under penalty of
9 perjury." Do you see that?

10 A Yes.

11 Q And then it has a signature and it's notarized; correct?

12 A 27th of October 2020, yes.

13 Q Okay. And that's your signature?

14 A Yes.

15 Q Okay. So this is you swearing to whatever is in this
16 document; right?

17 A Yes.

18 Q Okay. And there were some prior things that were served
19 upon you. And if you'll look at page 2 of this document, what
20 this is -- No. 1 says, "Admit that Defendant's December 6,
21 2017, responses to Plaintiff's request to admit were signed by
22 Defendant's attorney, consulted with Defendants, and that the
23 admissions, denials, and qualifications contained in the
24 responses accurately reflect Defendant's position at that
25 time." Did I read that correctly?

1 **A** Yes.

2 **Q** Okay. And that is admitted in response; correct?

3 **A** Yes.

4 **Q** Okay. And with respect to the interrogatories that I
5 showed in my opening presentation, if you will flip down to
6 No. 7, which is on page 3 -- let me know when you're there.

7 **A** Okay.

8 **Q** Okay. It says, "Admit that Defendant's December 19th,
9 2018, amended and supplemental responses to Plaintiff's
10 interrogatories and request for production were signed by
11 Defendant's attorney after Defendant's attorney consulted with
12 Defendants and that the admissions, denials and qualifications
13 contained in the responses accurately reflect Defendant's
14 position at that time." And that is response: Admitted.

15 Did I read that correctly?

16 **A** Yes.

17 **Q** Okay. And with respect to the discovery responses, do
18 you recall seeing the response that indicated only seasonal
19 merchandise was displayed on the floor with pallets and that
20 there were none in the store at the time?

21 **A** I'm not sure what you're referring to.

22 **Q** Okay. I am going to hand you responses to interrogatory
23 that I used -- and I have underlined the relevant portion but
24 I'll read it.

25 It says, "Response," and there's other things in there;

1 namely, "Defendants respond that the pallets in the area of
2 the subject store where the alleged incident occurred in the
3 grocery action alley a plastic and do not contain nails.
4 Defendants further respond that wooden pallets are
5 occasionally used in seasonal displays, but upon information
6 and belief, no such displays were in place on the subject
7 store on the day of the alleged incident."

8 Do you see that?

9 **A** Yes.

10 **Q** Okay. And if you'll turn to the last page, you'll see
11 there your attorney's signature and the date of December 19th,
12 2018.

13 **A** Yes.

14 **Q** Okay. And you -- they had you swear on behalf of
15 Walmart, under penalty of perjury, that that was true. Do you
16 understand that?

17 **A** I guess I do now.

18 **Q** Okay. And with respect to the video that we talked about
19 in the grocery action alley area, there were, in fact, at
20 least one wooden pallet display on the date of the incident;
21 correct?

22 **A** Yes, that was up on top the stack base.

23 **Q** And so that wasn't true, was it?

24 **A** I mean, I'm not sure what y'all mean by seasonal display.

25 **Q** Well, that's your response.

1 **A** I understand.

2 THE COURT: One moment, Mr. Willey.

3 Normally, we take a mid-morning break for y'all to
4 refresh yourselves. We had a brief break while we were taking
5 up a matter of law. I intend on breaking for lunch at 12:00.
6 Do y'all need another break or do you feel like you could go
7 till 12? Everybody -- raise your hand if there's a problem.

8 Well, we're going to power through until 12 and we'll
9 take a break, all right, for lunch. 12:00 to 1:30. Thank
10 you.

11 BY MR. WILLEY:

12 **Q** Mr. Ringer, I'm going to hand you -- well, actually,
13 let's -- I'm going to hand you Defendant's admitted responses
14 to plaintiff's first request to admit. Okay? And those are
15 the ones that, again, you verify as part of that supplement.

16 And you'll notice on the front page it says, "Defendant's
17 Walmart Stores, Inc., and Tim Ringer." Do you see that?

18 **A** Yes.

19 **Q** Okay. And so this is Walmart's response and Tim Ringer's
20 response. And if you go to page 3, it says, "Admit that
21 Defendant is responsible for managing, maintaining,
22 controlling, safeguarding, caring for, and inspecting Walmart
23 No. 630." And the response is, "Denied as stated." Right?
24 Your response.

25 **A** That's what it says.

1 Q Okay. And, Mr. Ringer, if you will, go to No. 8, and
2 this one says, "Admit that the placement of unmaintained
3 wooden pallets with loose rusty nails in areas where invitees
4 passing through is or should be foreseeable presented a
5 dangerous condition for those shopping on the premises." Do
6 you see that?

7 A Yes.

8 Q And would you agree with me that, if there were
9 unmaintained wooden pallets with loose rusty nails in areas
10 where invitees are passing through, that that would present a
11 dangerous condition?

12 A Yes.

13 Q Okay. And the response there is, "Denied as stated.
14 Upon information and belief, no unmaintained wooden pallets
15 with loose rusty nails were present in subject areas in the
16 store at the time of the alleged incident." Right?

17 A That's what it says, yes.

18 Q Mr. Ringer, if you'll flip to No. 10, it says, "Admit
19 that Defendant had a duty to make regular inspections of the
20 Walmart 630 premises." And what's the response?

21 A "Denied as stated. Defendant admit -- admit that Walmart
22 owes its customers the duty to exercise ordinary care to keep
23 the premises in a reasonably safe condition."

24 Q All right. So "denied as stated," but you have already
25 indicated that Walmart has a policy of regular inspection of

1 the premises; right?

2 **A** I do a regular inspection of the store every single
3 day --

4 **Q** Right. That would --

5 **A** -- to maintain a clean, safe environment for my
6 customers. I'm worried about my customers and their
7 experience within my store.

8 **Q** And that was --

9 **A** I'm there to provide a service to the community.

10 **Q** Right.

11 **A** And that's the utmost important to me because we are a --
12 people don't want to talk about it. Walmart's a critical
13 piece to the communities for the services we provide, the
14 product we provide. So that's -- that's what I'm focused on.

15 **Q** Right. And so that should have been admitted, that they
16 have a duty to make regular inspections; right?

17 **A** I -- well, I can tell you whether it's considered an
18 inspection or what. I walk around and make sure my store is
19 safe and clean.

20 **Q** All right. And that's kind of the entire point. The
21 date on these requests to admit, if you flip to the next page,
22 is November 29, 2018. Do you see that?

23 **A** Let me find the right page, the right document. You have
24 got a lot up here. Page what now?

25 **Q** Page 5 of that same document. November 29th, 2018.

1 **A** Where it was signed and dated?

2 **Q** Yes.

3 **A** It's signed and dated, yes.

4 **Q** Okay. And did you have any say in responding to those
5 requests to admit?

6 **A** This is all handled corporately through our legal team,
7 sir.

8 **Q** But -- and that's kind of my point, sir, is Walmart had
9 you swear under penalty of perjury on the verification;
10 correct?

11 **A** I don't even know what -- which one you're referring to
12 at this point in time.

13 **Q** We had a verification on all of them.

14 **A** Okay.

15 **Q** Do you remember? Under penalty of perjury you had signed
16 it?

17 **A** I signed -- yeah, I saw something here I signed.

18 **Q** And that was Walmart doing that at the corporate level?

19 **A** Well, if it's my signature, I signed it.

20 **Q** You signed it. But I think you just told us you didn't
21 get to make the decisions about what went into these; is that
22 right?

23 **A** I mean, all of the legal aspects are handled by people --
24 attorneys, legal teams. I'm a store manager.

25 **Q** All right. And let's just look at No. 12, and that will

1 be the last one --

2 **A** All right. Which one again? I apologize. I got them
3 mixed up.

4 **Q** That's okay. We're looking at Defendant's amended
5 responses to Plaintiff's first requests to admit.

6 **A** Defendant's amended and supplemental responses.
7 Defendant's response to -- amended responses to Plaintiff's
8 first request. Okay. Yep.

9 **Q** That's No. 12. And it says, "Admit that Defendant knew
10 or should have known that unmaintained property can present
11 dangerous conditions and/or hazards to invitees; right?

12 **A** Mm-hmm.

13 **Q** And response, "Denied as stated. Upon information and
14 belief, no unmaintained property was involved in subject
15 incident." Right?

16 **A** Right.

17 **Q** And --

18 **A** But that's saying there was unmaintained property. There
19 was no unmaintained property.

20 **Q** I understand your position on that.

21 With respect to the verification that she signed, do you
22 have that?

23 **A** Defendant's response to Plaintiff's second request to
24 admit?

25 **Q** Yes, sir.

1 **A** Okay.

2 **Q** The last two pages. And that document I'm going to mark
3 as a plaintiff's exhibit, verifications, and that document
4 says that the "attached responses are true and correct based
5 upon Defendant's personal knowledge and belief." Do you see
6 that at No. 3?

7 **A** "Admit that the Defendant's March 22nd, 2018, answers"?
8 Is that what you're talking about?

9 **Q** Yes, sir. I can hand you these.

10 **A** It's on page 2?

11 **Q** Number 3. Just read No. 3.

12 **A** "That the attached responses are true and correct and
13 based upon Defendant's personal knowledge and belief."

14 **Q** Okay. That's your signature?

15 **A** Yes, sir.

16 **Q** Now --

17 **A** So those are the exact same wording where I'm as
18 defendant and as a representative.

19 **Q** Right, yes. And we marked both verifications, personally
20 and as a representative.

21 (Plaintiff's Exhibit No. 5, Defendant's Amended Responses
22 and Plaintiff's Exhibit No. 6, Verifications, were marked for
23 identification and received into evidence.)

24 BY MR. WILLEY:

25 **Q** And, just to end this, you don't deny that Ms. Jones was

1 a patron of the Walmart Store 630 on June 26 of 2015, do you?

2 **A** She was in the store, obviously. There was an incident
3 report filled out.

4 **Q** And she made a purchase?

5 **A** On the video you showed, it showed her making a purchase,
6 yes.

7 **Q** In your deposition, you told us that pallets cause trash,
8 which we just talked about; right?

9 **A** They can, yes.

10 **Q** And are you familiar with a device called Pallet Guard?

11 **A** No.

12 **Q** Okay. As far as you know --

13 MR. BLAIN: Objection, Your Honor.

14 THE COURT: Your grounds?

15 MR. BLAIN: I believe this is a motion that was brought
16 up in limine --

17 THE COURT: Might you approach the bench.

18 BENCH CONFERENCE

19 (A bench conference was held off the record and outside of
20 the hearing of the jury and others.)

21 (Open court resumes as follows:)

22 BY MR. WILLEY:

23 **Q** Mr. Ringer, to this day, does Walmart utilize pallet
24 guards in its store?

25 **A** I'm not sure what you're talking about.

1 Q Okay. You're not sure what a pallet guard is?

2 A (No audible response.)

3 MR. WILLEY: Okay. Mark as Plaintiff's Exhibit 7.

4 (Plaintiff's Exhibit No. 7, Pallet Guard Photograph, was
5 marked for identification.)

6 A Do you got a picture or something --

7 Q I do.

8 A -- that I might could -- maybe I call it by something
9 else. I don't know.

10 Q So Plaintiff's Exhibit No. 7 is a pallet guard, which is
11 basically just a plastic protective device that goes around
12 the wood of a pallet to keep all that trash you talked about
13 contained so that it doesn't go out on the sales floor. Do
14 you see the photograph of it there?

15 A Yes.

16 Q Okay. Does Walmart use pallet guards in any of its
17 stores?

18 A Not that I'm aware of. I have never seen one.

19 Q Okay. Are you aware of other pallet injuries occurring
20 at other Walmart Stores as a result of Walmart not using
21 pallet guards?

22 A I don't know what kind of injuries you're talking -- what
23 are you talking about?

24 Q Are you aware of the seven and a half million dollar
25 verdict that was rendered against Walmart --

1 MR. BLAIN: Objection.

2 THE COURT: Sustained. Sustained.

3 MR. WILLEY: May we approach?

4 BENCH CONFERENCE

5 (A bench conference was held off the record and outside of
6 the hearing of the jury and others.)

7 (Open court continues as follows:)

8 THE COURT: Mr. Foreman, ladies and gentlemen of the
9 jury, there's been mention of some other trial or verdict
10 rendered against Walmart. That's irrelevant. It's improper.
11 Do not give that any consideration whatsoever. That's
12 stricken from the record.

13 BY MR. WILLEY:

14 Q Mr. Ringer, how much is that pallet guard? How much does
15 it cost?

16 A It says on here, "Price: \$132."

17 Q \$132?

18 And Walmart still doesn't use them, does it?

19 A I never have, no. It looks like something you'd get off
20 of Amazon.

21 Q Yeah, I think the retailer here is MasonWays
22 Indestructible Plastics.

23 Are you aware that other retailers use pallet guards to
24 keep pallet trash off of their floors?

25 A No, sir.

1 Q Has anybody at Walmart ever sent down one of their safety
2 notifications or anything else about injuries that were caused
3 as a result of not using pallet guards in its stores?

4 A No, sir, not that I'm aware of.

5 Q Okay.

6 A Again, this is the first time I have ever seen one.

7 MR. WILLEY: May I have a moment to confer with counsel?

8 (Pause in the proceedings.)

9 BY MR. WILLEY:

10 Q So nobody at Walmart corporate has told you about that
11 product?

12 A I have never had any information about that product, no,
13 sir.

14 Q And nobody at Walmart corporate consulted with you before
15 making you sign the verifications that we moved into evidence
16 as Plaintiff's Exhibit 6?

17 A You know, they -- they -- I received the information. It
18 was up to my discretion to read through it, sir.

19 MR. WILLEY: And, Your Honor, at this time, we move
20 Plaintiff's Exhibit 7 into evidence.

21 THE COURT: Any objection?

22 MR. BLAIN: No objection, Your Honor.

23 THE COURT: Is it's into evidence.

24 (Plaintiff's Exhibit No. 7 was received into evidence.)

25 MR. WILLEY: Thank you, sir.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. BLAIN:

4 Q Good morning, Mr. Ringer.

5 A Good morning.

6 Q You weren't in the store the day Ms. Jones had an
7 incident; correct?

8 A Correct.

9 Q You didn't personally observe Ms. Jones in the store?

10 A No.

11 Q You didn't speak with Ms. Jones in the store?

12 A No.

13 Q As far as you understand, you have been personally sued
14 simply because you were the store manager at the location
15 where this happened; is that fair?

16 A Yes.

17 Q You were individually served with the lawsuit; correct?

18 A Yeah, yeah. My wife and family were really excited about
19 it.

20 Q And just this past Sunday, someone came to your house and
21 knocked on your door on Sunday night and served you with a
22 subpoena for this trial; isn't that right?

23 A Yeah, about 8:00 or 8:30 Sunday night.

24 Q How does that make your wife and four kids --

25 MR. WILLEY: Objection, Your Honor.

1 BY MR. BLAIN:

2 Q -- feel?

3 THE COURT: I'll -- I'll sustain that.

4 BY MR. BLAIN:

5 Q Mr. Ringer, how does it make you feel?

6 MR. WILLEY: Objection, Your Honor.

7 THE COURT: I'll sustain -- sustain that. We need to
8 move on.

9 BY MR. BLAIN:

10 Q You're the manager of the Hartsville Walmart location
11 currently; is that fair?

12 A Yes.

13 Q And that store's pretty close to your house?

14 A Yes. Thank goodness.

15 Q So you moved to that store to be a little closer to home;
16 is that fair?

17 A Absolutely.

18 Q But you used to be the manager of the West Florence
19 Walmart store; correct?

20 A Yes, sir.

21 Q How long were you the manager at West Florence?

22 A Seven, eight years.

23 Q Okay. Quite a while.

24 A Yeah.

25 Q And I think you mentioned in your testimony already that

1 Walmart sees itself as part of the community -- part of the
2 Florence community.

3 **A** Yes.

4 **Q** Tell me a little bit about what Walmart does to give back
5 to make itself part of the community.

6 MR. WILLEY: Objection, Your Honor.

7 THE COURT: I'll sustain that. We need to stick with
8 relevant issues here today.

9 MR. BLAIN: Thank you.

10 BY MR. BLAIN:

11 **Q** Mr. Ringer, I'd like to talk to you a little bit about
12 safety at Walmart.

13 **A** Okay.

14 **Q** Would you agree that safety is a pretty big part of the
15 culture at Walmart?

16 **A** Absolutely.

17 **Q** Would you agree that it's a priority at Walmart?

18 **A** It is a priority for both customers and associates.

19 **Q** Okay. And just for the jury to understand, associates
20 are Walmart employees; right?

21 **A** Yes. They refer to them as associates. Mr. Sam started
22 that years and years ago.

23 **Q** And I'd like to understand -- I'd like the jury to
24 understand what steps Walmart does to make safety such a
25 priority, such a big part of the Walmart culture. That starts

1 day one when a new associate is hired; is that right?

2 **A** Yes. I mean, when an associate is initially hired, I
3 mean, they go through -- it's changed names over time, but
4 it's a computer-based learning training modules where you
5 begin going through that process, and those are some of the
6 first points of your training, is talking about the safety for
7 yourself and for the customers. It's continued on a daily,
8 weekly basis.

9 Safety is talked about -- I have already spoke about
10 safety team meetings, but beyond that, we have multiple
11 meetings throughout the day where we pull associates together,
12 we talk about different points of the business. You know, he
13 asked about TIPS earlier. That's one of the things we talk a
14 lot. Towel-in-pocket. Yeah, we're constantly having
15 something to talk about from a safety standpoint, whether it
16 be weather, whether it be safe lifting, whether it be, you
17 know, removal of anything off the sales floor. I mean,
18 that's -- when you deal with the amount of people that we have
19 inside of a building already that's employed along with
20 potentially thousands of customers each day, it has to be a
21 priority.

22 **Q** Thank you.

23 You mentioned those computer-based learning modules,
24 those training modules. New hires go through those before
25 they even get on the sales floor?

1 **A** Yes.

2 **Q** And those training modules are updated periodically?

3 **A** Yes. And you have to go back and do them again. Over a
4 certain time you have to go back.

5 **Q** In addition to those training modules, we talked about
6 safety meetings. How often do those happen?

7 **A** Weekly.

8 **Q** And in addition to those safety meetings, you mentioned
9 other kind of informal meetings with your staff. Is safety
10 discussed during those meetings?

11 **A** Yes.

12 **Q** Tell us a little bit about safety sweeps. What is a
13 safety sweep?

14 **A** A safety sweep is something that a lot of people think is
15 a broom, but it's not. A safety sweep -- it can -- a broom
16 can be used without a doubt, but a safety sweep is where you
17 literally -- if I were to sweep this store -- this store, I
18 apologize -- this room, I would walk through this room and I
19 would look to see if there was anything that posed a hazard or
20 needed to be cleaned up or debris or anything like that, just
21 to make sure it's a clean, safe area. I mean, that's what a
22 safety sweep is.

23 And quite honestly, we teach our associates -- and I talk
24 about it all the time. Work with your head up. Look. Look
25 and see what you see. See what's in front of you.

1 So, yeah, I mean, it's a constant point of focus.

2 **Q** And you consider yourself like a teacher for your
3 associates?

4 **A** I teach every single day. Every single day.

5 **Q** One of those lessons that you're constantly teaching is
6 about safety, is about sweeping a store both visually with
7 your head up to make sure that there's not anything on the
8 floor that would pose a hazard to the customer or associates.

9 **A** Absolutely. I walk through the store -- I have to empty
10 my pockets on my -- and I'm sure y'all have seen the vests we
11 wear. They're really complementary. They look good on us;
12 right? Well, they have the big pockets. The good thing about
13 the big pockets is I can fill them full of trash. I'm
14 constantly picking trash up through the day.

15 My associates do the same thing. I have to empty my
16 pockets multiple times a day, whether it be a Kleenex, tissue
17 from the bottom of somebody's foot -- shoe, gum, paper labels.
18 I mean, I'll stop there. But I'm constantly picking things up
19 and so are my associates.

20 In my opinion, it's my -- it is extremely important that
21 I lead by example, and that's what I do with my associates.
22 If they see me bending over picking up stuff all day long,
23 they -- they follow suit. I mean, that's a -- it's not a once
24 every hour and a half you walk around and look for stuff.
25 It's as you walk from Point A to Point B, you notice what is

1 in front of you. You deal with it. It's pretty simple.

2 **Q** And the West Florence store, could you make an estimate
3 as to what kind of volume -- what kind of customer volume
4 comes through that store on a daily basis?

5 **A** When I left there, we probably averaged four or five
6 thousand transactions a day. I can't do a head count except
7 during COVID but thank goodness that stopped, but the only
8 thing I really have to base it off of was transactions. How
9 many things -- how many sales were done at a register. That's
10 what I can base it off of.

11 **Q** Four or five thousand transactions, and one of those
12 transactions could be, you know --

13 **A** One of those could be a pack of gum, one of them could be
14 a \$500 TV, or one of them two shopping carts full of
15 groceries.

16 **Q** And it could be a whole family, couple of kids?

17 **A** Yeah.

18 **Q** You know, a number of people --

19 **A** Oh, yeah, that's just a transaction. There could be
20 multiple people involved with that, yeah.

21 **Q** So Walmart knows, with that volume of customers comes
22 through the store, things are going to end up on the floor.

23 You mentioned Kleenex. You mentioned gum. You mentioned, you
24 know, paper.

25 So Walmart takes a proactive approach to keep an eye on

1 the sales floor?

2 **A** Absolutely, because part of what -- we have a thousand
3 metrics that we're rated on, and one of the metrics that we're
4 rated on is our customer surveys. The customers do surveys on
5 our stores. Are they clean? Are they in stock? How long did
6 it take you to check out? All these different aspects.

7 And when you're being measured on something, even more
8 so, it moves to be even more important. You know what I'm
9 saying? I mean, if it's your job and you know that somebody's
10 grading you on something, what are you going to do? You're
11 going to try to do even better at that point in your job. So
12 that's -- you know, that just escalates the importance of a
13 clean, safe environment.

14 **Q** And we have touched on safety sweeps. I believe your
15 testimony was that safety sweeps are conducted every one and a
16 half to two hours. Is that correct?

17 **A** Yes.

18 **Q** But safety sweeps are more organized but your associates
19 in your store are constantly doing a visual heads-up
20 assessment of what's in their surroundings.

21 **A** All the time. That is -- like I just said, I mean, that
22 is a huge focus. I mean, those pictures he showed us of the
23 store -- when you see those pictures of that store, that store
24 is clean. That store is clean. When you look at the side
25 counter where she was purchasing bleach, that was a clean

1 counter. It was well-stocked. It was neat. We referred to
2 zone. It was zoned.

3 Q We'll take a look at those videos in a moment. I'd like
4 the jury to look for exactly what you have just described, but
5 the cleanliness of the store --

6 A That store is clean.

7 Q Now, how many square feet is that Walmart store?

8 A It's over 220,000 square feet.

9 Q Okay. Now, how big is a football field?

10 A 100 yards. Square footage, I don't know. I can't do
11 that math.

12 Q I'll represent to you that a football field is up to
13 50,000 square feet. So you got a little over four football
14 fields inside that store; isn't that right?

15 A Yes.

16 Q Being a store manager with Walmart is not a desk job, is
17 it?

18 A No.

19 Q I think, at one point, you mentioned that you probably
20 walk four to six miles at the end of the day?

21 A Yes.

22 Q And is that something that you're -- that you have seen
23 that on your phone and track it?

24 A Yeah, I mean, we honestly -- you know, it's kind of a
25 running thing, where we would -- you know, at the end of the

1 day, you're tired, and you bring your phone out, and you know
2 how it will track how much you walk? It would sit there,
3 lord, I got 5.2 today. I mean, it's just kind of a thing that
4 we would discuss in our wrap-up meetings in the afternoon,
5 just kind of a light-hearted-type thing. But it's -- you
6 know, it's facts.

7 **Q** And it's not just you. How many employees do you think
8 are in that store -- how many associates in that store on a
9 given day?

10 **A** In West Florence? I think it's pretty close to 350.

11 **Q** Okay. And all those associates are trained, but some of
12 them are quite experienced at walking in a store and scanning
13 for things that may need to get picked up.

14 **A** Absolutely. I mean, that store -- that's a -- by Walmart
15 standards, it's an old store. When you hear them refer to
16 630, that was the 630th store that was opened. So it's been
17 around a long time. I had a -- I was very fortunate that I
18 had a lot of associates in that building that had been there
19 20, 25, some even over 30 years that had been working in that
20 same facility.

21 **Q** If somebody's working at Walmart 30 years, they must be
22 pretty happy there.

23 **A** Well, I have been there 28, so yeah.

24 **Q** Okay. Would you say that yourself and your associates
25 take a lot of pride with keeping the store clean?

1 **A** Absolutely. Absolutely.

2 **Q** Do y'all take a lot of pride in minimizing customer
3 accidents, customer injuries in the store?

4 **A** Why would you not? I mean, that -- you don't want to
5 hurt anybody. I mean, yes. Again, it is a focus to make sure
6 that everybody goes home safe. I want them to leave the store
7 the same way they came in.

8 **Q** Thank you, Mr. Ringer. We talked a lot about safety. I
9 want to move on to talk about how your store brings
10 merchandise from the back of the house out on the sales floor.
11 I think it's important that we start with overnight prep.

12 Does most of the merchandise move around overnight in
13 your store?

14 **A** When -- processes have changed. So we're talking about
15 when this took place.

16 **Q** In 2015, yes, sir.

17 **A** At that time, the majority of the merchandise was stocked
18 overnight.

19 **Q** At that time, the West Florence store was 24 hours?

20 **A** Yes.

21 **Q** Okay. And, naturally, you'd see some ebb and flow of
22 customer volume. And overnight is a slower time for customers
23 on the sales floor.

24 **A** Yeah, overnight, my average sales from midnight till 6
25 a.m. during the week would be about \$1200 to on the weekend,

1 it could be three or four thousand dollars during the midnight
2 to 6 a.m., if that kind of gives you an idea of the amount of
3 traffic through there.

4 **Q** So, overnight, the store is making an effort to restock,
5 resupply so they can restart the store before 8 a.m.; is that
6 correct?

7 **A** Yes, yes. Our goal is to -- you don't reopen every day,
8 but, you know, it's kind of like a soft reopening. Every day,
9 7:00, 8:00, you want the store refreshed, replenished,
10 rezoned, ready for the next day.

11 **Q** So before 8 a.m., overnight, there may be merchandise
12 that's transferred from the back to on the sales floor?

13 **A** Absolutely.

14 **Q** And most of that merchandise is transferred by associates
15 pushing hand carts?

16 **A** You'd have a lot of carts, yes.

17 **Q** Okay. And to the extent that some pallets may be used,
18 walk me through that process. Are pallets used and how are
19 they used when you do that overnight restocking?

20 **A** Yes. Pallets would be used for merchandise. Literally
21 you jack and roll a pallet jack. Take it out to the sales
22 floor. You place it in an area that doesn't cause congestion
23 or impaired, you know, ebb and flow, so to say. And then the
24 merchandise will be worked from the pallet to the side
25 counters or to displays or wherever it's final destination

1 would be.

2 When the pallet's empty, then the pallet's removed from
3 the sales floor. You look for any trash or debris around,
4 make sure all your cardboard from your stocking of your
5 merchandise is taken to the back and disposed of properly.
6 And then you move on to your next process.

7 Sometimes the pallets -- a lot of times, the pallets
8 would be sitting there because you can move more merchandise
9 on a pallet than you can on a cart at one time overnight, and
10 then you would run your cart back and forth to the pallet to
11 take merchandise off of the pallet, onto the cart, go down the
12 counter, and stock it. I mean, that's...

13 **Q** So, generally, the pallets aren't left unattended.
14 They're kind of a stocking mechanism to take bulk merchandise
15 from the back of the house and move it to the display counter
16 and then the pallet and the shrink wrap and the cardboard is
17 returned to the back of the house.

18 **A** Yes. And then, you know, at the end of the -- toward the
19 end of the night, one of the last things that's done by third
20 shift is we have an overnight floor maintenance team that goes
21 through and they sweep the store and then they actually run
22 the scrubbers and the floor equipment, I guess, around the
23 store again to make sure everything is clean and neat and
24 tidy, again, for our reopening, our daily, you know, start-up
25 so...

1 Q Okay. So there's a restocking process that happens
2 overnight. Then you move into the clean-up, floor maintenance
3 phase, and that includes a push broom all around the store and
4 then followed by a scrubber?

5 A Yes.

6 Q Now, you mentioned a soft reopening at 8 a.m. That's
7 when the customer volume that you see starts to pick back up
8 again?

9 A Yes. That's when you start seeing an uptick in your
10 customers.

11 Q With a rare exception, there's not a lot of pallets that
12 are being moved around the sales floor after that, are there?

13 A No, and even we limit our vendors as to what they can
14 bring onto the sales floor. They know they have to get the
15 majority of their stuff done. Anything that would have to be
16 palletized needs to be done before 8:00. And then, after
17 that, they work off of carts, just like we do.

18 Q So we just talked a good bit about pallets. I think you
19 talked with Mr. Willey about pallets.

20 Ms. Jones wasn't injured by a pallet, was she?

21 A No.

22 Q She was injured by a -- allegedly injured by a roofing
23 nail; right?

24 A Yes.

25 Q In your 28 years at Walmart, have you ever seen a roofing

1 nail in a pallet on your sales floor?

2 MR. WILLEY: Objection.

3 A Negative. Never.

4 THE COURT: Overruled.

5 BY MR. BLAIN:

6 Q So in your seven years at West Florence, have you ever
7 seen a roofing nail used in a pallet on your sales floor?

8 A No.

9 Q Now, Walmart has its own kind of lingo. We have already
10 talked about employees are associates and, you know, things of
11 that nature. I want to understand the difference in Walmart's
12 eyes, in your understanding, between pallets and something
13 called PDQs. I think you told the jury earlier that PDQs
14 stood for "pretty darn quick"; is that right?

15 A Yeah, that's pretty much the way we look at. So PDQs are
16 pre-built displays that will come in. They're displays. We
17 don't -- I don't think of that as a pallet. A pallet is an
18 empty pallet, you know, that you would add to and take off of.
19 You know, when I think about a pallet, that's what I think
20 about.

21 Q Okay.

22 A I don't think about a display, a PDQ as a pallet. While
23 it may have a wooden base, you don't add to or take off of
24 that. I mean, you know what I'm saying?

25 Q I do follow you. Let's just examine that a little bit.

1 You know, pallets, you just said you don't add to or take
2 off -- a pallet you just said you don't add to or take off --
3 a pallet, you can add to or take off and stock merchandise.

4 **A** All right. Pallets are used to move merchandise around.

5 **Q** Okay. And after they're used to move merchandise around,
6 they should not be left on the sales floor; correct?

7 **A** Correct.

8 **Q** You have reviewed a lot of video in this case. Have you
9 seen any pallets that were left on the sales floor on any of
10 those videos?

11 **A** No, I have not.

12 **Q** Now, PDQs come in a variety of types; is that fair?

13 **A** Yes.

14 **Q** You mentioned chips and S'mores and seasonal displays;
15 correct?

16 **A** Yeah. That's a lot of different things coming on PDQs.

17 **Q** So not every PDQ has a wood -- a wood base to it. Some
18 are plastic. Some are cardboard.

19 **A** Mm-hmm.

20 **Q** Is that a yes?

21 **A** Yes, yes.

22 **Q** And what do you think is pretty typical for PDQs in the
23 grocery action alley, the area of the store where Ms. Jones
24 was? What do the PDQs generally look like in that area?

25 **A** Are you talking about, like, merchandise-wise?

1 Q No, no. Let's talk -- what is the PDQ constructed of?
2 Is it plastic? Is it cardboard? Is it a wood base? What
3 does it look like?

4 A The majority of them would be wood based.

5 Q Okay.

6 A And they would have a cardboard structure, whether it
7 would have shelves or whether it would be dump -- what we
8 refer to as a dump bin. And they -- like I say, they come
9 in -- in that area, the majority of them would either be a
10 four-foot by four-foot or a two-foot by four-foot size.

11 Q Okay. And I think earlier you testified about a display
12 of S'mores that had a stack base on it. Do you remember that?

13 A Yeah. In that video, you can see it's a PDQ because it's
14 a -- like I say, it's cardboard, and I think it was S'mores.
15 Based off the time of year, it would make sense. And it's on
16 a 2-by-4 wooden base, but we have got it sitting up on top of
17 our plastic stack base. And we would do that because it
18 makes -- it's cleaner, it makes a better presentation, there's
19 less chance of that wooden pallet or that wooden base getting
20 hit by something if it's sitting up on top of that plastic.

21 Q And if it's sitting up on top of that plastic stack base,
22 that would allow the overnight folks, when they're sweeping
23 the floors with a broom or using scrubbers, that would allow
24 them to clean in and around that area?

25 A Yes.

1 Q We talked about the videos a little bit. I think if the
2 technology committee is ready, it might be a good time to pull
3 up some of those. I think we need to...

4 (Pause in the proceedings.)

5 MR. BLAIN: Thank you-all for your patience. I
6 appreciate it. You know, the technology isn't also going to
7 cooperate but figuring it out is Step 1.

8 BY MR. BLAIN:

9 Q Okay, Mr. Ringer. Are you able to see the video on your
10 screen?

11 A Yes.

12 Q I believe the ladies and gentlemen of the jury have the
13 video.

14 MR. BLAIN: Can Your Honor see the video?

15 THE COURT: Yes.

16 BY MR. BLAIN:

17 Q Now, you see down here at the bottom, this says, "Deli."
18 Do you see that?

19 A Yes, sir.

20 Q Is this overhead camera looking at the grocery entrance,
21 that door in the top left there?

22 A Yes.

23 Q And so, on the right side of the screen, just to get
24 oriented, is that over in the produce area?

25 A Yes, sir. You can see tables with watermelons on them,

1 and then you see the deli hot bar right behind it.

2 **Q** Okay. And, in the foreground on the lower left, that's
3 the self-checkout area?

4 **A** Yes.

5 **Q** All right. Now, drawing your attention to the display of
6 watermelons on the right side of your screen, and I don't know
7 if that's a PDQ, but you called that table.

8 **A** That's a produce table. Those are faux wood plastic
9 tables. The top part -- you can see the brown and then the
10 black band that runs around the top. That's actually a
11 removable hard plastic insert that sits down in there. And,
12 yeah, those are produce tables. Those aren't PDQs. They're
13 not -- there's no wood on that.

14 **Q** Okay. So even though it looks like wood color, it's faux
15 wood. It's all plastic?

16 **A** Yes.

17 **Q** No nails or any of that?

18 **A** No.

19 **Q** So we'll see Ms. Jones enter the store. Pardon me while
20 I fast-forward. Here's Ms. Jones walking by this display of
21 watermelons. Do you see her there on the screen?

22 **A** Yes.

23 **Q** If she contends that she encountered a nail at some point
24 in Walmart, it couldn't possibly have been from these plastic
25 watermelon displays; correct?

1 **A** There's no nails in those.

2 **Q** Okay. All right. Mr. Ringer, I have just pulled up a
3 different camera angle here. You see down at the bottom it
4 says action alley, left side, back to front. Is that correct?

5 **A** Yes. That's the very back of the grocery action alley
6 because you can see infants department immediately to the left
7 side, and then grocery would be to the right side.

8 **Q** Okay. So way off in the distance in that top right
9 corner, that's the same grocery entrance --

10 **A** Yeah, that's the same entrance right by the deli produce
11 area, yes.

12 **Q** So now we're all the way in the back of the store looking
13 forward up at the grocery entrance; correct?

14 **A** That's correct.

15 **Q** Okay. Now, some of these displays in the center are
16 PDQs, the center of the action alley?

17 **A** One is.

18 **Q** Okay. Which one is that?

19 **A** You see the big one that says 5.98 and all those are
20 chips and stuff. And then the next one, it's white right
21 there where your cursor.

22 **Q** Okay. This 1.98 display right here is a PDQ?

23 **A** Yes. You can see at the bottom, it's a wooden base.

24 **Q** Okay.

25 **A** It's sitting up on top of a stack base.

1 Q Okay. So this wooden base -- do you see any of these
2 other displays in grocery action alley?

3 A No, all those are --

4 Q Any other wooden bases?

5 A They're black on the bottom. They're dark. They're
6 black because they're all stack bases. Plastic. They're
7 black plastic stack bases that we would put merchandise on.

8 Q Okay. So of all the displays that we can see in this
9 grocery action alley, only this one -- not the first one but
10 the second one in the foreground is the only one with a wooden
11 base. All the rest is black -- have black plastic stack
12 bases; correct?

13 A Correct.

14 Q And there's no nails used in these black plastic stack
15 bases; correct?

16 A No. They're one solid plastic mould.

17 Q Okay. I'm going to fast-forward a little bit.

18 Okay. Now, it may be difficult to see, but do you know
19 if this is Ms. Jones up in the top right, stopping here to
20 chat with a few other customers?

21 A I believe it is, yes.

22 Q I don't know, maybe you can better than I, but how many
23 displays is she -- how far away is she from the one stacked
24 base with the wooden pallet?

25 A Well, considering each display is at least -- some of

1 those are four feet, some of those are eight-foot displays,
2 and then you leave another eight feet in between each display,
3 just looking at it, one, two, three -- that's 24. That's
4 8-foot so that's, what, 24 and 16 is 40. And then you got
5 one, two, three more spaces at least in between each of those.
6 So probably 64 feet potentially.

7 Q Okay. So --

8 A It's a good ways.

9 Q In your estimate, she's approximately 64 feet? That's a
10 pretty precise number. Approximately 64 feet away from the
11 one stack base?

12 A Like I say, I just know that -- how much floor space each
13 of those displays take. I know how much space is in between
14 each of those displays. So, I mean, based off of where she
15 stands, I see one, two, three, four features. Three or four
16 footers. One is a 16 -- I mean, one is -- yeah, one's an
17 eight-footer, and then the space in between, yeah, so...

18 Q You have looked at a lot of video in this case.
19 Ms. Jones, we see her here in the grocery action alley. Is
20 that about where she turns onto the bleach aisle?

21 A The chemical aisle, yeah.

22 Q So she buys the bleach.

23 At any point, is she any closer than the 64 feet away?

24 A No, because she turns and goes back up toward the
25 self-checkout.

1 Q So the closest she ever gets to a wood pallet is 64 feet?

2 MR. WILLEY: Objection.

3 THE COURT: Grounds?

4 MR. WILLEY: Facts not in evidence. This is one clip.

5 THE COURT: Well, I think that it is in evidence because
6 he's calculated it for us here today. You will be given wide
7 range to redirect.

8 MR. WILLEY: Thank you.

9 BY MR. BLAIN:

10 Q Now, Mr. Ringer, Mr. Willey asked you a lot of questions
11 about pleadings, interrogatories, verifications. You're not a
12 lawyer, are you?

13 A No, sir.

14 Q Walmart has provided you with lawyers to defend this case
15 for you; right?

16 A Yes.

17 Q And those lawyers consulted with you throughout the
18 litigation; correct?

19 A Yeah, I would be contacted.

20 Q So if there are terms of art -- if there are specific
21 language that carries a legally charged meaning that is
22 different than the meaning that may describe to a layperson,
23 is that something that is better addressed by a lawyer or by
24 yourself?

25 A I leave it to the lawyers.

1 Q So if any of those interrogatory responses or requests
2 for admission were denied or denied as stated or giving some
3 sort of explanation based on a legally charged rationale,
4 that's not your purview, is it?

5 A Absolutely not. I'm a store manager. I'm in retail. I
6 don't do legal stuff.

7 Q Now, what is in your purview is Walmart policy. You know
8 Walmart policy pretty well --

9 A I think so.

10 Q -- as part of your job to make sure that your associates
11 are following policy, that they understand the policy?

12 A Yes.

13 Q We have looked at a lot of video and I'll show one more
14 to you here. Bear with me here. Now, this video is of the
15 laundry detergent aisle?

16 A Yes.

17 Q This is the same aisle where -- about where we saw
18 Ms. Jones -- we saw her in the grocery action alley talking
19 with customers on the last video clip; correct?

20 A Yes.

21 Q And now, she's turned down that aisle by the laundry
22 detergent section; correct?

23 A Yes.

24 Q I think you said earlier, I mean, does this look pretty
25 clean to you?

1 **A** Yes, sir. That's a -- that's a good looking counter
2 right there. If you look at it, it's clean, it's neat. The
3 merchandise is pulled to the end of the shelves. I mean, it's
4 what we would call well zoned. Even on the end cap there
5 where it says 8.97, the way all that stuff is stacked nice and
6 neat stripes, the side counters are the same way, that's one
7 of those counters that you walk past and you feel good about
8 your team and what they have accomplished. You can even see
9 it over on to the paper counter. I mean, that's one of those
10 shots you want your boss to see.

11 **Q** One of those shots you want your boss to see. You're
12 proud of the way the store looks?

13 **A** Absolutely. Absolutely.

14 **Q** The store looks pretty clean, doesn't it?

15 **A** Yes, sir.

16 **Q** You don't see anything on the floor, do you?

17 **A** No, sir.

18 **Q** I'd like to show you what the Plaintiffs marked as
19 Exhibit 2, I believe, the floor plan. Take a look at that.

20 **A** All right.

21 **Q** Why don't you stand up a minute (indiscernible).

22 **A** That would be great.

23 **Q** Now, Mr. Ringer, this is your store 630, West Florence;
24 right?

25 **A** Yes.

1 Q And we looked at some video, to orient a little bit. The
2 video kind of started with the grocery store entrance; right?

3 A Right.

4 Q So this is the grocery store entrance?

5 A Yes.

6 Q And we looked at the -- remember those tables, the
7 plastic tables with the watermelons.

8 A That would have been right in here.

9 Q Okay.

10 A You can see the little (indiscernible).

11 Q Let me -- bear with me just one moment. This is the
12 whole store floor plan; correct?

13 A Yes.

14 Q This is a blown-up portion of just the grocery side of
15 the store?

16 A Yeah.

17 Q So, just to reorient it, this down here is sort of the
18 main grocery entrance?

19 A That's the entrance. These are the watermelons. This is
20 all produce. That is the action alley.

21 Q Could you estimate, based on, you know, your familiarity
22 with the store, whereabouts you saw Ms. Jones in the video
23 stop and talk with a few other customers?

24 A This is the detergent aisle right here.

25 Q Okay. So she stopped and talked with customers at the

1 intersection of the action alley, and the detergent aisle
2 would be right about here?

3 **A** Yes.

4 **Q** Okay. And we looked at a camera angle that came from
5 back to the front. So that camera would have been through the
6 back of the store.

7 **A** That big tent display is right about there.

8 **Q** Okay. So the -- you identified one PDQ with a wooden
9 base.

10 **A** It would have been right about there.

11 **Q** So this is the only pallet -- the only wooden display
12 that you saw, and this is about -- right here is about as far
13 up the store that you saw Ms. Jones walk on video?

14 **A** Yes.

15 **Q** Okay. So this is the difference we're talking about?

16 **A** Yes, sir.

17 **Q** Okay. And you estimate that about 64 feet?

18 **A** I'm just counting (indiscernible).

19 **Q** And based on your understanding of what you have seen on
20 the video, she left the detergent aisle and went -- you know,
21 retraced her steps back down action alley to the customer
22 service -- self-checkout customer service?

23 **A** Yes (indiscernible).

24 **Q** Okay. All right. Thank you.

25 Mr. Ringer, I was asking you a little bit before about

1 Walmart policy. You know those pretty well, don't you?

2 **A** Yes, sir.

3 **Q** And Mr. Willey showed you a copy of some policies that
4 the Department of Safety Solutions that were marked as Exhibit
5 4.

6 **A** Yes.

7 **Q** Now, on page 1 down there, it says that Walmart should
8 maintain good housekeeping standards to prevent slips, trips,
9 and falls; correct?

10 **A** Yes.

11 **Q** Ms. Jones didn't slip, trip, or fall, did she?

12 **A** No.

13 **Q** In the bullet points underneath that, it says, "Zone
14 frequently to ensure a safe work and shopping environment."
15 Based on what you have seen on video and what you know about
16 what happened, do you think Walmart was doing a good job
17 zoning to ensure a safe work and shopping environment?

18 **A** Absolutely.

19 **Q** Bullet point No. 2 says, "Remove pallets from the sales
20 floor, along with shrink wrap, cardboard, and other debris in
21 a timely manner." Based on what you have seen on video, based
22 on what you know about the incident, do you see any pallets,
23 shrink wrap, cardboard, or other debris that was not removed
24 from the sales floor in a timely manner?

25 **A** No. That floor is clean.

1 Q The third bullet point says, "Do not set pallets on end
2 or lean them up against another rack or fixture and should be
3 removed in a timely manner." Do you see any pallets on end or
4 leaned up against another rack or fixture anywhere in any of
5 these videos?

6 A No.

7 Q On page 3, Mr. Willey asked you a few questions about the
8 policy that's on page 3. There's a general policy that says,
9 "Avoid stepping on pallets. Remove the pallet from the floor
10 and stack in a designated location." Do you see that?

11 A Yes, I see that.

12 Q Do you see any Walmart employees or customers standing on
13 pallets in any of these videos?

14 A There's no pallets on the floor to step on.

15 Q Okay. So all the pallets have been removed from the
16 floor as far as you can tell?

17 A Yes.

18 Q Just below that, there's a slip, trip-and-fall column.
19 We know Ms. Jones didn't slip, trip, or fall, but it says, "Do
20 not place pallets on the floor between 8 a.m. and 9 p.m." Do
21 you see that?

22 A Yes.

23 Q That's pretty consistent with what we were talking about
24 before. What happens is, overnight, to get the store ready to
25 go, restarted for customers?

1 **A** Yes.

2 **Q** Below that bullet point it says, "Remove or restock empty
3 stack bases and pallets in a timely manner." Do you see that?

4 **A** Yes.

5 **Q** Do you see any empty stack bases or pallets --

6 **A** No.

7 **Q** -- that (indiscernible) on the sales floor?

8 **A** No. No, those stack bases -- those fixtures looked good.
9 They were well stocked. And there is no -- again, we have
10 already identified there's no pallets on the floor.

11 **Q** So we've looked at the policies. You're an expert on
12 Walmart policies. I mean, you know these policies backwards
13 and forwards.

14 **A** I know a lot of them.

15 **Q** Looking at these videos from June 26, 2015, when you
16 weren't even at the store, do you see any policy violations
17 anywhere here?

18 **A** No, sir. Like I say, that store -- the pictures -- the
19 video shows -- I mean, like I say, showing something like
20 that, that counter, that just shows you the detail that was
21 put into the stocking and the zoning and the cleaning of the
22 store. I mean, that was evident in all the video that I saw.

23 **Q** So not only are there no policy violations, you said that
24 you love to show this off to your boss as an exemplar of good
25 work.

1 **A** Yeah, that's one of those kind of pictures you want your
2 boss to see because it's -- they'd say that looks really good.

3 **Q** Mr. Ringer, you don't have any information about where
4 the nail Ms. Jones allegedly stepped on, you don't have any
5 information about where that came from at all, do you?

6 **A** Absolutely not.

7 **Q** Do you have any information about how long it may have
8 been in her shoe?

9 **A** I don't. Again, I wasn't even there that day. My
10 co-manager, Kevin Lane, took the report. Or I don't know that
11 he took it. I think another assistant manager took the
12 report, and Kevin came up to lend assistance to Ms. Jones that
13 day. I know Kevin said that she had on flip-flops and --

14 MR. WILLEY: Objection, Your Honor, as to anything --

15 THE COURT: That's sustained. You can't say what other
16 people said.

17 THE WITNESS: Okay. I apologize.

18 BY MR. BLAIN:

19 **Q** The last point I want to touch on with you, Mr. Ringer,
20 is, when Mr. Willey was asking you questions, he was talking
21 about, you know, frankly, delays in the case. And here we are
22 in 2021. This is a 2015 incident.

23 Do you have any personal knowledge about why or how this
24 case has moved through the court system?

25 **A** No. The only thing I know about this case outside of

1 anything is some information that I provided to my legal team
2 about some incidents. Beyond that, I don't have any...

3 Q Do you know that this case was --

4 MR. WILLEY: Objection, Your Honor. He just said that he
5 has no personal knowledge about anything related to the case.

6 THE COURT: He can ask him. If he knows personally
7 about -- we don't know what he's going to ask him. If he has
8 personal knowledge of what he's doing to ask him, he can
9 ask -- answer.

10 BY MR. BLAIN:

11 Q Mr. Ringer, your deposition was taken in this case,
12 wasn't it?

13 A Yes.

14 Q Were there any delays related to your deposition?

15 A Related to the deposition?

16 Q Well, was your deposition ever delayed?

17 A It seems like it was delayed at one point. I don't
18 remember.

19 Q Do you know if it was delayed for a number of years?

20 A It very well could have been. I mean...

21 Q And that wasn't your choice, was it?

22 A No. No.

23 Q Okay. Do you know why the Plaintiff's counsel would have
24 delayed your deposition?

25 MR. WILLEY: Objection, Your Honor. Plaintiff's counsel

1 did --

2 THE COURT: If he knows, he can answer.

3 MR. WILLEY: Well, Plaintiff's counsel didn't delay
4 anything. I mean, he just asked, you know, why Plaintiff's
5 counsel delayed. I didn't delay.

6 THE COURT: You can ask the question.

7 MR. BLAIN: I'll retract the question.

8 BY MR. BLAIN:

9 Q Last one, Mr. Ringer. Mr. Willey asked you about a
10 pallet guard in Exhibit No. 7.

11 A Yes.

12 Q Do you know if other retailers use pallet guards?

13 A I have never -- I have never seen one of these. And I
14 have --

15 Q Have you ever seen it in Target or Sam's Club?

16 A No, I haven't. And like I say, I go into a lot of
17 retailers. I have never seen that in a retailer. Not in this
18 area.

19 Q Okay. No further questions. Thank you very much.

20 A Sure.

21 THE COURT: All right. We're going to take a break for
22 lunch. We need to be back at 1:30. 1:30 sharp. And we'll
23 resume with your testimony after the hearing.

24 Was there any redirect, by the way?

25 MR. WILLEY: Yes, Your Honor.

1 THE COURT: All right. I'll give him the appropriate
2 instruction after the jury's left.

3 MR. WILLEY: Yes, sir.

4 (The jury exited the courtroom at 12:04 p.m.)

5 THE COURT: Yes, sir, under these circumstances, you're
6 still on the stand. I'm going to order that you not discuss
7 the case with plaintiff's counsel or defense counsel. Y'all
8 aren't to discuss the case in any way, shape, or form. When
9 we get back at 1:30, you'll resume the stand, and Plaintiff's
10 counsel has an opportunity to do redirect and we'll go from
11 there. But you can't discuss the matter with anybody. Do you
12 understand that?

13 THE WITNESS: I'll go to lunch by myself.

14 THE COURT: Very good. Thank you.

15 THE WITNESS: Do you want me to just leave all this stuff
16 here?

17 THE COURT: Yes. You can leave it right there. Thank
18 you.

19 Anything further?

20 MR. WILLEY: No.

21 THE COURT: Anything from the defense?

22 MR. BLAIN: Nothing, Your Honor. Thank you.

23 THE COURT: Very good.

24 (A lunch recess was taken from 12:05 p.m. to 1:30 p.m.)

25 MR. WILLEY: No, sir.

1 THE COURT: Anything from defense?

2 MR. BLAIN: (No audible response.)

3 THE COURT: Are we ready for the jury? Are we ready for
4 a bailiff? I don't know where they are.

5 (The jury entered the courtroom at 1:35 p.m.)

6 THE COURT: Mr. Foreman, ladies and gentlemen of the
7 jury. Thank you for being here and being here on time. As
8 you know, Mr. Ringer has been subject to direct examination
9 and cross-examination, and the plaintiff has an opportunity to
10 redirect. And the plaintiff is recognized.

11 MR. WILLEY: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. WILLEY:

14 Q Did you have a good lunch?

15 A It was.

16 Q Good.

17 Before we broke, your lawyer had asked you some
18 questions. I just want to go over a few things about that.

19 But, first, let me ask you: You and I, before today,
20 have never met one another; right?

21 A Correct.

22 Q And we have never talked, you and I, before today?

23 A Correct.

24 Q Okay. And I understand from your testimony that Walmart
25 hired the lawyers that represent you?

1 **A** Correct.

2 **Q** Okay. And that Walmart corporate did the answers to the
3 questions that I had asked you about that you verified; right?

4 **A** Correct.

5 **Q** Okay. And there was a conversation about you not being a
6 lawyer and you're not a lawyer, but you're a fairly smart guy;
7 right?

8 **A** Depends on who you ask.

9 **Q** What does phrase "legally charged" means? So let me just
10 ask you this. You know what the word "denied" means; right?

11 **A** Yes.

12 **Q** Okay. You know what the phrase "under oath" means;
13 right?

14 **A** Correct.

15 **Q** And you know what the phrase "under penalty of perjury"
16 means; right?

17 **A** Yes.

18 **Q** Okay. And so when Walmart came up with those answers,
19 nobody from Walmart signed them other than you; right?

20 **A** I guess.

21 **Q** You didn't see another signature on the verification
22 other than the notary; right?

23 **A** All I saw was -- no.

24 **Q** With respect to some of the testimony that was elicited
25 from you, you indicated that you had never seen the type of

1 nail at issue in this case in a pallet on your sales floor;
2 correct?

3 **A** Yes.

4 **Q** Okay. And just so we're clear, there are different types
5 of nails. There's finishing nails and roofing nails and trim
6 nails and, you know, drywall screws and railroad spikes, and
7 they're all referred to by a specific name. Is that your
8 understanding?

9 **A** Yes.

10 **Q** Okay. And you can use any given type of nail for
11 multiple purposes, not just the one that fits the category;
12 right?

13 **A** You can, but you may face failure.

14 **Q** Okay. And with respect to the pallets on your sales
15 floor, I just want to be clear on this. So those pallets come
16 in on semi trucks to your store; right?

17 **A** Yes.

18 **Q** Okay. And they are unloaded at night?

19 **A** Evening, night, yes.

20 **Q** Okay. And they are taken out onto the sales floor during
21 the evening, night, early morning, and unloaded, if necessary;
22 right?

23 **A** Yes.

24 **Q** Okay. And during that period of time with the vendor
25 pallets, you don't personally inspect any vendor pallets, did

1 you?

2 **A** I have.

3 **Q** You have. But let me ask you this: What are your normal
4 working hours during this period of time at the Walmart store?

5 **A** I would usually get to work around 6:30 in the morning
6 and leave any time between 5:00 and 7:00 at night.

7 **Q** Okay. And so most of this unloading/stocking is going on
8 when you're not in the store; right?

9 **A** Yes.

10 **Q** Okay. And so you're not personally expecting the pallets
11 and the vendor displays that are going out during the period
12 of time when you're not there; right?

13 **A** No, I would see them the next day.

14 **Q** Right. You'd see them when they're out on the sales
15 floor.

16 **A** I would see them on the sales floor or if they did not
17 make it to the sales floor yet, they were still being held in
18 our back room.

19 **Q** Fair.

20 And the display pallets and the PDQs that are out on the
21 sales floor, they have displays or bins or product on top;
22 right?

23 **A** Yes.

24 **Q** And so you're not able to see, with the product on top of
25 the pallet, the base of -- the deck of the pallet; fair?

1 **A** You can see the edge of the pallets all the way around to
2 see if the sides are in good shape; that there's no damage or,
3 you know, to that degree.

4 As far as seeing the boards as they run across
5 horizontally with the merchandise or display on top of it, I
6 can't see those directly.

7 **Q** And the reason it's important to be able to see the sides
8 is what you're really concerned with is stability; right?

9 **A** Correct.

10 **Q** You don't want the pallet to completely fail on the sales
11 floor and the product fall over.

12 **A** You wouldn't want that or you wouldn't want any -- you
13 wouldn't want, you know, splintering or anything like that to
14 take place.

15 **Q** Right. But you're not getting down there and inspecting
16 each nail head and each junction and all that?

17 **A** No.

18 **Q** Okay. Now, some question about, you know, Ms. Jones
19 stepped on a nail in the Walmart. Do you acknowledge that?

20 **A** No.

21 **Q** Or you disagree with that. Okay.

22 There was not, at this period of time -- Walmart was not
23 selling individual nails; right?

24 **A** No. It would sell boxes or bags or, you know, a package
25 of nails.

1 Q But you couldn't do, like you go to Lowe's where you go
2 down the screw aisle and pick one out of a bin?

3 A No.

4 Q Okay. And as far as you know, there wasn't, like, a nail
5 fairy going around the Walmart sprinkling nails around the
6 floor; right?

7 A Absolutely not.

8 Q Okay. And when we looked at some of the video during
9 your deposition, you were asked: "Do you have any way of
10 knowing whether the nail in Ms. Jones's foot did or did not
11 come out of that wooden pallet in the store?"

12 What's your response to that?

13 A Which wooden pallet are you referring to?

14 Q At this point, we were referring to the wooden pallet
15 that you had looked at in Clip 12, which was the same clip
16 that you were looking at with your lawyer, which is the
17 back --

18 A Was the back of the action alley --

19 Q Right.

20 A -- with the display.

21 The question again? I'm sorry.

22 Q Do you have any way of knowing whether the nail in
23 Ms. Jones's foot did or did not come out of that wooden pallet
24 in the store?

25 A I have no way of knowing it.

1 Q And when we looked at the rest of that clip, you remember
2 there's a different angle where you can see the front, and the
3 question was posed to you: "Can you tell what's on top of the
4 stack bases heading back up here, whether it's wooden pallets,
5 plastic pallets, or what?"

6 A Okay.

7 Q And do you remember what you said?

8 A "I saw no other wooden displays."

9 Q Okay. You may remember taking a deposition in this case,
10 Mr. Ringer?

11 A Yes.

12 THE COURT: Mr. Foreman, ladies and gentlemen of the
13 jury, when a lawsuit is filed, lawyers have the opportunity to
14 take deposition, which is sworn testimony outside of this
15 court. Quite often, it takes place at one of the lawyer's
16 offices, and you have a court reporter there. They transcribe
17 it and it's in written form. The rules of evidence allow you
18 to use it in a number of different forms. Sometimes they're
19 published in their entirety. Sometimes if the testimony is
20 different than what it is at trial, they can use it to refresh
21 their memory and perhaps impeach them of that. That is
22 evidence for you to consider and pay very, very close
23 attention.

24 BY MR. WILLEY:

25 Q I'm going to hand you your deposition. At page 68 and

69, I'd direct you to Line No. 19 on page 68. And the question was asked: "Can you tell if any of these others in Video Clip No. 12 are the same way or can you tell at all?"

And what was your answer?

A [As read] "They all, from what I can see, that black footprint are all black stack bases."

Q And the question was asked: "Okay. Can you tell what's on top of the stack bases, heading back up here, whether it's wooden pallets, plastic pallets, or what?"

A "I can't from that."

Q What was your answer?

A "I can't from that."

Q Okay. And so you understand, when you were in your deposition, obviously, you were under oath, just like you are today; right?

A Mm-hmm.

Q Correct?

A Yes.

Q Okay. And you told us in your deposition that, looking at Clip No. 12, you were unable to tell whether or not, going back up the aisle, they were wooden pallets or plastic pallets or what; right?

A That's what I said on that day, yes.

Q Okay. Now, with respect to the safety sweep, you told us earlier that there is no log done of the safety sweeps;

1 correct?

2 **A** Correct.

3 **Q** Okay. And just like with no logs of the safety sweeps,
4 there's no logs done or anything written down about
5 inspections of pallets; right?

6 **A** No.

7 **Q** Okay. And there is no formal inspection of the pallets
8 that come into the store; right?

9 **A** No formal inspection.

10 **Q** There's no person designated that, as the pallets come
11 off the truck, to look at them and say, Okay, that one's got a
12 nail loose, this one doesn't, etc. Right?

13 **A** No.

14 **Q** Okay. When they come into the store and go out onto the
15 sales floor, there's no formal inspection done of them at that
16 point either; right?

17 **A** I mean, there's -- they're looked at visually to make
18 sure that there's nothing that's going to cause a potential
19 issue when it goes to the sales floor.

20 **Q** Right. And what we're concerned with there mainly, at
21 looking at the edges, is we want to make sure that the pallet
22 is stable; right?

23 **A** Yes.

24 **Q** Okay. Now, I think you told us that -- and I wasn't
25 clear on this in your testimony -- there are 350 associates in

1 that store at a given time?

2 **A** On roster.

3 **Q** On roster. Okay.

4 And that's what I thought was the answer. How many, you
5 know, on the day like June 26th at 11:30 in the morning are
6 going to be on the clock?

7 **A** 50, 60 maybe.

8 **Q** Okay. And so that's 50 or 60 people that we have every
9 hour and a half or two hours that are supposed to do complete
10 safety sweeps when they walk around and look in detail at the
11 area that they're working in; right?

12 **A** Not all of them would because some are not assigned to
13 the sales floor.

14 **Q** Okay. That's -- thank you for the clarification.

15 So how many associates are going to be assigned to the
16 sales floor of the 50 or 60?

17 **A** Probably -- well, the thing is, with the sales floor, you
18 have to -- to me; again, I just tell you the way I think about
19 it -- I define the sales floor as those who work on the sales
20 floor and those who work on my front end.

21 **Q** Okay.

22 **A** Because of that, you have a higher percentage of your
23 people on the floor actually on your front end working that
24 would not walk away from their registers to walk around the
25 store.

1 Q Got it.

2 A So of 50 or 60, you probably have somewhere in the
3 neighborhood of 20, maybe 25 people that would be on the sales
4 floor.

5 Q Okay. And those people are the ones that are supposed to
6 go around every hour or two hours in their area looking in
7 detail at the floor?

8 A Yes.

9 Q Okay. And I think you also said that, as far as breaking
10 down palletized merchandise, bringing pallets out on the floor
11 and taking product off and putting it on the shelf, that's
12 supposed to be completed by 8 a.m.; right?

13 A Yes.

14 Q And you indicated that the only way you really know if an
15 individual associate did their safety sweep is that you walk
16 through their area, and if you see something, then you would
17 go and talk to them about it and about doing their safety
18 sweep; right?

19 A Yes, about reactivating a situation.

20 Q All right. And you said that the way -- that you
21 wouldn't want to send out a pallet onto the sales floor that
22 looked dangerous as well; right?

23 A True.

24 Q And you indicated that the way that you would know if a
25 pallet was dangerous is you would see it? You would observe

1 it?

2 **A** Yes.

3 **Q** And that would be whether or not it was in the back about
4 to go out or already out on the sales floor; right?

5 **A** True.

6 **Q** And on June 26, 2015, you wouldn't be able to know those
7 things because you weren't in the store; right?

8 **A** True.

9 **Q** All right. But there are video cameras all throughout
10 the Walmart store; right?

11 **A** They're randomly --

12 **Q** And those video cameras -- and we have seen angles from
13 some of the areas where Ms. Jones was -- would be able to show
14 us if there were associates walking around on schedule doing
15 their safety sweeps; right?

16 **A** They will show you people walking around, yes, sir.

17 **Q** And we would be able to use those videos to identify who
18 was an associate and who was not an associate and what they
19 were doing in the store; right?

20 **A** It might be difficult but, yeah, I guess you could.

21 **Q** Okay. Well, on the video that we did have, the one --
22 one of the short clips, we were able to see an associate by
23 identifying the vest. Is that --

24 **A** Yeah. I mean, you can identify them through what they're
25 wearing. That would be obvious.

1 Q And so the video would be a pretty good way, in terms of
2 June 26 of 2015, of telling us whether or not that area that
3 Ms. Jones walked through was -- the safety sweeps were
4 conducted; right?

5 A Yeah.

6 Q And if we went back six hours before her injury occurred,
7 we should see three to four safety sweeps taking place in all
8 of those areas that she walked; right?

9 A Yes. You'd see associate walking those areas, yes.

10 Q And if we went back three hours to 8 a.m., we would be
11 able to see whether or not all the palletized merchandise had
12 been put away and the pallets were off the floor; right?

13 A Yes.

14 Q And we would be able to see, if we went back a few more
15 hours and the pallets were still on the floor, whether or not,
16 after the pallets were taken to the back, the associates went
17 around and cleaned up the area like you're supposed to; right?

18 A Yes, you'd see them on the floor.

19 Q In fact, the PTZ cameras in these stores are so good that
20 you would actually be able to see a nail on the floor
21 potentially; right?

22 A I don't know if they're that good but they're pretty
23 good.

24 Q Okay. And if we could see that nail on the floor, we
25 would be able to determine how long it had been there by

1 looking at those videos; right?

2 **A** Yeah.

3 **Q** Mr. Ringer, I'm going to hand you what I'm going to mark
4 as Plaintiff's Exhibit -- and Plaintiff's Exhibit 7 is a
5 letter from the Jernigan Law Firm, Rod Jernigan, who worked on
6 this case, and it's dated July 13th, 2015. Do you see that?

7 **A** Yes.

8 **Q** And if you look at No. 1, it says, "This letter is a
9 formal request that you preserve all of the following: Both
10 tangible as well as electronically stored containing
11 information potentially relevant in any way to the following:
12 No. 1, all video camera footage directed towards the floor
13 area of the main grocery aisle during the six hours prior to
14 the injury and the one hour following the injury.

15 No. 2. All video camera footage directed towards the
16 service desk area, beginning at 11 a.m. on June 26, 2015, and
17 continuing through 2 p.m. on June 26, 2015." And it has other
18 things. And it's addressed to you; correct?

19 **A** Yes.

20 **Q** And it was delivered by hand delivery?

21 **A** That's what it says, yes.

22 **Q** And in this case, Walmart -- you have the same video
23 clips that we have had, the 17 that the jury is going to have;
24 right?

25 **A** They were burned onto some device or whatever.

1 Q Right. But you have had the opportunity to review those?

2 A Yes.

3 Q And you haven't had any other video footage provided
4 relating to this matter, have you?

5 A No.

6 Q Okay. And so when No. 1 requested all video camera
7 footage directed towards the floor area of the main grocery
8 aisle during the six hours prior to the injury and the one
9 hour following the injury, we don't have that in this case to
10 look at, do we?

11 A I don't know.

12 Q You haven't seen it, have you?

13 A All I have seen is the clips I have been shown.

14 Q Right. And if we had that, if Walmart had saved that and
15 produced that, we would be able to watch that video and
16 determine whether or not those safety sweeps took place prior
17 to the injury; right?

18 A I would assume so, yes.

19 Q And if the cameras are good enough, we would be able to
20 see where exactly on the floor that nail was; right?

21 A If they were good enough, yes.

22 Q And we would be able to see, prior to 8 a.m., what
23 exactly happened in that area with respect to palletized
24 merchandise and whether or not it was appropriately cleaned up
25 after the shelves were stocked; right?

- 1 **A** Yes.
- 2 **Q** But we don't have that in this case, do we?
- 3 **A** You say we don't. I have to assume --
- 4 **Q** You have seen the videos, and the video that has been
5 produced that Walmart gave the clips of start when Ms. Jones
6 enters the store; right?
- 7 **A** That's what I have seen, yes.
- 8 **Q** You haven't seen any video from Walmart prior to that;
9 right?
- 10 **A** I have not, no.
- 11 **Q** And let me ask you this: How long does Walmart retain
12 its video in the normal course of business?
- 13 **A** It would only hold for approximately 30 days, maybe a
14 little bit more.
- 15 **Q** Okay. Well, if you will, open that deposition up to page
16 28. Are you with me?
- 17 **A** Yes, sir.
- 18 **Q** All right. And down at line 11, you're talking here
19 about the videos, and the question is: Do you know how long
20 it does hold it for? And what's your answer?
- 21 **A** I said here it was 60 days.
- 22 **Q** Okay. So is it 60 days?
- 23 **A** It depends on the equipment, and honestly, I don't
24 remember what was in place in 2015.
- 25 **Q** Okay. The date on that letter that we just read -- yeah,

1 there is -- July 13th of 2015; right?

2 **A** Mm-hmm.

3 **Q** And this incident occurred on June the 26th of 2015?

4 **A** Yes.

5 **Q** So irrespective of whether it was 30 days or 60 days or
6 90 days, at the time that this letter was delivered, that
7 video would have still been saved on Walmart's system; right?

8 **A** Yes.

9 **Q** Okay. I want to give you what's marked as Plaintiff's
10 Exhibit 8 a July 21st, 2015, letter from Rod Jernigan.

11 (Plaintiff's Exhibit No. 8, 7/21/2015 Jernigan Letter,
12 was marked for identification.)

13 BY MR. WILLEY:

14 **Q** And this letter was sent to you and it has a stamp on
15 there that it went through the Walmart legal department
16 central intake. Do you see that? Just to the right of the --

17 **A** Yes.

18 **Q** Okay. And it's dated July 21st, 2015; right?

19 **A** Yes.

20 **Q** And this letter says, "Dear Mr. Ringer: As you know,
21 April Jones suffered a puncture injury to her foot in your
22 store on June 26, 2015. We subsequently sent you a letter
23 requesting a preservation of video and other records
24 surrounding the date and time of her injury. We wish to
25 inform you that April is currently in the hospital, having had

1 amputation surgery of one of her toes due to her injury. We
2 understand she may have to have other toes amputated to save
3 her foot. We will keep you informed of her condition as she
4 progresses."

5 Did I read that correctly?

6 **A** Yes.

7 **Q** Okay. And this letter dated July 21st, 2015, was still
8 within the 30-day window even; right?

9 **A** Yes.

10 **Q** And so, at this time, you had an understanding -- Walmart
11 had an understanding that this was a serious matter based on
12 this letter; right?

13 **A** Yes, I would say so.

14 **Q** Okay.

15 (Plaintiff's Exhibit No. 9, Letter from Ms. Parham, was
16 marked for identification.)

17 BY MR. WILLEY:

18 **Q** Plaintiff's Exhibit No. 9, which is a letter from another
19 attorney that's been involved in the case, Rosemary Parham,
20 and that letter the dated August the 5th of 2015. Do you see
21 that?

22 **A** Yes.

23 **Q** And this letter was sent via U.S. mail and facsimile to
24 Claims Management, Inc., which is Walmart's in-house claims
25 department; right?

1 **A** Correct.

2 **Q** Okay. And this letter informs them that she has much
3 treatment and rehabilitation left, as her foot had to be
4 amputated. Do you see that?

5 **A** Yes.

6 **Q** Okay. And second part of that is the fax cover sheet and
7 just the fax sending it via U.S. mail. And these, by the way,
8 did you know, were produced by your attorneys? Your attorneys
9 has these as well?

10 **A** (No audible response.)

11 **Q** You did know. Okay.

12 And August 5th of 2015, when Walmart learned that she had
13 to have her foot amputated, would still have been within the
14 60-day window certainly; right?

15 **A** Yes.

16 MR. WILLEY: I'll mark as Exhibit as Plaintiff's Exhibit
17 No. 10...

18 (Plaintiff's Exhibit No. 10, Letter from Jernigan
19 9/21/2015, was marked for identification.)

20 BY MR. WILLEY:

21 **Q** Plaintiff's Exhibit No. 10 is another letter from Rod,
22 Mr. Jernigan, excuse me, dated September 21st, 2015. Do you
23 see that?

24 **A** Yes.

25 **Q** And this one is also sent to Claims Management, which is

1 Walmart's in-house claims department; right?

2 **A** Yes.

3 **Q** Okay. And this letter says, "As you know, April Jones
4 suffered a puncture injury to her foot in your store on June
5 26, 2015. We subsequently sent you a letter requesting the
6 preservation of video and other records surrounding the date
7 and time of her injury. We acknowledge your telephone
8 conversation with my staff stating the videos have been
9 reviewed and you would be issuing a formal denial of this
10 claim; however, we have not received any further communication
11 at this time. We would reiterate our request for the videos
12 to be forwarded to us, including that video of our client
13 sitting near the service desk where another gentleman was
14 seated near her wearing a bow tie.

15 With kind regards, I remain, sincerely, Rod Jernigan."

16 Did I read that correctly?

17 **A** Yes.

18 **Q** And the videos that Mr. Jernigan is referring to are the
19 videos that he requested in his first letter, which were six
20 hours prior to the injury and one hour following; right?

21 That's what the first letter said?

22 **A** Let me go back to the first one. Yes.

23 **Q** And you haven't seen those videos?

24 **A** No, the videos I have seen --

25 **Q** Do you know what happened to them?

1 **A** No, sir.

2 **Q** Thank you.

3 MR. WILLEY: Your Honor, at this time, I would move
4 Plaintiff's Exhibits just marked -- I believe it's 7 through
5 10 -- into evidence.

6 THE COURT: Any objection?

7 MR. BLAIN: No objection.

8 THE COURT: Into evidence.

9 (Plaintiff's Exhibit Nos. 7 through 10 were received into
10 evidence.)

11 MR. WILLEY: Thank you.

12 THE COURT: All right. You may step down. Thank you,
13 sir.

14 THE WITNESS: Thank you.

15 THE COURT: All right. You may call your next witness.

16 MR. WILLEY: Plaintiff calls Ayesha Cooke.

17 THE COURT: Ms. Cooke, please come forward. I'm going to
18 ask you to approach the bailiff. And turn and face the clerk
19 and place your left hand on the Bible and raise your right
20 hand as the clerk administers the oath.

21 AYESHA COOKE-SIMMONS,
22 the witness, after having been duly sworn, was examined and
23 testified to as follows:

24 THE CLERK: Please be seated.

25 THE COURT: Watch your step. And have a seat in the

1 witness chair. And I'm going to ask if you could pull up real
2 close to that microphone. Speak loudly, clearly, and slowly
3 so that we can hear everything that you have to say.

4 THE WITNESS: Okay.

5 THE COURT: And if you feel comfortable doing so, you can
6 remove your mask. We might be able to hear you better.

7 THE WITNESS: Okay.

8 THE COURT: Okay. And your full name?

9 THE WITNESS: Ayesha Cooke-Simmons.

10 THE COURT: Very good.

11 MR. WILLEY: If it pleases the Court.

12 DIRECT EXAMINATION

13 BY MR. WILLEY:

14 Q Ms. Cooke-Simmons, how are you?

15 A Good.

16 Q Good. My name is Roy Willey. We have not met before,
17 have we?

18 A No.

19 Q Okay. I represent Ms. Jones, just so you know.

20 A Okay.

21 Q And you have had the opportunity to meet Ms. Jones;
22 correct?

23 A Yes.

24 Q Okay. On June the 26th of 2015, where were you employed?

25 A Walmart.

1 Q Okay. And, at that time, what was your role?

2 A Assistant manager, I believe over the front end.

3 Q And were you, in fact, working on June the 26th, 2015?

4 A Yes.

5 Q And as assistant manager over the front end, explain to
6 the jury what the front end means.

7 A The front end is basically anything dealing with the
8 cashiers, maintenance, cart pushing. I oversee their jobs,
9 what they're doing.

10 Q And at that point in time, the customer service desk was
11 also on the front end; correct?

12 A Yes.

13 Q And on June the 26th of 2015 around 11:30 or so in the
14 morning, 11:40, Ms. Jones came into the customer service area;
15 correct?

16 A Yes.

17 Q And you had the opportunity to speak with her; correct?

18 A Yes.

19 Q Okay. During that interaction, what did she tell you?

20 A If I could remember correctly, she told me that she had
21 stepped on a nail.

22 Q And was she bleeding? Do you remember?

23 A Honestly, I don't remember.

24 Q Okay. Fair enough.

25 MR. WILLEY: Let me do this. I'll mark Plaintiff's

Exhibits 11, 12, and 13 all at once, and this is going to be the customer incident report, the claims report, and then the video request form.

(Plaintiff's Exhibit No. 11, Customer Incident Report, was marked for identification.)

(Plaintiff's Exhibit No. 12, Claims Report, was marked for identification.)

(Plaintiff's Exhibit No. 13, Video Request Form, was marked for identification.)

BY MR. WILLEY:

Q Take your time and get your glasses so you can see.

A Okay.

Q I know it's been a while since this incident. So what I have handed you, Plaintiff's Exhibit 11, is a customer incident report. And explain to the jury what this document is.

A This is the information that I would get from the customer pretty much kind of verbatim as to what took place and where, if possible.

Q Okay. And what you wrote down, I think, is what you just told us, which is "stepped on a nail." Right?

A Mm-hmm.

Q Okay. And then I guess that's your handwriting with the description of Ms. Jones?

A No, that's not.

1 Q That is not. Okay.

2 A No.

3 Q Do you know whose handwriting that is?

4 A No. The only one that's mine is the "stepped on a nail."

5 Q Okay.

6 A And then "the main aisle of grocery."

7 Q And the "main aisle of grocery," was under "identify and
8 describe the location of incident"?

9 A That's correct.

10 Q And so you filled this out, and that's your signature
11 down at the bottom?

12 A Yes.

13 Q Okay. And once you fill out a customer incident report,
14 what happens to it? What do you do with it?

15 A We have a file that we put it all together with, and then
16 I have to -- at the time, we have a system where we had to put
17 it in the system, the computer. Type it all up and then
18 submit it.

19 Q Okay.

20 A And then there's a part for AP, which is asset
21 protection, and then we have them pull the video.

22 MR. WILLEY: And so, at this point, I would move
23 Plaintiff's Exhibit 11 into evidence.

24 MR. BLAIN: No objection.

25 THE COURT: It's in evidence.

1 (Plaintiff's Exhibit No. 11 was received into evidence.)

2 BY MR. WILLEY:

3 Q Plaintiff's Exhibit 12, it says, "Claim," with a number
4 at the top. Is that the computer-based form that you're
5 talking about?

6 A Yes, the information I put in the system. Yes.

7 Q Okay. And when you put that information in the system,
8 does that go to corporate?

9 A Yes.

10 MR. WILLEY: At this time, I move Plaintiff's Exhibit 12
11 into evidence.

12 MR. BLAIN: No objection.

13 (Plaintiff's Exhibit No. 12 was received into evidence.)

14 BY MR. WILLEY:

15 Q And then Plaintiff's Exhibit 13, Ms. Cooke-Simmons, is a
16 video request form?

17 A Yes, that's correct.

18 Q Okay. And, on here, there is a section that says, "Type
19 of accident." And what did you write in?

20 A That's not my handwriting.

21 Q That is not your handwriting. Do you know whose
22 handwriting that is?

23 A No, sir.

24 Q Okay. But is that your signature at the bottom?

25 A Yes.

1 Q And is your handwriting at the top with the name of the
2 customer and the claim number?

3 A Yes, that's my handwriting.

4 Q Okay. So we have this video request form, and you put on
5 Ms. Jones's name and claim number. Do you know who filled it
6 out?

7 A No, I do not.

8 Q But, then, it was given back to you to sign?

9 A It could have been or I could have signed it. I'm not
10 sure.

11 Q There's some possibility you signed a blank one and
12 somebody else filled it out?

13 A The top part is me and then I might have filled it out
14 before or after. I'm not sure, though, to be honest with you.

15 Q Okay. The description of accident on this form says,
16 "Stepped on a nail. Punctured skin on right foot." Do you
17 see that?

18 A Yes.

19 Q And that's consistent with what you learned from
20 Ms. Jones when she came and talked to you that day; right?

21 A The step on the nail, yes.

22 Q Okay.

23 MR. WILLEY: At this time, we'd move Plaintiff's Exhibit
24 13 into evidence.

25 MR. BLAIN: No objection, Your Honor.

1 THE COURT: It's in evidence.

2 (Plaintiff's Exhibit No. 13 was received into evidence.)

3 BY MR. WILLEY:

4 Q And, Ms. Cooke-Simmons, on that particular day, you had
5 the opportunity to interact with Ms. Jones a little bit?

6 A Yes.

7 Q And isn't it true that Ms. Jones actually showed you the
8 nail that she stepped on?

9 A Yes.

10 Q And it was, in fact, a nail?

11 A Yes.

12 Q Okay.

13 A Mm-hmm.

14 Q And that's what you wrote in the report and signed your
15 name to; right?

16 A Yes.

17 Q And so Ms. Jones, that day, had the incident, reported
18 the incident, and showed you the nail.

19 A Yes.

20 Q And, if I recall, Walmart asked you to keep the nail;
21 right?

22 A I think I tried to get the nail, but she wouldn't -- she
23 wouldn't let it out her hands, mm-hmm.

24 Q And -- but it was in her hand and you had the opportunity
25 to see it?

1 **A** Yes.

2 **Q** And you had the opportunity to photograph it?

3 **A** I believe I did take a picture, yes.

4 **Q** Okay. And that photograph, you don't know what happened

5 to it after you took it?

6 **A** I do not. I know I took a picture with my phone --

7 cellphone at the time. I don't know if I ever went to Photo

8 to get it developed. But, at any rate, I don't have the phone

9 anymore.

10 **Q** Understood. But that photo, once developed, would have

11 become part of her claim file; right?

12 **A** That's correct.

13 **Q** Okay. And that was your purpose in taking it.

14 **A** Yes.

15 **Q** And, in general, when you would do customer incident

16 reports and take photographs, your process was to have it

17 developed there at Walmart and put it in the file; right?

18 **A** Yes.

19 **Q** Any reason to believe that you did not do that in this

20 case?

21 **A** Not that I can think of, no.

22 **Q** Okay. Because that's what you would have always done.

23 **A** Right. That's essential, mm-hmm.

24 **Q** And, in this case, do you know that Walmart has not

25 produced that photograph?

1 **A** I was told, yes.

2 **Q** Thank you.

3 **A** Mm-hmm.

4 THE COURT: Cross-examination, Mr. Blain?

5 CROSS-EXAMINATION

6 BY MR. BLAIN:

7 **Q** Good afternoon, Ms. Cooke-Simmons.

8 **A** Good afternoon.

9 **Q** Hi. How are you doing?

10 **A** Good.

11 **Q** Are you still working at the West Florence Walmart store?

12 **A** Yes.

13 **Q** How long have you been with Walmart?

14 **A** Nine years come this February.

15 **Q** Have you got any plans to leave Walmart in the near
16 future?

17 **A** No.

18 **Q** Nine years -- nine-plus years at Walmart. So you're
19 pretty familiar with Walmart store policies, especially
20 pertaining to the front end where you're working?

21 **A** Yes.

22 **Q** Is it the Code White policy that deals with customer
23 injuries, customer accidents?

24 **A** Yes.

25 **Q** And that -- those Code White procedures would include the

1 forms that you complete when a customer reports an accident;
2 correct?

3 **A** Yes.

4 **Q** And we just looked at three exhibits -- 11, 12, and 13 --
5 that the plaintiff entered into it. We have the customer
6 incident report. We have the claim information that you enter
7 into the computer and the video request form. Right?

8 **A** Yes.

9 **Q** And those are all part of the Code White procedures.

10 **A** Yes.

11 **Q** And you do those any time any customer any day comes up
12 to you and says, "Hi, Ms. Cooke. I have got a problem"?
13 Isn't that right?

14 **A** Yes.

15 **Q** Do you remember where you were -- were you in the
16 customer service area when you first spoke with Ms. Jones?

17 **A** Yes.

18 **Q** And would you take steps to notify a member of management
19 after a customer like Ms. Jones has reported an injury to you?

20 **A** Well, I mean, I'm the manager at the time, so not
21 necessarily.

22 **Q** Understood.

23 Did co-manager Kevin Lane come over to assist you and
24 talk with Ms. Jones?

25 **A** Yes.

1 Q Once Kevin Lane comes over to assist Ms. Jones, did you
2 kind of go back to your -- filling out paperwork and back to
3 your regular work routine?

4 A Yes, because -- my understanding, if I can kind of
5 remember that far back, I didn't have much interaction with
6 Ms. Jones overall, even though I did interact with her.

7 Q To your best recollection, we have pretty much covered
8 your entire interaction with Ms. Jones already --

9 A Mm-hmm.

10 Q -- through your testimony here today?

11 A Yes.

12 Q Okay. I have got great assistance over here from my
13 co-counsel who has clued me in on important details. When you
14 complete the incident report, the exhibits we have talked
15 about, you put all the relevant information that the customer
16 tells you; correct?

17 A Yes.

18 Q That customer incident report doesn't say anything about
19 a pallet, does it?

20 A No.

21 Q If Ms. Jones would have mentioned a pallet to you back on
22 June 26 of 2015, you would have put it in the incident report,
23 wouldn't you?

24 A Yes.

25 Q So, to the best of your recollection, she never mentioned

1 a pallet, though, did she?

2 **A** Not that I can remember, no.

3 **Q** Thank you, Ms. Cooke-Simmons. That's all the questions I
4 have for you.

5 THE COURT: Any redirect?

6 MR. WILLEY: Briefly.

7 REDIRECT EXAMINATION

8 BY MR. WILLEY:

9 **Q** Ms. Cooke-Simmons, how long have you worked for Walmart?

10 **A** Nine years coming this February.

11 **Q** And have you been in the Beltline store that entire time?

12 **A** No.

13 **Q** Okay. How long have you worked in that store?

14 **A** I have been in that store from 2013 to 2020.

15 **Q** Okay.

16 **A** And then I went to the Irby Street Walmart for about
17 seven months. And now I came back to Irby -- I mean,
18 Beltline.

19 **Q** Okay. And so you're pretty familiar with the Beltline
20 store?

21 **A** Yes.

22 **Q** Number 630; right?

23 **A** Yes. 630, yes.

24 **Q** And the shelves in that store, they're made of metal;
25 right?

1 **A** Yes.

2 **Q** Okay. And the roof on that store, it doesn't have

3 shingles on it, does it?

4 **A** No.

5 **Q** No. And the flooring in that store, it's not wood

6 flooring, is it?

7 **A** No.

8 **Q** And the cash registers and the things -- the conveyor

9 belts there, they're all made of metal; right?

10 **A** Yes.

11 **Q** And Walmart doesn't sell nails individually; right?

12 **A** I mean, we have a hardware. Oh, no individually? No.

13 **Q** So other than -- other than a pallet, is there anything

14 you can think about that's inside the Walmart store with nails

15 in it?

16 **A** Not offhand, no.

17 **Q** Thank you, ma'am.

18 **A** Mm-hmm.

19 THE COURT: You may step down.

20 Any objection to this witness being excused?

21 MR. WILLEY: Not from the plaintiff.

22 THE COURT: You're free to leave. Thank you, ma'am.

23 THE WITNESS: Okay.

24 THE COURT: You may call your next witness.

25 MR. WILLEY: May we approach?

1 THE COURT: Yes.

2 BENCH CONFERENCE

3 (A bench conference was held off the record and outside of
4 the hearing of the jury and others.)

5 (Open court resumes as follows:)

6 THE COURT: Bear with us just for a moment. Just for a
7 brief moment, we're going to take just a brief moment and get
8 these matters together. I'm going to ask if you can stand up
9 and stretch. How about that? Usually after lunch, there's a
10 little lull.

11 (Pause in the proceedings.)

12 THE COURT: You don't have to keep standing, but if you
13 wanted to, you can.

14 JUROR: We'll stand as long as you allow us, Your Honor.

15 MR. WILLEY: Your Honor, the plaintiff calls Virginia
16 Wright.

17 THE COURT: Okay. All right. Ms. Wright, if you could
18 please come forward. I'm going to ask if you could approach
19 the bailiff. And you see the Bible on the corner there? I'm
20 going to ask if you could put your left hand on the Bible and
21 raise your right hand as the clerk administers the oath. You
22 can face the clerk.

23 VIRGINIA WRIGHT,

24 the witness, after having been duly sworn, was examined and
25 testified to as follows:

1 THE CLERK: Please be seated.

2 THE COURT: Watch your step. There's a little slant
3 there. Have a seat in the witness chair. I'm going to ask,
4 if you could, to pull up real close to that microphone. Speak
5 loudly, clearly, and slowly in order that we can hear
6 everything that you have to say.

7 And if you feel comfortable doing so, I'm going to ask if
8 you could remove your mask so we can better understand what
9 you have to say.

10 THE WITNESS: Sure.

11 THE COURT: And let's start with your full name, please,
12 ma'am.

13 THE WITNESS: Virginia Christine Wright.

14 THE COURT: All right. Very good.

15 MR. WILLEY: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. WILLEY:

18 Q Ms. Wright, tell us what you do currently.

19 A Currently, I'm the store manager at Palmetto Moon.

20 Q And prior to that, what did you do?

21 A I was the front end coach for Walmart.

22 Q Okay. And prior to being a front end coach, what did you
23 do?

24 A I was the asset protection manager at Walmart.

25 Q Okay. And on June 26 of 2015, you were the asset

1 protection manager for Walmart; right?

2 **A** Yes, sir.

3 **Q** Okay. Explain to the jury what it means to be the asset
4 protection manager for Walmart.

5 **A** Okay. So, basically, I was over any kind of internal
6 investigations, whether it be, you know, for associates or
7 customers. Any kind of accidents. I was over safety and
8 security for the building. The associates that worked under
9 me were over external theft, which means anybody that came in
10 to steal, they investigated that. I more or less investigated
11 internal investigations like associates.

12 **Q** Okay. So your primary role as a manager was basically
13 looking into any kind of internal theft or issues?

14 **A** Yes, sir.

15 **Q** And how many associates did you have working for you that
16 looked into external theft at that time?

17 **A** To be honest with you, back then, I'm not really sure
18 what that number was. I think it was two or three.

19 **Q** Okay. So -- in June of 2015, there were at least three
20 of you, maybe more, on the asset protection team?

21 **A** Correct.

22 **Q** And everybody on the asset protection team was paid;
23 correct? It's not a volunteer position?

24 **A** That's correct.

25 **Q** And the asset protection team, what type of tools do you

1 have at your disposal?

2 **A** A lot. You know, of course the stationary camera system,
3 which is incorporated inside of my main computer that I used.
4 And then there were pan tilt zoom cameras, you know, that were
5 also available on another monitor.

6 **Q** All right. And with respect to the pan tilt zoom
7 cameras, who would be mainly utilizing them on the day-to-day?

8 **A** Primarily, the asset protection associates, but myself on
9 occasion as well.

10 **Q** Okay. Tell the jury what it means to be pan tilt zoom.
11 Tell them a little bit more about those cameras.

12 **A** Okay. So, basically, exactly what that means. They can
13 zoom in. They can move. They can tilt any kind of way only
14 on live video. You can't, you know, go back and zoom in on
15 recorded feed.

16 **Q** And those cameras are pretty good; right?

17 **A** Very good, yes.

18 **Q** I think you said in your deposition that, with the
19 cameras at Walmart, you could literally count the freckles on
20 my face; right?

21 **A** Yes.

22 **Q** And if I dropped a handful of change on to the Walmart
23 floor, you would be able to tell, utilizing those cameras,
24 what type of coins they are?

25 **A** Yes.

1 Q And whether or not they were heads or tails?

2 A Yes.

3 Q With respect to the asset protection team that's
4 utilizing these cameras, looking around the store, what are
5 those associates looking for? What are they paid to look for?

6 A Primarily theft.

7 Q Okay. And is there any -- obviously, if they were to
8 see, for example, a display fall, they would have the ability
9 to contact someone to go fix it; right?

10 A Absolutely, yes.

11 Q And if they were, you know, to see any other obvious
12 hazard, they'd have the ability to radio somebody to go fix
13 that; right?

14 A Yes.

15 Q But as I understand it from prior testimony, there's not
16 any sort of a separate safety team that has access to cameras
17 like this. It's only the asset protection team; right?

18 A Correct.

19 Q There's nobody in the Walmart store that Walmart pays,
20 that uses cameras to look around the sales floor specifically
21 for dangers; right?

22 A Well, I was over safety and security, as I stated. You
23 know, that was my job. But was I there just to do safety?

24 No.

25 Q And you weren't utilizing the pan tilt zoom cameras in

1 you role.

2 **A** Of course I did, when I needed to, yes.

3 **Q** When you needed to.

4 **A** Yes.

5 **Q** But not on a regular, continuous basis; right?

6 **A** Whenever I needed to. So I wouldn't say that I didn't
7 because I, quite honestly, did use them quite often, yes.

8 **Q** And when you say when you needed to, what sort of
9 circumstances would arise when you would need to use the pan
10 tilt zoom camera?

11 **A** If I were walking around on the floor and thought I saw
12 something and I wanted to go into the office to not be seen,
13 you know, I would run in there and grab PTZs to try to find
14 that person or whatever I thought I saw. Zoom in on it. You
15 know what I mean? Yeah, to see what I saw, yes.

16 **Q** So you're not regularly just sitting there looking
17 through pan tilt zoom cameras onto the sales floor for random
18 things?

19 **A** Sometimes, yes.

20 **Q** Sometimes?

21 **A** Yes.

22 **Q** How often?

23 **A** I could not tell you.

24 **Q** Okay.

25 **A** Whenever I had a moment that I wasn't busy doing

1 something else.

2 Q It was my understanding from the prior testimony that
3 there's a safety team lead. Does that sound familiar?

4 A Yes.

5 Q And during this period of time in June of 2015, would
6 that individual have reported to you?

7 A Yes.

8 Q Okay. And who was it?

9 A I honestly can't recall.

10 Q Did you have regular interaction with that person?

11 A I would have, yes. I want to say maybe -- I can't say
12 because I have had a couple, so I don't want to say and be
13 wrong, yeah.

14 Q I want to know you what's previously marked as
15 Plaintiff's Exhibit 2-B. I'm going to stand away from you.
16 Are you familiar with this?

17 A Very much so.

18 Q Okay. What is this?

19 A This is our store map.

20 Q And, obviously, on the store map, we can see shelves and
21 that sort of thing. But as it relates to your role and the
22 cameras, what does this map show us?

23 A Do you mind if I look?

24 Q If you want to come down in front --

25 A No, you're okay.

1 Q Okay.

2 A This one is a little bit different than what I'm used to.
3 But the one that used to hang in my office that was very
4 similar to this would show where the cameras were out on the
5 floor.

6 Q Okay.

7 A But it would also show where the DVR boxes were up in the
8 ceiling, which is what I primarily used for it. Because if we
9 had a camera or a system go out that needed to be repaired, I
10 would need to know which cabinet to go to.

11 Q Got it.

12 So these cameras that are out on the floor record to
13 different DVR boxes, depending on where they are?

14 A Yes.

15 Q Okay. And are these -- these are the cameras; correct?
16 The things with the arrows?

17 A I'm not familiar with that. I'm not familiar with this
18 map, but if you say so.

19 Q Do you know what PMG means?

20 A I do not.

21 Q You do not. Okay.

22 A Uh-uh.

23 Q Your map in your office, how did it delineate the
24 cameras?

25 A It has, like, little circles like that, but it didn't

1 have the logos in it.

2 Q It didn't have the logos.

3 A Uh-uh.

4 Q Did it have arrows out of the circles?

5 A Not that I recall.

6 Q Not that you recall. Okay.

7 Do you know about how many cameras were in that store in
8 2015?

9 A No, sir. Because I know we had an upgrade. I just --
10 I'm not sure when that upgrade took place.

11 Q This is the zoomed-out version of that. Does that look
12 anymore familiar?

13 A Yes.

14 Q Okay. And so tell the jury about what this tells us
15 about the cameras.

16 A Just where they are -- where they are.

17 Q Where they are.

18 A Yes.

19 Q Okay. And the arrows coming out of the circles, is that
20 where the stationary cameras are pointed?

21 A I'm honestly not sure.

22 Q You're not sure. Okay.

23 A I'm not.

24 Q And do you see on there where you were talking about with
25 the DVR boxes?

1 **A** I'm looking. Sorry. Yeah. Right here and right there.

2 **Q** Okay. The bolded squares?

3 **A** Yes.

4 **Q** Okay. And those DVR boxes at Walmart, physically where

5 are they located? Are they in the ceiling? Are they in a --

6 **A** Yes, in a cabinet in the ceiling.

7 **Q** In a cabinet in the ceiling. Okay.

8 And how long does Walmart retain its videos?

9 **A** The DVR holds footage for usually up to 90 days.

10 **Q** And in order to access that footage over the course of 90

11 days in this store, somebody would have had to make a request

12 through you; is that right?

13 **A** Can you repeat that? I'm sorry.

14 **Q** Yeah. So if someone wanted some footage pulled from the

15 DVR, would that request have come through you?

16 **A** Most likely.

17 **Q** And the PTZ cameras -- sorry -- that we have talked

18 about, do you know how many of those were in the Walmart store

19 in 2015?

20 **A** If we had them then, which I'm unsure of, but if we had

21 them then, I believe it was 32.

22 **Q** Okay. And, in this particular case, we have already

23 marked the video request form. I'm going to hand you --

24 first, I'm going to hand you -- and it's not the greatest

25 copy. But that does look familiar to you?

- 1 **A** Yes. This is my handwriting.
- 2 **Q** That is your handwriting.
- 3 **A** Mm-hmm.
- 4 **Q** Okay. I will hand you an unmarked copy of the video
5 request form.
- 6 **A** Sure.
- 7 **Q** That video request form was signed by Ms. Cooke-Simmons,
8 who we just heard from. And is this the type of form that you
9 would receive in order to pull video?
- 10 **A** Yes.
- 11 **Q** Okay. And when you receive a form like this, what would
12 you do next?
- 13 **A** I would start reading it.
- 14 **Q** Okay. And after you read it and ascertained what it
15 says, what would you do?
- 16 **A** Based on where they're saying this took place, I would
17 try to figure out where an accident took place or -- you know,
18 I was read the description of the customer. Here, I can't
19 quite make out what that says.
- 20 **Q** Okay.
- 21 **A** And then I would see the location and then type of
22 accident. So I would get an idea of what it is exactly I was
23 trying to find.
- 24 **Q** Okay. And, in this case, you did that?
- 25 **A** Yes.

1 Q The document that we will mark as Plaintiff's Exhibit 14
2 will be your handwritten document.

3 (Plaintiff Exhibit No. 14 was marked for identification.)

4 BY MR. WILLEY:

5 Q And that's your signature at the bottom; right?

6 A Correct.

7 Q It's signed Jenny Wright?

8 A Mm-hmm.

9 Q And you completed this on 6/29 of 2015; right?

10 A If that's what it says, yes.

11 Q Okay. So you -- I mean, when you got the video request
12 form, you went and pulled the relevant -- what you thought,
13 you know, were the clips of the customer in the store at that
14 time; right?

15 A I would have tracked her from the time this accident
16 says, you know, and tried to find it. But a lot of times, the
17 times on here, if there's any at all -- which I don't see --
18 then I would try to find it and go from there, yes.

19 Q Okay. And you did that and basically what we marked as
20 Plaintiff's Exhibit 13 [verbatim] is a short timeline that you
21 made of what you saw; right?

22 A Correct.

23 Q Okay. And you underlined twice the phrase that says,
24 "Checks her right foot at 11:34:10." Right?

25 A Yes.

1 Q And so you actually reviewed the video and you were able
2 to see her walk through the store and look at her right foot.

3 A Yes.

4 Q But you did not, at the time that she was in the store,
5 do anything or even know that this was happening; right?

6 A Right. To my knowledge, if this says right here that she
7 submitted this form on the 26th and I didn't do this video
8 until the 29th, that would usually mean that I was not there.

9 Q Okay. Because, normally, you would do it --

10 A The same day.

11 Q -- the same day.

12 A Yep.

13 Q Got it.

14 Do you recall how -- well, strike that.

15 With respect to this incident, did Walmart or anybody
16 from corporate or Mr. Ringer or anyone else come back to you
17 later and ask you to pull more video?

18 A On this particular incident for this same case?

19 Q Yes.

20 A Not to my knowledge.

21 Q Okay. So with respect to June 26 of 2015, which is the
22 day that the incident occurred, nobody at any point in time
23 from Walmart or Mr. Ringer came back to you and said, "We need
24 to pull additional video on this"?

25 A Not to my knowledge.

1 Q Okay. And if they had done that within the 90-day
2 timeframe after the incident, you would have been able to do
3 that; right?

4 A Most likely.

5 MR. WILLEY: All right. So we'll move what we think we
6 have marked as 13 but should be 14 probably into evidence.

7 THE COURT: Which is what?

8 MR. WILLEY: Which is her timeline summary of the videos.

9 MS. BOYD: No objection, Your Honor.

10 THE COURT: It's into evidence.

11 (Plaintiff's Exhibit No. 14 was received into evidence.)

12 BY MR. WILLEY:

13 Q So, Ms. Wright, if Mr. Ringer or Walmart had come to you
14 on July 15th of 2015 and asked you to pull additional video,
15 you would have been able to do that?

16 A Most likely, yes.

17 Q Okay. And if Mr. Ringer or Walmart had come to you on
18 July 21st of 2015 and asked you to pull additional video, you
19 would have been able to do that?

20 A Most likely. But, like I said, it depends on the camera
21 footage. You know, what shot. You would have to pull up that
22 particular shot to see if the video was still there. Some of
23 them were 30 days. Some of them were 60 days. Some of them
24 were 90 days. It all depended on that shot.

25 Q Right. But if we were looking for just general shots of

1 the area she would have been and not her specifically, we
2 should have been able to pull that within -- by July 21st,
3 less than 30 days?

4 **A** Most likely.

5 **Q** And by July 13th, which was just about two weeks; right?

6 **A** Most likely.

7 **Q** And if we were getting video of the general sales floor
8 of the area where she was and someone had come to you on
9 August 5th of 2015 and asked you to pull the video, you would
10 have been able to do that?

11 **A** Most likely.

12 **Q** Okay. And with the 90 days -- and you're very familiar
13 with this camera system; right?

14 **A** Very.

15 **Q** And within the 90-day window, if they had come to you --
16 Walmart had come to you on September 21st of 2015 and asked
17 you to pull additional video, you would have been able to do
18 that?

19 **A** Possibly, yes.

20 **Q** Thank you, Ms. Wright.

21 **A** You're welcome.

22 THE COURT: Cross-examination.

23 MS. BOYD: May it please the Court.

24 THE COURT: Yes.

25 MS. BOYD: Thank you.

CROSS-EXAMINATION

BY MS. BOYD:

Q Hello, Ms. Wright. How are you?

A I'm good.

Q Good, good. I just have a few questions for you.

A Sure.

Q I believe you testified about the ability of the PTZ cameras to count freckles and to see coins on the floor; correct?

A Correct.

Q In those situations, would you have to have an object to zoom in on in order to focus that closely?

A Correct. The camera does -- it has to have something to focus on in order to focus up close, yes.

Q So simply zooming around and scanning the floor would be difficult to zoom in on an object that closely that you're not looking specifically for?

A Correct.

Q And, again, you indicated that that functionality is only available in the live format?

A Correct.

Q So if you were going backwards to look -- investigate an incident, you would not have that capability; correct?

A Correct.

Q So your PTZ cameras wouldn't necessarily catch something

1 minute on the floor from two or three days ago?

2 **A** No.

3 **Q** And I believe you testified that the retention, it
4 depends. You were very unequivocal on that. You said some
5 are 30 days. Some are 60 days. Some are 90 days.

6 What's the differentiating factor to determine the
7 retention?

8 **A** That is still unknown to me.

9 **Q** Okay. So you are not sure which cameras could be
10 retained for 30 days --

11 **A** No.

12 **Q** -- 60 days or 90 days?

13 **A** No.

14 **Q** So when you testified that it's most likely that you
15 would have been able to pull additional footage during those
16 dates that Plaintiff's counsel indicated to you, you're not
17 sure about that; correct?

18 **A** Correct. You would have to try the shot out on that date
19 for whatever times you were looking for, and either it would
20 come up for you or it would tell you it's not available.

21 **Q** Okay. And so -- and you indicated that you did not try
22 to obtain that additional footage?

23 **A** Not to my knowledge, no.

24 **Q** And so you have no way of knowing if that additional
25 footage was available on July 15th?

1 **A** Correct.

2 **Q** And you have no idea -- way of knowing whether it was
3 available on August 4th?

4 **A** That's correct.

5 **Q** And you have no way of knowing definitively that it would
6 have been available on September 21st, I believe?

7 **A** Right. You would just have had to try it, yeah.

8 **Q** So, in general, you tried to obtain video within what
9 period of time? So if you were looking back on an incident,
10 how quickly do you try to obtain the video?

11 **A** As soon as possible.

12 **Q** Okay. But say a customer comes in two weeks later and
13 complains of an incident, you would -- you would then look
14 backwards; correct?

15 **A** Yes, ma'am.

16 **Q** But you do it as soon as possible because you don't know
17 how long it's actually going to be on the cameras; correct?

18 **A** Correct. Plus we have a small window to send it in to
19 CMI.

20 **Q** Okay. But that window doesn't start until you know of
21 the incident; correct?

22 **A** Correct.

23 **Q** And -- one second.

24 **A** Sure.

25 **Q** I think that's all I have for you. Thank you so much,

1 Ms. Wright.

2 **A** You're welcome.

3 THE COURT: Any redirect?

4 MR. WILLEY: Briefly.

5 REDIRECT EXAMINATION

6 BY MR. WILLEY:

7 **Q** Ms. Wright, I'm going to show you a still of one of the
8 videos that you did take. Can you see it, Ms. Wright?

9 **A** Yes.

10 **Q** And this is one of the videos that you pulled from June
11 26, 2015, related to this incident; right?

12 **A** Okay.

13 **Q** And what does this video -- general area of this video
14 show?

15 **A** That is the grocery action alley.

16 **Q** Okay. And it says down at the bottom, PTZ 024. Do you
17 see that?

18 **A** I do.

19 **Q** Any still that's labeled with PTZ, would that indicate
20 that it came off a PTZ camera?

21 **A** Correct.

22 **Q** And a PTZ camera, again, is that pan tilt zoom camera
23 that allows us to zoom in on objects as small as a coin on the
24 floor?

25 **A** Only in live footage.

1 Q Right. In live footage.

2 A Yes.

3 Q And so if Walmart had safety personnel that were using
4 the PTZ cameras on the action alley, they would be able to use
5 those cameras to zoom in on that floor in real-time and see if
6 there's ever anything on the floor that poses a danger to
7 their customers; right?

8 A I would think so, but there's usually no need to be
9 looking at a floor. You are usually looking for theft.

10 Q Right, because that's what asset protection is about,
11 looking for theft; right?

12 A Theft and safety issues, but, you know, not small items
13 on the floor, no.

14 Q Like nails.

15 A Like nails.

16 Q Thank you.

17 THE COURT: You may step down.

18 Any objection to this witness being excused?

19 MR. WILLEY: No. Thanks, Ms. Wright.

20 THE WITNESS: You're welcome.

21 THE COURT: Any objection from defense?

22 MS. BOYD: No, Your Honor.

23 THE COURT: You're free to leave. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: You may call your next witness.

1 MR. WILLEY: My client needs a break. Can we take a
2 short --

3 THE COURT: We'll -- Madam Forelady, ladies and gentlemen
4 of the jury, I'm going to ask if you retain or return to the
5 jury room, but once again, do not ask us the case.

6 (The jury exited the courtroom at 2:46 p.m.)

7 (A recess was taken from 2:46 to 2:59 p.m.)

8 THE COURT: Anything from the defense?

9 MS. BOYD: No, Your Honor.

10 THE COURT: We're ready for the jury.

11 (The jury entered the courtroom at 3:00 p.m.)

12 THE COURT: Mr. Willey, you may call your next witness.

13 MR. WILLEY: The plaintiff calls Allen Pavlovich.

14 THE COURT: Yes, sir. Please come forward. I'm going to
15 ask, if you could, to please come forward to the clerk. Place
16 your left hand on the Bible and raise your right hand as the
17 clerk administers the oath. Approach the bailiff there. Left
18 hand on the Bible. There we go. All right. The other left
19 hand. There you go. All right.

20 ALLEN PAVLOVICH,
21 the witness, after having been duly sworn, was examined and
22 testified to as follows:

23 THE COURT: Yes, sir. Please come around. Watch your
24 step and have a seat in the witness chair. I'm going to ask,
25 if you could, to pull up real close to that microphone and

1 speak loudly, clearly, and slowly in order that we can hear
2 everything that you have to say.

3 If you feel comfortable doing so, you can remove your
4 mask so we can hear you better, and we'll start with your full
5 name, please, sir.

6 THE WITNESS: Yes. My full name is Allen Michael
7 Pavlovich.

8 THE COURT: Very good.

9 Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. WILLEY:

12 Q Good afternoon.

13 A Good afternoon.

14 Q You and I have not met before today; right?

15 A Not that I recall.

16 Q Okay. And your current position is what?

17 A I'm a general manager for special projects.

18 Q And for what company?

19 A Walmart.

20 Q And what does that mean? What do you do as a general
21 manager for special projects?

22 A I implement different network-wide projects throughout
23 the company.

24 Q And can you give us some examples?

25 A Next-level automation, for example, or process

1 improvement projects for the network.

2 **Q** Okay. What is next-level automation?

3 **A** Perhaps a lifting system. Some of these items are
4 proprietary so I really am not at liberty to talk about the
5 details of Walmart's steps, and I don't know if this is
6 relevant to this case.

7 **Q** Okay. In June of 2015, were you working for Walmart?

8 **A** No, sir.

9 **Q** When did you start working for Walmart?

10 **A** I started working for Walmart in October of 2019.

11 **Q** And when you started working for Walmart, what was your
12 position?

13 **A** General manager for the distribution center.

14 **Q** Okay. And how long were you in that position?

15 **A** Just about two years.

16 **Q** Okay. So you started as the general manager for the
17 distribution center in October of 2019?

18 **A** That is correct.

19 **Q** And you moved positions about October of 2021?

20 **A** August of 2021.

21 **Q** Okay. And when you say that you were the general manager
22 for the distribution center, tell the jury what that means.

23 **A** That means I'm responsible for the operation of the
24 regional distribution center that services 130-plus stores for
25 general merchandise. So I'm responsible for warehouse

1 operations within that distribution center.

2 Q And what distribution center were you responsible for?

3 A Distribution Center 6040 in Hope Mills, North Carolina.

4 Q Prior to coming to work for Walmart, what did you do?

5 A I was the director of operations for a company called
6 T. Marzetti.

7 Q In October of 2020, some of the lawyers involved in this
8 case took your deposition. Do you recall that?

9 A I recall a long --

10 Q Deposition?

11 A Yes.

12 Q In October of 2020, you had worked for Walmart at that
13 point for about a year?

14 A That would be approximately correct.

15 Q And you understood that that was what we called a
16 30(b)(6) deposition?

17 A I don't know what 30(b)(6) means.

18 Q You understood that when you gave that deposition that
19 you were speaking as Walmart as to certain topics; right?

20 A Yes, sir.

21 Q Okay. And those topics were generally related to how
22 pallets are handled in the distribution center?

23 A Yes, sir.

24 Q And you understand that the relevant time period in this
25 case would have been June 26 of 2015 is when the incident

1 occurred?

2 **A** I understand now, yes.

3 **Q** Okay. And you did not work for Walmart in the
4 distribution center or otherwise in 2015; right?

5 **A** No, sir, I did not.

6 **Q** Okay.

7 **A** At that time, I was a supplier to Walmart.

8 **Q** So when Walmart made you as their representative as to
9 those matters in October of 2020, you really were only able to
10 speak as to things that had occurred since October of 2019
11 when you started; right?

12 **A** I'm aware of -- I was trained on Walmart policies and
13 procedures before, and I could witness those operations for
14 the one-year period of time at that time.

15 **Q** And tell the jury, as the general manager, distribution
16 center, what is the distribution center and how does it
17 operate just in kind of a 10,000-foot view.

18 **A** Distribution center is essentially for regional
19 merchandise. It's essentially an operations where all the
20 in-bound freight comes into the building and then we receive
21 it into the building and distribute those items to the
22 different stores within the Walmart network.

23 **Q** And the distribution center that you worked at in 2019
24 and 2020 distributed merchandise to the Florence, South
25 Carolina, store on Beltline?

1 **A** That is correct. Florence store was one of our customers
2 for the general merchandise.

3 **Q** Okay. And tell the jury about the different types of
4 pallets that would go through your distribution center and go
5 out to the Walmart Stores.

6 **A** So there's really -- there's essentially two type of
7 pallets that we handle. It would be white wood pallets and it
8 will be leased CHEP pallets that we handle that could
9 potentially go to a store. Now, white wood pallets will
10 typically be part of a display item.

11 **Q** And CHEP pallets are what? What do CHEP pallets look
12 like?

13 **A** In color, they are blue and they are typically maintained
14 by the CHEP company. They're leased pallets.

15 **Q** And so Walmart leases pallets from the CHEP company;
16 correct?

17 **A** Correct.

18 **Q** And Walmart uses those pallets for purposes of its
19 internal distribution; correct?

20 **A** Correct.

21 **Q** Now, the white wood pallets, explain to the jury what
22 they look like in general.

23 **A** So they look very similar in structure except they're not
24 owned by CHEP. They're not painted blue, and they meet the
25 general industry standards for quality, as Walmart prescribes

1 to each vendor particular standards.

2 **Q** And those pallets come in from whoever the vendor is that
3 is supplying the product; right?

4 **A** They will be coming from a qualified vendor -- qualified
5 Walmart vendor.

6 **Q** And Walmart has a process that you have to go through in
7 order to sell things in their store; correct?

8 **A** Absolutely. I can tell you that, from a personal
9 experience, as I was a vendor to Walmart, they have extremely
10 rigorous standards and requirements.

11 **Q** Okay. And the other main difference between the CHEP
12 pallet and the white wood pallet is you mentioned the white
13 wood pallet is typically part of a display?

14 **A** If it goes to the store. Otherwise, it wouldn't go to
15 the store. If it goes to the store, it's typically a design
16 pallet for a floor display.

17 **Q** So the white wood pallets that come in through the
18 distribution center with merchandise that is not going to be
19 displayed on that pallet in the store, what happens to that
20 merchandise?

21 **A** That gets put into our own modules and then it ends up --
22 the pallets get disposed of.

23 **Q** And with respect to the vendor displays that come in to
24 the distribution center, they come in fully packaged; right?

25 **A** Yes, sir.

1 Q Okay. And they go to the store just as they came in,
2 fully packaged?

3 A Yes, sir.

4 Q And once they leave the distribution center, your
5 operation doesn't have any control over them at all really;
6 right?

7 A So once they leave the operation center, the distribution
8 center, they go on a Walmart trailer, and the Walmart trailer
9 goes to the Walmart store.

10 Q Okay. And you told us in your deposition that, when
11 these pallets come in, obviously, there's a visual inspection.
12 You'll look at it essentially to make sure that it's not going
13 to fail in terms of being able to support the merchandise;
14 right?

15 A Yes. These pallets are typically designed to carry
16 weight of in excess of 2,000 pounds. Display items, typically
17 are not nearly that heavy, typically not. And we will do a
18 visual inspection upon receipt of the goods and then we'll do
19 a visual inspection before we would send the goods out to the
20 store.

21 Q And when those white wood pallets go to the store and the
22 product is sold, what happens to the pallet at that point? It
23 comes back on a truck; right?

24 A So what happens in the store, I don't know. I'm not -- I
25 have never worked in a Walmart store, so I can't attest to

1 that.

2 Q That's fair.

3 A When they are returned, they go to a recycler or a third
4 party that will store the pallets. And what they do with
5 them, I don't know. They do not come back. Those white wood
6 pallets do not come back into the building.

7 Q Those white wood pallets go into the recycling folks, and
8 they sell or distribute them, however they do, to other
9 vendors?

10 A I do not think that they go to other vendors. I can't --
11 I can't testify to that. That's a third-party company. What
12 they do with the pallets that come back from Walmart, I just
13 can't tell you that.

14 Q Right. And I think I asked you -- or they asked in your
15 deposition, they said, "And does Walmart have any knowledge as
16 to the life of that white wood pallet owned by the vendor
17 before it shows up at the loading dock of your distribution
18 center?"

19 A The pallet has to meet the Walmart specifications. So --
20 and I only know that because I was a vendor to Walmart and I
21 have seen those specifications before.

22 Q All right. But you nor Walmart knows where that pallet
23 was before; right?

24 A It will have to meet the requirements of the
25 specification, which may require that part as well of the

1 vendor to certify.

2 **Q** Mr. Pavlovich, I have just handed you your deposition.
3 And if you will look on page 54, you were asked the question:
4 "Okay. And does Walmart have any knowledge as to the life of
5 that white wood pallet owned by the vendor before it shows up
6 at the loading dock of your distribution center?"

7 **A** Which line are you reading?

8 **Q** Line 12 through 15.

9 **A** On which page?

10 **Q** 54.

11 **A** Okay.

12 **Q** And the question was: "And does Walmart have any
13 knowledge as to the life of that white wood pallet owned by
14 the vendor before it shows up at the loading dock of your
15 distribution center?"

16 And what was your answer?

17 **A** The answer here was, "No, sir," but I don't know the
18 specifics but they do have to meet -- I never said that they
19 don't have to meet Walmart requirements.

20 **Q** Okay. And going down to line 22, you were asked, "And it
21 could also be an old white wood pallet that they have used
22 over and over and over again. That's also a possibility."

23 And your answer -- and your answer was, "That would not
24 be necessarily a high likelihood. I would have to refer that
25 to our contracts with our vendors. I do not know precisely

1 what specification we have imposed on our vendors."

2 Is that your answer?

3 **A** That's what it looks like. That's what I said.

4 **Q** Okay. And when you gave this deposition, you understood
5 that you were under oath?

6 **A** Yes, sir.

7 **Q** Okay. And if you will go to page 8. And I'm going to
8 look -- direct your attention to line 24 and 25. You
9 understood in that deposition that you -- it says, "So you are
10 here as a representative of Walmart." You understood that;
11 right?

12 **A** Yes, sir. You told me that.

13 **Q** Okay.

14 **A** Or whoever was the attorney there.

15 **Q** Yes.

16 And if you'll go to page 9 on line 5, the question was,
17 "And, as such, when you give an answer, that is the answer of
18 Walmart. So if you, for instance, say, 'I don't know,' what
19 will you're saying is Walmart does not know. So I just want
20 to be clear on that. I don't want you to accidentally say
21 that Walmart doesn't know something it might know. Make
22 sense?"

23 And your answer was, "It makes sense, but of course I
24 don't know everything Walmart knows."

25 Right?

1 **A** Yeah.

2 **Q** Okay. And so you understood in that deposition that the
3 answers you were giving were on behalf of Walmart?

4 **A** Yes, sir.

5 **Q** Okay. And your answer in the deposition about whether or
6 not Walmart knew the life of the white wood pallets that comes
7 in its store was "no, sir," right?

8 **A** That was not the question, sir.

9 **Q** Okay. Let's go back to it. It was on page 54, as I
10 recall. "Okay. And does Walmart have any knowledge as to the
11 life of that white wood pallet owned by the vendor before it
12 shows up at the loading dock of your distribution center?"

13 Answer: "No, sir."

14 Did I read that correctly?

15 **A** But, sir, not every white wood pallet would qualify to go
16 to the store.

17 **Q** Sure. I didn't ask about pallets that go to the store.
18 Did I read that question and answer correctly?

19 **A** You were just telling me -- in this conversation right
20 now, you were asking me a question, does Walmart know about
21 the -- what's the life of the pallet before it goes to the
22 store, and that implies -- that question implies that the
23 pallet is going to be sent to the store.

24 **Q** So the question that --

25 **A** So I can tell you the pallet that's going to go to the

1 store is very different than a potential transportation only
2 pallet that will not make it to the store.

3 **Q** Sure. And the question that I asked you was: "And does
4 Walmart have any knowledge as to the life of that white wood
5 pallet owned by the vendor before it shows up at the loading
6 dock of your distribution center?"

7 And your answer was, "No, sir."

8 Right?

9 **A** Other than meeting the standards, that's correct.

10 **Q** Okay. And with respect to the question ahead of that, on
11 page 54, question 3, the question was, "So a vendor sends you
12 a pallet of something. I don't know, it doesn't matter. A
13 pallet of something that's on a white wood pallet that is more
14 than unlikely not a white wood pallet that's actually owned by
15 the vendor."

16 And your answer was, "Yes, sir. That would be part of
17 their packaging. Just like the vendor sends you a package in
18 a box and you open the box, the pallet is part of the
19 packaging." Right?

20 **A** That goes to the distribution center. But that pallet
21 does not -- there's only certain types of pallets that will go
22 to the store.

23 **Q** I understand. And the pallets that go to the store as
24 part of the displays, we have already heard testimony and I
25 think you will testify that the vendor displays that go to the

1 store on the pallet are, in fact, on white wood pallets;
2 correct?

3 **A** Yes. Specific white wood pallets. But there's other
4 white wood pallets that the distribution center could get
5 that's just for transportation purposes only.

6 **Q** Right. And when there's other white wood pallets coming
7 to the distribution center for transportation purposes only,
8 Walmart actually takes the product off of those white wood
9 pallets and puts them on CHEP pallets; right?

10 **A** No, sir.

11 **Q** Oh, so what happens?

12 **A** That product is typically taken into the module, okay,
13 order filling module. And then when the order fill is --
14 order fill that particular product, they use -- it's basically
15 like a shelf in a grocery store. They pick up a number of
16 cases. They put the right store label on it, put it on the
17 conveyor belt, and those -- that merchandise will typically
18 get floor loaded on to the truck that will go to the store.

19 **Q** Okay. So that merchandise that doesn't arrive on the
20 vendor display pallet but is on a white wood pallet typically
21 gets taken off and gets floor loaded.

22 **A** In vast majority of the case. There are some specific
23 situation where what we call a non-con, non-conveyable,
24 product, where the product cannot fit through our conveyer
25 system. In that case, you know, if it's too big, too heavy or

1 something along those lines, then particular product could
2 potentially be taken directly to the truck.

3 **Q** And when a vendor display pallet, white wood pallet,
4 comes in to the distribution center, nobody ever takes the
5 product off of the pallet to look at the pallet to see what
6 kind of nails are in there or how many nails or anything like
7 that; right?

8 **A** No, sir. That pallet is a finished product that gets
9 shipped to the store in its original form.

10 **Q** From the vendor?

11 **A** From the vendor.

12 **Q** And Walmart distribution center doesn't know what kind of
13 nails might be in the pallet, how many nails, etc.; right?

14 **A** It will still have to meet the requirements of the
15 Walmart specifications, but not -- I think your specific
16 question, when I was answering this question in deposition of
17 whoever the attorney may have been, was that we take the
18 pallet and take it apart. And the answer is we do not take
19 pallets apart. We don't do that at Walmart at all.

20 But I can tell you that if -- I have never seen a pallet
21 that's been broken that did not have a particularly --
22 particular type of nails in them. You would imagine a
23 transportation process or the pallet could be bumped, there's
24 particular type of nails that are typically used for it.

25 I have been in the supply chain for 22 years, and I have

1 not seen short types of roofing tacks or nails in any one of
2 the pallets in any one of the buildings I have ever worked at.
3 And, quite frankly, when a pallet is designed to carry a load
4 of about 2,000 pounds or more, it is very unlikely it will be
5 even be able picked up if it was secured with a short nail
6 that does not meet the industry standard for the pallet
7 building.

8 **Q** Right, if the whole pallet were constructed with a short
9 nail that didn't meet industry standards, it might fail;
10 right?

11 **A** Well, even in one board was not -- not secured properly,
12 that board will fall off in the process of being lifted with a
13 forklift.

14 **Q** Right. And when the forklift or the pallet jack would
15 lift that board and if that board lifted at all, there's a
16 likelihood that that nail could fall out of the board; right?

17 **A** If that was to happen. But in the 22 years of my
18 experience in the supply chain, I have not ever seen a short
19 nail like that, whether I was working for Walmart vendor or
20 Walmart itself.

21 **Q** Now, you have actually never been to the Florence store;
22 correct?

23 **A** No, sir.

24 **Q** And you don't have any experience with what the farmers
25 that send you the watermelon bins might do to repair the

1 pallets on the farm; right?

2 MS. BOYD: Objection, Your Honor. There's no evidence of
3 any pallets coming from farmers.

4 THE COURT: Sustained.

5 BY MR. WILLEY:

6 Q Do you have any knowledge of every vendor that sends
7 pallets into Walmart, what they might use to repair the
8 pallets?

9 A All of the vendors that service Walmart have to meet
10 Walmart standards.

11 Q And the way that we know that they meet Walmart standards
12 is we look at pallets that are already loaded with product;
13 right?

14 A They have to certify to Walmart they are meeting specific
15 standards. We do visual inspection. What we look for is not
16 the construction of the pallet itself. We are looking for
17 visual damages that could potentially be a hazard to our
18 associates.

19 At Walmart distribution, our base belief -- our core
20 belief is the life and health of our associates is priceless
21 and valuable, and every decision is founded on that base
22 belief. There's absolutely no decision that can be made
23 without considering the life and health of our associates as
24 priceless and valuable.

25 We are not the customer interfacing location, so from

1 that perspective, I cannot comment on what happens on a store
2 side, but I would never allow nor would I imagine any one of
3 Walmart leaders to allow an unsafe condition to transpire in
4 the building that could potentially create a risk for our
5 associates.

6 Q Well, we know that there are some pallets that get into a
7 Walmart from time to time that don't comply with the
8 specifications; right?

9 MS. BOYD: Objection.

10 THE COURT: Sustained.

11 MR. WILLEY: Can we approach?

12 THE COURT: Yes.

13 BENCH CONFERENCE

14 (A bench conference was held off the record outside of the
15 hearing of the jury and others.)

16 (Open court resumes as follows:)

17 BY MR. WILLEY:

18 Q Okay. Mr. Pavlovich, just to be clear, on page 55 of
19 your deposition, you told the attorney under oath that you do
20 not know precisely what specification Walmart has imposed on
21 its vendors; right?

22 A I cannot recite them, no. I have seen them in the
23 past --

24 Q But you know in general, as the distribution manager --
25 the distribution house manager, that there are some

1 specification that the vendors have certified that they are
2 complying with?

3 **A** Yes, sir.

4 **Q** And there's nothing done at a distribution center in
5 terms of taking product off of pallets and spot-checking or
6 doing the survey or anything else to check that other than
7 just visually inspecting the sides of the pallet as it comes
8 in; correct?

9 **A** Are we talking about the pallets -- display pallets now
10 or are we talking about --

11 **Q** Display pallets.

12 **A** Display pallets we would not take apart at the
13 distribution center.

14 **Q** Thank you, sir.

15 THE COURT: Cross-examination.

16 MS. BOYD: May it please the Court.

17 CROSS-EXAMINATION

18 BY MS. BOYD:

19 **Q** Good afternoon, Mr. Pavlovich.

20 **A** Good afternoon.

21 **Q** How are you?

22 **A** Doing good. How are you?

23 **Q** I'm well.

24 The first thing I want to address with you is -- I think
25 there's a little confusion about your deposition testimony

1 versus your testimony here today. Plaintiff's counsel asked
2 you what you knew about the life of a pallet before it entered
3 a store; is that correct?

4 **A** Before it entered the distribution center, if I can
5 remember correctly.

6 **Q** In your deposition.

7 **A** Yeah.

8 **Q** But what did he ask you here today?

9 **A** He asked me what happened with the pallet before it got
10 sent to the store.

11 **Q** And in your deposition, what were you asked?

12 **A** What was the life of the pallet before it got to the
13 distribution center.

14 **Q** Are those often two different types of pallets?

15 **A** They are -- they are very -- two very different types of
16 pallets.

17 **Q** How so?

18 **A** The aisle displays, or the vendor displays, are designed
19 as full displays themselves, and as such, they will be sent to
20 the store in that condition. Other shipping pallets are not
21 intended to be on a store floor. They're intended just for
22 the shipping purposes. They're not, if you want to say it, as
23 pretty, or they're not -- they're not necessarily brand new
24 pallets either. They are not necessarily designed for that.
25 They could potentially be designed for reuse but not -- not on

1 a floor of a Walmart store and it would not leave our
2 building. That pallet is actually -- once we are done with
3 it, will go to our third-party recycler.

4 **Q** And to be clear, when plaintiff's counsel asked you if
5 your deposition, "And does Walmart have any knowledge as to
6 the life of that white wood pallet owned by the vendor before
7 it shows up at the loading dock of your distribution center,"
8 what pallet were you referring to when you answered?

9 **A** I was referring to the general pallet that's used for
10 transportation purposes. It was not -- the question was not
11 specific to the vendor display pallets.

12 **Q** Okay. And you did give testimony about vendor pallets in
13 that deposition. And I'm going refer you to your testimony on
14 page 55, starting at line 5. Can you please read that?

15 **A** "What I can tell you is that the pallets need to meet the
16 integrity and information criteria when they come inside of
17 the building, and those are not pallets that will ship a
18 product to the store only unless they are part of a display
19 item."

20 **Q** And so the question -- the question -- your answer, you
21 indicated that there's a difference between the pallets that
22 are solely coming to the distribution center and the ones that
23 are going out of the door to the stores; correct?

24 **A** That is correct.

25 **Q** And, so, is it your understanding, as you testify here

1 today, that the standards for the displays is established to
2 the vendors by Walmart?

3 **A** Yes, ma'am.

4 **Q** And plaintiff's counsel asked you about your tenure with
5 Walmart, specifically about the fact that you started working
6 for Walmart in 2019. But during your deposition, did you
7 indicate that the policies and procedures had not changed
8 since 2015?

9 **A** Yes, I have.

10 **Q** Okay. And so it's your understanding that everything you
11 have testified about, about your knowledge of the distribution
12 center, would have also been in place on June 26, 2015?

13 **A** That is my understanding.

14 **Q** Okay. And you also talked about fully packaged displays.
15 What does fully packaged mean?

16 **A** That means there's actually a cover on the display that
17 will cover the product, the merchandise, that will protect it
18 from dust or different items in the transportation process.
19 So when you come in -- for example, we get a heavier flow of
20 those pallets right around this time when we're preparing for
21 the Black Friday sale or Christmas sales, so they may actually
22 have a cardboard cover on -- that will cover the actual
23 merchandise. So when it gets to this store, the store
24 associate, I would assume, would just take the cover off and
25 display the item. So they're fully packaged and prepared by

1 the vendor as a display item that is designed to be displayed
2 in the aisle of the store.

3 Q And when you say it's fully covered, that's the
4 merchandise but not the pallet itself; correct?

5 A That is correct, ma'am. The merchandise is covered but
6 the pallet is still visible on the edges.

7 Q Okay. And when you do the visual inspection of those
8 pallets, you're not simply looking for damage. Are you also
9 looking for potential safety hazards?

10 A We're absolutely looking for potential safety hazards,
11 and it will be done twice -- minimum of two times, possibly
12 three times or four times, actually, because if the pallet
13 comes into the distribution center, it will be visually
14 inspected by the receiving associate. It will be taken and
15 put away in its storage location if it needs to be stored, and
16 then it will be picked up by an associate who is also
17 responsible to inspect the pallet, and it will be loaded by
18 another associate who will also inspect the quality of the
19 pallet.

20 Typically, these pallets will be loaded in the nose of
21 the truck or in the back of the truck that will aid in a load
22 securement process, and, as such, they will also be inspected
23 by a person that validates the closure of the truck that it
24 meets standards.

25 Q Okay. And is it your testimony here today that Walmart

1 relies on its vendors to ensure that pallets meet industry
2 standards before they are sent to your distribution center?

3 **A** Yes, ma'am.

4 **Q** And Walmart communicates those standards prior to
5 accepting products into its distribution center?

6 **A** Yes, ma'am. My understanding is Walmart -- well, I know
7 it because I was a Walmart vendor -- requires specific
8 industry standard requirement for the structural quality of
9 the pallet and appearance, especially, if it's going to be
10 used as an actual display inside of a store.

11 **Q** Thank you. I have no further questions.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. WILLEY:

15 **Q** So the vendor-prepared display, the sort of thing that
16 would stay on its white or red pallet all the way into the
17 store, okay --

18 **A** White wood pallet.

19 **Q** White pallet.

20 That vendor-prepared display arrives at your distribution
21 center from the vendor on the truck and this is its first
22 interaction with Walmart ; right?

23 **A** It could have gone through a cross dock somewhere else in
24 a different building.

25 **Q** Okay. But, at this point, Walmart hasn't inspected this

1 thing at all so far. It just came from the vendor; right?

2 **A** Correct.

3 **Q** Okay. All right. And then y'all perform an inspection.

4 You do that visual inspection for damage and you go through

5 those five things that we have talked about and you say that

6 pallet passes. Everything is good. All right?

7 **A** Yeah.

8 **Q** Then that pallet, with the vendor-prepared display on it,

9 would then, when it's ready to go to a store, go into a truck

10 along with a majority of floor-stacked items, and it would go

11 to the store; right?

12 **A** Yes, sir. Those particular trailers are typically

13 located from the floor to the ceiling without -- with very

14 little wiggle room inside of them, and that's why we load the

15 floor-load trucks because it gives us opportunity to take full

16 advantage of the cube space inside of the trailer and secure

17 the load that way.

18 **Q** All right. And then the store unloads it, and that's

19 where your knowledge stops. Right?

20 **A** Yeah, I do not -- I cannot testify to what store does --

21 what's the unloading process in the store. I have not been

22 part of that.

23 **Q** How do pallets get damaged? Like what sorts of things?

24 **A** It could be hit by a fork truck. That's probably -- or

25 scraped in a drive-by that's in a distribution center. That

1 will be the most common item. Or it would be improperly
2 loaded inside of the trailer and then you would -- those type
3 of damages are typically pretty significant that are widely
4 obvious. If the pallet is broken, you see it.

5 Q It's typically the handling of the pallet; right?

6 A Yeah.

7 Q So, on forklifts, on hand lifts, however the pallet is
8 handled, typically that is what damages it; right?

9 A It's -- typically, you would not see a very large damage
10 from a pallet jack just because there's not enough power to
11 make any significant impact to this type of item. Typically,
12 if it's damaged like that, it will require some part of the
13 power equipment to do so, typically.

14 Q Okay. So, typically, in the handling of the pallets is
15 how they're damaged; right?

16 A Yes. If you don't touch it, it's not going to get
17 damaged.

18 Q And you have no knowledge of the handling of the pallets
19 at Walmart once they get to the store; fair?

20 A That's fair.

21 Q Thank you.

22 THE COURT: All right. Any objection to this witness
23 being excused?

24 MR. WILLEY: No, sir.

25 MS. BOYD: No, Your Honor.

1 THE COURT: You may -- you're free to leave. Thank you,
2 sir.

3 THE WITNESS: All right.

4 THE COURT: You may call your next witness.

5 MR. WILLEY: I call Christian Jones, please.

6 THE COURT: Mr. Jones, please come forward, if you could.
7 I'm going ask you to approach the bailiff right here. Place
8 your left hand on the Bible and raise your right hand as the
9 clerk administers the oath.

10 CHRISTIAN JONES,
11 the witness, after having been duly sworn, was examined and
12 testified to as follows:

13 THE COURT: I'm going to ask, if you could, to have a
14 seat in that witness chair. Pull up real close to that
15 microphone. Speak loudly, clearly, and slowly in order that
16 we can hear everything that you have to say.

17 And let's start with your full name. If you feel
18 comfortable doing so, you can remove your mask.

19 Thank you, sir. And your full name?

20 THE WITNESS: Christian Jamal Jones.

21 THE COURT: Very good, Mr. Jones.

22 Yes, sir.

23 MR. JEFFERIES: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. JEFFERIES:

Q Good afternoon, Mr. Jones. Will you tell us briefly what your relationship is with the plaintiff, April Jones?

A That's my mom.

Q Okay. Are you an only child?

A No, sir. I have four other siblings.

Q Four other siblings. How many? You have brothers and sisters; right?

A Two brothers and two sisters.

Q And what are all their names?

A Chelsea, Brooke, Isaac, and Jason.

Q So it's you, Chelsea, Brooke, Isaac, Jason. Where do you fall in the line? You know, are you the baby or the oldest one?

A I'm the oldest.

Q It's kind of like you have four kids of your own in a way, huh?

A Yeah.

Q Do you have children of your own, by the way?

A Yes. I have two children.

Q You have two children. What do you have?

A Two boys.

Q Two boys.

Do they have cousins?

1 **A** Oh, they have plenty of cousins.

2 **Q** How many grand kids does April have altogether?

3 **A** Eleven.

4 **Q** And your children are how old?

5 **A** Three and seven.

6 **Q** Three and seven.

7 I want you to think -- you know, I'm going to ask you
8 questions that are going to be probably a little tough to
9 answer because this is your mom, and I get that. So we'll
10 take our time and go through it. And if you need anything,
11 tell me just to hold on a second and I'll do that. All right?

12 I want to take you back to 2015 -- early 2015, back
13 before the incident at Walmart. All right?

14 **A** Yes.

15 **Q** Back then, where were you living? What were you doing?
16 What was your life all about?

17 **A** I was living in Georgia. During that time, I was doing
18 remodeling and renovations.

19 **Q** Residential construction? Commercial?

20 **A** Residential and commercial.

21 **Q** At that time, your children had not been born yet; is
22 that right?

23 **A** My youngest wasn't born yet, yes.

24 **Q** So you're down there. You're -- whereabouts in Georgia
25 were you living?

1 **A** Statesboro.

2 **Q** I'm not familiar with Statesboro. Whereabouts is that?

3 **A** It's where Georgia Southern University is, basically.

4 That campus, yes.

5 **Q** So you're there in Statsboro. You're doing commercial --

6 I mean, residential construction, that sort of thing. How did

7 you find out what happened to your mother about her stepping

8 on a nail?

9 **A** My sister, Brooke, called me.

10 **Q** And when you first -- excuse me. When you first heard

11 about it, did you realize at that time how serious it was

12 ultimately going to become? Or what impression did it make on

13 you, if any, at that time?

14 **A** I was kind of confused at first, to be honest with you.

15 I didn't think it was that extreme at first until I saw my mom

16 foot. That's when I was like, well, yeah, this is kind of

17 serious.

18 **Q** When did you first see your mother's foot?

19 **A** I think -- I believe it was during -- I want to say --

20 no, I seen my mother foot after the surgery.

21 **Q** After the first --

22 **A** After the first surgery.

23 **Q** And that first surgery, I don't know if you have seen

24 these --

25 MR. JEFFERIES: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. JEFFERIES:

3 Q I don't know if you have seen these pictures before. And
4 if you haven't, that's okay. That first surgery is where they
5 took out her second toe. Is that your memory of it?

6 A Yeah. Yes, that's the first -- that was the first. Yes,
7 I remember that.

8 Q And that was back in July of 2015.

9 A Yes.

10 Q And, at that time, that's when you realized, man, there's
11 something more going on here than just a run-of-the-mill
12 puncture wound?

13 A Yes.

14 Q All right.

15 A I believe, during that time, that's when I noticed -- I
16 think we was at a family function and I was helping my mom
17 move around, and her foot started bleeding. Well, we had to,
18 you know, undress it and then redress it. And that's when we
19 noticed that the gangrene was -- it was starting to form. And
20 I asked my mom, I said, "Well, you know, the gangrene is
21 starting to form. You know, don't you need to call them or
22 something like that?"

23 So she was like, "Well, you know, when we come back from
24 the family function." It was like a mini-family reunion, that
25 she was going to call the doctor. But I believe she had

1 already called the doctor's already. I'm not sure.

2 Q And that's what put the rest of this in motion, this
3 other --

4 A Yes.

5 Q -- next amputation, which was more of her foot?

6 A Yes.

7 Q That one there.

8 A Yes.

9 Q In August.

10 A Yes. I'm not familiar with the two toes. I thought it
11 was, like, all the rest of the -- half a foot, to be honest
12 with you.

13 Q Well, ultimately it was, unfortunately.

14 Family functions, is that something y'all did prior to
15 this injury? Is that something that y'all did somewhat
16 routinely? My mother's family always loved -- they got
17 together all the time; my father's family never
18 (indiscernible). Were you one of those families that did a
19 lot of that?

20 A Yes, especially during the summertimes, yes.

21 Q Do you have a big family?

22 A Yes.

23 Q Where would y'all go? What kinds of places? The
24 mountains? Beach?

25 A It's pretty much like -- we'll go where the family

1 decides that year. Some years, we'll go to Atlantic City.
2 You know, to Myrtle -- not to Myrtle Beach, but Atlantic City.
3 We'll go to the boardwalk, go to the beach. Then some
4 summers, we'll go to Myrtle Beach. Some summers we'll decide,
5 you know, if we want to go to Alabama to visit family. But we
6 were basically trying to -- you know, since we have got a big
7 family, we're basically trying to bring the family back in the
8 routine of having big family functions at the time.

9 **Q** And that was something that you participated in and your
10 mom participated in primarily (indiscernible)?

11 **A** Yes.

12 **Q** How has it been since she had her leg amputated in 2016?
13 Have y'all -- have you been able to do it? Has she -- have
14 these functions happened?

15 **A** Not -- not regularly, no. Some of the routine -- some of
16 the family functions, yes, we still have, but it's kind of
17 difficult, to be honest with you. Like as far as, like, going
18 to the beach, she can't go into water no more. I mean,
19 there's no way to get her to the sand and to the water, you
20 know, in a wheelchair.

21 **Q** Right. So a beach vacation is out.

22 **A** Unless she's on a boardwalk and watching from afar, yes.

23 **Q** Let's talk back kind of in this period where she's having
24 these amputations done. I know you were living in Georgia,
25 Statesboro. Are you -- were you coming up here to help out

1 some of the time? Going back and forth? What was going on?

2 **A** Yes. It's been real difficult, I'm going to be honest
3 with you. A couple of jobs I had to leave because my mom
4 needed more help than -- you know, my sisters and brothers at
5 the time, they had they family, they had they kids, and a lot
6 of them, you know, they were just pretty much wrapped up. So
7 I was like, well, you know what? I'll just come back. I'll
8 find something here. So I take my time and come back, find a
9 little job here, and try to, you know, help my mom as much as
10 possible. But it's been a struggle on every last one of our
11 family members.

12 **Q** And, before this, she was -- was she on her own? Was she
13 fine or did y'all have help then too?

14 **A** No, not really. My mom is kind of a strong-minded
15 person, strong-willed person, so she pretty much, you know,
16 handled everything on her own. She was, you know, kind of
17 independent with doing everything on her own.

18 **Q** Taking care of the house, cooking?

19 **A** Yes.

20 **Q** Taking care of you kids? Taking care of the grand kids?

21 **A** Yes.

22 **Q** But then, after this, it got such that you had to
23 actually leave your home and your employment in Statesboro,
24 Georgia, to come up here and help out?

25 **A** Yes.

1 Q All right. And how long were you here for helping out?

2 A Sometime a year. She'll get better and then -- it's kind
3 of up and down. You know? Not only with that, during these
4 durations of the time, she was going to dialysis, too, so that
5 took a toll on everybody. You know, she got to get pushed up
6 the ramp. She got to get moved around in the house. Some of
7 the spaces in the house is, like, a tight fit, so sometimes
8 she'd need help just to, you know, get into the bathroom,
9 getting to the washing machine, moving her clothes. You know,
10 sometimes I had to come back just to rake the yard. Too much
11 leaves in the yard or stuff like that. You know?

12 Q Is it a one-story house or a two-story house?

13 A One.

14 Q One-story. So at least she can get around -- as long as
15 she can get through the doorway, she can get in the room but
16 not all the doorways are that --

17 A No. Some of the doorways, you couldn't get the
18 wheelchair in. Like, some of the rooms, yeah. Like, the
19 living room -- mainly the living room, but, like, this -- for
20 the longest, she didn't even have the proper bed to sleep on
21 to even get in the room to sleep. So, for the longest, her
22 bed was in the living room.

23 Q So she couldn't actually sleep in the bedroom.

24 A No.

25 Q And where did she sleep in the living room? Was it on a

1 bed or was it the couch or how would she do that?

2 **A** She was sleeping on the couch first till they brung her
3 her actual bed.

4 **Q** Gotcha.

5 **A** So, for the longest, she couldn't even sleep in the room.

6 **Q** Could she get -- could she bathe? Could she get to the
7 bathroom and bathe? Could she do that on her own or how did
8 that work?

9 **A** Sometimes and sometimes -- she needed super guidance and
10 for the simple fact that she only has one leg. So if she fall
11 down in the house by herself, you know, it's going to be hard
12 for her to get up on her own.

13 **Q** So somebody had to be there.

14 **A** Yes.

15 **Q** No matter what was going on, somebody had to be there.

16 Now, you mentioned dialysis. So the dialysis -- got to
17 go to dialysis?

18 **A** Yes.

19 **Q** And she was doing that once a week? Twice a week? Three
20 times a week?

21 **A** Three times a week. Tuesday, Thursday, and Saturday.

22 **Q** Tuesday, Thursday, and Saturday.

23 So y'all would load her up in the car?

24 **A** Sometimes we'd load her up in the car. Sometimes the
25 transportation people would, you know -- like, as far as,

1 like, pushing her, you know, down to the -- to the base of
2 the -- on the ground from the porch, yeah, because, you know,
3 a lot -- sometimes it may be women that would transport her.
4 Sometimes the women couldn't actually, you know, push her back
5 up the ramp, you know, because of her weight and stuff and,
6 you know...

7 **Q** All the things that she used to do independently now she
8 had to have somebody there. Whether it was you, another
9 sibling, a medical care provider or somebody like that.

10 **A** Yes.

11 **Q** Always somebody.

12 **A** Yes.

13 **Q** You were there -- you moved up from Statesboro, and you
14 took care her of good while. Did you hand that over, at some
15 stage, to another brother or sister, or have you been doing it
16 continuously?

17 **A** I have been doing it continuously off and on. I mean, me
18 and my sisters and brothers, we kind of -- we all kind of
19 close, so we communicate a lot. Some of them be like, "I'm
20 tired today. I'm just tired." And I be like, "All right.
21 Well, I'll just go ahead and go ahead and do it."

22 **Q** So you-all just chipped in.

23 **A** We all chipped in. We would rotate. Sometimes we'd have
24 a headache. I mean, you're dealing with family, so, you know,
25 it can get complicated. But the main goal was to help our

1 mom. That was the main goal.

2 **Q** Now, where are you living now, Christian? Are you
3 still -- did you get to go back to Statesboro? Are you still
4 here? Where are you?

5 **A** I recently just moved back here from Savannah, Georgia,
6 yes.

7 **Q** From Savannah?

8 **A** Yes.

9 **Q** And so you're back -- are you working here now?

10 **A** No. I'm currently looking for a job now. I was working
11 there. I was.

12 **Q** Gotcha. And you moved back here to --

13 **A** To help my mom, yeah.

14 **Q** Do you have any intention of going back to Georgia and
15 staying there where you have a job, or are you going to stay
16 here for the foreseeable future to take care of her?

17 **A** I'm going to try to stay here and take care of her. I
18 mean, my goal was to come here and help take care of my mom.
19 That's my goal. You know, my sister -- you know, my youngest
20 sister, she stays in Columbia, so she's not, you know, more
21 accessible. My older -- well, my sister that's right with me,
22 Brooke, she stays at the beach, so she's not here most of the
23 time. Isaac, he has his own family. He have a wife and he
24 has two kids, and he's working most of the time. And Jason,
25 he's working most of the time.

1 So I'm the only one, you know, that's going to be there
2 really consistently.

3 **Q** The job you left behind in Savannah, what kind of job was
4 that?

5 **A** I was working at Wayfair.

6 **Q** What kind of work did you do?

7 **A** Order filling. Like as far as, like, picking furniture.
8 All different type of products.

9 **Q** And that's the one I see online and my wife is always
10 ordering (indiscernible)?

11 **A** Yes.

12 **Q** That's a big business.

13 **A** Yes.

14 **Q** Had to be hard to leave that job behind, I would think.

15 **A** Yeah, it was. It was. It was kind of hard, but you
16 know.

17 **Q** Had to do what you got to do for your mom; right?

18 **A** Yes.

19 **Q** Christian, I might have a few more questions for you in
20 followup, but what I'd like to do is give Walmart's attorneys
21 an opportunity to ask you some questions. So if you would
22 answer their questions, I'd surely appreciate it.

23 **A** Okay.

24 THE COURT: Mr. Blain, cross-examination.

25 CROSS-EXAMINATION

1 BY MR. BLAIN:

2 Q Good afternoon, Mr. Jones.

3 A Hi.

4 Q Mind if I call you Christian?

5 A Yes.

6 Q Thank you. You can call me Robert.

7 A All right.

8 Q I know you're here today to help your mom. I think you
9 just testified when you said your main goal was to help your
10 mom.

11 A Right.

12 Q You love your mom, don't you?

13 A Right.

14 Q You changed your life around to come back home and help
15 her out to the best you can?

16 A Yes.

17 Q So you want to help your mom even including this lawsuit;
18 isn't that right?

19 A I wouldn't necessarily say that.

20 Q Well, you're willing to come testify to help her lawsuit;
21 isn't that fair?

22 A Yeah, I guess you can say that.

23 Q Okay. So you love your mom and you want the best for
24 her.

25 A Right.

1 Q You want the best for her, you know, with the outcome of
2 this lawsuit?

3 A Yes, versus all the stuff that she endured, yes.

4 Q So your main goal is to help your mom, and you'll do what
5 you can to help her with this lawsuit even if that includes
6 coming to testify here today; isn't that fair?

7 A Yes.

8 Q You weren't with your mom in Walmart on June 26, 2015,
9 were you?

10 A No, I was not.

11 Q Okay. You didn't see her, you know, pull an object out
12 of her shoe or anything that day?

13 A No.

14 Q Okay. Other than what, you know, your mom has told you
15 and maybe what your siblings have told you, you didn't really
16 have any information about how the nail got into her shoe that
17 day, do you?

18 A No, I don't.

19 Q Okay. Other than what your mom has told you, you don't
20 have any information about how long the nail may have been in
21 her shoe, do you?

22 A No.

23 Q You don't have any information about the nail at all?

24 A No.

25 Q Okay. You're just here today because your main goal is

1 to help your mom.

2 **A** I'm here to testify about as far as how hard it's been
3 for my mother to actually move around, how her daily life has
4 changed, how our daily life has changed. I mean, every day --
5 one of us got to call my mom each and every day to make sure
6 she's all right, because, you know, staying in the house with
7 one leg and the wheelchair, that's not really an option for a
8 person.

9 I mean, last week, I was in the living room asleep. It
10 just so happened I just had went to sleep. My hear my mom
11 calling me. So I go around there to see what she want. I'm
12 thinking she want a glass of water. She's sliding off the bed
13 on one leg but she can't even pull herself up. So I had to
14 pick her up, put her back on the bed. Good thing I was there
15 or she would have been stuck on the floor.

16 **Q** I'm glad you were there for your mom. I'm glad you're
17 here for your mom today.

18 **A** Right.

19 **Q** Thank you very much. I appreciate it.

20 **A** All right.

21 THE COURT: Any redirect?

22 MR. WILLEY: No, Your Honor. Thank you.

23 THE COURT: Very good.

24 You may step down. Thank you, sir.

25 THE WITNESS: All right.

1 THE COURT: You may call your next witness.

2 MR. JEFFERIES: Thank you, Your Honor. The plaintiff
3 would call Isaac Jones.

4 THE COURT: Mr. Jones, I'm going to ask, if you could, to
5 please come forward. You see the bailiff over there? I'm
6 going to ask, if you could, to turn around and face me and
7 place your left hand on the Bible and raise your right hand as
8 the clerk administers the oath.

9 ISAAC JONES,

10 the witness, after having been duly sworn, was examined and
11 testified to as follows:

12 THE CLERK: Please be seated and state your name for the
13 record.

14 THE COURT: Mr. Jones, I'm going to ask if you could to
15 have a seat in that witness chair. Pull up real close to that
16 microphone. Speak loudly, clearly, and slowly in order for we
17 can hear everything that you have to say.

18 And if you feel comfortable doing so, you can remove your
19 mask so we can hear you a little bit better. Let's start with
20 your full name, please, sir.

21 THE WITNESS: My name is Isaac Jerome Jones.

22 THE COURT: Very good. Thank you.

23 Yes, sir.

24 MR. JEFFERIES: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. JEFFERIES:

2 Q Isaac, I know that you're related to April because your
3 older brother just told us, so I'm not going to ask you that
4 question.

5 You are one of five children; right?

6 A Yes, sir.

7 Q I know -- Christian told us he's the eldest. Where do
8 you fall in line?

9 A Right in the middle.

10 Q Right in the middle. Okay.

11 A Yes, sir.

12 Q Talking about the middle child.

13 I want to ask you this: On June 22nd of -- pardon me --
14 June 26 of 2015, you were not at the Walmart with your mother?

15 A No, sir.

16 Q So you didn't see her step on the nail or pull a nail out
17 of her foot or anything like that; right?

18 A No, sir.

19 Q You're not here to testify about how she got injured, are
20 you?

21 A No, sir.

22 Q Fair enough.

23 Let me ask you about this. So you're one of five
24 children. I think Christian mentioned there are some
25 grandchildren. Are some of the grandchildren yours?

1 **A** Yes, sir.

2 **Q** How many?

3 **A** Two.

4 **Q** Boys? Girls?

5 **A** One boy, one girl.

6 **Q** And how old are they?

7 **A** My little girl is five and my little boy is two.

8 **Q** (Indiscernible).

9 **A** Yes, sir.

10 **Q** I made it through it. I have a daughter who is now 19

11 and I also have a son who is 17 and another son who is 21

12 months, so I know exactly where you're at.

13 Tell me about -- what's the relationship between your

14 children and their grandmother -- and April?

15 **A** It's a pretty good, positive relationship. They love

16 their Boo Boo to death.

17 **Q** What do they call her?

18 **A** Boo Boo.

19 **Q** Boo Boo.

20 **A** Yes, sir.

21 **Q** I like that. Who came up with that?

22 **A** The eldest grandchild, my sister's son.

23 **Q** So tell me about this. I know, given their ages, that

24 this incident precedes those children; right? Obviously, they

25 didn't know her before she was injured. But you remember what

1 I'm talking about; right?

2 **A** Yes, sir.

3 **Q** What sort of things did y'all do together when you were a
4 little kid? What did April do with you? Think of memories
5 that you have that really stand out.

6 **A** Fair. Going to the fair. Myrtle Beach. Family
7 reunions. And, you know, different Sunday outings and things
8 like that.

9 **Q** Tell us about -- tell us a little bit about those kind of
10 outings. What sort of things would you-all do as a family?

11 **A** One, we like to eat, so...

12 Going out to eat. We'd get -- call the family up, get
13 together and go out to eat. Like, we'd take the children down
14 to Myrtle Beach and have them run around at the -- what do you
15 call it?

16 **Q** The Sky Wheel thing?

17 **A** Yes, sir. The one down there by the gorilla.

18 **Q** Yeah, yeah, yeah. That's fun. I remember when they put
19 that gorilla up. That thing is kind of crazy.

20 **A** Yes, sir.

21 **Q** So is it -- you enjoyed that as a kid. You have those
22 memories of what you did with your mom.

23 **A** Yes, sir.

24 **Q** I would imagine it was your hope that she would be able
25 to do those things with your children when you had children?

1 **A** Yes, sir, definitely.

2 **Q** And now that you have a couple of children, how is it?
3 What is April able to do with your children, her two grand
4 babies?

5 **A** Not much. It's pretty much just come in, I guess, and
6 watch. Not too much interaction as it should be, I guess.

7 **Q** So she couldn't, on her own, come grab your kids and say,
8 Let's go to the park.

9 **A** No, sir.

10 **Q** And, really, could she at all? Could she watch them by
11 herself at the house?

12 **A** At the house only. My oldest daughter, she could, but my
13 little boy, he's very active, so...

14 **Q** So if he got up and ran off --

15 **A** -- she wouldn't get him.

16 **Q** So all that stuff, that kind of normal grandparent stuff
17 that we kind of take for granted -- I know -- my in-laws live
18 right across the street from me. They'll come over and grab
19 our son just on the spur of the moment on Sunday morning, take
20 him off to the park or something.

21 **A** Yes, sir.

22 **Q** That's the sort of thing that a lot of us take for
23 granted. That's not happening in your house.

24 **A** No, sir, not at all.

25 **Q** Do you remember -- I know you said you weren't there.

1 You weren't there at the Walmart in 2015. Do you remember how
2 you learned about what happened?

3 **A** Yes, sir. I was at work and my mother called me and said
4 she had stepped on a nail at Walmart and she had been there
5 for some time and they didn't even bother to call the EMS,
6 paramedic to come pick her up or check on her.

7 **Q** Wow.

8 **A** And that she wanted me to come get her, but, at the
9 moment, I was actually on a route, you know, towards
10 Effingham, so I was a little bit out the way.

11 **Q** What kind of work were you doing back then?

12 **A** Well, I was delivering Chinese food here at the local
13 Goody's.

14 **Q** I gotcha.

15 **A** Yes, sir.

16 **Q** And so you were -- not the kind of job where you can just
17 walk off and go do something else.

18 **A** Right, right.

19 **Q** You had places to be.

20 **A** Yes, sir.

21 **Q** Where were you living back then in 2015?

22 **A** Coventry Lane. That's down off of -- I want to say Pine
23 Needle Road.

24 **Q** Okay.

25 **A** Yes, sir.

1 Q About how far from your mother's house is that?

2 A I'd say a good 10 to 12 miles.

3 Q So you find out about this. Did you realize at the time
4 when she first called and said, "Listen, I stepped on a nail
5 in the Walmart. I need somebody to get me" --

6 A Right.

7 Q -- did you realize how serious this was, that it was
8 going to result in all this?

9 A No, sir, not at all. I did not.

10 Q When did you first start to realize, oh, man, this is
11 more than just a puncture wound?

12 A Once they start talking about amputation. Once they
13 first start saying they would cleanse the foot and then, you
14 know, I thought it was good there. But once they first start
15 talking about amputating one of her toes, that's when I
16 realized it was something serious.

17 Q Since that amputation -- that series of amputations,
18 which would have been July and August of 2015 and then a final
19 one in 2016 -- February of 2016 --

20 A Yes, sir.

21 Q -- since those amputations have occurred, how has --
22 based on what you have seen, how has April's life changed?
23 What have you had to do to help out, if anything?

24 A I have had to help her with bills. Days in hospitals. I
25 have had to bring her food multiple times. Since I was, you

1 know, across the street, that would be my thing. Had to help
2 build her a ramp to get in and out of her home. It's a bunch
3 of different things.

4 Q Did you help -- if she needed to go places, was that
5 something that you handled? Did you help take her around?

6 A Yes, sir, when I could. Yes, sir.

7 Q Which I imagine was a challenge since you have a couple
8 of kids of your own?

9 A Yes, sir. Well, at this point, at her last amputation, I
10 was actually in the hospital. That's when my first baby was
11 born.

12 Q Oh, wow.

13 A Yeah.

14 Q What was the birth date of your first one?

15 A February 25th.

16 Q Oh, of 2016?

17 A Yes, sir.

18 Q So the day before her last amputation?

19 A Yes, sir. I was downstairs on the second floor or the
20 fourth floor.

21 Q And she was not there to see her grand baby being born?

22 A No, sir. They gave her a hassle to come down before they
23 let her come down. They gave her a hassle.

24 Q Tell me about the ramp that you built at home. What did
25 you have to do for that?

1 **A** Me and my brother-in-law, we decided that we were going
2 to go to Lowe's and pick up some wood to build her a ramp. He
3 already had the tools, so, you know, we just cut them. You
4 know, he did most of the trimming from the top step to the
5 bottom, but he -- once he got the foundation set, we went back
6 and nailed the -- what do you call it -- 2 by 4s in, yes, sir.

7 **Q** Now, is that ramp such that she can just, on her own,
8 with the chair, grab the sides of it and --

9 **A** No, sir. She'd definitely have to be pushed up.

10 **Q** Is there any -- can she get around on her own at all or
11 is she always with somebody?

12 **A** She's always with somebody, yes, sir, at all times.
13 Might get 10 or 15 minutes by herself, but that's about it.

14 **Q** So that sense of freedom and peace that a lot of get from
15 just going off on our own --

16 **A** Yes, sir.

17 **Q** -- that's something she hasn't had.

18 **A** No, sir.

19 **Q** And she's not going to have --

20 **A** No, sir.

21 **Q** -- in a state like this; right?

22 **A** Right.

23 **Q** What about an electric wheelchair? Did y'all try to get
24 her one?

25 **A** We actually got one from my deceased grandmother in New

1 Jersey. It's kind of a little cart. It works. But it's
2 rarely working. Like, it can come apart if it's not -- we
3 have to get spare tools to stick in. You know, a butter knife
4 to crank it up.

5 Q So it's not a reliable thing that you feel good to say,
6 "All right, Mom, you go off on your own."

7 A Right. Yes, sir.

8 Q But a new one, a good one from a dealership that sells
9 these things --

10 A Yes, sir.

11 Q -- that could give her some freedom?

12 A Yes, sir. Definitely.

13 Q You talked about some of the things you-all used to do.
14 Family gatherings, family reunions, and all that. Who
15 organized those family reunions and how often were they?

16 A My mother. And it's usually three big events a year:
17 4th of July, Christmas, and usually something -- something
18 else. Thanksgiving, Christmas, and 4th of July and sometimes
19 even more.

20 Q Now, is that -- obviously, the five children and 11
21 grands, that's a big family right there, but were there others
22 beyond that? Extended family?

23 A Yes, it's others.

24 Q And that's -- and your mom organized those?

25 A Yes, sir.

1 Q Three a year?

2 A Sir?

3 Q Three of them a year?

4 A Yes, sir.

5 Q That's a lot.

6 A Yeah.

7 Q Who is doing it now?

8 A My mom, she's not letting us fully do it. Like we're

9 having Thanksgiving at her house, but we do, you know, most of

10 the work as far as cleaning, food, and cooking. Sometimes we

11 clean food and pass it to her, let her do her seasoning, and,

12 you know, throw it in the oven. So she's determined.

13 Q Stuff that she used to do entirely on her own --

14 A No, sir.

15 Q -- now takes a lot of effort.

16 A Yes, sir.

17 Q But she's still the proud woman that she is, she's not

18 (indiscernible)?

19 A Yes, sir.

20 Q That reminds me of my mother as well. She would not let

21 go of it.

22 A Right.

23 Q Isaac, listen, I appreciate your time. I know talking

24 about these things isn't easy. With any luck, you'll only

25 have to talk about it for a few more minutes when you answer

1 some questions from Walmart's attorneys. I appreciate if you
2 would answers their questions and answering mine.

3 **A** Yes, sir.

4 **Q** Thank you.

5 **A** Thank you.

6 THE COURT: Ms. Boyd?

7 MS. BOYD: Your Honor, we have no questions for
8 Mr. Jones. Thank you.

9 THE COURT: Very good.

10 You may step down. Thank you, sir.

11 THE WITNESS: Thank you.

12 THE COURT: All right. You may call your next witness.

13 MR. JEFFERIES: Your Honor, the plaintiff would call
14 Chelsea Rilley.

15 THE COURT: Ms. Rilley, please come forward. I'm going
16 to ask, if you could, to approach the bailiff over there. And
17 you see the Bible? I'm going ask you, if you could, to face
18 me, place your left hand on the Bible and raise your right
19 hand.

20 CHELSEA RILLEY,
21 the witness, after having been duly sworn, was examined and
22 testified to as follows:

23 THE CLERK: Please be seated.

24 THE COURT: Yes, ma'am. Watch your step. That's a
25 slanted area there. Have a seat in the witness chair.

1 Please pull up to that microphone. Speak loudly,
2 clearly, and slowly in order that we can hear everything that
3 you have to say.

4 And let's start with your full name, please, ma'am.

5 THE WITNESS: Chelsea Rilley.

6 THE COURT: Thank you, Ms. Rilley.

7 MR. JEFFERIES: Thank you, Your Honor. May it please the
8 Court.

9 DIRECT EXAMINATION

10 BY MR. JEFFERIES:

11 Q Chelsea, we appreciate you being here. I understand from
12 your brothers that you are one of five children that April
13 has; right?

14 A That's correct.

15 Q And I know -- I think Christian is the eldest and Isaac
16 falls in the middle. Where are you?

17 A Number four out of five.

18 Q Almost the baby?

19 A Almost.

20 Q Almost the baby.

21 Do you have any children of your own?

22 A Yes, I do.

23 Q How many do you have?

24 A Three.

25 Q And boys? Girls?

1 **A** I have an 8-year-old daughter, a 4-year-old son, and a
2 one-year-old daughter.

3 **Q** One-year-old?

4 **A** Yes.

5 **Q** So you are still changing diapers?

6 **A** Yes, I am.

7 **Q** Yeah, that's something I -- something I thought I left
8 beyond. I have a 19-year-old, a 17-year-old, and a 21-month
9 old --

10 **A** Wow.

11 **Q** -- so I thought I had left diaper-changing behind years
12 ago, but no, not so much.

13 Let me ask you about this. And we have heard your
14 brothers testify about helping April after she had these
15 amputations.

16 **A** Right.

17 **Q** And he said all of you all have helped.

18 **A** Right.

19 **Q** And so I want you to talk about your role in that. What
20 you did with your mom, how you did it, where y'all lived.
21 Just color me the picture of what you would do for her.

22 **A** There was times she stayed in my home. When she was
23 going the whole amputation of her leg, she stayed with me.
24 Once she got out the hospital from her leg being amputated,
25 she moved back home. And that's when family members came from

1 out of state to try to help her, because I couldn't help her
2 beyond that point by myself.

3 **Q** How far did y'all live apart from one another at that
4 time?

5 **A** Maybe five minutes.

6 **Q** So she spent a period of time in your home, and then went
7 back to her -- what was her home. Did she ever return to your
8 home or was it just that one period of time?

9 **A** She returned this year. She went through a little
10 situation, and she returned to my home in Lexington. I now
11 stay in Lexington, South Carolina.

12 **Q** I gotcha.

13 **A** And she moved down there with me for a few months.

14 **Q** Your brothers talked to us about her difficulty getting
15 around in the size of the home. These public buildings are
16 built to be wheelchair accessible.

17 **A** Right.

18 **Q** They have got wide doors. They have elevators. They
19 have all these things. Houses almost never have all that.
20 How is it for her to get around inside of your home?

21 **A** She can only -- I live in a two-story house. She can
22 only stay downstairs. She couldn't walk up the 17 steps. And
23 I have two baths -- two full baths and a half a bathroom
24 downstairs. She wasn't able to go upstairs to wash, so I had
25 to take her 12 miles up 20 to go wash at the truck stop and

1 then 12 miles back home every time she had to wash.

2 Q So your full baths -- let me make sure I'm understanding
3 this right. Your full baths are upstairs.

4 A Yes, sir. Two full baths upstairs.

5 Q Downstairs is a half-bath?

6 A A half a bath.

7 Q And that's a toilet and sink; right?

8 A Just a toilet and sink.

9 Q So while she was with you -- and she's still with you; is
10 that right?

11 A No, she's at her home.

12 Q She's back home.

13 The time she was with you, she -- there was no facility
14 in your home where she could took a shower or bath or anything
15 like that.

16 A Not downstairs.

17 Q And she couldn't get upstairs.

18 A No, she could not.

19 Q I don't have an elevator in my house. I'm guessing you
20 didn't have one in yours.

21 A No, I don't.

22 Q So tell us what you did. You would put her in the car
23 and take her to, like, one of those truck stops where they
24 have showers?

25 A Yes, I would.

- 1 Q How often did you do that?
- 2 A It was every other day because taking her every day, that
- 3 was really an inconvenience.
- 4 Q But, ordinarily, before she got hurt, she would have
- 5 taken a shower every day.
- 6 A Every day.
- 7 Q Like most of us; right?
- 8 A Right.
- 9 Q So she can't shower everyday because there's no way
- 10 that's going to happen.
- 11 A Right.
- 12 Q So you're taking her every other day. Could she wheel
- 13 herself out of the house to your car?
- 14 A She can wheel herself to the door. When she got to the
- 15 door, she had to hold on to the door and roll out backwards.
- 16 Q And then you put her in the car. And how -- you go down
- 17 Highway -- Interstate 20. How far is the (indiscernible)?
- 18 A Interstate 20. I live on Exit 58 and she had to go to
- 19 Exit 70 to wash. So that's 12 miles on 20.
- 20 Q 12 miles down the road to the truck stop.
- 21 I confess I have never showered in a truck stop.
- 22 A Me either.
- 23 Q I don't know whether it's the most luxurious thing.
- 24 A No.
- 25 Q I imagine it's not.

- 1 **A** Right.
- 2 **Q** How long did y'all have to do that for?
- 3 **A** She came to my house the middle of July, and she just
4 moved in her place -- what's this month? November? --
5 September 1st.
- 6 **Q** So months of --
- 7 **A** Mm-hmm.
- 8 **Q** -- every other day, 12 miles.
- 9 And how long did that take, all said and done?
- 10 **A** With Columbia traffic, it may take 15 to 20 minutes to
11 get there, depending on what time of day I leave. Then she
12 would take at least 30 to 45 minutes to wash and get dressed
13 and then come back out.
- 14 **Q** So 15, 20 minutes to get there and 15 to 20 minutes back.
15 That's half an hour or 40 minutes. Another half an hour or 40
16 minutes to actually go through that process.
- 17 **A** Right.
- 18 **Q** So an hour every other day.
- 19 **A** Right.
- 20 **Q** For something that ordinarily wouldn't have taken any of
21 your time --
- 22 **A** Right.
- 23 **Q** -- and taken maybe 20 of hers.
- 24 **A** Exactly.
- 25 **Q** I'm just trying to wrap my mind around that.

1 What about other things around the home? Could she do
2 other stuff around the house herself?

3 **A** She would clean up and she would cook as well. That's
4 about all she can do downstairs, because it's just --
5 downstairs is a kitchen, a bathroom, and a living room.

6 **Q** One of your brothers -- I think it might have been
7 Christian -- mentioned that, for a period of time, in her own
8 home, she had to sleep on the couch in the living room because
9 she couldn't get into her bedroom.

10 **A** That's correct.

11 **Q** And what about in your house?

12 **A** She had --

13 **Q** Did she have a bed?

14 **A** No, she had to sleep on my furniture.

15 **Q** So, at your house, she's sleeping on the couch?

16 **A** That's correct. All the bedrooms are upstairs as well.

17 **Q** So right in the -- that private time when you're trying
18 to get ready for bed at night, she's doing that in the living
19 room.

20 **A** Right. And there were times I couldn't go to the
21 kitchen. Sometimes I would just have to fix my baby bottles
22 early so I won't disturb her while she sleep.

23 **Q** If she were able to get into a home that was designed to
24 accommodate, if you would, being in a wheelchair -- had the
25 right kind of shower --

- 1 **A** Right.
- 2 **Q** -- that she could roll into and had ramps, how would that
- 3 change not only her life but your life and your children's?
- 4 **A** It would definitely change my life because she's able to
- 5 do it herself without the help of us.
- 6 **Q** If she can get into that kind of a house.
- 7 **A** That's correct.
- 8 **Q** What about getting -- we heard testimony that she can't
- 9 really go far in her own wheelchair. She can't
- 10 (indiscernible) and that sort of thing. Would it help to have
- 11 an electric wheelchair?
- 12 **A** Yes, it will.
- 13 **Q** Or a vehicle that she could roll it into?
- 14 **A** Yes. It would really help a lot.
- 15 **Q** If she could do that, that would kind of restore her
- 16 freedom as much as possible?
- 17 **A** Right.
- 18 **Q** And I'm guessing that if y'all could have afforded to do
- 19 that, it would be done?
- 20 **A** Right.
- 21 **Q** Chelsea, let me ask you, you -- completely shifting gears
- 22 here, but you were not with your mother at Walmart when she
- 23 stepped on the nail?
- 24 **A** No, I was not.
- 25 **Q** So you didn't see any of that happen.

- 1 **A** No.
- 2 **Q** You didn't see her pull the nail out?
- 3 **A** No.
- 4 **Q** Did you see her go to the hospital?
- 5 **A** No, I did not.
- 6 **Q** You saw her after she got back from the hospital?
- 7 **A** Right.
- 8 **Q** So you're not going to offer any testimony about how she
9 got injured?
- 10 **A** Right.
- 11 **Q** You didn't see it.
- 12 **A** Right.
- 13 **Q** Tell us just a little bit -- I know you got the three
14 grand kids. And I learned that their nickname -- the grand
15 kids' nickname for April is Boo Boo.
- 16 **A** Boo Boo. They all call her Boo Boo.
- 17 **Q** Tell us how you wanted their relationship with their
18 grandmother to be. Were there things that you remember doing
19 as a child that you were hoping they'd get to do?
- 20 **A** Yeah. We would travel a lot. We would go out of town.
21 Visit family. We would go back home. For us, it's New
22 Jersey. That's where the majority of our family resides. So
23 we would go see family from Jersey to Alabama, Georgia.
- 24 **Q** And is that -- is that possible now?
- 25 **A** She can't move and she want to move. Sometimes she like

1 to get up and go, and right now, she just can't do that on her
2 own.

3 Q And so she doesn't have that freedom -- she doesn't have
4 that -- she doesn't have that piece of (indiscernible) --

5 A Right.

6 Q -- that a lot of us have, to go off on our own.

7 A Right.

8 Q Tell me something about (indiscernible), because this
9 keeps coming back in my mind. When you took April to the
10 truck stop shower, like, how does that -- how does that
11 actually work? I mean, are they -- it's not a communal
12 shower; right?

13 A Right.

14 Q So how does it -- like, talk us through that process. Do
15 you pay for it? Is it free?

16 A It's not free. What she did -- my cousin -- I have a
17 first cousin. He's a truck driver and he earns showers on his
18 reward card, and he would give my mom his number for her to
19 take a free shower.

20 Q So she got his whatever T/A Truck Stop --

21 A Yes.

22 Q -- whatever it is. So she's got his card and goes in
23 there. If it weren't for those rewards that he earned --

24 A She would have to pay. And I'm not sure of the price,
25 but -- I'm not sure. I can't give you a number.

1 Q Because now he has to pay, right, if he wants to stop for
2 a shower.

3 A Right.

4 Q I don't know -- the truck drivers you saw there, I mean,
5 I'm guessing it's mostly men?

6 A Yeah. He is.

7 Q Is that a place you would want to shower as a woman?

8 A No.

9 Q And not --

10 A And that was a dangerous area.

11 Q Tell me about that. Why did it seem dangerous to you?

12 A It's a high-crime area. You have people doing all kinds
13 of stuff at the truck stop.

14 Q Drugs and that sort of thing.

15 A Yes. You had homeless people. I mean, just anything.
16 You'll see anything at that truck stop. And that was the
17 closest truck stop to my house that she could shower at.

18 Q And if you had another option, if there were another way
19 that she could have taken a shower, I'm guessing you would
20 have done it?

21 A Right.

22 Q She showered at the truck stop because that was your only
23 choice.

24 A Right.

25 Q Couldn't afford to do anything else?

1 **A** That's correct.

2 **Q** Couldn't afford to, you know, build an addition to the
3 house to have a downstairs bathroom.

4 **A** Right.

5 **Q** And she slept on the couch not only in her own house but
6 in your home.

7 **A** That's correct.

8 **Q** Because that's what she could get at.

9 **A** That's correct.

10 **Q** And if she would have been a wealthy woman, she could
11 have just added an addition to the bedroom downstairs and gone
12 right in.

13 **A** Right.

14 **Q** What about your mother doing stuff with your kids? Is
15 she able to take your kids off to the park?

16 **A** No.

17 **Q** Out to the movies?

18 **A** No, she cannot.

19 **Q** All that normal grandparent stuff?

20 **A** Right. She cannot do it without the help of us.

21 **Q** So that affects her, obviously; right?

22 **A** Right.

23 **Q** And you?

24 **A** Right.

25 **Q** She can't do like my parents and in-laws do and take the

1 kids so I get a night off?

2 **A** Right.

3 **Q** It affects those kids too.

4 **A** That's correct.

5 **Q** Because they know their grandmother are not going on
6 trips to the beach.

7 **A** Right.

8 **Q** Chelsea, listen, I appreciate it. Walmart's attorneys
9 might have some questions for you. Will you please, please
10 answer them? I know it's not easy to talk about this.

11 **A** I will.

12 **Q** Thank you for being here.

13 **A** You're welcome.

14 THE COURT: Cross-examination?

15 MS. BOYD: We have no questions of Ms. Riley. Thank
16 you.

17 THE WITNESS: You're welcome.

18 THE COURT: You may step down. Thank you, ma'am.

19 All right. You may call your next witness.

20 MR. BLAIN: May I approach?

21 THE COURT: Yes.

22 BENCH CONFERENCE

23 (A bench conference was held off the record and outside of
24 the hearing of the jury and others.)

25 (Open court resumes as follows:)

1 THE COURT: Yes, sir.

2 MR. JEFFERIES: Thank you, Your Honor. Plaintiff would
3 call Jason Jones to the stand, please.

4 THE COURT: Yes, sir. Please come forward. I'm going to
5 ask, if you could, to walk over towards the bailiff. Do you
6 see the Bible there? Place your left hand on that Bible and
7 turn and face me. Left hand on the Bible and raise your right
8 hand. Very good.

9 JASON JONES,

10 the witness, after having been duly sworn by the Court, was
11 examined and testified to as follows:

12 THE COURT: I'm going to ask you to come around, if you
13 could, and watch your step. Come around this way. Watch your
14 step. And have a seat in that witness chair. Pull up real
15 close to that microphone. Speak loudly, clearly, and slowly
16 in order that we can hear everything that you have to say.

17 And if you feel comfortable doing so, I'm going to ask if
18 you could to take your mask off and start with your full name,
19 please.

20 THE WITNESS: Okay. Full name is Jason Jones.

21 THE COURT: Thank you, Mr. Jones.

22 MR. JEFFERIES: Thank you, Your Honor. May it please the
23 Court.

24 DIRECT EXAMINATION

25 BY MR. JEFFERIES:

1 Q Jason, we have talked to some of your brothers and
2 sisters already. We have covered certain ground over time, so
3 I'm not going to ask you to tell us about things that we have
4 heard already, so this might be relatively short and sweet.
5 But give us a little bit about you. I see you are wearing
6 what appears to be a work uniform.

7 A Yes.

8 Q Where do you work?

9 A I work at Honda of South Carolina. I'm a welder in the
10 IP department.

11 Q And what is the IP department?

12 A Well, we make ATVs and side-by-sides.

13 Q Okay. So you actually weld frames and that sort of
14 thing?

15 A Yes.

16 Q How long have you been doing that?

17 A I have been doing this for a year now.

18 Q Do you like it?

19 A Yes, I do.

20 Q Well, we appreciate you taking time off work to come here
21 and do this today.

22 A Yes.

23 Q It's my understanding -- and tell me if I'm wrong -- you
24 didn't actually witness your mom stepping on the nail.

25 A I didn't.

1 Q You did not. You didn't see it. You didn't see her pull
2 the nail out of her foot or anything like that?

3 A No, I didn't.

4 Q So you're not here to testify about how she got hurt.

5 A Right.

6 Q I want to ask you a bit about the effect of her injuries
7 on her life, your life. Do you have kids?

8 A I don't.

9 Q How old are you?

10 A I'm 29.

11 Q 29?

12 A Yes.

13 Q A little longer.

14 I want to ask you about growing up --

15 A Yes.

16 Q -- with April as your mother. What sort of things did
17 y'all do together that stick out in your mind?

18 A Things that we did together -- well, first off, I would
19 like to say, my mom, she's the backbone of the family. And
20 things we did together, like she would always put together a
21 family reunion every year or every other year. She's, like,
22 the driver of the family. Like nobody really likes to drive
23 so she's the driver. She's always driving.

24 Things we did? She liked to take us to amusement parks.
25 It's things she did. She stood in the place for my father

1 most of the time, so she was always present with us.

2 **Q** What about church life? Did y'all have a church life
3 together?

4 **A** Yes. She always took us to church. As far as I can
5 remember, I think, since, like, the age of four. We were in
6 church activities. We were -- like, well, she was on the
7 praise dance team. I was on the praise dance team. I was on
8 the choir. And she was always on the choir as well. And we
9 had, like, drama clubs also in church, so we were both in
10 those clubs as well.

11 **Q** Was she pretty heavily involved with church up prior to
12 this incident?

13 **A** Yes, she was.

14 **Q** How has that changed, if it has changed? How has it
15 changes after her amputation? Is she able to do it?

16 **A** No. Definitely not praise dance. Definitely not on the
17 choir. Her being in the wheelchair for so long, it takes up a
18 lot of room, like upfront, if she was to go upfront with the
19 choir, so she's not able to do that anymore.

20 **Q** And she couldn't get to church on her own.

21 **A** No. She was always helped.

22 **Q** You'd have to take her there to do that.

23 Let me ask you about the period of time from when she
24 first stepped on this nail in Walmart. How did you find out
25 about it?

1 **A** I think at the time -- I was at work. I think it was
2 kind of, like, late in the evening, because I was working at
3 Francis Marion at the time. I think my sister called me. I
4 can't remember exactly. She either told me when I got home or
5 she called me. But I can't remember exactly how I found out,
6 but I know it was from my oldest sister.

7 **Q** And as this -- and is that your older sister as well?

8 **A** Yes.

9 **Q** As this series of amputations happened in the summer of
10 2015 and in the last one in February of 2016, did it fall on
11 you to help out to --

12 **A** Yes.

13 **Q** -- do things that needed to be done?

14 **A** Yes, it did.

15 **Q** What kind of assistance did you give to your mother?

16 **A** Well, I was in the house most of the time. Like if she's
17 cook -- well, she love to cook. So she can't stand up anymore
18 or she do stand up to reach things in the cabinets, she can't
19 stand up for very long.

20 Like now, I would have to take her clothes to the washer,
21 to the dryer for her. I would have to take them back to her
22 room for her. And it was others that helped out, but we had
23 to switch out because of the work schedules.

24 But, like I said, I was there most of the time. Before
25 the ramp was built, I had to, like, manually lift her up the

1 steps that we had at the house. And it was a lot of things
2 like she could not physically get -- like, she would always
3 clean up. Like she can't just grab things like she -- like
4 the cleaning supplies. She couldn't just grab them like she
5 wanted anymore. And her just pushing herself, you could tell
6 she was discouraged. She got weak. And you could see it in
7 her face. She didn't want to ask nobody, you know, but I
8 could see it in her face and others could see it and would
9 ask, "What you need?" And then she would breathe before she
10 asked what she wanted or say what she wanted.

11 **Q** Do you see that changing in the future? Is there
12 anything -- other than an ability to have a new home that's
13 more accessible and a wheelchair that's electric and some of
14 these things, absent that, if she continues with that chair
15 and not having a prosthetic leg that fits her, is that going
16 to get better or is that the rest of her life and your life as
17 a son?

18 **A** It's -- somehow it's -- I feel like it's still going to
19 kind of affect her in a way or affect the whole family. Like
20 I said, she's still not 100 percent independent like she was.
21 So, yes, it's still going to -- some things will get better or
22 more, you know -- well, she's able to do more now for herself
23 if she was to get, you know, a house that's more accessible
24 for -- or an electric wheelchair, but things will never be the
25 same.

1 Q You hope to have kids of your own one day?

2 A Yeah.

3 Q Listen, Jason, I appreciate it. I know this is tough on
4 you. I see it's tough on your mama. I'm going to ask you to
5 please answer Walmart's attorney's questions if you would,
6 please.

7 A Okay.

8 THE COURT: Cross-examination?

9 MS. BOYD: We have no questions for Mr. Jones. Thank
10 you.

11 THE WITNESS: No problem.

12 THE COURT: You may step down. Thank you, sir.

13 THE WITNESS: Okay. No problem.

14 THE COURT: All right. You may call your next witness.

15 MR. JEFFERIES: Thank you, Your Honor.

16 Can we take a break?

17 THE COURT: Mr. Foreman, ladies and gentlemen of the
18 jury, we're going to take a brief recess. And do not discuss
19 the case amongst yourselves.

20 Everyone remain seated as the jury exits the courtroom.

21 (The jury exited the courtroom at 4:30 p.m.)

22 THE COURT: All right. Might counsel approach the bench
23 for a moment.

24 BENCH CONFERENCE

25 (A bench conference was held off the record and outside the

1 hearing of the jury and others.)

2 (Open court resumes as follows:)

3 (A brief recess was taken from 4:39 p.m. to 4:47 p.m.)

4 THE COURT: Anything before we proceed?

5 MR. WILLEY: No, sir.

6 THE COURT: Anything from the defense?

7 MS. BOYD: No, Your Honor.

8 THE COURT: We're ready for the jury.

9 (The jury entered the courtroom at 4:49 p.m.)

10 THE COURT: You may call your next witness.

11 MR. JEFFERIES: Thank you, Your Honor. May it please the
12 Court. The plaintiff would call Brooke Jones.

13 THE COURT: All right, Ms. Jones. Please come forward.
14 I'm going to ask you if you could, please, ma'am, to approach
15 the bailiff and place your left hand on the Bible and raise
16 your right hand as the clerk administers the oath.

17 BROOKE JONES,
18 the witness, after having been duly sworn, was examined and
19 testified to as follows:

20 THE CLERK: Please be seated.

21 THE COURT: Watch your step. There's a slant over there.
22 Have a seat in that witness chair, please, ma'am. I'm going
23 to ask you if you could to pull up real close to that
24 microphone. Speak loudly, clearly, and slowly in order that
25 we can hear everything that you have to say.

1 And you can take your mask off if you feel comfortable
2 doing so.

3 THE WITNESS: Okay.

4 THE COURT: And let's start with your full name.

5 THE WITNESS: Brooke Jones.

6 THE COURT: Thank you, Ms. Jones.

7 THE WITNESS: You're welcome.

8 MR. JEFFERIES: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. JEFFERIES:

11 Q Good afternoon, Ms. Jones.

12 A Good afternoon.

13 Q I have been going down my list checking off children, and
14 I have come to -- you must be Child No. 4. I don't know if
15 that's where fall in the line, but you're in the middle
16 somewhere; right?

17 A I'm actually the second child.

18 Q The second. All right.

19 Listen, it's almost 5:00, so I'm not going to take a long
20 time. I want to ask you a handful of questions. We have
21 already heard a lot from your brothers and sisters.

22 First thing: You didn't see your mama step on the nail?

23 A I didn't.

24 Q How did you learn she stepped on the nail?

25 A She actually called me and told me that she stepped on a

1 nail and for me to come up there to get her. I actually got
2 up there, but she was already in her car, and she told me just
3 to follow her to McLeod. And that's what I did.

4 Q So she called you while she was at the Walmart?

5 A Yes.

6 Q You go to the Walmart, and she's outside. She's in the
7 car?

8 A Yes.

9 Q And then y'all go off to the hospital?

10 A Yes.

11 Q I understand from your brothers and sisters that all of
12 y'all kind of shared in the help of your mother with the
13 activities of daily life. I'm not going to --

14 A Yes.

15 Q -- belabor that. But you participated in that?

16 A Yes, sir, I did.

17 Q There was something that your brother -- I think it was
18 Jason -- said that -- I should have asked him that but I want
19 to ask you if you know, that y'all got a praise dance league,
20 I think it was, at the church?

21 A Yes.

22 Q What is that?

23 A Basically, it's a form of dancing for, I guess, the Lord.
24 Praise dance. And she was actually one of the dancers in the
25 older group of the church.

1 Q How long did she do that for?

2 A A couple of years she did.

3 Q As far as you know, she would have kept on doing that?

4 A She would have. She would have.

5 Q And, obviously, even with a prosthetic, that's probably
6 not likely?

7 A Yes.

8 Q As I'm going through my list, checking things off, I have
9 checked off five kids. I have checked off seven out of 11
10 grandchildren. So if my math is right, you have four.

11 A Four, yes.

12 Q All right. Who do you have?

13 A I have Nyamia (ph); he's 11. Amber; she's nine. I have
14 Noah; he's seven. And Mariah, she's five.

15 Q I'm not going to remember all the names.

16 A Yes.

17 Q I'll tell you in advance.

18 Noah stands out in my mind because your mother told me
19 something about Noah, and I wanted to ask you about it.

20 A Yes.

21 Q Noah has special needs?

22 A Yes. He was actually diagnosed before birth with
23 lissencephaly and Miller-Dieker syndrome. And, basically,
24 with that, he has a life expectancy. And from there, my
25 mom -- when we found out about it, she was right there with me

1 from day one. Even in labor and delivery when I went back
2 for -- to have my Cesarean, she was right there. And she
3 never left my side.

4 And for me at the time, I was actually 26 years old, knew
5 nothing about taking care of a disabled child. She helped me
6 from day one. He had a couple surgeries. She was --
7 actually, when he had his first surgery, she was actually in
8 the hospital at the same time that he had his first surgery.
9 And she couldn't be there, but what she did was she told the
10 nurse that "My grandson has surgery today. Can y'all wheel me
11 downstairs to go see him?"

12 And, as a 26-year-old mother, not knowing basically
13 anything, you know, I actually needed my mom there. You know,
14 that was my comfort, my go-to person. And her to actually be
15 on the eighth floor while he's down on the third floor,
16 basically I pondered all day. I worried because it was either
17 he was going to live -- he was going to make it or he wasn't.

18 And when he came out, he was only breathing 10 percent on
19 his own. And for her to actually set aside her -- everything
20 that she was going through to come down and be there and just,
21 you know, while, you know, he came out of surgery to see him
22 was everything -- it meant everything to me.

23 And for the strong person she is, everything that she
24 went through and to be there for me while I was actually going
25 through that moment, it meant everything. And she put aside

1 everything just to be there for her grandchild.

2 Q Noah was born about a year roughly before this incident.

3 A Mm-hmm.

4 Q April had mentioned to me that -- you know, after this
5 happened, things changed --

6 A Mm-hmm.

7 Q -- that there was an opportunity at the Make-A-Wish
8 Foundation.

9 A Mm-hmm, yes.

10 Q Tell us about that.

11 A Well, in 2018, initially we were -- we were living with
12 my mom, and everybody in the home was invited to go on this
13 special trip for Noah. And it's basically, they provide --
14 Make-A-Wish, they provide trips for children with special
15 needs that have, like, life expectancies, who aren't going to
16 make it, you know, throughout a certain period of their life.

17 And Noah's wish was granted, and she was initially on the
18 list to make it -- to be there, but when they found out that
19 she would require certain accommodations like, you know,
20 certain things they couldn't accommodate her, like wheelchair.
21 Like days we would go to the park, she would need little
22 scooters. It just became -- it became too much because they
23 had to provide all of that for Noah. And it was just too
24 expensive for her to --

25 Q So the Make-A-Wish trip happened. It just happened --

1 **A** Without her.

2 **Q** -- without her.

3 **A** Mm-hmm.

4 **Q** And Noah was about four at the time?

5 **A** Yes.

6 **Q** You said -- I hate to ask you this and I know this is

7 hard.

8 **A** Mm-hmm.

9 **Q** I'm a parent too myself.

10 **A** Mm-hmm.

11 **Q** You said Noah has a life expectancy?

12 **A** Yes.

13 **Q** You used that term.

14 **A** Yes.

15 **Q** He's seven now. What do they say his life expectancy is?

16 **A** Normally, they say children with that type of diagnosis

17 doesn't live past 12, but they gave him a life expectancy of

18 living until two. But they say normally 12 years old.

19 **Q** He's beat the odds.

20 **A** Yes.

21 **Q** So they set it at 12.

22 **A** Twelve. And, every day, that's something that plays in

23 the back of my head. It does.

24 **Q** People say all the time (indiscernible) is

25 once-in-a-lifetime thing.

1 **A** Yes.

2 **Q** But, here, it really is.

3 **A** It really is. It is.

4 **Q** I'm not going to ask you any questions about it. I
5 appreciate you.

6 **A** Okay.

7 **Q** If they have questions, you're free to answer that.

8 **A** Okay.

9 THE COURT: Cross-examination?

10 MS. BOYD: We have no questions for Ms. Jones.

11 THE COURT: You may step down. Thank you, ma'am.

12 THE WITNESS: Okay. Thank you.

13 THE COURT: All right. Mr. Foreman, ladies and gentlemen
14 of the jury, we're going to recess for the evening. We'll
15 start back at 9:30 in the morning.

16 Once again, do not discuss the case amongst yourselves or
17 with anyone else. Don't do any independent investigation.
18 Certainly, no one would ever contact you about this matter,
19 but on the outside chance someone did, report that to me.

20 We'll see you in the morning bright and early, 9:30.
21 9:30 sharp. Thank you.

22 (The jury exited the courtroom at 4:58 p.m.)

23 THE COURT: Anything from the plaintiff before we recess
24 for the evening?

25 MR. WILLEY: No, sir.

1 THE COURT: Anything from defense?

2 MR. BLAIN: Your Honor, briefly. We briefly discussed
3 our Rule 403 motion. I think we'll just let that -- let that
4 lie and not make that on the record. Just wanted to, you
5 know, put closure on that so we don't waive that argument as
6 to the witnesses that have already presented. If there are
7 additional witnesses, we want to reserve the right to --

8 THE COURT: That's certainly discretionary. It's their
9 day in court. I'm going to allow them to present any evidence
10 they want to in that regard. And I think, based on what they
11 have said, that was the last of such witness.

12 MR. BLAIN: Thank you, Your Honor.

13 THE COURT: Very good.

14 All right. One thing, I'm going to ask -- I will
15 entertain any jury charges. I'm just going to go over briefly
16 what my jury charge is going to be, and y'all can give some
17 thought to that over the evening to see whether or not y'all
18 need to go ahead and start supplementing it. And I'll
19 entertain any requests or objections that you have.

20 I'm going to charge the duty of the jury and the judge,
21 preponderance of the evidence, direct and circumstantial
22 evidence, credibility of witnesses, how to evaluate expert
23 witnesses. I'm going to charge the law with regard to prior
24 inconsistent statements, the fact that they're to treat a
25 corporation as a person. I'm going to explain premises

1 liability, the concept of unsafe condition, the concept of
2 notice, the concept of reasonable care. I'm going to explain
3 what an invitee is, talk about proximate cause with regard to
4 premises liability.

5 I'll talk in general terms about personal injuries and
6 damages and the language, impairment, disfigurement. I'm
7 going to talk about prospective damages, about pain -- and I'm
8 going to define pain and suffering, loss of enjoyment of life,
9 mental suffering. I'll charge the life expectancy table.

10 And I'm going to charge pre-existing condition. And the
11 issue of punitive damages will be discussed at the conclusion
12 of the plaintiff's case.

13 Any objections so far? Any additional requests at this
14 juncture?

15 MR. WILLEY: If you want to email to 'em, I'd be glad --

16 THE COURT: I don't do that.

17 MR. WILLEY: Oh, you don't do that.

18 THE COURT: I don't do that. I told you what it was,
19 and, of course, I just don't do that.

20 MR. WILLEY: Is the premises liability charge the charge
21 book charge or is it some other charge?

22 THE COURT: Well -- are you talking about, like, Judge
23 Anderson's charge book?

24 MR. WILLEY: Right.

25 THE COURT: It's just the stand -- it's not Judge

1 Anderson's charge. I can promise you that.

2 MR. WILLEY: Okay.

3 THE COURT: Because it's usually too long and verbose.
4 But it's the standard charge that's in the charge book.

5 MR. WILLEY: Okay. We'll confer. The only one that
6 jumps out at me is that we are going to request a spoliation
7 charge as to videos and the preservation evidence that was
8 admitted into the record and the fact that they were not
9 preserved or produced, so...

10 THE COURT: And --

11 MR. WILLEY: And the other thing is, Your Honor,
12 pre-existing condition, which we can talk about more but I
13 don't think it's a proper charge in this case. There's no
14 pre-existing condition that caused her amputation. I think
15 what the proper charge would be would be the eggshell
16 plaintiff charge.

17 THE COURT: I'll be happy to entertain -- entertain that.
18 And what is your position on pre-existing condition?

19 MS. BOYD: We believe it's appropriate, Your Honor. We
20 plan to proffer expert testimony regarding her pre-existing
21 conditions. And Dr. Player even testified that she had
22 pre-existing conditions and that impacted the course -- the
23 cascade.

24 THE COURT: How would you disagree with what it says? It
25 says that -- it doesn't -- you know, the pre-existing

1 condition talks about the eggshell plaintiff.

2 MS. BOYD: Right.

3 THE COURT: It says that you take the plaintiff as you
4 find them and that it doesn't matter whether the plaintiff is
5 in good health, bad health, or anything in between. You take
6 your plaintiff as you -- have you read that charge?

7 MR. WILLEY: That has been charged in almost every case I
8 think I have ever tried, but -- so I'm familiar with it.
9 We'll take a look at it. I just -- you'll remember we had a
10 pretrial motion that dealt with that specifically, as to the
11 underlying conditions. Because it's not like a case where,
12 you know --

13 THE COURT: It's not that.

14 MR. WILLEY: Right.

15 THE COURT: But it does explain the law on pre-existing
16 condition --

17 MR. WILLEY: Right.

18 THE COURT: -- and how they're to evaluate that. I can't
19 imagine my not charging it, but I'll hear anything you have
20 got to say in that regard.

21 MR. WILLEY: We'll take a look at it. We might just want
22 some edits. But let us take a look at it. I mean, I feel
23 like I'm -- you know, I can pull up the charge --

24 THE COURT: I'll hear anything you have got to say about
25 it. I'm more than likely going to charge it. All right.

1 Any additional requests, including the eggshell
2 plaintiff, I'll be happy to do that. And, obviously, y'all
3 have an opportunity to object at the conclusion of the -- once
4 you have heard the text of -- but y'all know what I'm going to
5 charge based on what I have told you.

6 MR. JEFFERIES: Your Honor, with one kind of
7 administrative thing to smooth tomorrow out. At some point, I
8 think we need to proffer the photos that were excluded so that
9 they can be in the record. I don't know if Your Honor wants
10 full size. That seems very inconvenient for your clerk.

11 THE COURT: Well, y'all can do it however you want to. I
12 think that would be fine. And, of course, one of the -- I did
13 not articulate it very well is the reason why I excluded them.
14 One is that I find that the inspection was done in violation
15 of Rule 34, and I noticed in one of those pictures, a pallet
16 is obviously taken and laid down in the middle of the floor,
17 which I think would be prejudicial. Of course we don't know
18 how it got there. And the pictures were taken some four years
19 after the event.

20 It's not -- I think that the most relevant pictures can
21 be gleaned from the video, which we have got tons of those
22 pictures, and that's the most relevant thing is what -- what
23 the condition of the store was that day. And taking random
24 pictures without the benefit of defense counsel there to find
25 out the circumstances of it, particularly with regard to the

1 strong circumstantial evidence of destructive testing that
2 took place, I think it's inappropriate to do that, not to
3 mention the fact that it would be unduly prejudicial because I
4 really don't think that they're -- that something four years
5 away from -- four years past the incident and in different
6 parts of the store, I just think it's irrelevant and highly
7 prejudicial and in violation of Rule 34.

8 And, to answer your question, administratively, just put
9 those in. You can put in the big ones, the small ones, both,
10 or anything in between as a Court's exhibit.

11 MR. WILLEY: Thank you, Your Honor.

12 THE COURT: All right. And anything further?

13 MR. WILLEY: I'm assuming Your Honor does not wish to
14 hear any further argument for the record on the admissibility
15 of those pictures.

16 THE COURT: Absolutely not.

17 MR. WILLEY: I will not.

18 THE COURT: I do not. All right. Very good.

19 MS. BOYD: I have nothing, Your Honor.

20 THE COURT: Thank you.

21 (At 5:10 p.m., the above trial adjourned until November
22 10, 2021, at 9:30 a.m.)
23
24
25

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: April Jones v. Tim Ringer/Walmart

3 2017-CP-21-01375

4 DATE OF PROCEEDING: November 9, 2021 (Day 2 of 4)

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; **that said proceedings were transcribed**
9 **to the best of my ability from the audio recording and**
10 **supporting information**, and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14 

15 _____/s/ Bobbi Fisher_____

16 Bobbi J. Fisher, RPR

17 NCRA Registered Professional Reporter (RPR)

18 Prepared: December 31, 2021

19
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E X H I B I T S(Exhibits on file in the Clerk's Office.)

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COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:34 a.m.)

THE COURT: -- ready?

MR. BLAIN: No, Your Honor, it's not.

THE COURT: All right. I want that made part of the record, the May 15, 2019, inspection.

MR. BLAIN: Well, we have that series of videos on a flash drive. We can make that a Court's exhibit, if that would suit Your Honor.

THE COURT: That will be fine. Is this it?

MR. BLAIN: No, sir.

THE COURT: That's not it?

MR. BLAIN: I don't believe so.

THE COURT: Okay. Well, I don't know. For appellate review, does the Court of Appeals or the Supreme Court, do they look at flash drives or do they need pieces of paper?

MR. WILLEY: I think they can certainly consider it. I don't know.

MS. BOYD: That's how we enter video normally, Your Honor.

THE COURT: All right. Well, do it the way you normally do it, but it needs to be a part of the record. I want that to be clear.

(Court's Exhibit No. 7, Flash Drive, was marked for identification and entered into evidence for appellate review

1 only.)

2 MS. BOYD: So we just had it marked. Isn't that what we
3 did for the defendants? We just marked --

4 MR. WILLEY: -- yeah, flash drive. That preserves -- the
5 appellate court can look at that, yeah.

6 MS. BOYD: Right, right, right.

7 THE COURT: This is a letter that the flash drive was
8 with, I believe.

9 MS. BOYD: Okay.

10 THE COURT: Now, you can look at that if you want to.

11 MS. BOYD: Yes. And we have another copy of the flash
12 drive.

13 THE COURT: Oh, good. That's all I need.

14 Anything from the plaintiff before we proceed?

15 MR. WILLEY: Yes. We have those photographs that we were
16 going to mark as the Court's exhibit.

17 THE COURT: All right.

18 MR. WILLEY: We have got smaller versions.

19 THE COURT: All right. Good.

20 (Court's Exhibit No. 6, Pallet Photographs, were marked
21 for identification and received into evidence for appellate
22 review only.)

23 THE COURT: All right. Anything from the defense before
24 we proceed?

25 MS. BOYD: Not at this time, Your Honor.

1 THE COURT: All right. We're ready for the jury.

2 COURT MONITOR: You good? Do you need anything from me?

3 THE COURT: That's a Court's exhibit and it just needs to
4 be made a part of the record for appellate reasons.

5 (The jury entered the courtroom at 9:35 a.m.)

6 THE COURT: Good morning.

7 JURORS: Good morning.

8 THE COURT: Thank you-all for being here and being here
9 on time.

10 Plaintiff, you're recognized. You may call your next
11 witness.

12 MR. JEFFERIES: Thank you, Your Honor, may it please the
13 Court. The plaintiff could call herself, April Jones.

14 THE COURT: Very good.

15 Ms. Jones, I'm going to ask you if -- I'm going to ask
16 the bailiff if you could take the Bible and present it to her
17 so she can -- the clerk can administer the oath.

18 APRIL JONES,
19 the witness, after having been duly sworn, was examined and
20 testified to as follows:

21 THE CLERK: Thank you.

22 THE COURT: Ms. Jones, I'm going to ask you if you can
23 speak loudly, clearly, and slowly in order so we can hear
24 everything that you have to say.

25 If you feel comfortable taking your mask off, that would

1 be good.

2 Let's start with your full name, Ms. Jones.

3 THE WITNESS: April Michelle Jones.

4 THE COURT: Thank you, Ms. Jones.

5 MR. JEFFERIES: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. JEFFERIES:

8 Q April, I want to get started. I know we have heard a lot
9 of testimony from your family. I want to get started with
10 your testimony by looking at some of these videos -- well,
11 really, all of these videos. We're going to work our way
12 through the videos so you can identify, you know, where you
13 are, what's happened, what's going on, what you're thinking
14 about, what we're seeing.

15 Candidly, this is going to take a little while. It's
16 probably about an hour worth of video, but, you know, this is
17 your one day in court. It's your one shot, and we have to
18 authenticate this evidence. So we're going to go through it.
19 If you need me to rewind something, I'll do it, but we'll work
20 our way through it, and you just tell us what we're seeing.
21 All right?

22 Now, April, what I'm putting up here is a video clip that
23 was provided by Walmart. It's what I believe they call Clip
24 No. 8. And just for reference, if you look down there on your
25 screen, you see that -- you can see the date. Can you tell us

1 what date that says?

2 **A** June 26, 2015.

3 **Q** All right. And the time next to that is what?

4 **A** 11:29 a.m.

5 **Q** All right. Now, I'm going to play this video here.

6 MR. JEFFERIES: You got it? All right. Thank you,
7 Mr. Willey.

8 MR. WILLEY: Yes, sir.

9 BY MR. JEFFERIES:

10 **Q** All right. So I'm going to play this Video Clip No. 8.
11 You said it begins at 11:29 and looks like 57 seconds on June
12 26, 2015.

13 (Video plays.)

14 What did you see in that video?

15 **A** I saw myself walking in Walmart.

16 **Q** Walking into?

17 **A** Into the Walmart.

18 **Q** Into the Walmart.

19 And what was the purpose of your visit to Walmart that
20 day?

21 **A** Actually, I was going in to get bleach.

22 **Q** Going to get bleach?

23 **A** Yes, sir.

24 **Q** In the video clip that we just watched where you're
25 walking into the Walmart, at that time, did you have -- did

1 you hear any kind of sounds? Did you have any awareness that
2 anything was wrong?

3 **A** No, I didn't.

4 **Q** All right. I'm going to show you another video clip.
5 And if you'd tell us what the date and time at the bottom of
6 this is.

7 **A** June 26, 2015, at 11:30 a.m.

8 **Q** (Video plays.) Okay. And do you recognize what's shown
9 here in the video?

10 **A** Yes, I do.

11 **Q** Okay. And what are we looking at there?

12 **A** We're actually looking at the produce and the grocery
13 aisle.

14 **Q** Okay. Of the Walmart store?

15 **A** Yes, the Walmart.

16 **Q** And I'm going to play this video, about 50 seconds long.
17 (Video plays.)

18 THE COURT: Mr. Jefferies, tilt that a little bit this
19 way.

20 MR. JEFFERIES: Oh, yes, Your Honor.

21 THE COURT: Very good. Thank you.

22 MR. JEFFERIES: Is that good?

23 THE COURT: Yes, sir. We just lost it. There's
24 something about that thing, when you tilt it. Can you tilt it
25 back a little bit the other way? Sometimes it will come back

1 on.

2 MR. JEFFERIES: There we go.

3 (Technical interruption.)

4 BY MR. JEFFERIES:

5 Q All right. I'm going to put this -- Ms. Jones, I'm going
6 to rewind this -- that's funny, when I say that to young
7 people, they don't even know what I'm talking about because
8 you don't rewind anything anymore. But I'm going to go back
9 to the beginning of this video.

10 Clip No. 6, you told us, was June 26, the entryway of the
11 Walmart there by the grocery. And let me just play this,
12 we'll watch it through, and then I'm going to ask you some
13 questions about it.

14 A Okay.

15 Q (Video plays.) Okay. And I'm going to pause it right
16 here. Do you recognize yourself here in this video?

17 A Yes, I do.

18 Q All right. And whereabouts are you, if you can describe
19 to the jury where you are in the video.

20 A I'm actually over -- it would be on the left-hand side,
21 headed towards the deli.

22 Q Oh, to your left as you come in?

23 A Yes.

24 Q But as we're looking at the video, kind of to the right?

25 A Yes.

1 Q All right. And what are you wearing?

2 A I'm wearing a white tank top, green knickerbockers.

3 Q I'm going to turn this monitor just a little so you can

4 see it.

5 So would that be you right there?

6 A Yes, it is.

7 Q And it looks like -- are you pushing something?

8 A I'm pushing a shopping cart.

9 Q All right. So that's you coming in there at 11:30 and 51

10 seconds into the Walmart by the produce aisle?

11 A Yes.

12 Q (Video plays.) That's the end of the video. It just

13 stops right there. What are you standing beside there?

14 A Watermelons.

15 Q Okay. Did you continue on in the produce aisle? What

16 did you do next?

17 A Yes, I did. I walked around the produce.

18 Q All right. What all did you see in the produce aisle as

19 you walked around?

20 A I saw different fruits. I saw other watermelons. I saw

21 cucumbers, peaches.

22 Q Tell us about the displays that these things were

23 displayed on. Did you notice anything about them?

24 A Yes. The other watermelons that I saw, they were

25 displayed on pallets.

1 Q The other watermelons.

2 A Yes.

3 Q Now, can you see these other watermelons on the pallets
4 that are -- are they in this video?

5 A I can't see them, but they're --

6 Q Okay. So they'd be off to the --

7 A Yes.

8 Q -- off to the right. All right.
9 So you walked around --

10 A Yes, I did.

11 Q -- the produce area --

12 A Yes.

13 Q -- for a while. All right.
14 Walmart did not produce a video of you walking around the
15 produce aisle. Are you aware of that?

16 A No, I'm not aware.

17 Q So we can only rely on you to tell us what you saw in the
18 produce aisle because the video doesn't seem to exist.

19 After this video, you go in the produce aisle. You
20 walked around. You saw produce. You said you saw another
21 watermelon display on pallets?

22 A Yes.

23 Q All right. And then did you leave the produce aisle at
24 some point?

25 A Yes, I did.

1 Q All right. Let me see if I can find a video for that.

2 (Video plays.) And that's a slightly different angle.

3 Do you recognize what's here in this video now that I'm

4 showing you? It's Video Clip No. 2.

5 A Yes, I recognize it.

6 Q All right. Is that a view of the same front door that
7 you came in?

8 A Yes, it is.

9 Q Can you read to us the date and time at the bottom of
10 this video clip?

11 A June 26, 2015.

12 Q All right.

13 A 11:31 a.m.

14 Q And just to make sure we're all oriented and in the same
15 place, the produce department that you were, would that be
16 over here on the side?

17 A Yes, it would be.

18 Q And out of the frame as well?

19 A Yes.

20 Q Can you keep an eye out of you coming out of the produce.

21 (Video plays.) Do you recognize yourself in the video at
22 all yet?

23 A Yes, I do.

24 Q Whereabouts are you?

25 A I'm coming down the actuality (ph) aisle.

1 Q Coming toward the camera?

2 A Yes.

3 Q All right. I'm going to rewind that just a little bit.

4 (Video plays.) So is this right where you're coming out

5 right now?

6 A Yes, it is.

7 Q Okay. So that would be you. That would be you coming

8 out here?

9 A Yes.

10 Q On this right side (indiscernible)?

11 A Yes, it is.

12 Q And, again, white shirt, green -- green pants?

13 A Yes, sir.

14 Q And still pushing a cart?

15 A Yes, I am.

16 Q So here you come.

17 (Video plays.) And that's you there on the right side of

18 the screen, walking toward the camera?

19 A Yes, I am.

20 Q All right.

21 (Video plays.) And now you're out of the picture.

22 A Yes, sir.

23 Q Okay. I want to back that up a little bit. As you're

24 walking toward the camera here, this would be at 11:32 and 22

25 seconds is where I'm starting the video.

1 As you're walking toward the camera, just before you get
2 out of the bottom, it looks like you lean over or bend over or
3 look over or something. Right there.

4 **A** Yes.

5 **Q** At 11:32:34. What are you doing right there?

6 **A** I'm actually bending over, looking down. Lifting my foot
7 up, looking at the bottom of my foot.

8 **Q** And why are you doing that?

9 **A** Because I heard some noise.

10 **Q** Tell us what you heard.

11 **A** I heard metal.

12 **Q** What you mean?

13 **A** It's like I was walking and, all of a sudden, I heard the
14 metal hitting the floor of Walmart. So I actually bent over
15 to look to see what it was. And I seen a little something,
16 but then I kept walking.

17 **Q** When you heard that sound, what kind of sound was that?

18 **A** It sounded like metal hitting the floor.

19 **Q** And when did that sound start?

20 **A** It actually started maybe -- it wasn't even a minute
21 before that.

22 **Q** Okay. Was it -- did it start, what, during this video
23 here?

24 **A** Yes.

25 **Q** Okay. I'm going to rewind the video.

1 So by the end of this video, you're hearing a metal like
2 scraping on the floor kind of sound?

3 **A** Yes, I am.

4 **Q** All right. Why did you think it was -- was coming from
5 you and not just somewhere else?

6 **A** Because you automatically -- I heard it and I kind of
7 felt the feeling on the bottom of my flip-flop.

8 **Q** Like you had stepped on something?

9 **A** Yes.

10 **Q** All right. It didn't hurt, though, did it?

11 **A** No, it didn't hurt. I felt pressure, but it didn't hurt.

12 **Q** It didn't hurt. All right.

13 So you come out of produce -- and I'm going to play it
14 here -- and you start walking. And are you saying somewhere
15 in this range here where you're walking, 11:31:52, somewhere
16 between there and the end is where you started hearing it?
17 And I know you might not know exactly.

18 **A** I say like right where I'm at now.

19 **Q** Right where you're -- okay. I'm going to pause that
20 right there.

21 **A** Yes.

22 **Q** So right around 11:32 and 6 seconds, somewhere in
23 there --

24 **A** Yes.

25 **Q** -- is where you start hearing that sound,

1 "chk-chk-chk" --

2 A Yes.

3 Q -- metal on the floor?

4 A Yes.

5 Q Okay. You walk a little bit and then you look down. And

6 tell us what you saw when you looked down.

7 A I saw a little piece of metal.

8 Q Okay. Did you recognize what it was?

9 A I didn't.

10 Q Did you determine later what it was?

11 A Yes, I did.

12 Q And what did you determine later was that piece of metal

13 in your flip-flop?

14 A I determined it was a nail.

15 Q It was a nail. Okay.

16 A Yes, sir.

17 Q We'll come to that, ma'am.

18 So we're going to go on with this video.

19 (Video plays.)

20 And right here at 11:32 and 33 seconds where you're

21 looking down in the video, that's when you said you were

22 looking down to see what the cause of that noise was?

23 A Yes, I was.

24 Q And you saw it was -- what did you say? A piece of

25 metal?

1 **A** Yeah, a piece of metal.

2 **Q** As you passed by it, you came out of that -- came out of
3 that grocery aisle -- produce aisle, I should say. Out of
4 that produce aisle. So in passing down here, down the action
5 alley (indiscernible) the camera before you got here and
6 looked at your foot, you mentioned you seeing some pallet back
7 here in the produce aisle. Did you see any here in the action
8 alley aisle?

9 **A** Yes, I did.

10 **Q** Whereabouts did you see those?

11 **A** The pallets were actually between -- right where the 98
12 cent sign is. It was between there and on -- up to around
13 where the sodas are at.

14 **Q** So between this sign here where I'm pointing and the
15 98-cent sign down at the bottom?

16 **A** Yes.

17 **Q** Now, they weren't loose pallets just laying on the floor,
18 were they?

19 **A** No.

20 **Q** How were they? Were they under a display or --

21 **A** They was -- they was -- a display was on the pallets.

22 **Q** You later figured out that it was a nail in your
23 flip-flop, you said.

24 **A** Yes, I did.

25 **Q** You never saw a nail laying on the floor.

1 **A** No, I didn't.

2 **Q** Which makes sense; right? If you had seen it, you
3 wouldn't have stepped on it.

4 **A** Right. I wouldn't have.

5 **Q** So that's at 11:32 and 33 seconds when you're looking
6 down. And I'm going to go to the next video and see if you
7 recognize that.

8 (Video plays.) Can you tell us the date and time at the
9 bottom of this video?

10 **A** June 26, 2015.

11 **Q** All right.

12 **A** 11:31 a.m.

13 **Q** All right. So that would be just a little bit before you
14 had looked down at your foot.

15 **A** Yes.

16 **Q** Okay. Do you recognize what's in this video clip? This
17 video clip -- well, let me look. No. 17.

18 Do you recognize what's in the video clip?

19 **A** Yes, I do.

20 **Q** All right. What is it?

21 **A** It's actually food. I see sodas.

22 **Q** Is that the action alley that you were in?

23 **A** Yes, it is.

24 **Q** All right. I'm going to press play, and you tell me when
25 you see you come into the picture.

1 (Video plays.)

2 **A** I see me right now.

3 **Q** All right. And where are you on the screen, just so the
4 jury can spot you?

5 **A** I'm on the bottom left-hand corner.

6 **Q** On the bottom left. Okay. And so you're walking away
7 from this camera.

8 **A** Yes.

9 **Q** All right. And this would be 11:32 even; right? That's
10 the part we're looking at?

11 **A** Yes, sir.

12 **Q** All right. So this is about 33 seconds before you looked
13 down to see what's in your foot?

14 **A** Yes, sir.

15 **Q** Is that you coming out from behind that red sign there
16 that says "pick up"?

17 **A** Yes, sir.

18 **Q** Heading up toward the top of the screen.

19 (Video plays.) And right there at 11:32 and 34 seconds,
20 what do you see yourself doing there?

21 **A** I'm lifting up my right leg to look at the bottom of my
22 foot.

23 **Q** So that's the same thing we just saw from the other
24 angle: One looking at the front of you and one looking at the
25 back of you.

1 **A** Yes.

2 **Q** Okay. And I don't see in here -- I don't think the video
3 is good enough to see that 98-cent sign that you were talking
4 about where you said that was the area you saw some pallets.
5 But would it be in this center aisle?

6 **A** It is in the center aisle.

7 **Q** Okay.

8 (Video plays.) I'm going to finish playing this video
9 until you go out of sight. You get kind of small there at the
10 top and hard to see. And I believe you're gone. Do you see
11 yourself there anymore now?

12 **A** No, I don't.

13 **Q** Okay. So, through this video, you heard the sound and
14 you looked in your foot and you saw the piece of metal.

15 **A** Yes.

16 **Q** At this stage, do you have any idea that anything really
17 serious is wrong yet?

18 **A** I don't.

19 **Q** Okay. We'll go to the next video.

20 (Video plays.) So this is Video Clip No. 15. And can
21 you tell us what the time and date at the bottom is?

22 **A** June 26, 2015. 11:32 a.m.

23 **Q** Okay. And I'm going to press play. Do you recognize
24 what's in this video?

25 **A** Yes, I do.

1 Q All right. And you will appear in this video at some
2 point; right?

3 A Yes, sir.

4 Q Where we will first see you in this video? Do you know
5 or do we need to watch it?

6 A I don't know. I need to watch it.

7 Q All right.

8 (Video plays.) Is that you there in the bottom?

9 A Yes, it is.

10 Q I'm going to keep on playing.

11 (Video plays.) Do you know what you're doing there? It
12 looks like you're standing still. Maybe talking to somebody?

13 A It looks like I was talking to someone.

14 Q Do you know who it was?

15 A I don't.

16 Q Okay.

17 (Video plays.) Now, what are you doing right there at
18 11:34 and 10 seconds?

19 A I'm actually lifting my right leg up again, looking at my
20 foot.

21 Q Why are you doing it again?

22 A Because I felt a lot of pressure.

23 Q Okay.

24 A And I definitely picked it up to look to see and figure
25 out what was going on. And at that time is when I actually

1 realized I stepped on a nail. It just wasn't metal. It was a
2 nail.

3 Q So it wasn't just -- at that time -- prior to that, it
4 might have been something just stuck to the bottom of your
5 shoe.

6 A Yes.

7 Q But, here, you realize, wait a minute, something more is
8 going on.

9 A Right.

10 Q Okay. Let's watch this video for a little bit and see
11 what happens.

12 (Video plays.) And what did you do just there? It
13 looked like you reached up toward the shelf?

14 A I actually had pulled the nail out my shoe.

15 Q Okay.

16 A And put the nail up on the shelf.

17 Q All right. Let's go back a little bit and see if we can
18 see that.

19 (Video plays.) See that little flash there? What was
20 that down there at your foot? Was that your foot? Was that a
21 sock or something? What was that?

22 A It wasn't a sock. It was my foot.

23 Q It was your foot. All right. Let's go back here a
24 little bit and watch there.

25 (Video plays.) So you're looking at your foot. Take the

1 flip-flop off. What are you doing right there?

2 **A** Actually, I had took the nail out.

3 **Q** Okay. And you put it on the shelf?

4 **A** Yes, I did.

5 **Q** Is your foot red there? Is it bleeding?

6 **A** It looked like it was bleeding. It was bleeding a little

7 bit.

8 **Q** At that stage. Okay.

9 **A** But it wasn't bleeding a lot.

10 **Q** All right. And then you keep on walking.

11 **A** Yes.

12 **Q** Now, the nail is still on the shelf; right?

13 **A** Yes, it is.

14 **Q** And what are you walking down this aisle to get?

15 **A** I'm walking down the aisle to get bleach.

16 **Q** Okay.

17 (Video plays.) What are you doing right there?

18 **A** I'm picking up the bleach.

19 **Q** Up there toward the top of the screen?

20 **A** Yes, sir.

21 **Q** Okay.

22 (Video plays.) And is that you on the move again?

23 **A** Yes, it is.

24 **Q** All right. Coming back toward the camera. 11:35 and 53

25 seconds.

1 **A** Yes, sir.

2 **Q** (Video plays.) Now, what did you do right there?

3 **A** Picked the nail back up.

4 **Q** 11:36 and about 9 seconds?

5 **A** Yes, sir.

6 **Q** Okay. You picked the nail back up off the shelf?

7 **A** Yes, I did.

8 **Q** All right. Why did you do that?

9 **A** I picked the nail back up because, by the time I got the

10 bleach and I put the bleach in the cart, the pain was coming

11 through my foot so bad. And I got the nail to actually take

12 it up to customer service to show the manager, you know, that

13 I had stepped on a nail, still not knowing that it was going

14 to lead to what it lead to. But I took it, you know, as my

15 proof.

16 **Q** So back in one of the earlier videos, around 11:32 and 33

17 seconds, that's when you first hear the noise and look at your

18 foot and think, "Well, that's maybe just something on the

19 bottom of my shoe."

20 **A** Yes.

21 **Q** And then this is now not quite four minutes later. Now

22 you're realizing that there's a problem.

23 **A** Right.

24 **Q** And you grab that nail. All right.

25 So you grab the nail back off of the shelf. And then

1 what do you do?

2 **A** I proceeds to the front of the store to check out and pay
3 for the bleach and go to customer service.

4 **Q** All right. So let's look at -- let's follow you through
5 the store and look at those videos.

6 (Video plays.) Now, this is Clip No. 17 once again. And
7 you told us, I think -- I just want to make sure you get
8 oriented.

9 When you first came up in this depiction, you came out of
10 the bottom here and you were heading up, and you were turning
11 right into that bleach aisle here.

12 **A** Yes.

13 **Q** All right. So in this one, you're going to come out of
14 the bleach aisle?

15 **A** Yes, sir.

16 **Q** And come back to (indiscernible).

17 **A** Yes, sir.

18 **Q** Let me stand on the other side, might be able to see
19 better.

20 Tell us when you see yourself.

21 (Video plays.)

22 **A** I see myself coming down the aisle.

23 **Q** Coming toward the camera.

24 **A** Yes.

25 **Q** In that aisle that's on the right side of the screen?

1 **A** Yes.

2 **Q** Okay. So that's you towards the top. So if we back up a
3 little bit, we kind of follow you back where you came out.

4 That's you backing up. All right.

5 So just as you come out of that aisle, that would have
6 just been, what, seconds after you picked up the nail off the
7 shelf?

8 **A** Yes, sir.

9 **Q** All right. So let's watch and see what you do.

10 (Video plays.) And while you're walking toward the
11 camera here in this 11:36 and 27 seconds, where do you have
12 that nail?

13 **A** I have the nail in my hand.

14 **Q** In your hand. Okay.

15 **A** Yes.

16 **Q** And did you hold on to it the entire time?

17 **A** Yes, I did.

18 **Q** Okay. (Video plays.) Is that you that just disappeared
19 out the bottom of the frame?

20 **A** Yes, I did.

21 **Q** All right. And let's check out that time you would have
22 left this camera. Right there, what time does that say at the
23 bottom of the frame?

24 **A** 11:37 a.m.

25 **Q** 11:37 a.m. So, by that stage, you have been in the store

1 about seven minutes.

2 **A** Yes, sir.

3 **Q** Okay. We'll go to the next video.

4 We looked at this one before. This is Video Clip No. 2,

5 but this is a little later on the timestamp. What does the

6 time and date on the bottom of this one say?

7 **A** June 26, 2015. 11:36 a.m.

8 **Q** 11:36 and 25 seconds.

9 **A** Yes, sir.

10 **Q** Okay. So that's when you would be heading back to the

11 front of the store.

12 **A** Yes, sir.

13 **Q** So tell us when you see yourself come into the picture on

14 this one.

15 **A** (Video plays.) I see myself.

16 **Q** And where are you in this video?

17 **A** The bottom left-hand corner.

18 **Q** So down.

19 **A** In the middle of the action aisle.

20 **Q** Is that you right in there?

21 **A** Yes, it is.

22 **Q** Right about where that (indiscernible) is?

23 **A** Yes.

24 **Q** 11:36 and 36 seconds?

25 **A** Yes, it is.

1 Q I'll press play again. (Video plays.) Tell us what
2 you're doing there.

3 A I'm walking.

4 Q And where are you headed to?

5 A Headed to the cash register.

6 Q And you're going to buy what?

7 A To pay for my bleach.

8 Q Pay for the bleach. Okay.

9 You didn't pick up anything else?

10 A No, I didn't.

11 Q Just the bleach you came to get. Okay.

12 Is that you turning left?

13 A Yes, it is.

14 Q Tell us when you disappear out of the picture. (Video
15 plays.) Well, it ends before you're completely gone. Is that
16 you almost out of the picture?

17 A Yes, it is.

18 Q At 11:37 and about 21 seconds?

19 A Yes, it is.

20 Q Okay. We'll go to the next video. This one starts --
21 what time does this one say it starts at?

22 A 11:37 and 19 seconds.

23 Q Okay. So just before that other one ended.

24 A Yes.

25 Q All right. So tell us if you see yourself coming to this

1 one.

2 **A** (Video plays.) I see myself.

3 **Q** All right. Where are you in this video?

4 **A** Entering into the check-out area.

5 **Q** Okay. Are you on the right side of the screen? Left

6 side of the screen?

7 **A** The right side.

8 **Q** The right side of the -- right side of the check-out

9 area, left side of the screen?

10 **A** Yes.

11 **Q** I just want to make sure.

12 So that's you?

13 **A** Yes, it is.

14 **Q** And you just came from over there and (indiscernible) the

15 check-out?

16 **A** Yes, I am.

17 **Q** And then, off the screen, you go at about 11:37 and 30

18 seconds.

19 **A** Yes.

20 **Q** Okay. All right. And I apologize; I know this is kind

21 of plodding to go through these, but we just have to

22 authenticate them, so...

23 We'll go to the next video. This should be Clip No. 9, I

24 believe. Pardon me, it might be Clip No. 14. It is. Clip

25 No. 14. Where does it say for the date and time at the

1 bottom?

2 **A** June 26, 2015. 11:37 and 22 seconds a.m.

3 **Q** Just after you pass through the other video?

4 **A** Yes.

5 **Q** All right. I'll press play. And just tell us -- when
6 you see something happening here, tell us what we're seeing.

7 (Video plays.)

8 **A** I see myself coming up to the register, scanning my
9 bleach. Scanning my coupon for the bleach. I'm getting my
10 money out my purse to pay for the bleach. Put the bleach in
11 the cart. Depositing my coupon for the bleach. I'm
12 retrieving my receipt and my change. I'm putting my change
13 back in my purse and I'm walking off.

14 **Q** So you just bought -- in this video, you just bought the
15 bleach?

16 **A** Yes, sir.

17 **Q** Okay. And this is the video I think you would have heard
18 the Walmart folks testify that they actually pulled this video
19 about three days later.

20 **A** Yes.

21 **Q** Okay. And would have seen you buying that bleach.

22 **A** Right.

23 **Q** So you, then, left the screen here in this video. Where
24 did you head to next?

25 **A** I went to customer service.

1 Q And why did you do that? Why did you go to customer
2 service?

3 A To speak with the manager.

4 Q What did you want to speak with the manager of customer
5 service about?

6 A So they can write me an incident report about the nail
7 that I stepped on in the store.

8 Q Okay. So let's find that video. This is Clip No. 11.
9 Date and time at the bottom of that one?

10 A June 26, 2015. 11:39 and 56 seconds a.m.

11 Q All right. So this would be right after you bought the
12 bleach.

13 A Yes, sir.

14 Q All right. I'm going to press play. You just tell me
15 when you see yourself come into the video.

16 A Okay. (Video plays.) I see myself walking down the
17 aisle towards customer service.

18 Q So, on this screen, we see you walking down the aisle
19 towards customer service.

20 A Yes.

21 Q This aisle here?

22 A Yes.

23 Q So you would be up in here somewhere?

24 A Yes, sir.

25 Q And we're going to follow you up on your trip toward

1 customer service.

2 (Video plays.) And that's you there walking toward the
3 camera.

4 **A** Yes, it is.

5 **Q** Looks like you're favoring that foot a little.

6 What time is it now on the video?

7 **A** 11:40 and 55 seconds a.m.

8 **Q** All right. So you have been in the store now about nine
9 months, almost ten?

10 **A** Yes, sir.

11 **Q** And then you go out of the video?

12 **A** Yes.

13 **Q** All right. Are you turning -- where are you turning
14 towards when you go out of there?

15 **A** Into customer service.

16 **Q** Into customer service. Okay.

17 All right. We'll start the next video, which is Clip No.

18 7. (Video plays.) Tell us when you come into Clip No. 7.

19 **A** I'm entering into customer service now.

20 **Q** Okay. And the time is 11:41 and 1 second?

21 **A** Yes, it is.

22 **Q** So that picks up where the other one left off then?

23 **A** Yes, sir.

24 **Q** All right. So you come into customer service. Just tell
25 us what's happening here as you're -- as this video goes on.

1 **A** Okay. I'm walking up to the counter to ask someone to
2 speak with a manager.

3 **Q** Okay. Now, you're at the counter at 11:41 and 20
4 seconds?

5 **A** Yes. (Video plays.) I just pulled the nail out my
6 pocketbook.

7 **Q** Okay. Now, it looked like you were turning around. Why
8 did you turn around as that fellow walked by?

9 **A** Actually, to tell the associate -- try to get help.

10 **Q** Try to get help.

11 **A** Yes.

12 **Q** Is there anybody at the counter there talking to you?

13 **A** Not right now there isn't.

14 **Q** Okay. So I'm going to back that up since I interrupted
15 you there a little bit.

16 (Video plays.) All right. So we see an associate
17 walking through.

18 **A** Yes.

19 **Q** And you're turning around toward him to try to get his
20 attention?

21 **A** Yes, I am.

22 **Q** All right. And is that another associate going by?

23 **A** It is.

24 **Q** Okay. And did you get their attention?

25 **A** Not yet.

1 Q Not yet.

2 (Video plays.) Now somebody comes over to you.

3 A Yes. I'm talking to the associate now.

4 Q All right. And what did you just -- you talked to them.

5 What did you just say to them?

6 A I asked him could he get a manager for me.

7 Q Okay. Do you remember what he said?

8 A He said yes.

9 Q Did you tell him at that stage why you wanted the

10 manager?

11 A Yes. I told him I stepped on a nail.

12 Q Okay. Did you tell him anything else about the injury

13 and whether you were bleeding or anything at that stage or

14 just that you stepped on a nail?

15 A No, I didn't tell him about that.

16 Q So that's at 11:42 and 7 seconds you tell the associate

17 "I have stepped on a nail"?

18 A Yes.

19 Q All right. (Video plays.)

20 A That's the manager approaching me now.

21 Q Do you know who that manager is? Do you know his name?

22 A I don't know his -- remember his name.

23 Q Okay. So you're talking with the manager.

24 A Yes, I am.

25 Q And what did you tell the manager?

1 **A** I told him I stepped on a nail over in the grocery
2 department.

3 **Q** And what did he say to you?

4 **A** He asked me for the nail.

5 **Q** Did you give it to him?

6 **A** No.

7 **Q** Did you show it to him?

8 **A** Yes, I did.

9 **Q** Why didn't you give it to him?

10 **A** Because I felt, at that time, I needed to hold on to the
11 nail myself.

12 **Q** That was probably smart.

13 **A** Yes.

14 **Q** I want to show you something and ask you -- well, tell me
15 about the nail first. What did it look like? Big nail?
16 Short nail? Fat nail?

17 **A** It was a short nail.

18 **Q** Kind of short?

19 **A** Yes.

20 **Q** What color was it?

21 **A** It was dark. It was rusty.

22 **Q** Rusty. All right?

23 **A** Yes.

24 **Q** Short, rusty nail.

25 **A** Yes.

1 MR. JEFFERIES: May I approach, Your Honor?

2 BY MR. JEFFERIES:

3 Q Is that the nail?

4 A That's the nail.

5 Q And that's just a nail like the nail. That's the nail.

6 A That's the actual nail.

7 Q That's the nail.

8 A Yes.

9 Q You're certain about that?

10 A Yes, I am.

11 MR. JEFFERIES: Your Honor, we would move the nail into
12 evidence.

13 THE COURT: Any objection?

14 MS. BOYD: No, Your Honor.

15 THE COURT: It's into evidence.

16 (Plaintiff's Exhibit No. 15, the nail, was marked for
17 identification and received into evidence.)

18 BY MR. JEFFERIES:

19 Q This is Plaintiff's Exhibit 15, the nail.

20 So this is the nail that you pulled out of your foot?

21 A Yes, it is.

22 Q And you heard that sound at 11:30 -- early 11:30s?

23 A Yes, it is.

24 Q And you showed this to the manager of the Walmart?

25 A Yes, I did.

1 Q Now, you said the manager of the Walmart wanted to take
2 it, but you said no.

3 A Yes.

4 Q All right. So we're resuming the video at 11:42 and 57
5 seconds. (Video plays.) What's going on there?

6 A He's still asking me for the nail.

7 Q Did he ask more than once?

8 A Yes. I asked him what did he need the nail for. He told
9 he'd need it for his records. Well, that's what I need it
10 for, my records, my evidence.

11 Q So he asked. You told him no. He asked again. You told
12 him no.

13 A Yes.

14 Q Was he the only one that asked for it?

15 A No, he's not.

16 Q Who else asked for it?

17 A Actually, the lady that wrote the incident report, she
18 came and she asked for it. She said, "I hate to ask you
19 this," she said, "But he told me to ask you for the nail."

20 And I said, "No, you can't have the nail." She said, "Okay."

21 So she went back over, and she came back. "Well, I need
22 to hold it to take a picture."

23 I said, "No, I'll hold it and you can take the picture."

24 I wouldn't give her the nail to hold because I knew she
25 wouldn't give it back.

1 Q So he asked you twice and then sent her to ask you?
2 A Yes.
3 Q And then she asked to hold it?
4 A Yes.
5 Q Persistent.
6 You mention she asked to take a picture of it?
7 A Yes.
8 Q Did you let her do that?
9 A Yes, I did.
10 Q How did you do that?
11 A I held it in my hand while she took the picture.
12 Q What did she take the picture with? I know a camera
13 but --
14 A Her cellphone. A cellphone.
15 Q A cellphone.
16 A Yes.
17 Q And we have not seen that picture so far in this trial,
18 have we?
19 A No, I have it.
20 Q I have never seen it.
21 Any idea what Walmart did with the picture?
22 A I have no idea.
23 Q It's gone.
24 A Yeah, they --
25 Q Thank heaven the nail ain't gone.

1 All right. Let's resume here at 11:43:09 a.m. Tell us
2 what's going on now.

3 **A** I asked him was he going to offer me any peroxide or
4 paper towels or anything for my foot.

5 **Q** What did he say?

6 **A** He was trying to get the nail. He said, "I'm actually
7 trying to get the nail."

8 I said, "Well, sir, I'm not giving you the nail." I
9 said, "Wouldn't it be polite to offer me a first aid kit --

10 MS. BOYD: Your Honor, I'm going to object at this time.

11 THE COURT: And the grounds for your objection?

12 MS. BOYD: Hearsay. She's testifying to what she --

13 THE COURT: That's correct. She can't testify as to what
14 other people said.

15 MR. JEFFERIES: Your Honor, if I may, party opponent is
16 Walmart.

17 MS. BOYD: But not Mr. Lane, who she is identifying.
18 She's testifying on behalf of someone who is not a party to
19 this case.

20 MR. JEFFERIES: In his capacity --

21 THE COURT: Let's move on.

22 MR. JEFFERIES: Okay.

23 BY MR. JEFFERIES:

24 **Q** Do you know if that was Mr. Lane you were talking to
25 there?

1 **A** I believe it is.

2 **Q** Okay. And did he represent to you that he was at work?

3 **A** Excuse me? I didn't hear you.

4 **Q** He was at work; right? He was working for Walmart?

5 **A** Yes, he was.

6 **Q** In his capacity not just as Mr. Lane of the street but as

7 a Walmart employee.

8 **A** Yes.

9 **Q** So he was speaking for Walmart when he was asking you for

10 that nail?

11 **A** He said he was the manager on duty.

12 **Q** Okay. Did he ultimately provide you with any kind of

13 peroxide or towels? Well, let's watch and see. Let's see

14 what happens. Let the video speak for itself.

15 (Video plays.) So what's happening now at 11:43 and 40

16 seconds?

17 **A** I'm looking at my foot with all the blood coming out of

18 it.

19 **Q** Okay. So it's bleeding more now than it was before?

20 **A** Yes, it was.

21 **Q** (Video plays.) Can you tell what Mr. Lane is doing there?

22 **A** He's actually handling other business with his associate

23 that just walked away.

24 **Q** Is anybody helping you at 11:44 and 43 seconds?

25 **A** No, sir.

1 Q Let's keep on playing.
2 (Video plays.) Somebody walks up to Mr. Lane there. Do
3 you know what they're doing there?
4 A I'm not sure.
5 Q Let's watch and see.
6 A I'm not really sure.
7 Q She walks away.
8 (Video plays.) What time is it now on this video?
9 A 11:46 and 20 seconds.
10 Q And you shown us earlier you went up to the counter at
11 11:41 and 20 seconds.
12 A Yes.
13 Q So it's now been five minutes since you got to the
14 counter with a nail in your foot. What has Walmart done?
15 A Nothing.
16 Q Did they tell you they were doing something?
17 A No, they didn't.
18 Q You're just standing there.
19 A Just standing there.
20 Q Did you have any idea whether somebody was going to help
21 you or not?
22 A No.
23 Q Let's keep watching. 11:46 and 22 seconds.
24 (Video plays.) What were you thinking about while you
25 were waiting?

1 **A** How awful the service was.

2 **Q** Anyone offer you a chair? It's been five or six minutes

3 now. Anyone offer you a chair?

4 **A** No, they didn't.

5 **Q** So you got a -- you step on a nail, show them the nail --

6 **A** Yes.

7 **Q** -- and no one even offers you a seat?

8 **A** Never offer a seat.

9 **Q** Not yet anyway.

10 (Video plays.) How is your foot feeling now at 11:47?

11 **A** It's throbbing.

12 **Q** Throbbing?

13 **A** Yes.

14 **Q** So it didn't hurt at the beginning.

15 **A** Correct.

16 **Q** But it's hurting now.

17 **A** It's hurting.

18 **Q** (Video plays.) Any idea what Mr. Lane there is doing at

19 11:47 and 58 seconds?

20 **A** He's handling some Walmart's business.

21 **Q** Okay. Now, it looks like you're walking -- well, tell us

22 about how you're walking. What's going on there?

23 **A** I'm really limping because, as I applied pressure, the

24 pain just really getting aggravating.

25 **Q** So that's about 11:48. About eight minutes -- seven,

1 eight minutes after you first came up to the counter and said
2 I got a nail in my foot.

3 **A** Yes.

4 **Q** I didn't see it but maybe you saw it. Did anyone at
5 Walmart offer you that chair?

6 **A** No.

7 **Q** You just --

8 **A** I went over there and sat down myself.

9 **Q** Just decided to do it.

10 **A** Yes.

11 **Q** All right. We're just going to rewind that for a second.
12 Why did you decide to sit down?

13 **A** Because the pressure was too great.

14 **Q** Okay. There you go.

15 (Video plays.) That fellow walked by. Did he offer to
16 help?

17 **A** No.

18 **Q** So at 11:48 and 26 seconds, you sit down. And now who is
19 coming over to you?

20 **A** The manager.

21 **Q** All right. Do you remember what he's doing now?

22 **A** No. I told him I needed an incident report.

23 **Q** Okay. And how did he respond to that?

24 **A** He wanted the nail.

25 **Q** He wanted the nail. Credit for persistence.

1 (Video plays.) All right. Now, he's gone and you're --
2 what are you doing?

3 **A** I'm sitting there. That's when he decided he would go
4 get me some peroxide.

5 **Q** Okay. Good. So that's about 11:49 he decides to go get
6 you some peroxide.

7 **A** Yes.

8 **Q** How is your foot feeling now in this video?

9 **A** It's still throbbing.

10 **Q** (Video plays.) All right. What's happening right there
11 at 11:50.

12 **A** He's coming with the peroxide.

13 **Q** Okay. So not quite ten minutes from the time you got
14 there.

15 **A** Right.

16 **Q** And he gives some peroxide.

17 **A** Yes.

18 **Q** And what else is going on there?

19 **A** I'm pouring the peroxide on my foot.

20 **Q** Did that Walmart manager get you anything else besides
21 peroxide?

22 **A** No, he didn't.

23 **Q** Like a first aid kit or anything like that?

24 **A** No.

25 **Q** Did he offer to call an ambulance or anything like that?

1 **A** No, he didn't.

2 **Q** Did he say anything when he gave you the peroxide?

3 **A** No. He just gave it -- basically gave it to me. He was
4 trying to put it on. I told him I could pour it. And that's
5 what I did.

6 **Q** Okay. So there you are putting the peroxide on your
7 foot.

8 **A** Yes.

9 **Q** (Video plays.) Now, it looks like he's back. What's he
10 doing there?

11 **A** He's cleaning up the blood off the floor.

12 **Q** Oh, okay. That's that towel-in-pocket thing we heard
13 about?

14 **A** Yes.

15 **Q** So he's -- that's him with a towel, wiping up blood off
16 the floor?

17 **A** Yes.

18 **Q** Okay. Now, you had said you asked for an incident
19 report. Do you have any idea at this stage whether that's
20 happening or not?

21 **A** It's not happening right now.

22 **Q** Okay. Now, is there somebody else here? Back that up
23 for a second. Somebody else here looked like they might have
24 been pushing a towel around on the floor.

25 (Video plays.) Back that up a touch more. We see Mr. --

1 I guess that's Mr. Lane. You said you think it is.

2 **A** It is.

3 **Q** Walmart manager. Okay. And he's wiping.

4 You see that lady coming at the bottom left, or man?

5 What is that in that person's hand?

6 **A** It looks like towels.

7 **Q** Looks like a towel. And what are they doing?

8 **A** Oh, she's cleaning blood up.

9 **Q** Okay. And where she's cleaning, how far away from you is

10 that?

11 **A** Maybe 25 feet.

12 **Q** Something like that. However far it is in the video. So

13 there's no chance of what she's cleaning up is that peroxide

14 which you pouring?

15 **A** No, that wasn't the peroxide.

16 **Q** That would be blood --

17 **A** That was the blood, yes.

18 **Q** So she's cleaning up the blood.

19 (Video plays.) And now it's 11:52 and 30 seconds, and

20 there you are in the chair. What's Mr. Lane back to doing?

21 **A** He was over there handling some kind of business.

22 **Q** Okay.

23 **A** I'm not sure.

24 **Q** Did they tell you what was -- at this stage while you're

25 sitting there waiting, has anyone told you what's going on,

1 what you're waiting for?

2 **A** No.

3 **Q** (Video plays.) Now it's 11:53 and 43 seconds. What's
4 happened since the last time you told me something happened?

5 **A** Nothing.

6 **Q** Nothing.

7 (Video plays.) Then I know this is painful to sit here
8 and watch nothing happening, but how was it in real life?

9 **A** It was horrible.

10 **Q** So it looks like at 11:54 and 22 seconds. What's
11 happening now?

12 **A** I'm asking him, you know, when was I going to get the
13 incident report.

14 **Q** Okay. Why were you asking him about when were you going
15 to get the incident report?

16 **A** Because nobody was writing anything down.

17 **Q** And you didn't, what, just want to wait all day and
18 see --

19 **A** Right. And I was just sitting there.

20 **Q** At this stage, are you worried about needing medical
21 attention?

22 **A** I am. And that's why I was really needing an incident
23 report so I could go ahead and leave.

24 **Q** Okay. And it is 11:54 and 22 seconds right now in this
25 video. Is that right?

1 **A** Yes.

2 **Q** All right. So that's about 13 minutes -- a little over
3 13 minutes after you first got to the counter and said, "I got
4 a nail in my foot. Stepped on a nail in Walmart"?

5 **A** Yes.

6 **Q** 13 minutes. All right.

7 (Video plays.) Let's keep watching and see what sense of
8 urgency we see here. Looks like you're talking with Mr. Lane.
9 What are you-all talking about now?

10 **A** The incident report.

11 **Q** Okay. You saw the incident report, right, when we
12 brought it into evidence; right?

13 **A** Yes.

14 **Q** Do you remember how many pages it was?

15 **A** It was one page.

16 **Q** One page.

17 **A** A few words.

18 **Q** A few words.

19 Going on 15 minutes and the one-page report, you don't
20 have that yet; right? And that's all you need to leave?

21 **A** That's right.

22 **Q** Because you got the nail. You didn't turn loose of the
23 nail.

24 **A** Right.

25 **Q** How many times have you seen people walk by this white

1 thing laying on the floor?

2 **A** Several times.

3 **Q** I wonder why nobody's picking it up. Maybe it's because
4 Mr. Ringer wasn't there that day. He picks things -- you
5 heard him say he picks things up.

6 **A** Yes, sir.

7 **Q** But he wasn't there that day.

8 **A** No, he wasn't.

9 **Q** Cats away...

10 All right. Now some people have shown up. What are
11 those folks doing?

12 **A** They're basically assisting their manager.

13 **Q** Okay. And did they talk to you?

14 **A** Not at that time.

15 **Q** Okay. Are they giving you any kind of aid or are they
16 looking at you? What are they doing?

17 **A** He was giving me some paper towels at that time.

18 **Q** Paper towels?

19 **A** Yes.

20 **Q** Not like a gauze bandage or anything?

21 **A** No.

22 **Q** Walmart sells, like, first aid stuff; right?

23 **A** Yes, they do.

24 **Q** Okay. Do you have any idea where those paper towels came
25 from?

1 **A** Probably came off the counter.

2 **Q** So paper towels. Not a sterile gauze bandage --

3 **A** No.

4 **Q** -- designed to prevent infection, but a paper towel?

5 **A** Paper towel that they wipe up spills with.

6 **Q** Any idea why nobody went and got one of those good first
7 aid kits off the counter that they sell?

8 **A** I asked them, and he didn't respond.

9 **Q** (Video plays.) What was that? Did she pick that up or
10 just kick it?

11 **A** She kicked it.

12 **Q** Let's watch that again. All right. That's still there.
13 We'll keep an eye on it. It's almost noon and I wonder how
14 long that lays there before somebody picks it up. We'll see.

15 All right. So they're giving you some paper towels for
16 you foot, not a sterile gauze bandage. You have had a little
17 peroxide. You have asked for a first aid kit but that's not
18 coming.

19 **A** No.

20 **Q** Okay. Have they given up on trying to get the nail from
21 you yet or are they still asking about that?

22 MS. BOYD: Objection, Your Honor.

23 THE COURT: Might counsel approach the bench?

24 MR. JEFFERIES: Yes, Your Honor. I need to grab my mask.

25 THE COURT: That's all right.

1 BENCH CONFERENCE

2 (A bench conference was held off the record and outside the
3 hearing of the jury and others.)

4 (Open court resumes as follows:)

5 BY MR. JEFFERIES:

6 Q All right. So we're going to resume the video here at
7 11:57 and 57 seconds.

8 (Video plays.) What's happening now in the video now at
9 11:59 and 16 seconds?

10 A They just finished cleaning the blood up off the floor.
11 And I was kind of trying to get my foot to stop bleeding so
12 much.

13 Q And what sort of first aid has been provided to you so
14 far?

15 A None. Just the peroxide.

16 Q In the video, it's now noon, any indication yet about
17 that incident report?

18 A No. They still wasn't writing the incident report.

19 Q What's that gentleman there doing?

20 A Unrolling paper towels.

21 Q What are they, sitting on the floor?

22 A Yes, they was wiping the floor up.

23 Q Okay.

24 (Video plays.) I'm going to pause it there. Can you
25 read us the time there at the bottom?

1 **A** 12:01.

2 **Q** And you said earlier you walked up to the counter at

3 11:41.

4 **A** Yes.

5 **Q** So it has now been 20 minutes?

6 **A** Yes.

7 **Q** At this stage, 20 minutes after going into customer

8 service, any idea what the status of that incident report is?

9 **A** It's not being prepared yet.

10 **Q** All right. I'm going to resume the video. 12:01.

11 (Video plays.) What's happening now?

12 **A** I'm actually sitting there, waiting on somebody to fill a

13 report out.

14 **Q** (Video plays.) What's happening now?

15 **A** I'm still sitting there. I'm on the phone -- like I'm on

16 the phone right now, calling my daughter.

17 **Q** Which daughter were you calling?

18 **A** Brooke.

19 **Q** Why did you call Brooke here at the 12:03?

20 **A** Because they was moving kind of slow, and I was actually

21 calling for her to come take me to the hospital.

22 **Q** Do you know where Brooke was when you called her?

23 **A** I'm not sure where she was at.

24 **Q** Okay. Did you call anyone else while you were waiting?

25 **A** I did.

1 Q Who did you call?

2 A I called my pastor.

3 Q Pardon me?

4 A I called my pastor.

5 Q You did? Why did you call your pastor?

6 A I was telling her what happened.

7 Q Did she pray with you?

8 A Yes.

9 Q It's now 12:05 in the video. Has anything happened since

10 the last time I asked you that question?

11 A No, it hasn't.

12 Q Please keep watching. If you see something happen, yell

13 out, and we'll stop it.

14 (Video plays.) Ms. Jones, it's now 12:10 in the video.

15 Has anything happened since the last time I asked you that

16 question?

17 A No, it hasn't.

18 Q What's happening now at 12:10 and 24 seconds?

19 A The maintenance guy's coming to mop up the floor.

20 Q Okay. Does the maintenance guy offer you any assistance?

21 A No, he doesn't.

22 Q (Video plays.) Ms. Jones, it's now 12:12 in the video.

23 I think you said earlier you came to the counter at 11:41 and

24 told them you had a nail in your foot. You told them that at

25 11:42. So it would be now half an hour after that happened.

1 **A** Yes.

2 THE COURT: Mr. Jefferies, it's 11:00. The jury's been
3 here about an hour and a half. We're going to take a break.

4 Everyone remain seated as the jury exits the courtroom.

5 Do not discuss the case.

6 (The jury exited the courtroom at 11:05 a.m.)

7 THE COURT: Ms. Jones, under these circumstances, you
8 can't discuss the case with your lawyers; however, if you need
9 assistance going to the restroom, certainly they can help you.
10 Just do not discuss the case.

11 THE WITNESS: Yes, sir.

12 THE COURT: And if you need anything to drink or anything
13 like that, they will help you as well.

14 THE WITNESS: Thank you.

15 THE COURT: We'll stand at ease about five minutes.

16 Anything before we take a recess?

17 MS. BOYD: Your Honor, I have just one brief issue I'd
18 like to raise with the Court while we're on the break about
19 the videos.

20 THE COURT: All right.

21 MS. BOYD: Mr. Jefferies represented to the Court that he
22 did not have a video of the produce department. He testified
23 to them that it had not been produced by Walmart. But
24 Mr. Jefferies used that video as an exhibit to Mr. Ringer's
25 deposition. He, in fact, asked questions about that video in

1 that deposition. And when they proffered the videos into
2 evidence, he indicated he was proffering 17 videos. There are
3 only 17. So the 17 I have include the produce department.

4 THE COURT: Well, you can certainly introduce that.

5 MS. BOYD: Okay. I will. I just wanted to note it for
6 the record.

7 THE COURT: I don't think that's something really I can
8 straighten out with them.

9 MS. BOYD: Okay.

10 THE COURT: But you can --

11 MS. BOYD: I just maybe, yeah, wanted to bring it to the
12 Court's attention.

13 MR. JEFFERIES: And, Your Honor, we're only partway
14 through showing videos. We have a lot more to go. So we
15 intend to show everything.

16 THE COURT: I think her point was that you said there was
17 no video of the produce.

18 MS. BOYD: There was testimony as well.

19 MR. JEFFERIES: I'll correct it. If I'm mistaken on it,
20 I'll certainly correct it.

21 MS. BOYD: I'd appreciate that.

22 THE COURT: I'm not real sure whether --

23 MS. BOYD: I get it, Your Honor. I just wanted to bring
24 it to the Court's attention.

25 THE COURT: All right. Very good. All right.

1 MR. JEFFERIES: Thank you, Your Honor.

2 (A brief recess was taken from 11:05 a.m. to 11:21 a.m.)

3 THE COURT: I'm going to ask -- when she leaves the
4 stand, I'm going ask if y'all with help with her. I think
5 it's kind of difficult for the bailiff to do that. Would
6 y'all help?

7 MR. JEFFERIES: Of course Your Honor.

8 THE COURT: Let's do that. And we're ready for the jury.

9 (The jury entered the courtroom at 11:22 a.m.)

10 THE COURT: I think the bailiff had mentioned that one of
11 the jurors was not feeling well but is presently feeling
12 better. All of y'all need to realize there's -- if you ever
13 feel bad or need to use the restroom or there's some problem,
14 raise your hand. You know, we aren't holding you hostage.
15 Y'all are -- we appreciate what you're doing. And I know it
16 kind of seems like -- seems like that at times, but y'all --
17 if you have a problem, let me know. Okay? Does that sound
18 fair? All right.

19 Yes, sir, Mr. Jefferies.

20 MR. JEFFERIES: Thank you, Your Honor.

21 Just making sure all the screens are on.

22 BY MR. JEFFERIES:

23 Q Ms. Jones, obviously, we're back from a brief break.

24 We're resuming the video where we left off. Can you read to
25 us the time and date stamp at the bottom of the video?

1 **A** June 26, 2015. 12:12:43.

2 **Q** Okay. And you had testified earlier that you came to the
3 counter at 11:41, told somebody you had a nail in your foot at
4 11:42.

5 **A** Yes, I did.

6 **Q** So we are resuming this video half an hour after you
7 first told them you had a nail in your foot.

8 **A** Yes, sir.

9 **Q** Okay. At this stage, has any first aid been provided to
10 you?

11 **A** Not other than the peroxide.

12 **Q** Okay. At this stage at 12:12, 30 minutes into your
13 customer service encounter, has anyone told you what the
14 status of the incident report is?

15 **A** No, sir.

16 **Q** All right. We're going to resume. If you see something
17 happening on the video that I haven't spotted, please sing
18 out, and we'll stop it and talk about it.

19 **A** Yes, sir.

20 **Q** (Video plays.) Ms. Jones, what time does the video say
21 now?

22 **A** 12:17 and five seconds.

23 **Q** Has anything happened since the last time I asked you
24 that question?

25 **A** No, it hasn't.

1 Q (Video plays.) Ms. Jones, what time does the video say
2 now?

3 A 12:22 and four seconds -- five seconds.

4 Q And has anything happened since the last time I asked you
5 that question?

6 A No, it isn't.

7 Q And you have been in there since, what, 11:42, I think
8 you said?

9 A That's correct.

10 Q (Video plays.) I'm going to pause the video right there.
11 Ms. Jones, what time does the video say?

12 A 12:24 and 30 seconds.

13 Q All right. I'm going to press play again. Can you tell
14 us what's happening now at 12:24 and 30 seconds?

15 A The associates actually come out to see if I will give
16 her the nail. And she also is the one who wrote the incident
17 report.

18 Q Okay. Does she have the incident report with her now at
19 12:24?

20 A She don't have it with her but she ended up -- right now,
21 she's actually trying to get the nail, and I told her that I
22 would let her take a picture of it.

23 Q Okay. And did she take a picture?

24 A Yes, she did.

25 Q (Video plays.) Now what's happening here at 12:25?

1 **A** She's walking off.

2 **Q** Okay. At this stage at 12:25 and 20 seconds, has anyone

3 told you yet about when that incident report is coming?

4 **A** No. She said she'll be back.

5 **Q** Okay. Did she tell you how long it would take?

6 **A** No, she didn't.

7 **Q** (Video plays.) Ms. Jones, what time does the video say

8 now?

9 **A** 12:32 and two seconds.

10 **Q** 12:32. And you had said earlier you went in to customer

11 service and told them you had a nail in your foot at 11:42.

12 **A** Yes.

13 **Q** So that's 50 minutes ago?

14 **A** Yes.

15 **Q** Any first aid provided during that 50 minutes?

16 **A** No, it has.

17 **Q** Just the peroxide?

18 **A** Just the peroxide.

19 **Q** Any indication how much longer before you get the

20 incident report? At this time, do you know?

21 **A** No, I don't know.

22 **Q** Let's keep watching.

23 (Video plays.) What's happening there? Or can you tell?

24 **A** I really can't tell.

25 **Q** Okay. You don't recognize that person that you see there

1 behind you?

2 **A** Not from what I see right -- I'm not seeing too clear.

3 **Q** That's not one of the people that did the incident report
4 or anything like that?

5 **A** I don't believe so.

6 **Q** Okay. (Video plays.)

7 **A** She's coming back in now.

8 **Q** What time does the video say?

9 **A** 12:34 and 42 seconds.

10 **Q** Okay. 12:34 and 42 seconds. And tell us what's
11 happening there at 12:34.

12 **A** She's coming in with the incident report.

13 **Q** Okay. And you said that was what? A one-page document?

14 **A** Yes, one page.

15 **Q** Is it Plaintiff's Exhibit No. 11?

16 **A** Yes.

17 MR. JEFFERIES: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MR. JEFFERIES:

20 **Q** That's the incident report?

21 **A** That is. Yes, it is.

22 **Q** When she brought it to you, was it filled out like this?

23 **A** Yes.

24 **Q** Did you write any of this? I'm just curious whose
25 handwriting that is.

1 **A** Let me see. No, I didn't write that.

2 **Q** And what does it say on the incident report there in the

3 middle of what happened?

4 **A** It says, "Stepped on nail. African-American female,

5 white tank top with green shorts, flip-flops."

6 **Q** Thank you.

7 **A** You're welcome.

8 **Q** All right. So we're back at 12:34 and 42 seconds, and

9 the Walmart associate is handing you the incident report.

10 **A** Yes.

11 **Q** Okay.

12 (Video plays.) What are you doing now?

13 **A** I'm reading the incident report.

14 **Q** And what you doing right now?

15 **A** I'm getting ready to exit the Walmart.

16 **Q** So that's -- what time is that?

17 **A** 12:35 and 4 seconds.

18 **Q** Okay. So less than 30 seconds after you got the incident

19 report?

20 **A** Yes.

21 **Q** Okay.

22 (Video plays.) What are you doing now?

23 **A** Getting ready to exit the Walmart.

24 **Q** Okay. All right. And that's the end of the videos that

25 was provided.

1 All right. We only have a few more here. I do want to
2 go to -- make sure I'm getting this right now. That might be
3 right. What's the time that I'm showing you here on this
4 video?

5 A 12:35 and 46 seconds.

6 Q Okay. So that would be about the time you're leaving the
7 store?

8 A Yes, it is.

9 Q All right. I'm just going to play this, and tell us if
10 you see yourself coming into this video. (Video plays.)

11 A I see myself exiting out of customer service.

12 Q All right. Is that you on the left side of the screen
13 here?

14 A Yes, it is.

15 Q Okay. So we watched that last video. You were leaving
16 customer service. This is you coming into the big aisle out
17 of customer service?

18 A Yes, it is.

19 Q Okay. (Video plays.) How is your foot feeling now at
20 12:36 as you're walking out of the store?

21 A It's in a lot of pain.

22 Q All right. That video ends. I want you tell me if you
23 recognize the time and date here. What time and date is that?

24 A The date is 6/26/2015, 11:37 and 38 seconds.

25 Q Okay.

1 **A** 12:37.

2 **Q** Right.

3 **A** Sorry.

4 **Q** Where the other one left off, this would be the next one

5 time-wise.

6 **A** Yes.

7 **Q** All right. So just watch this video. Tell us when you

8 see yourself, if you see yourself. (Video plays.)

9 **A** I see myself exiting the Walmart.

10 **Q** Okay. That's you walking across the screen?

11 **A** Yes.

12 **Q** And then out the door.

13 **A** Yes.

14 **Q** All right. When you exited the Walmart at 12:37 -- get

15 that time exactly right. Looks like 12:37:57. Does that look

16 right?

17 **A** Yes, it is.

18 **Q** When you exited the Walmart at 12:37:57 on June 26, what

19 did you do next? Where did you go?

20 **A** I went to my car.

21 **Q** Okay. Got in your car?

22 **A** Yes.

23 **Q** Okay. You said earlier that you called your daughter to

24 meet you?

25 **A** Yes, I did.

1 Q Did she end up being able to do that?

2 A Yes.

3 Q Okay. Where did she meet you?

4 A In the parking lot. I was already in the car.

5 Q Okay. So she had just gotten there?

6 A Yes.

7 Q Okay. What did you do next?

8 A I told her to follow me to the hospital.

9 Q To the hospital. Okay.

10 And what hospital did you go to?

11 A McLeod Regional.

12 Q McLeod. Okay.

13 I got one more video I want to show you. It's a quick

14 one. I misspoke earlier when I told you there was no video of

15 you in the produce department. I overlooked one that's kind

16 of short and not have a very good angle but it is a video, so

17 I wanted to show it to you. And tell me if you see yourself

18 in this video at all. I'm going to press play. (Video

19 plays.)

20 A I see myself.

21 Q Okay. So that's you right there with the cart in the

22 white shirt?

23 A Yes, it is.

24 Q All right. So that was you. You had been standing there

25 by that one display for a little bit --

1 **A** Yes.

2 **Q** -- before we could see your face. Okay.

3 And what's blocking our view of your face?

4 **A** Looked like the produce sign.

5 **Q** All right. And can you see in this video anything that's

6 behind that big produce sign? I mean, obviously, we can't see

7 your face but what about what's behind you in the rest of that

8 whole area of the produce?

9 **A** No, I can't.

10 **Q** Then now you have exited the video.

11 **A** Yes, I did.

12 **Q** All right. I want to ask you -- I'm mercifully going to

13 stop playing videos here. Let me ask you about something

14 else. When you were -- when you decided to go to Walmart on

15 June 26, how did you get there that day?

16 **A** I drove.

17 **Q** Drove from where?

18 **A** From my home.

19 **Q** How far roughly is your home to the Walmart?

20 **A** Maybe four or five miles.

21 **Q** Is it four or five miles highway or coming through town?

22 **A** Through town.

23 **Q** Stop signs and stoplights?

24 **A** Yes.

25 **Q** How long did it take you to get there, roughly?

- 1 **A** Roughly five minutes.
- 2 **Q** Your car, what kind of car do you have?
- 3 **A** At that time, I had a Nissan Maxima.
- 4 **Q** Nissan. Is it a stick shift or automatic?
- 5 **A** Automatic.
- 6 **Q** When you would drive that automatic, which foot did you
7 use for the gas?
- 8 **A** My right foot.
- 9 **Q** And which foot for the brake?
- 10 **A** My right foot.
- 11 **Q** So you drove four or five miles from your home to Walmart
12 in city traffic, mashing the gas and brake throughout?
- 13 **A** Yes.
- 14 **Q** At any time, did you feel any pain in your right foot?
- 15 **A** No.
- 16 **Q** At any time, did you hear any weird sound of any scraping
17 on the pedals?
- 18 **A** No, I didn't.
- 19 **Q** At any time, did you feel like a lump or something on
20 your shoe?
- 21 **A** No, I didn't.
- 22 **Q** When you parked at the Walmart and got out and walked
23 into the Walmart, did you hear any kind of metal scrape?
- 24 **A** No, I didn't.
- 25 **Q** Did you feel anything under your foot?

- 1 **A** No, I didn't.
- 2 **Q** When you got into the Walmart, crossing that vestibule,
3 sliding doors on either side, as you walked through that area,
4 did you hear anything scraping?
- 5 **A** No, I didn't.
- 6 **Q** Did you feel anything under your foot?
- 7 **A** No, I didn't.
- 8 **Q** The first time you heard it was when you showed us the
9 clip on the video when you were in the action aisle?
- 10 **A** Yes.
- 11 **Q** And that's the first time you felt anything?
- 12 **A** Yes.
- 13 **Q** But you said it wasn't painful yet.
- 14 **A** No.
- 15 **Q** It was just --
- 16 **A** It was the metal and then I felt pressure.
- 17 **Q** Is there any doubt in your mind that you stepped on a
18 nail at the Walmart?
- 19 **A** No, it's no doubt in my mind.
- 20 **Q** When you got ready to leave, how close were you parked to
21 when you went over to Brooke? Were y'all parked side by side
22 or were y'all a ways apart?
- 23 **A** No. When I met Brooke?
- 24 **Q** Yeah, afterwards.
- 25 **A** Okay. When I was in the car, Brooke had -- was just

1 pulling in.

2 Q Okay. So she never parked?

3 A No, she never parked.

4 Q All right. So you left the Walmart 12-thirty -- I think

5 it was five and 37, somewhere right in there?

6 A Yes.

7 Q And you went straight to McLeod?

8 A Yes.

9 Q Okay. After leaving the Walmart, did you hear from

10 Walmart again about the incident?

11 A I heard from them that Monday.

12 Q That Monday.

13 A Yes.

14 Q Incident was on a --

15 A Friday.

16 Q Friday?

17 A Yes.

18 Q And how did Walmart contact you on a Monday following you

19 stepping on a nail?

20 A By telephone.

21 Q On your cell?

22 A Yes.

23 Q Okay. Do you remember the circumstances of that call?

24 Like where you were, what you were doing?

25 A Yes.

1 Q Tell us about that.

2 A When they called, I was in the bed, highly sedated under
3 medication.

4 Q Where were you at?

5 A At home.

6 Q Okay. And they called. And you answered your cellphone?

7 A Yes, I did.

8 Q And what did Walmart say?

9 A They said, "Good morning. This is Walmart such and
10 such." I can't remember the name. She introduced herself.
11 And I said, okay.

12 She said, "Are you April Jones?"

13 I said, "Yes, I am."

14 And she said, "We got a report that you had a little
15 incident on Friday."

16 I said, "Yes, I did."

17 And she said, "Can you tell me about it?"

18 And I told her, I said, "To be honest, I'm under so much
19 medication right now." I said, "I don't want to tell you
20 something and I tell you wrong and I regret what I said," you
21 know, because I was really under medicine.

22 And so she says to me, "Well, Ms. Jones, I'm trying to
23 help you. I'm here to offer you a settlement."

24 And I said, "Well, I don't --"

25 She said, "I can offer you \$50,000".

1 And I said, "Well, I don't think I should take that right
2 now."

3 MS. BOYD: Objection, Your Honor.

4 THE COURT: Ladies and gentlemen of the jury, we're going
5 to take a break for lunch. I'm going to ask that you be back
6 at 1:30. 1:30 sharp. Do not discuss the case in any way,
7 shape, or form.

8 (The jury exited the courtroom at 12:02 p.m.)

9 MS. BOYD: Yes, Your Honor. The testimony about what was
10 said is hearsay. He's the claims manager, first and foremost.

11 Second, it was -- her testimony was an offer of
12 settlement, which is not admissible.

13 THE COURT: Mr. Jefferies, did you know that she was
14 going to say -- talk about settlement offers?

15 MR. JEFFERIES: No, Your Honor.

16 MS. BOYD: And, Your Honor, there's a recorded copy of
17 her interview, which has been produced to plaintiff's counsel,
18 which would be best evidence of the conversation.

19 THE COURT: Was there an offer of 50,000?

20 MS. BOYD: Not to our recollection.

21 MR. JEFFERIES: Your Honor, several things in response.
22 The first thing is that has some hearsay and it's a party
23 representative. This is a representative of Walmart. It's
24 not a non-party. Companies only act through human beings, so
25 it's necessarily (indiscernible). So it's not hearsay. It's

1 a party (indiscernible).

2 With respect to the recording, it's been a while since I
3 have listened to it. My recollection is -- of course you can
4 listen to it in camera. My recollection is that the recording
5 only starts partway into the conversation after there's
6 permission asked. The part of the recording that precedes
7 that, no one knows what's on that because it wasn't recorded.
8 So that's the issue.

9 The other thing, Your Honor, I don't know what the -- I
10 can only think of one cure, and it's not a cure I would
11 suggest. A curative instruction would only reinforce what she
12 just said. I suppose Ms. Boyd could move for a mistrial, but
13 that would seem, at this stage -- well, we would not advocate
14 that.

15 THE COURT: Well, it kind of puts the defense in a bad
16 spot. First of all, I sincerely doubt Walmart offered \$50,000
17 for what, at that time, was a puncture to her heel at that
18 time. I do not anticipate that was said.

19 But in order to -- for the defense to refute that,
20 they're going to have to play the -- play the taped
21 conversations, and that's going to -- they're put in a
22 position of refuting what she said. And not to mention the
23 fact that it's inadmissible. It's never -- settlement
24 negotiations have never been admissible.

25 And you indicate that you didn't know that she was going

1 to say that. She never told you that they offered her
2 \$50,000?

3 MR. JEFFERIES: No, Your Honor. I mean, that's -- she's
4 just giving her narrative, and that -- frankly, when she said
5 the word "settlement," I expected to hear an objection from
6 Ms. Boyd --

7 MS. BOYD: Sorry. I was processing it first because I
8 couldn't believe she said it. I'm sorry.

9 MR. JEFFERIES: It was part of her narrative, Your Honor.
10 I did not anticipate it.

11 MS. BOYD: And, Your Honor, with their explanation, that
12 the recorded interview is only part and parse of the
13 conversation, even if we attempted to rebut with the recorded
14 interview, based on their representation, the jury is not
15 going to believe that there is no such settlement offer. I
16 would just represent to the Court that no --

17 THE COURT: It does put the defense in a terrible
18 situation.

19 MS. BOYD: No such settlement offer was recorded as offer
20 to her.

21 MR. WILLEY: Your Honor, the problem is they -- I mean,
22 if there's --

23 THE COURT: I thought you said that only one lawyer can
24 argue a motion.

25 MR. WILLEY: Well, that's true. I didn't realize there

1 was a motion. No motion has been made and that's kind of my
2 point. I don't --

3 THE COURT: I mean --

4 MR. WILLEY: We all agree on what just happened and that
5 it shouldn't have happened.

6 THE COURT: Listen, there's an objection --

7 MS. BOYD: Yeah, I'm objecting.

8 THE COURT: There's an objection. I think that was
9 your -- your position earlier, that only one can talk. We're
10 going to hear from Mr. Jefferies.

11 MR. JEFFERIES: Your Honor, with respect to the objection
12 to introducing evidence of the same, I would not -- while I
13 disagree it's hearsay, I would not be inclined to argue that
14 it's admissible. I would never attempt to elicit that. I
15 recognize that I can't show liability through settlements.

16 So I would tend to agree, yeah, what was said is
17 inadmissible. The question then is: What do we do now to
18 cure it or to move on? I think that just depends on Ms. Boyd
19 making a motion for whatever remedy she seeks.

20 THE COURT: What do you want me to do about it, Ms. Boyd?

21 MS. BOYD: We'd like to offer a curative instruction,
22 Your Honor. I understand that it would reiterate, but, at
23 this juncture, I mean, we don't see mistrial as being --
24 (conferring off the record with co-counsel.)

25 Well, my esteemed counsel -- we'd like to consider it and

1 consult with our client just to make sure that we are
2 protecting our interest on the record.

3 THE COURT: All right. Well, y'all can talk to them as
4 much as you want to. I kind of have an opinion as to what I'm
5 going to do.

6 MS. BOYD: Okay.

7 THE COURT: But you can talk to them all you want to. My
8 question is: If the option is for a curative charge, what do
9 you suggest? Do you suggest -- first of all, do you suggest a
10 curative charge or to say nothing? And would the defense be
11 in a position to stipulate that there was no such settlement
12 offer, which I don't believe there was -- there was such a
13 thing.

14 MR. JEFFERIES: I don't think that's possible in light of
15 her -- her testimony, whether or not proper, is her testimony.
16 There's no for us to know what the true facts are. We have
17 testimony that happened. There might be -- I suppose they
18 could elicit testimony from their own people that it didn't
19 happen, but there's -- there's no way for us or the Court to
20 determine what happened in real life back in 2015 in order to
21 say this did not occur.

22 And, respectfully, Your Honor, as the judge of the law, I
23 wouldn't think it would be proper for the Court to comment on
24 the --

25 THE COURT: I'm asking if you're willing to offer a

1 stipulation.

2 MR. JEFFERIES: No, I can't, in light of -- I can't
3 stipulate that my client is a perjurer.

4 THE COURT: Therein lies the dilemma.

5 MR. JEFFERIES: Understood, Your Honor.

6 MS. BOYD: Can we have just --

7 THE COURT: We'll talk about it when we come back at
8 1:30. I think that we need to focus on a curative charge, and
9 we're going to resume -- we'll -- at the conclusion of the
10 case, whatever that might be, I think we're going to revisit.

11 MS. BOYD: Thank you, Your Honor.

12 MR. JEFFERIES: Thank you, Your Honor.

13 And, Ms. Jones, just to make sure you're clear, I know
14 the Court agrees, you're still under oath so we can't talk
15 during lunch.

16 THE WITNESS: No problem.

17 MR. JEFFERIES: I'm going to go one way and you'll go
18 another.

19 (A lunch recess was taken from 12:10 p.m. to 1:34 p.m.)

20 MOTION FOR MISTRIAL

21 THE COURT: All right. Be glad to hear from you. Yes,
22 ma'am.

23 MS. BOYD: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes.

1 MS. BOYD: At this time, the defendants would like to ask
2 for -- move for a mistrial pursuant to Rule 408. We have
3 reviewed the recorded interview, and there's no discussion of
4 settlement. And, further, reviewing plaintiff's deposition
5 testimony, there is no mention of any settlement offers made
6 to her by any other Walmart employees. We went over that
7 extensively.

8 So defense had no warnings that this would have been an
9 issue or we would have moved in limine to avoid it. And, at
10 this juncture, we just believe a curative instruction would
11 just simply highlight it to a jury and prejudice our clients.

12 THE COURT: All right. I'm going to deny your motion for
13 a mistrial. I am going to give a curative charge. I'm going
14 to tell you what it is, and I'll be glad to have input from
15 anyone about that. But we're going to revisit these issues at
16 the conclusion of the trial.

17 UNIDENTIFIED SPEAKER: I'm sorry?

18 THE COURT: We're going to revisit the issues at the
19 conclusion of the trial, but we're going forward with the
20 trial.

21 MR. JEFFERIES: Your Honor, we would agree and do agree
22 with Ms. Boyd with respect to a mistrial. We don't want to do
23 that, but in light of what's occurred, we agree that a
24 mistrial is appropriate. She's requested it. We agree to it.

25 THE COURT: I'm ordering that we go forward. And this is

1 my curative charge: You heard testimony about settlement
2 negotiations. If there were such conversations, it is
3 inadmissible and improper to testify as to such. You are to
4 disregard that testimony. It is stricken from the record. It
5 shall not be discussed in the jury room whatsoever.

6 Mr. Foreman, you are to enforce this order. There is to be no
7 discussion of this matter whatsoever.

8 I'm glad to hear input from anybody with that --
9 concerning that.

10 MR. JEFFERIES: Your Honor, I'm, obviously, again, just
11 renewing our agreement to a mistrial, but understanding Your
12 Honor's charge, there's a series of words in there that say if
13 there were such -- such negotiations. I think that,
14 unfortunately, seems to imply that there might not have been.
15 It's a comment upon the facts.

16 I think the correct charge would just have to say whether
17 or not or evidence of settlement negotiations is not
18 admissible. But if there were tends to suggest that the Court
19 doubts that such existed, which would not be a permissible
20 comment upon the facts.

21 THE COURT: I'll be glad to hear from you, Ms. Boyd.

22 MS. BOYD: One second, Your Honor. We're fine with the
23 charge as indicated by the Court.

24 THE COURT: All right. We're ready for the jury.

25 MR. WILLEY: Your Honor, may we have one moment, please?

1 THE COURT: Yes.

2 (Pause in the proceedings.)

3 MR. BLAIN: Mr. Court Reporter, during the intermission,
4 I left the Exhibit 12 up by your -- do you have that in your
5 possession? Okay. I just want to make sure that's been
6 returned to your possession. Thank you.

7 COURT MONITOR: 15?

8 MR. BLAIN: 15. That's the one. Thank you so much.

9 MR. JEFFERIES: Your Honor, Plaintiff also, at this time,
10 for reason I'll explain, would also move for a mistrial at
11 this stage. Our concern is the prejudice we have suffered
12 based on that number of \$50,000 being out there in front of
13 the jury; that my understanding is we're going to ask in
14 closing for somewhere in the eight figures. It is not at all
15 beneficial for us for the jury to have a number pegged in
16 their mind of \$50,000. I think that poisons the jury's
17 thought process.

18 THE COURT: This was elicited from your client. I'm
19 going to -- I'm going to ask that they not give any
20 consideration, and I feel sure that they will not. Your
21 motion is denied.

22 MR. JEFFERIES: Thank you, Your Honor.

23 THE COURT: We're ready for the jury.

24 (The jury entered the courtroom at 1:40 p.m.)

25 THE COURT: Mr. Foreman, at the break, each of you heard

1 testimony about settlement negotiations. Whether or not there
2 were such discussions is inadmissible. You are to disregard
3 that testimony. It is stricken from the record. It shall not
4 be discussed in the jury room.

5 Mr. Foreman, you are to enforce this order. There is to
6 be no discussion whatsoever about this matter.

7 All right. You may proceed.

8 MR. JEFFERIES: Thank you, Your Honor. May it please the
9 Court.

10 CONTINUING DIRECT EXAMINATION

11 BY MR. JEFFERIES:

12 Q Ms. Jones, before the break for lunch, we have been
13 talking a bit about the videos. You described to us Walmart
14 employees asking you for the nail several times over. Do you
15 recall that?

16 A Yes.

17 Q After you left the Walmart and got home, it's your
18 testimony, just before we broke, that Walmart contacted you
19 again; is that correct?

20 A Yes.

21 Q By telephone?

22 A Yes.

23 Q Okay. One time or more than one time?

24 A More than once.

25 Q In those conversations, did Walmart again ask you about

1 the nail?

2 **A** I can't recall.

3 **Q** Did they ask anything about whether you possessed or
4 whether they could have it or anything along those lines?

5 **A** Well, they asked me what happened.

6 **Q** Okay. And when you told them what happened during those
7 phone calls, did you tell them anything different than what
8 you told them the first time?

9 **A** No, I don't.

10 **Q** How many calls did you receive from Walmart after you
11 left the Walmart?

12 **A** Not to be exact, but -- you mean in all?

13 **Q** Right. So walk us through it. I think you mentioned the
14 first one was on that Monday.

15 **A** Right.

16 **Q** Okay. So if you'll tell us about that call. And, again,
17 you just heard Your Honor's caution, so I want you to --

18 **A** Yes.

19 **Q** -- carefully restrict your testimony.

20 Tell us about what call, what your condition was when
21 they called, etc. And then I'll have you walk us through the
22 subsequent calls.

23 **A** My condition at that time, I was in extreme pain. I was
24 highly medicated. When they first -- the first call, they
25 woke me -- actually woke me out my sleep. So I told them that

1 I'll get back in touch with them once the medication wore
2 down. They said okay, so I hung up.

3 They continued to call back approximately two hours later
4 and woke me up again. And I told her I wasn't ready to talk.
5 It was really nothing for us to talk about at that time.

6 And so they called me another time, but frequently right
7 after that. So in the process of that, after that, I decided
8 I was going to go on back to the emergency room.

9 Q Okay. And was that on Monday?

10 A Yes. This was on Monday.

11 Q So you went back to the emergency room. What happened
12 then?

13 A When I went to the emergency room, I was -- it was
14 approximately 90-something degrees outside, but I was
15 shivering and freezing and in a lot of pain. And so when I
16 went, they admitted me into the hospital.

17 Q Okay. And that would have been sometime on Monday, June
18 29th?

19 A Yes, sir.

20 Q Okay. And while you were admitted into the hospital on
21 Monday, June 29th, did you hear again from Walmart?

22 A Walmart continued to call me, and that's when I wouldn't
23 answer their calls. And so one of the nephrologists was in
24 the room with me. He stopped through because he heard some
25 talk from my nephrology that he was, you know --

1 MS. BOYD: I'm going to object.

2 THE COURT: It's sustained.

3 BY MR. JEFFERIES:

4 Q Did the calls from Walmart eventually stop?

5 A Yes.

6 Q Do you know why the calls stopped?

7 A Yes, I do.

8 Q Can you tell us why the calls stopped?

9 A The nephrologist that was in the room with me kept
10 hearing the phone ring, ring and then hang up. Ring again,
11 hang up. Kept ringing. And he said, "Who is that calling
12 you?"

13 MS. BOYD: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. JEFFERIES:

16 Q Did you hear the -- did the nephrologist talk on the
17 phone?

18 A Yes, he did.

19 Q Now, I'm going ask you something not because I'm trying
20 to elicit whether it's true or not. I just want to know what
21 was said. I want to know what the words are, just so we can
22 know who was put on notice. Did you hear the nephrologist say
23 something into that phone?

24 A Yes, I did.

25 Q And what did he say?

1 **A** He asked him could --

2 MS. BOYD: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. JEFFERIES:

5 **Q** After that phone call between the nephrologist and
6 Walmart, did Walmart ever call you again?

7 **A** No, they didn't.

8 **Q** Thank you.

9 Let's shift gears a little bit about talk about your
10 medical conditions. You were here when Dr. Player talked at
11 length about your situation; right?

12 **A** Yes, I was.

13 **Q** All right. And did you hear him talk about your
14 diabetes?

15 **A** Yes, I did.

16 **Q** And do you take insulin for your diabetes?

17 **A** No, I don't.

18 **Q** And that's consistent with what Dr. Player said? You
19 have non-insulin-dependent diabetes?

20 **A** Yes.

21 **Q** Do you take or did you take, back in 2015, any sort of
22 prescriptions at all for diabetes?

23 **A** No, I didn't.

24 **Q** What sort of healthcare have you had over time -- well,
25 let me back up. That's a broad question.

1 We have heard about kidney problems and hypertension
2 and -- well, and diabetes. What sort of treatment did you
3 take back in 2015 and continuing up through today for any of
4 those conditions?

5 **A** Actually, I'm on medicine for hypertension and I do
6 kidney dialysis. I don't take any other medication.

7 **Q** And that's consistent with what your doctors told you to
8 do?

9 **A** Yes, it is.

10 **Q** Hypertension and kidney dialysis.

11 How often do you go to kidney dialysis?

12 **A** Three times a week.

13 **Q** Pardon me?

14 **A** Three times a week.

15 **Q** Three times a week.

16 **A** Yes.

17 **Q** What days of the week would you do that?

18 **A** Tuesday, Thursday, and Saturday.

19 **Q** So when did you go to dialysis most recently?

20 **A** I went early Tuesday morning before I came to court.

21 **Q** Yesterday?

22 **A** Yes.

23 **Q** Okay. And will you be going again tomorrow?

24 **A** Yes, I am.

25 **Q** When you go to dialysis, how long does that process

1 typically take?

2 **A** Four hours and 15 minutes.

3 **Q** Four hours and 15 minutes each time you do it: Tuesday,
4 Thursday, Saturday?

5 **A** Yes.

6 **Q** How long have you been doing that, going to dialysis like
7 that?

8 **A** Since the end of 2013.

9 **Q** So roughly two years before this incident?

10 **A** Yes.

11 **Q** You have heard a lot of talk about, you know, from
12 Dr. Player, from opposing counsel, etc., about your
13 underlying -- they call it your underlying medical conditions.

14 **A** Yes.

15 **Q** Diabetes, hypertension, poor vascular flow, that sort of
16 thing. Right?

17 **A** Yes.

18 **Q** How long have you suffered from those -- from those
19 conditions?

20 **A** Well, from diabetes, I'll say approximately ten years.

21 **Q** So if you are, what, 50 -- I hate to ask you about your
22 age. I'm sorry. If you're 52 now, that would have been back
23 when you were 42?

24 **A** Yes. Or maybe a little before that.

25 **Q** A little before that.

1 **A** Yes.

2 **Q** This injury in Walmart was about six years. So you were

3 suffering with diabetes, as far as you know, at least four

4 years before the injury at Walmart?

5 **A** I won't say I was suffering with diabetes.

6 **Q** You were living with it.

7 **A** I won't even say that.

8 **Q** Okay. What about the hypertension and these other

9 things. Have you had those for a while?

10 **A** Yes.

11 **Q** And you had them back before the incident in the Walmart?

12 **A** Yes, I did.

13 **Q** Okay. The incident at the Walmart was 2015.

14 **A** Yes, it was.

15 **Q** So you would have been about 46?

16 **A** Yes, approximately.

17 **Q** All right. All these other conditions you have, you

18 still have them today?

19 **A** Yes, I do.

20 **Q** Hypertension, poor vascular flow, and all that?

21 **A** Yes.

22 **Q** But the only -- if I'm understanding right and tell me if

23 I'm wrong, the only amputations you have had are the three

24 that we have talked about: July of 2015, August of 2015, and

25 February of 2016.

1 **A** Exactly.

2 **Q** Okay. No amputations in the prior 46 years of your life,
3 including that time when you were suffering with diabetes and
4 hypertension and poor vascular flow? None during that time;
5 right?

6 **A** No.

7 **Q** Only right after you stepped on the nail.

8 **A** Exactly.

9 **Q** Now, after this last amputation, February of 2016, you
10 haven't had any others, have you?

11 **A** No, I haven't.

12 **Q** Although you continue to suffer with these various
13 things.

14 **A** Yes.

15 **Q** And the only amputations -- well, let me ask you another
16 way. Have you had any amputations other than to your right
17 foot and leg?

18 **A** No, I haven't.

19 **Q** No other limb?

20 **A** No, sir.

21 **Q** Nothing else. Okay.

22 Have you had -- at any time, have you had a prosthetic
23 device? Do you remember getting one a few years back?

24 **A** Yes.

25 **Q** I don't see you wearing it today. Why not?

1 **A** It's actually too small now.

2 **Q** Do you remember -- we can look through the medical
3 records later if you don't remember. Do you remember what the
4 price of that prosthetic was back in 2018?

5 **A** Approximately \$20,000.

6 **Q** And we'll look through the medical records to see if we
7 can find that.

8 And that prosthetic that you had back in 2018, you don't
9 wear it because it doesn't fit anymore.

10 **A** Correct.

11 **Q** So would you want another one?

12 **A** Yes.

13 **Q** Let's talk about other physical things resulting from
14 these amputations, if there are any. Do you have any pain
15 still?

16 **A** I do.

17 **Q** Tell us about that.

18 **A** I have -- I have phantom pains all the time.

19 **Q** And the phantom pain, what is that?

20 **A** It's actually when they remove a part -- a member of your
21 body. My leg. And it's pains that you get that -- they give
22 you medicine for it, but it don't work. And it comes when it
23 want and it goes when it want.

24 **Q** And that's pain in the part of your body that's not there
25 anymore?

1 **A** Correct. It makes you feel like you still have the leg,
2 the leg is hurting, the foot is hurting, and the ankle is
3 hurting. It's just -- it's basically like it's still here.
4 And sometimes I reach -- grab for the leg when it's hurting,
5 it's throbbing or whatever, and it's not there. So it's
6 basically nothing you can do about it. They prescribe you
7 medicine, but it's just a high, a high I don't want. It don't
8 get rid of the pain.

9 **Q** And so you don't -- do you take the medicine?

10 **A** No, I don't.

11 **Q** Why do you not take it?

12 **A** Because it's just a high. I don't want to get addicted.

13 **Q** I understand.

14 **A** I don't want to be high.

15 **Q** Right.

16 **A** And it's not getting rid of the pain.

17 **Q** Gotcha. All right.

18 Do you have any reason to believe that that phantom pain
19 will stop at some point?

20 **A** No.

21 **Q** Has anyone told you it will stop?

22 **A** No.

23 **Q** 52 now. I think the life expectancy table said you can
24 expect another 30, almost 31 years of life. So you anticipate
25 that phantom pain being with you into your 80s?

1 **A** Yes.

2 **Q** If you could -- I know you can't have your leg back.

3 That's -- if we could do that, that would be wonderful.

4 That's not possible.

5 What could you have that would help you live a more close
6 to normal life? You mentioned one: Prosthetic. Is there
7 anything else that would help you live a more close-to-normal
8 sort of life?

9 **A** Yes. I mean, having an accessible place to live where I
10 can get through by myself. Doors, showers, the kitchen. Just
11 different stuff.

12 **Q** A place that has one-story, wider doors.

13 **A** Yes.

14 **Q** ADA-accessible shower. That sort of thing.

15 **A** Yes.

16 **Q** What about your chair? Are you happy with that one?

17 **A** I'm not happy with it.

18 **Q** What would you have, if you could, have something that
19 would --

20 **A** I would have a -- a scooter. Another -- electric scooter
21 to ride on.

22 **Q** Something electric? Something reliable?

23 **A** Yes.

24 **Q** Would you like to get back to driving?

25 **A** Yes, I would.

1 Q And so would you be able to do that with an electric
2 wheelchair or would you need a special kind of vehicle for
3 that with a lift?

4 A I would need a special vehicle.

5 Q I'd like you to take a look with me at some medical bills
6 I'm going to hand up.

7 MR. JEFFERIES: I'll give opposing counsel a moment to
8 look through that if you need it.

9 MS. BOYD: I do.

10 MR. JEFFERIES: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 MS. BOYD: I'm good. Thank you.

13 MR. JEFFERIES: Thank you.

14 BY MR. JEFFERIES:

15 Q Ms. Jones, what I'd like you to do -- I want to hit -- I
16 don't want to hit these necessarily in order. I want to look
17 first at medical bills related -- I shouldn't say related but
18 close in time to the days of your amputations. If I may, I
19 can find it faster than you probably can. Hold on just a
20 second.

21 MR. JEFFERIES: And, Ms. Boyd, just so you know what I'm
22 pulling out first is pages 16 and 17 and then 18 through 24.

23 MS. BOYD: Thank you.

24 Lane, are they numbered? Or do I just need to count
25 them?

1 MR. JEFFERIES: It's got big headlines on -- yeah, got to
2 do like I do and just sort of flip through.

3 BY MR. JEFFERIES:

4 Q You testified and others testified that you had
5 amputation July of 2015 and then in August of 2015.

6 A Yes.

7 Q Okay. If you would, take a look up there sitting right
8 in front of you. And I have set up there a stack of documents
9 that say McLeod Regional Medical Center on them. Do you see
10 those?

11 A Yes, I do.

12 Q Just take a quick look at them. Flip through the pages
13 just real quick for me, if you would. Do you recognize those
14 documents from McLeod Regional Medical Center as being the
15 billing documents that you would have received from McLeod?

16 A Yes, I do.

17 Q Okay. And are they the same as what you received?

18 A Yes, it is.

19 Q Okay. And the total on the McLeod Regional medical
20 documents, is that \$129,018?

21 A Yes, it is.

22 Q Okay. I'm just going to put a little check beside that.

23 That next set of documents says Carolina Hospital System
24 on it. Just take a little look through those, if you would.

25 And let me know when you have done that.

1 **A** Okay. I'm ready.

2 **Q** Do you recognize those documents as the billing documents
3 you would have received from Carolina Hospital?

4 **A** Yes, it is.

5 **Q** Okay. And they look the same as what you got?

6 **A** Yes, they do.

7 **Q** And is the total of those \$103,640.13?

8 **A** Yes, it is.

9 **Q** If you'd set those to the side as well, please.

10 MR. JEFFERIES: Ms. Boyd, just so you know, I'm now
11 looking at pages 69 through 74, Carolina's Hospital and McLeod
12 Regional.

13 BY MR. JEFFERIES:

14 **Q** Now, Ms. Jones, if you would take a look through the
15 documents from Carolina's Hospital there. And let me know
16 when you have done that.

17 **A** Okay. I'm ready.

18 **Q** The documents from Carolina's Hospital, the dates of
19 service, February 15 of 2016 through the 19th, do you
20 recognize those as the billing documents you would have
21 received from Carolina's Hospital system?

22 **A** Yes, I do.

23 **Q** Okay. And the total amount of those is how much?

24 **A** \$57,623.87.

25 **Q** Okay. Sit those over there to your side, if you would,

1 please.

2 And then turn to the McLeod Regional medical ones that
3 were set up there. Take a look through those.

4 **A** I'm ready.

5 **Q** Do you recognize those documents as the billing documents
6 you would receive from McLeod Regional Medical Center?

7 **A** Yes, I do.

8 **Q** And they're in the same condition as what you received?

9 **A** Yes.

10 **Q** Okay. What is the amount of those documents from McLeod
11 Regional Medical Center?

12 **A** \$40,458.

13 **Q** Okay. And you can sit those to the side as well.

14 I'm turning now to pages 79 through 85. Would you take a
15 look through these documents.

16 **A** Okay. I'm ready.

17 **Q** Do you recognize those documents as being the bills
18 documents from HealthSouth of Florence that you had received?

19 **A** Yes, it is.

20 **Q** And the same condition?

21 **A** Yes.

22 **Q** And what is the total of those bills?

23 **A** \$31,178.27.

24 **Q** Okay. You can sit those to the side there.

25 The date of your injury was June 26th?

1 **A** Yes.

2 **Q** I'm going to hand you a stack of bills from that date of
3 service from McLeod Regional Medical Center. Just take a look
4 at those.

5 **A** Okay. I'm ready.

6 **Q** Do you recognize those documents to be the billing
7 documents that you would have received from McLeod Regional
8 Medical Center?

9 **A** Yes.

10 **Q** Okay. And they are in the same condition, not altered in
11 any way?

12 **A** No, they're not.

13 **Q** And what is the total amount of those documents?

14 **A** \$51,140.

15 **Q** 51,140. I'm just checking them off as we go here. All
16 right.

17 MR. JEFFERIES: Ms. Boyd, I'm turning to pages 31 and 32,
18 which is McLeod Regional Medical Center bills.

19 BY MR. JEFFERIES:

20 **Q** I'm going to hand you another couple of documents.

21 **A** Okay.

22 **Q** Just take a look at those and let me know when you're
23 ready.

24 **A** I'm ready.

25 **Q** Do you recognize those documents as being the billing

1 documents you would have received from McLeod Regional Medical
2 Center?

3 **A** Yes, I do.

4 **Q** Are they in the same condition?

5 **A** They are.

6 **Q** All right. What's the total number of those bills?

7 **A** \$21,764.

8 **Q** Set those to the side.

9 Now, so far, we have been looking at bills since your
10 date of incident up through early March when you had received
11 the HealthSouth bill from HealthSouth of Florence. So far,
12 all the bills that we have looked through, are they all
13 related to your amputations in that related case?

14 **A** Yes, they are.

15 **Q** Okay. I'm going to try to move through the rest of
16 these.

17 **MR. JEFFERIES:** Your Honor, may I have a moment to confer
18 with opposing counsel?

19 **THE COURT:** Yes. Why don't counsel approach the bench.

20 **BENCH CONFERENCE**

21 (A bench conference was held off the record and outside the
22 hearing of the jury and others.)

23 (Open court resumes as follows:)

24 **BY MR. JEFFERIES:**

25 **Q** We all agreed to do this a little faster now.

1 **A** Okay.

2 **Q** So here's what I'm going to do: I'm going to hand you a
3 list right there. And we're just going to go down it. And
4 I'm going to ask about each one.

5 Is this a bill -- is it related to your injury, your
6 amputations, and how much is the -- and I'm just going to
7 confirm -- I'll tell you the amount and you tell me if I'm
8 right.

9 **A** Okay.

10 **Q** And check them off.

11 The second line, it's like \$160 medical bill?

12 **A** That's correct.

13 **Q** And that's related to your injury?

14 **A** Yes, it is.

15 **Q** All right. The next line, \$313?

16 **A** That's correct.

17 **Q** All right. The next line, \$1169?

18 **A** Correct.

19 **Q** All right. All these related to your injury?

20 **A** Yes, they are.

21 **Q** All right. The next line, \$840?

22 **A** That's correct.

23 **Q** The next line, 2481?

24 **A** Yes.

25 **Q** 2160?

1 **A** That's correct.

2 **Q** We already did the 129,000 and the 103.

3 The next line is \$5,493.74?

4 **A** That's correct.

5 **Q** All right. \$3,378?

6 **A** That's correct.

7 **Q** \$313?

8 **A** Correct.

9 **Q** We already did the 21,000. So the next is 3,378?

10 **A** That's correct.

11 **Q** 9,888.50?

12 **A** Correct.

13 **Q** 402.50?

14 **A** That's correct.

15 **Q** 3,453.50?

16 **A** Yes, it is.

17 **Q** \$1,689?

18 **A** That's correct.

19 **Q** \$7,180.50?

20 **A** Correct.

21 **Q** The same amount again?

22 **A** Correct.

23 **Q** \$1,764.50?

24 **A** Correct.

25 **Q** \$1,689?

1 **A** Correct.

2 **Q** \$3,275.50?

3 **A** That's correct.

4 **Q** \$2,577?

5 **A** Correct.

6 **Q** \$737.50?

7 **A** That's correct.

8 **Q** \$1,932.50?

9 **A** Correct.

10 **Q** \$2,514.52?

11 **A** That's correct.

12 **Q** \$4,233.50?

13 **A** Correct.

14 **Q** \$2,802.50?

15 **A** That's correct.

16 **Q** Almost there. Turning the page.

17 Top of the page: \$655.50?

18 **A** Correct.

19 **Q** \$1,850?

20 **A** Correct.

21 **Q** We already did this 57. We did the 40,000.

22 \$3,051?

23 **A** Correct.

24 **Q** \$1,320?

25 **A** Correct.

1 Q We already did this 31,000. So 1,687?

2 A Correct.

3 Q 160?

4 A Correct.

5 Q 540?

6 A Correct.

7 Q \$19,653.17 from Palmetto Prosthetics and Orthotics?

8 A That's correct.

9 Q Looks like you got that pretty close.

10 \$190?

11 A Correct.

12 Q All right. And the total of all these would be

13 \$534,935.70?

14 A That's correct.

15 Q All right. And all of this is related to the injuries

16 that are at issue here that you suffered?

17 A Correct.

18 Q Okay. I'm going to bundle all these up and I'm going to

19 find a binder clip. Here's one.

20 MR. JEFFERIES: And, Your Honor, we then offer the

21 medical bills into evidence.

22 THE COURT: Any objection from defense?

23 MS. BOYD: We have none, Your Honor.

24 THE COURT: Into evidence.

25 (Plaintiff's Exhibit No. 16, Medical Bills, was marked

1 for identification and received into evidence.)

2 MR. JEFFERIES: Thank you, Your Honor. This will be
3 Plaintiff's Exhibit 16, the medical bills. Thank you.

4 BY MR. JEFFERIES:

5 Q Let's talk about what's not in the bills. Let's talk
6 about how this has affected your life, what's going on in your
7 life, how it's affected your family, etc. We have heard a
8 little bit about your family from their perspective. Tell us
9 from yours.

10 A Well, where do I begin? From day one, I didn't ask for
11 this. It totally changed my life. It changed my life in ways
12 where just walking alone and not being able to do it, that's
13 just a life-changing moment. When you have to depend on
14 somebody to come and go to the store for you, take you to the
15 store, take you to the doctors, pick you up. Sometimes it's
16 not accessible for them to move when you need to go.

17 I'm a person that always did stuff for myself. I didn't
18 depend on people. When I had to get to the point to ask for
19 help, "Can you help me do this? Can you help me do that? Can
20 you go get this? Can you go get that?", you become a burden
21 to people. They say that you're not burdening them but you
22 know you are.

23 And then it was so much as my oldest granddaughter, I
24 believe she was three or four at the time. I would be trying
25 to get dressed, and she would come in the room and say, "Boo

1 Boo, I'll help you." Three years old.

2 Excuse me for a minute.

3 **Q** Just take your time.

4 **A** Thank you.

5 She would stand up on the bed, and I could put on my
6 shirt and everything from the top. When I went to put on my
7 under clothes, I had a three-year-old in there actually
8 pulling my under clothes up for me. And one day I began to
9 cry, and she says, "Stop crying." She said, "I don't mind
10 helping you."

11 And she would do that every day. She would get up early
12 in the morning, and she would come in the room with me. And I
13 said, "Amber," I said, "You go in there and play." I say,
14 "I'm okay."

15 And she said, "No, Boo Boo, I'm going to stay in here and
16 I'm going to help you."

17 And I'm going to skip from there to until she just turned
18 nine on the 6th of November. She's still that same little
19 girl that come in there. She don't live with me, but every
20 time she can come on the weekend, she's there. When school is
21 out, she's there.

22 Recently, they moved to Myrtle Beach. She told her mom,
23 "I don't want to go to Myrtle Beach." She said, "I don't want
24 to leave Boo Boo." And it's like, she said, "I could stay
25 here and still go to school where you are."

1 I said, "No, you go ahead, Amber." I said, "I'll be
2 okay."

3 She said, "Well, I'll come back every time I can."

4 And she -- it's like now when she comes, she grabs the
5 vacuum cleaner and she vacuums. She tries to wash the dishes.
6 I say, "Amber, no, I can do that." I said, "I sit in the
7 wheelchair and I wash the dishes."

8 And it's like, she said, "I don't mind doing it."

9 And that part right there is the part that really took me
10 for a loop because you're having to look for a three-year-old
11 and a four-year-old, when she turned four and she turned five,
12 and every year, when her birthday come, her mom said, "What do
13 you want to do for your birthday?"

14 "I'm having my party at Boo Boo house."

15 She never wanted to go nowhere and have a party because
16 she was afraid I wasn't going to be able to come to her party.

17 So last year, I told her, I said, "Amber," I said, "Where
18 do you want to have a party at?"

19 She said, "At your house."

20 I said, "No, you go have a party where you want to have
21 it at."

22 And she said, "You really want me?"

23 I said, "Yeah." I said, "Where you want to go?"

24 She said, "I want to go to the beach and rent a condo."

25 I said, "Well, you go ahead, and I'll come down there."

1 She said, "You going to spend the night?"

2 I said, "No."

3 So we went and my daughter Chelsea picked me up. We went
4 down there. And we walk -- we get in the pool. We had a
5 party and I had to leave. I said, "I got to go because I got
6 to go to dialysis in the morning."

7 Then I have another granddaughter the same age, McKenzie.
8 When I first came home from the hospital, they was supposed to
9 have stuff set up where I could use the bathroom and have
10 stuff to hold on to. And it was. It didn't.

11 And I went in the bathroom and I fell. The worse fall of
12 my life. I screamed so hard because the pain was so
13 excruciating. As I screamed, Mackenzie screamed. And I said,
14 "Oh, God, I got to stop this because it's affecting the kids
15 now."

16 So I went to the emergency room, and they said basically
17 it's nothing we can do. It then split open. The nurse said,
18 "Thank God it didn't split open."

19 I said, "Yeah."

20 She said, "The pain is going to come and go but it's
21 nothing we can do but give you nerve medicine." And it don't
22 work.

23 So I went back home that night. And to make a long story
24 short, it's like it affects the kids, and for awhile, I told
25 God, I said, "God, just let me die." I just felt like it was

1 no need.

2 When you become a burden on people -- and they say you're
3 not a burden but you're not crazy. They have a life. My kids
4 did good. But I couldn't continue, and I can't continue to
5 keep stopping their plans in life to help me. That's selfish.
6 I try to do what I can do. Whatever I can't do, I don't worry
7 about it. I basically -- I miss out on a lot. It hurts.

8 **Q** We heard about that.

9 **A** Yes.

10 **Q** Just take a second.

11 **A** Then I have not grandchild that's Noah. He's the one
12 that's disabled. I used to hold him because he was so tiny.
13 Now he's so -- he's got big. He can't walk. He can't really
14 do too much for his self, and it's hard to hold him. I have
15 to sit -- I say, "Let me sit on the couch and then you lay him
16 across my leg and give him to me." And I told him and I talk
17 to him and I pray with him. And it's just -- I mean --

18 And then I have other grand kids, and they're small, and
19 they said, "Boo boo, what happened to your leg?"

20 I said, "A doctor had to cut it off." And I tell them
21 what happened. I tell them the truth.

22 **Q** Tell us what about yesterday. Brooke was telling the
23 story toward the end of the day, and you were very emotional
24 and you were crying. What was going through your mind then?

25 **A** Basically, Noah because they gave up on him so many

1 times, and a lot of times, I wasn't able to be there. One
2 time, I left dialysis early. I said, "Can y'all please take
3 me off?"

4 They said, "What's wrong?"

5 I said, "Nothing with me, but I need to go to the
6 hospital and see about my grandson. They said that he wasn't
7 going to make it."

8 So I told one of my kids to pick me up. I can't remember
9 who it was. And they took me. And it didn't look good. So I
10 just sat there. And I held him. They took him out the crib
11 and he was all hooked up with wires. And I just begin to hold
12 him. And I begin to pray with him.

13 I said, "Noah" -- he looked up. See, Noah, they said
14 that he would never understand. They said he would never know
15 his name. He would never be able to know what's really going
16 on. But that turned out not to be true.

17 And I said, "Noah," and I said, "We're going to pray."
18 And every time I tell him we're going to pray, he closes his
19 eyes. And that right there let me know that Noah knew what
20 was going on. And I began to pray for him. And the nurses up
21 in the PICU, NICU -- I can't even remember which one it was --
22 they said, "We're going to take care of him."

23 But that still didn't stop what the doctor said. The
24 only thing I could think about was him dying, and by me not
25 being there to help him or help my daughter. God worked it

1 out now.

2 **Q** I don't have anymore questions for you. I appreciate you
3 sharing that.

4 **A** You're welcome.

5 **Q** Walmart's attorneys are probably going to ask some
6 questions. I need you to answer their questions. Just say
7 the truth (indiscernible).

8 **A** I will.

9 **Q** Thank you.

10 **A** You're welcome.

11 THE COURT: Ms. Boyd, you're recognized for
12 cross-examination.

13 MS. BOYD: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes.

16 (Defendant's Exhibit No. 1, April Jones Transcript, was
17 marked for identification.)

18 CROSS-EXAMINATION

19 BY MS. BOYD:

20 **Q** Good afternoon, Ms. Jones.

21 **A** Good afternoon.

22 **Q** It's good to see you again. It's been a while.

23 **A** It has.

24 **Q** I'm going to try my best to be brief with you. I know
25 you have been on the stand all day, but I just want to go over

1 a couple of those videos with you again --

2 **A** Okay.

3 **Q** -- really briefly.

4 (Video plays.) Now, this first video is what? You are
5 talking into the store; correct?

6 **A** Correct.

7 **Q** Okay. And that's the overview of kind of like the deli,
8 the produce department; is that correct?

9 **A** That's correct.

10 **Q** All right. Just going to wait for you to come on in.

11 (Video plays.) And I think you previously identified
12 yourself as being the person with the white tank top and the
13 cart; correct?

14 **A** That's correct.

15 **Q** And you're going to head directly into the produce
16 department; correct?

17 **A** That's correct.

18 **Q** I'm just going to make it go back a little bit so we can
19 see the timestamp. So you walk over to the grocery department
20 right about 11:31. Kind of like 11:30:58. Do you see that at
21 the bottom?

22 **A** I do.

23 **Q** Okay. And as you are in this area, do you see any
24 pallets or anything in your area -- in your immediate area?

25 **A** Where I'm at now?

- 1 Q Yes, ma'am.
- 2 A No, not right now I don't.
- 3 Q Okay. And did you see anything on the floor?
- 4 A I basically wasn't looking on the floor.
- 5 Q Okay. So that's a no, you didn't see anything, though?
- 6 A I didn't look.
- 7 Q Oh, okay.
- 8 (Video plays.) And I think you testified about this
- 9 produce video or your time in the produce department. And,
- 10 again, you entered this area about 11:30:58; correct? That's
- 11 what we saw in the other video?
- 12 A That's correct.
- 13 Q Okay. So this one starts at 11:30:58; correct?
- 14 A Correct.
- 15 Q All right. And I know there's that big bright green
- 16 produce sign right there. But in about eight seconds, you
- 17 arrive at this display that appears to be some kind of fruit.
- 18 Would you agree with that?
- 19 A Yes.
- 20 Q Okay. And I believe, during your testimony, you
- 21 indicated that you walked past some watermelon pallets.
- 22 A Yes, I did.
- 23 Q Okay. So if we look at this angle -- let's just pause
- 24 it -- where were those watermelon pallets?
- 25 A From where I'm at now?

1 Q Yes, ma'am. In reference. To the left? To the right?
2 Behind? In front?

3 A It probably was to the left.

4 Q To the left?

5 A Mm-hmm.

6 Q And it wasn't the table of watermelons that we saw in the
7 previous video?

8 A I saw those, but there were more watermelons.

9 Q Okay. So it's your testimony there were additional
10 watermelons?

11 A Yes, it is.

12 Q And not the additional watermelons at the rear of this
13 view? Do you see those watermelons where I --

14 A Yes, I can see them.

15 Q Okay. So you're saying there were additional watermelons
16 in addition to the one we saw in the other video and this one?

17 A Well, I can't say it's additional ones after the second
18 set of watermelons.

19 Q I'm sorry. Say that one more time.

20 A I saw the first watermelons --

21 Q Yes, ma'am.

22 A -- and I also see the second set of watermelons.

23 Q That's in this view right here?

24 A Yes.

25 Q Okay. So that's the additional watermelons that you

1 walked past?

2 **A** I believe so.

3 **Q** Okay. Let's watch the rest of this video.

4 (Video plays.) At what point do you walk past those

5 watermelons?

6 **A** Actually, I'm not sure.

7 **Q** Okay. But you saw yourself exit the produce department

8 around 11:31:38; is that correct?

9 **A** That's correct.

10 **Q** Were you in the produce department any other times that

11 day?

12 **A** No, I wasn't.

13 **Q** Okay. And we talked about this main grocery aisle where

14 you enter from the produce and enter to the main grocery

15 aisle; is that correct?

16 **A** That's correct.

17 **Q** And you see yourself doing that; correct?

18 **A** Yes, I do.

19 **Q** All right. And that time is approximately 11:31:54? We

20 kind of were talking. Want to go back and see exactly when

21 you hit the aisle?

22 **A** Yes, go back a little bit.

23 **Q** Okay. That's fair.

24 So about 11:31:54 --

25 **A** That's correct.

1 Q -- you hit the aisle.

2 And that aisle is pretty busy that day. Would you agree
3 with that?

4 A Yes, I do.

5 Q That a lot of people were walking by?

6 A Correct.

7 Q Did you recognize any of those people?

8 A No, I don't.

9 Q Do you know why they were in Walmart that day?

10 A No, I don't.

11 Q I wouldn't think so. You know, I just have to ask this.
12 Do you have any idea what they were shopping for?

13 A No, I don't.

14 Q Oh, okay. Is it possible they are shopping for roofing
15 nails?

16 A I really don't know.

17 Q You really wouldn't know?

18 A No, I wouldn't.

19 Q Okay. Well, have you ever been shopping for anything and
20 took, say, a sample with you, like if you wanted to replace a
21 light bulb in your house and you weren't sure of the size,
22 have you ever taken it with you to the store?

23 A No, I didn't.

24 Q Have you ever taken anything into the store with you
25 because you just weren't sure, that you wanted to replace the

1 exact same item?

2 **A** No, I didn't.

3 **Q** So you didn't or you have never done that?

4 **A** I didn't.

5 **Q** I know you didn't do it on the day of the incident, but
6 I'm asking have you ever had that happen.

7 **A** No, I didn't.

8 **Q** Okay. But is it possible that another customer may have
9 done that?

10 **A** It could be.

11 **Q** So it's possible that they may have brought in --

12 MR. JEFFERIES: Objection, Your Honor. She can't
13 speculate in the minds of other shoppers.

14 THE COURT: Yeah, we'll move on.

15 MS. BOYD: Okay.

16 BY MS. BOYD:

17 **Q** (Video plays.) And that's you walking down the aisle.

18 And I know the jury has seen this. I'm going to fast-forward
19 it, if that's okay with you.

20 **A** Okay.

21 **Q** (Video plays.) I want to stop it right where you stop.
22 Here you go.

23 And I think you previously testified that this is when
24 you heard the metal clacking --

25 **A** Yes, I did.

1 Q -- and it alerted you to the nail in your shoe?

2 A Can you repeat that?

3 Q This is when you heard the metal clacking in your --

4 alerted you to something?

5 A Exactly.

6 Q And you looked down at your foot --

7 A Yes.

8 Q -- at this point?

9 And you saw what? I want it to just be clear.

10 A I saw some metal.

11 Q Okay. But you couldn't identify what it was?

12 A Not at that time.

13 Q At that time, did you attempt to take it out of your

14 shoe?

15 A No, because I really didn't know what it was to even pull

16 out my shoe.

17 Q Oh, okay. Did you try to pull it out of your shoe?

18 A Eventually, I did.

19 Q I'm just asking about right here.

20 A No, I didn't.

21 Q Okay. And, at this point, when you were looking down at

22 your shoe, did you see anything on the floor?

23 A No.

24 Q And, again, this is the overview of this main alley

25 you're walking down.

1 (Video plays.) Here we go. And as you proceeded down
2 this aisle, this main aisle, did you see anything on the
3 floor?

4 **A** No, I didn't.

5 **Q** I'm going to represent to you that the version of the
6 video -- this laundry detergent video I have starts a lot
7 sooner than the one that your attorney played for you, so I'm
8 going to go to 11:33.

9 (Video plays.) And that's you in the corner of the view
10 of the camera; correct?

11 **A** Yes, it is.

12 **Q** And I think you testified earlier that you may have run
13 into some other customers that you knew?

14 **A** I didn't say I knew them.

15 **Q** Oh, but that you were talking to.

16 **A** Right.

17 **Q** Okay. So you're not sure that you knew them. You were
18 maybe just speaking with them?

19 **A** Right.

20 **Q** And at any point in time during this juncture, did you
21 look back down at your shoe?

22 **A** Right there I didn't.

23 **Q** Did you indicate to any of them that maybe there was
24 something in your shoe?

25 **A** No, I didn't.

1 Q Just going to go a little ahead so we can -- again, I
2 know we have watched these all the way through.

3 (Video plays.) And you turn on the laundry aisle;
4 correct?

5 A That is correct.

6 Q And that's -- it's at this point that you discover or
7 realize it's an actual nail in your shoe; correct?

8 A That is correct.

9 Q And you take it out and you place the nail on the shelf?

10 A Yes, I did.

11 Q Okay. Why did you place it on the shelf?

12 A Because I never knew that it was going to result in
13 anything that I needed it for.

14 Q Okay. Is it common for you just to, like, discard stuff
15 on the shelf without really thinking about it? You took it
16 out of your shoe --

17 A It was better to put it on the shelf than on the floor.

18 Q I agree.

19 A So that's why I put it there.

20 Q I agree. I agree with that.

21 But you put it there and you continued to walked on down
22 the Clorox aisle?

23 A Yes, I did.

24 Q Okay. And I believe there is another customer that
25 enters the aisle right about where you were when you discarded

1 the nail. Would you agree with that?

2 **A** Well, from what I see, but I didn't see her.

3 **Q** Okay.

4 **A** Okay. What I'm saying is what I'm looking at now.

5 **Q** Yes. And that is what I'm asking you, Ms. Jones. I'm

6 not trying to trick you. I promise.

7 **A** Oh, I'm not worried about that.

8 **Q** Oh, okay. So I'm just asking you do you see at customer

9 in the area --

10 **A** Yes, I did.

11 **Q** -- of where you discarded the nail; correct?

12 **A** Yes, I do.

13 **Q** Okay. When you discarded that nail on the shelf, did it

14 occur to you that it might fall on the floor?

15 **A** No.

16 **Q** If another customer reached for an item on the shelf,

17 that they could knock it down?

18 **A** No, it didn't.

19 **Q** Okay. But, of course, you didn't put it there thinking

20 that it may end up on the floor. Because you told me, you

21 said, "I didn't want it to end up on the floor." Correct?

22 **A** Exactly.

23 **Q** So you put it on the shelf.

24 **A** Right.

25 **Q** So it never occurred to you that another customer could

1 come behind you and knock it down?

2 **A** No, it didn't.

3 **Q** Okay. And, actually, if you watch her, it's really
4 lucky. She picks a product a little further to the left of
5 where you put the nail. Would you agree with that?

6 **A** Yes.

7 **Q** (Video plays.) And I think you testified that you, at
8 that point, realized that experiencing some pain so you
9 decided to come back and get the nail; is that correct?

10 **A** That's correct.

11 **Q** All right. So you come back and retrieve the nail.

12 Would you agree with me that it was about approximately
13 two minutes between you putting the nail on the shelf and you
14 retrieving it?

15 **A** If you can rewind the camera.

16 **Q** Sure. Of course.

17 (Video plays.) So about 11:34:22. Would you agree with
18 that timestamp?

19 **A** Yes, I do.

20 **Q** Okay.

21 (Video plays.) Until 11:36. So about 11 seconds shy --
22 would you agree with that -- of two minutes?

23 **A** I do.

24 **Q** Okay. And in that two minutes, would you agree that it's
25 possible someone could have knocked it off the shelf on to the

1 floor?

2 **A** Yes.

3 **Q** And is it possible that that's how the nail got on the
4 floor in the first place? That someone else --

5 **A** Oh, I don't know.

6 MR. JEFFERIES: Objection, Your Honor.

7 **A** I don't know.

8 MR. JEFFERIES: We're wandering off on speculation now.

9 MS. BOYD: I'm just simply asking her --

10 THE COURT: I'll ask to rephrase the question.

11 MS. BOYD: Okay.

12 BY MS. BOYD:

13 **Q** You took a nail that you found in your shoe and set it on
14 a shelf to avoid someone stepping on it; correct?

15 **A** Correct.

16 **Q** And you said you didn't really even think about it
17 falling on to the floor and someone stepping on it; correct?

18 **A** Correct.

19 **Q** And what I asked you, is it possible that another
20 customer found --

21 MR. JEFFERIES: Objection, Your Honor.

22 BY MS. BOYD:

23 **Q** -- it and set it on the shelf?

24 THE COURT: I'll sustain the objection.

25 BY MS. BOYD:

1 Q I'm not sure if we watched this video with your attorney,
2 so I'll let it play in its entirety if that's okay.

3 A No problem.

4 Q (Video plays.) And I'll represent to you that this is a
5 shot from the rear of the store facing forward, so you're
6 going to be walking towards the camera.

7 A Okay.

8 Q Just for perspective.

9 (Video plays.) Can you see yourself yet? You're like a
10 little dot so I know it may be hard.

11 A No, I don't see myself.

12 Q Okay. I'm going to represent that you're right here
13 actually looking as if you're checking your shoe. Right
14 there.

15 A Oh, I see.

16 Q You see it? Okay. Great.

17 (Video plays.) And do you see yourself stopping to talk
18 to the other customers that you may or may not have known?

19 A Yes.

20 Q Okay. And you see that Walmart associate with the star
21 on her back?

22 A Yes, I do.

23 Q Walking directly towards you?

24 A Yes.

25 Q (Video plays.) Do you see her walk right past you?

1 **A** I do.

2 **Q** But you didn't stop her and say, "Hey, I found a piece of
3 metal in my shoe"?

4 **A** Actually, at that time, I didn't see her. I see her now
5 on the video.

6 **Q** Oh, okay. So you didn't see her when she walked through?

7 **A** No, I didn't.

8 **Q** Okay. Do you see the display that says, like a dollar
9 and some change and it's like a white box that may or may not
10 say S'mores on it?

11 **A** I see that.

12 **Q** Do you recognize anything specific about this display?

13 **A** What do you mean, specific?

14 **Q** Anything about this display that jumps out at you?

15 **A** No.

16 **Q** Okay.

17 (Video plays.) Did you notice anything on the floor while
18 you were standing there in this area, to your recollection?

19 **A** No, I wasn't --

20 **Q** I'm sorry.

21 **A** -- because I wasn't looking on the floor.

22 **Q** What about in the laundry aisle when you took the nail
23 out of your shoe? Do you recall seeing anything on the floor
24 or any kind of debris?

25 **A** No, I didn't.

1 Q And I'm just going to -- I know we have seen you walk
2 throughout the rest of the store. We have captured you pretty
3 extensively, and you have gone over that. So I'm just going
4 to show you some specific videos and not track you all the way
5 through, if that's okay.

6 A Fine with me.

7 Q Just to save time.

8 (Video plays.) And I believe this is an overview of the
9 self-checkout where you checked out?

10 A I wouldn't know until I got to the register.

11 Q I know. I'm just representing to you what the video is
12 of. Would you agree with that?

13 A Oh, yeah, that's me.

14 Q Yes. You were wearing flip-flops on that day. I'm
15 trying to get it to pause at your foot. You were wearing
16 flip-flops on that day; correct?

17 A That is correct.

18 Q Anything stand out about those flip-flops that you were
19 wearing that day?

20 A Yes.

21 Q What about it?

22 A I bought them from Walmart.

23 Q You bought them from Walmart?

24 A Yes.

25 Q Great. So they were just regular old Walmart flip-flops?

1 **A** Walmart flip-flops.

2 **Q** Okay. Great. And you know what? I actually have a pair

3 of those.

4 **A** Wonderful.

5 **Q** I'd like to show them to you.

6 **A** Mm-hmm.

7 MR. JEFFERIES: It's a flip-flop.

8 MS. BOYD: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MS. BOYD:

11 **Q** Does this appear to be the same type of flip-flop?

12 **A** No.

13 **Q** Okay. What kind of flip-flop did you have?

14 **A** My flip-flop I had was cloth that goes -- let me hold it.

15 I'll show you.

16 **Q** Sure.

17 **A** Right here, these were cloth.

18 **Q** Oh, okay.

19 **A** And the bottom was thicker than this.

20 **Q** Oh, okay. Do you know about how thick it was?

21 **A** Maybe an inch, inch and a half.

22 **Q** An inch and a half?

23 **A** Yeah.

24 **Q** Okay. And then the top, you said, it was cloth?

25 **A** Brown cloth, yes.

- 1 Q Oh, okay. So it's not this kind of cloth?
- 2 A No.
- 3 Q It's a thicker -- thicker than this cloth.
- 4 A Yes. Those are the 98-cent flip-flops.
- 5 Q Okay. (Indiscernible) --
- 6 A I don't wear 98-cent flip-flops.
- 7 Q Okay. I just wasn't sure. I was trying to match what it
- 8 looked like from the --
- 9 A No -- no problem.
- 10 Q So they were about an inch, inch and a half thick?
- 11 A Yes.
- 12 Q Oh, okay. So the good kind.
- 13 A Yes.
- 14 Q All right. I'm just noting that.
- 15 Do you still have those shoes?
- 16 A No.
- 17 Q Do you know what happened to them?
- 18 A I wouldn't keep old memories like that.
- 19 Q Oh, okay. Did you ever show them to your attorney?
- 20 A I showed them to intake.
- 21 Q What's intake?
- 22 A The person who came out and took my case.
- 23 Q At your attorney's office?
- 24 A Yes.
- 25 Q Oh, okay. So you showed them -- the flip-flop to those

1 people?

2 **A** Yes.

3 **Q** Did they take a photo of it?

4 **A** I'm not sure.

5 **Q** Okay. Do you know when about you got rid of those

6 flip-flops?

7 **A** Not long after that.

8 **Q** Oh, okay. But you were certain you would have shown them

9 to counsel before you discarded them; correct?

10 **A** Yes.

11 **Q** Okay. And I'm going to pull up the customer service

12 video. And I'm going to tell you -- I know we watched it at

13 length, but I'm going to be try to be short on it, because I

14 know it's a very long video.

15 **A** Take your time.

16 **Q** Okay.

17 (Video plays.) And so you enter customer service at about

18 11:41; correct?

19 **A** Correct.

20 **Q** We have watched that. And you went right up to the desk;

21 correct?

22 **A** I did.

23 **Q** And there's an associate standing there, but he's clearly

24 assisting another customer; correct?

25 **A** Yes, he is.

1 Q Okay.

2 (Video plays.) And there's also another customer sitting
3 on a chair when you initially enter; correct?

4 A Yes.

5 Q (Video plays.) And I'm going to stop right there.

6 Actually, I might go back ten seconds and stop there.

7 That associate that walks in, he clearly is pointing that
8 customer out to the manager as he walks into the customer
9 service area; correct?

10 A He's pointing what customer out?

11 Q The one that's sitting in the chair. You may not have --

12 A I don't remember.

13 Q I want you to just watch the guy as he walk in -- as he
14 walks in.

15 (Video plays.) Do you see how he points the manager
16 towards that customer? Would you agree with that?

17 A I do.

18 Q Okay. So it's quite possible that, when the manager
19 enters the customer service area, he had another customer that
20 was there before you that needed some assistance as well;
21 correct?

22 A I guess so.

23 Q All right. And we don't know what she needed assistance
24 for; correct?

25 A No, I don't.

1 Q Okay. Now, once he goes and he does something on the
2 keypad, but he comes back to talk to you to inquire why you're
3 standing at the desk; correct?

4 A He didn't come immediately.

5 Q Okay. How long did it take him?

6 A I don't know. Maybe you can rewind it and we can --

7 Q Sure.

8 A -- count.

9 Q Sure. Of course.

10 (Video plays.) Did it take a substantial amount of time
11 for him to leave the register to get to you?

12 A Leave the register?

13 Q Yeah. He was standing at the register. He entered
14 something on the keypad. Do you see him entering something on
15 the keypad? And he walks away at 11:51 -- I mean 41 and 51
16 seconds.

17 A Is that a manager?

18 Q That's the guy that comes to talk to you.

19 A Oh, okay.

20 Q Do you see that he comes over to inquire? Because this
21 is the first person to --

22 A Yes, he did.

23 Q Because at no point anyone else knew what was wrong while
24 you were at the desk; correct?

25 A True.

1 Q All right. And so he comes over as soon as he's
2 available to inquire what happened?

3 A Yes, he did.

4 Q And by your own testimony, you told him that you wanted
5 to talk to a manager; correct?

6 A That is correct.

7 Q All right. And we see the manager. We know now the
8 manager. He is talking to another customer; correct?

9 A Yes, that manager is.

10 Q Okay. (Video plays.) And are you aware of any other
11 managers that are standing here that are available to talk to
12 you?

13 A Yes. Well, not standing there, but you did have another
14 one. The one that wrote my incident report.

15 Q Okay. But do you know where she was --

16 A No, I didn't.

17 Q -- at this time? Okay.

18 (Video plays.) And it appears that, after the manager
19 has at least found out what was happening with the other
20 customer, he walks over to at least address what's happening
21 with you; correct?

22 A That is correct.

23 Q Okay. And it's at that juncture you tell him that you
24 have the nail in your foot or had a nail in your foot, in your
25 shoe?

1 **A** Yes.

2 **Q** Okay. Did you ask him to call EMT?

3 **A** He didn't offer me.

4 **Q** Okay. But did you ask?

5 **A** No, I didn't.

6 **Q** Okay. And it appears you guys are in active
7 conversation. Would you agree with that?

8 **A** I agree.

9 **Q** Okay. So maybe you're explaining to him where you
10 believe you encountered the nail? Do you have any memory of
11 what that conversation --

12 **A** I don't remember.

13 **Q** And I promise I have a point. I'm just trying to -- I
14 keep skipping it, so I'm just going to let it run. I
15 apologize.

16 **A** No problem.

17 **Q** I can't control my video as well as the technology of
18 plaintiff's counsel.

19 Did you see that associate bring a box over to where you
20 and Mr. Lane were standing?

21 **A** No, I didn't.

22 **Q** Okay. Let me go back then seconds, and let's watch it
23 again.

24 (Video plays.) You see her up open a box?

25 **A** That looks like a notebook to me.

1 Q Oh, okay.

2 (Video plays.) And he -- it appears like he's moving
3 stuff from the -- to the side. You don't agree with that
4 characterization that it looks like he's taking something out
5 of it?

6 A No, I don't.

7 Q And you were standing there and you believe it was a
8 notebook?

9 A It was a notebook.

10 Q Okay.

11 (Video plays.) Do you see a cross on the top of that
12 notebook?

13 A Can you make this picture a little clearer?

14 Q I wish I could.

15 A Because some of your pictures that you're showing me is
16 very clear and then when it gets up to this register, it gets
17 very blurry.

18 Q Okay. Well, let me -- let me close it out and try to
19 open it in a different program where I can zoom.

20 A Sure.

21 Q Give me one second. Let me see if I can do that.

22 (Video plays.) Does that look like a cross that -- I
23 can't --

24 A I can't see it.

25 Q You can't tell. Okay. Well, let's watch and see what

1 else he does.

2 (Video plays.) Would you agree that it looks like he's
3 looking in the binder or something -- you believe it's a
4 binder?

5 **A** He's looking in the binder, yes.

6 **Q** Okay. Here, does it appear that he's putting on gloves?

7 **A** Yes, he's putting on gloves.

8 **Q** That he pulled out of the binder?

9 **A** Yes.

10 **Q** Okay.

11 (Video plays.) And at the time you're sitting on the
12 seat, where are your feet?

13 **A** On the floor.

14 **Q** Both of them are on the floor?

15 **A** Yes.

16 **Q** Is your injured foot still in the shoe or not?

17 **A** It's in the shoe.

18 **Q** Okay. I'm just trying to get orientation.

19 **A** I wouldn't dare put an open wound on a dirty floor.

20 **Q** I should hope not, but I --

21 **A** No, ma'am.

22 **Q** I just couldn't tell what was happening. Because, like
23 you said, it's not super clear.

24 (Video plays.) Do you know what that black thing is right
25 here in front of you?

1 **A** No.

2 **Q** And you're telling me that that's not your shoe?

3 **A** It could have been my -- it's not my shoe.

4 **Q** Okay.

5 **A** Because my foot is on the floor.

6 **Q** Okay.

7 **A** And I'm not going to put my foot on the floor.

8 **Q** Okay. But you don't know what that is?

9 **A** It could be blood.

10 **Q** Okay.

11 (Video plays.) Did you see yourself move the blood?

12 **A** No, I didn't.

13 **Q** And are you on the phone at this point or just sitting

14 there?

15 **A** I am.

16 **Q** Do you remember who you called?

17 **A** I called two people.

18 **Q** Okay. Who did you call?

19 **A** I called my daughter Brooke, and I called my pastor.

20 **Q** Okay. So you called your daughter within ten minutes of

21 being in the customer service area approximately?

22 **A** Approximately.

23 **Q** Okay. And did you think you needed emergency services

24 that day?

25 **A** At first, I didn't, but then I know I needed services

1 right away.

2 Q Okay. While you were still in customer service or not?

3 A Yes.

4 Q And you still never asked anyone to call EMS for you?

5 A I was waiting for my incident report.

6 Q Mm-hmm.

7 A And then I was going to leave and go get the service --

8 Q Okay.

9 A -- that I needed.

10 Q Okay.

11 (Video plays.) And what's Mr. Lane doing at that point?

12 A At that point, I was showing him my foot.

13 Q Okay.

14 (Video plays.) And is your shoe now on the floor because
15 you have your foot crossed across your lap; correct?

16 A It probably is.

17 Q And that's your shoe right there on the floor; correct?

18 A Probably so.

19 Q (Video plays.) And I think you testified earlier that
20 Mr. Lane was cleaning the area but he never gave you any type
21 of assistance; is that correct?

22 A He didn't.

23 Q But I also believe you testified he attempted to pour the
24 peroxide on you but you declined.

25 A After I asked for the peroxide.

1 Q Oh, okay.

2 (Video plays.) And can you see what Mr. Lane is doing
3 over here?

4 A Looks like he's pulling some paper towels or something.

5 Q Mm-hmm. I believe you testified earlier that he was
6 doing Walmart business. Does it look like he's doing Walmart
7 business?

8 A Yes, it does because it's paper towels over there by me.

9 Q Okay.

10 A Yes.

11 Q And you don't believe that that's some type of wrap or
12 something that he's cutting?

13 A A wrap? For what?

14 Q Any kind of gauze or wrap that he's cutting?

15 A I know it wasn't.

16 Q Okay.

17 (Video plays.) He doesn't appear to be folding something
18 right here.

19 A If he's folding something, it wasn't for me.

20 Q Okay.

21 (Video plays.) And, at this point, it looks like you're
22 actively engaging with your feet or with your foot. Would you
23 agree with that?

24 A I agree.

25 Q And that you are wiping it up and using excess paper

1 towels --

2 **A** Yes, I am.

3 **Q** -- to wipe your foot at this juncture.

4 **A** That is correct.

5 **Q** Okay.

6 (Video plays.) What's Mr. Lane doing at this point?

7 **A** He's down there looking, because he hasn't even went and

8 got the peroxide yet.

9 **Q** Oh, okay.

10 (Video plays.) And so it appears that that associate

11 hands him some items?

12 **A** It wasn't peroxide.

13 **Q** But do you recall what she handed him?

14 **A** No, I don't.

15 **Q** So, at this point, you don't believe the peroxide had

16 ever come?

17 **A** No, because he has to walk away and go get the peroxide.

18 **Q** I understand.

19 (Video plays.) But it appears they're doing something.

20 What is he doing right in front of you right here?

21 **A** I don't know what he's doing.

22 **Q** Could you see him?

23 **A** Could I see him?

24 **Q** Yeah, that day. Could you see him?

25 **A** Yeah, that day, I could see him very well.

1 Q But you just don't recall what he was doing?

2 A No, I don't.

3 Q Okay.

4 (Video plays.) And it's your testimony that you don't

5 believe he was giving you any type of first aid that day?

6 A He didn't give me any type.

7 Q And what was the second gentleman doing?

8 A The second gentleman was down there cleaning up the

9 floor.

10 Q (Video plays.) Do you see him wiping the floors?

11 A No. But you'll see him.

12 Q Okay. But right this second, what is he doing?

13 A I don't know.

14 Q Okay. But you are right there; correct?

15 A Correct.

16 Q And you don't recall what they were doing?

17 A I was sitting right there, and I don't recall.

18 Q Okay.

19 (Video plays.) And they had been down there for quite

20 some time. Would you agree with that?

21 A I agree.

22 Q And here it appears that Mr. Lane moved a little closer

23 to you. Would you agree with that?

24 A No, I don't.

25 Q Okay.

1 (Video plays.) Do you believe they were cleaning the
2 floor?

3 A Well, no, right now they're not.

4 Q Could you hear what they were saying?

5 A I can't remember what they were saying.

6 Q But you just recall that no one gave you any type of aid.

7 A Other than the peroxide, they didn't.

8 Q Okay. And so they just huddled in front of your feet for
9 now about two minutes without any assistance?

10 A Right.

11 Q (Video plays.) And now it appears like they're picking up
12 things. Do you know what they were picking up off the floor?

13 A Yeah, he was picking up the paper towel that I used to
14 dab my foot with.

15 Q Oh, okay. Did he leave you a paper towel in which to
16 continue to tab with?

17 A It's a whole roll down there.

18 Q Did you obtain an additional paper towel?

19 A Yes, I did.

20 Q So do you have one on your foot right now?

21 A I can't recall.

22 Q And, again, it's not very clear. Where are your feet?

23 A I can't even recall that either because the video is not
24 actually showing my legs too good, period.

25 Q And do you see yourself talking to that associate?

- 1 **A** Yes, I do.
- 2 **Q** Do you recall what y'all were talking about?
- 3 **A** I don't. That was six years ago.
- 4 **Q** Do you recall if this is the person who took your
5 incident report?
- 6 **A** I'm not sure. I can't see her face so I'm not sure if
7 that's her or not.
- 8 **Q** Okay. That's fair.
9 Can you see what she's doing?
- 10 **A** No, I can't. She look like she at the coin machine, to
11 me.
- 12 **Q** Is it possible she's leaning on the coin machine, filling
13 out a piece of paper?
- 14 **A** No, it's not possible.
- 15 **Q** Okay.
16 (Video plays.) At this point, do you see where your legs
17 are here? Can you see that your left leg is on the ground and
18 that your right is crossed -- you have it across your lap?
- 19 **A** I do see that now.
- 20 **Q** Okay.
21 (Video plays.) Can you tell if you're still applying
22 pressure to your foot with a paper towel?
- 23 **A** Most likely I am.
- 24 **Q** But do you --
- 25 **A** Can I ask you something?

1 Q No, ma'am.

2 A I can't?

3 Q No, ma'am.

4 A Okay.

5 Q I'm sorry.

6 A No problem.

7 Q I'm going to pause it right there. Do you see that paper

8 in her hand?

9 A I see something in her hand.

10 Q Okay. And you don't believe that's paper?

11 A I see something. I don't know what it is.

12 Q Okay. That's fair.

13 (Video plays.) And you still can't tell what it is in her

14 hand?

15 A I can't.

16 Q Okay. What about now?

17 A I still can't tell.

18 Q Okay. Does it look like paper?

19 A I can't tell.

20 Q Can you describe it?

21 A I can't tell.

22 Q "Can't tell" isn't a response.

23 A I can't identify it.

24 Q Okay. That's fair.

25 A Okay.

1 Q (Video plays.) And I know this is tedious, but if you
2 recall, you know, there was much testimony about what happened
3 in the customer service department, so I just want to make
4 sure we understand all of the aspects of the customer service
5 department. Is that fair?

6 A Yes, it would be.

7 Q Would you agree that you now set both of your feet back
8 down?

9 A Can you repeat that?

10 Q Does it appear that both of your feet are back down, like
11 right here and right there?

12 A Yes.

13 Q Okay. So you're no longer applying pressure to your
14 right foot?

15 A Right.

16 Q Do you see a paper towel or anything wedged between your
17 foot and the shoe?

18 A No.

19 Q Do you see a speck of white anywhere?

20 A I don't.

21 Q Okay.

22 (Video plays.) Had you stopped bleeding?

23 A No, it didn't stop bleeding. It slowed down but it
24 didn't stop.

25 Q Did you get a Band-aid at any point?

1 **A** They didn't give me a Band-aid.

2 **Q** So you just are okay with sitting your foot, with the
3 injury, on the floor?

4 **A** I mean, if they didn't offer me a first aid kit, what was
5 I to do?

6 **Q** Okay. Could you have used the paper towels that you said
7 were right beside you?

8 **A** Oh, no, it wouldn't have stuck.

9 **Q** Oh, okay. But to just stop the bleeding, to wedge it
10 between your shoe and your foot?

11 **A** The pressure stopped the bleeding, not the paper towel.

12 **Q** Okay. But to capture the blood?

13 **A** Yeah, it capture it.

14 **Q** Okay.

15 (Video plays.) And now you're on the phone again. Are
16 you still talking to your daughter or have you called that
17 second person?

18 **A** Probably the second person by now.

19 **Q** Okay.

20 (Video plays.) And as you so aptly pointed out in your
21 direct, you're just sitting there; correct?

22 **A** Waiting on the peroxide.

23 **Q** Are you waiting on the peroxide at this point?

24 **A** The peroxide and the incident report.

25 **Q** Okay. Is it possible that we skipped past the peroxide?

1 Because I did jump a little bit.

2 **A** No, you didn't skip. He just walked off --

3 **Q** Oh, okay.

4 **A** -- to go get the peroxide.

5 **Q** At this juncture. At 12:04, you were still waiting on
6 the peroxide?

7 **A** Yes.

8 MR. JEFFERIES: Your Honor, we object to watching this
9 video, skipping all around. It's just -- it's confusing.

10 THE COURT: I'll allow her to do that. Overruled.

11 BY MS. BOYD:

12 **Q** (Video plays.) And the time is 12:04:37, would you agree?

13 **A** That's correct.

14 **Q** And you have both your feet on the ground; is that
15 correct?

16 **A** That's correct.

17 **Q** And you're just sitting, waiting on the peroxide and the
18 customer incident report?

19 **A** Yes.

20 **Q** And your foot is still bleeding?

21 **A** Yes.

22 **Q** (Video plays.) And now it's 12:05:37. Would you agree
23 with that?

24 **A** Correct.

25 **Q** And you're still sitting with both your feet down?

1 **A** That's correct.

2 **Q** And you have not applied any pressure to your bleeding

3 foot?

4 **A** With my feet being down, I'm applying pressure.

5 **Q** Oh, okay. So just having them on the floor was stopping

6 the bleeding?

7 **A** It was actually applying pressure.

8 **Q** Okay. But it was still bleeding?

9 **A** Correct.

10 **Q** (Video plays.) And now it's 12:06:37. Another minute has

11 passed and your feet are still down?

12 **A** Yes.

13 **Q** And you haven't wiped any blood off your foot or your

14 shoe?

15 **A** No.

16 **Q** But your foot's still bleeding?

17 **A** Yes, it is.

18 **Q** And you haven't gotten any first aid?

19 **A** Excuse me?

20 **Q** And you haven't received any first aid?

21 **A** No, I haven't.

22 **Q** Okay.

23 (Video plays.) And it's 12:07:37. And another minute has

24 passed. And your feet are still planted on the ground;

25 correct?

- 1 **A** Correct.
- 2 **Q** And you have not wiped your feet at all?
- 3 **A** No, I didn't.
- 4 **Q** And you have not received any first aid?
- 5 **A** No, I didn't.
- 6 **Q** And your foot is still bleeding?
- 7 **A** Yes.
- 8 **Q** (Video plays.) It's 12:08 actually 39. And another
9 minute has passed; correct?
- 10 **A** Correct.
- 11 **Q** And your feet are still on the ground?
- 12 **A** Still on the ground.
- 13 **Q** And you have received no first aid?
- 14 **A** Haven't received it.
- 15 **Q** And your foot is still bleeding?
- 16 **A** Yes.
- 17 **Q** And you have not wiped it all in four minutes?
- 18 **A** No, I haven't.
- 19 **Q** Okay. And I'm just going to jump to when you get that
20 customer incident report, that elusive customer incident
21 report.
- 22 (Video plays.) That's when you received the incident
23 report?
- 24 **A** Yes, it is.
- 25 **Q** Does that appear to be the same lady that was standing

1 next to the Coinstar machine?

2 **A** I'm not sure.

3 **Q** You're not sure.

4 But that's when she gave it to you?

5 **A** Yes.

6 **Q** And I believe you testified that you were -- it didn't
7 have a lot on it, if I'm not mistaken. Is that what you said?

8 **A** I didn't have what?

9 **Q** That the customer incident report didn't have a lot of
10 information on it. Is that correct?

11 **A** That's correct.

12 **Q** Were you unhappy with that information that was on there?

13 **A** I just wanted the incident report.

14 **Q** Okay. Did you ever think it should have contained more
15 information?

16 **A** That was fine with me. What they gave me, I was fine, as
17 long as I got something.

18 **Q** Okay. Do you recall talking to me about the incident
19 report --

20 **A** Probably so.

21 **Q** -- at your deposition?

22 Do you recall we talked about it a little bit?

23 **A** We can talk about it.

24 **Q** Yeah. This is a copy of your deposition transcript and
25 it's just -- remember when we started, I told you that the

1 court reporter was taking down everything we talked about for
2 this purpose?

3 **A** Yes.

4 **Q** And I'm going to give you that copy.

5 And do you recall us talking -- I'm sorry. I think I
6 asked you do you recall us talking about the incident report?

7 **A** Yes.

8 **Q** And do you recall then telling me that you were unhappy
9 with the amount of information that was included on the
10 incident report?

11 **A** Basically because -- yes.

12 **Q** Okay. What did you tell me? Do you recall?

13 **A** Basically, I believe I said the period -- the long period
14 of time I waited, those few words, it didn't take that long.

15 **Q** Oh, okay.

16 **A** And that's why I was disgusted about that.

17 **Q** So it wasn't about the content per se. It was the length
18 of time it took --

19 **A** It was the length of time.

20 **Q** So you don't recall telling me that you were unhappy with
21 the content?

22 **A** I probably did tell you that.

23 **Q** Okay. Do you recall telling me that it should have
24 included that they provided you assistance?

25 **A** That they provided me with assistance?

1 Q Yes, ma'am.

2 A Assistance that I didn't get?

3 Q I'm not sure. I'm telling you -- I'm asking you, do you
4 recall saying that to me?

5 A They could have put in there "we gave Ms. Jones some
6 peroxide."

7 Q Mm-hmm, yeah.

8 A That would have been better.

9 Q Okay. Do you recall indicating that they should have put
10 that they called the -- offered to call EMT for you?

11 A Yes, I do.

12 Q You do recall telling me that they should have put that
13 in the report, that they offered to call --

14 A They didn't offer.

15 Q Oh, okay.

16 A They should have offered to call.

17 Q Okay. But you don't recall telling me -- okay. I'm
18 going to point you in the right direction. All my flags is
19 falling down. I apologize.

20 Can you turn to page 29?

21 A Okay.

22 Q Line No. 20. And I ask you did the report have your name
23 on it.

24 A Okay.

25 Q What did you say?

1 **A** "I can't remember."

2 **Q** Okay. And that's what you said.

3 And then I asked you -- you said it had a few words on

4 it. "Do you recall what those words were?"

5 And what did you say?

6 **A** "I know it said something about I stepped on a nail."

7 **Q** Uh-huh. What else did you say?

8 **A** (No response.)

9 **Q** Okay. Well, let's go to page 30.

10 **A** Okay.

11 **Q** And I asked you on line 6: "What additional details

12 would you have added if you could have written it yourself?"

13 And what did you say?

14 **A** "I would have added my name and customer stated that she

15 stepped on a nail in our store and I assisted her. You know,

16 something like that. Or I offered her to call her an

17 ambulance or something like that."

18 **Q** Okay. And so you wanted them to put in the report that

19 they offered to call you an ambulance?

20 **A** They didn't offer.

21 **Q** I understand that's your testimony. But you wanted them

22 to put in the report that they did offer to --

23 **A** Not if they didn't offer it, no.

24 **Q** Okay. I'm just being clear. But they didn't offer it.

25 **A** They didn't offer it.

1 Q Okay. Ms. Jones, let's talk about the puncture, the nail
2 you stepped on.

3 A Okay.

4 Q Where was that wound on your foot?

5 A The wound was right below my toes.

6 Q Right between your toes?

7 A No, below my toes.

8 Q Right below your toes?

9 A It was...

10 Q You were here when we asked Dr. Player to put a sticker
11 on this foot; right?

12 A Yes.

13 Q And he put it right there?

14 A Yes.

15 Q So it's your testimony that that's where it was?

16 A Yes.

17 Q Okay. That's where the wound for the nail was?

18 A It was somewhere in there, yes.

19 Q Do you recall me asking you about that in your
20 deposition?

21 A I remember you asking me.

22 Q Okay. Do you remember us talking about the wound on your
23 foot?

24 A Yes.

25 Q Do you remember me pulling out my foot in the middle of

1 the deposition and showing it to you?

2 **A** I don't remember that.

3 **Q** Yeah, that was a pretty good time.

4 So do you remember where you told me that wound was on
5 your foot?

6 **A** Do I remember where I told you it was?

7 **Q** Yes, ma'am.

8 **A** No. I mean, I believe I told you it was below my toes.

9 **Q** Do you recall telling me that it was in the middle of
10 your foot?

11 **A** I probably told you that.

12 **Q** Do you remember -- so you don't remember me putting my
13 foot up. So you don't recall me asking you to explain it
14 exactly as I pointed to my foot? Do you remember that?

15 **A** I don't remember you putting your foot, but I do remember
16 saying, towards the middle of my foot, which actually, at the
17 time before it was cut, it wasn't there. But, you know, as he
18 cut the tissue out, that expanded.

19 **Q** To the middle of your foot?

20 **A** Yeah, it was a very big cut, deep cut.

21 **Q** So that was after it. But you don't recall us talking
22 about where the actual nail went into your foot?

23 **A** We talked about it, yes, we did.

24 **Q** And remember I showed you my foot and I pointed, and we
25 talked about the fact that I had an arch and you didn't. Does

1 that sound familiar?

2 **A** Yes, it sounds familiar.

3 **Q** Do you recall telling me that it was just below my arch?

4 And you said, "Well, I don't have an arch."

5 **A** Never had one.

6 **Q** Yeah. But do you recall that?

7 **A** I do.

8 **Q** And so is it your testimony that this is in the middle,

9 below the arch?

10 **A** Is that in the middle below the arch?

11 **Q** Yes.

12 **A** No.

13 **Q** But do you recall telling me that the wound was near the

14 (indiscernible) your arch?

15 **A** No, first of all, I don't have an arch. Never had one.

16 **Q** I know you didn't.

17 **A** So I'm not going to tell you it was below my arch. I

18 never had an arch.

19 **Q** Okay. Let's go to the deposition transcript. If you

20 will turn to page 48.

21 **A** 48?

22 **Q** Yes, ma'am. Actually, if you go to 47 and just start

23 there. 47, line 22. Have you located it?

24 **A** Yes, I do.

25 **Q** And the question I asked you was: "And when you stepped

1 on the nail in Walmart, what part of your foot was punctured?"

2 And what was your response?

3 **A** I put in here: "And it was towards the --"

4 And then you have blank, blank. "It was like in the
5 middle but kind of towards the back. It was like in the
6 middle of the foot."

7 **Q** And then No. 5: "So the middle of the foot. So it's
8 that kind of the area where your arch is in the back?"

9 And your answer was?

10 **A** "A little bit further back."

11 **Q** And so I said: "Further back towards your heel? I'm
12 going to pull my foot out, because I'm a visual person. I'm
13 sorry. And then this is my foot" or, sorry, it says "feet."
14 It says, "So this is my foot. So are you saying it's here?"
15 And I pointed.

16 And you indicated what?

17 **A** "Maybe a little bit up."

18 **Q** And I said: "Here?" And you indicated what?

19 **A** "Right there."

20 **Q** So I said: "So right here. It's kind of right below the
21 arch. Right below the arch. Yes?" And you said?

22 **A** "I guess so. I don't have an arch though."

23 **Q** And I said, "Oh, okay. You have got a flat foot. So
24 like right below." And you said....

25 **A** "Yeah."

1 Q And I said, "Slightly below the center?" And you said...

2 A "Yes."

3 Q And so it's your testimony here today that this is
4 slightly below the center of your foot beyond the arch?

5 A No.

6 Q Okay. So where was the puncture wound on the day of the
7 incident?

8 A You can bring the foot over here and I can show you.

9 Q (Indiscernible) mark it?

10 A It was basically -- I said it was basically right here.

11 Q Okay. Let me get a marker. Here you go. To you, this
12 is the same as the description that we just went through?

13 A Yes, to me. That wasn't the back of my foot, but that is
14 where the puncture was.

15 Q This is where the puncture was?

16 A Yes.

17 Q And so when we talked about it being slightly below
18 center, which we agree this is the center of the foot?

19 A That's -- yes.

20 Q Slightly below center. You agree with me that's the same
21 spot that you describe in your deposition?

22 A No, I don't.

23 Q And how big was the wound on the day of?

24 A It was around about a dime size.

25 Q The size of a dime?

1 **A** Or a little smaller, yes.

2 **Q** I'm sorry. Say that again.

3 **A** I said "or a little smaller."

4 **Q** A little smaller than the dime but in that same --

5 **A** Approximate, yes.

6 **Q** Do you have the nail?

7 MR. JEFFERIES: It's in evidence.

8 MS. BOYD: I'm sorry.

9 BY MS. BOYD:

10 **Q** (Indiscernible) testified was, in fact, the nail?

11 **A** Yes, it is.

12 **Q** And this nail punctured your foot and it was the size of

13 a dime?

14 **A** Yes.

15 **Q** On the day of?

16 **A** On the day of, yes.

17 **Q** Okay. Ms. Jones, do you know where that nail came from?

18 **A** Other than Walmart's store, no.

19 **Q** Okay. But I think there's been extensive testimony that

20 Walmart doesn't sell loose nails; correct?

21 **A** That's what you guys say.

22 **Q** And you don't know where the nail came from other than it

23 was located in your shoe at Walmart.

24 **A** Right.

25 **Q** Do you have any idea how long it had been on the floor

1 before you stepped on it?

2 **A** If I did, I wouldn't have never stepped on it.

3 **Q** So is that a no?

4 **A** Exactly.

5 **Q** Yes. That's a no?

6 **A** That's a no.

7 **Q** Oh, okay.

8 Do you have any information that anyone at Walmart knew
9 it was on the floor before you stepped on it?

10 **A** I don't know.

11 **Q** You don't know.

12 Ms. Jones, do you remember us talking about that initial
13 toe amputation that you had?

14 **A** Basically, yes.

15 **Q** Do you recall what you told me about that toe amputation?

16 **A** Excuse me?

17 **Q** Do you recall what you told me about it?

18 **A** What did I tell you?

19 **Q** That's what I'm asking. Do you recall; yes or no?

20 **A** No.

21 **Q** Okay. You had -- you went to the doctor about three days
22 after the incident at Walmart about your toe. Does that sound
23 right?

24 **A** I went to the emergency room the same day.

25 **Q** I know you went the same day, but I'm talking about the

1 infected toe that led to that initial amputation.

2 **A** I didn't have an infected toe.

3 **Q** Oh, okay. You did not have an infected toe?

4 **A** No.

5 **Q** Okay. Why did you get that initial amputation?

6 **A** Because of this nail going in my foot.

7 **Q** Okay. But there was some implication of at least one of
8 your toes; is that not correct?

9 **A** That's not correct.

10 **Q** Okay. So why did they amputate your toe?

11 **A** I mean, Dr. Player answered all those questions.

12 **Q** I understand. And now I'm asking you.

13 **A** Okay. He said because the infection set in.

14 **Q** Okay. Where did the infection set in?

15 **A** In my foot.

16 **Q** Okay. So why did they amputate your toe and not your
17 foot?

18 MR. JEFFERIES: Objection, Your Honor. Dr. Player's
19 testified as to this. She's not a doctor.

20 MS. BOYD: I'm asking for her understanding of her
21 procedures.

22 THE COURT: I'll allow some leeway in that regard.

23 BY MS. BOYD:

24 **Q** So it your testimony that your toe was not infected?

25 **A** That is my testimony.

1 Q Okay. Do you recall us talking about your toe being
2 infected?

3 A No, I don't.

4 Q Can you turn to page 49 of your deposition transcript?
5 And on line 3, I said, "Yes. And three days later, your large
6 toe was infected?"

7 And you said....

8 A "Yes."

9 Q "Was there an area in between the wound and your --"
10 sorry; I apologize.

11 "Was the area in between the wound and your toe also
12 infected?"

13 And you said....

14 A I said, "No."

15 Q "So it was just the toe."

16 And you said....

17 A "I had the toe" -- I said, "Yes."

18 Q And I said, "Has the toe been punctured by the nail?"

19 And you said....

20 A "No."

21 Q I asked, "Did he indicate to you why the toe was
22 infected?"

23 And then you said....

24 A "Well, he said, being so I had diabetes and that kind of
25 led in on that."

1 Q So it was at least your understanding that had something
2 to do with your amputation?

3 A What had something to do with it?

4 Q The toe infection.

5 A I know my foot got infected.

6 Q Okay.

7 A And he stated he wanted to cut the toe off to stop the
8 infection.

9 Q Okay. And you don't recall telling me that the toe was
10 infected?

11 A I might have told you that.

12 Q Okay. But that's not what you're testifying to today.

13 A I'm not a doctor.

14 Q I understand.

15 A So I don't know how it got infected. I know the foot got
16 infected because of the nail, but I don't know how it led from
17 there to the toe. I'm not a doctor. I can't explain that to
18 you.

19 Q Well, when we engage in discovery, this is an opportunity
20 for me to ask questions, and so I can just rely on what you're
21 telling me. And I'm just trying to understand, is that what
22 you told me?

23 A That's what the paperwork say.

24 Q Ms. Jones, have you ever had diabetic ulcers on your
25 feet?

- 1 **A** No.
- 2 **Q** Not even prior to the incident at Walmart?
- 3 **A** No, not that I can recall.
- 4 **Q** Okay. Were you taking any pain medication before you
- 5 stepped on the nail at Walmart?
- 6 **A** Yes.
- 7 **Q** What kind of pain medications were you taken?
- 8 **A** I was taking oxycodone.
- 9 **Q** Are you still taking that same medication?
- 10 **A** No.
- 11 **Q** Why did you stop taking it?
- 12 **A** Because I don't want to get addicted.
- 13 **Q** That's understandable.
- 14 Had you been on it for a significant amount of time
- 15 beforehand?
- 16 **A** Yes.
- 17 **Q** But that was before the incident at Walmart; correct?
- 18 **A** Yes.
- 19 **Q** As you sit here today, do you have any personal knowledge
- 20 that that nail came from a pallet in Walmart?
- 21 **A** Do I have any personal knowledge?
- 22 **Q** Yes, ma'am.
- 23 **A** That it came from...
- 24 **Q** Yes.
- 25 **A** I can't say I do.

1 Q Okay.

2 A I don't know where the nail came from in Walmart.

3 Q Okay. You just know that you found it in your shoe in
4 Walmart; correct?

5 A I know I stepped on it in Walmart.

6 Q Okay. But you -- other than that, you don't know the
7 source of it?

8 A No, I don't.

9 Q Or how it got on the floor?

10 A No.

11 Q Or how long it had been there?

12 A I don't work at Walmart. No, I don't.

13 Q I understand you don't.

14 A Okay.

15 Q And you don't know if Walmart knew it was there?

16 A I don't know.

17 Q Okay. That's all I have for you, Ms. Jones. Thank you
18 so much.

19 A You're welcome.

20 THE COURT: We're going to take a brief recess,
21 Mr. Foreman and ladies and gentlemen of the jury. I'd ask
22 that you return to the jury room. Do not discuss the case.

23 (The jury exited the courtroom at 3:46 p.m.)

24 THE COURT: He's going to ask you a few more questions,
25 so if you'll just --

1 THE WITNESS: No problem.

2 THE COURT: If you need assistance with the restroom or
3 refreshments or whatever, just let us know --

4 THE WITNESS: Okay.

5 THE COURT: -- and we'll -- between the bailiffs and the
6 lawyers --

7 THE WITNESS: Yes, sir. Thank you.

8 THE COURT: -- we'll get it straight.

9 THE WITNESS: I'm going to step out for a few.

10 THE COURT: We'll stand at ease for five minutes.

11 (A brief recess was taken from 3:47 p.m. to 3:59 p.m.)

12 THE COURT: Redirect?

13 MR. JEFFERIES: Yes.

14 THE COURT: Anything before we proceed?

15 MR. JEFFERIES: No, Your Honor.

16 THE COURT: Anything from defense?

17 MS. BOYD: No, Your Honor.

18 THE COURT: All right, sir. We're ready for the jury.

19 Might counsel approach the bench for one moment.

20 BENCH CONFERENCE

21 (A bench conference was held off the record and outside the
22 hearing of the jury and others.)

23 (Open court resumes as follows:)

24 MS. BOYD: Sorry; may I approach?

25 THE COURT: Yes.

1 MS. BOYD: I want to add this to this deposition.

2 THE COURT: Plaintiff, you're recognized for redirect.

3 MR. JEFFERIES: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. JEFFERIES:

6 Q Ms. Jones, I know we have spent a lot of time at customer
7 service today. Bear with me; I'm going to spend a few minutes
8 more. All right?

9 A Okay.

10 MR. JEFFERIES: Video on for everybody?

11 BY MR. JEFFERIES:

12 Q We have watched this video before at customer service.
13 And when I played it, we played it all the way through, as
14 you'll recall; right?

15 A Yes.

16 Q Took a break in the middle; right?

17 A Yes.

18 Q And then picked it up and went through it. No skipping
19 around.

20 So do you remember telling me, when I asked you if you
21 could see where peroxide was provided to you, you identified
22 that happening at 11:49 a.m. in the video.

23 A That is correct.

24 Q All right. And that's still what you think; right?

25 A Yes.

1 Q Okay. So skipping around might have confused you a
2 little bit about when it happened, but if we played it
3 through -- and I don't want to play it another hour if we
4 don't have. But we played it all the way through, start to
5 beginning, the way I did it, you'd be able to identify it
6 again at 11:39.

7 A Yes.

8 Q Okay. Now, take a look at the video right now. It's at
9 11:49. And you're in the chair; right?

10 A Yes.

11 Q And once you sit in that chair, you don't get up again
12 until the very end.

13 A Right.

14 Q And I'm going to see if I can make it go through just a
15 little faster. Oh, there we go. There it is.

16 Do you see Mr. Lane over there and he's got what you said
17 you thought was a binder or opposing counsel called it a box,
18 whatever.

19 A Yes.

20 Q All right. When this was happening, you were in the
21 chair; right?

22 A Yes.

23 Q And the box or the binder or whatever is up on the
24 counter.

25 A Correct.

1 Q On the other side of Mr. Lane from you?

2 A Yes.

3 Q All right. So you couldn't -- there's no way you could
4 have seen what he was doing then, could you?

5 A No, sir.

6 Q Only time you have seen this box or this binder is in
7 this grainy video that we're looking at now?

8 A That's correct.

9 Q Okay. Now, I think you agreed that Kevin Lane looks like
10 he got some gloves out of that box or that binder.

11 A Yes, he did.

12 Q All right. He never brought it over to you, did he?

13 A No, he didn't.

14 Q Never carried that box. He got something for himself but
15 he never brought a box or binder over to you and offered you
16 anything out of it?

17 A No, he didn't.

18 Q All right. So when you say "I was never provided a first
19 aid kit," that's true; right? I mean, no one brought a first
20 aid kit to you, did they?

21 A They didn't offer me one.

22 Q He might maybe, depending on what this is, have been
23 getting something out of a first aid kit, but you wouldn't
24 have known that at the time?

25 A That's correct.

1 Q You couldn't see it.

2 And I think when I asked you -- I was clear on this --
3 each time I asked you about first aid, I said, "Was there any
4 first aid provided aside from the peroxide?" And what was
5 your answer to that?

6 A "No."

7 Q Okay. But you agree that you were provided with
8 peroxide.

9 A Yes.

10 Q There's no dispute about that.

11 A No dispute.

12 Q Okay. Just that there was nothing else beyond that and
13 some paper towels.

14 A Nothing else.

15 Q Okay. Take a look at the video here at the 11:54 and 50
16 seconds. Do you see that?

17 A I do.

18 Q All right. And do you see where that towel, I think it
19 is, white -- whatever it is, the white thing you identified on
20 the floor. Do you see where that is?

21 A Yes, I do.

22 Q And do you remember me asking you how far away from you
23 that was? Do you remember that question?

24 A I do.

25 Q All right. And your answer was something like 25 feet.

1 Something along those lines?

2 **A** Yes.

3 **Q** Is it safe to say that maybe you are not the best judge
4 of distances?

5 **A** That is very safe to say.

6 **Q** Okay. Because that's -- I don't know what that is, but
7 that -- eight feet, six feet, something. All right.

8 You testified that your flip-flop was an inch and a half
9 thick?

10 **A** Not that thick. It was not like this.

11 **Q** All right. Hold up for the jury. Okay. Just like about
12 like that.

13 **A** Yes.

14 **Q** So maybe a little bigger than this flip-flop but maybe
15 not much; right? And that's, of course, nobody's standing on
16 this flip-flop.

17 **A** Right.

18 **Q** You know, more than age there's a question I hate to ask
19 even more and that is to ask a woman what she weighs. I hate
20 to say it. Let me just ask this question. Regardless of what
21 you weigh, if you stand on this flip-flop, it's going to
22 squish, ain't it?

23 MS. BOYD: Objection, Your Honor.

24 **A** Yes, it is.

25 THE COURT: Sustained. And might counsel approach the

1 bench.

2 BENCH CONFERENCE

3 (A bench conference was held off the record and outside the
4 hearing of the jury and others.)

5 (Open court resumes as follows:)

6 MR. JEFFERIES: May I approach?

7 BY MR. JEFFERIES:

8 Q Can you hold this flip-flop up? Hold it up for the jury
9 and just squeeze it with your hand. What's it doing when you
10 squeeze it?

11 A It's going in.

12 Q So you said how thick? Show the jury how thick you said
13 it was before you were standing on it.

14 A (Indicating).

15 Q So not an inch and a half.

16 A No.

17 Q Understood. Moving on.

18 You testified that you did not see the nail that you
19 stepped on before you stepped on it.

20 A That's correct.

21 Q All right. Had you seen the nail, would you have stepped
22 on it?

23 A No way.

24 Q In all the video we watched, did you see anywhere where a
25 customer put a nail up on a shelf --

1 MS. BOYD: Your Honor, I'm going to object.

2 BY MR. JEFFERIES:

3 Q -- and somebody knocked it down?

4 MS. BOYD: -- to the question.

5 A No.

6 MS. BOYD: The line of questioning -- the format of the
7 questioning. He's leading.

8 MR. JEFFERIES: I don't know how to ask it otherwise,
9 Your Honor. It's a very specific question about what she saw.

10 THE COURT: Rephrase the question.

11 BY MR. JEFFERIES:

12 Q In all the video --

13 THE COURT: (Indiscernible) a question that calls for a
14 yes-or-no answer.

15 MR. JEFFERIES: May I have just a moment to think of it?

16 THE COURT: Yes.

17 MR. JEFFERIES: Thank you.

18 BY MR. JEFFERIES:

19 Q In all the video we watched today, a good bit, did you
20 see anyone drop a nail or put a nail on a shelf?

21 A No, I didn't.

22 Q If that had occurred in the five hours, fix hours before
23 you went in the store, would you have been able to see it if
24 there were video of it?

25 A No.

1 Q There's no video of it?

2 A No.

3 Q Did you have an infection in your right foot or toe --

4 MS. BOYD: Objection, Your Honor. These questions are
5 leading and this is a direct examination.

6 MR. JEFFERIES: I'll rephrase it.

7 BY MR. JEFFERIES:

8 Q When did you first have an infection in your right foot
9 or toe? Before or after the nail, is what I'm asking.

10 A After the nail.

11 Q Okay. Now, I want to take you back to your deposition
12 for a second. Opposing counsel was asking you about page 49
13 of your deposition. Can you turn to that?

14 A Okay.

15 Q All right. And if you look at the top of page 49, line
16 3, the question to you was: "Yes. And three days later, your
17 large toe was infected." And your answer was....

18 A "Yes."

19 Q Okay. Is your large toe what was amputated?

20 A No.

21 Q What was amputated in the first amputation?

22 A The second toe.

23 Q The second.

24 A Yes.

25 Q And not to belabor it, but what's that date?

1 **A** August 4th.

2 **Q** August 4th of 2015?

3 **A** Of 2015.

4 **Q** Where the large toe was amputated?

5 **A** That's correct.

6 **Q** So when you were talking here at page 49 about your large
7 toe being infected, was that about the second or the first
8 amputation?

9 **A** That was the second.

10 **Q** That was the second.

11 **A** Yes.

12 **Q** This one here?

13 **A** Yes.

14 **Q** In which you said you didn't have an infection.

15 **A** That's correct.

16 **Q** Okay. May I hold the foot?

17 I think you testified -- just tell me if I'm right --
18 that you put the X where you remember the puncture wound from
19 the nail being?

20 **A** Yes.

21 MR. JEFFERIES: Your Honor, we would move the foot into
22 evidence.

23 THE COURT: Any objection?

24 MS. BOYD: No, Your Honor.

25 THE COURT: It's into evidence.

1 MR. JEFFERIES: Plaintiff's...

2 COURT REPORTER: No. 17.

3 MR. JEFFERIES: 17. Plaintiff's 17 is the foot.

4 (Plaintiff's Exhibit No. 17, demonstrative foot, was
5 marked for identification and received into evidence.)

6 MR. JEFFERIES: Your Honor, may I have just a moment to
7 confer with counsel?

8 THE COURT: Yes.

9 MR. JEFFERIES: Thank you.

10 Your Honor, I have no further questions for Ms. Jones.

11 THE COURT: All right. Ms. Jones, you have been on the
12 stand all day.

13 THE WITNESS: Yes, sir.

14 THE COURT: You're done. You can have a seat back.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Jefferies, you're recognized. You may
17 call your next witness.

18 MR. JEFFERIES: May we approach?

19 THE COURT: Yes.

20 BENCH CONFERENCE

21 (A bench conference was held off the record and outside the
22 hearing of the jury and others.)

23 (Open court resumes as follows:)

24 THE COURT: Mr. Foreman, ladies and gentlemen of the
25 jury, we have -- we're at a juncture where we need to take up

1 some legal matters outside of your presence, and we're going
2 to ask that you be back at 9:30 on Friday morning. Tomorrow
3 is Veterans Day, and that's a state holiday. If left up to
4 me, we'd work tomorrow, but I have been called down on that
5 before. So we can't do that. I know probably a number of
6 y'all don't recognize Veterans Day as a holiday, but the State
7 does. So I have to do that.

8 So we're going to ask that you, once again, do not do any
9 independent investigation. Don't look up anything on Google
10 and do not discuss the case amongst yourselves or with anyone
11 else. And, obviously, if anybody would try to contact you,
12 identify them as best you can, and inform me and I'll deal
13 with them accordingly. But I don't anticipate that, under any
14 circumstance, would ever happen. I always tell people that in
15 case under the unusual circumstance that something would
16 happen.

17 I'm going to ask that you be here at 9:30. 9:30 sharp
18 Friday. Tomorrow's Thursday. Not tomorrow but Friday. 9:30.
19 9:30 sharp.

20 All right. We'll see you then.

21 Y'all need to know, we're still here working.

22 (The jury exited the courtroom at 4:19 p.m.)

23 THE COURT: Be happy to entertain motions at this time.

24 MATTERS OF LAW/MOTIONS

25 MS. BOYD: Defendant's move for a directed verdict at

1 this time, Your Honor.

2 THE COURT: And would you like to elaborate on that?

3 MS. BOYD: Yes, I'm sorry, Your Honor. I was adjusting
4 my -- I apologize.

5 It's clear in South Carolina law that a merchant does
6 not -- is not an insurer of its patron's safety, and, thus,
7 the merchant is not required to maintain the premises in such
8 condition that no accident could happen. The business owner
9 only owes the invitee the duty of exercising reasonable and
10 ordinary care. There's no duty to warn or protect from
11 blatant or hidden dangers unless they know of them, unless
12 they're known at the time.

13 The Supreme Court has declined to adopt a foreseeable
14 risk in these types of case analysis. This is nothing more
15 than a foreign substance case. While it is a nail, it is an
16 item foreign to the floor. And Plaintiffs try to argue that
17 Walmart placed the pallet and, therefore, created a condition
18 with the knowledge that it was a foreseeable risk that a nail
19 may fall out of wood.

20 But that's not the law in South Carolina. And, in fact,
21 this case is almost identical to the Wintersteen case where
22 the Supreme Court reviewed just this type of analysis. And in
23 that case, as you know, Your Honor, the store had placed a
24 self-serve ice machine in the store and a plaintiff alleged
25 that ice got on the floor, melted, and caused a slip/fall

1 hazard. And the plaintiff argued that, by placing the ice
2 machine in the store, the store had created a foreseeable
3 risk, and, therefore, they owed a duty to protect the
4 customers from that foreseeable risk.

5 And the Supreme Court specifically declined to adopt such
6 a standard and, instead, held that this is a traditional
7 foreign substance analysis case where there must either be
8 notice or constructive notice because there was no creation --

9 THE COURT: Or they put it.

10 MS. BOYD: Or they put the actual hazard there, Your
11 Honor, which would mean the ice or the water --

12 THE COURT: Let's see what they have to say about that.
13 I understand that whole argument, the whole concept.

14 First of all, what evidence -- who is going to argue
15 this?

16 MR. WILLEY: I am.

17 THE COURT: What evidence do you have that Walmart put
18 the nail there?

19 MR. WILLEY: So --

20 THE COURT: And we'll start with that.

21 MR. WILLEY: We'll start with that. So with respect to
22 Walmart creating the danger, what we have had is testimony
23 that there is no other place in the store where the nail could
24 have come from except a pallet. And so --

25 THE COURT: Who says it came from a pallet and how can

1 you prove that it did come from a pallet?

2 MR. WILLEY: It's not -- no one can say that it came from
3 a pallet. If someone could say that it came from a pallet,
4 they wouldn't have picked it up. But what the evidence has
5 shown is that the nail could have come from a pallet.

6 THE COURT: Well, it could have, but even your witness,
7 or somebody's witness -- I reckon it was your witness -- said
8 that you don't build pallets with roofing nails.

9 MR. WILLEY: Yeah, but I don't know which witness said
10 that or what exactly you're referring to, but it's not
11 about --

12 THE COURT: I think it was the gentleman who was at the
13 distribution center.

14 MS. BOYD: It was Mr. Ringer, actually.

15 THE COURT: The gentleman who was a distribution -- at
16 the distribution center said that he's been around pallets his
17 entire life and that you don't -- I don't know if we asked the
18 question, but it was clear that he's never seen roofing nails
19 used in the construction of a pallet or in the repair of a
20 pallet.

21 MR. WILLEY: Well, and that's where I would disagree. So
22 he did not speak about repair of a pallet, and I think, in
23 this particular case, it is common knowledge that you can use
24 different types of nails -- there was testimony about this --
25 for different uses. And we went through that.

1 He did not testify about the repair of pallets. In fact,
2 what he said is that, when the pallets come --

3 THE COURT: How is that any different? How is that
4 saying it could have been repaired by a roofing nail? How is
5 that any different than it could have been dropped five
6 seconds before by a customer?

7 MR. WILLEY: It could have been dropped five -- well, if
8 it -- we have the spoliation --

9 THE COURT: A roofing nail could have been dropped five
10 seconds before by a customer.

11 MR. WILLEY: And we have a spoliation motion in charge
12 that deals with that, which is actually an adverse inference
13 against Walmart.

14 THE COURT: Wait a minute now --

15 MS. BOYD: Your Honor -- I'm sorry.

16 THE COURT: All right. Well, let's answer that question
17 right there. How is "it could have been used to repair a
18 pallet" different than "it could have been a customer that
19 dropped it five seconds before she stepped on it"? We don't
20 know, do we?

21 MR. WILLEY: In a typical situation, we would know if we
22 had the video because we would be able to see --

23 THE COURT: Wait a minute, now. All right...

24 MR. WILLEY: In a normal --

25 THE COURT: But I'm asking, with the evidence that's been

1 presented here today and your argument was it could have been
2 repaired with the roofing nail -- that's what your theory is,
3 that it was repaired -- the pallets were repaired with a
4 roofing nail; right?

5 MR. WILLEY: Or it could have been manufactured.

6 THE COURT: Pardon?

7 MR. WILLEY: Or it could have been manufactured with a
8 roofing nail.

9 THE COURT: Well, I don't --

10 MR. WILLEY: We had a gentleman --

11 THE COURT: That would have been -- that would be you
12 saying that, but your witness indicated that you can't build
13 one with roofing nails.

14 MR. WILLEY: I don't think the witness said you can't
15 build it with roofing nails. What he said was that, looking
16 at the pallets that he has seen that come through the Walmart
17 center, he may not have seen one. However, he also testified
18 that they don't inspect every pallet that comes through the
19 Walmart distribution center, including white wood vendor
20 pallets.

21 THE COURT: All right. What do you have other than
22 speculation that it could have been manufactured by -- with
23 roofing nails? Have you ever -- do you have any evidence that
24 there's ever a company that constructs them with roofing
25 nails?

1 MR. WILLEY: Well, I don't think that's our burden of
2 proof. The burden in the case is to put --

3 THE COURT: Well, if you're going to try to prove that
4 Walmart put the nail there via the pallets, which you have
5 intimated took place, I think you do.

6 MR. WILLEY: No, no. And that's not the full argument.
7 The full argument is that Walmart put the nail there. And so
8 if the pallets --

9 THE COURT: That's the question right there. What
10 evidence do you have that Walmart put that nail there?

11 MR. WILLEY: Well, we have got two things. We have got
12 in-store, they use wooden pallets, which contain nails --

13 THE COURT: Not roofing nails.

14 MR. WILLEY: Well, that's not the evidence. That's you
15 saying that now, but that's not the evidence. There's no
16 evidence --

17 THE COURT: The burden is on you, not on me.

18 MR. WILLEY: That's right. But there's no evidence in
19 the case that none of the pallets in the Walmart store ever
20 contained roofing nails. And, in fact, that's why I went
21 through the testimony. As you know, we can have direct and
22 circumstantial evidence, and in this case, we aren't going to
23 have direct evidence of that nail came out of that pallet,
24 obviously. And you're not required to have that in a case
25 like this.

1 The circumstantial evidence that the nail came from a
2 pallet is we have had testimony that the pallets are made of
3 wood, that they contain nails, that they're on the floor, that
4 Walmart doesn't inspect the pallets that come on to the floor
5 for the nails. Particularly you'll recall we talked about the
6 vendor display pallets where the display is already on top of
7 the pallet when it arrives at the distribution center from the
8 vendor. And you can think of -- the best way to think of it
9 is to think of the watermelon bin that comes in on a pallet,
10 and that watermelon bin goes into the distribution on the
11 pallet. And it's not inspected for the nails. All they're
12 looking at, he testified, is the sides of the pallet there to
13 ensure for stability that the merchandise isn't going to get
14 injured. And then goes to the store where they look at the
15 same thing just to make sure there's no stability issues.
16 And, in this case, there's evidence -- Mr. Ringer indicated
17 that the way the pallets are inspected is he looks at them and
18 he wasn't --

19 THE COURT: I understand what you're saying then. All
20 right.

21 If -- of course the law says that if Walmart did not put
22 it there, they have to have actual constructive notice.

23 MR. WILLEY: Well, not quite. There's a third way, and
24 that's violation of internal policies, which gives rise to the
25 negligence and gives rise to potential punitive damages. And,

1 in addition to that, in addition to actual constructive
2 damages, violation of policies, they have a duty to do
3 reasonable inspections for benefit of invitees. And so those
4 things all exist. This pallet issue is but one way that we
5 prevail, and this is the simplest way, it's how we built our
6 case, obviously, and we put up the circumstantial evidence to
7 establish that. Now, what we can't -- what we can't do,
8 obviously, is have somebody testify, which you never would be
9 able to do, to say this came from there.

10 I mean, think of the Garrison case. Garrison v. Target
11 case that, you know, just went all the way up on punitive
12 damages, a syringe in the parking lot. No testimony in that
13 case that anybody ever saw it. No testimony in that case that
14 Target put it there. The testimony in that case -- the
15 evidence in that case is that they had policies to make sure
16 that the parking lot was in reasonable repair, and there was
17 evidence that that -- those policies were not followed. And
18 that's under (indiscernible) Garrison. Garrison, you'll
19 recall, went up to the Court of Appeals. It was affirmed on
20 that portion. There's, you know, various portions of it
21 relating to the punitive damage award, etc. And then the cert
22 hasn't been granted, and if you watch the arguments, most of
23 the focus there, it would seem to me, was on whether the
24 statutory -- statutory limitation on punitives has to be pled.

25 But you can go look at that case. This case is even

1 easier to prove than Garrison because this nail is inside of
2 the Walmart. Walmart has said, the testimony was, that they
3 have cameras that they could utilize to look for things on the
4 floor that maybe would be able to see things as small as a
5 nail on the floor if they were looking for it.

6 THE COURT: Well, that, I never have -- I heard you ask
7 those questions, and it does not make any sense to me because
8 if you could get a camera to zoom in on something as small as
9 a nail, wouldn't it be better to walk? Wouldn't it be more
10 effective to walk up and down and look with your own eyes?
11 Which is what they do. They walk five miles a day each one of
12 them.

13 MR. WILLEY: Well, Mr. Ringer didn't that day because we
14 wasn't there. But I agree with you that if you can walk, that
15 is another way to do it. But, in this case, we asked -- it
16 was asked that the evidence of those walks be preserved, and
17 it wasn't done.

18 And so that -- it all fits together on all -- all of
19 these prongs. And so, when you look at the evidence, taken as
20 a whole, we don't have to prove -- someone doesn't have to
21 come in here and say, Yeah, that nail came from a pallet. You
22 never deal with a proof of premises case -- well, I guess you
23 could prove some premises case where they knew there was an
24 nail on the floor and just left it there. Like if someone had
25 tripped over that towel and we had it on the video that they

1 put it there, but, obviously, that's very rare.

2 That's not what's required. What's required under the
3 law is to use direct and circumstantial evidence if you're
4 saying they created the danger, which is one of our theories,
5 to say the nail most likely -- more likely than not -- came
6 from a pallet. And the testimony in the case is that there's
7 no other place in the Walmart store -- they don't sell
8 individual nails. They don't, you know, use nails in their
9 shelves. They don't do any of that. Of course they would
10 create those dangers too.

11 But that, in the store, there's wooden pallets made of
12 nails, and there's no testimony to the contrary of any other
13 potential source of the nail. And of course in every case --
14 I mean, in a wreck case even where we have a rear end wreck,
15 we can sit and speculate and say, Well, you didn't put in
16 evidence that the person who rear-ended you didn't have a
17 heart attack and that's why they rear-ended you. Well, of
18 course not because it's the act that we're concerned with.
19 And that's what we have here.

20 THE COURT: Anything further?

21 MS. BOYD: Yes, Your Honor. First of all, the pallet
22 itself is not being alleged to be a hazardous condition. It's
23 the nail. And he's -- all of his testimony has been about
24 pallets, not the specifics of a nail. The placement of
25 pallets in the store, that Walmart put the pallet. Their

1 speculation is that this improper nail came from some vendor,
2 some third party. No evidence that Walmart would have had any
3 knowledge of this non-complying nail.

4 And if you look at the cases where the courts found that
5 there was a creation issue such as the Pigney (ph) case, the
6 Court found that those leaves had been falling -- it was a
7 recurring condition that the store was aware of, and so they
8 should have swept it up, even though they didn't know that
9 that particular leaf at that time had fallen. But it was a
10 history of pattern of knowledge that it would happen.

11 Or even the Henderson case with the sweetgum balls. They
12 planted the tree. They created the condition. But in all
13 those circumstances, you knew where it came from and what was
14 causing it, and it was a recurrence so there is some knowledge
15 that you created -- I mean, the creation of a hazard.

16 Here, they're saying simply placing a pallet on the floor
17 and not deconstructing every one to make sure that all the
18 nails are compliant somehow makes you responsible for a random
19 nail that's not a pallet nail on the floor in the store, and
20 that's not the law.

21 THE COURT: All right. I have a good idea about what the
22 arguments are with regard to this.

23 Any other motions?

24 MR. WILLEY: Your Honor, may I just say one thing for the
25 record?

1 THE COURT: Yes.

2 MR. WILLEY: If the mechanism of injury is a nail but the
3 pallet is a hazard, and the pallet is a hazard because there's
4 testimony that we know that these pallets get damaged and
5 moving in the store and that it's foreseeable that a nail
6 could fall out. And you'll remember, Your Honor, from
7 photographs that we have marked as a Court's exhibit, that, in
8 fact, some four years later, in that same Walmart, next to a
9 pallet, you find a nail.

10 MS. BOYD: A pallet --

11 MR. WILLEY: And that's because this happens.

12 MS. BOYD: Sorry.

13 MR. WILLEY: This happens.

14 MS. BOYD: That's not in evidence, Your Honor, first of
15 all.

16 MR. WILLEY: That is not in evidence. It's a Court's
17 exhibit.

18 MS. BOYD: But it's all --

19 MR. WILLEY: But that is what we have to show, is it's
20 foreseeable that bringing wood pallets into the store with
21 nails, that something like this would happen. And, in fact,
22 does happen. And you'll remember that there was testimony
23 elicited about a verdict in another case involving a pallet,
24 and I put into evidence of a pallet guard, which, by the way,
25 is a commercially reasonable --

1 THE COURT: All right.

2 MR. WILLEY: -- safe thing --

3 THE COURT: I have heard -- I have heard all I need to
4 hear on that.

5 What other motions do you have?

6 MS. BOYD: Well, Your Honor, you indicated that we would
7 revisit the mistrial issue at the conclusion of plaintiff's
8 case earlier today. I just wanted to remind you of that.

9 THE COURT: I'm not going to grant it at this time.

10 MS. BOYD: Okay.

11 THE COURT: Any other motions?

12 MS. BOYD: No, Your Honor.

13 THE COURT: Any motions with regard to punitive damages?

14 MS. BOYD: We'd ask that -- for a directed verdict on the
15 issue of punitive damages. Plaintiff has not presented any
16 evidence of willful or wanton behavior on behalf of Walmart or
17 Mr. Ringer. In fact, Mr. Ringer testified that he reviewed
18 the videos, even though he wasn't there on the day, and he
19 could see no policy violations. He testified to how clean the
20 store looked and how it was well stocked and well zoned. And
21 so there is no other evidence. Plaintiff testified she saw
22 nothing on the floor. There's no debris. And so there's no
23 evidence at this time of any policy violations or any willful
24 or wanton conduct by any of the defendants. Therefore,
25 punitive damages shouldn't apply in this case.

1 THE COURT: I'll be glad to hear from the defense. I
2 mean, from the plaintiff. I'm sorry.

3 MR. WILLEY: I mean, that's just not the case. I mean,
4 the facts in evidence are that Walmart has internal policies
5 for safety sweeps, where they walk around and they look at --
6 or -- and the evidence in the case is that, if they had
7 preserved the six hours of videos, that they were on notice
8 within two weeks, that they needed to preserve. That letter
9 is in evidence, that that would have captured in these safety
10 weeks. And Mr. Ringer --

11 THE COURT: Let's deal with the issue of lack of video
12 and the spoliation request.

13 MS. BOYD: Yes, Your Honor. Mr. Ringer doesn't recall
14 getting the letter to retain the evidence, and he sent it to
15 corporate. I have no -- yeah, we have no -- yeah, no
16 information of where that letter went. But Walmart retained
17 the store video in compliance with its internal policies. It
18 contains -- it retains 17 videos, tracking her throughout the
19 store, and the policy for incidents is one hour before, one
20 hour after the incident. And the incident was finding the
21 nail. That is what triggered that video to be retained for
22 such a large amount of time versus the other clips.

23 THE COURT: All right. Be glad to hear from the
24 plaintiff.

25 MR. WILLEY: Their internal policy is irrelevant. The

1 law on spoliation is that, when you know litigation is
2 imminent, you have to retain what has been asked to be
3 retained. And, in this particular case, they have produced
4 the letters back to us in discovery. And as Mr. Ringer
5 indicated, that letter was hand delivered to him. And the
6 second letter actually has the stamp on it from claims
7 management, which is, as you'll recall, Walmart's internal
8 claims handling and processing. So there's no dispute about
9 that. Walmart doesn't get to get out of spoiling evidence
10 simply because they have an internal policy that is different.

11 Of course the store never wants to identify where a
12 hazardous condition came from or -- or how long it has been
13 there, unless it's in their interest to do so. I mean,
14 Walmart -- if somebody spilled something on the floor and they
15 had a video of it, you better believe they would retain that
16 if -- if it's shown that it hadn't been there for a sufficient
17 amount of time.

18 In this case, we don't know one way or the other, and we
19 can't know, and that's the point of spoliation. When you can
20 somebody to save something in connection with the lawsuit --

21 THE COURT: What didn't they save?

22 MR. WILLEY: I'll read them to you. May I get the
23 exhibit?

24 MS. BOYD: Your Honor, I'd just like to point out, with
25 the spoliation charge, the jury may or may not make a negative

1 adverse inference. It's not automatic. And so plaintiff's
2 counsel can't depend on the possibility of an inference to
3 prove its case.

4 MR. WILLEY: Of course we can, because the standard at
5 this juncture is any evidence. It's not proving the case.
6 The jury ultimately gets to decide. But taking all the facts
7 and potential inferences and the light most favorable to the
8 non-moving party, which is us, this is one way that we get
9 there. And so that's the standard on directed verdict is
10 taking --

11 THE COURT: What video don't you have? We saw -- we
12 spent all day looking at videos.

13 MR. WILLEY: Here's what we said: All video camera
14 footage directed towards the floor area and main grocery aisle
15 during the six hours prior to injury and the one hour
16 following the injury.

17 And here's what that would have showed us: It would have
18 showed us, obviously, if someone had dropped a nail. We'd be
19 able to see that. But in terms of proving the case as to
20 punitive damages, there's testimony about the internal policy
21 that every one and a half to two hours, each associate is
22 supposed to be doing a safety sweep of its area. One and a
23 half to two hours. Right?

24 And the only way that Mr. Ringer knows that they do that
25 is he walks, and if he seeing something on the floor, then he

1 assumes they didn't do it and he goes and talked to them.

2 This video would have shown this. We would have been
3 able to see were there associates in that six-hour period
4 before the injury going around, conducting safety sweeps in
5 the area where Ms. Jones traversed, and we don't have that.
6 And so the jury is entitled to draw an adverse inference that
7 that didn't happen. And because that didn't happen, if the
8 adverse inference is drawn, they violated their own internal
9 policies.

10 THE COURT: Very good. I understand what you're saying.
11 All right.

12 Ms. Boyd?

13 MS. BOYD: Well, Your Honor, there's -- I'm sorry.

14 THE COURT: Y'all produced a number of videos, and we
15 have seen every step that she took in the store.

16 MS. BOYD: We did, Your Honor.

17 THE COURT: And all of those cameras were utilized in
18 doing that. Is there anything that just -- all those cameras
19 are looking at the floor.

20 MS. BOYD: They are, Your Honor, but those cameras -- I
21 mean, plaintiff argues that we would have been see someone
22 drop a nail. Let's also be reminded that that nail is less
23 than an inch long. There is no evidence that you would see
24 that fall.

25 In fact, Ms. Jones testified that she could barely see

1 things in the videos we had. And so to indicate that six
2 hours of video would have located the source of who dropped
3 the nail, it's purely speculative. It does not indicate that
4 there is additional evidence.

5 And, further, Mr. Ringer testified that, based on the
6 videos he saw, the zoning had happened and sweeps had
7 occurred. And Mrs. Jones testified that she saw nothing on
8 the floor, indicating that the floor was clean.

9 THE COURT: All right. I'm going to deny the request for
10 a spoliation charge. I find that there are a number of
11 videos, all of which pointed towards the floor. And there are
12 17, I believe, that are in evidence; is that correct?

13 MS. BOYD: That's correct, Your Honor.

14 THE COURT: And in addition to that, there was never a
15 motion to compel.

16 MR. WILLEY: There's not -- Your Honor --

17 THE COURT: There was never a motion to compel. And
18 that's my ruling and you're protected on the record.

19 MR. WILLEY: The one thing that I would just add for the
20 benefit of the record is that the representation is that the
21 video did not exist. So a motion to compel would have been a
22 frivolous motion, and it's not --

23 THE COURT: In order to say that -- to be entitled to a
24 spoliation, you have to prove that there's something you
25 didn't get and they destroyed it.

1 MR. WILLEY: We have to prove that there's something that
2 we didn't get and they destroyed it, and the testimony on the
3 stand from Jenny Wright was the only video that she ever
4 pulled were the 17 clips, which I would add, do not show every
5 step that Ms. Jones took.

6 Second of all, I asked her specifically did anyone ever
7 come back and say pull these additional videos, and she said
8 no.

9 THE COURT: All right. You're protected on the record,
10 and I'm denying the spoliation charge.

11 Anything else?

12 MS. BOYD: We'd move for a spoliation charge on
13 Plaintiff's shoes that she was wearing on the day of the
14 incident. She testified about varying sizes. She's testified
15 about varying placement of wounds of where the nail punctured
16 her shoe. And so that --

17 THE COURT: Did you subpoena that?

18 MS. BOYD: We did. We requested it in discovery. We
19 asked for the shoes --

20 THE COURT: And did you bring it before the Court on a
21 motion to compel?

22 MS. BOYD: We did not, but she told me it no longer
23 existed at her deposition.

24 THE COURT: All right. Well, I deny that one as well.

25 MS. BOYD: Thank you, Your Honor.

1 THE COURT: All right. As far as the motion with regard
2 to punitive damages, I find that the condition of the store,
3 just looking at the video, is pristine. And in order to
4 justify punitive damages, there has to be a conscious
5 wrongdoing, and I think that the testimony and the record
6 speaks for itself, that Walmart -- if you look at things from
7 a very optimistic standpoint -- want to keep the store safe
8 for customers so nobody gets hurt. But you can look at it in
9 a more cynical way that they want to keep the store safe so
10 they won't find themselves in this situation.

11 But nonetheless, no one can say that Walmart wanted
12 that -- that -- or did something nefarious to put that nail on
13 the floor. I think that it's clear that there is -- that the
14 employees are trained to do safety sweeps even before they're
15 employed. They do regular safety meetings. They're trained
16 continuously on safety. After the stocking at night, they
17 sweep the floor, and they run one of those butane scrubbers on
18 the floor every morning.

19 I think there's testimony that it's not uncommon for each
20 associate to have more than five miles on their step counter
21 in a day's time. I find that they are on constant patrol.
22 And if anything, if this were to survive a directed verdict,
23 that the only thing that it could be, if it's anything, is
24 simple negligence. There's no conscious wrongdoing.

25 And that's my ruling with regard to punitive damage.

1 Anything further from anybody?

2 MS. BOYD: No, Your Honor.

3 THE COURT: All right. Anything further from the
4 plaintiff?

5 MR. WILLEY: I would just note, for the record, the
6 letter I was referring to is in evidence as a Plaintiff's
7 evidence.

8 THE COURT: Very good. And you're protected on the
9 record in that regard.

10 Anything else before we recess?

11 MS. BOYD: No, Your Honor.

12 THE COURT: Anything from the plaintiff?

13 MR. WILLEY: No, Your Honor.

14 THE COURT: We'll be back at 9:30 on Friday.

15 MR. WILLEY: Thank you, Your Honor.

16 THE COURT: -- hold motions conclusion of the case.

17 (At 4:49 p.m., the trial was adjourned until Friday,
18 November 12, 2021, at 9:30 a.m.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: April Jones v. Tim Ringer/Walmart

3 2017-CP-21-01375

4 DATE OF PROCEEDING: November 10, 2021 (Day 3 of 4)

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; **that said proceedings were transcribed**
9 **to the best of my ability from the audio recording and**
10 **supporting information**, and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14 

15 _____/s/ Bobbi Fisher_____

16 Bobbi J. Fisher, RPR

17 NCRA Registered Professional Reporter (RPR)

18 Prepared: December 31, 2021

19
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